

NMa 2011 Annual Bulletin

Introduction

The Annual Bulletin touches on the most interesting cases and events directly related to the themes highlighted in the NMa's 2010-2011 Agenda. Among other topics, the upcoming Annual Report will also discuss more cases. The NMa aims to release the 2011 Annual Report in March.

As in previous years, in 2011, the NMa covered a wide range of markets. Its 2010-2011 Agenda designated the following industries as so-called focus industries: health care, the processing industry, financial and business services, energy, and transport. The Annual Report groups cases in chapters according to these focus industries, followed by a separate chapter covering some of the NMa's more noteworthy activities in other industries.

Outcome of the NMa's activities

The 3-year rolling average of the NMa's outcome for 2011 is EUR 265 million. The Netherlands Bureau for Economic Policy Analysis (CPB) has assessed the validity of these calculations. This figure is more than six times the NMa's annual budget. In addition, of all the general-competition cases that were brought to court, the judge ruled in the NMa's favor 87 per cent of the time. Of the industry-specific regulatory cases (energy and transport) that were brought to court, that figure is 73 per cent. More key figures can be found in the table on the last page of this Annual Bulletin.

Energy

The courts on energy regulation

In 2011, the Dutch Trade and Industry Appeals Tribunal (CBB) and the District Court of Rotterdam ruled in 13 cases. The CBB has reaffirmed that, to the extent it sees fit, the NMa, as the authority for all types of regulatory decisions, is free to choose in what way it believes it is best able to contribute to the realization of the goals of competition oversight. However, the NMa must comply with industry-specific regulations, as well as justify its choices sufficiently. The courts have reacted positively to the implementation of the tariff regulations and the technical codes. The NMa's role in dispute resolution was similarly welcomed.

The consumer market

Energy suppliers Greenchoice and energie:direct fined

Energy bills

For years, Dutch energy supplier Greenchoice sent its final bills late to customers that had cancelled their contracts, or even failed to send any final bills at all. In most of these cases, customers were entitled to overpayment refunds. The NMa has therefore imposed a fine of EUR 7.2 million on Greenchoice. All affected customers have finally received their final bills, as well as their refunds. In close consultation with the NMa, Greenchoice has taken measures to prevent this from happening again. The ability to switch energy suppliers quickly and easily relies on having error-free administrative processes. Hassle-free switching leads to stimulation of competition among suppliers, which in turn stimulates competition in the energy industry.

Door-to-door selling

The NMa has imposed fines on two Dutch energy providers, Greenchoice and energie:direct, for customer-recruitment methods involving door-to-door selling they used in early 2010. Triggered by indications they received through a special online complaints office on door-to-door selling, both the Netherlands Consumer Authority (CA) and the NMa launched investigations. It turned out that many consumers were not aware that they were actually signing a contract with another energy provider, because the aforementioned energy providers failed to adequately inform these consumers about important conditions of the contracts they were about to sign. Consumers must be provided with clear information about the offers energy companies make them. Greenchoice has been fined more than EUR 2 million, while energie:direct has been fined more than EUR 1 million. The level of the fines already reflects the measures that both companies have taken in order to prevent future violations.

Wholesale markets

Market coupling in Central Western and Northern European regions realized

The NMa and British energy regulator Ofgem have approved the auction rules for the BritNed cable, a new electricity cable between the Netherlands and Great Britain. With the auction rules approved, BritNed can put the cable into operation. In a separate move, the NMa has approved the rules for cross-border trade between the Netherlands and Belgium, which takes place on the power exchange APX-Endex. In addition, the NMa has cleared intra-day trade between Norway and the Netherlands. Finally, all Dutch interconnectors have been coupled, thanks to the so-called NorNed cable, a 580-kilometer long submarine power cable between the Norwegian city of Fedaa and the Dutch seaport of Eemshaven.

Opening up the gas market

The NMa has ensured that Dutch natural-gas supplier GasTerra has taken measures leading to increased competition on the wholesale market for natural gas. The most important measure GasTerra has taken is offering energy companies a new flexibility service for the storage of natural gas. This service is necessary in order to be able to meet fluctuations in demand for natural gas in summer and winter. Energy suppliers will have more choice when buying natural gas.

Investment climate for energy networks

Dutch gas transmission system operator is to return EUR 400 million to its customers

Dutch transmission system operator for natural gas GTS is to return EUR 400 million in excess revenues to its network users by means of a discount on future gas transport tariffs. As a result of two rulings by the CBB, the NMa revised its regulatory framework for the period of 2006-2009. This new framework offers GTS enough leeway to make the necessary investments in infrastructure to realize its ambition to become the gas roundabout in Europe, while at the same time ensuring that customers are not overcharged.

Dutch transmission system operator's 2012 transmission and system services tariffs remain stable

The tariffs for transmission services of Dutch transmission system operator TenneT continue to be stable in 2012, according to the NMa's tariff decisions. TenneT's revenues are expected to increase by approximately 8 per cent, mostly as a result of projected increases in transmission volumes. The new transmission tariffs included a surcharge for three large-scale investments. They also included an inflation adjustment of 2.6 per cent. TenneT's revenues for system services have increased by 2.1 per cent.

Financial and business services

Enforcement

Industrial-laundry cartel fined EUR 18 million for market-sharing

The NMa has imposed fines, totaling EUR 18 million, on four major laundries for engaging in market-sharing activities. These industrial laundries wash, among other items, bed linen and working-clothing for health care providers. The NMa's decision stated that the industrial-laundry cartel had shared the Dutch market since at least January 1, 1998. The laundries involved were each allocated a region. They were not allowed to compete with one another, nor actively recruit any customers outside their regions. Their long-standing market-sharing agreement therefore resulted in health care providers not being offered competitive bids from these industrial laundries, denying them the benefits of competition.

Homeowners at foreclosure auctions have been victims of cartel for years

Homeowners that were forced to sell their homes through foreclosure auctions have also been the victim of a cartel for years. The NMa imposed fines, totaling EUR 6.3 million, on 14 Dutch property traders. These traders kept property prices at foreclosure auctions artificially low in order to make a profit at secret auctions held after the official auctions.

The cartel existed between June 2000 and November 2009, and has affected foreclosure auctions across the Netherlands, involving more than 2,000 homes. The 14 traders that have been fined were involved in auctions involving 265 to (in some cases) more than 1,100 homes per trader. Another 42 traders have also been fined.

Study provided insight in antitrust risks in property finance industry

A study commissioned by the NMa has revealed that the risk of cartels in the property finance market has increased due to the limited number of players in that market, which in recent years has decreased even further. In the future, the NMa will particularly focus on refinancing products and syndicated loans, since the study indicated an elevated risk to competition in these two submarkets.

Mortgage margins and competitive pressure are closely connected

In early 2011, mortgage margins in the Netherlands were back at pre-financial-crisis levels. This decrease in margins has been accompanied by an increase in competition. This is one conclusion the NMa drew in its study into competition in the Dutch mortgage market. As part of that study, the NMa looked specifically into the possibility of collusion, but did not find any indications of price-fixing agreements between mortgage providers, or of any other violations of the Dutch Competition Act.

The decrease in margins coincided with the success of several insurers and non-Dutch banks in gaining market share over the major Dutch banks. This underlines the fact that these other 'challengers' are crucial for a healthy market. Consumers also play a vital role in stimulating competition by shopping around before making a decision, and by including providers other than the major Dutch banks in their decision process.

Transport

Oversight and regulation

Specific requirements needed when tendering the main railway network concession

Following the release of its Market Scan on Passenger Transport, the NMa called on the Minister of Infrastructure and the Environment to sharply negotiate with parties in the upcoming negotiations for awarding the main railway network concession. The Market Scan outlines the NMa's view on the passenger rail market from an economic point of view. Dutch Railways NS is the current holder of the main railway network concession, which will expire January 1, 2015. The Ministry of Infrastructure and the Environment has awarded the new concession to NS for ten years (2015-2025).

European rail regulators will cooperate more closely

Sixteen independent European rail regulators established IRG-Rail: the Independent Regulators Group. IRG-Rail can help solve technical and administrative problems when crossing borders. Railway undertakings should be able to run their trains unhindered, not having to deal with technical and administrative problems at every border. For example, the more the Port of Rotterdam grows (once the expansion project Maasvlakte 2 is completed), the greater the importance of having high-quality, borderless rail connections becomes.

Pilotage tariffs decrease 1.55 per cent in 2012

The NMa has set lower pilotage tariffs than the Dutch Pilots' Corporation (NLc) had proposed. The NMa is authorized to deviate from the tariff proposal should it not meet the requirements set out in the Dutch Pilotage Act. The NMa is of the opinion that the NLc failed to give a proper justification for the number of so-called availability hours for 2012.

Mergers and acquisitions

Public-transport companies HTM and Qbuzz are allowed to cooperate

The NMa has granted Dutch municipal public-transport company HTM (based in The Hague) and public-transport company Qbuzz permission to cooperate with one another. Through their yet-to-be-created joint venture HTM Buzz, HTM and Qbuzz are allowed to submit a bid in the tender of the bus concession in The Hague for the period of 2012-2017. Having conducted an investigation, the NMa found that enough competition will be left in that market after said tender.

Situation in Rotterdam

The situation in The Hague is different from the tender for the bus concession in Rotterdam, where Qbuzz sought to cooperate with municipal public-transport company RET (based in Rotterdam). Like RET, Qbuzz already operates several bus services in Rotterdam. Before reaching its final decision, the NMa wanted to investigate the competitive positions of Qbuzz and RET in the Rotterdam tender in greater detail. Since RET and Qbuzz have withdrawn their concentration notification, the NMa has not launched such an investigation.

Processing industry

Enforcement

Ship-generated waste collection cartel fined

Three ship-generated waste collection companies based in the Dutch ports of Rotterdam, Schiedam, Vlaardingen and Maassluis have been imposed fines, totaling more than EUR 2.9 million, for cartel activities between August 2005 and July 2007. They concluded price-fixing agreements, and shared work amongst each other, thereby eliminating competition. They harmed customers, which, in this case, are shipping companies that own ships. These shipping companies were under the impression they were getting competitive offers, yet, the cartelists secretly harmonized their offers and decided amongst themselves who would get each job and at what price.

Highest Dutch court in antitrust cases upheld fines on shrimp cartel

Traders and Dutch, German and Danish producers' organizations representing shrimp fishers must pay fines, totaling more than EUR 4.4 million, for violation of the prohibition of cartels between 1998 and 2000. This is the outcome of the final ruling laid down by the CBb in the long-standing legal dispute that lasted more than eight years over the fines that the NMa imposed in early 2003. This is the first case ever in which the NMa has fined non-Dutch parties. The fishermen's organizations made arrangements over the maximum amount of shrimp that they could bring to land each week per cutter. The lion's share of these fines, more than EUR 3 million, will be borne by two wholesalers involved. The fines, though, have been lowered by the CBb.

Sustainability

The NMa has welcomed the plans the Dutch shrimp-fishing industry put forward on how to make shrimp-fishing sustainable. The NMa has approved most of the plans, drawn up by Dutch producer organization Garnaal and the Dutch Fishing Association. It believes that sustainability and competition can definitely go hand in hand, but, at the same time, the NMa questioned the proposals on catch limits aimed at protecting the Brown-shrimp population. There is no need for such limits, as studies have revealed that the Brown-shrimp population is not in danger at the moment. That means that the proposed catch limits would go beyond what is necessary. In fact, it would lead to a reduced supply of Brown shrimps, thereby affecting the price of shrimp.

At a roundtable discussion on sustainability with representatives from the corporate sector, the NMa listened to the experiences of companies that sought to collaborate with an eye to, for example, the environment, animal welfare, or consumer health. This initiative came as a result of, among other things, the 2010 evaluation of the NMa as a so-called Autonomous Administrative Authority, and of the advisory report 'Working harder towards sustainable growth' by the Social and Economic Council of the Netherlands (SER) for the Dutch government (published in May 2010).

Health Care

Enforcement

Dutch National Association of General Practitioners fined for illegal establishment recommendations

The Dutch National Association of General Practitioners (LHV) called on its members to restrict the freedom of establishment for new GPs. The NMa imposed a fine of EUR 7,719,000 on LHV for these illegal recommendations. In addition, two LHV officials have been imposed personal fines of EUR 50,000 and EUR 25,000 respectively, because the NMa held them responsible for making LHV's recommendations to its members. GPs should be free to decide for themselves where they want to establish their practices. And to eliminate any confusion regarding this matter, the NMa has also imposed an order subject to periodic penalty payments on LHV, requiring it to inform all of its members and regional divisions that its establishment recommendations have been revoked.

Home care industry is becoming more aware of competition

The NMa is seeing a positive trend as more and more home care providers become aware of competition and of the antitrust rules that come with it. These providers are doing more and more to prevent future mistakes. This has been the conclusion the NMa draws following, among other things, talks it had held with supervisory boards of home care providers. Next to the constructive talks it held with home care providers, the NMa has also completed a number of cases from the past.

Commitments

Four home care providers based in the south of the Netherlands that had been the subject of ongoing NMa investigations have made commitments to the NMa that they would adjust their behavior so that competition would no longer be jeopardized. Thanks to these commitments, the potential antitrust concerns have been taken away swiftly and effectively, enabling the NMa to complete its investigation efficiently.

Fines

The NMa has imposed fines on two home care providers, Stichting Careyn Zuwe Aveant and Stichting Vierstroom, of EUR 1,343,000 and EUR 3,000,000 for market-sharing activities. These home care providers had made a far-reaching non-aggression pact as part of the dissolution of a cooperative arrangement (Caraat). The dissolution process had thus resulted in a market-sharing agreement, which constitutes a severe violation of the Dutch Competition Act. The non-aggression pact the providers had made had the objective of eliminating mutual competition. Furthermore, as a result of the pact, the threat of a new entrant, Careyn, in the subsidized health-care market in the region of Midden-Holland had subsided.

Collaboration between hospitals is allowed only if patients benefit

Hospitals are allowed to collaborate and make specialization arrangements only if patients clearly benefit from such collaborations. Hospitals must be able to demonstrate that the quality benefits of their collaboration outweigh the drawbacks of, for example, less freedom of choice for patients or insurers. Mutual agreements cannot result in less or no competition. If hospitals were to be forced to specialize in order to meet certain quality requirements, insurers could play a key role in determining what hospital would provide what health care treatments in the future, so the NMa believes.

The NMa has developed an informational brochure, explaining the rules on joint purchasing by health insurers. Under certain conditions, they are allowed to collaborate when selecting health care providers, if such collaboration helps improve hospital care quality.

Mergers and acquisitions

Merger between health care providers in central Netherlands blocked

The NMa has blocked the planned merger between health care providers Zorggroep Noordwest-Veluwe and Het Baken, both of which are based in Veluwe, a region in central Netherlands. The NMa argued that this merger would have eliminated each other's main competitor. It would have reduced health care options for patients, and would have taken away mutual competition between these providers. Nursing care patients often choose local providers, so patients in this particular region rely on these aforementioned local providers. By turning down their license application, the NMa has prevented that the merger would have resulted in these health care providers being stimulated too little to differentiate themselves from each other, for example, by innovating and improving their health care services.

Merger between two health insurers cleared

After conducting a detailed investigation in the licensing phase, the NMa approved the merger between Dutch health insurers Achmea and De Friesland. The investigation had revealed that Achmea/De Friesland would have a strong buying position in the northern Dutch province of Friesland. However, Achmea/De Friesland customers and patients do not have to fear a reduction in the quality of their health care plans or of their policies. Risking losing customers to competitors, the new company is expected to think twice before reducing the quality of their health care plans or benefits.

Acquisition of Dutch ambulance service provider VZA by Amsterdam hospital AMC will not harm patients

The NMa in 2009 cleared the acquisition of ambulance service provider VZA by Amsterdam-based hospital AMC. Two rival hospitals filed an appeal against this approval with the District Court of Rotterdam. The NMa assessed whether it was likely that patients would be harmed if the merger went through, and if AMC, as a result thereof, succeeded in rival hospitals getting fewer patients (through ambulances). The NMa concluded that the acquisition would not generate any antitrust concerns. The District Court upheld the NMa's decision.

Other Industries

Enforcement

Cartel activities of Dutch mobile operators in 2001 reconfirmed

Following a ruling of the CBb, the NMa confirmed that the three biggest mobile operators in the Netherlands, KPN, Vodafone and T-Mobile, engaged in cartel activities in 2001 about dealer remuneration levels, and issued new fining decisions. The fines have been revised as follows: KPN: EUR 7,933,000, T-Mobile: EUR 4,599,000 and Vodafone: EUR 3,717,000. These are lower than the original fines that were imposed by the NMa in late 2002, because the violation was only established for the postpaid market, not for the prepaid market, and because the reasonable time limits with regard to decision-making and judicial review had been exceeded.

Mergers and acquisitions

Acquisition of SBS Netherlands by Sanoma and Talpa conditionally approved

Media companies Sanoma and Talpa have been conditionally allowed to acquire the Dutch activities of rival company SBS Netherlands. Talpa must sell its minority interest in broadcaster RTL Netherlands within three years, and, until then, it must transfer its shares in RTL Netherlands to an independent trust foundation, whose board will report to the NMa. This way, the NMa has prevented Talpa from exerting substantial influence over both SBS and RTL's strategies (two of the Netherlands' biggest broadcasters), and thus from potentially gaining a competitive advantage. The NMa's investigation into the acquisition's effects further revealed that there are no antitrust concerns with regard to the other markets Sanoma and SBS operate in, for example, the distribution market for single-copy magazine sales, such as TV listings magazines.

Acquisition of mobile-phone retail chain BelCompany by Vodafone conditionally approved

The NMa has approved the acquisition of Dutch mobile-phone retail chain BelCompany by telecom provider Vodafone under the condition that, from January 1, 2012, Vodafone would no longer sell any mobile-phone plans of its competitors KPN and T-Mobile in the BelCompany stores or in its own stores. At the same time, Vodafone cannot sell its plans through stores owned by KPN or T-Mobile. The NMa attached these conditions to the acquisition in order to prevent Vodafone, KPN and T-Mobile from getting the opportunity to harmonize their commercial strategies through their stores. If that were to happen, competition would be reduced, and consumers would be harmed. The NMa's investigation revealed that, if the NMa's conditions are met, consumers continue to have enough choice, even after the acquisition.

Acquisition of postal service company Selekt Mail by rival Sandd approved

Postal service company Sandd has been allowed to acquire rival company Selekt Mail, a subsidiary of Deutsche Post. According to the NMa, it is unlikely that this acquisition would significantly impede competition, because it was inevitable that Selekt Mail would eventually withdraw from the Dutch market. The NMa cannot rule out that mail delivery prices may increase, now that it is clear that only two national postal service companies will remain active on the market.

NMa's 2011 key figures

Please note that these figures are provisional figures only. The final figures may differ due to administrative processes.

Preliminary Key Figures NMa 2011		2009	2010	2011	Comments 2011
Competition					
Statement of Objections and Fines					
	Number of formal investigations under competition law	24	19 (+1)	18	
	Number of formal investigations resulting in a Statement of Objections (establishing a reasonable suspicion that the Competition Act was violated)	15	11	10	
	Number of investigations completed by means of an alternative instrument	2	3 (+1)	2	
	Number of investigations in which the formal investigation was suspended due to insufficient evidence	7	5	6	
	Number of cases in which a fine and/or an order for periodic penalty payments was imposed	12	12	6	
	Total amount of fines in competition cases (x € million)	4.5	137.1	39.7	
	Number of fines on de facto executives	-	8	2	
Complaints and informal opinions					
	Complaints settled in relation to violations of the Competition Act	24	17	18	
	Informal opinions	1	1	1	
Concentrations					
	Proceeds of notifications and licences (x € million)	1.2	1.3	1.4	
	Notifications of mergers, acquisitions and joint ventures (concentrations)	90	83	98	
	Concentration notifications that did not need to have been notified	-	1	-	
	Withdrawn notifications	7	4	6	
	Exemption from the waiting period	6	0	3	
	Decisions on notifications of concentrations	82	83	87	
	License required for concentration	1	7	5	
	License applications	4	4	5	
	License applications withdrawn	1	1	2	
	Decisions on license applications	2	3	4	
Transport					
Railway Act					
	Number of investigations by Office of Transport Regulation	4	2	7	
	Number of formal investigations resulting in a Statement of Objections	-	-	-	
	Number of investigations completed by means of an alternative instrument	3	-	3	
	Number of cases in which no violation was established	1	-	4	
	Number of completed sanctions cases	-	-	-	
	Total amount of fines in transport cases (x € million)	-	-	-	
	Number of completed complaints related to the Railway Act	3	-	-	
	Number of advisory opinions to Ministry of Infrastructure	4	5	6	
Aviation Act					
	Number of requests for tariff assessment resulting in a decision	2	-	2	
	Approval decision on cost allocation system	-	2	-	
Pilotage Act					
	Decisions Pilotage Act	3	1	4	
Passenger					
	Completed cases involving local transport companies	6	-	-	
Transport Act					
	Number of cases resulting in a court ruling	-	-	-	
	Number of advisory opinions to Ministry of Transport	2	1	-	
Energy					
	Proceeds of contribution scheme energy (x € million)	2.9	3.1	4.1	
	Method decisions	-	4	7	
	Implementation decisions	69	116	78	
	Enforcement decisions	11	3	2	
	Advisory opinions to the Minister of Economic Affairs	21	9	12	
	Dispute resolution	30	26	20	
	Number of energy cases in which a fine and/or an order subject to periodic penalty payments was imposed	9	1	3	
	Total amount of fines in energy cases (x € million)	0.8	0.2	10.4	
Administrative appeals					
	Completed administrative appeals in competition cases	18	12	24	
	Completed administrative appeals in energy cases	42	118	142	
	Completed administrative appeals in transport cases	1	1	1	
Judicial appeals					
	Judicial appeals completed by the District Court of Rotterdam against decisions in relation to competition	45	12	11	Includes 2 construction industry cases
	Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to competition	8	36	13	includes 10 construction industry cases
	Judicial appeals completed by the District Court of Rotterdam against decisions in relation to energy	39	55	73	
	Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to energy	-	-	-	
	Judicial appeals completed by the District Court of Rotterdam against decisions in relation to transport	6	6	1	
	Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to transport	9	1	3	
Outcome					
	3-year rolling average (x € million; in 2011 prices)	340	366	265	
Budget and personnel					
	Total budget granted (x € million)	49.4	45.9	45.5	does not include compensations
	Number of staff on December 31st	438	433	395	
	Ratio men/women	51%/49%	52%/48%	52%/48%	
	Average age of staff	37	38	39	