1999

Annual Report of the Netherlands Competition Authority (NMa)
and the Netherlands Electricity Regulatory Service (DTe)
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This is the second Annual Report covering a full year of operations by the Netherlands Competition Authority (NMa). Because the Netherlands Electricity Regulatory Service (DTe) formally became a department of the NMa on 1 July 1999, an integrated Annual Report has been drawn up. This further underscores the synergies between the two supervisory authorities. In the future, these synergies will strengthen further.

1999 was still dominated largely by the processing of the more than 1,000 requests for exemption submitted during the NMa’s first year of operations and the continual intake of concentration requests and complaints. During its first year of operations, DTe faced the task of setting up the key elements of its regulatory system.

This resulted in high pressure of work, which meant that the nature and intensity of the work were governed less by the authority’s own priorities. Nevertheless, the organisation was largely successful in defining the lines which enable companies and private citizens to take account of
Dutch competition policy and the implementation of regulation that is consistent with European law. However, it should be noted that, during this start-up phase, the NMa has not yet been able to perform critical tasks such as active detection of disguised cartels and abuse of dominant positions to the full, which means that the evaluation of the authority is coming at a relatively early stage. There is therefore no room for complacency.

The first priority in 2000 will be to complete processing of the initial flood of requests for exemption. Most of the remaining applications come from the heavily regulated care sector. A labour-intensive approach has been chosen here, in which modifications are made in consultation with care providers and insurers, to bring contracts into line with the Competition Act. The initial flood of requests for exemption was not swelled by large numbers of new applications during 1999. Experience with processing requests showed that many of the applications were submitted ‘just to be sure’. As a result, a substantial number of applications could be settled via an informal view. The use of this instrument is explained elsewhere in this Annual Report. The reduction in the number of new requests for exemption is probably also related to more widespread familiarity with the Competition Act and with implementation practice.

The reduction in the number of new requests created scope for other activities. During 2000, this will be used first and foremost to investigate hidden cartels and abuses of dominant positions, particularly in relation to network access. The NMa has chosen to realise a shift in enforcement policy from a reactive to a pro-active approach. So far, the emphasis has lain on processing requests for common sets of concentration applications, which limited the possibilities for setting priorities. A focus on the sectors and/ or practices where the highest prosperity gains can be realised will benefit the effectiveness of enforcement policy, but this assumes the selective and planned deployment of instruments of enforcement. Determining where potential prosperity gains can be realised calls for further expansion of the available knowledge of the market. The NMa’s work on this area will continue to invest in people and support systems for the development of, and access to this market knowledge.

Selectiveness is not only important in the enforcement of the prohibition of cartels and abuse of dominant positions, but also in supervision of concentrations. Again, effectiveness will benefit from a focus on the concentrations that result in loss of prosperity through the creation of dominant positions. Acquisitions of relatively small companies with limited turnover will not lead to dominant positions or to loss of prosperity through restriction of competition. I take the view that raising the turnover thresholds could make an important contribution to improving the effectiveness of supervision of concentrations and reduce administrative costs for the private sector. The NMa is responsible for early identification of problems in implementation. The Ministry holds responsibility for preparing regulations that increase the effectiveness of competition policy. The relationship between the Minister of Economic Affairs and the NMa can be described as excellent. I would like to express my appreciation here for the Ministry’s restraint in relation to individual cases and its intensive involvement in general issues relating to competition policy. That restraint has helped significantly to establish the NMa’s reputation for independence. Co-operation between the two institutions is realised primarily at the international level. Officials of the Ministry of Economic Affairs and the NMa work together in the main European and other international fora where competition is on the agenda, for example. It is precisely at the international level that major changes can be expected. The European Commission adopted the ‘Modernisation White Paper’ on 28 April 1999. This represents the first step towards the most radical initiative from the Commission’s Competition Directorate General since the 1980s. The Commission is proposing to abolish the reporting and exemption system for the European prohibition of cartels. Companies will initially have to determine for themselves whether their agreements comply with the current norms for obtaining exemption from the European Commission. The NMa hopes to realise a shift in enforcement policy from a reactive to a pro-active approach. So far, the emphasis has lain on processing requests for common sets of concentration applications, which limited the possibilities for setting priorities. A focus on the sectors and/or practices where the highest prosperity gains can be realised will benefit the effectiveness of enforcement policy, but this assumes the selective and planned deployment of instruments of enforcement. Determining where potential prosperity gains can be realised calls for further expansion of the available knowledge of the market. The NMa will continue to invest in people and support systems for the development of, and access to this market knowledge.

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The consequences that the implementation of the White Paper will have for the national competition authorities in due course are not yet entirely clear. However, the following two issues will require close consideration: (1) Because the above sections of the treaty will be applied by a large number of institutions in the Member States, and because the Commission will only still guide the proceedings in exceptional, strategic cases, the competition authorities must provide for assurances of legal uniformity by creating a network. The NMa seeks to make a substantial contribution towards the development of this network. Secondly, the implementation of the White Paper will make heavy demands on the knowledge of Dutch courts of competition law and, above all, on the understanding of concentrated markets. The NMa is prepared to investigate and discuss possibilities for providing support if the courts so require.

Another change relates to vertical agreements. The European Commission has issued a block exemption for vertical agreements. The relevant Regulation provides for an exemption for all vertical agreements between undertakings, if the supplier’s share of the relevant market is no more than 30%, with the exception of serious ‘hardcore’ restraints. The new Regulation took effect on 1 January 2000 and will apply from 1 June 2000. It will also apply to purely Dutch cases, as EC exemptions apply for strictly national cases pursuant to the Competition Act.

In addition to the changes now being set in motion at the Community level, national legislators have also assigned a number of new tasks to the NMa. For example, the implementation of the new Passenger Transport Act also contains provisions that will be implemented by the NMa. In the year 2000, a considerable amount of energy must be devoted to effective organisational embedding of these new tasks.

This touches on the question of the relationship between the supervision of competition based on sector-specific regulation and the supervision based on the Competition Act. Now that there is a clear Cabinet position (in short: sector-specific regulation is, in principle, a temporary exceptional situation), there is no reason to re-open the discussion. However, there are reasons for clarifying one aspect with a little more precision. Firstly, both forms of supervision are branches of the same trunk. They are particularisations and developments of the principle of Article 24 of the Competition Act, that dominant positions may not disturb the functioning of the market to an unacceptable degree. Furthermore, this is not an ‘either/or’ or a ‘first or second’ issue. It is not a question of choosing between a sector-specific or a general supervisor, firstly because the departmental model applied for the relationship between the NMa and DTe is an alternative to the attribution to the NMa provided for in the Passenger Transport Act and secondly, because their exemption, ironically, demand that they seek conceptual and organisational compatibility. Finally, all supervision of competition, including general supervision, recognises sector and market specificity as a point of departure. In fact, the foundations of that specificity lie partly in the policy rules formulated pursuant to Article 24 of the Competition Act and the remedies for specific sectoral problems if that Article applies.

Looking both forward and back, the predominant conclusion is one of satisfaction over the dynamic start made by the NMa in its second year of operations, but also that the many changes that lie ahead mean that the time for consolidation has not arrived. Precisely because of this dynamism, it is necessary to make clear choices that optimise the effectiveness of the implementation of the Competition Act.

A.W. Kist

Director General

The Hague, April 2000
Finally, the NMa’s co-operative relationships with other organisations are considered. International co-operation is considered particularly in relation to transmission on the electricity grid. DTe is also the supervisory authority for the Act. In 1999, the NMa and DTe recruited a total of 38 new employees and 17 left the organisation. There was therefore a clear net growth in the total number of employees. Of the 17 that left the NMa, two remained in the service of the Ministry of Economic Affairs, three accepted other positions in central government departments, eight moved to the private sector, one took special leave and three returned to their original government posts at the end of a temporary secondment period.

The NMa, like other organisations, is feeling the effects of the tight labour market and must make major efforts to recruit staff, particularly experienced personnel. In addition to the efforts directed at recruiting (more) experienced employees, NMa invests in its own staff by providing internal and external training courses in fields including competition law and industrial economics. Education and training activities will be intensified in the coming year.

2.3 Co-operation

Co-operation with OPTA

During 1999, the NMa and the supervisory authority for the post and telecommunication sector, the Independent Post and Telecommunications Authority (OPTA) worked intensively to implement the co-operation protocol signed at the start of the year. The principles for co-operation between the NMa and OPTA are effective and efficient enforcement of the law and decision-making, as well as consistent interpretation and application of general and sector-specific competition rules. The protocol regulates the allocation of tasks in situations where both authorities are competent. It also defines when and how the two authorities will work together.

Pursuant to the co-operation protocol, the NMa and OPTA jointly formulated policy rules for the assessment of disputes on access to cable networks. Intensive co-operation and co-ordination took place in the processing of complaints and requests for exemption in the telecommunications field submitted to the NMa and the cases with competition law aspects filed with OPTA. For example, OPTA and the NMa jointly assessed the complaint from Canal+ against cable operator KTA (regarding the transfer charges applied by KTA). NMa also presented its views on OPTA’s draft consultation document and decision on price caps, as well as on OPTA’s draft consultation document on ‘Instructuons for strong positions in the mobile telephony market’.

Co-operation with the Media Commission

Agreements were contracted with the Media Commission on how NMa will be involved in the interpretation of
cooperation with other supervisory authorities

During 1999, contacts were maintained with national supervisory authorities, including De Nederlandsche Bank (DNB), the Social Insurance Supervisory Board, the Securities Trading Supervision Foundation and the Registration Board. Where relevant, general information is exchanged and if necessary, these authorities work together and notify each other of decisions taken. A protocol was drawn up with DNB and the Insurance Supervisory Board at the end of 1999.

Co-operation in relation to enforcement

Contacts with organisations with specific expertise in the field of enforcement were also made during the year, and possibilities were considered for sharing and co-development of expertise. These organisations include the Department of Public Prosecutions, the Fiscal Intelligence and Investigation Service (FIOD) and the Economic Surveillance Department (ECD).

2.3.1 International co-operation

The Competition Act is clearly oriented towards European Competition law. Developments in European competition policy and decisions on individual cases are therefore of considerable importance to the NMa. The NMa works with the European Commission’s Competition Directorate on various levels. Within the NMa, contributions to European affairs are prepared and co-ordinated by the International Affairs Working Group. These contributions are discussed in more detail below. Co-operation with foreign competition authorities is also covered.

Contributions to advisory committees for supervision of cartels and concentrations

In order to promote uniformity in decisions on cartel and concentration supervision within the European Union (EU) Member States, the European Commission performs these activities in close and continual contact with the relevant competition authorities of the Member States. Before finalising its decisions, the Commission is required to consult the Member States via advisory committees. There are advisory committees for suppression of concentrations, for cartel cases and for abuse of dominant positions. The NMa represents the Dutch government in the advisory committees, often in co-operation with the Ministry of Economic Affairs, plus a delegation from the Ministry of Transport and Public Works when transport cases are involved. The NMa regularly consults fellow authorities in order to formulate a joint view on individual cases or other issues raised in the advisory committees.

Through the advisory committees, the Member States have a say in, and make recommendations on the European Commission’s draft decision, the prohibition of cartels and the prohibition on abuse of dominant positions. If the Commission intends to impose a fine on a company, after an advisory committee has made recommendations on the draft decision, another advisory committee considers the (level of the) fine. The advisory committee can recommend that its advisory report be published in the Official Journal of the European Communities. The Member States can also take part in hearings on individual cases at which, for example, the parties concerned and other interested parties are invited to comment on the European Commission’s Statement of Objections. The Commission is not required to adopt the recommendations, but does take them into account as far as possible in issuing the decision.

General advisory committees and working groups

In addition to advisory committees on individual cases, more general procedural and policy issues are considered in the general advisory committees and working groups. Among other things, the advisory committees, a Regulation on passenger and freight charges on scheduled flights, the allocation of slots for airports, a block exemption for scheduled shipping services, the modernisation of competition policy, policy on fines and policy on vertical agreements were all considered in 1999. The NMa also contributed to the review of interpretative notices on secondary restrictions, commitments relating to supervision of concentrations and a simplified procedure for concentration cases. The NMa contributed to advisory committees on the following concentrations in 1999:

- Case IV/M.1221 - Rewey/Meurin
- Case IV/M.1359 - P. I. Clubs
- Case IV/M.1354 - Safoni/Synthelabo (penalty proceeding)
- Case IV/M.1353 - Danish Crown/Westfries Slagerij
- Case IV/M.1352 - BT/AT&T
- Case IV/M.1351 - KLM/Martinair
- Case IV/M.1341 - Ahold/Kraemer
- Case IV/M.1339 - Telia/Telenor
- Case IV/M.1338 - APM/Molloy
- Case IV/M.1337 - Airports First Choice
- Case IV/M.1336 - Brussels Airlines/Rhombus/RMRA/ECT
- Case IV/M.1335 - Deutsche Post/Trans-Ohio (penalty proceeding)
- Case IV/M.1334 - KLM/Martinair
- Case IV/M.1333 - BICS/Mobistar

DC-conferences

During 1999, the NMa and the Ministry of Economic Affairs took part in two conferences of Directors General of competition authorities of the Member States. The most prominent topic here was the White Paper on the modernisation of European competition policy.

OECD

In addition to co-operation with the European Commission, the NMa and the Ministry of Economic Affairs took part in meetings of the Competition Law & Policy Committee of the Organisation for Economic Co-operation and Development (OECD). In 1999, the NMa contributed mainly to the presentation of the annual report on competition policy in the Netherlands, at which an explanation of the NMa’s experiences in its first year of operations was provided. The NMa also took part in the debate on prioritisation in the implementation of enforcement policy.

Contacts with foreign competition authorities

The NMa maintains contacts with various competition authorities within and outside the EU. During the year under review, for example, the NMa visited the Department of Justice and the Federal Trade Commission in Washington. Among other things, the working methods and experiences with enforcement practice in the US and the Netherlands were considered here. Through training placements, secondments and exchanges, experience and knowledge is exchanged and co-operation is simplified. The NMa also received delegations from fellow authorities, such as the Bundeskartellamt and the Conseil de la Concurrence.

International developments for DTe

The electricity market is increasingly internationalising and trade flows are growing. This calls for deeper and broader co-operation between the Member States. This is the responsibility of the Transmission System Operators, or the national equivalent of TenneT, and certainly also of the national supervisory authorities or regulators, each of which has different powers and responsibilities of its own. In any event, these organisations are working hard together, in particular with the European Commission, to realise a European market. Through the ‘Florence process’, the rules for international trade are being developed further and simplified. The regulators are also organising in a joint partnership. In March 2000, the Council of European Regulators was formed. It is important that the national supervisory authorities join this organisation as far as possible, even when there is no sector-specific regulator, not only in order to learn from each other, but above all, to co-ordinate the rules in play and to focus on promoting international electricity trading. This is in the interests of European consumers. DTe plays an active role in this European process.

2.4 Changes

2.4.1 Changes in the application of the competition Act in relation to the financial and insurance sector

From 1 January 2000, the exception made for supervision of concentrations in the financial and insurance sectors was withdrawn. As from this date, concentrations involving only credit institutions, financial institutions or insurers are also subject to supervision of concentrations under the Competition Act, provided that they meet the turnover criteria and are not subject to supervision of concentrations by the European Commission.

In preparation for this change, the NMa commissioned external research agencies to define all the important issues for the financial and insurance sector from the point of view of competition. DNB, the NMa and the Insurance Supervisory Board (in co-operation with the Ministry of Finance and the Ministry of Economic Affairs) also drew up a protocol for the assessment of concentrations in emergency situations in the financial sector, in consultation with the Ministry of Finance. The protocol governs situations in which a financial institution faces an acute threat of failure, which would have a significant impact on the entire financial sector and either DNB or the Insurance Supervisory Board regard a concentration as necessary to avert this threat.
The Competition Act is based on European law and sometimes makes explicit reference to it. The changes in European competition law are therefore significant for the implementation of the Competition Act. The main (proposed) changes are presented below.

2.4.2 (Proposed) changes in European law

The European Commission adopted the ‘Modernisation White Paper’ on 28 April 1999. It represents the first step towards the most radical initiative of the European Commission, the so-called Modernisation Policy for Competition since the 1960s. The White Paper proposes decentralised application (by national competition authorities and national courts) of the competition norms of the EU Treaty, originally developed for the Community level, and abolition of the notification system. Together with the Ministry of Economic Affairs, the NMa plays an active role in the discussions of this with the Commission and other Member States in Brussels.

New EC Regulations on vertical agreements

Two Council Regulations were amended in 1999, with the following consequences. Firstly, it is now possible to notify a vertical agreement after the event, with any exemption applying retrospectively to the date on which the agreement came into effect. Secondly, the European Commission is authorised to draw up a block exemption for vertical agreements. The Commission adopted this block exemption on 22 December 1999. This exemption replaces three existing block exemptions for exclusive distribution agreements (including internet supplies and petrol station contracts), sole trading and franchising. The remaining block exemption for vertical agreements, covering sale and customer service agreements for motor vehicles, remains in effect. The block exemption for vertical agreements provides for a general exemption for clauses containing competitive restraints in vertical agreements between undertakings, if the supplier has a market share of no more than 50% in the relevant market, with the exception of certain types of restraints that severely distort competition (the ‘hard core’ restraints). The new Regulation was introduced on 1 January 2000 and will take effect from 1 June 2000. This also applies with the exception of certain types of restraints that

The same Regulation authorises the competent authorities of the Member States (including the NMa) to withdraw the advantages of the block exemption for vertical agreements that do not comply with the conditions for exemption on the basis of the Treaty, if the consequences arise within the territory of the Member State in question and if that territory shows the features of a separate geographical market. In November 1999, the Minister of Economic Affairs notified the Second Chamber of Parliament of the new regime for vertical agreements applies in the Dutch situation via the Competition Act. The Minister of Economic Affairs wishes to include this issue in the evaluation of the NMa and to consider whether any amendment to the Competition Act is necessary. If companies require assurances with regard to exemption for any vertical agreements that are not automatically exempt under the new Regulation, they can contact the Commission.

2.5 New tasks for the NMa and DTe

2.5.1 The Gas Act

The Gas Act recently passed by Parliament provides for the liberalisation of the gas market. There are two key issues here: the gradual opening up of the market and the regulation of access to the network. The Act is designed to determine the conditions for liberalisation of the gas market. Given the objective of maintaining reliable, affordable and cleaner energy supplies, the aim will be an efficient gas market with access to the network on non-discriminatory terms for all providers, so that competition develops. Ultimately, consumers will reap the benefits in the form of lower prices and better services. Regulation of access to the network is largely in line with the regime of the 1998 Electricity Act. An approach based partly on regulated access and partly on allowing scope for negotiation between market parties and network companies has been chosen. This results in extra tasks for DTe, particularly as regards regulation, and its name will consequently be changed to the Netherlands Energy Regulatory Service. The NMa will concentrate on settlement of disputes based on the Competition Act. DTe will have an important task in advising the Minister of Economic Affairs on gas supplies to small-scale users and captive customers.

2.5.2 The Passenger Transport Act

The new Passenger Transport Act also provides for new tasks for the NMa. Although the new Act does not concern competition, it will monitor the transport market. Partly on the basis of this information, the Second Chamber of Parliament can assess whether it is necessary, in order to create healthy competitive relationships in the transport market, for the

The recommendations were subject to the continuation of these trends.

Advice on licensing of Universal Mobile Telecommunications System (UMTS)

In June 1999, the State Secretary of Transport and Public Works asked the NMa for an advisory report on plans to restrict the number of UMTS licences issued per applicant, in order to avoid substantial restrictions of actual competition. UMTS is described as a third generation mobile telecommunications system. In addition to the conventional voice, fax and data communications facilities, UMTS provides users with the possibility of interactive multimedia telecom services (e.g. fast Internet access, video telephony, on-line banking and on-line shopping). UMTS technology is part of a global standard for mobile telecommunications services. In its advisory report, the NMa comes to the conclusion that UMTS must be regarded as part of the market for mobile telecommunications services. The exclusion of certain parties from competition for a frequency is an exceptionally severe measure that should only be applied if an undertaking or a number of undertakings acting in concert, were to gain or strengthen a dominant position by acquiring UMTS frequencies, significantly restricting actual competition in the Dutch market, or in part of that market. Because of the gradual shift in the market for mobile telecommunications services from narrow band to wideband services, the current market situation in the field of GSM networks is important for the reply to the question of whether a particular party should be excluded.

In March, in connection with the Telecommunications Act, the State Secretary for Transport and Public Works asked the NMa for an advisory report on whether to extend the period for which and Libertel are excluded from use of the DCS 1800 frequencies that they acquired in February 1998. The purpose of the exclusion was to allow the three new parties (Telfort, Dutchtone and Ben) to build up a network and compete. The exclusion expired in February 2000. It could only be prolonged if this was regarded as necessary in order to realise actual competition. In order to determine whether this was necessary, a survey was conducted among the five mobile operators and a number of service providers, among others. In the advisory report issued on 26 August 1999, the NMa concluded that actual competition in the Dutch market for mobile telephony could be said to exist in mid-February 2000. There was therefore no reason to extend the exclusion period. The recommendations were based on the following findings:

• Newcomers had made a vigorous start.
• The newcomers had realised relatively strong growth in a very short space of time.

There is fierce price competition and improved opportunities for number portability are available.

Advice on licensing of Wireless Local Loop

In June 1999, in connection with telecommunications facilities, the State Secretary of Transport and Public Works asked the NMa for an advisory report on plans to restrict the number of licences per applicant for Wireless Local Loop (WLL) frequencies, in order to avoid substantial restriction of actual competition. WLL is a connection network enabling cordless connections to be realised from a single point (base station) within a radius of five to 15 km, using digital radio connections and fixed antenna. WLL is used as an alternative for conventional copper wire connections between subscribers and switchboards in the fixed telephony network. WLL is not suitable for mobile telecommunications. An important advantage of WLL is that no cables need to be laid in the ground. In principle, this makes the investments for the creation of a connection network lower than with a wire connection network. This does not apply for urban areas, as the required wire length per connection is then relatively short.

Initially, the services provided with WLL are not expected to differ substantially from the services currently provided with the wire network. The growth of fixed voice telephony is expected to continue, primarily because of Internet traffic. Gradually, more wide-band services will be provided. The relevant geographical market is, for the time being, the Netherlands.

KPN holds a very strong dominant position in the market for fixed telecommunications services. The services expected to be provided with the aid of WLL networks will largely be similar to the telecommunications services that KPN provides with the aid of its copper wire network. In view of KPN’s dominant position in the market for fixed telecommunications services, it is desirable KPN’s possibilities for acquiring WLL frequencies be limited, in order to create more opportunities for the development of actual competition in the field of connection networks for telecommunications services. This restriction should mean that KPN can acquire only one of the available frequency bands, to the exclusion of the other two. For the other candidates, the restriction of the maximum frequency range to be acquired, as included in the Ministry of Transport and Public Works’ plans, should suffice.

Advice on the postal market

On 22 June 1999, the State Secretary of Transport and Public Works and Economic Affairs asked the NMa for an advisory report on competition in the postal market. The request for advice was addressed both to OPTA and to the NMa. Following talks between the two supervisory authorities, the publication of two separate advisory reports was chosen.

In its advisory report, the NMa focused on the following two issues:
• Which form of supervision is most suitable, given the developments in the postal market?
• Are additional bookkeeping and accounting rules, geared specifically to the postal sector, necessary for allocation of the costs and returns to concession activities and non-concession activities in a sound business-economic manner?

A key question is which form of regulation is most suitable for the postal market(s). The concession-holder (TPC) has a dominant position in the reserved market (for letters), so that in principle, it would be possible to apply the prohibition of abuses of dominant positions from the Competition Act. The abuse can also occur in a market other than the one in which the dominant position is held. The prohibition of abuses of dominant positions would provide particular benefits in:
• Forcing undertakings with a dominant position in the postal market to provide ‘network’ access, if this is abused and no alternatives are available at acceptable costs.
• Sanctioning cross-subsidisation by an undertaking with a dominant position in the postal market (in this case, the abuse of financial advantages afforded by the concession for the improvement of the competitive position in other markets).
• Sanctioning other forms of abuse of dominant positions in the postal market, such as cross-sellings.

In view of the existence of healthy competitive relationships in some segments of the postal market (e.g. for package and courier services), NMa did not call for sector-specific, but for general supervision of competition. The need for specific bookkeeping and accounting rules for the concession holder was endorsed, as this makes it easier to determine whether there is abuse of dominant positions in the postal market.

Contribution to the advice of the Media Concentrations Commission

As part of its advisory activities, the Media Concentrations Commission put a number of questions to the NMa on supervision of competition in the media sector. The NMa’s response was included in the advisory report issued by the Media Concentrations Commission on 19 April 1999.

2.7 Public information

The basic aim of the NMa’s public information activities is to make its own activities transparent. The NMa also regards it as its duty to explain the operation of the Competition Act and to make the resulting activities visible.

The NMa has a website at which all decisions are published. Visitors can subscribe at the site, and are then notified automatically whenever new information is added. Information is updated weekly. Visitors can also find brochures at the site or submit questions to the NMa. Both these services are widely used. The NMa also replies to many telephone queries on the Competition Act and everything relating to it. More than 1,700 queries were handled in 1999.

The NMa regularly receives invitations to provide speakers for meetings. The NMa accepts these invitations in cases in which it considers that it has a duty to explain the Competition Act to the sector, or if key issues are being discussed in a sector, that require an explanation. During the year under review, the NMa contributed to various congresses and symposia by delivering lectures or taking part in panel debates.

In 1999, the organisation answered numerous questions from journalists on cases that it is processing. Pioneering decisions or decisions on issues that attract widespread interest were announced in press releases. In some cases, decisions were explained at press conferences.

The NMa regularly receives requests for explanations in the form of interviews. This results in articles in both national and regional newspapers, as well as in newspapers or journals that provide professional or sector-specific information.

DTe’s communications strategy merits special consideration. A key tool for communications with both the sector and interested outsiders is the DTe’s own website. DTe publishes documents and decisions at the website, as well as other information that is relevant to its target groups. The interactive character of the website is also utilised. For example, visitors have the option to subscribe, and will then automatically be notified when new information is published. They can also put questions to DTe via the site.

DTe receives many questions, orally, in writing or electronically. They range from simple queries concerning the interpretation of the Act in the light of new developments in the postal market or other sectors, to complex issues on which DTe is asked to provide an opinion. In view of the supervision aspect, DTe regards replies to such questions as an important task. However, it is restrained by its limited powers on this level. For example, DTe is not authorised to interpret the Electricity Act. Ultimately, that is a matter for the courts. However, DTe can provide advice on the interpretation of the Act in reply to questions.

A large number of symposia and congresses were held on the liberalisation of the electricity sector during the year under review. DTe presented its activities at various meetings in the Netherlands and elsewhere. The presentations related to the new situation in a liberalised market and also covered specific issues such as the allocation of the available capacity on interconnectors, transmission charges and regulation of transmission tariffs. At a European Commission congress for countries wishing to join the EU, DTe gave a presentation on the organisation of the electricity market in the Netherlands.

During the year under review, DTe regularly gave interviews on its activities, to both the general press and the trade press in the Netherlands and elsewhere. DTe also sought publicity for key decisions and publications itself, by issuing press releases and giving interviews.

NMa Annual Report 1999 - NMa and DTe: Legislation and development
3.1 General themes

3.1.1 The market

We begin with the way in which the NMa addressed ‘the market’ in 1999. Market definition is a crucial step in competition law assessments. Both the question of whether a licence can be issued for a concentration and the assessment of the negative effects of a large market share, for example, are considered against the background of the ‘dominant position’ concept. A licence for a concentration will not be issued if this will lead to the creation or strengthening of a dominant position that actually restricts competition. The Competition Act also prohibits abuse of dominant positions, including dominant positions resulting from organic growth. Cartel agreements are also assessed in the light of their effects on the market.

In its competition analyses, the NMa considers whether there is sufficient competition in the relevant markets in each case. The main sources of competitive pressure are undertakings that are already active in the relevant market(s) and potential market entrants. The market shares of the parties and their main competitors in the relevant market are key indicators of competitive pressure. High market shares may, but do not necessarily imply, that parties will be able to use their market power to demand higher margins over and above the cost price of a product. Generally speaking, therefore, such a situation provides grounds to examine the economic effects of an agreement in more detail.

In order to determine market shares and measure the competitive pressure from potential market entrants, the limits of the market must first be defined. In both concentration and exemption cases, the economic analysis is therefore based on the definition of the relevant market. Partly on this basis, one can then determine whether a dominant position arises, is strengthened or is abused. The definition of the relevant market is therefore always the first step in any competition law assessment. Both the product and the geographical market are defined here.

Product market

A relevant product market comprises all the goods and services that, from the point of view of the end-user, are ‘interchangeable’ in view of the product features, prices and intended use. The definition of both the relevant product market and the geographical market is based on criteria that are designed to provide an idea of the competitive pressure faced by an undertaking. One obvious competitive factor is the consumer’s opportunity to choose a rival provider that can supply goods or services that provide for the same needs.

But what kinds of goods and services are interchangeable? Case 1383/NoordNed provides an example of such an appraisal. This involved plans to form a joint venture known as NoordNed Personenvervoer B.V., in which NS Reizigers B.V. and Arriva Personenvervoer Nederland B.V. would participate. NS is active in public transport by train and Arriva in public transport by bus. The parties claimed that the mobility market was the relevant market. In their view, consumers regard all forms of passenger transport, including taxis, private buses, vehicles for the handicapped, cars and bicycles as substitutes for public transport by train or bus. The implication of this is that the effect of such a concentration would be limited if travellers can switch to a different form of transport without difficulty. However, the NMa could not accept the parties’ claim that one should refer to the mobility market. Bicycles and mopeds, for example, do not constitute real alternatives for means of transport such as trains over longer distances. Other consumers do not have a choice between cars and public transport, simply because they do not own a car. The effects of concentrations are assessed on the basis of market analyses of this kind, although in this case there was no question of the creation of a dominant position that could result in the restriction of competition.

The same method is used in the assessments of complaints concerning abuse of dominant positions. The questions raised here are:

- What is the relevant product and geographical market?
- Does the undertaking in question hold a dominant position in this market?
- Does the undertaking in question abuse this dominant position?

The NMa found that Casema holds a dominant position in the transmission from television stations in Utrecht (Case 1380, Various complainants versus N.V. Casema). There are no realistic alternatives for consumers to receive television transmissions for more or less the same price. The television broadcasting stations (providers of television programmes) also have to rely on Casema to transmit their programmes. However, in this case, the NMa found that this dominant position had not been abused, as an initial investigation showed that the transmission charges were in no way excessive. For a complaint over abuse of dominant positions to be upheld, both a dominant position and abuse must be found.

The price of a product can also be taken as the starting point to determine which alternatives are available. In concrete terms, this means that the relevant market consists of a group of products and a geographical area of a form which would allow a theoretical monopoly to increase its profits in that market by permanently raising the price of the product by a small percentage.

This approach was applied in the second phase decision in Case 1531 PNEM-MEGA – EDON, among others. The question here concerned the extent to which commercial...
and domestic consumers would react to an increase in electricity prices. Electricity provides for a basic need for many types of users. For example, it is essential for many industrial processes, which means that no alternative is available. It can therefore be assumed that there would not be a strong response in demand in the short term if electricity prices were increased. This could change in the longer term, because consumers can take energy conservation measures or to some extent, make use of other sources of energy.

The geographical market

The geographical market is the area within which the undertakings in question operate, in which competitive conditions are homogeneous and which can be distinguished from other areas by the existence of clearly different competitive conditions. The definition of these markets involves determining whether they are local, regional, national or international. It is incorrect to assume, however, that a national competition authority such as the NMvA will prefer to define national markets. The characteristics of the market itself determine whether it is local, regional, national or international.

On the supply side, the distance between parties and their nearest competitor, and the resulting transport costs, play an important role in the determination of the area of geographical dimension, although to a larger extent in the case of products than of services. National legislation and regulations are also important, as these are used to impose national requirements for products and services.

One example of an international market is the market for supply and demand for telecom services. Reference can be made here to Case 1210/Global TeleSystems Group Inc. – Esprit Telecom Group Plc. Both undertakings were active in the provision of services to other telecom undertakings. The geographical market was defined here as being at least pan-European. Another example is provided by Case 1580/Rolex-Rayna – Vickers, concerning activities relating to (parts of) power machinery, is realised through exports to countries in the region, 25% of turnover in power systems, and 40% of that for deck machinery, is realised through exports to countries in the region. This could change in the longer term, for example, if an agreement serves to restrict competition, a geographical market was defined here as being at least pan-European.

3.1.2 Effects on the market

The NMa assesses regulations and agreements between undertakings in their legal and economic context. Obviously, the (horizontal or vertical) relationship in which the competitive restraint occurs and the type of restraint are also taken into consideration. For example, if an agreement serves to restrict competition, the decision will place less emphasis on the assessment of its effects.

A good example of the approach focusing on the effects can be found in Case 277/VAN Gaming Machines Sectoral Organisation and the related cases. The contracts contained an exclusivity clause, 49% did not contain such clauses. The co-operators are the owners, tenants or lessees of facilities in which gaming machines are installed. In this case, exclusivity meant that the co-operators were not permitted to install gaming machines of another operator alongside those of the operator already contracted. In this case there were two product markets: the market for operation of gaming machines and the market for games of skill machines in catering establishments and/or amusement arcades. Empirical studies were conducted into the question of whether the exclusivity clauses closed off the market for operation of gaming machines and games of skill machines. The above research showed that 38% of the contracts contained the exclusivity clause. The contracts contained such a clause and in 15%, this was not known. The general conclusion from the research was that the extent to which exclusivity clauses are used and the average life of the contracts and the features of the market did not restrict access to the market for the operation of gaming machines. Furthermore, the categorisation of companies had sufficient opportunities to switch operators. There is therefore no appreciable restriction of competition.

Case 163/HIC, involving a purchasing co-operative for pinewood, provides another example of a decision focusing on the impact on the market. The purpose of the alliance between the parties is to reduce the costs of joint purchasing of pinewood by optimising the terms for prices and logistical costs. In order to assess the effects of the agreement, both imports and wholesaling of pinewood were examined. In view of the limited share of pinewood in the import market and the existence of equivalent rival undertakings, it cannot reasonably be assumed that the sales opportunities of pinewood suppliers will be restricted to any large extent as a result of the alliance. The investigators also concluded that the alliance did not generate negative consequences for competition in the pinewood wholesaling market, partly because the absence of access and expansion barriers means that this can be described as an exceptionally competitive market.

An example of a decision in which exemption was refused in view of the market effects was Case 620/Nederland Framework Agreement. Eleven undertakings, all of them sand quarrying businesses, were party to this agreement. The agreement concerned ‘industrial sand’, which refers to sand suitable for the production of concrete and masonry cement. The agreement covered the territory of Gelderland, North Brabant and Limburg provinces. It included agreements on the volumes of sand to be produced, the financial relationships (cost-sharing regulation) and control. The underlying principle for the relationships between the parties was always the ‘annual percentage’, which was determined on the basis of a progressive seven-year average of concrete and masonry sand sales. This annual percentage served, among other things, as the key to the allocation of participation in joint projects. Projects undertaken in relation to national production of industrial sand had to be open to all parties to the agreement.

The NMa’s decision concluded that the Framework Agreement formed the basis for a very far-reaching, structural and long-term alliance between virtually all major sand quarrying undertakings in the Netherlands. This ruled out competition between the parties to the agreement to a significant degree. Because production rights were divided among the parties (in fixed ratios based on their relative market positions), the sources of supply were shared out, which can be regarded, among other things, as a form of market sharing. This severely restricted the opportunities for third parties to gain access to the restricted supply locations and, thereby, to sources of supply. The costs of the undertakings that were party to the agreement were largely smoothed out, resulting in a price competition in the sales of the sand produced.

The Framework Agreement also had a substantial impact on the market, as the main (potential) locations for the production of concrete and masonry sand in the Netherlands lie in the three provinces mentioned above. The Framework Agreement applied to the vast majority of the remaining Dutch reserves of concrete and masonry sand (two thirds). As no advantages of the alliance could be demonstrated, the request for exemption was rejected.

3.2 SMEs and the market

This paragraph discusses a specific issue, that of the role and position of SMEs. As SMEs are by definition small and medium-sized undertakings, there are many alliances designed to realise economies of scale or protect the interests of the sector in a broader sense. The primary point is that such alliances will not be assessed any differently from other forms of co-operation between undertakings in relation to the prohibition of cartel agreements.

One can first consider the types of activities pursued within the alliance. The activities of an alliance of SMEs need not necessarily serve to, or result in the restriction of competition. Where these purely involve informing the members (e.g. on government policy), for example, this is unlikely to be the case. If there is a potential restriction of competition, the impact on the market can be considered. The criteria that can be applied here include:

• assessment of the market share (import, turnover, sales etc.);
• involvement of large undertakings;
• percentage of companies in the sector that are members of the alliance;
• percentage of the economic resources in the hands of the members.

As a rule, alliances between undertakings also have entry procedures. Such procedures can be assessed on the basis of standards including:

• open and objective application of the procedure;
• the grounds for the decision to admit or reject a prospective member;
• the possibility of appeal against such a decision before an independent body.

To be quite clear, it should be noted that the above criteria must be considered as a whole, and in relation to each other. As part of such an entrance procedure, certain admission criteria are applied. One of the points that the NMvA will consider is the objective, transparent and non-discriminatory application of these admission criteria.

An integrated test is also conducted in the assessment of the admission criteria, in which other circumstances can also be taken into consideration. If vague or open norms arise in the admission criteria, these should be made clear. If this is not possible, the NMvA can impose conditions relating to non-discriminatory application of the criteria.
Finally, alliances aimed at joint purchasing are not designed to restrict competition. As a result, the NMa primarily considers the economic effect.

The latter situation may involve forms of exclusivity for the members of the co-operative, leading to commitments to buy only via the co-operative and the standardisation of cost prices that can result. However, the economic effects take priority in all these considerations, and the NMa plays close attention to the market shares of the purchasing co-operative in the relevant market(s), the existence of exclusivity and the share of the purchasing prices in the total costs.

Obviously, alliances between SME undertakings need not be confined to purchasing co-operatives. Other possibilities include alliances aimed at joint acquisition and potential execution of orders that exceed the capacity of a single undertaking. The NMa primarily considers the competitive nature of such an alliance, which was given the go-ahead by the NMa in Case 447/K.O. Bus Bedrijven (ven Groep Nederland B.V.).

If the alliance results in an extra player in a market in which the individual companies could not operate because of their limited scale, as a rule there will be no infringement of the prohibition of cartels. On the contrary, such an alliance can have the effect of promoting competition, as an additional player becomes active in the latter market, which is not accessible to the individual undertakings as such. Again, therefore, the NMa primarily considers the economic effect.

Not only scale benefits, but also synergy benefits can arise as a result of an alliance between different SME undertakings, which must obviously also be passed on to the individual undertakings (Case 447/K.O. Bus Bedrijven). The NMa may also examine, for example, a potential primary advantage in joint purchasing.

Figure 3.1 shows the combined turnover of the undertakings involved in the concentration (in millions of NLG). It follows from these analyses that under the current regime (with the existing turnover thresholds), a relatively large number of companies, including those from the SME segment, are involved in concentrations. Raising these turnover thresholds could have a positive effect on further reducing administrative costs, particularly for SME undertakings or undertakings that realise only a small proportion of their turnover in the Netherlands.

3.3 Government authorities and competition

It is also interesting to consider the scale of the undertakings involved in a concentration notified to the NMa.

Firstly, Figure 3.1 shows the combined turnover of the undertakings involved in the concentration (in millions of NLG). The NMa’s second year

Figure 3.1 Number of concentrations by combined turnover in the Netherlands of the smallest undertaking involved in the concentration (in millions of NLG).

It is important to note that an example of such an alliance which was given the go-ahead by the NMa is Case 427/K.O. Bus Bedrijven (ven Groep Nederland B.V.).

The NMa primarily considers the economic effect. Furthermore, many different forms of alliances are possible among SMEs, ranging from sectoral organisations with a broad package of tasks to purchasing co-operatives (for an example of a purchasing co-operative, we refer to Case 169/HIC, alliance in the field of pinewood, as mentioned above, among others).

In the case of purchasing co-operatives, the NMa considers the following issues:

- Alliances aimed at joint purchasing are not designed to restrict competition. As a result, the NMa primarily considers the effects of the purchasing co-operative on the relevant market(s).
- One possible effect that restricts competition could lie in the limited opportunities of the suppliers of the purchasing co-operative to sell their products elsewhere, or prices as the effects on the selling side, which severely restrict competitive relationships between the members of the purchasing co-operative.

The latter situation may involve forms of exclusivity for the members of the co-operative, leading to commitments to buy only via the co-operative and the standardisation of cost prices that can result.

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authority enforced co-operation in sand quarrying through its licensing procedures, which made it impossible to test this alliance in terms of the prohibition of cartels, because there was no question of independent conduct on the part of the sand quarrying companies concerned (e.g. Case 547/‘Watergord’ partnership agreement).

Finally, the government can play yet another role. Undertakings may also have to deal with government bodies that approve agreements or with agreements based on statutory commitments. In the event of any conflict with the Competition Act, the prohibition of cartels will not apply for a particular period (up to five years after the date the Competition Act took effect). As a result, there is no need to fear that undertakings will find themselves caught between different government capacities and manifestations. This issue is discussed in the following paragraph.

3.4 Concurrent powers

The Competition Act provides that the prohibition of cartels does not apply to agreements that:
• are made subject to approval by or pursuant to the law;
• can be declared non-binding, prohibited or overturned by an administrative body;
• are based on the basis of any statutory commitment.

The underlying intention is to avoid conflicting decisions by different administrative bodies. The NMa received a request for an exemption from the protocol of the power generation sector and the power distribution sector, known as the Protocol (Case 73/Protocol). This involved a set of agreements on costs, prices and tariffs for the supply and take-up of electricity in 1997 to 2000. Although the Protocol was not originally realised on the basis of a statutory commitment, it has now been given a specific statutory basis. Pursuant to the amended 1998 Electricity Act, the Protocol must remain in effect until 1 January 2001. The parliamentary record shows that the dividing lines with the Competition Act were made explicit. The statutory requirement that an agreement must remain in effect and that the parties to that agreement can modify or terminate it can in this case be closely equated to the realisation on the basis of a statutory requirement, as laid down in the Competition Act, that the prohibition of cartels does not apply. However, the legislation must actually prevent concrete application of the prohibition of cartels, as shown by Case 275 (exemption request for Libertel). Through the notified agreement, Libertel affords service providers a non-exclusive right to provide telecommunications services to subscribers in the Netherlands, using the Libertel network. Libertel argued that the agreement cannot be subject to the Competition Act as it is an agreement to make services available for public use for consideration.

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The NMa can draw on sources including the following for the supply and take-up of electricity in 1997 to 2000. The underlying intention is to avoid conflicting decisions by different administrative bodies. The NMa received a request for an exemption from the protocol of the power generation sector and the power distribution sector, known as the Protocol (Case 73/Protocol). This involved a set of agreements on costs, prices and tariffs for the supply and take-up of electricity in 1997 to 2000. Although the Protocol was not originally realised on the basis of a statutory commitment, it has now been given a specific statutory basis. Pursuant to the amended 1998 Electricity Act, the Protocol must remain in effect until 1 January 2001. The parliamentary record shows that the dividing lines with the Competition Act were made explicit. The statutory requirement that an agreement must remain in effect and that the parties to that agreement can modify or terminate it can in this case be closely equated to the realisation on the basis of a statutory requirement, as laid down in the Competition Act, that the prohibition of cartels does not apply.

However, the legislation must actually prevent concrete application of the prohibition of cartels, as shown by Case 275 (exemption request for Libertel). Through the notified agreement, Libertel affords service providers a non-exclusive right to provide telecommunications services to subscribers in the Netherlands, using the Libertel network. Libertel argued that the agreement cannot be subject to the Competition Act as it is an agreement to make services available for public use for consideration.
The legislators consciously opted for a flexible fine system of this kind, because it is consistent with the open standards of the prohibition system of the Competition Act. With this choice, too, the legislators comply with the system that applies for the European Commission.

The fine provisions of the Competition Act mean that the NMa must consider the level of the fine in each specific case, with the aim of effective application of the Act. The Act does provide two instructive elements on this: first, in respect of this: the NMa must in any event take account of the gravity and duration of the infringement when determining the level of the fine. Other circumstances of the case may also play a role, such as recidivism and the benefits gained through the infringement. In principle, the relevant undertaking’s financial position or profitability does not play a role here.

In 1999, the NMa issued decisions imposing fines for violations of the prohibition of cartels or of the abuse of dominant positions on two occasions. These involved the cases of Hydro Energy B.V. versus Sep (Case 650) and of the agreements between civil law notaries in Breda (Case 593). In the latter Case, the NMa accused the Breda civil law notaries of violating the prohibition of cartels by contracting a market sharing agreement. The NMa took the view that this was a very serious violation, particularly since the effects of the Notaries Act already restrict the opportunities for competition between civil law notaries. The NMa found that the duration of the violation, at 15 months, could neither be described as short, nor as long-lasting. Various other circumstances were also taken into consideration, which reduced the level of the fine. For example, after the NMa found that a violation of the Competition Act had occurred, the civil law notaries independently discontinued the violation and furthermore, the established market sharing applied only to a proportion of the civil law notaries’ activities.

The Case of Hydro Energy B.V. versus Sep concerned the abuse of a dominant position. The NMa accused Sep of refusing to perform transport services for Hydro without objective grounds. The NMa takes the view that Sep had consequently committed a very serious violation of the Competition Act. The NMa regards the duration of the violation, lasting less than six months, as short. The fact that the electricity market is in a phase of transition from the public to the private sector was also taken into consideration in the NMa’s assessment. In view of this, a fine of NLG 14 million was considered an appropriate sanction.

With these decisions imposing fines, the NMa took the first steps towards policy making. This NMa intends to lay down this policy in policy rules once it has taken shape more clearly, as proposed in the Notes to the Competition Act. In addition to making the material core provisions of the Competition Act subject to fines, some other forms of conduct also face the penalty of administrative fines. For example, the NMa can impose fines of up to NLG 10,000 for non-compliance with the commitment to co-operate. This power was also exercised for the first time in 1999. The maximum fine of NLG 10,000 was imposed on Audax (Case 803). The NMa accused Audax of stalling and a non-co-operative attitude, which obstructed the progress of the European law investigation of Audax’s conduct in the market for import and distribution of daily newspapers and magazines.

The NMa can also impose fines for infringements as part of the supervision of concentrations. A maximum fine of NLG 10,000 can be imposed for non-compliance with regulations or failure to comply with the information requirements in relation to a request for a concentration licence. The NMa is authorised to impose fines of up to NLG 50,000 for the provision of inaccurate or incomplete information, non-compliance with the regulations for a concentration licence and a number of other infringements in relation to supervision of concentrations. No such fines were imposed during 1999.

3.7 Informal views

The legislators assigned the NMa various powers to issue decisions, such as exemptions, licences, fines and orders subject to penalties. During the year under review, various requests for exemption from the prohibition of cartels or regulations were notified. A report may follow, which could lead to a decision or an order (now as an alternative to an application). The NMa expressed to the legislators that these can be resolved by minor alterations, such as curing the violation, stating which subjects in any event still require an exemption.

The NMa is sometimes asked for an opinion before an application or notification is submitted. This is sometimes referred to as a pre-notification or orientation. The parties wish to obtain an idea of whether it is worthwhile to submit an application, to ensure that their application is correct or simply to obtain information. It is ultimately up to the parties to make their own choice. If they do not agree with the informal view or want a formal decision for other reasons, they can submit a request for this.

However, an informal view from the NMa is not always aimed at interim discontinuation of a procedure. Various procedures provide for a point (for example a hearing) at which all parties concerned exchange views on the case. To prepare for this, the NMa can draw up a document stating which subjects in any event still require discussion. Sometimes, a draft decision is already available for discussion, but usually, ‘points for consideration’ (sometimes referred to as a provisional opinion) suffice.

During 1999, special attention focused on a provisional view drawn up in response to a complaint from a lawyer regarding the prohibition, under the rules of conduct of the Dutch Bar Association (NOVA) on charging on a ‘no cure no pay’ basis (an agreement in advance that clients pay nothing if they receive no benefit from the proceedings) or on a quota pars litis basis (an agreement that the lawyer will receive a pre-defined share of the value of the outcome realised). A provisional opinion was presented to the NOVA, but had occurred that the NOVA is an association of undertakings within the meaning of the Competition Act and that its Rules of Conduct constitute a decision of that association that serves to restrict competition (on the points mentioned). The parties can present their views on this opinion and contest it if necessary. The provisional opinion was published in the Netherlands Legal Gazette (Volume 1999, pg. 251) by (one of) the addresses. This case involves an investigation in response to a complaint. A report may follow, which could lead to a decision imposing sanctions. The NMa is not always necessary or can, therefore, be granted. Applicants are notified of this and are then asked whether they wish to withdraw the superfuous application or nevertheless wish to complete the entire decision-making process, which is expected to result in the rejection of the application. In other cases, applicants are informed that a notified regulation or concentration probably does raise problems from the point of view of competition law, but that these can be resolved by minor alterations, such as the withdrawal of a particular restrictive requirement. Once again, the question is then whether they wish to modify and withdraw the notification or to go through the procedure. The question of whether it is preferable to withdraw an application (or complaint) can also arise for other reasons, for example if the likelihood that the Director General of the NMa will issue the required decision is minimal.

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6.1 Concentrations

4.1.1 Figures

We begin with the number of concentration cases completed in 1999.

<table>
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<tr>
<th>Category</th>
<th>Completed in 1999</th>
<th>Withdrawn in 1999</th>
<th>Submitted in 1999 and still under consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notifications of concentrations</td>
<td>146</td>
<td>6</td>
<td>18</td>
</tr>
<tr>
<td>Applications for concentration licences</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Applications under Art. 40</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Applications under Art. 35, Clause 3</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Figure 4.1: Processing of concentration cases

The proposed concentrations notified to the NMa related to a large number of sectors of the Dutch economy. Some sectors, such as construction, production and distribution of electricity, gas and water and environmental services, were represented relatively often.

Once the NMa receives notification of a proposed concentration, a four-week period begins, within which the NMa must decide whether a licence is required for the concentration. A licence is required if the NMa has reasons to assume that a dominant position can be created or reinforced as a result of the proposed concentration. The notifying parties can be asked for additional information if the data provided are incomplete insufficient for assessment of the notification. The four-week period can be suspended until such information is received.

During 1999, 158 notifications of proposed concentrations were submitted. This was slightly higher than the number received in 1998 (154). Six of these notifications were withdrawn within the four-week period. Decisions were issued on 146 notifications during the year under review. A further three decisions were issued in the second phase, two to allow a concentration to continue, for serious reasons (Article 40 of the Competition Act), a further three decisions were issued on 146 notifications during the year under review.

The NMa decided that a licence was required on six occasions in 1999, the same number of times as in 1998. Following such a decision, the parties wishing to undergo a concentration must submit a licence application to the NMa.

In principle, the licensing phase, which begins after the parties to a concentration submit a licence application, takes 13 weeks. This period can be suspended pursuant to the General Administrative Law Act if the NMa requires further information for assessment purposes from the parties wishing to form a concentration.

The licensing phase ends with a decision in which:
- a licence is issued,
- the application is rejected, or
- a licence is issued subject to restrictions and/or conditions.

The NMa is prepared to discuss proposals from the parties on the restrictions and/or conditions ('commitments') attached to the licence. The initiative for talks must come from the parties themselves. The NMa will investigate whether the proposed commitments solve the identified competition problems, in which case it will often submit the proposed commitments to market parties.

11 • Case 1427/The Greenery – Fruitmasters, the applicants withdrew their application during processing. Decisions on Cases 1528/Wegener Arcade – VNU Dagbladen and 1538/De Telegraaf – De Limburger are expected in the course of 2000.

12 In Case 1331/PNEM-MEGA – EDON, the parties proposed a number of commitments in order to remove the competitive objections outlined. The decision to issue a partial licence on the basis of the commitments offered. The licence was issued subject to the condition that the commitments should be effected and that the parties should report on the progress of their commitments to the Director General every two months. The committing parties are required to submit the commitments to the Director General every two months. The commitments were included in the licence as conditions.
Determination of turnover
Turnover is determined on the basis of net turnover, in compliance with the Dutch Civil Code. The determination of turnover must reflect the undertaking's business activities. Generally, the NMa uses audited financial statements or the parties' own estimates for the determination of turnover. It also determines whether turnover thresholds have been exceeded, on the basis of the date on which a concentration is notified. The NMa does not know the date on which the concentration will be formed and to this extent, it is not relevant. The calendar year for which an undertaking's turnover must be taken into consideration also depends on the notification date.

An undertaking's turnover must be included if it has the right to lead a concentration of which it forms part – i.e. if it has a say in the day-to-day management. A right to veto appointments and dismissals of managers does not, in itself, appear to be sufficient for this. The turnover that a joint venture realises from trade with undertakings other than the parent undertakings must be attributed in equal proportions to the parent undertakings.

Whether the parent undertakings hold equal shares in the capital of the joint venture is not relevant here. Government aid relating to an undertaking’s ordinary business operations undertaken in a turnover if the undertaking receives the aid itself and the aid relates directly to its sales. This will be the case if the aid of aid depends on supplies and the level of aid is in proportion to the supply volumes. If the aid is granted as a lump sum for a number of years, it must be attributed to each of these years in equal amounts (see also Case 1583/Volkswoningen – Onze Wolongemeenschap housing foundation).

The combined turnover of the undertakings involved in a concentration in the preceding year must be more than NLG 500 million. Each of at least two of the undertakings involved must also have realised at least NLG 30 million in the Netherlands. Both criteria were satisfied in Case 1678/ BDO – Walgroem. However, in the determination of the parties' turnover, BDO's upcoming acquisition of two other firms of accountants, in compliance with legally binding agreements, were also considered. In Case 1678/BDO – Walgroem stated in their agreements that the results of the two firms to be acquired by BDO would be attributed to BDO. Consequently, BDO's new planned acquisitions therefore proved to be relevant to the concentration between BDO and Walgroem, as the resources actually involved in the concentration included legally binding agreements between BDO and two other undertakings. On the basis of these agreements, BDO would acquire sole control over these firms of accountants and the turnover of these two firms could therefore be attributed to BDO in the context of the proposed concentration.

Secondary restrictions relating to concentrations
During the year under review, the most common secondary restrictions were once again related to competition clauses. The policy with regard to these clauses during 1999 was to accept non-competition clauses for a maximum of five years, in order to protect the buyer. In August 1999, the European Commission published a draft notice on secondary restrictions, in which the period regarded as acceptable for transfers of know-how and goodwill is reduced to three years. This draft notice encodes decisions already issued. From the end of 1999, therefore, parties were asked to provide details of special circumstances justifying a duration of more than three years.

If the parties have not restricted the geographical scope of a non-competitive clause to the area in which the transferring party was active at the time of the transfer (e.g. in Case 1163/Autobinck – Groep Teijlingen – Groep Smit), then the secondary restriction applies even if in as far as the geographical limitation is applied.

Generally speaking, it is assumed that the fact that the seller is not required to act as a provider of loans or other forms of credit goes beyond what can reasonably be regarded as necessary for the realisation of the concentration and is consequently not regarded as a secondary restriction (e.g. in Case 1549/Sitho – Baars & Bloemhoff and Case 1653/Priuli – NKF Kabel). If the seller is forbidden to hire employees of the undertaking to be acquired, or to assign them work in other ways, this prohibition will only be accepted if it is confined to active recruitment for the purpose of employment or assignment of work in other ways (e.g. in Case 1123/Autobinck – Greemin). Furthermore, this must involve personnel with important know-how regarding the activities of the undertaking to be acquired (e.g. in Case 1559/Bolfore – OTAL).

In Case 1123/Autobinck – Greemin, the continuation of an existing relationship between one of the seller’s group companies and the undertaking to be acquired was accepted as a secondary restriction for a shorter period than that notified by the parties. This was related to the fact that the notified operation, the acquisition of two companies, was changed during the notification phase to the acquisition of just one of the two companies. As a result, it was no longer possible to state that the said group company was entirely dependent on the undertaking to be acquired. Consequently, the duration of the agreement on the above relationship exceeded what could reasonably be regarded as necessary. Preferred supplier clauses can also be accepted for a certain period (e.g. in Case 1218/Economom – EDS Product Services and Case 1228/Stork – Printed Circuit Board Fabriek). Such a commitment must not last for longer than necessary to replace the ties of dependence between the seller and the undertaking to be acquired with an independent position as regards purchasing in the market. Such a period affords the new owner and the new owner an opportunity to adjust to the new situation.

With regard to turnover guarantees, it should be noted that turnover guarantees provided by a seller to the new owner and expiring over time have a higher chance of acceptance as a secondary restriction. If it is found that the new owner was not previously active in the market of the undertaking to be acquired, or barely so, such turnover guarantees can be said to enable the new owner to build up an independent position in the market with the acquired undertaking. In such a case, there is no appreciable reason why an addition non-competition clause should be necessary to realise the concentration. Even a sole supplier agreement between a new joint undertaking and the seller will be accepted (Case 1250/United News Media – Bloomberg).

In this decision, it was found that the joint undertaking must earn access to the technology and the know-how of the joint undertaking. An agreement that the undertaking to be acquired will continue to supply certain services to the seller can be acceptable as a secondary restriction in certain circumstances (e.g. in Case 1288/KFN Telecom – Origin/TS&N (10)). In this case, a minimum turnover...
Joint ventures

A transaction that leads to the formation of a joint venture can be defined as a concentration if:

• more than one parent company has control over the joint venture after the transaction is effected;
• the joint venture performs all the functions of an independent economic unit on a permanent basis;
• the joint venture does not lead to co-ordination of market practices by the parent companies.

If one or more of these conditions are not met in a specific case, the joint venture is not subject to the supervision of competition. This also means that the joint venture may be subject to the prohibition of cartels, in which case, the possibility of a dispensation request is open.

Generally speaking, there is no joint control if three or more shareholders each hold a minority interest in a joint venture, which does not enable them to take or block strategic decisions on the joint venture’s activities on an individual basis. In this case, there is a situation in which alternating coalitions can take decisions. As a rule, the realisation of such a situation will not be regarded as a concentration. This was the conclusion in Case 76/69 – Heineken and NUSBC – Members, in which there was a switch from a situation with a single majority shareholder with sole control to a situation with three minority shareholders, none of which had a controlling interest.

On a number of occasions, joint ventures were notified which, in the NMa’s view, did not perform all the functions of an independent economic unit. This was the situation in Case 167/67 – Water Company Eerpoort – Rotterdam Port Authority, for example. The joint venture in question was to pursue activities relating to the production and supply of surface water. Almost all the executive work was to be performed by one of the parent companies, while the joint venture would have very few operating assets of its own. In such a case, the NMa concluded that the joint venture is not a fully-fledged economic unit. This means that its formation cannot be regarded as a concentration.

If an undertaking acquires control of an existing joint venture, this can, in principle, be regarded as a concentration. Such a decision was made in Case 1208/ABN AMRO Participates – Humtures Beheer, in which the number of shareholders able to exert a controlling interest via veto rights was expanded from three to four.

One Case in which the issue of whether the formation of a joint venture could lead to concerted market practices on the part of the founding undertakings was Case 1201/ABP – PCCM – NIB. In order to answer this question, the extent to which the parent companies were active in one or more of the markets in which the joint venture operated, or in neighbouring markets, had to be investigated. In this Case, the NMa concluded that it could not reasonably be assumed that the creation of a joint venture would lead to concerted market practices on the part of ABP and PCCM.

Exemption for venture capital companies

During the past year, there proved to be a need for a more detailed interpretation of the exemption for venture capital companies included in the Competition Act. The acquisition of participating interests in corporate capital by venture capital companies is not regarded as a concentration, provided that the voting rights attached to the participation are exercised only in order to secure the full value of these investments. As the acquisition of participating interests in undertakings is the core activity of venture capital companies, they wished to develop a code of conduct together with the NMa. This code should enable venture capital companies to decide for themselves whether a concentration needs to be notified.

In the supervision of concentrations, it is assumed that control is acquired if a decisive influence on an undertaking can be exerted. A code of conduct therefore applies only to the acquisition of controlling interests by venture capital companies. This arises if a venture capital company acquires the right to take or block decisions concerning the:

• appointment and dismissal of managing directors;
• determination or approval of the budget and business plan;
• approval of major investments.

Although the precise formulation of the code of conduct was left to the venture capital companies themselves, the NMa formulated a number of suggestions on the basis of which these companies could develop the code. The key issue was that the code of conduct should lead to a restraint on the part of venture capital companies that acquire controlling interests.

• Firstly, restraint should be demonstrated with regard to decisions on the commercial operations (investments, the budget, business plan and other operational issues relating to the management of the undertaking). Decisions relating to the legal structure of the undertaking require no further consideration (for the purposes of the code of conduct) as they do not have an influence on an undertaking’s commercial practices.

• Secondly, incidental intervention, for example in the updating of a business plan, is less serious than regular intervention.

• Thirdly, it is important to incorporate a degree of objectivity with regard to crisis conditions, in which far-reaching intervention on the part of the venture capital company may be justified.

Confidential information

In connection with the rights of interested parties, it is necessary to draw up a public version of a decision on a concentration. The NMa publicises concentration decisions as far as possible, and includes the information that it regards as fundamental or which, in its view, makes the decision transparent. Confidential business or manufacturing information, within the meaning of the Freedom of Information Act, or information that should remain confidential pursuant to Art. 15, is not included in the public version of a decision. For this reason, the parties to a concentration are asked to indicate the information in the text of a concentration decision that they regard as confidential, stating their reasons, with a specific period (usually three working days).

Usually, the parties and the NMa are able to agree fairly quickly on which information in a concentration decision should be regarded as confidential. If this is not the case, the Competition Act provides for the following possibility: ‘Information provided by an undertaking with notification shall not be notified to the public until at least one week after the announcement of the relevant decision of the Director General, if the undertaking defines that information as confidential.’ (Article 35, Clause 3).

During the year under review, two of the above decisions (Cases 13/93/Do – Do Stor, the NMa found that an estimate of the total value of a market by definition does not contain any confidential business or manufacturing information, as the specific data concerning the parties’ internal figures cannot be deduced from the total value of a market. After all, such an estimate incorporates the position of competitors in that market, as well as the information from the parties. The parties based their estimates of the total value of the relevant markets on their own turnover and an estimate of market shares. These estimates were fundamental to the grounds for the decision. The method by which the combined share of parties in the relevant market is estimated may be very relevant to third parties, because the accuracy of the combined share of the parties stands or falls by an accurate determination of the total value of the relevant market(s).

Publication of these estimates is also important for the NMa and interested third parties because publication enables or enables third parties to assess whether the realisation of the Competition Act.

The second decision was taken in Case 1208/TDC Logistics – Van Straaten, in which the names of the three Van Straaten shareholders that sold their shares to TDC were included in the concentration decision. The NMa took the view that there this involved a family business bearing the family name. This provides explicit evidence of a choice to take the family name public to the personal sphere. In this case, two share- holders owned their shares via a personal holding company bearing their own initials and the same family name. As the information on two of the three shareholders was already generally known and consequently, public information, it can be argued that the identity of these shareholders is not information that does not qualify for publication. The identity of shareholders in an undertaking is not, in principle, confidential information. This is not altered by the fact that in some cases, information on the identity of shareholders is not generally accessible.

The request to regard the identity of the third shareholder, a natural person who does not have the same family name, as confidential information and to refrain from disclosing it is a request to refuse disclosure of that information on relative grounds. This means that the interests in publication of the information must be weighed against those of non-disclosure. The parties had not, however, provided further grounds for their interests in non-disclosure, so that this consideration was not possible. Furthermore, the interests in disclosure of the information investigated in this case were strengthened by the fact that the concentration decision also contained an opinion on a non-competition clause that the parties wished to be included in the agreement, to which the sellers and the natural persons were party.

The identity of those who are party to a non-competition clause is an essential part of this in the case in question. In both cases, the NMa concluded that the interests of the parties in non-disclosure, and that the request for non-disclosure of this information could not be honoured.

Dispensation requests for the realisation of a concentration within four weeks

Pursuant to Article 46 of the Competition Act, parties that notify a concentration can apply to the NMa for dispensation from the prohibition of the realisation of the concentration before the four-week term has expired. The NMa can grant such dispensation ‘on serious grounds’. Serious grounds arise if observance of the compulsory waiting period will cause irretrievable harm to a proposed concentration. Any dispensation will be granted on a provisional basis. If the NMa later decides that the concentration requires a licence, the parties are required to submit a licence application within four weeks. If they fail to do so, or withdraw the application, or provide it cannot be approved, the concentration must be disbanded within 13 weeks. The same applies if the licence application is rejected.

In 1999, the NMa issued decisions in response to such requests on two occasions. Both requests were honoured.
The first request was submitted by the Accell Group, a producer of bicycles under the Batavus brand, which wished to acquire the struggling Sparta company (Case 1550/Accell Group – Sparta). Sparta faced serious financial difficulties. It was no longer able to pay suppliers, which were refusing to deliver parts for production. As a result, production was at a standstill and no bicycles could be delivered to consumers. Consequently, there were justifiable fears that consumers would not place any orders for the following season and that employees would leave. Because the bicycle sector was taking decisions on the collection for the next season precisely at the time when the notification and request were submitted, special circumstances applied. The four-week waiting period could have severely reduced Sparta’s value and chances of survival. The Director General of the NMa therefore concluded that there was sufficient evidence of a threat of irreversible damage.

The second request was made in by the Schreiner Aviation Group in Case 1557/Schreiner – Air Holland. Schreiner wished to acquire Air Holland and save it from failure. The situation was similar to that in the Accell Group – Sparta case. Air Holland was in serious financial trouble and threatened with compulsory winding up. Precisely in the period when the request was submitted (early October), Air Holland’s customers, the tour operators, were buying in airline capacity for the following summer season. Key accounts stated that they were only prepared to sign contracts with Air Holland for the next season if adequate assurances regarding continuity could be provided. These accounts accepted a take-over by Schreiner as an adequate assurance, but could not wait four weeks for it.

The NMa concluded that if Air Holland could not be acquired immediately by a buyer with continuity prospects, it would suffer an irreversible reduction in value. Again, this provided sufficient evidence of irreversible damage to the proposed concentration, which served as grounds to grant dispensation.

Supervision of concentrations by foreign competition authorities: multiple notifications

When the European Concentration Regulation No. 4064/89 was amended on 30 June 1999, the EU Council of Ministers agreed that the Member States would record how many of the concentrations notified in each Member State are also notified in other EU Member States. In view of this decision, a question on this issue was included in the Notification of Concentrations Form. Of the 158 concentrations notified to the NMa in 1999, 18 were also notified to competition authorities in the other EU Member States. The distribution of these notifications was as follows:

<table>
<thead>
<tr>
<th>Concentrations notified in</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netherlands and Belgium</td>
<td>1</td>
</tr>
<tr>
<td>Netherlands and UK</td>
<td>2</td>
</tr>
<tr>
<td>Netherlands and Ireland</td>
<td>1</td>
</tr>
<tr>
<td>Luxembourg and Austria</td>
<td>1</td>
</tr>
<tr>
<td>Netherlands, Belgium, Germany, Italy</td>
<td>1</td>
</tr>
<tr>
<td>Netherlands, Denmark, Germany, Italy</td>
<td>1</td>
</tr>
<tr>
<td>Luxembourg, Austria and Sweden</td>
<td>1</td>
</tr>
<tr>
<td>Netherlands, Belgium, Denmark, Germany, Ireland</td>
<td>1</td>
</tr>
<tr>
<td>Finland, Ireland, Italy and Sweden</td>
<td>1</td>
</tr>
</tbody>
</table>

The NMa’s expectations. This raises the question of the position realised with regard to processing of these requests.

<table>
<thead>
<tr>
<th>Description</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Position as at 1 January 1998</td>
<td>89</td>
</tr>
<tr>
<td>Completed in 1998</td>
<td>7</td>
</tr>
<tr>
<td>Outstanding in 1998</td>
<td>52</td>
</tr>
<tr>
<td>Correction for file split</td>
<td>16</td>
</tr>
<tr>
<td>Received in 1999</td>
<td>36</td>
</tr>
<tr>
<td>Completed in 1999</td>
<td>25</td>
</tr>
</tbody>
</table>

4.4 Processing of requests for exemption

This paragraph discusses the processing of requests for exemption during 1999. Figure 4.7 first presents an illustration of the processing modalities.

Informal views and exemptions

The type of informal view issued for requests for exemption can be defined in more detail:

- Notified agreements or decisions by associations of undertakings that, following an NMa investigation, do not qualify for exemption.
- Notified agreements or decisions by associations of undertakings that, following an NMa investigation, proved not to be subject to the prohibition of cartels, because the informal view found that there is no appreciable competitive restraint.
- Notified agreements or decisions that proved not to be subject to the prohibition of cartels of the Competition Act after the applicant modified the notified provisional valid agreement or the decision of an association of undertakings.
- Notified agreements or decisions by associations of undertakings that, according to an informal view issued following an NMa investigation, do not qualify for exemption.

Figure 4.7 Modalities for processing of requests for exemption.

- Settlement
- Decisions
- Withdrawals

In 1999, 60% of all requests for exemption were settled informally. There is a high level of diversity within the category of requests for exemption settled on an informal basis. In 15% of cases, the requests were withdrawn entirely at the initiative of the applicant, without an informal view. Finally, formal decisions were taken on 25% of the completed requests for exemption. The following paragraph first discusses the informal views issued on the basis of information supplied by the parties.

4.3 Complaints

Figures for complaints

The following table can provide an insight into settlement of complaints in 1999.

<table>
<thead>
<tr>
<th>Description</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Position as at 1 January 1998</td>
<td>139</td>
</tr>
<tr>
<td>Completed in 1998</td>
<td>133</td>
</tr>
<tr>
<td>Outstanding in 1998</td>
<td>92</td>
</tr>
<tr>
<td>Received in 1999</td>
<td>85</td>
</tr>
<tr>
<td>Completed in 1999</td>
<td>150</td>
</tr>
</tbody>
</table>

A total of 127 complaints were outstanding at the start of 1999. A further 92 new complaints were received in the course of the year. A total of 89 complaints were settled, leaving 150 outstanding at the end of 1999.
The following case also arose within the care sector. It concerned agreements between care insurers and care providers. The insurers had complete freedom to buy services from law firms that were not party to the notified agreements. The agreement was therefore of a facilitative character. The figures submitted also showed that in practice, the foundations outsourced a large proportion of their legal services to firms that were not party to the agreement. There was no question of an agreement on volumes. The law firms that were party to the agreement also had a completely free choice of legal aid insurers for which they wished to do business. There was therefore no question of mutual exclusivity.

A case concerning a system for selective distribution of crystal ornaments was also completed in the form of an informal view, as the system complied with the norms developed in European legal practice.

A request for exemption relating to clauses included in policy conditions was also concluded with an informal view. The policy conditions applied to agreements between a care insurer and its insureds. These insurers are end-users and as such, cannot be regarded as ‘ undertakings’ within the meaning of the Competition Act. For this reason, the notified agreements were not subject to the prohibition of cartels, as there was no agreement between undertakings.

As shown by the examples, this involves relatively simple cases, in which the informal views simply conclude that there was no appreciable restriction of competition. This conclusion was reached on the basis of information provided by the parties. Some examples of such informal views are:

- Agreements between care insurers and care providers on the creation of an electronic network, with no risk for exchanges of information between care insurers themselves. This request for exemption was settled with an informal view.
- The following case also arose within the care sector. It concerned agreements between health insurance funds and ambulance services, thrombosis services, audiology centres or clinical genetic centres. The applicant for exemption co-ordinated and directed the exchange of these authorisations between centres. The applicant for exemption co-ordinated and directed the exchange of these authorisations between centres.

Exemption for Combined Agreements Decree. However, on the basis of the following considerations, an informal view was issued on these co-operative projects between small-scale contractors and shareholders, for projects on a modest scale. This was because:

1. The combination was formed to perform a specific project for which it was therefore contracted for a temporary period only.
2. The participants in the project and combination are small-scale contractors and shareholders, for projects on a modest scale.
3. Another agreement restricting competition would not have any significant effect on the market.
4. The NMa concluded that these provisions were necessary to achieve other objectives and that the regulation in combination with a supply commitment may not be so restrictive that the members are bound to the co-operative for goods supplied to installation companies. In this case, the NMa found an informal view that there was no (longer any) conflict with the prohibition of cartels.

Not subject to the prohibition of cartels

In 58% of the cases, after conducting an examination, the NMa concluded in an informal view that there was no conflict with the prohibition of cartels and that therefore, no exemption was required. In principle, this involved a simple observation on the part of those handling the case that there was no reason to provide exemption as there was no question of a conflict with the prohibition of cartels. This conclusion was reached on the basis of information provided by the parties. Some examples of such informal views are:

- Agreements between care insurers and care providers on the creation of an electronic network, with no risk for exchanges of information between care insurers themselves. This request for exemption was settled with an informal view.
- The following case also arose within the care sector. It concerned agreements between health insurance funds and ambulance services, thrombosis services, audiology centres or clinical genetic centres. The applicant for exemption co-ordinated and directed the exchange of these authorisations between centres. The applicant for exemption co-ordinated and directed the exchange of these authorisations between centres.

The quantitative allocation to these categories of informal views is as follows:

- Not subject to the prohibition of cartels: 58%
- Non-appreciable: 10%
- Not subject to prohibition of cartels after modification: 17%
- Does not qualify for exemption: 15%
infringement of the prohibition of cartels had occurred and, therefore, no exemption was required. More than half the number of decisions on requests for exemption therefore resulted, in essence, in a go-ahead for the applicant. In 28% of cases, exemption was refused. The final category of decisions rejected part of the request and granted exemption in relation to another part.

4.5 Processing of complaints

The ways in which complaints were settled are first considered below.

Figure 4.10 Settlement of complaints.

In 29% of cases, processing of complaints led to a decision in 1999. A decision on a complaint by definition involves a rejection. If the NMa wishes to follow up a complaint, an investigation is launched. If this investigation gives rise to suspicions of a violation of the Competition Act and the NMa wishes to take action against this, a report must be drawn up. After hearing all the undertakings concerned, a report may lead to the imposition of sanctions. In 65% of cases, complaints were withdrawn, either because the grounds for the complaint no longer applied or because, after contacts with the NMa, the complainant reached the conclusion that there had not been any infringement of the Competition Act. Finally, in 6% of cases, processing of a complaint was discontinued because the complainant did not provide the necessary information.

The diagram shows whether complaints concerned the prohibition of cartels or abuse of a dominant position, in cases in which a decision was issued. In 45% of cases, the NMa issued decisions in response to complaints concerning alleged violations of the prohibition of cartels. In 38% of cases where a decision was issued, the complaint concerned alleged abuse of a dominant position. Complaints in the other 19 cases concerned alleged violations of both prohibitions.

4.6 Decisions imposing sanctions and measures subject to penalties

If the NMa suspects that an undertaking has violated the prohibition of cartels or abused a dominant position and that a fine or measure subject to penalties should be imposed for this, a report is drawn up. After the undertakings concerned have been heard on the basis of the report, the NMa can decide to impose a fine or measure subject to penalties. In the course of the year under review, there was a clear increase in the number of administrative appeals submitted. During 1999, 32 appeals were settled, compared with 10 in 1998. In two cases, the appeals were upheld and in two others, were partially upheld. Fine appeals were withdrawn. The remaining 23 were rejected or declared inadmissible.

The diagram below shows that the complaints leading to decisions were spread relatively evenly over the different sectors.

Figure 4.11 Grounds for complaints.

During 1999, 32 decisions were spread relatively evenly over the different sectors.

4.7 Processing of administrative and judicial appeals

During the year under review, there was a clear increase in the number of administrative appeals submitted. During 1999, 32 appeals were settled, compared with 10 in 1998. In two cases, the appeals were upheld and in two others, were partially upheld. Fine appeals were withdrawn. The remaining 23 were rejected or declared inadmissible.

During the year under review, there was a clear increase in the number of administrative appeals submitted. During 1999, 32 appeals were settled, compared with 10 in 1998. In two cases, the appeals were upheld and in two others, were partially upheld. Fine appeals were withdrawn. The remaining 23 were rejected or declared inadmissible.

At the end of the year under review, 13 appeal cases were pending before the Rotterdam Court of Appeal. Seven appeal cases were withdrawn by the undertakings concerned in the course of the year, before or after the Director General of the NMa filed a defence. No judicial appeal cases were completed during the year.

Processing of administrative appeals made heavy demands on the NMa. The flood of exemption requests submitted under the transitional regime, when the Competition Act came into force, led to an increase in the number of cases during the year, while the NMa was also dealing with a growing number of new activities related to the preparation of decisions imposing sanctions and processing appeals against decisions of the Director of DE.

In principle, pursuant to the General Administrative Law Act, the term for issuing decisions on administrative appeals is six weeks. The NMa is aware of the interests served by quick processing of appeals. At the same time, however, the nature of the appeals procedure and the principle of care must be taken into consideration. As a rule, parties submit a ‘pro forma’ statement of appeal in response to a decision of the NMa Director General. They then ask for more time to supplement the statement. The NMa usually grants six weeks for this. At the request of the parties, a longer term is sometimes granted. After the grounds for the appeal have been elaborated, the term for processing begins. The NMa
5.1 Decisions on concentrations

This paragraph first discusses the cases in which no licence was required, followed by those where a licence was required. In the cases where no licence was required, those in which the parties held a strong market position are discussed first, followed by cases in a number of specific market sectors.

5.1.1 No licence required

Assessments of a number of notifications of proposed concentrations showed that the parties would gain a strong market position. For various reasons, the NMa’s investigations showed that these positions would not unacceptably restrict competition in the relevant market(s). For this reason, no licence was required in the following cases.

Case 1312/Ahold – Gastronoom

Parties and market(s): The notified transaction involved the acquisition of Gastronoom Holding B.V. by Koninklijke Ahold N.V. The main overlap between the activities of Ahold (a subsidiary of CIAM) and Gastronoom lay in the field of wholesale deliveries of food-products and related non-food-products for the ‘non-domestic’ market (mainly catering-establishments and large-scale institutional consumers). With regard to the geographical scale of the market, it was found that key competition parameters in the ‘non-domestic’ market, such as the price structure, advertising policy and quality requirements, were laid down primarily on a national level.

Findings: After the acquisition of Gastronoom, Ahold would become one of the largest players serving the non-domestic market in the Netherlands, and the largest in terms of provisions for institutions (such as health care and educational institutions), with a market share of some 30-40%. The NMa’s investigations in this case showed that there were enough strong national competitors able to provide competitive pressure. There also appeared to be a trend for customers (particularly institutions) to join forces in purchasing by forming purchasing combines. The market was also expected to grow and other companies (potential competitors) were prepared to enter the market in the near future. For these reasons, the NMa’s investigations showed there was no need to fear a dominant position.

Case 1362/Draka – NKF

Parties and market(s): Draka and NKF are active in the production and sale of telecommunications, glass fibre and electricity cables, which can be sub-divided into general wiring cables and electricity transmission cables. For the final assessment, it was not necessary in this case to determine whether the markets were West European or Dutch.

Findings: In the West European markets for electricity cables, the combined market share remained below 15%. In the Dutch market for electricity transmission cables, the parties held a strong position, but the demand side of this market is concentrated and the buyers can provide a corresponding counterweight. In the other markets distinguished, the increase in market share is relatively low, although there are more competitors and the buyers are often major market parties. There was therefore no question of a dominant position, or of any strengthening thereof.

Case 1653/Pirelli – NKF Kabel

Parties and market(s): Likewise, no licence was required for the sale of NKF Kabel B.V.’s activities to Pirelli Cavi e Sistemi S.p.A. The parties took the view that no distinction should be made between electricity transmission cables for different voltages. However, a more precise definition of the market for the production of electricity transmission cables was unnecessary, as was the definition of the geographical market.

Findings: In the Netherlands, there is no overlap between the activities of the two undertakings. In the West European market, the undertakings have a combined share of less than 50%. For the high voltage level, this is less than 15%. This is a high market share, but projects involving electricity transmission cables are always tendered on a European scale and the customers hold a relatively strong position in relation to the producers. There was therefore no reason to assume that the concentration could give rise to, or strengthen a dominant position.

Case 1413/ZVN – Huka

Parties and market(s): ZVN and Huka are both active in the sale and leasing of rehabilitation aids. In this case, the market is also defined as such. It was not necessary to determine whether the product market should be more precisely defined or whether the relevant market was national or regional.

Findings: The parties would hold a combined market share of some 50% at both the regional and the national levels. ZVN was by far the largest provider of rehabilitation aids prior to the proposed acquisition, and this position would be strengthened by the acquisition of Huka. The NMa’s investigations showed that a large number of smaller competitors, customers, municipal authorities and care providers could provide a sufficient counterweight. There was also a vertical relationship between the parties, because Huka produces rehabilitation aids for children, some of which are sold via ZVN. Huka’s market share in the Netherlands in this area was some 10%. However, a number of other Dutch producers are active in child rehabilitation aids and there are also imports. It was therefore not reasonable to assume that the proposed concentration would lead to potential closure of the market. There was therefore no reason to fear a dominant position.
The highest market share was found in the children's bicycles in the middle and higher price segment. If the combined market share lay between 20% and 30%.

Accell would obtain or strengthen a collective dominant position with Derby, the largest cycle producer in the Netherlands, as a result of the acquisition. It was found that market shares have fluctuated in recent years, that problems in this area. There was therefore no reason to assume that a (collective) dominant position could arise or be strengthened.

During the year under review, a number ofnotifications sometimes related to the same sector. This was the case with the financial sector, social insurance/working conditions services, the utilities sector, housing corporations and cable companies, for example. Some decisions in these sectors are discussed collectively below. In these cases, the NMa found that no dominant position would be created or strengthened.

Decisions on the financial sector

1999 was the last year in which concentrations involving only credit institutions, financial institutions and/or insurers were exempt from supervision pursuant the Competition Act. In each of the cases described below, the application of the exemption was an important consideration.

Case 1205/ABP – PPGM – NIB

This case concluded that many of the activities of the pension funds heading the groups of insurers did not qualify them as financial institutions. The exemption in question did not, therefore, apply. Because De Nederlandse Bank en de Insurance Supervisory Board were responsible for supervising competition in financial markets in 1999, only the potential competitive constraint in non-financial markets were assessed in this decision.

Case 1207/SNS Real Groep – Nutspaarbank Zierikzee

Both SNS Real and Nutspaarbank Zierikzee were covered by the exemption. In some cases, a certificate of no objection is required pursuant to the law on financial supervision, in order for the exemption to apply. This also applied in relation to SNS Real. Because no other undertakings with activities that were not covered by the exemption were involved in SNS Real's acquisition of Nutspaarbank Zierikzee, the provisions concerning supervision of concentrations did not apply to this transaction. It could therefore be realised without notification of the intention to do so to the Director General of the NMa.

Case 1311/Nuts-Ohra – Noorder Kroon

In this case, Nuts Ohra Beheer B.V. (hereinafter referred to as ‘Nuts-Ohra’) acquired control over Noorder Kroon Holding B.V. (hereinafter referred to as ‘Noorder Kroon’) which provides banking services and is active in the fields of life insurance, non-life insurance and care insurance. Noorder Kroon has two subsidiaries, which is provides services relating to life insurance products, as an insurance agent. These concentrations were not subject to the exemption from supervision of concentrations in the financial sector. Nuts-Ohra did comply with the requirements for exemption, but Noorder Kroon, which operated via an intermediary (i.e. not as an insurer, but only as a service provider) did not.

Case 1314/SNS Real Groep – Abfin

This case concerned SNS Real Groep N.V.'s acquisition of control over Abfin B.V. SNS Real is active in banking and in life and non-life insurance. As a finance company, Abfin concentrates on consumer and commercial credit and on operational and financial leases for motor vehicles. Apart from operational leasing, Abfin’s activities qualified as activities covered by the relevant exemptions. Because consumer and dealer loans and financial leasing activities accounted for more than half of Abfin’s portfolio, one could conclude that its business consisted primarily of these activities and that, therefore, it was a financial institution as required for the application of the exemption. SNS Real is an undertaking that heads one or more credit institutions, financial institutions or insurers, as required for the application of the exemption. Nevertheless, unlike Case 1205/SNS Real – Nutspaarbank Zierikzee, the exemption did not apply here. The difference lay in the fact that Nutspaarbank Zierikzee qualified as a credit institution, so that the exemption applied to the concentration, while Abfin qualifies as a financial institution. Although SNS Real should be regarded as a holding company for a group including credit institutions, financial institutions and insurers, as required for the exemption, it cannot itself be regarded as such an institution or insurer.

Decisions on social insurance/working conditions services

Case 1195/Argonaut – ZVN

The social insurance market is a sector that is changing fast, partly as a result of legislative reforms. This put the activities of Argonaut, in perspective. Nevertheless, the potential consequences of the take-over were considered. The NMa investigated whether the companies in question would strengthen their competitive position because they were able to provide a broader and more coherent service package than in the past, and whether they could make use of each other’s expertise. In principle, Argonaut’s expertise could be applied most directly for the claim assessment activities. However, implementing organisations (UVIs) cannot compete in this respect and there are no indications that this will change in the foreseeable future. To the extent that UVIs can compete in terms of the administrative part of their current activities, it can be established that ZVN Abfin’s other activities do not mean that a broader package of services can be provided for customers than in the past. Finally, the undertakings in question also have strong competition for their services in the social insurance, care, insurance and case management activities.

Three decisions were issued in the field of working conditions services in 1999:

Case 1414/PGCM – VYCZ – Twalf Provincien Case 1423/Arbo Group Gak – Arbo Management Group Case 1326/Arbo Unie

In all these decisions, there was no need to establish whether there was a single market for the provision of working conditions services, or markets for such services in each sector. Because current Dutch legislation differs from that in other countries, and because the insurance sector of the market participants are not competitors, it can be concluded that the market for working conditions services operate on a national scale, one could conclude that the market for working conditions services is a national one.

Decisions on the utilities sector

Case 1185/NUON – ENW – EWR – Camog Case 1233/NUON – De Regge Case 1244/PGGM – GEM – CCN

Case 1212/NUON Water – Waterfielding Friesland To illustrate how the NMa deals with the definition of markets, market definitions included in the decisions of the NMa in the fields of life insurance, non-life insurance and care insurance, as defined in the following decisions are defined as follows:

The market for production of electricity

In line with earlier decisions (Case 4/Sep – EPON – EPZ – EZH – UNA, see preceding Annual Report) a separate market for the production of electricity is distinguished. In view of the fact that import capacity is still limited, the market still appears to be a national one, at least for the next few years.
The market for transmission of electricity

The 1998 Electricity Act provides for compulsory segregation of the trading and network activities of distribution companies. An exception to the ‘captive customers’ category is made with respect to the networks that they manage to other market parties (with the exception of captive customers) without discrimination. In view of the above, a separate market is distinguished for the transmission of electricity. The networks of the various network companies coincide geographically with the distribution companies’ current regional supply areas. The markets are therefore regional.

The market for supply of electricity

In line with earlier decisions (Case 1/8 MECA-Limburg – Nuthbedrijf Heerlen – see preceding Annual Report) a separate market is distinguished for the supply of electricity. A distinction is also made between supplies to ‘free’ customers and to ‘protected’ or ‘captive’ customers. Pursuant to the 1998 Electricity Act, all customers will become free, in phases, to choose their own suppliers. Major industrial consumers already have this freedom. Under the regime of the Electricity Act, until all end-users are free to choose their own suppliers, they are captive customers that, in principle, can only be, and must be supplied by the licence-holder (distribution company) in their area. However, the above differences between captive and free customers, one can conclude that these groups belong to different markets. With regard to the supply of electricity to captive customers, supply companies, pursuant to an exclusive supply licence, hold a monopoly in the area for which the licence applies. In the first instance, therefore, the supply area is regarded as the relevant geographical market. When the two groups of captive customers are granted freedom of choice, the first in 2002 and the second in 2004, the size of the market for these groups, too, will no longer automatically coincide with this supply area. As a result, where relevant, the consequences of the concentration were also assessed on the basis of geographically broader supply companies, pursuant to an exclusive supply licence, hold a monopoly in the area for which the licence applies. In the first instance, therefore, the supply area is regarded as the relevant geographical market. When the two groups of captive customers are granted freedom of choice, the first in 2002 and the second in 2004, the size of the market for these groups, too, will no longer automatically coincide with this supply area. As a result, where relevant, the consequences of the concentration were also assessed on the basis of geographically broader supply areas. The markets are therefore regional.

Relevant markets for related products and services

The following product markets are distinguished: the market for the supply of heat, including industrial water, the market for public lighting and traffic systems, the market for advice on energy applications and energy provision and the market for administrative services for third parties. These markets are at least regional. There is no need to determine whether they are likely to be national.

The market for drinking water

A separate market exists for drinking water. This is a largely homogeneous product that is largely distinct from other products in terms of price and product features. Consumers cannot normally substitute drinking water with other qualities of water. The geographical dimensions of these markets can be assumed to coincide with the supply areas of the water companies. After all, the government awards water companies exclusive rights regarding the supply of drinking water in their supply areas. The Cabinet has considered introducing a system for the decontamination and separation of sludge) constitute separate product markets.

Processing or treatment to form semi-finished products

Processing or treatment to form semi-finished products leads to the separation of wastes for re-use and final products. If not otherwise prohibited by law, these decisions assume a national market for processing and treatment of hazardous wastes. These activities represent separate product markets, which are discussed below.

Composting is discussed in Case 135/1 P/NEM-MECA – EDON.

Incineration

Case 1244 assumes a separate national market for incineration of hazardous wastes. The government plays a steering role in this market and aims for national self-sufficiency. A national market is therefore assumed for incineration of hazardous wastes.

Dumping/recycling

Case 1124 considers both dumping and recycling of dredging sludge. Recycling of dredging sludge is a relatively new activity that provides an alternative to dumping. This decision does not address the question of whether these activities form part of a single market or belong to two separate markets, nor whether a regional or national market is involved. Because of the specific installations required for recycling of white and brown goods, a separate product market for recycling of white and brown goods is assumed in Case 1244, making no distinction between white and brown goods.

Supply of new products

Case 1124 argues that secondary building materials released during the recycling process for dredging sludge do not belong to a separate market, but can be substituted by other building materials (recovred from other products), because they suffer too little from other building materials in terms of properties, price and quality. In view of the transport costs, the market for the supply of building materials are prohibited by law, these decisions assume a national market for processing and treatment of hazardous wastes.
Decisions on housing corporations

**Case 1264/ Woningstichting 's-Gravenhage – Vereniging Zeeuwse Woningen**

Parties and market(s): These two housing foundations in The Hague notified their merger plans after the Director General of the NMa found in an earlier decision that, in principle, housing foundations are undertakings within the meaning of the Competition Act. The decision ruled that, partly because of the existence of detailed government rules regulating housing, there is a separate market for housing rentals in the 'social housing sector'. The Director General of the NMa did not rule on the question of whether this market should be broken down further into housing types, as this did not affect the assessment of the notified concentration, since both parties were active within The Hague municipality. It proved unnecessary to investigate whether the market for rentals in the social housing sector should be defined more broadly in geographical terms than the municipality of The Hague, since this, too, had no effect on the assessment of the concentration.

In this case, there is a single local social housing market covering all types of housing in The Hague, the parties would obtain a combined market share of more than 15%. If the market were sub-divided into the various types of housing available in The Hague, the parties would jointly hold market shares of less than 10%, which would not be sufficient to affect competition. Under these circumstances, it could not be assumed that the concentration would give rise to or strengthen a dominant position that would lead to significant restriction of actual competition in the Dutch market, or a part of it. Consequently, no licence was required for the realisation of the concentration. The parties were active within The Hague municipality. It proved unnecessary to investigate whether the market for rentals in the social housing sector should be defined more broadly in geographical terms than the municipality of The Hague, since this, too, had no effect on the assessment of the concentration.

**Case 1589/ Stichting Volkswoningen – Stichting Onze Woongemeenschap**

Parties and market(s): In this case, the parties (two housing corporations) had provisionally notified their merger plans on the basis of the fact that, in their view, they were not required to add the item 'equalisation of state subsidies' in their 1998 profit and loss accounts to their turnover and would consequently remain below the turnover threshold for notification. The Director General of the NMa ruled that the subsidies received did have to be included in the turnover, since they were directly related to the operation of the homes that the parties rented out. The Director General also concluded that the fact that the subsidy had actually been received some years earlier could not alter the fact that a proportional share of the subsidy should be included in the determination of turnover in a later year. The merger therefore had to be notified. Both parties were active in the market for rentals in the social housing sector in the Rijnmond region. In this case too, the Director General did not need to make any further distinctions according to the various types of housing. The geographical dimensions of the market did not require further definition, as this did not affect the material assessment of the concentration.

Findings: Assuming a local market for the rental of all housing types in the social housing sector, the parties would gain a combined market share of less than 10%. If the local market were further sub-divided by housing types, all market shares would be less than 15%. There were however other providers active in the Rijnmond region to make it reasonable to assume that the concentration could not give rise to or strengthen a dominant position. No licence was therefore required for the realisation of the concentration.

Decisions on cable companies

**Case 1358/ AWBV – Patrimonium – ‘De Goede Woning’**

Parties and market(s): The three companies, which were active in rentals in the social housing sector in the Haaglanden region, had notified their merger plans. As concluded earlier, housing foundations are undertakings within the meaning of the Competition Act and a licence was required for the joint market for rentals in the social housing sector. In this case too, investigations of any more detailed distinctions by housing types or the precise definition of the market were unnecessary, as they did not affect the material assessment. In the Haaglanden region, the parties would hold a combined share of 13% of the market for rentals in the social housing sector. More than 25 other housing corporations were active in the Haaglanden region, at least one of which was of a similar size. None of the competitors questioned reported that they thought the concentration could give rise to a dominant position. On the basis of this survey and the information provided by the parties, the Director General of the NMa found that there was no reason to assume that the concentration would result in the creation or strengthening of a dominant position, which meant that the parties could realise the concentration without the need for a licence.

**Case 1395/ UPC – A2000**

Parties and market(s): In the case above, a separate product market was distinguished for the distribution of radio and television signal via the cable network. In association with these activities, cable operators provide standard programme packages, but the question of whether this constitutes a separate market was not addressed, as this did not affect the final assessment. The question of whether new services such as Pay-TV, data communications, telephony and Internet access via the cable network as it was regarded as separate markets could likewise be left open.

Findings: In the regional service areas of cable operators, the activities of the parties did not overlap. At the national level, UPC would hold a share of some 26% of the market for distribution of radio and television signals via the cable after the concentration, and enough large and medium-sized competitors would remain. UPC and A2000 held limited shares of the national markets for Pay-TV, data communications, telephony and Internet access. In the field of Internet access via the cable, the parties hold a combined market share of 10% to 20% in the Netherlands. One could therefore conclude that no dominant position would be created or strengthened, and that no licence was required.

The same market definitions were applied in Cases 1201/1-PNEM-MEGA – EDON and 1350/Casema – CAI Bussum, and similar or lower national market shares were realised.

**5.1.2 Licence required**

The concentration proposals briefly described in this paragraph have in common that the NMa concluded during the notification phase that they could give rise to or strengthen a dominant position that could significantly restrict competition in the relevant market. A licence was therefore required in these cases.

**Case 807/State Lottery – Lotto – Bankgiro Lottery**

Parties and market(s): On 25 February 1999, the State Lottery, Lotto and the Bankgiro Lottery notified their plans for a merger. All three were active in the operation of games of chance. The NMa decision of 23 March 1999 concluded that no licence was required for the merger, as there was reason to assume that the parties would acquire a dominant position in the market(s) for lotteries, sports competitions and instant lotteries. The parties submitted a licence application on 17 June 1999. The NMa’s investigations also showed that potential competition from other lottery providers (including foreign ones) on the Internet is too limited to threaten the parties’ market position. In view of the problems relating to payment methods and language, among other things, the existing supply is not particularly attractive. Participation is still marginal. As the Dutch licence holders will soon be able to legally offer their games on the Internet, there will be little reason for Dutch consumers to use the foreign supply on lotteries on the Internet.

Furthermore, the access barriers to the Dutch market for lotteries and pools are not expected to disappear in the near future. All of this means that there are no potential market entrants of any serious size.

Decision: The licence application for the realisation of the merger was rejected by a decision of 15 October 1999.

**Case 1133/FCDF – De Kievit**

Parties and market(s): On 26 December 1998, the NMa ruled that a licence was required for the plans of Friesland Coopervoeders Dierenvoeding (FCDF), notified on 30 October 1998, to acquire control over Zuivelboedek van De Kievit. This requirement was based on the provisional conclusion that the proposed concentration would significantly strengthen the position of the new undertaking in the market for farm milk in the Netherlands.

Further investigations were also needed into the market for quality fat centres and the market for purchasing of raw milk from fat centres. The parties submitted an application for a licence on 15 March 1999. One relevant product market was the market for farm milk, in which FCDF and De Kievit were buyers. This is a regional market determined by the area in which a dairy company operates. This definition is based on findings including the following:

- In recent years, less than 5% of farm milk processed in the Netherlands was imported.
More than 80% of Dutch farm milk is collected in operating areas within a 100-kilometre radius of the dairy plant.

The market for farm milk is distinguished by a high degree of rigidity, which is promoted by factors including the characteristics of dairy co-operatives, of which some 80% of Dutch dairy farmers are members.

It was also found that the market for the purchasing of raw milk for whey fat cores consists of a market for whey powder covering the European Union, and a market for liquid whey covering the Netherlands, Germany, Belgium and France. The market for whey fat cores is a competitive product market covering the Benelux countries, France and Germany.

Findings: In 1998, FCDF held a market share for farm milk of some 80% to 90% in its operating area. This high market share in itself indicated the existence of a dominant position. As a result of the acquisition of De Kievit, FCDF’s market share would increase by a maximum of 5%. The NMa’s investigations showed that the consequences of the proposed take-over would be greater than the increase in market share suggests. The market for farm milk is homogeneous and shows negligible growth. The number of dairy companies/dairy company units is declining as a result of mergers. Dairy companies and dairy farmers have close customer-supplier ties. More than 50% of the Dutch milk quota is supplied by just three companies. Two (co-operative) dairy companies process 70% to 80% of the Dutch farm milk supplies. Little movement occurs in the various dairy company units. The geographical scale of the market for farm milk processed. Little or no entry of new buyers to the farm milk market occurs. The number of alternative buyers for farm milk in FCDF’s operating area is minimal.

These factors also mean that, as a result of the proposed concentration, FCDF’s dominant position in the market for farm milk will be strengthened, which will result in significant restriction of actual competition in the Dutch market, or part of it. No competition problems were observed in the markets for whey powder, liquid whey and whey fat cores.

Remedies: During the licensing procedure, the parties offered to undertake remedies. These would entail segregating De Kievit’s farm milk trading activities prior to the take-over, and transferring these to a subsidiary of De Kievit. This subsidiary would continue the activities and integrate them with its existing activities. Hoogwegt undertook to De Kievit’s existing suppliers to continue De Kievit’s policies within Hoogwegt.

Decision: According to the NMa, the remedies offered provided a sufficient solution to the competition problem identified. On the basis of these commitments, the Director General of the NMa granted a licence by a decision of 28 April 1999. As of 15 June 1999, the NMa ruled that this concentration was considered reasonable to assume that the proposed concentration would lead to the creation of a dominant position in the market for electricity production and the creation of a collective dominant position for PNEM-MEGA – EDON and NUON-ENW in the markets for the sale of electricity. The NMa also concluded that further investigations would be needed into the consequences of the proposed concentration in the market for the production of composting organic domestic refuse. The licence application was received on 15 July 1999. A separate market for the production of electricity was assumed, in which electricity from producers engaged in the Netherlands and imported electricity is sold to distribution and trading companies. With regard to electricity from Dutch producers, no distinction was made between centralised and decentralised production. The NMa concluded that the geographical scale of the market for production of electricity is national. A number of reasons can be given for this. Imports currently account for some 14% of the production market and exports are negligible. Import capacity is currently fully utilised. It was also found that the possibilities to expand the Dutch network in the near future are limited and that therefore, the capacity problems cannot be solved in this way. Furthermore, there were no homogeneous competition conditions in the Netherlands and neighbouring countries. The existing and potential pressure of competition from imports was taken into account in the assessment of the consequences of the concentration, however. The market for the supply of electricity must currently be seen as a separate market for electricity supplies to free customers and a separate market for electricity supplies to captive customers. The geographical scale of the group of customers that will have freedom of choice in 2002 and the group of customers that will have this in 2004 with regard to supply to free customers, the NMa provisionally assumed a national market, for the same reasons as those presented for the market for the production of electricity.

In the case of composting of waste substances, the NMa assumed a separate market for composting of organic domestic refuse, in addition to a market for composting of vegetable wastes. Because composting is increasingly left to the free market, the provincial limits for transport of organic domestic refuse that have been abandoned, there is also actual evidence that certain undertakings compost organic domestic refuse from more distant regions, no export takes place and imports are extremely limited, a national market for composting of organic domestic refuse was assumed. The parties combined the licence of the market for production of electricity supplies to captive customers and the licence for composting organic domestic refuse. The NMa concluded that the remedies provide a solution for the competition problems identified. A licence was granted for the concentration by a decision of 20 October 1999.

As a result of the proposed concentration, the parties will gain a combined share of 49% to 53% of the market for composting of organic domestic refuse in the Netherlands. The NMa concluded that, as no new market entrants can be expected and the parties hold by far the best position for acquiring new supplies, the proposed concentration will give rise to a dominant position in Dutch market for composting organic domestic refuse, which will significantly restrict actual competition.

Remedies and decision: The parties proposed a number of remedies in order to remove the competitive objections outlined above. EDON would dispose of its interests in EPON and in one or more composting plants. The NMa concluded that these remedies provide a solution for the competition problems identified. A licence was granted for the concentration by a decision of 20 October 1999.
and Cooperative Fruitmasters Coop U.A. The parties would transfer their activities in the fields of auction and brokerage services for fruit sales to this joint undertaking. Negotiations about the governance of the joint venture and the future businesses for suppliers and customers for fruit. As there are two clearly distinct customer groups for these services, between suppliers and the growers, it was assumed that separate markets exist for each group. This led to the following definition of two relevant markets: the market for auctions established in South Limburg and the market for sales of fruit by growers and the associated provision of auction and brokerage services to buyers of fruit at auctions (hereinafter referred to as ‘the market for fruit sales’). The market for auction and brokerage services to fruit growers is assumed to be a national market. Further investigations were required with regard to the extent to which the auctions established in South Limburg represent an alternative for fruit growers in the rest of the Netherlands and the extent to which fruit growers established in South Limburg are members of fruit auctions in the rest of the Netherlands. The market for fruit sales was provisionally assumed to be a national market. Further investigations were needed to determine the extent to which the time factor affects the geographical definition of the market for fruit sales.

Findings: As a result of the proposed concentration, some 72% of Dutch fruit growers will offer their fruit for sale to auction and brokerage services to fruit growers is assumed to be a national market. Further investigations were required with regard to the extent to which the auctions established in South Limburg represent an alternative for fruit growers in the rest of the Netherlands and the extent to which fruit growers established in South Limburg are members of fruit auctions in the rest of the Netherlands. The market for fruit sales was provisionally assumed to be a national market. Further investigations were needed to determine the extent to which the time factor affects the geographical definition of the market for fruit sales.

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Findings: As a result of the proposed concentration, some 72% of Dutch fruit growers will offer their fruit for sale to auction and brokerage services to fruit growers is assumed to be a national market. Further investigations were required with regard to the extent to which the auctions established in South Limburg represent an alternative for fruit growers in the rest of the Netherlands and the extent to which fruit growers established in South Limburg are members of fruit auctions in the rest of the Netherlands. The market for fruit sales was provisionally assumed to be a national market. Further investigations were needed to determine the extent to which the time factor affects the geographical definition of the market for fruit sales.

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Findings: As a result of the proposed concentration, some 72% of Dutch fruit growers will offer their fruit for sale to auction and brokerage services to fruit growers is assumed to be a national market. Further investigations were required with regard to the extent to which the auctions established in South Limburg represent an alternative for fruit growers in the rest of the Netherlands and the extent to which fruit growers established in South Limburg are members of fruit auctions in the rest of the Netherlands. The market for fruit sales was provisionally assumed to be a national market. Further investigations were needed to determine the extent to which the time factor affects the geographical definition of the market for fruit sales.
Decision: A licence is required for the realisation of the concentration. The licence application was submitted to the NMa on 20 December 1999.

5.2 Decisions on supervision of cartels and abuses of dominant positions

During 1999, the NMa investigated a large number of cases relating to exemptions and complaints concerning infringements of the prohibition of cartels and/or abuses of dominant positions. This paragraph briefly discusses some of the decisions on these requests and complaints. Where possible, they are grouped in sectors or activities.

The sectors are discussed in the following sequence: the agricultural sector, construction, the transport sector, telecommunications, car retail, the retail and wholesale trade, health care, commercial services, the media (i.e., printed media) and the energy sector. Appendix I contains a full list of all NMa decisions issued in 1999.

5.2.1 Agricultural sector

Decisions were taken in 1999 on issues including integrated chain management in pork production. The restructuring of pig slaughterhouses, the delivery regulations of the Dutch flower auctions and regulations for exhibitions and demonstrations. These cases are briefly summarised below.

Case 304/General 'IKB' conditions for pork production

Request: The Livestock and Meat Product Board (PVV) asked the Director General of the NMa for an exemption for a quality control system for pork production, also known as integrated chain management (IKB). The purpose of the IKB system is to ensure the quality of pork by setting up quality requirements for its production and distribution.

The system relates to all links in the pork production and distribution chain. Undertakings that take part in the IKB system must comply with a number of conditions concerning the quality of the pig feed and veterinary medicines used.

In the assessment under competition law, the main relevant issue is that some links in the chain are required to work only with IKB pigs or to produce or sell IKB pork if they take part in the IKB system. This requirement restricts competition, since the commercial freedom of the affiliated companies is restricted with regard to the production of pigs other than IKB pigs, or the sale of pork other than IKB pork. The Director General of the NMa found that the IKB system as a whole satisfies the three conditions and on the basis of the advantages that benefit the consumer, the system helps to increase the diversity of supply, which expands the choices for consumers. The IKB system contains an incentive for market parties to produce high-quality pork. Pork distribution is improved by the integrated chain of companies. The competitive restraints that the system entails are essential in order to facilitate these advantages. Competition in the relevant markets is not ruled out for a substantial proportion of the products concerned. The companies taking part have a free choice of IKB suppliers and customers. They are also free to take part in the IKB system or to withdraw. Various links of the chain are permitted to produce or trade non-IKB pork, in addition to IKB pork. IKB pork can also be sold to companies that do not take part in the scheme, although it must then be labelled with the IKB certificate. The Director General of the NMa therefore granted an exemption for a period of five years.

The NMa therefore approved the restructuring agreements aimed at the final buy-out and closure of pig slaughterhouses retroactively, for a period of five years commenced on 1 August 1998. The NMa did not grant an exemption for restructuring agreements that the SSV contracts with slaughterhouses where these include restrictions on production for the remaining capacity of those slaughterhouses. These restrict the individual decision-making freedoms and competitive opportunities of the remaining slaughterhouses too severely and do not comply with the conditions for exemption for Art. 17 Competition Act. The complaint from Sturkomeat related to a restructuring agreement containing provisions on production restrictions. Because the NMa did not grant exemption for this agreement, this settled Sturkomeat’s complaint. Administrative appeals were filed against these decisions.

Case 374/Foundation of the Pig Slaughterhouses Restructuring Fund and 1087/Sturkomeat versus the Pig Slaughterhouses Restructuring Fund

Request: Foundation of the Pig Slaughterhouses Restructuring Fund (SSV) requested an exemption for its restructuring scheme. Twelve undertakings are affiliated to the SSV, jointly representing some 80% of the pig slaughtering potential in the Netherlands. The aim of the SSV is to strengthen the structure of the Dutch pig slaughtering sector through elimination of over-capacity in that sector. The exemption request related both to the SSV’s Articles of Association and to the restructuring agreements contracted later. Some of these agreements relate to a complete buy-out and others to production limitations.

Findings: The restructuring agreements are directed at the closure of pig slaughterhouses and restriction of capacity, financially supported by a compensation fund. The agreements have direct consequences for competition, as the means of production and thereby the investments and competition strategies of the companies concerned are restricted. As the agreements already infringed the provisions of the WEM, the transitional regime provided for in Article 100 of the Competition Act does not apply to these agreements.

However, Council Regulation 56/69, concerning the application of certain competition rules to production and trade in agricultural products, does not prevent the application of Article 6 of the Competition Act here. According to a letter, the European Commission’s Competition Directorate-General intended “to take a negative view of your notification and propose that the Commission concludes this case with a negative decision.”

The Director General of the NMa ruled that the regulation would be in accordance with the principle that the Commission applies for this purpose. In such a case, subject to strict conditions, the NMa consents to the introduction of measures designed to solve potential problems through a co-ordinated reduction of over-capacity. After the restructuring, healthy competition can be restored in an improved market situation.

Cases 492/Delivery regulations of the Netherlands Association of Flower Auctions

Request: The Netherlands Association of Flower Auctions (VBN) represents all flower auctions in the Netherlands. The VBN requested an exemption for the delivery regulations for flowers and plants that the VBN members use for sales via the auction clock. The regulations relate to quality grades, sorting and packaging of nursery products. The regulations drawn up by VBN are incorporated in the auction process and do not, therefore, restrict competition. The VBN requested that the packaging codes were assessed separately. Most of the packaging regulations fall within the scope of Article 6 of the Competition Act. The packaging codes were investigated in more detail. The VBN assigns packaging codes to packaging that complies with certain criteria formulated by VBN itself. Growers that deliver their flowers or plants in packaging with such a code automatically receive refunds for the packaging through a fixed surcharge on the net clock price (settlement system).

Findings: As such, the quality grades and sorting regulations for the remaining slaughterhouses too severely and do not restrict competition. They do not, therefore, fall within the scope of Article 6 of the Competition Act. The packaging codes were assessed separately. Most of the criteria the VBN applies for the assignment of packaging codes result from the logistical requirements of the auctions and do not, therefore, restrict competition. This does not apply for the ‘sufficient demand’ criterion, a requirement that packaging complies with certain agreements in the sector. This does not lead to an automatic settlement system. No exemption was granted for the ‘sufficient demand’ criterion, as this restricts the opportunities for the introduction of newly developed packaging. Exemption was granted for the requirement that packaging should comply with the auction’s waste policy, partly because it is necessary to impose requirements for this at the VBN level, since some suppliers deliver to more than one auction. The automatic settlement of packaging costs does not comply with the conditions for exemption. The automatic settlement of packaging costs leads to rigidity in packaging costs and distortion of competition. It is far more difficult, if not impossible to sell packaging without a packaging code and settlement. The rejection of the individual exemption request for the settlement system does not take place until 20 July 2000, in order to give the associations an opportunity to prepare their members and customers for the discontinuation of this system. An administrative appeal was filed against this decision.

Case 461/Federatie Agrotechniek

Request: Federatie Agrotechniek is an association that seeks to regulate the organisation of exhibitions (trade fairs) and demonstrations in the agricultural sector. Federatie Agrotechniek’s request for exemption related to its exhibition and demonstration regulations with the accompanying regulations on administration of justice and appeals.

Findings: In relation to the assessment under competition law, Article 5 of the exhibition regulations was of particular importance. This Article provides that Federatie Agrotechniek members are not permitted to participate in any agricultural events that are not recognised by Federatie Agrotechniek within four months prior to or after the Agricultural RAI exhibition. This ‘prohibitive clause’ restricts competition within the meaning of Article 6 of the Competition Act, as the exhibitors cannot participate in non-recognition events within this period, and the possibilities for organisers of other events in the agricultural sector are restricted, as this prohibition means they cannot be assured of exhibitors within the period set.

The prohibition qualifies as exemption, as Federatie Agrotechniek’s exhibition regulations lead to rationalisation and cost savings and at the same time, affords the users benefits that cannot be objectively outweighed by the competitive restraints. Furthermore, the positive effects cannot be facilitated in another (less radical) way and competition is not ruled out in the relevant market to a significant degree. An exemption was granted until 30 June 2000. An administrative appeal was filed against this decision.

15 EC October 1999, No. 155, p. 2048

16 This was the first decision of the Director General of the NMa growing out of Article 6 of the Competition Act, while the European Commission’s Competition Directorate-General stated in a cover letter that the regulation in question prima facie complies with the provisions of Article 1 EC Treaty.

17 See Case C-162/95 and Case C-196/95 of the EC Treaty. As the Court of Justice will not take action on the basis of Article 81, Clause 1 of the EC Treaty and the Director General of the NMa de facto has the power to take such action, as the EC Treaty is not the basis of the relevant case. In fact, the Director General of the NMa decided on the basis of its powers under the Dutch Act of 17 June 1990, in accordance with the principles established in Case C-162/95 of the EC Treaty.

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5.2.2 Construction

In the construction industry, the issues investigated generally relate to the NMa. The complaints are submitted by municipal authorities, alliances of housing corporations, the collection of plastic pipeline systems, concrete mixing plants, alliances for building and cement blending, quarrying and information on the coalformation of a showroom for bathrooms and sanitary fittings. The cases are summarised in brief below.

Case 553/Amsterdam housing corporations

Request: Fifteen housing corporations in Amsterdam requested exemption for partnership agreements relating to housing projects. The agreements related primarily to housing improvements in older districts of Amsterdam. In each district, one corporation was designated the primary candidate for housing projects. In principle, the other corporations will not develop projects in that district. The designated corporation is responsible for developing enough housing projects in the district, in terms of both profitable and unprofitable projects. This system was chosen in order to realise a more effective approach to urban renewal.

Findings: The NMa found that the agreements could have a positive effect on investments in urban renewal projects. Through these agreements, more urban renewal projects can be realised. The projects can also be performed faster and more efficiently, because they counterfragmentation of home ownership. Although competition between the corporations is not restricted, the advantages outweigh the disadvantages. Low-income households, in particular, can benefit from this because a larger and better stock of low-income housing will be realised. An exemption for the agreements relating to older districts was granted for a period of five years, after which the NMa will reassess whether the agreements actually have the desired effect.

Case 13/Association of Manufacturers of Plastic Pipeline Systems (FKS)

Request: The FKS is an association of six manufacturers of plastic pipelines, the members have to cooperate. The NMa requested the exemption for the organised collection of waste from plastic pipeline systems in the Netherlands, with a view to reprocessing in new plastic pipeline systems (closed product cycle).

Findings: Through joint collection and allocation in proportion to market share, sorting costs are avoided and important efficiency benefits are realised. Free intake of waste from plastic pipeline systems on delivery to collection points and the provision of an incentive premium of NLG 0.10 per kilo, using a container, promotes separate collection of waste from plastic pipeline systems by the parties that remove them. The collection system also contributes towards waste recycling through the development of new technologies for reutilisation of plastic pipelines. The system is not based on waste substances, as supported by the Dutch government. Through the collection system, the providers of plastic pipeline systems are enabled to contribute towards the reduction in incineration volumes of waste from such systems and to improve the quality of the environment. Organised collection is necessary in order to realise the envisaged goal and does not create any access barriers. As the regulation complies with the four cumulative criteria of Article 17 of the Competition Act, an exemption from the prohibition of Article 6 of the Act was granted for a period of five years.

Cases 206, 207 and 208/Betoncentrale Twenthe B.V.

Request: Betoncentrale Twenthe B.V. requested exemption for various agreements that it has contracted with Cement B.V. (Case 206), Sexam B.V. (Case 207) and Bos Beton B.V. and Cort and Zandhandel Bus B.V. (Case 208). These agreements provide that these (potential) competitors may not perform any concrete mortar activities in the area in which Betoncentrale Twenthe B.V. operates its concrete mortar plants. Betoncentrale Twenthe B.V. states that the application of the 1954 Business Licensing Act to the competitors is not in line with the purpose of the Act. The NMa found that the agreements are not Competition Act. As there is no agreement that restricts competition, the Director General of the NMa therefore rejected the exemption requests in all three cases.

Case 477/K.O. Bus Bedrijven Groep Nederland

Request: An alliance of 45 construction companies operating on a local and regional scale submitted a request for an exemption. This related to the maintenance of buildings by an alliance known as K.O. Bus Karwei Onderhoudsdienst. The aim of the alliance is to increase sales of maintenance services because individual K.O. Bus members can provide a more attractive service to national buyers of maintenance services if they work together. Such an alliance would make it more difficult for local and regional K.O. Bus members to compete with individual K.O. Bus members. At the local and regional levels, the K.O. Bus members are active and passively cooperate. The NMa rejected the request for exemption. The NMa found that the alliance between K.O. Bus members does not restrict competition, the Director General of the NMa therefore rejected the request for an exemption.

Cases 507, 541, 568, 617 and 620/Nederzand and individual sand quarrying projects

Request: The requests related to the Nederzand Framework Agreement (617) and the Heeswijkse Kampen (617) and Geertjesgolf (561) project agreements were rejected. Pursuant to Article 16 of the Competition Act, the prohibition of cartels does not apply to the Nederzand Framework Agreement (617) and Kraaijenbergse Plasen (568) project agreements and no exemption is therefore required. Administrative appeals were filed against these decisions, with the exception of Case 541.

Case 557/Netherlands Association of Installation Businesses (VNI)

Request: The VNI is a sectoral organisation for installers of central heating systems, gas or water facilities, sanitary fittings, etc. The VNI developed a ‘blueprint’ for its members on setting up a showroom for sanitary fittings and bathrooms. The VNI notified this blueprint for an exemption. The blueprint provides information on the development of a showroom for sanitary fittings and bathrooms, and the accompanying points for attention.

Findings: The VNI members can use (parts of) this blueprint on a voluntary basis. The blueprint is not, therefore, a decision of an association of undertakings, nor is it an agreement within the meaning of Article 6 of the Competition Act, since there is no question of any legal commitment. Finally, no evidence was found of concerted action, within the meaning of Article 6 of the Competition Act. As there is no agreement that restricts competition, no exemption is necessary.

5.2.3 Transport

The decision on breakdown services for passenger cars causes a result of an accident, and the decision on the complaint against Pion’s Automobilhandel, are discussed below.
Cases 38, 39, 40, 41, 42 and 269a and b

Breakdown services

Request: An exemption was requested for a new collective regulation for breakdown services for passenger cars stranded as a result of an accident. This concerns Cases 38, 39, 40, 41 and 269a. Eight emergency services that work for insurance companies were party to the regulation. They had transferred a number of their activities relating to breakdown services to the Netherlands Incident Management Foundation.

The Foundation had divided the Netherlands into regions. In each region, a breakdown service was selected via a tendering procedure, on the basis of price and quality. After signing a three-year contract, the selected breakdown service will collect a stranded car immediately on receiving notice of an incident. This involves ‘primary breakdown services’, which are of an urgent nature: the car must be removed as quickly as possible to free the road lanes. ‘Secondary breakdown services (transportation to a bodyshop) are less urgent, and are not covered by the collective regulation.

Findings: The Director General of the NMa accepted the proposed regulation on 30 March 1999 because fast and efficient removal of stranded passenger cars benefits safety and reduces tailbacks. Efficient service can also have a positive effect on the level of car insurance premiums. Procedures for the selection of breakdown services in each district ensure market dynamics. An exemption was granted for the regulation for a five-year period.

In October 1999, as part of the current administrative appeal proceedings, the Director General of the NMa rejected an appeal against the regulation for breakdown services in each district, on the basis of market dynamics. He found that the regulation was reasonable, because there were no grounds for assuming that the regulation would reduce competition.

Case 949/Autoleasing Bijleveld B.V. – Garage Bijleveld B.V. versus Pon’s Automobilhandel B.V.

Complaint: Bijleveld, a company that buys and sells cars, filed a complaint concerning the fact that it faces obstruction in the purchase of Audi and Volkswagen cars from the dealers of Pon, the Dutch importer of car makes including Volkswagen and Audi, because the parties supplied the cars to foreign private individuals. Bijleveld alleged that Pon’s actions were in contravention of the Competition Act.

Findings: The Director General of the NMa investigated whether an agreement exists between Pon and its dealers to refuse to supply intermediaries that supply foreign private individuals. The dealer agreements and various circulars sent by Pon to its dealers on this issue proved to comply with the provisions of Regulation 1475/92 of the European Commission concerning groups of safe and customer service agreements for motor vehicles. Because this regulation is incorporated in the Dutch Competition Act, the prohibition of Article 6, Cause 1 of the Competition Act does not apply to dealer agreements or to Pon’s circulars to its dealers. On this point, the complaint was rejected.

Case 273/Libertel-service provider agreement [SPO]

Request: Libertel is a provider of mobile telecommunications. The request for an exemption related to agreements that Libertel had contracted with various service providers, stipulating that they could sell their (Libertel) customer databases only to Libertel or to service providers affiliated to Libertel. The agreements also fixed the prices at which the customers’ data could be sold. These agreements were considered to restrict competition.

Findings: The provisions that service providers are permitted to sell their (Libertel) customer databases only to Libertel or to companies affiliated to Libertel fall within the scope of Article 6 of the Competition Act. The NMa found that there were no grounds to assume that these agreements would not be considered in competition.

In October 1999, as part of the current administrative appeal proceedings, the Director General of the NMa rejected an appeal against the complaint, on the basis of market dynamics. He found that the regulation was reasonable, because there were no grounds for assuming that the regulation would reduce competition.

In Case 42, by a decision of 30 March 1999, the Director General of the NMa also approved the initiative of the alarm centre-insurer Inter Partner Assistance S.A. (IPAS). At the request of IPAS, the Director General of the NMa adopted a provision that ensures that the selection of breakdown services was not feasible, the Director General scrapped this provision in a decision of 25 November 1999.

Administrative appeals were filed against both decisions.

Case 118/Ontwikkelbedrijf Rotterdam (OBR) versus Netherland Independent Broadcasting Transmission Company (NOZEMA)

Complaint: OBR, an association that seeks to promote the development of the landline market, filed a complaint against NOZEMA relating to a project in which local traffic information was broadcast together with the audio signals of a radio programme. OBR took the view that NOZEMA was abusing a dominant position by charging an excessive price for the transmission or distribution of traffic information with the aid of NOZEMA’s network. NOZEMA’s charges were in excess of the costs of transmission.

Findings: The NMa considered NOZEMA’s charges and the price proposed by the OBR. The OBR’s method of calculating the costs incurred for the use of transmission capacity was identical to NOZEMA’s method. However, OBR assumed a significantly lower initial sum, which meant that its final sum was also significantly lower.

Furthermore, OBR did not take account of other direct and indirect costs such as personnel costs and overheads. The latter items constitute a large proportion of NOZEMA’s cost calculation. Investigations conducted by the NMa showed that the OBR wrongly assumed a lower initial sum. NOZEMA’s cost price calculation did not lead to the conclusion that it was abusing a potential dominant position. Furthermore, NOZEMA’s competitor charges similar prices (benchmark), which could also indicate that NOZEMA charges commercial rates. The complaint was rejected, as no violation of Article 24 of the Competition Act was found. It was not considered reasonable to assume that NOZEMA’s charges give rise to abuse of a dominant position.

In July 1999, as part of the current administrative appeal proceedings, the Director General of the NMa rejected an appeal against the decision, on the basis of market dynamics. He found that the regulation was reasonable, because there were no grounds for assuming that the regulation would reduce competition.

Case 101/Telecom Teleservices B.V.

Request: KPN Telecom requested exemption for its contract with SNT Holding B.V., which led to the formation of a joint venture in the telesevelices field, known as Telecom Teleservices B.V. Teleservices provides direct telephone marketing services for third parties.

Findings: Before the NMa could assess whether the joint venture complied with the conditions for exemption from the prohibition of Article 6 of the Competition Act, it had to determine whether this was a joint undertaking with the character of a concentration. It found that this was not the case, as the joint venture would not perform all the functions of an independent economic unit on a permanent basis. The alliance was therefore assessed in terms of Article 6 of the Competition Act. As both parent companies remained active in the market for the provision of teleservices in the Netherlands after the formation of the joint venture, there was no indication that competition would be reduced.

Furthermore, both KPN Telecom and SNT were capable of performing the activities transferred to the joint venture, which meant that the joint venture did not reduce competition.

The formation and maintenance of the joint venture was therefore subject to Article 6 Competition Act. Because the combined production activities of the two companies were now concentrated in the joint venture, there was reason to assume that an improvement of production or distribution, or of economic and technical progress, would arise in due course. In view of the competitive pressure in the market for the provision of teleservices, it could also be assumed that the joint venture would pass on the cost benefits realised in its prices. This would benefit consumers.

There were no grounds to assume that these benefits could be realised through less far-reaching co-operation. There was also sufficient remaining competition, partly because of the dynamic and growing character of the market. The Director General of the NMa found that the alliance did not comply with the conditions for exemption from the Competition Act and granted an exemption for a period of five years. Despite the fact that access is relatively easy for potential competitors at present, this situation could change in a few years’ time. Another important factor was both participants in the joint venture held a substantial share of the market for the provision of teleservices in the Netherlands. For this reason, the duration of the exemption was limited to five years.

17 03/1999, Nr. 1146/95

18 03/1999, Nr. 249/95

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Case 1385/Various complainants versus Caseema N.V.  
Complaint: Until 1 July 1999, Caseema offered subscribes in Utrecht a cable subscription comprising 31 television channels (both public and commercial) for a price of NLG 17.09 plus VAT6 per month. From 1 July 1999 onwards, subscribers in Utrecht received the "basic package" and were offered the opportunity to combine this with the "plus package". The basic package comprised 17 public television channels for NLG 13.55 plus VAT per month. The plus package was only available in combination with the basic package. The complainants (two private individuals and "This Freedom of Choice!" Committee) argued that in order to continue receiving commercial channels that were included in the former subscription package, they were in fact forced to combine the new basic package with the plus package which, according to the complainants, led to a 51% price increase in the monthly subscription. They alleged that with this price increase, Caseema was abusing a dominant position. 
Findings: The NMa first considered whether these were requests within the meaning of Article 13, Clause 3 of the General Administrative Law Act. Two complaints were filed by individual Caseema subscribers. They were not sufficiently distinct from other subscribers in the Utrecht region. They therefore lacked a personal interest and could not be regarded as interest parties within the meaning of Article 13, Clause 3 of the General Administrative Law Act. With regard to the complaint from the Committee, it was determined that this group did not have the status of a legal person and did not enjoy the Articles of Association. The Committee could not, therefore, be regarded as a legal person within the meaning of Article 13, Clause 3 of the General Administrative Law Act as an interested party within the meaning of Article 13 of the Act. All complaints were therefore rejected. The NMa then conducted a marginal official examination of Caseema's conduct in terms of the Competition Act. It is noted here that the NMa, as the supervisory authority for the Competition Act, attaches considerable importance to the position of consumers in the market. The Director General of the NMa found that Caseema does hold a dominant position for the transmission of television programs, a system for deliveries of flowers, plants and related products and a standard franchise agreement.

5.2.5 Retail and wholesale trade

During 1999, the NMa issued decisions on requests for exemptions for the retail and wholesale trade. The argument that resale price maintenance enabled Schreuder to compete with major cosmetics brands was not accepted, as the resale price maintenance system by nature serves to restrict competition. The request for an exemption was therefore rejected.

Case 185/Hot Import Combine B.V.  
Request: Hot Import Combine B.V. (hereinafter referred to as "HIC") requested an exemption for the alliance of purchasing of pinewood. The undertakings involved (Van Drimmelen B.V., Koninklijke Houthandel Exen B.V. and Stho B.V.) and agreed that they would jointly import pinewood for an indefinite period. The parties are free to buy in pinewood independently, in as far as this involved domestic purchases of pinewood (i.e. the intermediate trade).

Findings: The NMa concluded that this company was not a joint venture and was therefore subject to the supervision of cartels. HIC has a limited market share (less than 10%) in the relevant markets, the market for the importation of pinewood and the market for pinewood wholesale. On this basis, and in view of the fact that this is an exceptionally competitive market, given the large number of undertakings, the absence of significant access and expansion barriers and the negotiating power of the customers, Director General of the NMa concluded that the agreement does not give rise to an appreciable restriction of competition in the market concerned. Ultimately, the Director General concluded that the exclusive take-up commitment which, like the agreement, was contracted for an indefinite period, was not necessary for the success of the alliance and should therefore be assessed separately. As the alliance did not give rise to an appreciable restriction of competition within the meaning of Article 6 of the Competition Act, the Director General took the view that the same applied for the exclusive take-up commitment. The Director General therefore concluded that no exemption was necessary.

Case 173/Drs. Hans Schreuder Laboratoria B.V.  
Request: Drs. Hans Schreuder Laboratoria B.V. (hereinafter referred to as "Schreuder"), a supplier of cosmetics, including the Biodermal brand, requested an exemption for the retail price maintenance provisions included in its general terms and conditions for Biodermal products (with the exception of sun-screening and tanning products).

Findings: The provisions of general terms and conditions that impose retail price maintenance conditions restrict competition by nature. In its exemption request, the applicant also sought recourse to a comfort letter from the European Commission. The documents showed that the Commission had closed the file because there was no question of an appreciable interstate effect. However, this was after resale price maintenance for one particular product had been ruled out (because in this case, there was deemed to be an agreement to that effect). The argument that resale price maintenance enabled Schreuder to compete with cosmetics brands was not accepted, as the resale price maintenance system by nature serves to restrict competition. The request for an exemption was therefore rejected.

Case 189 and 454/Telefónica Nederland B.V. and Verseniging Bloemexpress – Fleurop Interflora Retail.  
Telefónica Nederland B.V. requested exemption for a standard agreement that it contracts with some 1,100 retailers of flowers, plants and related products. Verseniging Bloemexpress-Fleurop Interflora requested exemption for the ‘Fleurop system’ in which some 1,600 florists participate. Agreements on the delivery of flowers, plants and related products are contracted with the florists taking part, using fixed charges for delivery and administration costs, a fixed commission percentage and a central settlement system. In addition, minimum amounts are fixed for the acceptance of orders for various products. This primarily involves the provision of a service in which the intermediate florists accept orders that are fulfilled by florists that execute the orders.

Findings: The NMa found that setting fixed delivery charges, a fixed percentage for the delivery and administration costs, and the acceptance of orders in themselves constitute competitive restraints. After all, the retailers are no longer free to negotiate the conditions for distance fulfilment of orders. The system improves efficiency and consequently has the effect of keeping down the costs that must be charged to consumers. Furthermore, central settlement of orders via the Telefónica or Fleurop organisation provides the florist that performs the order with an assurance of payment for that order. The organisation also guarantees that the order will comply with certain quality standards and will actually be fulfilled, which also benefits the consumer. Finally, the NMa found that there was sufficient residual competition, since for each organisation, the other organisation represents an organisation of substantial size that applies a similar system. Furthermore, competition will increase through the development of other delivery methods, such as purchasing via the Internet.

Because the conditions for exemption pursuant to Article 17 of the Competition Act were satisfied, the NMa granted an exemption for a period of ten years in each case.

Case 690/Vobis  
Request: Vobis Microcomputers B.V. requested an exemption for a standard franchise agreement. Vobis is active in the market for the sale of computer hardware, accessories and software, as well as mobile telecommunications.

Equipment for this market, it developed a franchise formula that it makes available to its franchisees for a fee. The franchisees can then use the Vobis trade names and brands, which are provided with know-how and training, to gain access to market opportunities. The franchisee has the sole right to use the Vobis formula in a particular district, from a location stipulated in the contract. The franchisee is required to buy hardware, components and OEM software only from Vobis. The franchiser issues recommended prices for the sale of these products.

Findings: After a number of changes had been made, it was found that Vobis’s standard franchise agreement complied with the conditions for the European block exemption for franchise agreements25. As this block exemption is incorporated in the Dutch Competition Act the prohibition of Article 6, Clause 1 of the Competition Act does not apply to Vobis’s standard franchise agreement. No exemption was therefore necessary.

5.2.6 Health care

The Dutch care sector submitted a large number of requests for exemptions to the NMa. In 1999, decisions were issued on joint purchasing of aids and maternity care, and on co-operative agreements with pharmacists for the provision of aids to those insured with health insurance funds. The cases are discussed below.

Case 224/MultiZorg  
Registrant cooperating operators operating on a national scale, which offer private care insurance, are affiliated to the MultiZorg co-operative. MultiZorg buys in hearing aids, respirators, stoma articles, diabetic materials, incontinence materials and maternity care for its members. The members are free to buy in care from other sources.

Findings: MultiZorg’s purchases of aids and maternity care accounted for only a very small share of these markets. Joint purchasing via MultiZorg did not, therefore, give rise to any appreciable restriction in the market(s) for purchasing of care, to a restriction of the sales opportunities of care providers or a restriction of competition between these care providers. There was no reason to assume that the co-operation on the purchasing side via MultiZorg weakens price competition between the companies concerned on the selling side of the market for the provision of private care insurance. MultiZorg’s conduct did not, therefore, conflict with Article 6 of the Competition Act and no exemption was necessary. MultiZorg also had an exit scheme on the basis of which the members were charged for costs they withdrew from the co-operation. With regard to the exit scheme, too, the NMa concluded that, although it was not necessary for the success of the co-operative, it did not conflict with Article 6 of the Competition Act.

Cases 882/Amicon Care Insurance and 407/Tesicane and Tevic versus Amicon Care Insurance

Amicon Care Insurance had contracted co-operative agreements with pharmacists for the supply of aids to those insured with health insurance funds. Amicon Care requested exemption from the NMa for these agreements. The agreements included the following:

- A list of preferred brands: Amicon stated the brands of incontinence absorption materials that are recommended for use and that the pharmacists should give preference in supplies to its insureds.
- Charges: the same discount percentage on the maximum charges laid down by the Central Health Care Tariffs Organisation was laid down in all of the contracts, so that all the member associations of pharmacists charged the same prices.

The Director General of the NMa also received a complaint from a producer and a supplier of incontinence absorption materials, alleging that Amicon was acting in contravention of the Competition Act by applying the list of preferred brands.

Findings: In determining which producers to include in the preferred brands list, Amicon only exercises its right to select the undertaking(s) with which it wishes to contract an agreement. A decision not to enter into a contractual relationship with other producers or suppliers is protected by the principle of contract freedom. This conduct is not subject to Article 6 of the Competition Act and, therefore, requires no exemption. The tariffs in the contracts are designed to restrict competition between the members of the association of pharmacists. This restricts, or at least substantially reduces, free pricing and the transfer of cost benefits to Amicon. This is all the more serious in a situation in which the tariffs are generally known and disclosure provides the only opportunity for actual price competition. A professional association may not directly or indirectly influence competition, particularly if this takes the form of tariffs that apply for all undertakings, regardless of their own cost price structure. The tariff agreements restrict competition and do not comply with the conditions for exemption, and no exemption was therefore granted. An administrative appeal was filed against this decision.

Complaint: The complaint from Tesicane and Tevic concerns the way in which Amicon buys incontinence materials from producers and importers. After all, Amicon buys incontinence materials from certain importers and producers of such materials, that it selects and then includes in the list of preferred brands. According to Tesicane and Tevic, this purchasing method contravenes the Competition Act.

Findings: The decision on the request for exemption ruled that the list of preferred brands is not subject to Article 6 of the Competition Act. The NMa then investigated whether there was any conduct in violation of Article 24 of the Competition Act and Article 85 of the EC Treaty. The market for purchasing of incontinence materials is a national market. Amicon accounts for less than 5% of total purchases of incontinence absorption materials in this market. As Amicon cannot be said to hold a dominant position in this market, there can be no question of abuse. Even if it did hold a dominant position, Amicon could not be charged with abuse of this position within the meaning of Article 24 of the Competition Act, in view of the fact that other brands can also be supplied, the fact that the agreements with producers are contracted for period of one year only and in view of the way in which the list of preferred brands is compiled. The complaint was therefore rejected. An administrative appeal was also filed against this decision.

5.2.7 Commercial services

In the field of commercial services, the NMa issued decisions on requests relating to the gaming machines sector and the millennium policy of the Association of Insurers. Both decisions are summarised below.

Cases 277, 350, 352, 487, 506, 514, 545, 558 and 619/VAN Gaming Machines Sectoral Organisation

Request: The VAN Gaming Machines Sectoral Organisation requested exemption for various services and regulations that it provides for operators of gaming machines. In addition to the VAN, a number of operators requested exemption for the contract that the operators will make that are based on the VAN’s model contract. The notified regulations cover issues including sectoral surveys, the VAN’s Articles of Association, the various benefit schemes, the code for operators, the certification scheme and the model operating contract.

Findings: In order to assess whether the notified regulations restrict competition, the NMa considered whether there was any restriction of access or of the possibility of expanding a share of the narrowest possible market, namely the market for the operation of gaming machines in catering establishments. The investigations showed that there is no reason to assume that a five-year exclusivity clause, such as that included in the model operating contract, will restrict access to this market for newcomers. A small number of operating contracts included a perpetual clause with the exclusion requirement. As a result, only that the co-operator’s successor would maintain the agreement for its remaining life, there was no appreciable restriction of competition even with the addition of this requirement. Consequently, no exemption was required.

Cases 1157 and 1096/Millennium policy of the Association of Insurers and complaint from BCCI

Request: The millennium policy of the Association of Insurers, which was notified for exemption, covers the Association’s advice to its members in connection with the millennium problem, to include certain clauses in insurance policies on coverage of millennium damage. The Association was also involved in the realisation of an NLG 1 billion provision in the Nederlandse Millennium Hervenkeringsmaatschappij N.V.

Findings: The Director General of the NMa concluded that the agreements with the clients of the clauses were not subject to the Competition Act, because the European block exemption for the insurance sector applies. With regard to the provision of NLC, the Association provided reasonable evidence to assume that the insurers were not in competition with regard to the coverage of millennium damages but also that the NLC and its members account for 50% of total turnover in the Dutch magazine market. The complaint of BCCI was rejected.

5.2.8 Media

During 1999, the NMa also devoted a fair amount of attention to the printed media in the Netherlands. In its decisions, the NMa provided an opinion on regulations including the Binding Gift System Decision of the Netherlands Daily Newspaper Association, individual resale price maintenance for domestic and foreign magazines and foreign newspapers and the fixed book price. These decisions are summarised below.

Case 587/Netherlands Daily Newspaper Association

Request: The Netherlands Daily Newspaper Association (NDA) is an association of which almost all publishers of Dutch daily newspapers are members. The NDA requested exemption for its Binding Gift System Decision, which prohibits publishers from offering (prospective) subscribers benefits at reduced rates or free of charge in recruitment campaigns, if subscribers can reasonably be expected to take out or continue a subscription to the newspaper in question because of these benefits. The publishers are also forbidden to offer any rewards, prices or benefits to third parties for subscription purposes, other than professional providers of recruitment services.

Findings: The NMa took the view that this regulation denies providers of Dutch-language daily newspapers the freedom to engage in competition, because it is an indirect consequence of the NMa’s decision. The NDA exempted from the Binding Gift System Decision, which prohibits recruiters from offering prospective subscribers benefits at reduced rates or of free charge. The complaint by KVB is thereby granted pursuant to the Economic Competition Act, but in the present position regarding these cases, cannot be withdrawn or amended pursuant to the Competition Act. The European Commission ruled at the end of 1999 that the NDA’s Binding Gift System Regulation, in which the agreements concerning book prices are laid down, is not subject to European competition law as long as the agreements have no interstate effects. The NDA’s decisions do not have such an effect. The complaint was rejected.

5.2.9 Energy

In the field of energy, the NMa issued decisions during the year under review on the partnership agreement of the power companies and the Protocol for power...
Case 747/Partnership Agreement (OVS) between EDON and NUON
Request: The four Dutch power companies (EPON, EZH, UNA and EPZ) and N.V. Sep notified their Partnership Agreement (OVS) to the NMa. This agreement concerned the planning and performance of power generation, investments in means of production, the operation of the high voltage grid, purchasing of fuels and the allocation of import and production costs.
Findings: The 1998 Electricity Act provides that the OVS should be maintained temporarily (pending a final regulation for the allocation of the power generation sector’s non-commercial costs) and may not be withdrawn without the consent of the Minister of Economic Affairs. The OVS already had a statutory foundation in the 1989 Electricity Act. The OVS is thereby covered by the exemption of Article 16 of the Competition Act, and no further exemption is therefore required.

Case 771/Protocol for power generation and distribution companies
Request: The four Dutch power companies (EPON, EZH, UNA and EPZ) and N.V. Sep, the Energiedefensie association of energy distribution companies and all electricity distribution companies in the Netherlands notified their agreements concerning the prices and tariffs for the take-up and delivery of electricity in the years from 1997 to 2000 for exemption.
Findings: The 1998 Electricity Act provides that the Protocol agreement shall be maintained until 1 January 2001. The Protocol is therefore exempt pursuant to Article 16 of the Competition Act and no exemption is necessary. An administrative appeal was filed against this decision.

Case 1150/Avebe et al. versus SEP et al.
Complaint: Avebe and three other industrial companies filed a complaint with the NMa alleging that the payments they received from EDON and NUON were too low. The latter are electricity distribution companies with former investments that were then deducted from the payments payable regardless of the take-up from Sep. The Protocol for power generation and distribution companies provided that the respective contribution did not mean that sales prices were jointly fixed.
Findings: With regard to the alleged cartel agreements, it was found that under the (former) Electricity Act, the defendants were required to reach agreements on the LBT and RBT, which were subject to the approval of the Minister of Economic Affairs. It was also found that the new 1998 Electricity Act requires that the Protocol be maintained. Because the conduct of the defendants was governed by statutory requirements, the electricity charges (and the agreements relating to these) cannot be regarded as cartel agreements. With regard to the complaint concerning a collective dominant position, it was found that there was no question of any abuse. The changes in the structure of the LBT/RBT (and their continuation in the Protocol) were based on the desire to create a ‘level playing field’, in view of the forthcoming liberalisation of the power generation market. This effectively meant that all distribution companies in the Netherlands, including EDON and NUON, had to contribute towards past investment costs (the ‘millstones’). This contribution was payable regardless of the level of take-up from Sep. The Protocol agreement cannot ‘avoid’ these contributions by purchasing power elsewhere. The contributions to the former investments were then deducted from the payments they made to CHP plants, with recourse to the ‘avoided purchasing costs’ clause in the contract. It was found that neither EDON nor NUON held a dominant position and that, even if this had been the case, there would not have been any abuse thereof. The relevant market is the (purchasing side of) the power generation market.

Decision: With regard to the defendant’s claim that, even if this had been the case, there was no question of any abuse, the complaint was dismissed as inapplicable to competition cases. The Competition Act does not apply to the Protocol plan. In its appeal statement, Stibat submitted that the system should be seen as an instrument to realise the objectives of the Royal Decree on Disposal of Batteries, and that the Competition Act did not apply. According to Stibat, passing on the disposal contribution did not mean that sales prices were jointly fixed. The participants in the Stibat plan remained free to set their own sales prices and consequently, no (appreciable) restrictions of competition occurred. Stibat also claimed that in the assessment of the collective nature of the plan, the NMa should have found, on the grounds of the ’rule of reason’, that the prohibition of cartels of Article 6 of the Competition Act does not apply. In his decision on the appeal, the Director General of the NMa found that, although the Disposal of Batteries Decree states that it is preferable that producers and importers work together as far as possible in the collection of batteries, there is no commitment to do so. The Competition Act does, therefore, apply. The Director General further ruled that an agreement that fixes the price, or a part thereof, restricts competition. Price competition regarding the disposal contribution is thereby ruled out. This contravenes Article 6 of the Competition Act. The complaints could not dispute the disposal contribution separately in the invoice is not a restriction of competition as such, but reinforces the prohibition of competitive restraints. Accordingly, the restriction of competition can be regarded as appreciable, as almost all market participants are party to the agreement. Stibat’s claim that, on the grounds of the rule of reason, the prohibition of cartels of Article 6 of the Competition Act does not apply to the Stibat plan cannot be accepted. On the basis of the jurisprudence of the Court of Justice of the European Communities, the Director General of the NMa found that the rule of reason cannot apply in relation to Article 6 of the Competition Act, as the price agreement in this case is not the result of a collective dominant position but of the organisation of collective system provides environmental as well as economic benefits. However, the request for exemption for the provisions relating to compulsory charging on of the disposal contribution was refused.

5.3 Decisions on administrative appeals
As already mentioned in Chapter 4, the number of decisions on administrative appeals increased substantially after the introduction of the ‘laurel’ procedure. The number of decisions during the years under review is shown in the table below. The table includes decisions concerning the cases discussed above.

Case 53/Stibat
Contested decision: In 1998, the Director General of the NMa granted an exemption for five years for the system providing environmentally acceptable solutions to the waste management problem. The KNMvD made the last alterations on 12 October 1999. This contravenes Article 6 of the Competition Act. The NMa found that under the (former) Electricity Act, the defendants were required to reach agreements on the LBT and RBT, which were subject to the approval of the Minister of Economic Affairs. It was also found that the new 1998 Electricity Act requires that the Protocol be maintained.
Findings: With regard to the alleged cartel agreements, it was found that under the (former) Electricity Act, the defendants were required to reach agreements on the LBT and RBT, which were subject to the approval of the Minister of Economic Affairs. It was also found that the new 1998 Electricity Act requires that the Protocol be maintained.

Case 123/Request for access to a report (Mulder case)
Contested decision: In 1998, the NMa assessed the concentration of the Vestdijk and KBB undertakings. In the preparation of this decision, the NMa commissioned a study to determine the effect of the merger on competition. The study was prepared by the Knelt wetenschappelijk onderzoek en adviesbureau (KNMvD) and the KNMvD issued its decision, a third party, Mr. Mulder, requested a copy of the report pursuant to the Government Information (Public Access) Act for collection and disposal of used batteries. Mr. Mulder filed an administrative appeal against this rejection. The Director General of the NMa found that the appeal was unfounded.

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Findings. The Director General of the NMa ruled that the appeal was valid to the extent that he found on appeal that no exemption was required for the modified Code for Veterinary Surgeons and the modified House Rules, since there is no (longer any) violation of Article 6 of the Competition Act. With regard to the provision of the Code for Veterinary Surgeons that a veterinary surgeon should not refrain from unlawful competition, the Director General of the NMa ruled that in the explanation contained in the request for an examination of his case and its enforcement, the provision is subject to the prohibition of Article 6 of the Competition Act. Pursuant to this provision, individual veterinary surgeons were forbidden to make sales below the cost price. In fact, such sales below the cost price amounted to a minimum price agreement and do not qualify for exemption. KNMV opened judicial appeal proceedings against this decision.

Case 381/’VBBS
Case. In 1998, the Director General of the NMa stated in a provisional view that a request for an exemption submitted by the Foundation for the Representation of the Interests of Painters and Decorators (VBBS), the Meldadres BBS Foundation and the Bureau Meldadres BBS B.V. concerning the tendering requirements in the painting and decorating business could not be granted. The regulations likewise did not enjoy provisional validity as they were already prohibited by the Economic Competition Act. At the same time, the Director General of the NMa notified the parties that he would be required to draw up a report within the meaning of Article 6 of the Competition Act, if the parties decided not to withdraw the regulations within a period of five weeks granted for that purpose. The parties then filed an administrative appeal against this provisional view.

Findings. The Director General of the NMa ruled that the administrative appeal submitted by the parties was inadmissible, as a provisional view does not constitute a decision within the meaning of Article 1:3 Clause 1 of the General Administrative Law Act. This was based on the following findings:

The Director General of the NMa explicitly notified the parties of an opinion with a provisional character, that does not yet constitute a final decision on the request for exemption. Among other things, a provisional view from the Director General of the NMa is intended to allow the parties an opportunity to opt to withdraw the agreements or to accept the related request for exemption, so that the request does not need to lead to proceedings with all the time and costs involved. The parties also have an opportunity to express an agreement before the Director General of the NMa makes a final assessment. If the notified agreements are not revised, a report will be drawn up. This is in line with the provisional character of the opinion. No report has yet been drawn up.

Furthermore, a report is not a final opinion.

The view presented by the Director General of the NMa is therefore of a provisional character and consequently, cannot be regarded as a decision within the meaning of Article 1:3 Clause 1 of the General Administrative Law Act. Judicial appeal: VBBS appealed against the decision stating that the opinion and the provisional opinion were inadmissible, as they were no ground to qualify a provisional view such as the one in question as a decision within the meaning of Article 1:3 Clause 1 of the General Administrative Law Act.

5.4 Decisions imposing sanctions

In certain cases, the Competition Act authorises the Director General of the NMa to impose sanctions and/or measures subject to penalties. This authority was exercised on several occasions during the year under review. The decisions concerned are discussed below. Please see Case 5 for the NMa’s policy on enforcement and sanctions.

Fine for abuse of a dominant position (violation of Article 2a)

Case 690/Hydro Energy B.V. versus Sep
Complaint. Hydro filed a complaint against Sep with the Director General of the NMa against Sep. Sep is the owner of the Dutch national grid, the main transmission network for public power supplies. Hydro is active worldwide in the production of products including artificial fertiliser, oils, gas, aluminium and magnesium. Hydro wished to import electricity for its artificial fertiliser plant in Sluisker, in which it also generated electricity itself. Sep refused to provide transmission of the electricity within the Netherlands, making it impossible for Hydro to make use of the imported electricity.

Findings. The Director General of the NMa found that Sep holds a dominant position in the field of inter-regional transmission of electricity within the Netherlands. Sep’s grid is the only realistic way to transmit (or provide for the transmission of) imported electricity, with regard to both cross-border transmission and transmission within the Netherlands. Sep’s grid must therefore be regarded as an essential facility. This implies that in principle, Sep is required to provide transmission services for third parties unless there are serious, objective reasons not to do so.

The Director General found that Sep had refused to provide transmission services for Hydro, or at least that Sep had made the provision of such services subject to certain conditions that could be equated with a refusal. Sep’s refusal to provide services, or the conditions imposed by Sep for such service provision, can be regarded as abuse of a dominant position. Sep is subject to the 1983 Electricity Act to justify its conduct cannot be accepted. This Act in fact permits an importer/generator to sell all the self-generated electricity to a distribution company and to import all the electricity required for its own use. The imposition of conditions in advance, that Hydro should prove that it does not supply electricity to distribution companies, is not acceptable, since Sep did not impose such conditions on other companies for which it transmits (imported) electricity. In at least one case, this involved a company that, like Hydro, both imported and generated its own electricity. In that case, Sep was prepared to provide the delivery of the power that was required to the condition that delivery could be halted if the company in question was found to have supplied imported electricity to third parties.

Subsequent conduct must therefore be regarded as discriminatory. The Director General of the NMa decided to impose a fine of NLG 14 million on Sep. The gravity and duration of the violation was taken into consideration in determining the amount of the fine.

Administrative appeal. Both parties filed an administrative appeal against the decision. The appeals were submitted to the Advisory Committee on Administrative Appeals on the Competition Act.

No decision was issued on the appeal during the year under review.

Fine for concerted practices (violation of Article 6)

Case 992/Agreements between civil law notaries in Breda
Case. The Director General of the NMa found that 16 civil law notaries in Breda had agreed to share orders to execute deeds to which Breda municipal authority was party by rotation. This restricted competition, which was already limited by current legislation, still further. The NMa found the agreements in violation of Article 6 of the Competition Act. In addition to the NMa’s administrative fine, the notaries were able to compete for the award of public orders awarded under the NMa’s tendering procedures.

Findings. The Director General of the NMa ruled that the agreements between the civil law notaries themselves and between the notaries and Breda municipal authority led to a market-sharing system that, by nature, restricted competition. Market-sharing agreements were already prohibited under the Economic Competition Act.

The notaries’ claim that there is no competition in relation to the services of notaries and that, for this reason, there could not be any restriction of competition, was rejected. Although tariffs for notarial activities were fixed until 11 October 1999, the notaries were able to compete for the actual acquisition of orders, in areas such as quality, service and speed. The agreement also ruled out this possibility.

The Director General imposed a fine of NLG 200,000 on each civil law notary, ranging from NLG 15,000 to NLG 200,000. Because the agreement was withdrawn as of 1 April 1999, no measures subject to penalties were imposed.

Administrative appeal. An administrative appeal was filed against the decision. The appeal was submitted to the Advisory Committee on Administrative Appeals on the Competition Act. No decision was issued on the administrative appeal during the year under review.

Measures subject to penalties for resale price maintenance

Case 570/Free Record Shop B.V. versus Erasmus Muziekproducties B.V.
Complaint. Erasmus Muziekproducties B.V. uses a standard agreement for the supply of the CD entitled ‘Het Vredenburg Concert’ by Wibi Soerjadi, providing that the retailer must sell the CD for a fixed price of NLC 14.95. Free Record Shop filed a complaint against this provision to the NMa. In civil proceedings, Rotterdam District Court had already ruled that Erasmus was not permitted to trade CDs of a live recording of a musical performance by Soerjadi, others than for the usual price under the Erasmus label of NLC 14.95. This ruling was confirmed by the Hague Court of Appeal. Without discussing competition law, the Court found that the provision was based on an agreement between the parties. Findings. The Director General of the NMa ruled in the complaint proceedings that the rulings of the civil courts did not detract from the NMa’s authority to apply Competition Act. By requiring its customers to sell the Wibi Soerjadi CD only for the price van NLC 14.95, Erasmus subjected them to price-fixing/resale price maintenance. This constituted a serious violation of Article 6 of the Competition Act, as it restricted the retailers’ freedom to determine the sale price of their products independently.

Measures subject to penalties: The Director General of the NMa therefore ordered Erasmus to amend the supply agreement with regard to the Wibi Soerjadi CD by scrapping the fixed resale price. Erasmus was also ordered to notify all customers/retailers to which the CD had been delivered of the withdrawal of the requirement in writing, and to restrict the resale price to NLC 14.95. Both orders were handed down subject to penalty. Partly because the rulings of the civil courts had led to confusion in this case, the NMa refrained from imposing a fine.

Fine for non-compliance with co-operation requirement

Case 802/Edipress versus Audax
Case. Edipress filed a complaint to the Director General of the NMa accusing Audax B.V. and some of its subsidiaries, including ARO, of conducting prevent competition to the Dutch market of the supply of foreign newspapers and magazines. The Director General of the NMa had already imposed provisional measures subject to penalties in response to this complaint in 1998. Inquiries were also opened in the proceedings on the substance of the case (Case 802). As part of these inquiries, the NMa asked Audax to provide information and access to its data and documents. Supervisory authorities are authorised to do so pursuant to Articles 5:16 and 5:17 of the General Administrative Law Act.

21 See Case 802. See the 1998 NMa Annual Report.
According to the Director General of the NMa, the authority to require information and access extends to conduct pre-dating 1 January 1998 (the date on which the Competition Act came into force), if it continued after that date.

Findings: During the investigations, Audax failed to provide the co-operation that can reasonably be required. This is the ‘co-operation requirement’, as laid down in Article 5:20, Clause 1 of the General Administrative Law Act. In the first instance, Audax refused to co-operate and later provided the required information only after various long overruns of the deadlines. The NMa drew up a report on Audax’s non-compliance with the co-operation requirement. Pursuant to Article 69, Clause 1 of the Competition Act, the Director General of the NMa can impose a maximum fine of NLG 10,000 on parties that conduct themselves towards NMa investigators in contravention of Article 5:20, Clause 1 of the General Administrative Law Act. In addition, an order to provide access to specified information and documents, subject to penalties, can be issued pursuant to Article 70, Clause 1 of the Competition Act, in conjunction with Article 5:17, Clause 1 of the General Administrative Law Act.

Fine: The Director General of the NMa decided to impose a fine of NLG 10,000 on Audax in this case. The fact that Audax repeatedly failed to comply promptly or in full with demands to provide certain information or access within a reasonable period was taken into consideration here. One final consideration was that Audax substantially obstructed the competition law inquiries into its own conduct in the market for the importation and distribution of daily newspapers and magazines. This conduct can be regarded as an extremely serious violation of the co-operation requirement. Measures subject to penalties were not imposed, as the inquiries in the proceedings on the substance of the case had resulted in a report, which meant that the imposition of penalties no longer served any purpose.

Administrative appeal: An administrative appeal was submitted against the decision. No decision was made on the appeal during the year under review.

5.5 Decisions on provisional measures subject to penalties

If, in the NMa’s provisional opinion, there is reason to assume a violation of the Competition Act and if there is a matter of urgency, the Director General of the NMa is authorised issue a decisions imposing provisional measures subject to penalties. The following decisions relate to that authority.

Case 1114/Dutch Farm Veterinary Pharmaceuticals BV versus Dopharma International BV

Complaint: Dutch Farm and Dopharma are both active in production and (wholesale) trading in veterinary medicines. Dutch Farm requested the NMa to impose a provisional measure subject to penalties on Dopharma, in order to force Dopharma to supply it with its veterinary medicine Levamisol Oral. According to Dutch Farm, Dopharma was abusing its dominant position by its refusal to supply.

Findings: In the NMa’s view, at first glance there was no question of any abuse of a dominant position, nor of any urgency requiring the imposition of provisional measures. According to Dutch Farm, Levamisol Oral would form a market in itself, due to the combination of target animals (pigs and cattle) to which it would be applied and to the method of administration (oral, through a solution in water).

The NMa found that the combination of target animals only indicates the presence of Levamisol Oral in two markets, that for treatment of pigs and for treatment of cattle. With regard to the method of administration, NMa commissioned further investigations by an expert. Given that there are other veterinary medicines available for the treatment of the same disorder in pigs and cattle, it was not immediately clear that Dopharma held a dominant position. According to Dutch Farm, the imposition of a provisional measure was necessary because the lack of Levamisol Oral in its range led to the loss of turnover and customers, with irreversible consequences. The NMa found that financial disadvantages caused by unlawful action would not generally be irreversible, because they can be reclaimed from the culprit. Furthermore, Dutch Farm had itself stated earlier that it would not be forced into liquidation as a result of Dopharma’s conduct. Dutch Farm was unable to provide enough evidence of the urgency and risk for the (near) future. The request to impose provisional measures subject to penalties was therefore rejected.

Case 1365/WilMar Press and Productions V.O.F. versus NOS

Complaint: WilMar Press and Productions V.O.F. is a press agency that collects new and data for publication in print, on CD-ROM or in other media, such as the Internet. WilMar Press and Productions filed a complaint against the Netherlands Broadcasting Corporation (NOS) for NOS’s refusal to make programme information available to WilMar Press and Productions for a commercial rate. WilMar Press and Productions also requested the NMa to order the NOS to provide it with programme information for the public broadcasting associations at a commercial rate, subject to a penalty of NLG 50,000 per day for each day that NOS continues to refuse. This case relates to the NOS’s general refusal to provide any (daily, weekly or genre-related) programme information.

Findings: The request for provisional measures subject to penalties was refused, on the grounds that there was no urgency. WilMar Press and Productions had not provided sufficient evidence of the risk of such radical and irreversible consequences that it could not wait for an investigation within the meaning of Article 59 of the Competition Act. The fact that continuity of WilMar Press and Productions was not at risk played a role here. Furthermore, the grounds for the request did not indicate that WilMar Press and Productions would be irreversibly driven from the market, or that later market entry would be impossible.

23 The NMa added that Breda District Court had already rejected Dutch Farm’s claims in summary proceedings at an earlier stage, and the court’s ruling had since become final.
6.1 Introduction

On 1 August 1998, a number of Articles of the 1998 Electricity Act came into force. This created a statutory position for DTe. The other Articles relevant to DTe took effect on 1 July 1999. Consequently, a start could be made on co-designing a free electricity market from that date onwards. DTe was also formally installed as a department of the NMa on 1 July. The departmental model did not alter the responsibilities and powers of the Director of DTe, but did lead to closer involvement of the NMa Director General in DTe’s activities. The relationship between the NMa and DTe is discussed in more detail in paragraph 6.3 of this Annual Report. The introduction of the relevant Articles of the Act on 1 July 1999 led the Director of DTe to issue a large number of decisions in a short space of time. Not only did the tariff structure (the Tariff Code) and (part of) the technical conditions (the Technical Code) have to be established for electricity transmission, but the maximum network prices for the year 2000 also had to be fixed. Prior to this, DTe conducted two information and consultation rounds in order to familiarise itself with the ideas and responses of those involved and interested parties. In addition to fixing the price caps, the Director of DTe also advised the Minister of Economic Affairs on supply charges for captive customers, the efficiency discounts and the tariff bases. Furthermore, DTe collected the duties from the relevant companies.

During 1999, DTe made a start on preparation of the price caps. A key part of this process is the comparison of the relevant companies, or the benchmarking process. Benchmarking was due to take place in the spring of 2000, in preparation for the determination of the first efficiency discounts on transmission and supply charges. More in general, during the transitional phase towards the liberalised market, the market parties proved to have many questions. DTe attempted to answer these as far as possible. In order to create as much transparency as possible, extra consideration was given to information in the (preparation of) decisions and, in addition to the consultation rounds mentioned above, a number of information meetings were organised. The public preparation procedure laid down in the General Administrative Law Act was also used frequently. All decisions, relevant documents and background information were published at the DTe’s website.

6.2 Relationship with the NMAs

DTe has been a department of the NMAs since 1 July 1999. The service transferred to the same building as the NMAs at the end of 1998 and can consequently make use of the same facilities. A new development is that, since 1 July 1999, the Director General of the NMAs has held a number of formal powers relating to DTe, pursuant to the 1998 Electricity Act. For example, the Director General can issue general and special instructions the Director of DTe concerning the latter’s responsibilities and powers, if the Director General considers that an interpretation of terms concerning the latter’s responsibilities and powers, if the Director General considers that an interpretation of terms that are also used in the application of the Competition Act can or must be provided. The Director General did not exercise these powers during 1999.

6.3 Outline of DTe’s first year

The division: before and after 1 July 1999

1999 was a notable year for both DTe and the market. Parts of the market were liberalised, but the market regulations had still to be developed. In some cases, this led to lack of transparency. For DTe, the year was divided into two parts, as the sections of the Electricity Act that...
The first half of 1999

In the first half of the year, the market was partly liberalised, but the conditions for market access (access to the networks) did not yet exist. This led to a lack of transparency and sometimes, to confusion among both new and existing market parties. Formally, DTs could not yet provide answers to questions and problems, nor could they intervene or take action if asked to do so. It was clear that the pre-existing Protocol Agreement\* between the power generation and distribution companies affected the development of the market, although not to the extent that became evident in early 2000. For example, there was already considerable interest in foreign imports during this period. DTs faced many questions concerning the allocation of scarce import capacity by the national grid company, TennT. As a result, DTs began a consultative process later in the year on potential allocation models. The first half of 1999 was also marked by preparations for DTs’s statutory duties on procedures for generating conditions and, where possible, for tariffs for access to the networks and tariff structures. Organisations representing market parties were still in the preparatory stage (the preparatory period), and DTs did not always have the feeling that their views were adequately considered, which later led to extra pressure on the formal consultative process for the decisions establishing the Codes. Another factor that played a role was that the statutory framework for the access rules and tariff structures did not become clear until mid-April.

One final issue during the first six months was the completion of advisory reports for the Minister of Economic Affairs on the appointment of network companies and the licences for suppliers of captive customers, and on the tariff bases. The debate on network companies and the licences for suppliers of captive customers, and the completion of advisory reports for the Minister of Economic Affairs were important goals for DTs. From the start, good and open communications with all parties, and relationships with the high voltage transmission System Operators (TSOs) — the counterparts of TennT in Europe, and also the national rules. For example, it is possible that the prohibition on the reservation of network capacity has a restrictive effect, particularly for European consumers, it may be necessary to adjust or clarify the European, and also the national rules. For example, it is possible that the prohibition on the reservation of network capacity has a restrictive effect, particularly for international trade. It may also be desirable to provide more assurances for quality, for example through direct intervention if network companies fail to comply properly with the rules. This could certainly be an important issue if liberalisation accelerates. As the market becomes increasingly free, further inter-relationships between the instruments of the Electricity Act and the Competition Act must also become possible. DTs, together with the NMa, will continually examine this and other constraints on the path towards effective national and international electricity market operations. If other proposals for amendments of the statutory rules, these proposals will be put to the Minister of Economic Affairs.

Tariff decisions for 2000

The end of 1999 was dominated by the tariff decisions for 2000. Three factors were important for the assessment of the proposals. The first was the statutory link with price levels in 1996. Second, there was the possibility of taking exogenous factors into account. And, finally, the process had to be carefully calculated on the basis of the new structure. The second half-year

After 1 July 1999, DTs was able to formally perform its assigned statutory duties. Within six months, the basic regulatory structure for the electricity market had to be set up, ready for the year 2000. The statutory procedures had to be carefully examined, on time, while doing justice to all the material factors and interests. The proposed tariffs for the transmission networks and suppliers to captive customers in 2000 had to be submitted by 1 October 1999, to ensure that they could be fixed by 2000 before the end of 1999. Among other things, this implied that the tariff structure for the networks had to be defined by 1 October at the latest, on the basis of a joint proposal from the network companies, even though decision-making on this issue could not start until after 1 July. During the parliamentary debates on the Act, close attention was paid to the new tariff structure, including the position of combined heat and power (CHP) units and relationships with the high voltage transmission networks.

This attention was reflected in an explicit desire to apply a consultative procedure in the decision-making process. DTs complied with this wish. During the preparatory period, it became clear that many interest groups were dissatisfied with the network company proposals. Because DTs also came to the conclusion that the proposals were not consistent with the intentions of the Act in every respect, the network companies were asked to revise them.

One final point that should be mentioned is that the Minister of Economic Affairs was required to fix the tariff base before 1 July, even though this could not be considered in isolation from the tariff structure as a whole. On the recommendations of DTs, this decision was not taken until the end of the preparatory period, for the tariff structure was known. Ultimately, DTs was able to take the decision in time (at the end of September) and to fix the tariff structure for the networks. This decision was the best possible option, given the time and the consequences for the tariffs in 2000. The administrative appeals submitted with respect to these market parties regarded the decision as optimal. However, DTs itself expects that the established tariff structure could change in due course. For example, the Protocol still has a distorting effect. New market developments will therefore call for adjustments in the future. A similar situation applies for the Technical Codes. Apart from the Network Code, containing the rules for the allocation of import capacity, and the System Code regulating Programme Responsibility, the time of year is not clear. Other technical conditions were notified to the EU in the course of 1999.

The second half-year

For example, the Protocol still has a distorting effect. New market developments will therefore call for adjustments in the future. A similar situation applies for the Technical Codes. Apart from the Network Code, containing the rules for the allocation of import capacity, and the System Code regulating Programme Responsibility, the time of year is not clear. Other technical conditions were notified to the EU in the course of 1999.

\* The Protocol is included in article 18 of the 1998 Electricity Act and contains agreements on volumes and prices for electricity purchasing and generation by distribution companies from the four producers.
attendant uncertainties. Furthermore, there is now a regulator that has been assigned all sorts of statutory duties. During the year under review, DTe frequently submitted proposals and opinions on the many matters on which it is performing those duties. For example, it published the consultation documents in which it explains how its proposals will be implemented. Information meetings were also held on these documents and other issues.

An important tool for communications with both the sector and interested outsiders is DTe’s own website, at which publications and decisions, as well as other information relevant to its target groups, are issued. DTe also makes use of the interactive character of the website. For example, visitors can subscribe, and are then automatically notified when new information is published on the site. Another frequently asked question is to put questions to DTe via the site. DTe receives many queries, both verbally, in writing and via e-mail. These vary from simple questions concerning where decisions can be found to complex issues on which DTe is asked for an opinion. In view of its regulatory responsibilities, DTe regards responding to such questions as an important task. However, it runs up against the limitations of its powers at this level. DTe is not authorised to interpret the Electricity Act, for example, although it can advise on questions concerning the Act’s interpretation.

A large number of symposia and congresses were held in relation to the liberalisation of the electricity sector during 1999. DTe provided presentations at various meetings, both in the Netherlands and elsewhere. These presentations related partly to the new situation in a liberalised market and partly to specific issues such as the allocation of capacity to interconnectors, transmission tariffs and price cap regulation. At the European Commission’s congress for countries wishing to join the EU, DTe gave a presentation on the organisation of the Dutch electricity market.

DTe regularly gave interviews to the general and trade press during the year under review, in both the Netherlands and other countries. It also sought publicity for key decisions and publications itself, by issuing press releases and giving interviews.

6.4 Decisions

6.4.1 Decisions on request

Decision 1 of 25 August 1999 on allocation of capacity to Amsterdam Power Exchange N.V.

DTe the possibility of reserving transmission capacity for a particular applicant if this serves to recover investments in an international network or contributes to the effective functioning of the electricity market.

According to the Notes, the Director of DTe can be asked to reserve transmission capacity. This can clarify the capacity reservations required for the execution of transactions contracted via the APX, for example. APX applied to the Director of DTe for such a reservation on 19 July 1999. In view of the contribution that, in the Director’s view, APX makes to competition in the electricity market, he granted the request on 25 August 1999, for a maximum of 250 megawatts until 31 December 1999. N.V. Samenwerkende elektriciteitsproductiebedrijven (hereinafter referred to as ‘Sep’) filed an administrative appeal against this decision in good time. The Director ruled that this appeal was unfounded op 23 December 1999.

Decision 2 of 30 September 1999, fixing the tariff structures referred to in Article 206 of the 1998 Electricity Act (Tariff Code)

Pursuant to the 1998 Electricity Act, the Director of DTe is required to determine the tariff structure for the electricity networks. He did so for the first time in 1999.

Consequently, the elements and determination method for the prices for which customers will be charged to network electricity will be transmitted for customers, system services will be performed and the energy balance maintained were laid down for the first time. The joint proposals of the network companies had to be taken into account in the establishment of the tariff structure (or selling price). The Director of DTe received such a proposal from the network companies on 5 July 1999. He ruled that the public preparatory procedure of the General Administrative Law Act applied to the decision in question. In the assessment of the proposal, the Director considered whether it complied with the formal requirements of the Electricity Act and whether its implementation would give rise to a reasonable tariff structure. After also considering the views presented in this respect and the responses of the joint network companies, the Director asked the latter to revise the proposals on a number of points. A revised proposal was received on 24 September 1999 and, with some changes relating to the connection charges and post-calculations, the Director adopted this on 30 September 1999.

Decision 3 of 26 October 1999, refusing the allocation of capacity to N.V. Sep pursuant to Article 206 of the 1998 Electricity Act

On 15 July 1999, the Director of DTe received a request from N.V. Sep to allocate it priority capacity on TenneT’s interconnectors, where such capacity is required for the take-up of electricity to comply with three long-term import contracts that N.V. Sep signed prior to the introduction of the 1998 Electricity Act. This request was submitted pursuant to Article 206. The Director of DTe rejected the request, as in his view, it could not be honoured within the legal framework of Article 206.

Capacity has since been allocated for N.V. Sep’s import contracts via the technical conditions.

Decision 5 van 12 November 1999, establishing (part of the conditions referred to in Article 206 of the 1998 Electricity Act (Technical Conditions)

Article 206 et seq. of the 1998 Electricity Act requires the Director of DTe to establish (technical) conditions for the transmission of electricity and access to the Dutch electricity networks. These can include technical requirements to be met by installations and measuring units connected to the networks, as well as the way in which network companies will cooperate and the procedure for the allocation of transmission capacity on interconnectors (import capacity). Some of these conditions were laid down on 12 November 1999, and some were notified to the European Commission in Brussels on 16 December 1999.

With regard to the technical conditions, 1999 was largely dominated by the problem of import capacity. Due to the present market situation, in which the Protocol provides that the four largest electricity producers can only sell electricity to Dutch distribution companies, when ever the export capacity required was lower in other countries, there is high demand for foreign power (particularly from Germany), reflected in high demand for import capacity. Demand currently exceeds supply and the scarcity involves major financial interests. After a successful round of consultations based on the Information and Consultation Document ‘Transport Capacity on International Electricity Connections’, DTe determined the procedure for the allocation of import capacity in the year 2000. This means that the available import capacity is allocated to market parties on a pro rata basis. Import capacity has been allocated to N.V. Sep and Amsterdam Power Exchange N.V. for 2000.

The allocation to Sep was based on a clear request to this effect from the Minister of Economic Affairs. The national grid company, TenneT B.V. implements this procedure and informed the various parties of their import capacity allocations on 1 December 1999.

6.4.2 Decisions establishing electricity transmission tariffs

On the basis of the transitional Article IV, the Director of DTe was required to fix the maximum prices that network companies could charge in 2000 for the transmission of electricity on their networks. The network companies were required to submit proposals for this purpose. The year 2000 is the first year in which individual price caps will be set for transmission and supply charges. Pursuant to the Electricity Act, prices in 2000 must be based on comparable prices charged to customers in 1996. This implies a split of the integrated electricity prices charged in 1996. The introduction of the new Tariff Code on 1 January 2000 also played a key role here for the network tariffs.

Pending the submission of the proposals, the Director of DTe notified the network companies of the procedure and principles that the DTe would apply for their assessment. He provided the network companies with two models for this purpose. Pursuant to the above transitional Article, the proposals had to be based on comparable prices charged to customers in 1996. As prices charged in 1996 covered both transmission and supply, they had to be divided into a transmission and a supply charge. The charges also had to comply with the new tariff structure, as a result of which a different allocation of costs to the various voltage levels was realised. There was closer adherence to the principle that the party generating the costs should be charged for those costs. This created the right incentives for the various users of network services and the network companies themselves to improve their efficiency. For these decisions, too, the public preparatory procedure of the General Administrative Law Act was followed.

The network companies submitted their proposals in October 1999. Some proposals proved to be incomplete and additions were submitted at DTe’s request. DTe assessed the proposals and notified the companies concerned of its provisional views. The companies then responded, and after verbal and written communications, revised and further supplemented their proposals in a large number of cases. The Director fixed the tariffs for TenneT on 7 December 1999 and for the other network companies in the second part of December.

6.5 Advisory reports to the Minister of Economic Affairs

During 1999, DTe provided advisory reports on the following issues to the Minister of Economic Affairs, on request:

- appointment of network companies;
- licensed electricity suppliers;
- tariff bases;
- supply tariffs;
- transmission tariffs for generators.

DTe also provided assistance in the assessment of more detailed proposals submitted by the envisaged network companies to realise approval of the network company appointments. Further advisory reports were issued on the exemptions. The various advisory reports are discussed in more detail below.
At the request of the Minister of Economic Affairs, on 3 March 1999 the Director of DTe issued an advisory report on requests for approval of the appointment of the network companies, within the meaning of the 1998 Electricity Act. The Minister also fixed the tariff bases for the transmission-dependent element of the supply tariffs for 2000. On the basis of the revised proposals, DTe notified the licensed suppliers in August of the procedure and principle that it would apply for the assessment of proposals for tariffs for the year 2000, in the context of its recommendations to the Minister on this issue. They were also notified of the information that DTe required in order to assess the proposals.

The Minister also fixed these charges in compliance with the system used by the legislators in the 1998 Electricity Act. The Director of DTe notified the licensed suppliers in August of the procedure and principle that it would apply for the assessment of proposals for tariffs for the year 2000, in the context of its recommendations to the Minister on this issue. They were also notified of the information that DTe required in order to assess the proposals.

The Minister of Economic Affairs is responsible for fixing the supply tariffs. The Minister requested the Director of DTe to advise on the establishment of the supply tariffs for the year 2000. On the basis of these calculations and the value added of the electricity supply services provided by all licensed suppliers in 2000, the Y factor was set at 6.24% for the year 2000. The Minister of Economic Affairs fixed the Y factor in compliance with the DTe’s recommendations.

Do not have exclusive supply commitments in their areas. The Minister of Economic Affairs is responsible for fixing the supply tariffs. The Minister requested the Director of DTe to advise on the establishment of the supply tariffs for the year 2000. On the basis of the revised proposals, DTe notified the licensed suppliers in August of the procedure and principle that it would apply for the assessment of proposals for tariffs for the year 2000, in the context of its recommendations to the Minister on this issue. They were also notified of the information that DTe required in order to assess the proposals.

The Director of DTe’s recommendations.

The Minister of Economic Affairs fixed the Y factor in compliance with the DTe’s recommendations.

In relation to renewable electricity supplies, the 1998 Electricity Act provides for the levying of a price cap on low carbon and renewable sources for a fixed price set by the Minister.

In order for the Minister to set these tariffs, each licensed supplier must present proposals for this purpose by 1 October of each year. The transmission tariffs for gas-generating companies are based on the supply prices charged by licensed suppliers, and on the Y factor (Y), which is deduction of the average value added of the electricity supply services provided by all licensed suppliers in period 1. The Minister requested DTe’s advice on the determination of the Y factor.

At the start of October 1999, DTe had received proposals for transmission tariffs for generators in 2000 from only a handful of licensed suppliers. At the request of the Director of DTe’s, therefore, licensed suppliers that had not yet submitted proposals were asked to do so by the Minister. Pending the response, DTe calculated the average value added of the services relating to the supply of electricity by all licensed suppliers on the basis of the available data for advice on the determination of supply tariffs in 2000. On the basis of these calculations and the proposals later received from the licensed suppliers, DTe drew up a questionnaire and conducted discussions with licensed suppliers and organisations representing captive customers that generate power in the manner referred to in this regulation.

On the basis of the talks and the value added of the services for electricity supplies by licensed suppliers, as calculated in the meantime, DTe prepared its recommendations to the Minister on the Y factor. The Director of DTe did not follow the proposals submitted by individual licensed suppliers in full here. These proposals were not based on a uniform Y factor and often applied the system for transmission tariffs for generators used in the past. Consequently, the proposals were not consistent with the system used by the legislators in the 1998 Electricity Act. The Director of DTe recommended that the Y factor be set at 6.24% for the year 2000. The Minister of Economic Affairs fixed the Y factor in compliance with the DTe’s recommendations.

Because the Minister of Economic Affairs had already fixed the price caps for licensed suppliers and now, the Y factor, the Director of DTe also advised the Minister on the determination of the transmission tariffs for generators payable by the various licensed suppliers for renewable power generation during the year 2000. The Minister also fixed these charges in compliance with the DTe’s recommendations.
6.6 Miscellaneous activities

6.6.1 Exemption from the commitment to appoint a network company

The Minister of Economic Affairs may exempt owners of electricity networks to which a small number of customers are connected from the commitment to appoint a network company. On 6 July 1999, the Minister asked the Director of DTe for advice on the assessment of exemption requests. In total, 115 exemption requests were submitted to the Director. DTe assessed these requests and, where necessary, requested missing information. The Director of DTe virtually completed his advisory report in the final months of 1999. The report was sent to the Minister on 1 February 2000.

6.6.2 Administrative charges

Part of DTe’s annual funding is provided by contributions from network companies and licensed suppliers. These are:
- Network companies, within the meaning of Article 10 of the 1998 Electricity Act, that require the approval of the Minister of Economic Affairs pursuant to Article 12 of the Act.
- Licensed suppliers, within the meaning of Article 36 of the 1998 Electricity Act, that, pursuant to Article 37 of the Act, require a licence from the Minister of Economic Affairs for the supply of electricity to captive customers.

The Minister of Economic Affairs fixes the amounts to be collected annually on the basis of the budget. The contribution of each network company or licensed supplier is then based on the number of connections available. The contribution for licensed suppliers in 1999 amounted to NLC 582,000. No contribution could be fixed for network companies, because the appointments had not yet been approved. During 1999, DTe implemented the decision determining contributions pursuant to the 1998 Electricity Act Cost Recovery Decree issued by the Minister on 6 July 1999.

6.6.3 Information and consultation document on Transport capacity on international electricity networks

During 1999, heavy demand for transmission capacity for electricity imports arose in the Netherlands. However, capacity on interconnectors between the Dutch and Belgian or German grids is limited. It proved necessary to develop a system for allocation of capacity on these interconnectors to the applicants. In August 1999, the Director of DTe drew up a consultation document describing various methods for the determination and allocation of the available interconnector capacity. Questions were put to market parties in the document, to which 30 responded. The parties were also given an opportunity to present their views orally. The contributions of market parties were extremely valuable in the establishment of an allocation system for the available capacity, which was laid down in the technical conditions. A considerable proportion of the capacity was allocated to APX, because the Director of DTe wishes to steer the spot trade onto the right track and expects to promote the derived trade in financial contracts by allocating more international capacity to APX.

6.6.4 Information and consultation document on Price cap regulation

DTe published the information and consultation document on price cap regulation in the electricity sector on 9 July 1999. The purpose of this document was to inform those directly involved in the electricity market and interested parties on the proposed development of regulation in the electricity sector. The document put consultative questions on issues such as asset valuation methods, yardstick returns, the CPI-X price capping method and the proposed benchmarking methods. Between July and mid-September, DTe organised six well-attended information and discussion meetings. These were spread across the country, in order to offer as many interested parties as possible an opportunity to exchange ideas on the issues in question. DTe provided as much information as possible, and also defined specific information requirements. There was a particular need for more information on valuation, financing and yield issues. For this reason, DTe decided to publish the background report that it had commissioned on ‘Determination of the Regulatory Asset Base for Network Companies’ during the consultation period.

Interested parties were also offered the opportunity to put questions regarding the application methods via the DTe website. The replies to these questions were also published at the website. The consultation period concluded with a public meeting at DTe. Several dozen responses to the consultation document were received in all.

These responses proved very valuable in DTe’s decision-making processes during 2000 on the design of regulation of the Dutch electricity sector for the coming regulatory period. The design of the method for simulating competition between network companies as far as possible is of particular importance here. This involves a form of competition engineering. At the end of February 2000, DTe published the Guidelines for Price cap regulation in the Dutch electricity sector for the 2000-2005 period.

6.6.5 Competition engineering through benchmarking of electricity networks

An important goal of liberalising the electricity sector is to provide operators of electricity networks with economic incentives to operate efficiently. Efficiency gains must then be passed on to electricity consumers. However, each region has only one electricity network. Competing networks are too expensive to set up and have no chance of profitable operations. This means that network companies are monopolistic companies and because of that fact, cannot, by nature, be stimulated to operate efficiently.

Because real competition between network companies is not possible, it has to be engineered. The benchmarking instrument plays an important role in this. Through benchmarking, the efficiency of individual companies is compared. Efficiency is determined by considering the relationship between the output (e.g. the available capacity and the volume of electricity transmitted) and the input used (e.g. the amount of capital and personnel). The company that operates most efficiently forms the benchmark for the others. The charges of companies that do not operate efficiently will be reduced via the efficiency discount (the 1998 Act refers to an ‘X-factor’) during a regulatory period. Prior to each regulatory period, an efficiency review is performed to determine which company is the most efficient at that point in time. New efficiency discounts are then fixed.

During 1999, DTe began preparations for the benchmark study to be performed in 2000. In the summer, a research agency was commissioned to support DTe in this process. A test phase has now been completed, together with the electricity companies, during which the form of the benchmark model was defined. It proved to be quite feasible to compare the distribution companies. For the operators of the national grid (TenneT and TZM), no comparable companies exist within the Netherlands. They will therefore be compared with foreign companies.

The final benchmark will be performed in May and June 2000. The results will provide key input for the determination of the efficiency discount in August 2000.
Annex I

NMa decisions 1999
## Annex I

### NMa decisions, 1999

#### 1. Decisions on concentrations (based on Article 37)

Decisions of the Director General of the NMa in 1999 ruling that there was no reason to assume that a concentration would give rise to or strengthen a dominant position. No licence was required for these concentrations.

<table>
<thead>
<tr>
<th>No.</th>
<th>Parties</th>
<th>Date of decision</th>
<th>Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>1089</td>
<td>Ozenem B.V. (in formation and Behoeversmaatschappij) Vreeman Wateringen B.V. and Warel B.V.</td>
<td>16.02.1999</td>
<td>Food production</td>
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<td>1112</td>
<td>Cummins Diesel Sales + Services B.V. and Wartol N.V. Nederland B.V.</td>
<td>23.01.1999</td>
<td>Production of machines and appliances</td>
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<td>1124</td>
<td>N.V. Staring Afvalwerking Limburg en Bewerking Afvalstoffen tot Groend en Bouwstoffen B.V.</td>
<td>22.02.1999</td>
<td>Environmental services</td>
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<td>1152</td>
<td>Autobind Holding N.V. and Greenh Car B.V.</td>
<td>26.02.1999</td>
<td>Car/commercial vehicles dealing</td>
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<td>1153</td>
<td>Brouwer Groep B.V. and Norec B.V.</td>
<td>22.01.1999</td>
<td>Publishers/printers</td>
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<td>1188</td>
<td>Heijmans N.V. and Beleggerei-gemaatschappij J. van Lee Vegel B.V.</td>
<td>11.01.1999</td>
<td>Construction</td>
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<td>1193</td>
<td>HAL Investments B.V. and PostMeyer N.V.</td>
<td>15.01.1999</td>
<td>Timber trade</td>
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<td>1195</td>
<td>Argosaat B.V. and ZVNM Advies B.V.</td>
<td>17.05.1999</td>
<td>Public administration, government services and compulsory social insurance</td>
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<td>1196</td>
<td>Heijmans N.V. and Van Zool Groep B.V.</td>
<td>11.01.1999</td>
<td>Construction</td>
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<td>1200</td>
<td>Acc Holding en Continental Bakers</td>
<td>07.01.1999</td>
<td>Food production</td>
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<td>1201</td>
<td>APB Pension Fund Foundation, Pension Fund Foundation for Health, Mental and Social Interests and Nationale Investeringsbank N.V.</td>
<td>05.09.1999</td>
<td>Financial services</td>
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<td>1202</td>
<td>C.NED I B.V. en Lexurokaming Holding B.V.</td>
<td>22.01.1999</td>
<td>Production of packaging</td>
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<td>1205</td>
<td>Content Beheer N.V. en Carrière Planning Groep Beheer B.V.</td>
<td>18.01.1999</td>
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<td>1204</td>
<td>Nissan Motor Nederland B.V. and Auto Veenman B.V.</td>
<td>22.01.1999</td>
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<td>1208</td>
<td>ABB AMRO Participaties B.V. en Humans Beheer B.V.</td>
<td>05.09.1999</td>
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<td>1210</td>
<td>Global Telesystems Group Inc. en Sprint Telecom Group Plc</td>
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<td>N.V. NUIGN Energie-Onderwieming voor Gelderland, Friesland en Flevoland en N.V. Waterklied Friesland</td>
<td>08.09.1999</td>
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<td>Wegner Vastgoed B.V. en Jonkheer B.V.</td>
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<td>1228</td>
<td>Stork N.V. en Printed Circuit Board Plant, unit of Philips Medical Systems Nederland B.V.</td>
<td>03.09.1999</td>
<td>Manufacturing of electric products</td>
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<td>United News Media Plc, UN Overseas Ltd., Bloomberg L.P., Bloomberg Euro Ltd</td>
<td>02.09.1999</td>
<td>Activities relating to a financial institution</td>
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<td>1234</td>
<td>Holding AVR-Bedrijven N.V. en N.V. VAM</td>
<td>17.09.1999</td>
<td>Environmental services</td>
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<td>1244</td>
<td>Holding AVR-Bedrijven N.V. en Ruhrkaro Milieu B.V.</td>
<td>24.09.1999</td>
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<td>1254</td>
<td>N.V. ENOCO en Consul Afvalverwerking N.V.</td>
<td>23.09.1999</td>
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<td>1257</td>
<td>Parkway Holdings B.V. en Travelbond Holding B.V.</td>
<td>25.09.1999</td>
<td>Tour and travel agency services</td>
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<td>Villeroy &amp; Boch AG and Ucosan Holding B.V.</td>
<td>20.10.1999</td>
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<td>Travel Unie – Kras Holding B.V.</td>
<td>29.10.1999</td>
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<td>Hermans Holding B.V., Beleggingsmaatschap Scholtens B.V. and</td>
<td>18.10.1999</td>
<td>Financial services</td>
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<td>Accell Group N.V. and Sparta Rijwielen en Motorenfabriek B.V.</td>
<td>02.11.1999</td>
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<td>Sara Lee Meats Europe B.V., Meester B.V., Nistria Dieetvleeswaren B.V.</td>
<td>21.10.1999</td>
<td>Production of meat</td>
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<td>CCF Charterhouse and Imperial Chemical Industries Plc.</td>
<td>28.10.1999</td>
<td>Computer services and IT</td>
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<td>Unique International N.V. and Brunel International N.V.</td>
<td>25.10.1999</td>
<td>Other commercial services</td>
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<td>1537</td>
<td>Hanson AK VI B.V. and Boral Industrie B.V.</td>
<td>06.10.1999</td>
<td>Production of building</td>
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<tr>
<td>1536</td>
<td>VNU B.V. and RCV Entertainment B.V.</td>
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<td>Retail trade</td>
</tr>
<tr>
<td>1532</td>
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<td>23.09.1999</td>
<td>Financial services</td>
</tr>
<tr>
<td>1530</td>
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<td>14.10.1999</td>
<td>Telecommunications</td>
</tr>
<tr>
<td>1524</td>
<td>De Alteris, Kraanverhuur en Transport Klomp B.V. and</td>
<td>03.10.1999</td>
<td>Transport</td>
</tr>
<tr>
<td>1523</td>
<td>Pirelli S.p.A. and NKF Kabel B.V.</td>
<td>15.12.1999</td>
<td>Production of electrical appliances and instruments</td>
</tr>
<tr>
<td>1522</td>
<td>Praxis Doe-Het-Zelf Center B.V. and Marketkauf Nederland</td>
<td>20.12.1999</td>
<td>Retail trade</td>
</tr>
<tr>
<td>1520</td>
<td>Dixons B.V. and Radio Modern B.V.</td>
<td>22.12.1999</td>
<td>Retail trade</td>
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<tr>
<td>1516</td>
<td>Van Wijmen – Obidein</td>
<td>09.12.1999</td>
<td>Construction</td>
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<td>1515</td>
<td>TBI Holdings B.V. and Osparlan B.V.</td>
<td>10.12.1999</td>
<td>Building products</td>
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<tr>
<td>1514</td>
<td>Koninklijke BAM Groep B.V. and Infranet Infra B.V.</td>
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<tr>
<td>1512</td>
<td>VSN B.V. and RCV Entertainment B.V.</td>
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<tr>
<td>1511</td>
<td>Hansen AK VI B.V. and Rural Industrie B.V.</td>
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<td>Building materials</td>
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<td>1510</td>
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<td>1508</td>
<td>Sara Lee Meats Europe B.V., Meester B.V., Nistria Dieetvleeswaren B.V.</td>
<td>21.10.1999</td>
<td>Production of meat</td>
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<tr>
<td>1506</td>
<td>PinkRocade – ACDS</td>
<td>10.11.1999</td>
<td>Computer service and IT</td>
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<tr>
<td>1535</td>
<td>N.V. Waterbedrijf Evenpoort and N.V. Waterverzuimbedrijf Brabantse Beibosch</td>
<td>07.05.1999</td>
<td>Energy</td>
</tr>
<tr>
<td>1533</td>
<td>Stichting Volkswoningen and ‘Onze Oeconomische Instituten’ Housing Foundation</td>
<td>07.11.1999</td>
<td>Building permits and materials etc.</td>
</tr>
<tr>
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<td>ABN AMRO Participaties B.V., NPM Capital N.V. and</td>
<td>22.09.1999</td>
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<td>1531</td>
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<td>20.12.1999</td>
<td>Agriculture</td>
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<td>1529</td>
<td>Van den Berg B.V. and Van de Kraanweg B.V.</td>
<td>03.10.1999</td>
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<tr>
<td>1528</td>
<td>Praxis Doe-Het-Zelf Center B.V. and Marketkauf Nederland</td>
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<tr>
<td>1526</td>
<td>Koninklijke Wageningen B.V., Van Transportation Engineers B.V.,</td>
<td>15.12.1999</td>
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<td>1525</td>
<td>Koninklijke BAM Groep B.V. and Infranet Infra B.V.</td>
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<td>1524</td>
<td>De Alteris, Kraanverhuur en Transport Klomp B.V. and</td>
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</tr>
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<td>1523</td>
<td>Pirelli S.p.A. and NKF Kabel B.V.</td>
<td>15.12.1999</td>
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<td>France Telecom Group (N.V. Casema) and N.V. Centrale Antenne</td>
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<td>1517</td>
<td>Koninklijke BAM Groep B.V. and Infranet Infra B.V.</td>
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<td>Other commercial services</td>
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<tr>
<td>1516</td>
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</tr>
<tr>
<td>1515</td>
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<td>14.10.1999</td>
<td>Telecommunications</td>
</tr>
<tr>
<td>1514</td>
<td>Unique International N.V. and Brunel International N.V.</td>
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<td>1513</td>
<td>Koninklijke BAM Groep B.V. and Infranet Infra B.V.</td>
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<td>Other commercial services</td>
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<tr>
<td>1511</td>
<td>Hermans Holding B.V., Beleggingsmaatschap Scholtens B.V. and</td>
<td>18.10.1999</td>
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<tr>
<td>1510</td>
<td>Travel Line – Kraanverhuur en Transport Klomp B.V.</td>
<td>29.10.1999</td>
<td>Retail trade</td>
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<tr>
<td>1508</td>
<td>KPN Telecom B.V. and TNT Holding B.V.</td>
<td>12.11.1999</td>
<td>Telecommunications</td>
</tr>
<tr>
<td>1506</td>
<td>PinkRocade – ACDS</td>
<td>10.11.1999</td>
<td>Computer service and IT</td>
</tr>
<tr>
<td>1505</td>
<td>ABN AMRO Holding N.V. and N.V. Bouwfonds Nederlands Gemeenten</td>
<td>20.10.1999</td>
<td>Production of other goods</td>
</tr>
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Decisions on exemptions

Exemption granted.

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<tr>
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<td>Pursuant to Article 17 of the Competition</td>
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<td>Livestock and Meat Product Board</td>
<td>19.04.1999</td>
<td>Slaughterhouses and meat processing</td>
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<td>447</td>
<td>Bloemenexpresse-Fleurop</td>
<td>17.06.1999</td>
<td>Retail trade</td>
<td>Pursuant to Article 17 of the Competition</td>
</tr>
<tr>
<td>807</td>
<td>State Lottery, Lotto and Bankgiro Lottery</td>
<td>29.03.1999</td>
<td>Other recreation</td>
<td>Pursuant to Article 17 of the Competition</td>
</tr>
<tr>
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<td>PNEM-MEGA Groep N.V. and N.V. EDON Groep</td>
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<td>Energy</td>
<td>Pursuant to Article 17 of the Competition</td>
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<tr>
<td>189</td>
<td>Teleflora</td>
<td>17.06.1999</td>
<td>Retail trade</td>
<td>Pursuant to Article 17 of the Competition</td>
</tr>
<tr>
<td>38, 39, 40, 41</td>
<td>Takel en Berging (Omnicare, SOS, 30.03.1999 Transport services, Verzekeraarshulpdienst, Elvia, Eurocross, DIMA, ZLM and Incident Management Foundation)</td>
<td>7.12.1999</td>
<td>Telecommunications</td>
<td>Pursuant to Article 17 of the Competition</td>
</tr>
<tr>
<td>374</td>
<td>Foundation of the Restructuring Fund for Pig Slaughterhouses</td>
<td>23.05.1999</td>
<td>Slaughterhouses and meat processing</td>
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<td>492</td>
<td>Netherlands Association of Flower Auctions</td>
<td>09.07.1999</td>
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<td>553</td>
<td>Amsterdam Federation of Housing Corporations</td>
<td>04.05.1999</td>
<td>Construction</td>
<td>Pursuant to Article 17 of the Competition</td>
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</tbody>
</table>

Decisions on licensing requirements

Concentrations that the NMa Director General decided could give rise to or strengthen a dominant position in 1999. A licence is required for these concentrations.

<table>
<thead>
<tr>
<th>No.</th>
<th>Parties</th>
<th>Date</th>
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<tbody>
<tr>
<td>807</td>
<td>State Lottery, Lotto and Bankgiro Lottery</td>
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<tr>
<td>1175</td>
<td>PNEM-MEGA Groep N.V. and N.V. EDON Groep</td>
<td>15.06.1999</td>
<td>Energy</td>
<td>Pursuant to Article 17 of the Competition</td>
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<table>
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<tr>
<td>807</td>
<td>State Lottery, Lotto and Bankgiro Lottery</td>
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<tr>
<td>1175</td>
<td>PNEM-MEGA Groep N.V. and N.V. EDON Groep</td>
<td>15.06.1999</td>
<td>Energy</td>
<td>Pursuant to Article 17 of the Competition</td>
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Decisions on Article 40

<table>
<thead>
<tr>
<th>No.</th>
<th>Parties</th>
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<th>Sector</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1011</td>
<td>Telecom Teleervices</td>
<td>15.04.1999</td>
<td>Telecommunications</td>
<td>Pursuant to Article 17 of the Competition</td>
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</tbody>
</table>

Decisions on Article 35, lid 3

<table>
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</thead>
<tbody>
<tr>
<td>42</td>
<td>Takel en Berging Inter Partner</td>
<td>30.03.1999</td>
<td>Transport services</td>
<td>Pursuant to Article 17 of the Competition</td>
</tr>
</tbody>
</table>

Exemption granted for part of application, rejected for other parts.

<table>
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<tr>
<th>No.</th>
<th>Parties</th>
<th>Date</th>
<th>Sector</th>
<th>Brief description</th>
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</thead>
<tbody>
<tr>
<td>263</td>
<td>Duni A.B. and De Ster Holding B.V.</td>
<td>27.09.1999</td>
<td>Production of other goods</td>
<td>Pursuant to Article 17 of the Competition</td>
</tr>
<tr>
<td>408</td>
<td>TDC Logistics B.V. and Van Straaten Beheer B.V.</td>
<td>14.10.1999</td>
<td>Transport</td>
<td>Pursuant to Article 17 of the Competition</td>
</tr>
</tbody>
</table>

Exemption granted.

Exemption granted for part of application, rejected for other parts.

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<tr>
<th>No.</th>
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<tr>
<td>42</td>
<td>Takel en Berging Inter Partner</td>
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<td>Transport services</td>
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</tbody>
</table>

Exemption granted.

Exemption granted for part of application, rejected for other parts.

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<tr>
<th>No.</th>
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<th>Sector</th>
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<td>459</td>
<td>Duni A.B. and De Ster Holding B.V.</td>
<td>27.09.1999</td>
<td>Production of other goods</td>
<td>Pursuant to Article 17 of the Competition</td>
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<tr>
<td>408</td>
<td>TDC Logistics B.V. and Van Straaten Beheer B.V.</td>
<td>14.10.1999</td>
<td>Transport</td>
<td>Pursuant to Article 17 of the Competition</td>
</tr>
</tbody>
</table>

Decisions on Article 35, lid 3

<table>
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<tr>
<th>No.</th>
<th>Parties</th>
<th>Date</th>
<th>Sector</th>
<th>Brief description</th>
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</thead>
<tbody>
<tr>
<td>1439</td>
<td>Duni A.B. and De Ster Holding B.V.</td>
<td>27.09.1999</td>
<td>Production of other goods</td>
<td>Pursuant to Article 17 of the Competition</td>
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Decisions on Article 40

<table>
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<tbody>
<tr>
<td>1011</td>
<td>Telecom Teleervices</td>
<td>15.04.1999</td>
<td>Telecommunications</td>
<td>Pursuant to Article 17 of the Competition</td>
</tr>
</tbody>
</table>

Decisions on Article 35, lid 3

<table>
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<tr>
<th>No.</th>
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<tr>
<td>1439</td>
<td>Duni A.B. and De Ster Holding B.V.</td>
<td>27.09.1999</td>
<td>Production of other goods</td>
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<tr>
<td>408</td>
<td>TDC Logistics B.V. and Van Straaten Beheer B.V.</td>
<td>14.10.1999</td>
<td>Transport</td>
<td>Pursuant to Article 17 of the Competition</td>
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<tr>
<td>169</td>
<td>Wood Import Combine</td>
<td>03.12.1999</td>
<td>Timber trading</td>
<td>No appreciable competitive restraint.</td>
</tr>
<tr>
<td>204</td>
<td>Multinorg</td>
<td>25.10.1999</td>
<td>Health care</td>
<td>No appreciable competitive restraint.</td>
</tr>
<tr>
<td>237, 531, 487</td>
<td>V.A.N. Gaming Machines Sectoral</td>
<td>15.09.1999</td>
<td>Commercial services/ amusement</td>
<td>No appreciable competitive restraint.</td>
</tr>
<tr>
<td>506, 314, 465</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>292</td>
<td>Poultry and Egg Product Board</td>
<td>01.12.1999</td>
<td>Slaughterhouses and meat processing</td>
<td>No appreciable competitive restraint.</td>
</tr>
<tr>
<td>477</td>
<td>K.O. Bax group</td>
<td>01.07.1999</td>
<td>Construction</td>
<td>No appreciable competitive restraint.</td>
</tr>
<tr>
<td>350</td>
<td>V.A.N. Gaming Machines</td>
<td>01.12.1999</td>
<td>Commercial services/ amusement</td>
<td>No appreciable competitive restraint.</td>
</tr>
<tr>
<td>409</td>
<td>Uitgeverij Waanders</td>
<td>01.06.1999</td>
<td>Publishers/ printers</td>
<td>Exemption pursuant to the Economic Competition Act (WEM) applies until 01.01.2005.</td>
</tr>
<tr>
<td>516</td>
<td>Postkantoren B.V. and Postaal agents</td>
<td>09.05.1999</td>
<td>Post</td>
<td>Postkantoren B.V. and agencies form an economic unit so Article 6 does not apply.</td>
</tr>
<tr>
<td>517</td>
<td>Netherlands Association of Installation Companies</td>
<td>13.04.1999</td>
<td>Construction</td>
<td>No decision, agreement or concerted practices are involved (Article 6, Clause 1).</td>
</tr>
<tr>
<td>541</td>
<td>Sand quarrying agreements for Watergoed</td>
<td>13.08.1999</td>
<td>Construction</td>
<td>This is a matter of 'government coercion'.</td>
</tr>
<tr>
<td>594</td>
<td>Messer standard delivery contracts</td>
<td>25.07.1999</td>
<td>Gas</td>
<td>No appreciable competitive restraint.</td>
</tr>
<tr>
<td>645</td>
<td>Messer standard user agreements</td>
<td>25.07.1999</td>
<td>Gas</td>
<td>No appreciable competitive restraint.</td>
</tr>
<tr>
<td>628</td>
<td>Creafor/Steenkamer</td>
<td>07.07.1999</td>
<td>Retail trade</td>
<td>The block exemption for sole trading applies.</td>
</tr>
<tr>
<td>650</td>
<td>Vobis</td>
<td>31.05.1999</td>
<td>Retail trade</td>
<td>No appreciable competitive restraint.</td>
</tr>
<tr>
<td>734</td>
<td>Painters Arbo Flexi Plan Foundation</td>
<td>02.11.1999</td>
<td>Construction</td>
<td>No appreciable competitive restraint.</td>
</tr>
<tr>
<td>741</td>
<td>Partnership agreement between Sap and EPON/52/H/UNA/EP2</td>
<td>31.08.1999</td>
<td>Energy</td>
<td>The temporary exemption of Article 16 of the Competition Act applies.</td>
</tr>
<tr>
<td>741</td>
<td>Electricity Production and Distribution Protocol</td>
<td>31.08.1999</td>
<td>Energy</td>
<td>Ditto.</td>
</tr>
<tr>
<td>757</td>
<td>Association of Insurers (millennium policy)</td>
<td>10.08.1999</td>
<td>Insurance</td>
<td>The block exemption for the insurance sector (OJ EEC/1993/518) applies, and there is no further appreciable restriction of competition.</td>
</tr>
</tbody>
</table>

Rejected.

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<tr>
<td>275</td>
<td>Libertel Group B.V.</td>
<td>04.08.1999</td>
<td>Telecommunications</td>
<td>Part of the agreement is compliant with Article 6, part fails to comply with the conditions for exemption as laid down in Article 17 of the Competition Act.</td>
</tr>
<tr>
<td>466</td>
<td>Vastned Group B.V.</td>
<td>01.04.1999</td>
<td>Retail trade</td>
<td>No compliance with the conditions for exemption, as laid down in Article 17 of the Competition Act.</td>
</tr>
<tr>
<td>507, 617</td>
<td>Nederzand sand quarrying and 620 agreement and individual project agreements for Huisvliks kampen and Geertjezegol</td>
<td>13.08.1999</td>
<td>Construction</td>
<td>Ditto.</td>
</tr>
</tbody>
</table>

* An administrative appeal was filed against this decision.
### 3. Decisions on complaints

Based on Article 6 of the Competition Act.

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<tr>
<th>No.</th>
<th>Parties</th>
<th>Date</th>
<th>Sector</th>
<th>Brief description</th>
</tr>
</thead>
<tbody>
<tr>
<td>60</td>
<td>KMIBB and BNA versus Oud-Beijerland municipal authority</td>
<td>09.06.1999</td>
<td>Construction</td>
<td>The compulsory selection of architects was withdrawn from the procedure.</td>
</tr>
<tr>
<td>146</td>
<td>Driepaal municipal authority versus IBM</td>
<td>04.02.1999</td>
<td>Commercial services</td>
<td>Concealed practices with IBM cannot reasonably be assumed.</td>
</tr>
<tr>
<td>280</td>
<td>Velthuysen versus Voegerb GP's</td>
<td>16.02.1999</td>
<td>Health care</td>
<td>An infringement of Article 6 of the Competition Act cannot reasonably be assumed.</td>
</tr>
<tr>
<td>592</td>
<td>Buiteman and BNA c.a. versus Leaard municipal authority</td>
<td>09.06.1999</td>
<td>Construction</td>
<td>No evidence of any restriction, obstruction, or distortion of competition within the meaning of Article 6 of the Competition Act.</td>
</tr>
<tr>
<td>1087</td>
<td>Sturkoom vs. Restructuring Fund for Pig Slaughters and meat processing</td>
<td>25.03.1999</td>
<td>Slaughterhouses and Restructuring Fund for Pig Slaughters and meat processing</td>
<td>The complaint was rejected as an exemption agreement.</td>
</tr>
<tr>
<td>1056</td>
<td>BCC versus millennium policy of the Association of Insurers</td>
<td>10.08.1999</td>
<td>Insurance</td>
<td>Article 6 of the Competition Act does not apply.</td>
</tr>
<tr>
<td>4293</td>
<td>Unipart versus Libertel SPO</td>
<td>15.08.1999</td>
<td>Telecommunications</td>
<td>Unipart is not an interested party, within the meaning of the General Administrative Law Act.</td>
</tr>
</tbody>
</table>

Based on Article 24 of the Competition Act.

<table>
<thead>
<tr>
<th>No.</th>
<th>Parties</th>
<th>Date</th>
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</tr>
</thead>
<tbody>
<tr>
<td>54</td>
<td>Diatron versus E-trade</td>
<td>15.02.1999</td>
<td>Commercial services</td>
<td>No abuse can reasonably be assumed.</td>
</tr>
<tr>
<td>49</td>
<td>Triple A Trading versus Veerman Kantoormachines</td>
<td>24.03.1999</td>
<td>Post</td>
<td>The Competition Act was not yet in force, and even then, there was no dominant position.</td>
</tr>
<tr>
<td>118</td>
<td>OBR/Project Innovation versus Nozama</td>
<td>09.06.1999</td>
<td>Media</td>
<td>No abuse can reasonably be assumed.</td>
</tr>
<tr>
<td>413</td>
<td>Leidsje stripshop versus PS Games</td>
<td>21.01.1999</td>
<td>Retail trade</td>
<td>Refusal to deliver, in the sense of abuse of a dominant position, cannot reasonably be assumed.</td>
</tr>
<tr>
<td>600</td>
<td>ICT versus Waterbedrijf Europost</td>
<td>24.02.1999</td>
<td>Energy</td>
<td>Grounds for the complaint removed.</td>
</tr>
<tr>
<td>1051</td>
<td>VUStichting versus Publishers/ printers</td>
<td>26.03.1999</td>
<td></td>
<td>Abuse of a dominant position cannot reasonably be assumed.</td>
</tr>
<tr>
<td>1060</td>
<td>Van Weringen versus Zorg en zekerheid</td>
<td>01.04.1999</td>
<td>Health care</td>
<td>No abuse can reasonably be assumed.</td>
</tr>
<tr>
<td>1970</td>
<td>Various complainants versus Casema</td>
<td>17.12.1999</td>
<td>Telecommunications</td>
<td>The complainants are not interested parties, within the meaning of the General Administrative Law and marginal tests.</td>
</tr>
</tbody>
</table>

5. Decisions imposing sanctions

<table>
<thead>
<tr>
<th>No.</th>
<th>Parties</th>
<th>Date</th>
<th>Sector</th>
<th>Brief description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1750</td>
<td>AVEBE et al. versus Sep et al.</td>
<td>30.12.1999</td>
<td>Energy</td>
<td>No infringement of Article 6 (exemption of Article 16 of the Competition Act) and no abuse.</td>
</tr>
<tr>
<td>1400</td>
<td>Nellen Seeds versus Netherland's</td>
<td>11.11.1999</td>
<td>Agriculture</td>
<td>Grounds for the complaint removed.</td>
</tr>
</tbody>
</table>

Request for provisional measures subject to penalties.

<table>
<thead>
<tr>
<th>No.</th>
<th>Parties</th>
<th>Date</th>
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<th>Brief description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1114</td>
<td>Dutch Farm Veterinary</td>
<td>31.08.1999</td>
<td>Production of chemical</td>
<td>At first glance, there was no infringement of Article 24 of the Competition Act, or of Diopharma International activities. The provisional measures no longer serve any purpose.</td>
</tr>
</tbody>
</table>

4. Other decisions

<table>
<thead>
<tr>
<th>No.</th>
<th>Parties</th>
<th>Date</th>
<th>Sector</th>
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</tr>
</thead>
<tbody>
<tr>
<td>805</td>
<td>Edipress versus Audax</td>
<td>21.12.1999</td>
<td>Publishers/printers</td>
<td>The NMa Director General withdrew the measures subject to penalty imposed on Audax by a decision of 11 August 1998. The measures were imposed in favour of Edipress. As Edipress discontinued its activities, the provisional measures no longer serve any purpose.</td>
</tr>
</tbody>
</table>

5. Decisions imposing sanctions

<table>
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<tr>
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<th>Date</th>
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</tr>
</thead>
<tbody>
<tr>
<td>62</td>
<td>Autobedrijf Veenhuis versus Huisen en Mattiesen municipal authority</td>
<td>15.02.1999</td>
<td>Services for oil and gas production</td>
<td>The NMa Director General refused from imposing measures subject to penalties and/or a fine, as the agreement between the parties was modified very shortly after the Competition Act came into force and a recurrence of the infringement cannot reasonably be assumed.</td>
</tr>
<tr>
<td>590</td>
<td>Free Record Shop B.V. versus Erasmus</td>
<td>25.03.1999</td>
<td>Publishers/printers</td>
<td>The NMa Director General found that a price condition such as that contained in the delivery agreements used by Erasmus infringed Article 6 of the Competition Act. On the basis of Article 56, Clause 1 in conjunction with Article 6a, Clause 1 of the Competition Act, Erasmus was ordered to remove the price clause from its delivery agreements and to notify all customers/retailers and the NMa Director General thereof in writing. With the application of Article 56, Clause 1 in conjunction with Article 6a, Clause 1 of the Competition Act, the NMa Director General ordered Erasmus to pay fines of NLG 1,100 and NLG 500 for each day that it failed to comply with these orders. The amount above which Erasmus was not liable to pay the fines was set at NLG 50,000.</td>
</tr>
</tbody>
</table>

86
6. Decisions on administrative appeals

<table>
<thead>
<tr>
<th>No.</th>
<th>Parties</th>
<th>Date</th>
<th>Sector</th>
<th>Brief description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Artistic training and education</td>
<td>04.06.1999</td>
<td>Education</td>
<td>The NMa Director General ruled that the appeal was unfounded. The NMa Director General upheld his view that the conduct of the Music School and the School for Expression are not independent entities, but part of Rosendal municipality. The municipal authority has not contravened Article 24 of the Competition Act. Although the charges are below the cost price, this is not for the purpose of eliminating competition. The appeal was unfounded. The NMa Director General held his view that the conduct of the Music School and the School for Expression are not independent entities, but part of Rosendal municipality. The municipal authority has not contravened Article 24 of the Competition Act.</td>
</tr>
<tr>
<td>6</td>
<td>Happy Radio versus General Programme Council Foundation</td>
<td>29.04.1999</td>
<td>Telecommunications</td>
<td>The NMa Director General ruled that the appeal was unfounded. The Director General upheld his view that the conduct of A2000, which complies with the Media Act, cannot be regarded as within the meaning of Article 24 of the Competition Act.</td>
</tr>
</tbody>
</table>

An appeal against this decision was filed with the Rotterdam Court of Appeal.

88
No. | Parties | Date | Sector | Brief description
--- | --- | --- | --- | ---
381 | VBB Schilderbedrijf | 04.02.1999 | Construction | The NMa Director General ruled that the appeal was unfounded. He found that CBR cannot be regarded as an undertaking within the meaning of the Competition Act and that therefore, the provisions of the Act do not apply.  

150 | Essers versus N.V. TeleKabel | 13.04.1999 | Telecommunications | The NMa Director General ruled that the appeal was unfounded, to the extent that they are made against the fact that Essers was not qualified as an interested party, and inadmissible in other respects, as TeleKabel has no interests that should be honoured in law in a decision on its appeal.  

183 | Van Vollenhove Olie | 09.07.1999 | Services for oil and gas production | The NMa Director General ruled that the appeal was unfounded. He upheld his view that an exclusivity agreement violating Article 6 of the Competition Act (still) existed in 1998. Furthermore, he found that there could be no abuse of a dominant position within the meaning of Article 24 of the Competition Act, as the contested conduct was a direct result of a zoning plan.  

191 | Loke versus CBR | 21.01.1999 | Education | The NMa Director General ruled that the appeal was unfounded. He found that CBR cannot be regarded as an undertaking within the meaning of the Competition Act and that therefore, the provisions of the Act do not apply.  

528 | Netherlands Daily Newspaper | 21.12.1999 | Media | The NMa Director General ruled that the appeal was unfounded.  

803 | Edipress versus Audax | 25.02.1999 | Publishers/printers | The NMa Director General ruled that the appeal was against his decision to withhold some documents from public inspection. He found that the decision directly affects the interests of the party concerned. This condition was not met in this case.  

379 | Royal Netherlands Veterinary Association (KNMvD) | 15.10.1999 | Health care/veterinary services | The NMa Director General found that this was a decision within the meaning of Article 6:3 of the General Administrative Law Act, against which there is no appeal, unless the decision directly affects the interests of the party concerned. This condition was not met in this case.  

407 | NOS | 09.11.1999 | Media | The NMa Director General ruled that the appeal was unfounded. On administrative appeal, the NMa Director General reaffirmed his decision of 23 December 1998, rejecting a request for exemption for a licensing agreement on programme information, under which Veronicablad is required to take account of the same content and marketing restrictions as the magazines of the public broadcasting associations. The opinion of the Media Commission does not constitute approval within the meaning of Article 16 of the Competition Act.  

788 | M.L. Wolters versus Uitgeverij Noozie Wolters van Bemmel | 15.04.1999 | Publishers/printers | The NMa Director General ruled that the appeal was unfounded. Exemption cannot be granted in the general interest unless the conditions of Article 17 of the Competition Act are met.  

459 | NOS | 09.11.1999 | Media | The NMa Director General ruled that the appeal was unfounded.  

91 | Edipress versus Audax | 25.02.1999 | Publishers/printers | The NMa Director General ruled that the appeal was unfounded. A violation of the Competition Act can reasonably assumed in view of non-compliance with an instruction pursuant to the WEM, which, pursuant to transitional law, is regarded as an order pursuant to...
<table>
<thead>
<tr>
<th>No.</th>
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</tr>
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<tbody>
<tr>
<td>925</td>
<td>Buiteman versus Leerdam municipal authority</td>
<td>05.11.19</td>
<td>Other commercial services</td>
<td>Article 56 of the Competition Act. An appeal against this instruction has been filed with the CBB. In principle, findings in proceedings on the merits of a case, such as the proceedings on provisional measures subject to penalties, are regarded as established facts. The NMa Director General ruled that the appeal was unfounded and reaffirmed his earlier ruling that Article 6 of the Competition Act does not apply, since Leerdam municipal authority selected architects during the development of its own municipal plans.</td>
</tr>
<tr>
<td>992</td>
<td>5 Buiteman versus Leerdam 03.11.99 Other commercial services</td>
<td>The NMa Director General found in favour of the appeal against the failure to take a decision on the complaint in good time, as the period within which a decision should have been taken had expired. The investigations relating to the request will be completed within six months.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>995</td>
<td>Association of Netherlands Prosthodontists (ONT) 17.05.1999 Health care</td>
<td>The NMa Director General found in favour of the appeal against the failure to take a decision on the complaint in good time, as the period within which a decision should have been taken had expired. The investigations relating to the request will be completed within four months.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1028</td>
<td>Central Street Trade Association versus Aalsmeer United Flower Auctions (VBA) 06.07.1999 Wholesale trade</td>
<td>The NMa Director General ruled that the appeal was inadmissible, as there is no exemption for failure to submit an administrative appeal within the required period.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1029</td>
<td>Huis versus Aalsmeer United Flower Auctions (VBA) 15.12.1999 Wholesale trade</td>
<td>The NMa Director General ruled that the appeal was unfounded, as neither Article 6 nor Article 24 of the Competition Act applies to the (altered) charges for buyers at the flower auction.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1052</td>
<td>IT Holland versus Microsoft 12.05.1999 Computer service and IT agencies etc.</td>
<td>The NMa Director General ruled that the appeal was unfounded. Microsoft is not required to accept the return of the Windows operating system supplied with a laptop for payment of a financial sum. The new complaint, as formulated during the appeal proceedings, will be processed by the Investigations, Supervision and Exemptions section.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1155</td>
<td>Kraamzorg de Eilanden 03.09.1999 Health care</td>
<td>The NMa Director General found in favour of the appeal against the failure to take a decision on the complaint in good time, as the period within which a decision should have been taken had expired. The investigations relating to the complaint will be completed within four months.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1231</td>
<td>Mulder (appeal pursuant to the Government Information (Public Access) Act (WOB)) 19.04.1999 Retail trade</td>
<td>The NMa Director General ruled that the appeal was unfounded. The Competition Act includes an exhaustive public information regulation superseding the WOB, and the WOB does not, therefore, apply.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* An appeal against this decision was filed with the Rotterdam Court of Appeal.
Annex II

Court rulings

1. Rulings of Rotterdam District Court

By way of departure from the General Administrative Law Act, only Rotterdam Court of Appeal is competent to hear appeals against decisions pursuant to the Competition Act. The appeal cases did not lead to any rulings in 1999. A ruling from Rotterdam District Court on a petition for a provisional decision, within the meaning of Article 8:81 of the General Administrative Law Act is included below.

<table>
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<tr>
<th>Date</th>
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</tr>
</thead>
<tbody>
<tr>
<td>01.04.1999</td>
<td>Nederlands Dagbladpers (NDP) versus Drent et al.</td>
<td>528</td>
<td>Rotterdam District Court rejected a petition from Director General of the NMa to suspend the NMa Director General’s decision of 5 February 1999.</td>
</tr>
</tbody>
</table>

2. Rulings of the Regulatory Industrial Organisation Appeals Court

The Competition Act may also be raised in proceedings between market parties. These cases are heard by the civil courts, often in summary proceedings. As the NMa is not, in principle, involved in these proceedings, it is not known how often it was raised. Civil court rulings of known to the NMa are listed below. The issues relevant to competition law are briefly listed for each case.

<table>
<thead>
<tr>
<th>Date</th>
<th>Case</th>
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</tr>
</thead>
<tbody>
<tr>
<td>10.02.1999</td>
<td>Association of Rotterdam Ship Brokers et al. versus Minister of Economic Affairs</td>
<td>95/1088/106/3709</td>
<td>Articles 10 and 12 of the WEM; Decision on horizontal price-fixing, transitional law, pursuant to Article 105, Clause 2 of the Competition Act.</td>
</tr>
</tbody>
</table>

3. Rulings of the Dutch courts

The Competition Act may also be raised in proceedings between market parties. The cases are heard by the civil courts, often in summary proceedings. As the NMa is not, in principle, involved in these proceedings, it is not known how often it was raised. Civil court rulings of known to the NMa are listed below. The issues relevant to competition law are briefly listed for each case.

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</tr>
</thead>
<tbody>
<tr>
<td>The Hague District Court</td>
<td>05.01.1999</td>
<td>Netherlands Broadcasting Corporation (NOS) et al. versus N.V. Holding-maat Beschripping Te Telegraaf et al.</td>
<td>KG 98/1359</td>
<td>Article 24 of the Competition Act; Decision on programme information, licensing agreement, copyright law.</td>
</tr>
<tr>
<td>Amsterdam District Court</td>
<td>14.01.1999</td>
<td>Drent et al. versus ZAO Zorgverzekering u.a.</td>
<td>KG 98/355/6VB</td>
<td>Article 24 of the Competition Act; employment contract.</td>
</tr>
<tr>
<td>Amsterdam District Court</td>
<td>28.01.1999</td>
<td>Canal+ Nederland B.V. versus Kabeltelevisie Amsterdam B.V.</td>
<td>KG 99/145/6CH</td>
<td>Article 24 of the Competition Act; transmission contract.</td>
</tr>
<tr>
<td>The Hague District Court</td>
<td>28.01.1999</td>
<td>Fruit and Vegetable Wholesale and Intermediate Trade Association et al. versus Netherlands Fruit and Vegetable Co-operative et al.</td>
<td>KG 99/75</td>
<td>Article 24 of the Competition Act; price change.</td>
</tr>
<tr>
<td>The Hague District Court</td>
<td>09.02.1999</td>
<td>Van Eerd Wholesale Trade B.V. versus C.V. Intergro B.A.</td>
<td>KG 98/119/MA</td>
<td>Articles 6 and 24 of the Competition Act; licensing agreement.</td>
</tr>
<tr>
<td>The Hague District Court</td>
<td>15.02.1999</td>
<td>Thijm B.V. versus Diesel Benelux B.V.</td>
<td>KG 98/142/HE</td>
<td>Articles 6 and 24 of the Competition Act; distribution contract, refusal to deliver.</td>
</tr>
<tr>
<td>The Hague District Court</td>
<td>18.02.1999</td>
<td>J. van der Roest (De Vliegspécialiste)</td>
<td>505/58 KG</td>
<td>Article 6 and 24 of the Competition Act; Restriction of range.</td>
</tr>
<tr>
<td>Zuidplein District Court</td>
<td>25.02.1999</td>
<td>J.B.H.F. Goos versus Hanos Apeldoorn et al.</td>
<td>17600/HAZA</td>
<td>Article 6 of the Competition Act; competition clause, establishment contract.</td>
</tr>
<tr>
<td>Utrecht District Court</td>
<td>02.03.1999</td>
<td>C.R. Mulder versus ANDOVA Zorgverzekeringen u.a. et al.</td>
<td>95/92/9 ZA</td>
<td>Articles 6 and 24 of the Competition Act; Employment contract.</td>
</tr>
<tr>
<td>The Hague District Court</td>
<td>09.03.1999</td>
<td>Denda Multimedia B.V. et al. versus Koninklijke KPN Nederland B.V.</td>
<td>KG 93/319</td>
<td>Article 24 of the Competition Act; refusal to supply, provisional assessment of the Director General of the NMa, Articles 35, 36, and 39 to 62 of the Competition Act.</td>
</tr>
<tr>
<td>Leeuwarden District Court</td>
<td>10.03.1999</td>
<td>Kapenga Beheer B.V. versus Beheer Miedema B.V.</td>
<td>98/00169</td>
<td>Article 6 of the Competition Act, sectoral protection agreement, appreciable restriction, relevant market.</td>
</tr>
<tr>
<td>Zuidplein District Court</td>
<td>18.03.1999</td>
<td>H.F. Goos versus Hanos Apeldoorn B.V.</td>
<td>1851/HAZA</td>
<td>Article 6 and 7 of the Competition Act; receivability restrictions, appreciable restriction.</td>
</tr>
<tr>
<td>Leeuwarden District Court</td>
<td>07.04.1999</td>
<td>T.J. Lindelboom versus W.W.</td>
<td>1990/55</td>
<td>Article 6 and 24 of the Competition Act; Assessment of the Director General of the NMa, Articles 52, 56, and 59 to 62 of the Competition Act.</td>
</tr>
<tr>
<td>Leeuwarden District Court</td>
<td>07.04.1999</td>
<td>C.V. Intergro B.A. versus Zorg en Zekerheid u.a.</td>
<td>98/356</td>
<td>Article 6 and 24 of the Competition Act; Employment contract.</td>
</tr>
<tr>
<td>Leeuwarden District Court</td>
<td>07.04.1999</td>
<td>De Zaaijer B.V. versus K.P.</td>
<td>99/368</td>
<td>Article 6 and 24 of the Competition Act; Employment contract.</td>
</tr>
<tr>
<td>Leeuwarden District Court</td>
<td>07.04.1999</td>
<td>P.P.S. E. Belgium N.V. et al.</td>
<td>1245/98 SKG</td>
<td>Article 6 and 24 of the Competition Act; Employment contract.</td>
</tr>
<tr>
<td>Leeuwarden District Court</td>
<td>07.04.1999</td>
<td>T.M. Vos versus K.P.</td>
<td>1245/98 SKG</td>
<td>Article 6 and 24 of the Competition Act; Employment contract.</td>
</tr>
<tr>
<td>Leeuwarden District Court</td>
<td>07.04.1999</td>
<td>P.R. Rijksverslag versus K.P.</td>
<td>1245/98 SKG</td>
<td>Article 6 and 24 of the Competition Act; Employment contract.</td>
</tr>
<tr>
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</tr>
<tr>
<td>The Hague</td>
<td>11.05.1999</td>
<td>Fruit and Vegetable Wholesaling and Intermediate Trade Association et al. versus Netherlands Fruit and Vegetable Co-operative et al.</td>
<td>99/0213</td>
<td>Article 24 of the Competition Act; price changes.</td>
</tr>
<tr>
<td>Breda District Court</td>
<td>21.05.1999</td>
<td>Dutch Farm Veterinary Pharmaceuticals B.V. versus Dopharma Research B.V. et al.</td>
<td>70335/KG ZA 99-18</td>
<td>Article 24 of the Competition Act; refusal to deliver; relevant market.</td>
</tr>
<tr>
<td>Maastricht District Court</td>
<td>16.08.1999</td>
<td>Kerkrade B.V. versus Woonboulevard III B.V.</td>
<td>50015/RG 99.350</td>
<td>Article 6 of the Competition Act; restriction of range; decision on exemption agreements; appreciable restriction.</td>
</tr>
<tr>
<td>Rotterdam District Court</td>
<td>09.09.1999</td>
<td>Royal Netherlands Football Association (KNVB) versus Feyenoord Foundation</td>
<td>58125/HA ZA 98.1428</td>
<td>Article 6 of the Competition Act; broadcasting rights; nullity.</td>
</tr>
<tr>
<td>Breda District Court</td>
<td>16.09.1999</td>
<td>Boulangerie Royale B.V. versus Geert De Bakker V.O.F. et al.</td>
<td>75438/KG ZA 99.248</td>
<td>Article 6 of the Competition Act; franchising agreement; take-up commitment.</td>
</tr>
<tr>
<td>The Hague Court of Appeal</td>
<td>30.09.1999</td>
<td>Onderlinge Waarborgmaatschappij versus Zorgzekerzaar Zorg en Zekerheid u.a.</td>
<td>58/056</td>
<td>Article 6 of the Competition Act; definition of undertaking, horizontal and vertical.</td>
</tr>
<tr>
<td>The Hague Supreme Court</td>
<td>15.10.1999</td>
<td>G.J.W. Driessen versus Benegas B.V.</td>
<td>198/1128HR</td>
<td>Article 6 of the Competition Act; exclusive take-up, definition of undertaking.</td>
</tr>
<tr>
<td>Utrecht District Court</td>
<td>26.11.1999</td>
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