



## Market Outlook

### The Netherlands Authority for Consumers and Markets

#### *Introduction*

The Netherlands Authority for Consumers and Markets (ACM) promotes opportunities and options for businesses and consumers alike. The ACM strategy, which will be put out for public consultation this spring, outlines the new authority's oversight philosophy and its envisaged approach. This market outlook details the current state of play within the broader realm of consumers and markets, focusing on several sectors. It outlines what questions ACM faces and how we seek to anticipate these in the execution of our duties. Together, the market outlook and strategy form the foundation of the key priorities that ACM has selected for 2013.

#### *Economic context*

The ongoing economic crisis is progressively eroding consumer purchasing power and consumer confidence. Consumers remain critical when purchasing goods and services, but are particularly susceptible to special offers at the moment, and are thus more vulnerable to unfair commercial practices. Based on an analysis of consumer indications submitted to consumer information desk ConsuWijzer, discussions with various stakeholders, and within the National Forum of the former Netherlands Consumer Authority, we have identified the main problems consumers face now and in the foreseeable future. These problems are the result of aggressive and deceptive telemarketing, delivery and payments problems at online shops, and untransparent prices and tariffs, for example in the travel industry. Naturally, this is a priority for our consumer protection efforts, including informing consumers through ConsuWijzer.

Recovery from the current economic crisis is weak, and as a result, many businesses are going through a rough patch and are looking for ways to survive. In tough times like these, solutions must be sought in efficiency gains and product innovations, thus making sure the economy emerges from the crisis in better shape. However, when forced by circumstances, businesses sometimes look for an answer in anticompetitive measures such as price-fixing agreements, market protection, market foreclosures and/or state aid. Such answers merely offer temporary solutions, leave overcapacity untouched at the expense of consumers and/or taxpayers, and let relatively inefficient businesses continue to exist at the expense of innovative newcomers. In times of



economic crises, regulators should not relax, but should remain vigilant against any attempts that may undermine competitive incentives. Only in cases of structural overcapacity, joint efforts to permanently reduce capacity may be allowed. We will keep a close watch on such collective initiatives, as observed in recent years in the inland-shipping industry and the office space market.

The regulated sectors are hit by the crisis, too. At the same time however, national and European ambitions in these sectors call for major investments in, among other projects, sustainable energy and the digital agenda. Funding the necessary investments requires a sufficient degree of certainty about future regulation, and sometimes requires a contribution from the shareholders. Costs must be recouped at a lower volume growth rate, which means tariffs could rise. In situations where the market offers incentives that are not strong enough, ACM must carefully create incentives to invest and innovate, and, respectively, oversee the effectiveness of planned investments and/or the efficient execution of assigned duties. In the current economic climate, the tension between affordability in the short run and high quality in the long run becomes more pronounced.

#### *Financial sector*

In the aftermath of the financial crisis, the functioning of the financial sector is a topic that attracts a lot of attention from regulators and lawmakers. Whenever additional safeguards for the stability of the financial system are put into place, sometimes even with financial backing from the Dutch State itself, effective competition in the financial-services industry can never be forgotten. That is why the European Commission attaches strict conditions to state aid. In mergers and acquisitions, it is important that competition in the financial-service markets is not unnecessarily impeded. New and stricter requirements that financial-service providers must meet are not allowed to create unnecessary barriers to entry for new entrants, or unnecessary switching barriers for customers.

A 2012 NMa study into price differences for various financial products revealed that consumers could realize substantial savings if they compared different products first before purchasing one. The study also found that the quality of price comparison websites for financial products still had room for improvement. A ban was introduced this year on commissions for advice to consumers on complex financial products such as mortgages. Room for competition on the markets involved cannot be restricted too much because of this ban. Having a diverse range of advisory services and healthy competition ultimately result in clear options and good price-quality ratios for consumers.

The economic characteristics of several banking markets (small number of providers, high survival rate, slow market dynamics) indicate an elevated risk for cartel activities. In the study into the functioning of the mortgage market, serious efforts were made to find concrete evidence of mutual coordination of prices, but such was not found. However, it was revealed that the margins in this market are connected to the market structure. Since the start of the financial crisis, various non-Dutch mortgage providers left the Dutch market, which meant supply in the Netherlands became more concentrated. The reduced levels of



competition were exacerbated by the price leadership bans that were imposed by the European Commission on a number of Dutch banks. The objective of such price leadership bans is to prevent state aid from becoming an unfair competitive advantage, which potentially disrupts the market. At the same time, such bans can restrict competition, particularly in a market that has very few players. Two of the original three bans have already been repealed, and the revised conditions imposed on ING provide for the entry of a new provider, which might actually stimulate competition. ACM will analyze whether further entry into the mortgage market is not unnecessarily impeded.

#### *Housing market chain and construction industry*

The stagnation of the Dutch housing market is attracting a lot of public attention. For us, this is a reason to examine the entire housing market chain. Various questions need to be addressed such as innovation and entry in the realtor business, competition in the rental market, the extent of information exchange between competitors in several submarkets, and entry into the mortgage market.

While the highest court on antitrust matters in the Netherlands in 2012 ruled in the last cases in the construction industry fraud, it must be noted that bid-rigging activities still take place in the Dutch construction industry. Just recently, the NMa imposed fines on demolition firms for cover pricing, where providers give the impression they are submitting serious bids in tenders while they secretly know that another provider has submitted a lower bid, giving the contractor the illusion of competition. ACM will keep a close watch on this sector, looking for indications of cartel activities.

#### *Agricultural and food industry*

In the production chain from food producers to end consumers, different market questions come together: the incomes of primary producers, buyer power of supermarkets, food price trends, and the ambition to make food production more sustainable.

The incomes of growers and fishers in various submarkets are under pressure. An often heard reason is buyer power of supermarkets, which allegedly extort too low prices from their suppliers. Collaboration on the buy side is, to a certain extent, allowed, as long as mutual competition on the sell side remains strong enough. After all, such competition will force supermarkets to pass on to consumers the purchase discounts they are able to negotiate. Insofar the price-forming process in the chain does not offer primary producers the opportunity to operate profitably, it must be concluded that there is overcapacity. This problem is not solved by income protection or cartel activities. If anything, it ought to stimulate producers to change, for example, through product innovation, cost reductions and/or a shift in activities.

Another often cited reason for the income problems are the intermediaries, who allegedly claim too large a share of the difference between the price the primary producer asks and the retail price. Insofar excess returns indeed exist in this link of the chain, it will be attractive to enter this segment or to circumvent it, where possible. Several primary



producers (or collaborations thereof) have indeed launched initiatives to do business with supermarkets directly. That is how competition helps utilize production resources more efficiently.

The income levels of primary producers are a matter of concern elsewhere in the European Union too, though often combined with concerns about high food prices. EU lawmakers are preparing bills that propose to offer more room for collaboration between undertakings, thereby enabling producers to gain more market power than existing agricultural regulations currently allow. In that context, it must be avoided that such proposals undermine the incentives for efficiency and innovation, or that they lead to consumers facing unwanted increases in food prices. The objectives of the Common Agricultural Policy (CAP) offer guidance in that context.

As mentioned earlier, another discussion in the Netherlands besides the income discussion is about the possibilities to make the production chain more sustainable. Many such initiatives are launched without the risk of any market disruption. Various product labels offer consumers the certainty that the products they buy have been produced in accordance with specific standards in ecological footprint, energy consumption, animal welfare, compliance with ecological values and/or social principles. This often also means higher prices, so consumers need to decide whether they think it is worth it. This process does not always lead to the desired outcome, either because it turns out the consumers' willingness to pay for a concrete objective is lower than originally anticipated or it is even completely absent, or because the concrete objective can only be realized through a market-wide implementation leaving individual consumers with no real alternatives. In those cases, the exemption clause in the prohibition of cartels may be invoked under certain conditions, which allows anticompetitive arrangements between producers to be possibly accepted. Examples thereof can be found in certain NMa cases in recent years, varying from waste collection to shrimp fishing (the Knowledge Bank on [www.acm.nl](http://www.acm.nl) has an overview). Alternatively, the government designates the objective as a public interest, and sets rules that can force realization thereof.

#### *Health care industry*

With its oversight on health care markets, ACM wishes to help realize increased cost control, accessibility, and quality improvements in health care. To that end, it is crucial to safeguard competition among suppliers to health care providers, and among health insurers. Strengthening competition among suppliers, particularly when buying drugs and medical equipment, can help reduce costs of health care providers. Having consumers that are well-informed and critical helps promote competition in the health insurance market. ACM endorses the trend that insurers increasingly differentiate themselves based on quality and effectiveness of the health care services they purchase for their customers.

In hospital care and primary care, various forms of collaboration have been developed that are aimed at quality improvement and/or efficiency gains. Collaborative efforts that are necessary to realize concrete benefits for consumers (patients, insured) will usually not be at



odds with the Dutch Competition Act. But if a collaboration restricts competition, and is primarily aimed at realizing benefits for the health insurers involved, it is likely a violation of the Dutch Competition Act. Other important indicators are the positions of health insurers and patients on the collaboration in question, because they are often the ones that will be affected first in case of any anticompetitive move.

Competition for clients and/or their representatives (insurers, municipality) can be observed in several submarkets within the broader field of health care. Examples include health insurances, pharmacies, and home care under the Dutch Social Support Act. In other submarkets, competition is less developed, but is increasing. For example, different segments of the hospital care and primary care markets face effective competition to varying degrees. Finally, there are also submarkets where competition is still in its infancy, for example in facility-based eldercare and in clinical mental health care. Case reviews are primarily based on the factual situation in each individual case, although in merger reviews, developments that can be reasonably expected in the next few years should also be taken into account. The rulings by the courts in 2012 on cartel cases in the home care industry from 2008 underline that the factual situation must be assessed soundly and on a case-by-case basis.

Since the introduction of the Dutch Health Insurance Act in 2006, the system of regulated competition in the curative health care market has slowly but steadily been further developed. A huge step was taken in 2012 when the segment within the hospital care market that is not subject to fixed prices was expanded dramatically, and the ex-post risk equalization scheme was discontinued. As a result, health insurers are given stronger incentives to buy efficient health care. In addition, health insurers in recent years bought health care services based on quality, which, so far, has been defined in terms of volume thresholds. This has given the development of quantifiable indicators for health care quality a new boost, which will benefit transparency in the market.

As a result of these recent developments, buyer power of health insurers has substantially increased vis-a-vis hospitals. Insurers now have greater incentives and more options than before to focus on quality and price when buying health care services. In the negotiation round for 2012, it was still difficult to have the carefully negotiated prices be properly reflected in health insurances, in part because of the conversion of the product definitions, which is part of the transition process from the so-called Diagnosis and Combination Treatment (DBC) system to a new system, called DOT. Against this backdrop, the NMa in 2012 ruled in three hospital merger cases that the buyer power of insurers sufficiently offset the seller power that was realized as a result of the merger, in part because the commitments made by the hospitals involved with regard to prices. In each of these three cases, the largest health insurers involved, which, after all, are these hospitals' biggest negotiation partners, were also in favor of these mergers. They expected to benefit in terms of price and health care quality because of these mergers, and had already made arrangements with the hospitals based on that assumption.



In the public debate on health care, an often heard question is whether such mergers create hospitals that are too large. There are numerous examples, both in and outside health care, of what can go wrong in large (or too large) semi-public organizations.

However, this question, no matter how valid, is not part of the merger review process under the Dutch Competition Act. Outside the semi-public sector, mergers and acquisitions are not always successful either. That risk is solely borne by the organization. In health care, however, that risk will also affect public interests, and will hurt more in case of a larger organization than in case of a smaller one. Therefore, there are enough reasons to have a certain check in place on ill-considered merger plans, as intended by the bill that has been submitted to the Dutch House of Representatives proposing the introduction of a health-care-specific merger review process. It requires the merging parties to draw up a merger impact analysis themselves, which will be discussed with stakeholders and internal regulators.

#### *Telecommunications*

The digital revolution shows no signs of slowing down. Consumers increasingly use digital services for their internet (including mobile internet), television and telephony needs. By taking advantage of social media and of mobile and online possibilities, consumers have greater access to relevant information about products and services. The need of customers to share experiences is increasing. For consumers, online safety and protection of personal information are very important. Data from Statistics Netherlands reveal that 12 percent of all Dutch aged 15 years and older in 2012 faced some form of computer crime. Online safety is threatened by, among other risks, the spread of malware which is software programmed to gather bank details or other such personal information, to delete files, to spy, or to shut down government websites. Fighting such forms of computer crime is an important task of ACM. In this context, European regulations against unrestricted use of cookies, which monitor a user's internet activity, are relevant as well. It is not easy to find the right balance between leaving enough room to promote efficient internet activity, and preventing unwanted registrations and marketing applications.

Having fast and high-quality broadband internet is a prerequisite for a competitive, innovative and sustainable knowledge economy. The European Commission has drawn up an ambitious digital agenda, which calls for major investments in many Member States. The Netherlands has a well-developed infrastructure, and, considering its investment pace, appears to be on schedule for realizing ultra-high speed internet for everyone by 2020. Furthermore, it is largely realized in the Netherlands in a competitive market, through copper, fiber optic, cable and ether. Competition in these markets is given much-needed help in the form of regulation of access to KPN's copper and fiber optic networks. KPN's network continues to be very strong, particularly for corporate customers, because of its nationwide coverage combined with its ability to provide high-quality services, for example, by using fiber optic. ACM believes it is essential that more investments are made in fiber optic and new technologies, while keeping a close watch on consumer interests. Moreover, ACM guarantees that both consumers and digital-service providers continue to be able to access the Internet against the same conditions.



The recent 4G spectrum auction ushered in a new phase on the mobile communication markets. In 2013, the three incumbents (Vodafone, KPN and T-Mobile) will further invest in 4G networks, making even faster Internet on mobile networks possible, and creating opportunities for more innovative services. In addition, a fourth player (Tele2) has entered the market, which raises the prospect of increased competition. Customers are expected to reap the benefits as a result thereof such as improved service, increased transparency with regard to prices and conditions, and better prices as well. ACM will keep a very close watch on this market, making sure this process will not be frustrated by anticompetitive behavior.

#### *Postal services and transport*

For several years now, the postal services sector has been plagued by a rapid decline in regular postal volumes, which is primarily because of a shift towards digital communication. This undermines the efficiency of the regular mail delivery network, whereby the fixed costs can only be recouped by ever increasing postage rates. At the same time, room for competition can be observed in some submarkets where volumes are more stable or even growing, for example, in parcel post. With new legislation, ACM will have more tools to improve competitive positions in these markets.

With regard to the transport industry, it are the developments in the rail market that attract attention the most. Under recent European directives, Member States are now required to offer room for efficient initiatives for cross-border passenger rail transport. In response to the recent problems on the rail connection between Amsterdam and Brussels, it looks like several market participants will be taking advantage of this expanded room soon, where ACM will be assessing whether one concrete initiative in particular does not harm the Dutch Railways' economic equilibrium too much. At the national level, the relationship between network infrastructure manager ProRail, Dutch Railways and the other rail undertakings is a constant source of tension. Current legislation continues to afford rail undertakings too much buyer power, while smaller undertakings are dependent on their larger competitors for numerous essential services. Travel information services for riders were recently transferred to Dutch Railways, and, in order to prevent this transfer from upsetting the competitive positions in the market, the NMa attached several conditions to said transfer. With these conditions, it is assured that all train riders are offered the same quality in travel information services, irrespective of the rail undertaking they travel with.

#### *Energy*

Within Europe, the North-Western region is leading in the integration of wholesale markets for electricity and natural gas, which are connected physically by cables, and procedurally by rules. This integration leads to a more efficient utilization of available production and network capacity. It also leads to increased competition among energy providers, resulting in lower prices, and more choices for buyers. Finally, a large number of producers in an integrated market will help security of supply. In order to complete the market integration process, rules are currently developed at a European level, which determine, for example, in what way scarce transport capacity must be allocated to market participants in an





economically efficient way. In anticipation of upcoming European regulation, national network operators have launched initiatives promoting market integration at a regional level, for example, as part of pilot projects for a limited number of interconnectors and/or products. ACM stimulates and supports such initiatives, where possible. Having well-functioning, integrated European energy markets is of great importance to the Netherlands, both to maximize its production and transmission potential, as well as to be able to offer low tariffs to domestic buyers. That is why ACM wishes to play a leading role in the discussion with fellow regulators and the European Commission.

Only if market participants vigorously compete with one another are buyers able to fully reap the benefits of an integrated European energy market. This means, among other things, that market participants cannot engage in illegal activities such as market manipulation or insider trading. The Agency for the Cooperation of Energy Regulators (ACER), in cooperation with national energy regulators, monitors the energy market at a European level to track down possible market manipulation and insider trading. ACM wishes to create more transparency for end users too (particularly for consumers) by streamlining tariff structures and improving the provision of information. To that end, ACM will, among other actions, check energy provider websites and price comparison websites.

The ambition of sustainable energy production in Europe poses a special challenge to the energy sector. The huge increase in wind and solar energy already means that energy supply has become more unpredictable and variable. Guaranteeing security of supply will therefore make new demands on the regulation of energy markets. Variability also means that additional efforts are needed to maintain voltage quality on the grid. At the same time, network operators are faced with major investments in order to connect the new production sites and also to facilitate small-scale distributed generation. In order to guarantee equal competitive conditions in the energy markets, the increased market integration also increasingly calls for European coordination, for example for harmonizing stimulation schemes for sustainable energy.

The high costs for expansion, replacement and adjustment of the infrastructure, combined with the requirement of continued high levels of reliability of the energy networks, lead to the question of how the additional room that is offered to renewable energy sources can be kept affordable. In connection therewith, having effective regulation, which, on the one hand, protects buyers that are dependent on providers, and, on the other hand, enables network operators to recoup their efficient investments and services, continues to be crucial.

A new market model will be introduced in the retail market. One of its objectives is to realize better services for consumers. Energy suppliers will be the sole point of contact for customers, and energy bills will be based on a single model invoice. In addition, smart meters are progressively rolled out, enabling consumers to get more information about their energy use and costs. ACM makes sure these changes are implemented properly, and, by





introducing a new information code, helps improve market processes. As a result of the Dutch Heat Act, which will come into effect soon, and which imposes rules on the tariffs that suppliers of district heating can charge, ACM will be charged with an

additional duty.

*In conclusion*

Even though various current topics have not been discussed yet, this overview shows not only that ACM has a vast and diverse range of tasks, but also that we need to anticipate all kinds of changes in our direct environment when executing those tasks. These changes are the result of economic and technological developments on the one hand, and of new rules and legislation on the other hand, both at a European level and at a national level. It is inevitable that ACM will have to prioritize and make choices. And our priorities and choices will be based on the expected impact (directly or indirectly, and in the short run or in the long run) of our activities on consumer welfare.