

1. What is that exactly, procurement power?

Procurement power is market power on the procurement side of the market. Market power exists if the buyer can act more or less autonomously of its suppliers. As a result, the buyer may demand unfair procurement conditions, without the supplier being able to do anything to prevent this. Having market power does not necessarily mean that one abuses it. A party with a dominant position may also purchase at competitive prices and be a tough negotiator.

2. What reports have you received following the consultation?

24 Undertakings and branch associations responded. NMa has obtained many examples which sometimes involved a dominant position, but no examples were given which infringed the Competition Act and which, in particular, involved the abuse of a dominant position.

3. What joint ventures does NMa permit?

1. Bagatelle:

Source: Competition Act

Section 6(1) shall not apply to agreements, decisions and concerted practices, as referred to in the said section, if:

- (a) no more than eight undertakings are involved in the agreement or concerted practice in question, or if no more than eight undertakings are involved in the respective association of undertakings; and
- (b) the combined turnover of the undertakings party to the respective agreement or the concerted practices in the preceding calendar year, or the combined turnover of the undertakings which are members of the respective association of undertakings does not exceed:

- 1° € 4,540,000, if the agreement, concerted practice or association involves only undertakings whose core activity is the supply of goods;
- 2° € 908,000, in all other cases.

2. If separate agreements with the same purpose are entered into between an undertaking or association of undertakings and two or more other undertakings, such agreements shall be regarded jointly as a single agreement for the purpose of the application of subsection (1).

3. By Order-in-Council, if necessary subject to conditions and restrictions, section 6(1) may be declared inoperative in respect of categories of agreements, decisions or practices, as referred to in the said section and described in that order, which are clearly of minor significance from the point of view of competition.

2. **Merger/takeover, provided a dominant position does not arise or is not strengthened**

3. **Horizontal cooperation** (see guidelines for horizontal cooperation)

4. **vertical cooperation** (see guidelines on vertical cooperation)

See also guidelines for corporation between companies.

4. How can NMa counteract procurement power?

NMa can prevent procurement power from arising through merger control. NMa can prohibit mergers which would result in the emergence or strengthening of a dominant position. Where a dominant position is abused by a party with procurement power, NMa can take action against this by imposing a fine and/or an order subject to a penalty. NMa can also permit mergers and joint ventures which focus on counteracting procurement power. A condition for this, however, is that these types of cooperation satisfy the frameworks provided in competition law (see the legislation and regulations on www.nmanet.nl)

5. Is procurement power a priority for NMa?

NMa can process complaints. The complaint must relate to a suspicion that a dominant position has been abused and must be supported by sufficient, concrete information.

6. What is your standpoint with regard to procurement power and supermarkets?

The present market situation is characterised by fierce competition between supermarkets for the patronage of customers, who benefit from this in the form of lower prices. In the White Paper, NMa concludes that, in principle, a dominant position is not abused on the procurement side if the procurement advantages are passed on to consumers. This is the case in relation to supermarkets. NMa therefore sees no reason to intervene. Despite this, some undertakings on a market on which undertakings are involved in fierce competition reach the limits of their possibilities and have to make far-reaching changes to their operations if they wish to remain active on the market. NMa will remain alert to developments in the sector but adhering to its motto "making markets work"—because that is NMa's mission—it will not be quick to intervene.

