NMa and DTe Annual Report 2000

2000

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Netherlands Competition Authority

NMa

2000

Annual Report of the Netherlands Competition Authority (NMa)

and the Office for Energy Regulation (DTe)

Preface

Before you is the annual report of the Netherlands Competition Authority (NMa) and the Office for Energy Regulation (DTe) for the year 2000. This report provides the third interim evaluation of the development of NMa/DTe.

The Netherlands is undergoing a 'cultural adjustment', according to the former EU Commissioner Karel van Miert. 'Your country has traditionally been one of the genuine cartel countries,' is the mirror that he holds up to us in an interview in this annual report. In every Dutch passport, a description is still given of the industrialisation wave at the beginning of the 20th century, which in our country was characterised by the formation of cartels. The term 'prohibition on cartels' (in Dutch, kartelverbod) is now included in the official list of words comprising the Dutch language. Concepts such as 'monopoly' and 'cartel' have acquired a negative connotation. The Netherlands is also becoming used to NMa/DTe; newspaper headlines no longer refer uncomfortably to 'the cartel police', but use the regulators own name.

More important than familiarisation with the regulation of competition, is the fact that the public is becoming used to healthy competitive relations. In the past three years, approximately 350 cartels were eliminated. Within the framework of the regulation of concentrations, mergers and takeovers have occurred which would have resulted in abuse of a dominant position that would have restrained competition. The regulation of the electricity and gas sectors by DTe has already resulted in cost savings to the benefit of consumers.

At the end of 2000, NMa had processed approximately 85 percent of the more than 1100 applications for exemption under the transitional regime governing competition agreements. The rulings in which applications were approved or rejected set clear 'boundaries' in a number of sectors. The rulings give substance to the legislative framework: they show which agreements are and which agreements are not permissible. In the healthcare sector, for instance, it has become clear that price agreements between physiotherapists are not acceptable. The decisions taken in relation to applications for exemption have an important proactive effect. Not only are they important for the undertakings in question, they also provide clarity to others, in all sectors. For instance, there is now a fixed approach to cooperation between companies within and outside the context of branch organisations. NMa will soon set out this approach in the form of guidelines.

In 2000 room was created and used to commence 10 investigations into violations of the prohibition on competition agreements and the abuse of dominant positions. This has given NMa the opportunity to develop further as a proactive competition authority. In 2000 a report was drawn up due to suspected breaches of the prohibition on cartels in the shrimp fishery industry and taxi branches. In addition, six decisions imposing sanctions were taken. NMa will develop further in the coming period into a law enforcement agency that detects and combats restraints on competition.

In 2000 NMa received and processed a large number of notifications (197, compared to 140 in 1999) of concentrations (mergers and acquisitions). In two cases, a licence could only be granted subject to conditions, in order to avoid the emergence of dominant position that would limit competition. In relation to the regulation of concentrations, considerable experience has been acquired in analysing market relationships, which is also of benefit to the NMa's other activities. Experience has shown that the (administrative) cost incurred by companies can be reduced. NMa has already developed a system to simplify the process of notification in cases in which it can reach a decision quickly that there is no reason to fear a restraint on competition. In addition, an indication has been given that the obligation to give notice of mergers and acquisitions of small undertakings may be waived. A General Administrative Order is currently being prepared which will raise the turnover threshold.

DTe set the trend towards greater efficiency and operation of market forces in the energy sector in 2000. A total of 122 decisions were taken to ensure that undertakings in the electricity sector operate more efficiently. Efficient grid management must result in the coming year in a cumulative cost reduction of approximately EUR 500 million. DTe has also approved temporary guidelines to improve operational efficiency and the cost orientation of tariffs.

NMa/DTe is an organisation undergoing a process of development, if for no other reason because it operates in a changing economy. On the basis of the applicable legislation, NMa's central mission is and remains the supervision of the proper functioning of all markets for products and services. These markets are constantly changing. In exercising supervision of the rules governing competition, it is therefore essential that market conditions are assessed. On each occasion the question that is asked is where undertakings can compete and where restraints on competition might be concealed. The concern is not with competition as an end in itself, but with competitive relationships that ought to benefit consumers.

NMa/DTe's work lies where markets are to be found, or rather, where markets ought to be found. Government policy has a direct effect on NMa/DTe's activities. Where the government creates room for competition, NMa/DTe ensures that undertakings do not illegally limit competition. Precisely in relation to the liberalisation of sectors, for instance the energy sector, firm regulation of competition is important. The opportunities that the public domain offers, may not be frustrated in the private domain. It is for this reason that DTe has made a considerable effort to implement the Electricity Act of 1998 and the Gas Act. It is for the same reason that NMa has once again paid considerable attention to healthcare, a sector that is becoming increasingly 'demand driven'.

NMa has been assigned a further duty in relation to the implementation of the Transport (Carriage of Passengers) Act of 2000 [Wet personenvervoer 2000] governing local and regional public transport. New duties are under preparation in relation to the Market and Public

Authorities Act [Wet markt en overheid] (that combats the distortion of competition by public authorities), the new legislation in relation to the railways (governing access to facilities surrounding the railways) and the privatisation of Schiphol (airport tariffs). The golden thread running through these duties is the regulation of markets.

NMa/DTe's position will also change, both at the national and the European level. The Lower House of the Dutch Parliament is debating a Bill that will grant NMa the status of an independent public authority. The proposal formalises existing practice, in which NMa operates independently of political bodies. The difference will be that the Minister of Economic Affairs will no longer have the formal power to issue instructions in relation to individual cases during proceedings. Of course, the possibility of imposing general rules will continue to exist.

In 2001 the Competition Act will also be evaluated. After three years of experience with applying the rules, consideration must be given to ways of strengthening the competition regime in the Netherlands. For NMa/DTe it is important that the legislation contains strict rules that can be applied effectively and efficiently.

Within the European context, NMa will function increasingly as part of a 'network', together with other competition authorities. This is a result of amendments to the way European competition rules are applied. The European Commission submitted a proposal in this regard in 2000. To promote competition, NMa took the initiative to set up a European forum of competition authorities (ECA: European Competition Authorities). DTe is also increasingly active in the European and international contexts. DTe is now a member of a European Council of Regulators in the area of energy (CEER: Council of European Energy Regulators).

Ultimately the success of competition legislation is not measured by the enforcement of the rules by NMa/DTe, but by whether undertakings comply with these rules. NMa/DTe's efforts in enforcing the law are aimed at achieving this. In a number of cases, undertakings appear to be willing to amend their agreements and change their behaviour. Increasingly they make use of the possibility of 'orientations'. Needless to say, regulation cannot be a question of negotiation, but NMa/DTe is, of course, willing to enter into consultation with undertakings and clarify the conditions laid down in the legislation. Where this is necessary and useful, NMa/DTe will also set out the 'dos and don'ts' in guidelines, to provide companies and consumers with maximum transparency.

NMa/DTe wishes to make clear what it does, why it does it, and how it does it. NMa/DTe will further strengthen its communication with companies and the public. Low-threshold access to NMa/DTe is not only of importance in providing the outside world with information, but also for receiving warnings of the disruption of markets.

Due to recent developments, NMa/DTe also has to develop. Of the markets regulated by NMa/DTe, the labour market is a source of concern for a special reason. Regulation is a discipline, a profession; it is work done by professionals; it is an example of 'people business'. It is crucial that the position of NMa/DTe on the labour market is such that NMa is a serious contender in a competitive struggle with private sector employers, such as firms of advocates and accountants. The fixed and generic structure of salary scales and job evaluation, as applied by the Civil Service, imposes limitations, which present a serious obstacle to being a serious contender. It is important that NMa/DTe is also in a position to be a strong regulator in this respect. In any event, it is clear that it is the effort, dedication, quality and team spirit of NMa/DTe's employees that have ensured that the Competition Act, the Electricity Act of 1998 and the Gas Act have had a real impact.

Whoever critically follows events in the outside world, is himself followed critically by the outside world. NMa/DTe is aware of this. A 'customer satisfaction survey' carried out recently by NMa showed that there is every reason to be proud but, of course, there is room for further improvement. NMa/DTe is therefore working, for instance, towards speeding up its procedures and improving the transparency of decision-making. This annual report is evidence that we are a keen to account for ourselves, for what we have done and for what we intend to do.

The Hague, April 2001

A.W. Kist
Director-General

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NMa/DTe in 2000

1.1. General Observations, Duties and Objectives

1.1.1. *General*

Economic markets that function well, in which supply and demand are matched effectively, are an important condition for sustainable economic growth.
A competitive environment is an incentive to companies to be innovative and ensures the competitive strength of Dutch companies. In addition, competition results in the optimisation of the price/quality ratio of products and services. Ultimately it is the consumer who benefits from this.

Markets do not always function well. Poor functioning of markets and distorted competion may have various causes. Possible causes are agreements between undertakings to limit competition or undertakings that abuse a dominant position. In addition dominant positions, resulting from mergers and acquisitions, may obstruct the proper functioning of the markets. In some markets, such as the energy sector and, in general, the network-sectors, natural monopolies exist. By definition these markets are characterised by the poor functioning of the markets and as yet consumers on these markets have no or hardly any freedom of choice. Effective supervision is therefore necessary.

1.1.2. *Activities of NMa*

The Competition Act, which took effect on 1 January 1998, prohibits agreements between undertakings that limit competition, the abuse of a dominant position and the implementation of (major) mergers and acquisitions without prior approval. The duties assigned by the legislature to NMa are set out in article 3 of the Competition Act. These duties, for instance, require NMa to carry out all activities necessary for the implementation of the Competition Act. This means exercising all the authority vested in it and taking any necessary measures.

NMa carries out the following activities, in particular:
- processing applications for exemption from the prohibition on cartels;
- processing complaints with regard to supposed violations of the Competition Act;
- supervising compliance with the Competition Act;
- detecting and investigating the possible formation of cartels and abuse of dominant positions (ex officio investigations);
- assessing proposed concentrations;
- ensuring that violations cease and imposing sanctions;
- processing administrative and judicial appeals;
- giving advice, on request, to Ministries with regard to the effects on competition of proposed or existing regulations and decisions; issues relating to the operation of market forces;
- making a contribution to international consultative bodies with regard to the application of national and European competition rules;
- carrying out or commissioning market research;
- providing information.

1.1.3 *Activities of DTe*

The Electricity Act of 1998 and the Gas Act of 2000 have laid the basis for the liberalisation of the electricity sector and the gas sector. The role of public authorities will change considerably as a result of liberalisation. They will no longer fulfil a central role in the planning of production and supply. Public authorities, however, will have to create the conditions for a free market in these sectors, for instance by ensuring free access to electricity grids and gas networks subject to non-discriminatory conditions. The legislature has assigned this task to DTe, as the regulator and supervisor.

DTe carries out the following activities, in particular:
- taking decisions with regard to the regulation of electricity and gas;
- taking decisions with regard to tariffs for electricity and gas;
- granting licences for the supply of electricity and gas to captive customers;
- issuing mandatory instructions and imposing orders subject to penalties;
- advising the Minister of Economic Affairs, at his request;
- making contributions to international consultative structures of European energy regulators;
- providing information.

1.1.4 *A Changing Environment*

NMa and DTe carry out their activities in a continuously changing environment. Important economic developments take place, markets are subject to changes, changes occur in legislation and the policy of the European Commission and NMa/DTe are assigned new duties. This has consequences for regulation.

Economic Developments

The development of the economy affects the way NMa/DTe's role is defined. The increasing number of multinational undertakings with a large market share, the rapid growth of the 'Internet economy' and the opportunities that information technology offers to provide access to necessary market information at any moment of the day, have led to considerable changes in the nature of markets. In network-sectors, the emphasis will lie increasingly on issues relating to access to these networks. Changes to the role of the public sector, for instance with regard to healthcare, public transport and the like, require the regulation of competition. The impact of the globalisation of capital markets and technological innovation are also important. Regularly it appears that the number of players in certain markets has decreased to such an extent that, partly due to the characteristics of these markets, the risk of collusion and collective dominance arises. Each of these developments contains elements that may elicit behaviour that disrupts markets or even results in the manipulation of markets. Regulation of this requires increasing effort, both at the national and the international level.

Changes to Legislation and the Policy of the European Commission

The application of the Competition Act by NMa is oriented towards the implementation of European competition rules by the European Commission. In 2000 the European Commission changed its policy with regard to horizontal and vertical agreements. This signifies a shift from a legal to a more economic approach to competition issues. This new policy is formalised in the EC block exemptions and Guidelines, which were agreed in the year under review. In accordance with the Competition Act, these block exemptions granted by the European Commission apply directly to the Dutch competition regime and therefore affect the way NMa carries out its activities. The proposed decentralisation of the implementation of European competition rules, for which the European Commission has already made proposals in its draft Council directive in relation to the modernisation of EC competition rules, will have consequences for the way NMa performs its duties. Partly with a view to this, NMa took the initiative to organise regular consultations within the framework of an informal association of all European competition authorities. This was done, in part, with a view to optimising cooperation between the national competition authorities with a view to setting objectives and with regard to inspections and investigations.

New Duties

NMa/DTe is regularly assigned new tasks, such as the tasks arising from the Gas Act and from the Transport (Carriage of Persons) Act. As a result, NMa is increasingly being given responsibility for implementing (sector) specific legislation, in addition to the general regulation of competition. The proposed implementation of the European Transparency Directive and the possible activities that are expected within the framework of the Market and Public Authorities Act, the regulation of facilities surrounding the railways and Schiphol's airport tariffs and conditions, are an extension of this. This development makes clear that general regulation of competition can be combined well with sector-specific tasks. Of course, a condition of this is that adequate sector-specific instruments are provided for in the respective Acts. The fact that the Minister of Economic Affairs issued DTe with a mandate to carry out a large number of his executive duties under both the Electricity Act of 1998 and the Gas Act at the end of 2000 is consistent with this development. Consequently NMa/DTe is moving more and more in the direction of becoming a Dutch market authority.

1.1.5 Alertness Remains Important

The changing environment means that alertness is required in adjusting and reorganising activities and processes so that, within the legislative framework, NMa/DTe may continue to fulfil its role as the competition watchdog and promote competitive market structures and competitive market behaviour. NMa aims to clarify what effective regulation of competition means. Precisely now that the economy is in a very dynamic phase, NMa's role is particularly relevant. NMa therefore wishes to exert a strong presence by acting swiftly and effectively in situations where behaviour or abuse of a dominant position that restrains competition occurs or is in danger of occurring, and to do so by acting not only reactively, but also proactively.

DTe wishes to show that the operation of market forces can also be effective in network-sectors. In doing so, DTe has set itself the objective of promoting the interests of captive customers by giving optimal substance to the conditions and tariffs for access to and the use of networks, taking into account the impact of this on investments in the network in the long term. In doing so, DTe wishes to create the conditions for the development of competitive forces on the supply and demand sides of the energy chain, resulting in a good price/quality ratio in

relation to network services and downward pressure on the energy prices charged to end consumers.

NMa/DTe strives to carry out its activities as effectively and efficiently as possible. Expertise with regard to substantive matters, impartial analysis, independence and the impeccable use of company data are the ingredients required in carrying out this task. Central to this at all times is the idea that it is ultimately the consumer who should benefit directly or indirectly from the activities of NMa/DTe, for instance by being given greater freedom of choice, greater (variety of) quality and/or lower prices.

1.2 Characteristics of 2000 for NMa/DTe

The year under review was characterised by:
- a shift of emphasis in the activities of NMa: from reactive to proactive;
- giving substance to legal and other norms, by means of decisions and guidelines;
- an increased need on the part of Ministries for advice from NMa in relation to policy development;
- a reactive environment;
- rapid developments on the energy markets.

1.2.1 *A More Proactive NMa*

The first two years of NMa's existence were dominated by activities relating to issues involving cartels. This was due to the huge wave (1126) of applications for exemption from the prohibition on cartels, which were submitted in accordance with the transitional regime provided for in the Competition Act. This is also referred to as the 'legacy of the Dutch cartel paradise'. At year-end 2000, it could be reported that the vast majority of these applications had been processed. On 31 December 2000 only 170 (15%) were still being processed.

Looking back at the past year it may be concluded that the work done by NMa with regard to applications for exemption under the transitional regime largely contributed to compliance with the Competition Act. There is now a clearly defined legal framework that provides guidance to companies. In accordance with this framework they can adjust their own market behaviour to comply with the standards set by the Competition Act. The large number of applications for exemption that have been processed resulted, in many cases, in the discontinuation of non-permissible restraints on competition. In this regard, more than 350 cartels have been eliminated since 1998. Without doubt, from the perspective of law enforcement, this is significant.

In the course of processing the applications for exemption under the interim regulations, the scope of the normative prohibition contained in article 6 of the Competition Act became clear, both to NMa and companies in the private sector. In a number of cases, the normative prohibition was implemented by means of formal decisions. In other cases, to which the prohibition did not apply, or in cases where the parties ended the restraint on competition during the proceedings, the matter was resolved informally. Most interim applications for exemption in the healthcare sector and many vertical agreements, of which notification had been given, could be dealt with in this way. It also became clear in which cases an exemption from the prohibition on cartels could be granted and in which cases this was not possible. These cases, in particular, involved EC block exemptions, which resulted in exemption from the national prohibition on cartels, in accordance with articles 12 and 13 of the Competition Act. These cases were also settled both by means of formal decisions and informally.

The law enforcement work carried out in relation to interim applications for exemption resulted in an observable change in the behaviour of undertakings and their branch organisations. This was apparent, for instance, from the numerous requests NMa received from undertakings to adopt a position in relation to amendments made to existing schemes and in relation to new schemes and joint ventures. These parties make these requests because they realised that their schemes and agreements had to comply with the Competition Act. Independent research[1] has shown that, in comparison to the period prior to the moment at which the Competition Act took effect, there has been a sharp decline in recommendations by branch organisations in relation to sales prices (price agreements are among the most serious restraints on competition).

In addition, in the healthcare sector the processing of interim applications for exemption has made an important contribution to changing the way contracts are entered into between healthcare providers and health insurers. As a result, the advantageous effects of market forces are accentuated. In addition, it has made the sector as a whole

1 *Research carried out by ESI-VU, Beusmans, P.M.M.M. Mededingingswet versus brancheorganisaties: een spannende relatie! [Competition Act versus Branch Organisations: A Tense Relationship!]. Amsterdam: November 2000.*

more aware of the importance of competition. In the case of consumers (the insured), this will bear fruit (greater freedom of choice for the insured and more opportunities for new entrants to set up practices). Decisions have been taken with regard to certain types of agreements, such as purchasing cooperations, systems of approval, quality labels, systems of selective collection and recovery of waste to protect the environment, joint ventures, anti-peddling schemes and vertical distribution agreements, which have given undertakings guidelines to follow when entering into agreements. Undertakings that enter into new agreements are expected to be able to assess whether these agreements are permissible under the Competition Act themselves.

All these factors lead NMa to draw the conclusion that a large number of restraints on competition have ceased, as a result of the work done in relation to interim applications for exemption. In some cases the restraints had existed for a long time. This is a gain, both for the economy and for the consumer. In addition, undertakings have been given clarity with regard to the legal framework and the way NMa applies the Competition Act. The time has passed that the Netherlands could be referred to as a Cartel Paradise.

Parallel to the processing and finalising of these applications for exemption, NMa started its so-called proactive activities in 2000. These involved mainly the initiation of ex officio investigations into violations of the Competition Act. This was done, for instance, on the basis of market analysis, tips and reports in the media. Up until now this has resulted in 10 investigations, most of which were still being processed at the end of the year under review. A report was drawn up following the completion of two investigations (in the fishing industry and the taxi branch). In these reports, based on the results of the investigations and research, it was concluded that a possible violation of the Competition Act had occurred. On the basis of this, the undertakings involved will be given the opportunity to state their case. If NMa subsequently reaches the conclusion that a violation has taken place, a penalty or an order subject to a penalty may be imposed. In addition, investigations have commenced into compliance with decisions taken earlier by NMa.
Three verifications have also been carried out at the request of the European Commission at the premises of Dutch undertakings, which the Commission suspected of involvement in violations of European competition rules. NMa expects to commence further investigations in the course of 2001.
NMa's proactive law enforcement policy and the experience of the past two years have provided insight into the need to reorganise parts of the organisation and work processes within NMa to enable the organisation to act more decisively. In relation to this, the 'typical cartel work' was organised in the year under review into sector-oriented clusters, in which knowledge of the market, necessary for processing cases, is concentrated and developed. In addition, a cluster has been created in which knowledge in relation to research and investigations has been combined. The initial experience has been favourable and has shown an increase in effectiveness in finalising cases. This way of working is expected to contribute to an increase in the effectiveness and efficiency of NMa's activities.

1.2.2 Further Definition of the Norms Contained in the Competition Act

In the year under review, a much larger number of competition cases were processed, compared to 1999. In total, 773 cases were finalised, amounting to an increase of 28 percent compared to 1999. These cases involved mainly concentrations, applications for exemption from the prohibition on cartels, complaints about supposed violations of the Competition Act and decisions in relation to penalties. In 250 cases a formal decision was taken. In addition, the Court passed judgment in a number of cases relating to the application of the Competition Act. As a result, further clarity was given with regard to the way the statutory norms should be applied in concrete situations. This increased clarity is important in the first place for companies. From this they can derive insight into how they should comply with the norms set out in the Competition Act. It is also important for the speed with which NMa can deal with cases. In an increasing number of cases it is possible to refer to existing case law and earlier decisions.

In the case of small and medium-sized enterprises (SME's) clarity has emerged due to the fact that NMa has taken decisions on the criteria applicable to systems of approval and the room branch organisations have for self-regulation. In particular, clarity was provided in relation to discount schemes, schemes in relation to data exchange and general terms and conditions. Such schemes occur frequently in the SME sector.

With regard to the healthcare sector, clarity was given in 2000 through the finalisation of a large number of applications for exemption submitted in 1998. A significant number of these related to agreements that healthcare insurers had entered into with healthcare providers in order to fulfil their duty to provide healthcare-in-kind. The

sector is still in the throes of a transition from a regulated to a more liberalised structure, as a result of changes to the system in 1992, brought about by the Health Insurance Act [Ziekenfondswet]. NMa has therefore held various discussions with health insurance funds and the various associations of professional practitioners in the healthcare sector. In these discussions NMa made clear that the traditional method of contracting is prohibited and that exemption is not possible. In the traditional method of contracting health insurance funds entered into agreements with bodies representing care providers with regard to the tariffs to be charged by the care providers and the allocation of the supply of care. The health insurance funds indicated that they wished to amend their agreements in such a way that they no longer violated the Competition Act. Partly due to the large number of these more or less identical applications for exemption, with the approval of the applicants NMa decided to handle the various cases in a more informal manner than usual. This is also referred to as the 'adjustment process in the healthcare sector'. Nevertheless a formal decision was taken in a number of cases. This was done to provide all the parties involved with clarity on how health insurance funds should comply with the Competition Act in relation to the procurement of care. In addition, under certain circumstances, cases which did not involve a duty to provide care and which lent themselves to this were selected for an adjustment process. As part of this process, parties amended their schemes in such a way that they complied with the norms set out in the Competition Act. As a result, it was not necessary to grant an exemption.

In principle, NMa will view schemes guaranteeing quality in the production chain positively. These occur more and more frequently, particularly in relation to food production. The aim of these (recognition) schemes is to guarantee the quality of production throughout the entire chain. In general, these schemes provide an incentive to maintain quality, while offering consumers increased freedom of choice. An exemption from the prohibition on cartels is likely to be granted, provided the restraints on competition -if and in so far as these schemes include such restraints- do not extend further than is necessary to achieve the intended advantages.

With regard to collective labour agreements, it was confirmed in 2000 that agreements between employers and employees with regard to the conditions of employment (wages, working hours, leave schemes etc.), which are declared is to be generally applicable by the Minister of Social Affairs and Employment, are not subject to competition regulation. Past rulings of the Court of Justice of the European Communities in relation to the conditions of employment were used as the basis for explaining this concept. The Competition Act is only applicable in situations where collective labour agreements are apparently used as a vehicle for implementing cartel agreements.

NMa's regulation of concentrations over a period of three years has resulted in many concrete cases involving a large number of business sectors. NMa has acquired considerable experience in defining the markets relevant to the assessment of cases. NMa has also made clear to the market parties how it defines markets and how it views certain markets. As a result, when undertakings give notification of mergers or acquisitions, they are now able to give a good description of the market in the same way as NMa does this. This speeds up the processing of concentration cases. In addition, undertakings are in a better position to make their own assessment of instances in which NMa is not likely to grant a licence. This prevents the formation of large concentrations of power in advance.

1.2.3 Requests for Advice

In the year under review, various public authorities called upon the expertise of NMa more often than they had done in the past. In most cases this took the form of requests for advice with regard to the impact on competition of proposed or existing regulations and decisions. The Ministry of Transport, Public Works and Water Management, for instance, requested NMa's advice on numerous occasions. In addition, the Ministry of Finance and the Ministry of Economic Affairs also called upon NMa. These requests for advice related, for example, to telecommunications, filling stations, Schiphol, the Market and Public Authorities Bill and systems of approval.

The advice given by NMa is consistent with its aim of ensuring that there is as much uniformity as possible in the way competition issues are approached in the Netherlands. This will promote unambiguous and recognisable decision-making in relation to both the Competition Act and other areas of regulation by public authorities. The increasing demands made on NMa to give advice are also an illustration of the authority that NMa has already acquired. Needless to say, the issues on which advice is requested are often extremely complex and therefore require a relatively large investment of time and

human resources. The advantage of dealing with these cases, however, is that these advisory activities are an important of source learning and have synergetic effects.

1.2.4 A Reactive Environment

The environment in which NMa is active regularly made itself heard in the year under review. Politicians, companies and social organisations are increasingly inclined to give their response to action taken by NMa. This is not surprising. The introduction of the Competition Act brought about a fundamental change, compared to the situation prior to 1998, in which the so-called abuse legislation still applied. As a result of the increasing number of decisions taken by NMa in concrete cases, more and more substance has been given to the normative prohibition. The impact of the new competition regime has become increasingly visible as a result. Since major interests are regularly at issue and it is not possible to satisfy all parties (particularly those parties that have violated the Competition Act), the action taken by NMa naturally elicits reactions and questions, and will continue to do so.

It must be mentioned that the tone of some of these reactions has been negative. For this reason NMa commissioned a customer satisfaction survey in the year under review.[2] The results of this survey give a different, more positive impression. One remarkable feature is that advocates and companies generally regard NMa as an expert, honest regulator with a customer-friendly attitude. A number of points of criticism also emerged, which are a reason to make improvements. This criticism related particularly to transparency in the various stages of the proceedings. Although the impression is not unfavourable, as an organisation NMa continues to strive after further professionalisation and improvements to quality. For instance, a complaints desk/helpdesk will be opened and the provision of public information will be intensified. The customer satisfaction surveys will be repeated. In addition, NMa will consider how the way it operates and its effectiveness can be analysed on a more permanent basis by means of the Balanced Scorecard method.

It has emerged that NMa's customers require greater transparency with regard to (possible) action that NMa may take and the consequences of regulations for various sectors. In the year under review, this need was met, for instance, by intensifying activities relating to the provision of information. For instance, with regard to the new directive of the European Commission in relation to vertical agreements, a brochure was produced which explained the consequences for undertakings of this change to the regulations. In relation to its activities aimed at providing information, NMa also gave a large number of lectures to various target groups, such as branch organisations, companies, advocates, social organisations and educational institutions. Guidelines are currently being developed specifically for small and medium-sized enterprises, partly based on relevant decisions, to allow branch organisations and companies to assess for themselves how they can best comply with the norms set out in the Competition Act. These guidelines will be approved and published after consultation with the part of the corporate sector involved.

1.2.5 Development of the Energy Markets

Electricity Market

New players have entered the electricity market. Three of the four electricity production companies have been taken over by foreign parties. Acquisitions have also taken place in the distribution sector. Traders have entered the stage. Despite overcapacity in the Dutch electricity production sector, the demand for import capacity is many times larger than the supply that is technically feasible. All these developments, however, did not result in the optimal utilisation of the advantages of market forces in 2000. This was due mainly to the fact that in 2000 both the protocol agreement between the electricity generation and distribution companies, and the Cooperation Agreement between the production companies still applied. With the introduction of the Electricity Production Sector (Transition) Act on 1 January 2001, both the production and the distribution companies experienced full, formal and de facto competition as of that date. As a result, the advantages of the liberalised market can actually be realised for free customers on the Dutch market. As of 2001 free customers have the possibility of choosing between various competitive suppliers. There is therefore every reason to expect that the operation of market forces will receive a strong boost in 2001 as a result of that. This also means that this market will have to be regulated strictly.

Since 1999 the market players' demand for cross-border transmission capacity has been greater than the actual capacity available. Congestion on the international transmission grids therefore has a prominent place on the international agenda. In order to allocate the capacity available for the Dutch market more adequately and in a

2 *Cf. section 5.3.1*

way that conforms to market forces, DTe has included a procedure for the allocation of import capacity in the Grid Code. DTe opted for an auction system, consisting of daily, monthly and annual auctions. DTe considers it to be its task to ensure that the method of auctioning capacity is closely aligned to the Dutch electricity market, on the one hand, and the requirements of players on this market, on the other hand. After all, the conditions, subject to which transmission capacity is auctioned, are not only relevant in relation to the non-discriminatory and transparent allocation of transmission capacity, but also bear a direct relationship to the possible development of the Dutch electricity market in the year 2001.

Gas Market

Soon after the Gas Act took effect, DTe approved the Guidelines for the regulation of the gas market for the year 2001. These Guidelines describe the system of negotiated network access in greater detail. This is the system on which the Gas Act is based. Almost immediately after the publication of the Guidelines for 2001, DTe also began to develop an overview of all the activities necessary for the further implementation of the Gas Act. Permanent Guidelines will be drawn up for the period after 2001.

Accelerated Liberalisation

The rate at which developments on the energy markets are occurring is such that there is pressure to accelerate the original timetable for freeing groups of consumers. To give adequate form to this process, within the agreed timeframe, the Minister of Economic Affairs set up the Platform for the Acceleration of Energy Liberalisation. The Platform for the Acceleration of Energy Liberalisation will be responsible for the activities required to ensure the orderly transition to a free electricity and gas market. Where necessary, DTe will amend the technical codes to facilitate this transition.

1.3 Outlook

An Even More Proactive NMa

In the coming year, in addition to processing approximately 25 new applications for exemption from the prohibition on cartels, as many of the remaining interim applications for exemption as possible will be finalised. Some reserve is appropriate here, as the European Commission has to take a decision in a number of cases. In 2001 less capacity will be required for processing this category of applications for exemption. The capacity release will be used for processing complaints and for ex officio investigations into the formation of cartels.

The continuation and intensification of this proactive policy is expected to have consequences for the number of cases that NMa can process and the duration of these.
On the basis of NMa's experience to date with ex officio investigations, and the experience of foreign cartel authorities, it must be concluded that the processing of complaints and ex officio investigations into the formation of cartels often requires greater effort and more human resources than the processing of applications for exemption. In addition, the duration of such activities may be considerably longer. The processing of complaints and ex officio investigations differs from the processing of applications for exemption, for instance due to problems involving detection. This is often more difficult and even more complex than processing applications for exemption. In the case of applications for exemption, the parties involved themselves often provide the information necessary to reach a well-founded opinion based on competition law. The duration of an investigation is also affected by the relevant information that NMa comes across during the investigation. New information obtained during an investigation may, for instance, be a reason to expand the investigation or to take a different direction.

Not all investigations will ultimately result in the conclusion that a violation of competition law has occurred. This is partly due to the fact that it is sometimes exceptionally difficult to unearth all the evidence required to establish that the law has been violated. If there is no evidence of a violation, this is reason enough to terminate the investigation. During an investigation it may also become apparent that there has been no breach of the Competition Act. If this is the case, a decision is taken to terminate the investigation.

As a result of the circumstances described above, if the proactive policy of law enforcement is continued and intensified without any changes to NMa's capacity, NMa expects to be able to process fewer cases simultaneously and there will be a clear reduction in the number of cases settled.

Prioritisation

Establishing which cases have priority is essential in this situation. With its current capacity, NMa will not be able to take on all the cases that arise. NMa will therefore have to make a selection in such a way that the impact of the way NMa operates can be optimised. Effective law

enforcement policy contributes as far as possible to the emergence and maintenance of actual competition. The following aspects may play a role in deciding on the priority given to cases:

- economic importance;
- importance for consumers;
- likelihood of establishing that a violation has occurred;
- effectiveness;
- seriousness of the supposed breach.

NMa will, of course, continue to give attention to non-prioritised cases. If, after a while, NMa concludes that an investigation is necessary in a particular sector, appropriate action will be taken.

Of course, the prioritisation of cases and the planning of activities associated with this should not result in rigidity. NMa's internal policy will continue to focus on making capacity available for urgent cases that arise unexpectedly. In practice, this will mean that the prioritisation of cases will be changed to meet the new circumstances.

Transparency

More than in the past, NMa will strive, as far as possible, to present the results of investigations in a way that is transparent for the outside world. The aim of this is to increase the awareness of companies of the risks of violating the Competition Act. First and foremost, the prioritisation of cases discussed above will clarify where the emphasis of NMa's activities lies. In some cases NMa will announce that it has drawn up in a report setting out the supposed breach of the Competition Act. A report is a formal step in a violation procedure, but does not imply that a final decision has been made confirming that a violation has occurred.

More Communication

Communication may be used to greater effect as an additional law enforcement instrument. Given the fact that NMa had to develop precedents in the first years of its existence, it was not opportune to set out its policy on certain competition problems and sectors in the form of guidelines. Now that the procedures for reaching decisions have started to acquire sufficient substance, NMa may be expected to produce guidelines and policy rules on the basis of its past decisions. For instance, in 2001 'Guidelines in Relation to Price Squeezing' will be drawn up in cooperation with OPTA. These guidelines will provide insight into the minimum price that a vertically integrated company that has a dominant position in the telecommunications sector may charge end-users for its services, so as not to drive competitors and new suppliers out of the market.

Leniency

The application of a so-called 'leniency' policy is another way to increase the effectiveness of law enforcement. This means that an undertaking may expect to receive a reduction in the fine imposed on it, compared to other offenders, if it informs NMa of its own accord of a breach of the prohibition on cartels, in which the undertaking itself is involved, and provides the necessary evidence before NMa commences an investigation. It is important that this undertaking immediately ceases its breach of the prohibition and cooperates in NMa's investigation. A policy such as this has the effect of inviting offenders to give notification of violations. As a result, less time-consuming and laborious investigative work has to be carried out. In the course of 2001, NMa will consider how a 'leniency' policy may be introduced.

Impact Measurement

In order to make a better assessment of the impact of action taken by NMa and, if necessary, to make changes to the action taken, NMa will give more attention in future to impact measurement. An importance aspect of this is that research should be carried out to establish the impact that decisions and law enforcement activities have on the behaviour of the companies in question and, more generally, on the respective markets. In particular, the interests of consumers in this regard will have to form part of this. On the basis of the outcomes of preliminary research, which started in 2000, appropriate indicators for impact measurement will be developed in 2001. By evaluating how it operates in this way, NMa aims to further increase the effectiveness and efficiency of its law enforcement activities.

Boundaries of Concentration Regulation

With regard to the regulation of concentrations, NMa has learnt from the experience of recent years that the majority of notifications result in a decision in which it is ascertained that there is no risk that a dominant position will emerge or be strengthened. This raises the question as to whether the legal turnover limits, which determine whether notification has to be given of a concentration, are not too low. Raising the limits may result in a decrease in the number of unproblematic notifications.

This would be an advantage to companies, as it would reduce their administrative burden. NMa would be able to use the capacity released by this for more in-depth investigations into problematic concentrations and other matters. The Ministry of Economic Affairs is currently preparing a General Administrative Order with a view to amending the turnover limits.

Fines Imposed in Relation to Investigations of Concentrations

In addition to breaches of the prohibition on cartels and the abuse of a dominant position, fines may also be imposed on companies that fail to notify NMa of a merger or an acquisition and on persons who do not fulfil their legal obligation to cooperate in investigations. In NMa's opinion, the fines that may be imposed in this regard, namely NLG 50,000 and NLG 10,000 respectively, are low compared to the interests involved. In principle, NMa's policy is to impose the maximum fine, unless there are exceptional mitigating circumstances. The question is whether these fines are not too low to have sufficient impact. After all, particularly in the case of larger companies, it may be worthwhile to offset the amount of the fine for not cooperating in an investigation against the amount of the fine that would have to be paid if a violation were to be proven on the basis of cooperation by the undertaking.

Supervision of the Energy Market

In the first two years of DTe's existence, its main task was the implementation of the Electricity Act of 1998. A considerable investment was made in developing methods of economic and technical regulation, including the acquisition of appropriate knowledge. A large portion of the knowledge acquired will be used in carrying out its duties in relation to the implementation of the Gas Act.

DTe will enter a period of consolidation, in which 'monitoring compliance' will be given further substance. Recent amendments to the law have increased the legal instruments at DTe's disposal (binding orders, orders subject penalties). Monitoring compliance involves ensuring compliance with the various technical codes and tariffs, but also involves regulation in the form of investigations into whether the grid managers and licence holders adequately fulfil their legal duties and comply with the conditions imposed on them when they were granted consent or a licence respectively. An important issue in this regard, which requires DTe's attention, is the quality of the infrastructure and the provision of services by grid managers. DTe will also have to monitor closely the developments on the electricity market and, if necessary, confront market players with their market behaviour if the operation of market forces could be obstructed.

Interview with Mr Van Miert

“Competition authorities, whether they like it or not, find themselves more and more in a hypersensitive situation. They will have to set the boundaries of what is and what is not acceptable in a market economy."

This statement was made by Prof. Karel van Miert. For seven years –from 1 January 1993 to 17 September 1999– as a member of the European Commission, he was the architect of European competition policy. As no other, he is in a position to assess the development and chances of success of the policy. For more than a year, he has been the President of Universiteit Nyenrode and Professor of Competition Policy.

You must be careful that you don't evolve from Marktwirtschaft to Machtwirtschaft.

"Take, for instance, the merging of companies," Mr Van Miert continued, "if only a few companies remain in a certain sector, this could result in 'collective dominance'. With regard to the dominance of a single company, the matter is clear. In principle, this is prohibited. But if there are only a few companies left in a sector, the threat of collective dominance is considerable. In this case, the Commission would have to take a decision or state: this is going too far because we fear that the market mechanism will no longer function properly. Where does the boundary lie? We have had heated discussions in relation to the EMI Time Warner case. It was thought that this merger would result in there being only four major players worldwide in the area of music editing and publishing, instead of five. From the perspective of collective dominance, the commission ruled against this merger. The role of the Commission, as the competition authority, has become crucial and this will be increasingly the case. Important as these issues are, regulation goes further than combating cartels and the regulation of government support. It touches the heart of the economic system. As the Germans say: you must be careful that you don't evolve from Marktwirtschaft (a market economy) to Machtwirtschaft (a power economy). Competition authorities –even at the national level– cannot escape playing this role, even though it is exceptionally sensitive, even political. This is all the more reason to continue to stress that competition authorities should be independent of politics and the private sector. Otherwise there is a danger that they will accept things that can no longer be reconciled with the normal operation of the market."

Mr Van Miert is not dissatisfied with what has been achieved up until now. "It is generally accepted that we have very good legislation in relation to mergers. Naturally you cannot assume that everyone will always be happy with decisions that the Commission takes in individual cases. On occasions you get embittered reactions, such as in the case of KLM - Martinair or Wolters Kluwer - Elsevier. But the Commission and the national authorities –in so far as they have this authority– have to accept their responsibilities. Somewhere a line has to be drawn. The basic principle is that companies may not become dominant by means of mergers and acquisitions.

The basic principle is that companies may not become dominant by mergers.

I think merger policy, although this is the most recent manifestation of competition policy, has already proved to be very successful. This is partly due to the intensive cooperation with the American competition authority."

Liberalisation policy is gathering momentum. In the telecommunications sector, developments are satisfactory, according to Mr Van Miert. He sees more problems in relation to postal services. "In many countries, postal services are regarded as something special. In France, La Poste is regarded as more than just an ordinary company. It is part of 'l'amenagement du territoir'; it is a national institution. Commissioner Bolkestein is now responsible for the liberalisation of the postal services because it is first and foremost a matter involving the internal market. But the competition authority is also involved because in many cases government subsidies also play a role, as in the case of Deutsche Post. I am not pessimistic. Liberalisation policy and the role that the competition authority plays in this may turn out to be successful. But there is a lot that still has to be done."

Government support is another aspect of policy. In Mr Van Miert's opinion, "As the European Commission, we are very specific on this point. Neither the US nor the national authorities in the European Union have authority in this area, presumably on the assumption that all is well if it is the government that provides support. But this is not the case, of course, because government subsidies may distort competition. The regulation of government subsidies is still the most sensitive responsibility of the Commission because one has to deal

Interview with Mr Van Miert

directly with governments. The French President and the German Chancellor involve themselves personally in these matters. In recent years we have applied the principles and rules much more strictly than previously. Take, for instance, cases such as Crédit Lyonnais."

The most difficult aspects, in Mr Van Miert's opinion, are combating cartels, price agreements, the dividing up of markets and the exchange of sensitive information; in short, the entire system of often untransparent behaviour of companies which violate the essential principles underlying the normal operation of market forces. Mr Van Miert: "This is the most important aspect because the Commission itself has to provide evidence. Often one has to carry out 'dawn raids', raids on companies in the morning in order to obtain evidence, but still there is no certainty that you will find sufficient evidence. Whoever is part of a cartel –apart from a few exceptional cases– is not going to come and tell you. Often one has to rely on former employees or the competition.

Evidence has to be strong or you are likely to be called to order.

But even then, the evidence has to be strong because if it is not you are likely to be called to order by the Court of Justice. As competition authorities, we have insufficient instruments in this area. It would be good if we could exchange confidential information, but we are not allowed to. If a cartel is discovered in America and we know that a cartel of this sort is also active in Europe, the Americans are not permitted to provide us with the evidence and vice versa. This makes it very difficult. Furthermore the European Commission does not have instruments that are as effective as those that the American authorities have at their disposal. If they suspect companies of belonging to a cartel, they can summon them to make a statement under oath. In the US, managers of companies who organise a cartel can be gaoled.

We can only impose fines up to maximum of ten percent of the total turnover. A discussion has started on whether a criminal procedure with the possibility of imposing a gaol sentence should also be possible in the European Union. I have always adhered to the point of view that we can avoid this if we make the fines severe enough. I think you make more of an impact on a company by imposing higher fines than by gaoling one of its managers. It is more important, however, that possibilities are created for hearing companies under oath."

Cooperation between the European cooperation authority and the national authorities is part of what Mr Van Miert refers to as 'a sensitive discussion'. He himself launched the discussion in the White Paper on the amendment of European Competition Directive No. 17.

Looking at the Nederlands, all I can say is: chapeau!

The division of authority amongst the European and national authorities is now fairly clear. According to Mr Van Miert, the aim of the reform that has been launched –a draft directive has been presented to the Council of Ministers– is that the national competition authorities in all the Member States and the national courts should be able to apply European rules directly. Permitting exceptions to agreements that restrain competition is usually reserved for national authorities. (This has been the case with regard to vertical agreements since 1 June 2000; the Council of Ministers still has to approve a draft directive with regard to horizontal agreements.)

Mr Van Miert: "In other words, more responsibility and room for the national authorities, but within a coherent framework for cooperation between the authorities and the Commission. The discussion doesn't focus on this problem because cooperation has developed in the consultative committee's in which the national authorities can have their say and which have to be consulted by the Commission in a large number of cases. No, the criticism of industry is directed at the role of the national courts. Industry is afraid of discrepancies between judicial rulings from one Member State to the next. They foresee that the policy will be put under pressure as a result, or will be forfeited altogether. The aim is to avoid this as far as possible and to build in the possibility of rectifying matters if a discrepancy arises."

Mr Van Miert views the proposed expansion of the Union with some concern. "The new Member States will, to say the least, have to get used to the European competition rules. But I am not overly pessimistic. Considerable progress has already been made in Poland, Hungary and the Czech Republic in this area. We have to appreciate what

is happening there with simple realism. We should not forget that it took a long time for us to get to where we are. Just look at how long the Netherlands lacked proper legislation and a strong authority. Belgium is still far from realising this. I sometimes ask, with a laugh, whether Belgium would meet the conditions for joining the Union?"

The former commissioner believes that government subsidies will be the most difficult problem in the negotiations on joining. "When I mentioned in Poland that the tax-free economic zones along the border with Germany would have to disappear, ministers, civil servants and business men rained down on me. Without doubt, the fact that they will not be able to do whatever they want in the area of government subsidies will cause problems. It is also still a problem for us, let's be honest."

Finally, how does Mr Van Miert view NMa? What is his opinion, if he were not to be friendly and polite? "Looking at the Netherlands, all I can say is chapeau! Hats off to you! In the space of a few years, the Netherlands has joined the small group of countries with a credible competition policy.
One can see that it operates well and that people take responsibility. This is a cultural adjustment for the Netherlands because your country has traditionally been one of the genuine cartel countries. All I have to say then is: my compliments. What the Netherlands has achieved is rather impressive. And I am not exaggerating. This is also the impression that Brussels and the other national authorities have."

2 International Developments and Cooperation

2.1. European Developments

White Paper on Modernisation: Debate on the Draft Council Directive

As was mentioned in NMa/DTe's Annual Report for 1999, on the initiative of the European Commission consideration is presently being given to allowing national competition authorities and national courts to apply the norms contained in article 81 of the EC Treaty in relation to exemptions from the prohibition on cartels. The European Commission has, for instance, proposed abolishing the notification system and creating a network of national authorities. Through this network, it would have to be possible for the separate national authorities to exchange information on decisions electronically. Furthermore they could support each other in investigating violations of EC competition rules. Rules with regard to the exchange of evidence, joint action and the allocation of cases would also be dealt with within the network.

Up until July 2000, regular consultation took place in Brussels between the Commission and national experts. In October 2000, the European Commission presented a draft Council Directive to the Member States. The discussions on this draft directive will take place in the Council's working group.

Under the present system, the Commission and the national courts are competing authorities with regard to the application of article 81(1) and 82 of the EC Treaty. When the reforms proposed in the draft Council Directive take effect, national courts, in addition to the competition authorities of the Member States, will be given the authority to apply article 81(3) of the EC Treaty. They will be able to decide whether schemes presented to them may be exempted from the prohibition contained in article 81(1) on the basis of this legal exception. Companies may appeal directly to the courts on the grounds of this legal exception. Agreements that fall within the scope of article 81(3) of the EC Treaty will therefore be valid from the moment they are made. Companies will be able to implement contracts entered into by them immediately, without first having to wait for a decision by the European Commission granting an exemption.

Under the new system, the European Commission, the national competition authorities and the national judicial bodies will have the same powers. The uniform application of community competition law will be guaranteed by a system of preventive control mechanisms. The regime will include obligations to exchange information and obligations in relation to mutual cooperation. Under the new system, the European Commission reserves the right to intervene in the procedure, subject to the approval of the court in question. The Netherlands considers it important that this should only occur at the request of the court in question.

If the courts experience problems in interpreting/applying community competition rules and are not able to resolve these problems on the basis of existing European decisions and case law, and the notices, guidelines and directives that have been issued, they may obtain information from the European Commission or from NMa. In addition, the national courts always have the possibility of putting preliminary questions to the Court of Justice (article 234 EC Treaty).

Vertical Agreements

Commission Directive EC 2790/1999[3], in respect of an EC block exemption for vertical agreements, took effect on 1 June 2000. As was mentioned earlier and as discussed extensively in NMa/DTe's Annual Report for 1999, this exemption replaces the three existing block exemptions for agreements relating to exclusive purchases[4], exclusive selling rights[5] and franchising[6]. The new directive applies to both EC cases and cases that are exclusively Dutch (where interstate trade is not affected).

The Commission has also published guidelines with regard to the assessment of vertical agreements[7] after ample consultation with experts from the Member States. The guidelines deal extensively with the explanation of the new block exemptions and the economic and legal considerations that are important in assessing vertical agreements which fall both within and outside of the scope of the block exemption. NMa will take the guidelines into account in applying EC and national law.

The block exemption for sales and customer service agreements in relation to automobiles[8] expires on 30 September 2002. In accordance with article 11.3 of the block exemption, the Commission is required to draw up an evaluation report on this block exemption on or

3 *Commission Directive of 22 December 1999 in OJEC 1999 No. L336.*
4 *Commission Directive EC/1984/83, of 22 June 1983 in OJEC 1983 No. L 173.*
5 *Commission Directive EC/1983/83, of 22 June 1983 in OJEC 1983 No. L173.*
6 *Commission Directive EC/4087/88, of 30 november 1988 in OJEC 1988 No. L359.*
7 *Commission Decision of 20 May 2000, see Notice in OJEC 2000, No. C291.*
8 *Commission Directive EC/1475/95, of 28 June 1995 in OJEC 1995, No. L145.*

before 31 December 2000. A working group set up by the Commission and national experts are involved in the evaluation and the question of whether these block exemption should be extended or replaced, or whether it would be better for automobiles to be subject to the general EC block exemption.

Horizontal Agreements

Commission Directive EC/2658/2000 of 29 November 2000 replaces Commission Directive EC/417/85[9] of 19 December 1984 in respect of block exemptions for groups of specialisation agreements, which ceased to be valid on 31 December 2000. The new directive deviates from the method whereby a list of exempted conditions is drawn up, and replaces this by an exemption for specialisation agreements between undertakings that do not have a combined market share in excess of 20%. Specialisation agreements are agreements in which one party refrains from producing certain products or providing certain services and leaves this to another party ('one-sided specialisation'), agreements in which each party refrains from producing certain products or providing certain services and leaves this to another party ('reciprocal specialisation') and agreements where members agree to produce certain products or provide certain services jointly ('joint production').

Commission Directive EC/2659/2000 of 29 November 2000 replaces Commission Directive EC/418/85[10] of 19 December 1984, in respect of a block exemption for groups of research and development agreements, the validity of which expired on 31 December 2000. The new block exemption applies to agreements between two or more undertakings with regard to the conditions subject to which these undertakings:

- carry out joint research and development of products or methods of operation and jointly use the results obtained from this;
- jointly use the results of research and development of products and methods of operation, carried out jointly in accordance with agreements entered into beforehand by the same undertakings; or carry out joint research and development in respect of products or methods of operation, with the exception of joint use of the results of this.

This new directive also no longer uses the method whereby a list of exempted conditions is drawn up. Instead it grants an exemption for agreements between non-competitors for 7 years from the moment at which the products covered by the contract are launched on the joint market for the first time. After this period has lapsed, the exemption continues to apply for as long as the undertakings that are party to the agreement do not have a combined market share that exceeds 25% of the relevant markets for the products covered by the contract. The exemption also applies to agreements between competitors for the same seven-year period, provided the joint market share of the undertakings at the moment at which the agreement is entered into does not exceed 25% of the relevant market.

The guidelines with regard to the assessment of horizontal joint venture agreements[11] relates to agreements or coordinated behaviour involving competitors active at the same level of the market. The preamble to the guidelines is general in nature and explains the basic principles for the assessment of horizontal agreements in accordance with article 81.1 and 81.3 of the EC Treaty. The rest of the guidelines is subdivided into chapters dealing with particular types of horizontal agreements. They provide an analytical framework for the most common forms of horizontal joint ventures, namely, research and development agreements, production agreements, procurement agreements, commercialisation agreements, standardisation of products and cooperation in relation to the environment. The new guidelines replace the notifications in relation to joint ventures[12] and the notification in respect of agreements, decisions and mutually coordinated de facto behaviour in relation to cooperation between undertakings[13] and supplements block exemption directives in relation to research and development and specialisation agreements.

2.2 Cooperation with the European Commission and EU Member States

Contributions to Advisory Committees in Relation to Cases Involving Cartels and Concentrations

The Director-General for Competition of the European Commission assesses the various cases involving cartels and concentrations in close and continuous contact with the Member States of the European Union. The European Commission consults with the Member States through advisory committees before it takes decisions. It is obliged to do so. There are advisory committees for concentration cases and for cases involving cartels and the abuse of

9 As recently amended by Directive No. EC/2236/97, OJEC 1997, No. L306.

10 As recently amended by Directive No. EC/2236/97, OJEC 1997, No. L306.

11 Commission Notice in OJEC 2001, No. C3.

12 OJEC 1993, No. C43.

13 OJEC 1968, No. C75.

dominant positions. The Commission is not obliged to follow this advice, but takes it into account as far as possible in taking decisions. The advisory committee may recommend publishing the advice in the Official Journal of the European Communities.

NMa represents the government of the Netherlands in the advisory committees, sometimes in cooperation with the Ministry of Economic Affairs. In relation to matters involving transport, the Dutch delegation is supplemented by representatives of the Ministry of Transport, Public Works and Water Management. NMa regularly consults other competition authorities in order to formulate common positions in relation to individual cases or other subjects raised in the advisory committees.

In 2000 NMa made a contribution to the advisory committees in relation to the concentrations listed below:

Case COMP/M.1628 – TotalFina/ELF
Case COMP/M.1630 – Air Liquide/BOC
Case COMP/M.1641 – Linde/AGA
Case COMP/M.1672 – Volvo/Scania
Case COMP/M.1671 – Dow Chemical/Union Carbide
Case COMP/M.1663 – Alcan/Alusuisse
Case COMP/M.1715 – Alcan/Pechiney
Case COMP/M.1636 – MMS/DASA/Astrium
Case COMP/M.1693 – Alcoa/Reynolds
Case COMP/M.1673 – VEBA/VIAG
Case COMP/M.1813 – Industry Kapital/DYNO
Case COMP/M.1741 – MCI Worldcom/Sprint
Case COMP/M.1806 – AstraZeneca/Novartis
Case COMP/M.1634 – Mitsubishi (boeteprocedure)
Case COMP/M.1882 – Pirelli/BICC
Case COMP/M.1879 – Boeing/Hughes
Case COMP/M.1845 – AOL/Time Warner
Case COMP/M.1852 – Time Warner/EMI
Case COMP/M.1963 – Industi Kapital/Perstorp
Case COMP/M.1940 – Siemens/Framatome/Cogema/JV
Case COMP/M.2060 – Bosch/Rexroth

In 2000 NMa made contributions to the following advisory committees in relation to the regulation of cartels and the abuse of dominant positions:

Case COMP/34.018	FETTSCA
Case COMP/ 36.453	Amino Acids
Case COMP/36.516	Nathan
Case COMP/36.653	Opel Nederland
Case COMP/35.918	Unisource
Case COMP/37.576	UEFA
Case COMP/36.583	ETCA +FGTB/FIFA

General Committees and Working Groups

In addition to advisory committees in individual cases, more general procedural and policy issues are discussed in general advisory committees and working groups, in which both the Ministry of Economic Affairs and NMa participate. In these committees attention was paid to a number of new block exemptions and the revision of the White Paper in 2000. NMa also made a contribution to the advisory committees in relation to the revision of a number of notices in the area of the European regulation of concentrations, in particular the notices in relation to contracts and the notices relating to the introduction of a simplified procedure for non-problematic concentration cases. In addition, NMa contributed to a special advisory committee with the task of reviewing the turnover thresholds contained in the European Concentration Directive No. EC/4064/89.

2.3 Support of the Directorate-General for Competition by NMa in Relation to Verifications at Dutch Undertakings

Council Directive 17[14] gives the Commission the authority to carry out unannounced verifications (on-site inspections) on the premises of undertakings. If the Commission wishes to carry out verifications in the Netherlands, it requests the support of NMa. The Commission may also request NMa to carry out verifications on its behalf. On various occasions in 2000 NMa supported verifications by the Commission or carried these out at its request. Normally neither the Commission nor NMa announce that verifications will occur or have occurred. In the past year a number of verifications were brought to public attention by third parties through the media. These involved verifications by Dutch undertakings in the brewing sector in March 2000 and in the telecommunications sector in June 2000.

DG Conference

In 2000 NMa participated in two conferences attended by the Directors-General of the competition authorities of the European Member States. At the first conference, held on 12 April, the modernisation of European competition policy, the World Trade Organisation and candidate Member States were the main topics of discussion. At the second conference, held on 29 November, NMa presented a written proposal to conduct research into the effectiveness of the 'leniency' programmes of the Commission, the

14 OJEC 1962, No. 13, p. 204.

United States of America and a number of Member States and set up a working group to analyse further the development of national leniency programmes and their possible harmonisation.

2.4 Other European Contacts

Maintaining international contacts at various levels is an important condition for the effective and unambiguous regulation of competition, particularly in relation to international affairs. Within this framework one of NMa's employees was seconded from 1 June 1998 to 1 June 2000 to a department of the Directorate-General of Competition. From 1 June 2000 another employee was seconded to the Directorate-General for Competition. On 23 May 2000 a delegation of the Directorate-General for Competition paid a working visit to NMa. In addition to presentations and discussions on the modernisation of competition policy, a number of cases were discussed that are presently being processed by the Commission and by NMa. Cooperation also takes place with the separate national authorities on a bilateral basis. On 31 March, for instance, NMa visited the Bundeskartellamt in Bonn, at which discussions were held on such topics as penalties and experience with 'leniency' in Germany. Visits of this sort provide a sound basis for cooperation at a strategic level as well as at the level of individual cases and make the mutual exchange of information possible.

2.5 Regulation of the Energy Markets

Increasingly the energy markets are acquiring a European dimension. Contacts with other European regulators have become increasingly important due to the work carried out by DTe. The 'self-regulating' function of international meetings, such as the 'Florence Forum' for electricity and the 'Madrid Forum' for gas, both of which are chaired by the European Commission, require close coordination with other European regulators of the energy markets. The emphasis in this regard lies on the development of a single European energy market instead of a situation where 15 liberalised market segments exist. This gives rise to the need to eliminate the existing obstacles to cross-border trade, in which national energy regulators play a direct role. Partly on the initiative of DTe, the Council of European Energy Regulators (CEER), a European umbrella organisation of the energy regulators, was formally established in 2000. Since the effective operation of market forces in the energy sector depends largely on the way the European energy market develops, an active contribution to these processes by DTe will remain one of the main aims of its policy.

2.6 OECD and Other Contacts

OECD

In addition to cooperation with the European Commission, in conjunction with the Ministry of Economic Affairs, NMa participated in meetings of the 'Competition Law and Policy Committee' of the Organisation for Economic Cooperation and Development (OECD). In 2000 NMa made a contribution to the presentation of the annual report on competition policy in the Netherlands, which included a section on NMa's experience. At the moment NMa participates in working groups of the OECD.

Other International Contacts

NMa also maintains contact with competition authorities in countries that are not part of the European Union. For instance, NMa received a delegation from the Taiwanese competition authority, the Fair Trade Commission, Executive Yuan Taiwan, Republic of China. In addition, in the year under review, following the visit NMa paid to the US Department of Justice in 1999, NMa received a delegation from the Antitrust Division of the Department of Justice. During this visit knowledge and experience were exchanged, particularly in the area of investigation. Initial contacts have also been made with the Competition Board of Estonia. The Competition Board is preparing for the accession of Estonia to the European Union. At the beginning of 2001 NMa will receive two employees of the Competition Board for a study visit of two weeks.

The European energy regulators, united in the Council of European Energy Regulators (CEER), organised their first seminar in October 2000, which was intended specially for energy regulators from Central and Eastern Europe. NMa/DTe hosted this seminar. In 2001 CEER will initiate training and educational programmes for the affiliated regulators. In this context, further cooperation with the regulators of new EU Member States is also of considerable importance.

Interview with Mr Monti

"More than ever before, cooperation between the European and the national competition authorities within a network that functions well is necessary. We will be confronted by relevant challenges, such as globalisation and continuing technological developments. The existing competition rules have sufficient scope to deal with changes in the economy. What is required is that we ensure that our methods of applying the rules are up-to-date. We are very busy ensuring that this is the case."

For Dr Mario Monti, European Commissioner for Competition Policy, giving substance to cooperation has priority. Within the Commission, under the leadership of Mr Santer, he was Commissioner for the Internal Market. In his memoirs, Karel Van Miert writes: "Mr Prodi asked me whom I saw as a possible successor. Without hesitation, the first name I mentioned was Mario Monti." And after the Italian had actually been given the portfolio: "…. I was overjoyed with his appointment."

As with his predecessor, Mr Monti does not consider the question "What's that got to do with you?" meaningful. The question that is relevant is why we have to have a European competition policy. Mr Monti: "To ensure that the internal market can function optimally in favour of the consumer and society as a whole and to stimulate competitive strength and, by doing so, the growth of European industry. Competition policy has played this role from the start of European unification. It must continue to play this role. The arrival of the Euro offers competition policy the prospect of further dynamic development and a promising future."

Mr Monti sees three challenges for competition policy under his leadership. The first is to ensure that the operation set out by his predecessor in the White Paper is brought to a successful conclusion. This relates to the reform of Competition Directive No. 17, which dates from 1962 and implements articles 81 and 82 of the Treaty of Rome, governing agreements that restrain competition and the abuse of dominant positions. The second is to help the candidate Member States implement European competition policy. The third challenge is to promote cooperation between the European and the national competition authorities and between 'Brussels' and competition authorities in other parts of the world. Against this background, Mr Monti is keen that his Directorate-General should "see the tremendous need to inform public opinion and to increase public awareness of why European competition policy exists and how it is implemented. It should clarify how it works and, above all, its value to citizens, consumers and taxpayers."

We have to clarify the value of competition policy to consumers and taxpayers.

The aim of reforming the rules is, in the words of Mr Monti, "to make the implementation and enforcement of competition policy more effective and, as a result, to bring it closer to citizens."

"The scenario with regard to competition is very different to that in 1962 when the policy was first introduced. Forty years ago, with a few exceptions such as the German Bundeskartellamt, Europe did not have a culture of competition and had no legislation in this area. Now we have a large number of consistent decisions by the Commission, case law of the Court, a culture of competition, legislation and competition authorities in the Member States. I am glad to be able to say that the Netherlands has managed to establish a credible authority within a very short period.

Europe did not have a culture of competition, forty years ago.

This is living proof of the considerable changes of recent years. What was inconceivable forty years ago, is now visible. Part and parcel of this is a more rational division of tasks between the Commission, on the one hand, and the national authorities and national courts, on the other.

The proposals approved by the Commission on the basis of the White Paper in September 2000 provided for this and have already been presented to the Council of Ministers for approval. The aim is certainly not to renationalise European competition policy, as some people fear. The idea is to implement the policy with even more vigour within a framework of close cooperation between European and national authorities. Cooperation is one of the main aspects of our proposals. In this regard, it is worth noting that these important reforms bear no relation to the total range of instruments, but only to those articles of the Treaty relating to agreements that restrain competition and the abuse of dominant positions. The regulation of mergers and government subsidies are not included in this."

Here and there people fear that the proposed decentralisation of the policy will exert pressure on the uniformity of the regulation of cartels within the European Union. Part of the new policy is that competition authorities will detect violations of the rules themselves. Does this also mean that they may act beyond their national borders and, for instance, impose penalties on companies

Interview with Mr Monti

based outside their own territories? The idea is that individual cases will be referred to the authority of the country whose interests are affected most by the case in question. This does not mean that there will be no cross-border effects, even if, for instance, the case focuses on the Netherlands. Imposing cross-border penalties, however, is not possible, but penalties may have an effect elsewhere, beyond the borders of one's own Member State. Commissioner Monti: "To ensure close cooperation between the Commission and the national authorities, we have established a forum for discussion and the exchange of information at the earliest possible stage. This should make it possible for us to detect cases of common interest and to have cases dealt with by the authority which is best equipped to do so, which has the best chance of obtaining evidence and is best able to ensure that the right decision is taken in the case in question. National authorities will not be authorised to carry out inspections beyond their own national borders. They will be able to request competition authorities in other Member States to do so on their behalf, to collect evidence and to pass on the results of this. Everything is aimed at collecting evidence and information, wherever this is obtained, and exchanging this. This is the situation at the European level. Imposing cross-border penalties is and remains a matter for national legislation."

Everything is aimed at collecting evidence and exchanging it.

Globalisation is the trend in the economy. It may give rise to the question of whether the national regulation of mergers and cartels is still necessary or even desirable. Mr Monti has no doubts in this regard. "Globalisation does not mean that every economic activity is global. There are still important European, national and even local markets and that will not change. The development of institutions must also be taken into account. From an historical perspective, Europe is farthest in developing institutions that are well adjusted to the internationalisation of economic activities. Elsewhere in the world people view the Treaty of Rome, with its provisions for the internal market and accompanying competition policies, with considerable interest as a possible example for their own schemes.

No, the trend towards internationalisation and globalisation does not mean that national authorities are superfluous. It is important more than ever, however, at the European level to ensure the most efficient possible division of work between the national authorities and the Commission, as a competition authority. Mergers are only subject to European regulation if they involve high turnovers and/or substantial interests. If the thresholds are not exceeded, national regulation of mergers applies. This will not change under the new regulations. Without national regulation of mergers, a gap would emerge in the regulatory mechanism, because less extensive mergers would not be subject to any form of regulation.

The globalisation trend does not make national authorities superfluous.

Experience has shown that such mergers, even if they remain below the European thresholds, may have major adverse effects on healthy competition in the market. For this reason, the Commission has urged the Member States to introduce legislation which enables them to regulate mergers efficiently at the national level."

"In the new situation, the Commission proposes substituting the present system of parallel application of community legislation and national legislation by a system involving the exclusive application of European law to all cases which adversely affect trade between Member States. This would mean, of course, that the application of national law would be diminished and relatively speaking the room for community policy would increase. This clearly shows that we are not busy renationalising European policy. Who will apply the European rules? In more cases than previously, it will be the national authorities. The Commission will do so in cases in which it is patently obvious that there is a serious risk of damage to European competition and to the operation of the internal market. But even in these cases national anti-trust legislation will continue to play an important and essential role. Contrary to what appears to be a widely held opinion, activities that do not have an appreciable affect on the trade between Member States, often have a damaging effect, however, on competition at the national level. National and European legislation are complimentary and ensure that

agreements that restrain competition are subject to a comprehensive regulatory system without any lacunae."

NMa is one of the partners in the network of competition authorities, and a good one at that, Mario Monti hastened to add. "I wish to state clearly that my Directorate-General and I personally are very impressed by the way NMa has developed into an effective and independent authority in a very short space of time. We experience the close and numerous contacts and discussions that we have with NMa as open and constructive. Even if we do not agree with each other, we always find a mutually acceptable pragmatic solution. The cooperation with NMa takes place in a manner and in a spirit that we hope will characterise the future network. I also wish to remark on the constructive, high-quality contributions made by Dutch delegations in committees and working groups. The priority which NMa gives to these is a good investment."

We experience the contacts and discussions with NMa as open and constructive.

The interview ended with a summary of his own personal priorities. Priority number one: "Application of the competition rules with increased strength and rigour. This is particularly necessary in the area of cartels. One of the aims of the reforms is to enable the European Commission and the national authorities to formulate even stronger policy by eliminating the dated system of routine processing of agreements that do not have a damaging effect on competition. This will allow us to concentrate time and human resources on research, the detection of damaging cartels and the imposition of penalties." The second priority: "To continue to invest considerable energy in the regulation of government subsidies. As in the case of undertakings that can distort the operation of the markets by entering into mutual agreements or by abusing a dominant position, states can also frustrate the market. The regulation of this is a crucial aspect of policy. Then there are two further important issues. The one is an issue at the micro level; the other is an issue at the macro level. The micro issue relates to the minds and hearts of our citizens. I would like us to make more of an effort to explain competition policy to citizens, because citizens, as consumers, and their consumer organisations, play an important role in that policy. They should notify the competition authorities of abuses of dominant positions and restraints on competition. I would like them to submit complaints if they are the victims of behaviour that obstructs competition. Within a fully functional network of competition authorities, citizens may play an important role. My macro issue is the wish that cooperation with competition authorities elsewhere in the world –the US, Canada, Japan– will increase further. This is important to combat the temptations of internationalisation and globalisation."

Finally, a very generally formulated priority: "At some point to pass on to my successor in the role of Commissioner for Competition, a European authority which is stronger and more credible than the authority that Karel Van Miert left behind for me."

3 Office for Energy Regulation

Three topics dominated the work of DTe in 2000:

1. The introduction of the Gas Act on 10 August 2000. As of that date the name of the Dutch Electricity Regulatory Service was changed to the Office for Energy Regulation (DTe).
2. The first period of regulation from 2001 up to and including 2003 has been implemented with regard to electricity companies. Efficiency discounts (price caps) have been determined for both grid managers and licence holders.
3. The development of a better method of allocating the available cross-border transmission capacity, which is in line with the market.

3.1 DTe's Position in Relation to Other Parts of NMa and in Relation to the Ministry of Economic Affairs

In carrying out its duties within the framework of both energy Acts, DTe's position as a 'chamber' of NMa is important, as is its position in relation to the Ministry of Economic Affairs.

Apart from the administrative aspects of the chamber model (DTe is an integral part of NMa from an organisational perspective), the substantive aspects are also important. After all, the chamber model results in synergy. The concepts relating to competition are interpreted unambiguously in implementing the Acts, under which NMa/DTe has been assigned duties. In addition, optimal use may be made of knowledge and information available within NMa/DTe, particularly in relation to energy and regulation. Naturally this takes place with the greatest possible care and the legal frameworks applicable to the use of this information are taken into account. DTe and the respective parts of NMa have made agreements in this regard. In relation to the expected granting of the status of an independent administrative body to NMa/DTe, the synergy of this chamber model will be developed further and the agreements referred to above will be worked out in further detail in 2001. This relates mainly to agreements of a procedural or practical nature.

Since the Ministry of Economic Affairs also has duties in relation to the implementation of the energy Acts, the relationship between the Ministry of Economic Affairs and DTe has to be good. The fact that this relationship is still developing is apparent from the fact that the Ministry of Economic Affairs delegated almost all its executive duties under the Electricity Act of 1998 and the Gas Act to NMa/DTe at the end of 2000. This idea of a 'one-stop shop' will increase clarity in relation to decision-making and procedures both for interested parties and for the companies involved. Naturally the relationship between DTe and the Ministry of Economic Affairs will change when NMa/DTe is granted the status of an independent administrative body.

3.2 Developments

Since 1999 the demand of market parties for cross-border transmission capacity for electricity has been greater than the capacity that is actually available. Congestion on the international transmission grids is therefore high on the international agenda. In December 2000 DTe commissioned independent research into the extent of the available transmission capacity and the method of calculation used in determining this.

The necessity for this research is partly due to the continuing lack of clarity about the extent of the available transmission capacity. The results of this research are expected in the first quarter of 2001. With a view to allocating the capacity available for the Dutch market adequately and in a manner that is in line with the market, DTe has introduced an auction system as an allocation mechanism. DTe regards it as its duty to ensure that the method of auctioning capacity closely matches the structure of the Dutch electricity market, on the one hand, and the requirements of players on this market, on the other. The conditions, subject to which transmission capacity is auctioned are, after all, not only relevant to ensuring the non-discriminatory and transparent allocation of transmission capacity, but also bear a direct relationship to the possible development of the Dutch electricity market in the year 2001.

The Gas Act took effect on 10 August 2000. In accordance with articles 13 and 18 of the Gas Act, DTe determined guidelines for the year 2001, which set out the system of negotiated network access. Gas transmission and storage companies have formulated basic services in accordance with these guidelines, which provide for the needs of market players. Following this, indicative tariffs for these basic services were published. It is up to the parties involved to enter into negotiations on these basic services and tariffs. Another important element in the guidelines is the provision that indicative tariffs must be based on efficient costs, including a reasonable return on invested capital. This is a market-oriented method of determining tariffs.

Permanent Guidelines will be drawn up for the period after 2001. These guidelines will offer a solution to the problem of access by third parties to gas storage facilities in the Netherlands. With a view to determining efficiency discounts (price caps) for the years 2002 and 2003, a model is being developed for comparing gas network managers and licence holders to each other (benchmarking). In the last quarter of 2000, DTe commenced preparations for both the separation of gas companies into gas network managers and gas suppliers and the separation of gas tariffs into network tariffs and supply tariffs. DTe also began drawing up a so-called technical agenda. This is a list of technical items that have to be worked out to ensure the proper operation of the gas market.

To give form to the process of accelerating liberalisation of the electricity and gas markets adequately and within the periods agreed, DTe has advised the Minister of Economic Affairs to set up an internal steering committee under the direct responsibility of the Minister, which has sufficient means at its disposal to act decisively. On 22 June 2000 the Minister launched the Platform for the Acceleration of Energy Liberalisation. The Platform will take responsibility for all activities necessary to ensure the orderly transition to a free electricity and gas market. This involves both technical and organisational issues, as well as issues relating to consumer protection. DTe is not a member of the Platform. The Programme Manager of the Platform informs DTe regularly of the progress of the activities undertaken by the Platform.

Concrete results achieved by the Platform may result in joint proposals to DTe by the grid managers to amend the technical conditions. DTe will assess these proposals. In October 2000 DTe published an information document that contained the framework to be used in assessing proposals. This document also sets out DTe's views in relation to a number of preconditions. These do not require a proposal for an amendment, but relate to DTe's regulatory duties. This information document was presented to the Minister of Economic Affairs, the Platform for the Acceleration of Energy Liberalisation and all the grid managers and licence holders.

In the information document DTe argues that the introduction of market forces in the energy sector will only be successful if all customers have the opportunity to exercise freedom of choice. At the moment consumers are free to choose their own supplier, all the technical facilities necessary for this should be present. If this is not the case, consumers will be worse off, as they will no longer be able to rely on the protection of DTe in the form of regulation of the supply tariffs and licensing conditions. The golden thread running through the information document is that there may be no barriers to trade and to switching from one energy supplier to another.

3.3 Decisions

In 2000 DTe took 123 decisions. With the exception of one, all these decisions related to electricity. Most of the decisions, namely 71, were decisions in relation to tariffs. In addition, 29 decisions were taken in relation to efficiency discounts (price caps), 6 decisions with regard to amendments to the technical codes and the Tariff Code and 16 decisions in relation to administrative appeals against earlier decisions taken by DTe.
One decision was taken in relation to gas, namely the Guidelines for 2001 in relation to indicative tariffs and conditions.

Efficiency Discounts (Price Caps) Imposed on Grid Managers (Decision Nos 047 up to and including 067 and Decision Nos 076 up to and including 083)

In 2000 DTe concluded its first period of economic regulation. The definitive efficiency discounts (x-factors) were determined for both the grid managers and the licence holders. These discounts applied to the period from 2001 up to and including 2003.
DTe determined individual x-factors for each grid manager on 22 September 2000. The main principle applied in doing so was that grid managers should be compared to each other by means of a benchmarking method. The most efficient grid manager was identified. The x-factor specifies the 'distance' that grid managers have to bridge in order to reach the level of greatest efficiency. DTe has developed a financial model for the calculation of the actual x-factors. The x-factors with regard to the utilisation of the electricity grids for the years 2001 up to and including 2003 will result in savings for the users of the grids amounting to approximately 500 million euro. The grid managers have included the x-factors in their proposed connection and transmission tariffs for 2001.

Parallel to the decision-making procedure in relation to the x-factors applicable to grid managers, DTe advised the Minister of Economic Affairs on the x-factor for licence holders. The Minister adopted this advice in its entirety in October and transferred responsibility for the implementation of this to DTe.

3.3.1 Decisions in Relation to Tariffs

There are many misunderstandings with regard to the price of a Dutch kilowatt hour. Two movements affect the price that customers see on their invoices. The first movement is the effect of market forces and regulation in relation to this. Tariff regulation by DTe will result in a downward trend. In addition, customers pay a regulatory energy tax and value-added tax. These have risen to such an extent that the fall in prices resulting from the operation of market forces has been eliminated in the year 2000.

Connection Tariffs in 2000 (Decision Nos 024 up to and including Decision Nos 045 and Decision Nos 070/071)

The definitive connection tariffs for 2000 were only determined in September 2000. During the tariff proposal procedure for 2000 (at the end of 1999) the companies were unable to provide well-substantiated proposals for connection tariffs. It was therefore not possible for DTe to compare the various elements of the tariffs and the total cost of the various standard connections at that time. The final connection tariffs for 2000 were maximum tariffs. DTe determined that, in the case of connections with a required connection capacity in excess of 10 MW, a connection tariff must be determined on the basis of a specified cost price determined beforehand. In assessing the proposals, attention was given mainly to establishing whether the proposals met the formal requirements of the Act and whether they complied with the approved Tariff Code and DTe's further interpretation of this, as set out in the Assessment Framework for Connection Tariffs [Toetsingskader Aansluittarieven].

Amendments to the Decisions in Relation of Transmission Tariffs for 2000 (Decision Nos 001 up to and Including Decision No. 005)

In January 2000 DTe could only approve the transmission tariffs for 2000 submitted by five grid managers in December 1999 after they had been amended. It was established that these grid managers had included partially incorrect data in their tariff proposals for 2000. For this reason DTe approved the correct tariffs on 26 January 2000 with retrospective effect as of 1 January 2000.

Decision Supplementary to the Decision in Relation to Transmission Tariffs for 2000 (Decision No. 022)

After DTe had determined the tariffs for the transmission of electricity for the year 2000 applicable to N.V. Continuon Netbeheer, it emerged that in its tariff proposals Continuon Netbeheer had not taken into account its customers connected to the high-voltage grids that purchase transmission services from Continuon Netbeheer at this high voltage.

On the basis of a proposal made by Continuon Netbeheer, DTe determined to the transmission tariffs for customers connected to the high-voltage grids on 6 September 2000. Continuon Netbeheer obtained additional revenues during the last four months of the year due to the transmission tariffs applicable to customers connected to the high-voltage grids, determined in accordance with this decision. Taking into account the commencement date of 1 September 2000, referred to in the decision, it was decided that the tariffs applicable to Continuon Netbeheer for 2001 should be reduced incidentally, in other words as a one-off measure, by an amount proportional to the additional income and the number of months that the supplementary decision had applied in the year 2000.

Decision in Relation to Transmission and Connection Tariffs for 2001 (Decision No. 085 up to and Including Decision No. 105 and Decision Nos 125/126)

These decisions related to the maximum tariffs that grid managers may charge in the year 2001 for a connection to their electricity grid or for the transmission of electricity. With regard to the grid manager of the national high-voltage grid (TenneT), the decisions apply to the performance of system services and maintaining the energy balance. These tariffs were determined by DTe on 13 December 2000.

Supply Tariffs for 2001 (Decisions Nos 106-123)

In October 2000 the Minister of Economic Affairs determined the efficiency discount/price cap applicable to supply companies. The purpose of this discount was to give supply companies an incentive to operate efficiently. In his decision, the Minister also determined that the supply tariffs would be assessed in future four times each calendar year by DTe on the basis of the data and tariff proposals that supply companies are required to submit. In accordance with the procedure in relation to grid managers, the supply companies incorporated the efficiency discounts into the supply tariffs for 2001 for the first time. DTe determined the supply tariffs for the first three months of 2001 on 19 December 2000.

3.3.2 *Decisions in Relation to the Amendment of Codes*

In 2000 DTe's technical codes were amended in a number of respects. The amendments are described briefly below. The introduction to each part explains the purpose of the amendments of the respective code(s).

Tariff Code (Decision No. 068)

Aim: Abolition of the Uniform National Producers Tariff in respect of imports and the introduction of tariff reserves

On 16 November 2000 DTe decided to amend the Tariff Code in two respects. The first amendment meant that parties connected to the Dutch High voltage grid by means of cross-border grids were no longer required to pay the Uniform National Tariff for Producers [Landelijk Uniform Producententarief (LUP)]. Within the European context agreements have been made with regard to promoting the liberalisation of the internal trade in electricity within the European Community. Part of this is an interim system for identifying, calculating and settling the costs incurred by the various national grid managers in relation to cross-border electricity flows. In this regard, it was decided that national authorities should determine the method of settlement with the national users of transmission services and that this should be done in a way that does not discriminate between users and does not disrupt trade. DTe has implemented these international agreements by means of this amendment to the Tariff Code.

The second amendment relates to the position of customers who only consume electricity for a very small number of hours per year. Research showed that the present provisions of the Tariff Codes have ongoing unfavourable consequences for this group of customers. As a concession to this group, a new article has been included in the Tariff Code, which stipulates that under certain conditions a tariff for reserving capacity on the grid is possible.

Grid Code (Decision No. 074)

Aim: Amendments to make it possible to auction available import capacity as of 1 January 2001

On 16 November 2000 DTe took a decision with regard to the auctioning of cross-border import capacity. The decision emphasised that the structure of the auction has to correspond closely to the present structure of the Dutch market. After all, the conditions, subject to which transmission capacity is auctioned, are not only important in allocating transmission capacity in a manner that is non-discriminatory and transparent, but also bear a direct relationship to the possible development of the Dutch electricity market in the year 2001.

Under TenneT's responsibility, the first monthly auction (for the month of January 2001) and the first annual auction (for 2001) were held at the end of November and the beginning of December 2000 respectively. The proceeds of these auctions were 5.1 million euro for the January auction (549 MWe) and 62 million euro for the annual auction (900 MWe). With regard to the daily auction, DTe determined in the Auction Decision [Veilingbesluit] that capacity auctions through the daily auction must be cleared through the Amsterdam Power Exchange (APX).

Clearly the development of the auction will have a significant effect on the development of the Dutch electricity market. DTe will therefore monitor the development of the auction closely. Precisely for this reason, DTe decided to only approve this method of allocating transmission capacity on the cross-border connections for the year 2001. In the course of 2001, the extent to which the system has to be amended and whether it is suitable for continuation in 2002 will have to be reviewed.
At the request of DTe, TenneT will develop a method which takes into account the technical restraints associated with the transmission of electricity, on the one hand, and makes optimal use of the available transmission capacity, on the other hand, and, gives market parties every possible opportunity to import electricity from abroad. In doing so, TenneT will give attention, in particular, to the so-called balancing of transmission capacity.

System Code (Decision No. 127)

Aim: Amendment to chapter 3.9 on programme responsibility

On 19 December 2000, DTe approved the amended chapter 3.9 of the System Code in relation to programme responsibility. If a programme responsible partner does not comply with the energy programme submitted in advance, he may create imbalance within the electricity grid. In 2000 the Protocol Agreement between production and distribution companies played a very important role in the system of programme responsibility. The new system provides a framework for bringing about a system for settling imbalance after the expiry of the Protocol Agreement on 31 December 2000.

Grid and System Codes (Decision No. 124)

Aim: To provide for the possibility of making compulsory the supply of power for the purpose of eliminating restraints on transmission and to provide for control and reserve power

TenneT is obliged to take measures in advance to provide the system services necessary for ensuring that electricity can be transmitted across all the grids safely and efficiently. In addition, TenneT is required to take measures to ensure security of supply. In order to be able to guarantee the reliability of electricity supply in the Netherlands in the year 2001 and the years thereafter, it is essential that sufficient power is available. Due to the present situation on the market, TenneT indicated that it was not able to enter into sufficient contracts to provide the necessary power. This affected the reliability of electricity supply in the Netherlands directly. On 21 December 2000, DTe therefore adopted a proposal made jointly by the grid managers to amend the Grid Code, the System Code and the List of Definitions. The consequence of the amendments is that TenneT, if necessary, may use power at its disposal to eliminate limitations on the transmission of electricity. A further consequence of the amendments is that electricity generating plants with a nominal maximum output of more than 60 MW may be required to supply control power and, if this is not sufficient, electricity generating plants with a nominal output of 5 MW or more may be compelled to supply reserve power. In taking its decision, DTe noted that, in his opinion, a system based on the voluntary supply of power was preferable. TenneT was instructed to conduct research into the feasibility of a system based on the voluntary supply of power and, if this is possible, to set up such a system as soon as possible.

Measurement Code

Aim: Amendment to chapter 4 on load profiles

The grid managers presented a joint proposal to DTe for a method of determining imbalance in the case of affiliated companies with a total installed capacity in excess of 2 MW. DTe notified the European Commission of the proposal on 9 November 2000 and submitted the proposal to the European Commission. The decision-making process will be completed in the first quarter of 2001.

Grid Code (Decision No. 011)

Aim: Amendment in relation to quality criteria

On 12 April 2000, DTe determined quality criteria with regard to 'technical specifications' and 'solving disruptions to the transmission of electricity'. With regard to the quality criteria, the grid managers made a joint additional proposal in relation to 'customer service' and providing 'compensation in the event of serious disruptions to service', which was submitted to DTe on 4 July 2000. DTe notified the European Commission of this additional proposal. The decision-making process will be completed in the first quarter of 2001. This additional proposal includes a provision that every grid manager is required to submit a report to DTe before 1 November on the way in which the grid manager complied with the quality criteria in the preceding calendar year. This provision implements article 39(1) of the Electricity Act of 1998. In fact, the grid managers will only submit their first report to DTe in the second half of 2001. In preparation for this, all grid managers will provide DTe, on request, with periodic technical information on the grids, including information on a number of quality criteria. In addition, the grid managers will report separately to DTe on major incidental disruptions to service.

3.3.3 *Decisions on Administrative Appeals*

Tariff Code
Contested decision: Decision No. 1999-002

Decision No. 002 of 30 September 1999 in Respect of the Determination of Tariff Structures, As Referred to in Article 36 of the Electricity Act of 1998.

Administrative appeal

DTe received a number of administrative appeals against this decision. A number of appellants appealed against (articles of) the Tariff Code on the same grounds or on grounds that were significantly similar. Since it was only possible to rule on the administrative appeals if all the interests were weighed against each other, DTe decided to set out his decision as a single ruling on the administrative appeals.

Findings

Due to the absence of a direct interest, DTe declared one of the administrative appeals to be inadmissible. DTe decided to amend the Tariff Code in one respect, namely the item dealing with the tariff for consumers connected at the extra high-voltage level. Article 3.7.8 of the Tariff Code consequently became inoperative. Article 3.7.1(a) was also replaced. DTe ruled that in all other respects the administrative appeals submitted were unfounded.

Decision on the administrative appeal

Decision No. 2000-013 was taken on 19 June 2000.

Technical Codes
Contested decision: Decision No. 1999-005

On 12 November 1999, DTe determined some of the conditions, referred to in article 36 of the Electricity Act of 1998. In this decision regulations were adopted, for instance, in relation to the system of programme responsibility (System Code) and the procedure for importing electricity for the year 2000 (Grid Code).

Administrative appeals

Twelve administrative appeals against this decision were submitted. The import procedure, in particular, gave rise to many administrative appeals. In addition to a number of administrative appeals against the system of programme responsibility, the administrative appeals were mainly directed, for instance, against the determination of the available transmission capacity on cross-border grids and the allocation of transmission capacity to market players.

Findings

At the beginning of 2000, 3500 MW of import capacity was available. Of this 1500 MW was reserved with priority for the fulfilment of three import contracts, which N.V. Samenwerkende elektriciteits-productiebedrijven (Sep) had entered into with two German electricity producers and one French electricity producer. On 11 July 2000, the Minister of Economic Affairs instructed DTe to make it possible for Sep to allocate import capacity. A decision was taken on 17 July 2000 on all the administrative appeals. DTe declared that the administrative appeals in relation to import capacity were unfounded. DTe upheld the appeals against article 3.9.20(c) of the System Code. This provision of the System Code was amended.

Decision on the administrative appeal

Decision No. 2000-016 was taken on 17 July 2000.

Transmission Tariff for 2000 TenneT
Contested decision: Decision No. 1999-006

In the year covered by the previous annual report, DTe determined the maximum tariffs that TenneT was entitled to charge for the transmission of electricity and for the performance of system services.

Administrative appeals

N.V. Samenwerkende elektriciteits-productiebedrijven (Sep) (a joint operating company of electricity producers), Vereniging voor Energie, Milieu en Water (VEMW) [Association for Energy, Environment and Water], Elektro-schmeltzwerk Delfzijl B.V. (ESD), EnergieNed, and TenneT appealed against this decision.

Findings

The administrative appeal filed by Sep was dismissed. Sep holds all the shares of TenneT and claimed that on the grounds of this it had an interest in the tariffs charged by the company. In this regard, DTe ruled that, in principle, shareholders do not have a direct interest in decisions relating to the company.

The appeal filed by VEMW was, in fact, against the approval of the Tariff Code and not against the determination of TenneT's tariffs and, as such, was declared to be unfounded.

The appeal filed by ESD was directed against the fact that the Tariff Code had not distinguished between customers connected at the extra high-voltage level, and customers connected at the high-voltage level. As a result, as a customer connected at the extra high-voltage level, ESD claimed that it would incur higher costs for the transmission of electricity. ESD's administrative appeal was upheld, as a result of which TenneT's tariff was amended retrospectively as of 1 January 2000.

The administrative appeal filed by EnergieNed was directed against the system services tariff determined for TenneT, which did not take account of the cost of collecting payment of this tariff, nor the fact that the grid managers bore all the debtors risk on behalf of TenneT. In relation to this appeal, DTe ruled that the costs associated with these activities constituted normal business risks and, as such, did not fall within the category of costs that may be included in the tariffs, in accordance with the Electricity Act. The appeal was declared to be unfounded.
The administrative appeals filed by TenneT were directed not only against the cost of collecting payments, but also against the fact that DTe had not fully accepted the item of salary increases for the period 1996-2000, and had therefore not included this item in calculating the tariffs. After reconsideration, DTe decided that the full amount of the salary increases could be included in the tariffs. This decision will be taken into account in determining TenneT's tariffs for the coming years.

Decision on the administrative appeal

Decision No. 2000-017 was taken on 24 July 2000.

Uniform National Transmission Tariff for Producers for 2000
Contested decision: Decision No. 1999-007

In its decision of 7 December 1999, Decision No. 007, DTe determined the method for calculating the Uniform

National Transmission Tariff for Producers [Landelijk uniform producenten transporttarief (LUP)] for 2000.

Administrative appeals
Administrative appeals were filed against this decision by N.V. Samenwerkende elektriciteits-productiebedrijven (Sep), Vereniging voor Energie, Milieu en Water (VEMW) [Association for Energy, Environment and Water], and the four electricity generating companies (EPON et al.). The administrative appeals were directed against the introduction of the Uniform National Transmission Tariff for Producers as such, the level of the Uniform National Transmission Tariff for Producers and the underlying principles on which this was based.

Findings
The appeals filed by VEMW and EPON et al. were declared to be unfounded because these appeals, in fact, were directed against the Tariff Code and not against the contested decision in relation to the Uniform National Transmission Tariff for Producers.

The appeals filed by Sep were dismissed. In accordance with its Articles of Association, Sep's aim is to ensure the reliable and efficient operation of the national, public electricity supply system at the lowest possible cost and in a socially responsible manner. In the light of this, it is reasonable to assume that the lowest possible tariffs are in Sep's interests. Sep's appeals, however, were aimed at increasing the tariffs. Taking into consideration the fact that Sep held all the shares of TenneT, DTe ruled that Sep had filed the administrative appeals with a view to promoting its interests as the shareholder of TenneT. Promoting these interests was not consistent with Sep's aims, as stated in its Articles of Association. Insofar as the administrative appeals filed by Sep implied that the Uniform National Tariff for Producers was too low, Sep's interests were not directly affected by the contested decision.

Decision on the administrative appeal
Decision No. 2000-020 was taken on 31 August 2000.

Transmission Tariff for 2000 Delta Netwerk Contested decision: Decision No. 1999-028

In December 1999 DTe determined the maximum tariffs that DELTA Netwerkbedrijf B.V. was permitted to charge its customers in 2000 for the transmission of electricity.

Administrative appeals
Pechiney Nederland BV filed an administrative appeal against this decision. The administrative appeal consisted, in fact, of three parts. It was directed against the fact that a connection tariff was not determined in the original decision. Consequently, DELTA had charged its own connection tariff. The administrative appeal was therefore against the amount of the connection tariff charged. Finally an appeal was lodged against the transmission tariff.

Findings
DTe upheld the appeal against the fact that a connection tariff had not been determined. In determining the grid tariffs for the year 2000, DTe had purposefully not determined the connection tariffs, since at that time a number of companies were still not able to provide well-substantiated proposals for connection tariffs, which complied with the Tariff Code determined by DTe. The connection tariffs were determined on 18 September 2000.

The appeal against the level of the connection tariff charged was dismissed, since the connection tariffs had not been determined at the moment that the administrative appeal was filed and Pechiney could not within reason have thought that this was the case. Filing an appeal was therefore premature.

The administrative appeal against the transmission tariff was upheld. The transmission service comprises a part that relates to actual transmission and a part that is independent of actual transmission. The part that is independent of actual transmission is allocated to every connected customer. The part that is related to actual transmission is allocated to every connected customer in proportion to its actual consumption, in accordance with the categories described in the Tariff Code. Every customer that makes use of transmission services pays for the services in proportion to the customer's actual consumption. The fact that Pechiney was a disproportionately large customer did not detract from this principle and did not lead to a different conclusion. There was also no question of a conflict with the non-discrimination principle.

Decision on the administrative appeal
Decision No. 2000-046 was taken on 15 September 2000.

Transmission Tariff for 2000 ENet Eindhoven Contested decision: Decision No. 1999-024

In December 1999 DTe determined the maximum tariffs that ENet Eindhoven was permitted to to charge its customers in 2000 for the transmission of electricity.

Administrative appeals
The administrative appeal was filed by ENet Eindhoven and was against the omission of a separate tariff group for public lighting in the contested decision. In its proposal, ENet had included a separate tariff group for public lighting. DTe had not included this in his decision.

Findings
The essence of this administrative appeal was that ENet wished to include its costs for public lighting in either the connection tariffs or the transmission tariffs. During the processing of the administrative appeal, DTe had developed an Assessment Framework and a Supplement to this, which dealt specifically with matters such as public lighting. In the meantime, DTe had also determined the connection tariffs. All these factors meant that the maintenance costs of public lighting were included in ENet's connection tariffs and the administrative appeal was consequently no longer relevant.

During the hearing, however, it appeared that ENet nevertheless wished to pursue the administrative appeal. The reason for this was that if the provisions of the Supplementary Assessment Framework were applied in relation to public lighting, ENet would fall within the single kWh transmission tariff or the differentiated kWh tariff, depending on the choice made by the customer, in this case the municipality of Eindhoven.

It appeared from a document requested by DTe that the municipality had opted for the differentiated kWh transmission tariff for public lighting. As a consequence, ENet would receive less income than in 1996 because public lighting burns mainly at night when the cheaper off-peak rate applies. On the basis of the above, ENet's appeal was upheld in relation to the last point and the transmission tariffs were amended.

Decision on the administrative appeal
Decision No. 2000-069 was taken on 13 October 2000.

Transmission Tariff for 2000 TZH
Contested decision: Decision No. 1999-008

In December 1999 DTe determined the maximum tariffs that Transportnet Zuid-Holland was permitted to charge its customers in 2000 for the transmission of electricity.

Administrative appeals
The administrative appeals were filed by Westland Energie Services and Westland Energie Infrastructuur and were directed against the fact that a higher tariff would have to be paid as a result of the contested decision in order to ensure that TZH could achieve a reasonable ratio of shareholders' capital to loan capital than the ratio that would be justified on the basis of past agreements and forecasts.

Findings: Westland Energie Services, as the licence holder, has a monopoly within its primary supply area. The tariffs would have the effect of damaging its reputation within the area and would have an adverse effect on its ability to present itself neutrally when the market opens up. In the opinion of DTe, this is not an interest that affects Westland Energie Services directly and immediately. In the decision, Westland Energie Services' appeal was dismissed.

The grid tariffs were determined in accordance with the basic principle that the tariffs applicable in 2000 should be equal to the tariffs in 1996. The separation under civil law of the distribution companies and the production companies was not assessed in this ruling. DTe regarded this separation as a civil law matter that had no bearing on the initial tariffs. The Electricity Act of 1998 provides a description of the costs that have to be allocated as part of the transmission tariff. Shareholders' equity should not be taken into account in this regard. In the decision on the administrative appeal, the appeals filed by Westland Energie Infrastructuur were declared to be unfounded.

Decision on the administrative appeal
Decision No. 2000-075 was taken on 21 November 2000.

Transmission Tariffs for 2000 in Relation to Various Grid Managers
Contested decisions: Decisions Nos 1999-009, 013, 014, 017, 020, 021, 026, 027 and 028

In December 1999 DTe determined the maximum tariffs that Netbeheerder Centraal Overijssel, DELTA Netwerkbedrijf, EdelNet Delfland, Elektriciteitsnetbeheerder Utrecht, ENECO Netbeheer, InfraMosane, RENDO Netbeheer, Net beheer Nutsbedrijven Weert and Westland Infrastructuur were entitled to charge their customers in 2000 for the transmission of electricity.

Administrative appeals
Each of the aforementioned grid managers filed an administrative appeal against the tariff determination applicable to the grid manager in question. On the basis of the Protocol agreed to by the former electricity distribution companies and the electricity production companies, united in Sep, the distribution companies jointly are required to pay an amount of NLG 400 million

to the production companies in the year 2000. This amount relates to costs that were not in line with the market and which were comparable to the item 'measures'. The administrative appeals filed by the grid managers were directed against the fact that the item 'measures' was not included in the tariffs, so that these costs could not be charged to customers.

Findings

Article 29 of the Electricity Act of 1998 and article 3.2.2 of the Tariff Code stipulate which costs have to be included in the transmission tariff. This article does not offer latitude to include the item 'measures' in the transmission tariff. Since the item 'measures' bears no relation to the transmission of electricity, this should not be included in the transmission tariffs.

Furthermore, the Electricity Production Sector Transition Act [Overgangswet Elektriciteitsproductiesector] contains a provision that allows these costs to be passed on to customers by means of a surcharge. This Act took effect on 1 January 2001 and the article in question took effect retrospectively from 1 August 2000.

Decisions on administrative appeals

Decisions Nos 2000-128 up to and including 136 were taken on 21 December 2000.

3.4 Advice Given to the Minister of Economic Affairs

3.4.1 *Exemption from the Obligation to Appoint a Grid Manager*

Legal entities that own an electricity grid to which a limited number of natural persons or legal entities are connected, may obtain exemption from the Minister of Economic from the obligation to appoint a grid manager. The Minister bases his decision in such cases on the advice of DTe. Since the Electricity Act took effect, a total of 122 applications for such exemptions have been submitted. Of these, 32 were not submitted in time or were withdrawn by the applicants. DTe advised the Minister to approve 73 of the 83 applications. Negative advice was given in respect of the remaining 10 applications because these applicants did not appear to own a grid, as defined in the Electricity Act of 1998.

The Minister accepted this advice in its entirety. In the case of seven new applications for exemption, a final decision will be taken at the beginning of 2001.

3.4.2 *Efficiency Discounts (Price Caps) in Relation to the Supply of Electricity by Licence Holders*

In taking decisions in relation to supply tariffs, an efficiency discount (price cap) must be taken into account. This discount aims at promoting the efficient operation of supply companies and consists of a discount to promote effective purchasing of electricity and a discount for services relating to the supply of electricity. At the end of September 2000, DTe advised the Minister of Economic Affairs on this. With regard to the regulation of procurement costs, DTe advised the Minister to determine the permissible procurement costs each quarter by means of a system of yardstick regulation. In accordance with this system, 50% of the permissible procurement costs of a licensed supplier may be based on its own procurement costs and 50% on the weighted average procurement costs of other licensed suppliers. With regard to the discount aimed at promoting services in relation to the supply of electricity, DTe advised the Minister to impose an efficiency discount equal to the consumer price index for a period of three years. As a consequence, this portion of the supply tariff will not increase in the coming three years and will remain nominally the same. The Minister accepted this advice and informed licence holders of his decision in October 2000.

3.4.3 *Conditions in Relation to the Auctioning of Import Capacity*

Partly at the request of the Lower House of the Dutch Parliament, DTe advised the Minister of Economic Affairs in relation to the auctioning of transmission capacity on cross-border grids in the year 2001 and in relation to the position of daily, monthly or annual contracts. In this advice, DTe in fact set out the considerations on which Decision No. 074 in respect of the auctioning of import capacity (Grid Code) was based. Within the context of the Parliamentary proceedings in relation to the Electricity Production Sector (Transition) Act, the Minister presented this advice to the Lower House of the Dutch Parliament.

3.5 Other Activities

3.5.1 *Charges/Payments*

In accordance with the Contribution Scheme for 2000 in respect of the Electricity Act of 1998, DTe issued invoices in the third quarter of 2000 for administrative charges and

the fixed and variable amounts payable by grid managers and licence holders. The total revenues for 2000 exceeded NLG 2.2 million. The Ministry of Economic Affairs has amended the existing Decree in Respect of Contributions, due to the tasks that NMa and DTe have been assigned under the Gas Act. The Decree in Respect of Contributions in relation to electricity and gas is expected to take effect at the end of the first quarter of 2001.

3.6 Communication and Information

In (preparing) decisions, DTe paid considerable attention in 2000 to the provision of information directly to interested parties and other parties involved. In addition to rounds of consultations, information meetings were also held. Much use was also made of the public preparatory procedure. All decisions, relevant documents and background information were published on DTe's website.

For DTe the website is an important medium of communication. A survey has shown that there is considerable interest in the website. The website is visited approximately 3000 times each month for general information and downloading documents, and to order publications electronically. By means of the option 'Questions', DTe was asked a total of 850 questions in 2000. In this regard, DTe adheres to the principle that questions should be answered in any event within 14 days.

Interview with Mr McCarthy

"Since May 1999 the energy market has been fully open. Every household may choose the supplier from which it purchases its gas and electricity. For reasons relating to price and possibly also service, 60,000 people switch from gas supplier every week and 100,000 people switch to a different electricity supplier. In the past five years, in each of the sectors, 6 million households have switched from one supplier to another."

With enthusiasm and barely concealed pride, Callum McCarthy, the Director-General of Ofgem, tells the success story of a purposefully chosen and consistently applied competition policy. Ofgem is short for the Office of Gas and Electricity Markets, the independent British regulator of the energy market. Ofgem has existed as a combined organisation for both gas and electricity for two years. Before this there were two separate organisations. The Directorate-General, run by Mr McCarthy, is the British counterpart of the Office for Energy Regulation (DTe), which is part of NMa and, as a separate chamber, has its own powers.

"I meet my Dutch colleagues in the Council of European Energy Regulators. I'm very impressed by the fact that DTe, as a young organisation with a staff a tenth the size of mine, deals so intelligently with complicated problems affecting the energy market. There is always a risk that the relationship between companies in the energy sector and the regulator will be characterised by open hostility. Insofar as I have been able to ascertain, DTe until now has managed to avoid that danger. I would like to leave it at this because commenting on the work of colleagues soon gives an impression of being arrogant."

DTe handles the complicated problems intelligently.

Designer, referee or spokesman. On which of these three functions should the accent lie, in Mr McCarthy's opinion?
"This depends on the development of the energy market. In recent years, Ofgem has certainly emphasised its function as a designer. We have invested considerable time and energy in designing a suitable structure to ensure that the market operates as well and efficiently as possible. This included designing trading arrangements to promote competition. The function of designer is the most important. Often, however, it will be combined with the role of referee in the sense of ensuring that the Act is complied with and that dominant positions on the market are not abused. With regard to the role of spokesman, I have my doubts. Naturally we have a responsibility to explain our policy –if you prefer, our role as designer and referee– clearly to the public. This is as far as it goes. No, I don't think this role is all that important. Designing, that is our most important task."

The downward pressure of price regulation varies from 13 to 28 percent.

"If you were to ask me to make a comparison with the Netherlands, I think the greatest difference would be that traditionally we take as our point of departure the interests of the consumer. An important part of our work during the past five years has been aimed at increasing and broadening competition. British people decide for themselves where they purchase their gas or electricity. Naturally this has made the supply of energy very competitive. Ofgem has an effect on prices in two ways. We carry out price regulation on natural monopolies, such as the gas pipeline and the electricity grid. This has resulted in many millions of pounds being returned to customers. Annually considerable financial advantages accrue to consumers via the second route, the promotion of competition on the domestic market."

Ofgem's annual report for 1999 contains striking figures in this regard. The downward pressure exerted by price regulation on the distribution of gas and electricity varies throughout the country from 13 percent to 28 percent. Calculated for the country as a whole, the amount paid for energy by an average household fell from one month to the next by 10 pounds.

Mr McCarthy explained the figures with an expression that seemed to say, 'as you see, competition works'. With a tone that betrayed the fact that he was troubled by the reality of this, he added: "What we are not able to do is to isolate the consumer from the fluctuations in supply and demand on the market. If oil prices on the world markets increase, gas prices also increase. We can do nothing about that. It is simply an incentive to make more of an effort to ensure that suppliers and consumers continue to act with an awareness of competition."

Mr McCarthy did not feel that he was able to comment on the differences between Dutch and British energy legislation with regard to access to the gas network, on the one hand, and to the electricity grids, on the other. "I am not sufficiently informed of this." As with DTe, Ofgem is also a member of 'the club', as only a true Englishman would refer to this. Mr McCarthy means by this the Council of European Regulators, a voluntary

Interview with Mr McCarthy

association of regulators set up in March 2000. Mr McCarthy: "We have a common aim: to ensure that the interests of consumers and the opinions of consumers are represented intelligently in a number of complicated and often technical matters, such as the issue of tariff policy for the use of cross-border grids (interconnectors), or in managing congestion when demand for the use of grids exceeds supply. DTe is especially good at leading and managing working groups in this area. My Dutch colleagues do this intelligently and with knowledge of the material."

I don't think we will soon see a European regulator of the energy market.

Mr McCarthy cherishes the voluntary nature of cooperation in the Council. "No, I don't think I would be in favour of obligatory cooperation. It would require a huge amount of time to reach agreement on a single European directive, if only because of the complicated issue of what should be left to the individual Member States and what should be part of common European policy. I think it is important that we agree on common basic principles in the Council. In many instances, we have the same opinions and when we do have a difference of opinion, it is important that we do justice to the opinions of both the majority and the minority. We have developed minimum standards and every individual regulator may opt to exceed these. If in the United Kingdom we had had to wait for a European directive, we would not have achieved the successes we have with regard to reforming the energy sector. We would have had to adhere to the pace of the slowest Member State. No, I don't think we will soon see a European regulator of the energy market. Perhaps I hold this opinion, however, because I am not in favour of one. Personally I prefer the present system in which we cooperate with colleagues and every national regulator has and retains its own responsibilities."

4 Special Themes in NMa Policy

In this chapter a number of themes have been grouped together, in which NMa was involved in 2000 or in relation to which it made choices that have set a trend.

4.1 Regulation of Competition

4.1.1 *Interpretation of Article 6 of the Competition Act: Purpose and Appreciability*

NMa is regularly confronted with cartel cases that restrain competition by their very nature, such as price maintenance and the division of markets. These are also referred to as 'object clauses'. These clauses are generally regarded as very serious restraints on competition, because they have a direct effect on the parameters of competition, such as price and product range. The recurring question in dealing with object clauses is whether, in assessing these on the basis of competition law, it is necessary in all cases to assess whether the restraints on competition have appreciable effects.

The general policy that has been developed in this regard is that in the case of object clauses it is assumed that the restraints on competition are appreciable. The object or intention of the parties concerned is therefore not relevant in determining the nature or purpose of the limitation on competition. In these cases it is therefore not necessary to provide further justification with regard to whether the restraints on competition are appreciable. This policy is in line, for instance, with the guidelines of the European Commission in relation to horizontal joint venture agreements. In accordance with these guidelines:

'In some cases the nature of a cooperation indicates from the outset the applicability of Article 81(1). This is the case for agreements that have as their object a restriction of competition by means of price fixing, output limitation or sharing of markets or customers. These agreements are presumed to have negative market effects. It is therefore not necessary to examine their actual effects on competition and the market in order to establish that they fall within Article 81(1).'

Under exceptional circumstances it may nevertheless be concluded that there is no evidence that a object clause is appreciable within the economic and legal context of the case. Such cases, which prove not to be appreciable on investigation, will not occur frequently. The possibility that such cases may occur cannot be excluded.
This policy was applied in decisions taken by NMa in case 199/Roodveldt, case 228/Vebidak, case 272/Nederlandse Kleding Conventie and case 25/Holland Dier Identiteit versus KNMvD.

4.1.2 *Small and Medium-sized Enterprises (SME'S) and Branch Organisations*

When the Competition Act took effect in 1998, a considerable number of branch organisations submitted applications for exemptions. Formal decisions were taken in 2000 in relation to a number of these applications. These decisions received the necessary attention by the press and from employers associations and interest in the topic has grown. As a result of this, NMa has cooperated in the information activities of VNO-NCW, the main employers' associations, targeted, for instance, at branch organisations. In addition, in 2001 guidelines will be published for small and medium-sized companies, in which further information will be given on the relationship between cooperation in the SME sector and the Competition Act. Special attention will be given to the role of branch organisations. With regard to the application of the Competition Act in specific cases within the SME sector, NMa paid attention in the past year, for instance, to systems of approval implemented by branch organisations and to agreements with regard to advertising and sales conditions

4.1.3 *Systems of approval and Requirements for Membership of Branch Organisations*

In part due to activities in relation to deregulation, there seems to be a growing need amongst undertakings for self-regulation. Partly as a result of the liberalisation of legislation governing the establishment of companies, companies have looked for support to so-called recognition and certification schemes. Such schemes may affect the market in a variety of ways. In 2000 decisions were taken in relation to systems of approval in cases 262, 714 and 715/Pharmacon, case 1145/E.W.S. Beveiliging vs ABN Amro and Stichting Kwaliteitsborging Preventie, 530, 456 and 534/Vereniging Nederlandse Installatiebedrijven. These decisions have clarified how systems of approval must be assessed in accordance with the Competition Act. This assessment may be summarised as follows. The aim of systems of approval is normally to increase the quality of production or service provision in a certain branch and therefore, in principle, they do not limit competition. A system of approval, however, may result in effects that restrain competition.

In the case of systems of approval to which a large part of the branch is affiliated, the system of approval may limit competition firstly between recognised and non-recognised undertakings, due to the fact that the latter are excluded. Associations may aim to build an image of quality and may therefore require their members to adhere to a certain level of quality. Striving for quality, however, may not be used as a means of withholding the advantages of membership from competitors. For this reason, systems of approval must satisfy the criteria of openness, objectivity, transparency and independence and the scheme must accept systems that offer equivalent guarantees ('dispensations'). It is also important that the systems of approval comply with the criteria not only on paper, but also in the way in which the scheme is applied.

This means that every potential candidate, who satisfies the criteria of membership, must be able to join the scheme, that the requirements that have to be met must be objective and known beforehand and that the procedure to be followed in joining the scheme must be clear beforehand. In addition, the system of approval must provide for independent assessment of candidates on the basis of the recognition criteria. This criterion has been imposed to avoid a situation where direct competitors may decide on the recognition of new entrants. Finally, how the criteria are met is not important. All that is important is whether the criteria have been met. Prescribing a specific course will therefore generally not be accepted. The systems of approval must accept courses that result in the same level of quality.

Secondly, a system of approval may result in restraints on competition between recognised undertakings. This is the case if the scheme provides for agreements with regard to the parameters of competition. For instance, if a system of approval includes agreements on prices or the division of markets, the scheme will fall within the scope of the Competition Act. If it is of considerable importance to a member to be able to be a member of a branch organisation in order to operate in the market, the requirements for membership of the branch organisation may function more or less as a system of approval.
In such cases, NMa will assess the requirements for membership of a branch organisation on the basis of the same criteria applied in assessing a system of approval.

4.1.4 *Prices and Discounts*

An assessment in accordance with competition law is based on the principle that vertical price maintenance and horizontal price agreements are prohibited. Maximum discounts, to which members of a branch organisation or retailers participating in a joint operating agreement are bound, limit the freedom of undertakings in question to set their own sales prices. It is not likely that exemption would be granted for such restraints on competition.

The above does not prevent branch organisations and cooperative associations of retailers from conducting joint advertising campaigns in which prices are an element. Advertising is an important means of promoting sales, and advertising campaigns that are better organised and are carried out jointly may result in efficiency gains. The advertising campaign and the prices advertised, however, must remain within reasonable boundaries. Advertising campaigns of short duration with regard to a number of products, aimed at promoting a commercial formula, and involving recommended or maximum prices advertised by associations of companies or branch organisations, may remain outside of the prohibition on cartel agreements contained in article 6 of the Competition Act. On the other hand, an 'advertising' system of fixed prices and discounts covering an entire product range for a long period of time is a breach of the prohibition on cartels. It is also important not to lose sight of economic reality. If the products or product ranges of the participating undertakings do not compete with each other and the scheme has no external effects, in the sense that third parties are limited in their opportunities to compete, this will not constitute a limitation on competition.

Another important point relates to the use of discounts and bonuses by an undertaking or group of undertakings with a dominant position with the aim of ensuring that customers do not purchase from a competitor. These so-called loyalty discounts are not permitted. On the other hand, however, volume discounts due to cost savings are permitted, for instance in the case of large orders.

The above policy of NMa was applied, for instance, in cases 120/Vereniging van Keurslagers, 272/Nederlandse Kleding Conventie, 767 and 141/Theo de Graaf vs Zorg en Zekerheid, 1426 and 1601/Nederlandse Juweliers- en Uurwerkenbranche vs See Buy Fly en 121, 127, 128, 1057, 1184 and 1185/Carglass.

4.1.5 *Information and Communication Technology*

The developments in the area of information and communication technology (ICT) have important consequences

for the way markets operate. ICT provides room for the improvement of products, ensures greater variety in the application of products and often result in greater market coverage. In many markets ICT is complimentary. In other words, the existing markets operate better as a result of the use of ICT. From the perspective of competition, it is important that the market for ICT products functions properly. In particular, information products, such as software, have characteristics which, on the one hand, may allow producers to acquire a dominant position and, on the other, may result in 'free rider' behaviour (for instance copying) and consequently to less innovation.

The often high fixed and low variable cost of information products promotes dominant positions on the market, particularly if this cost structure is accompanied by a process in which users familiarise themselves with a certain information product or information system (for instance, experience with using Windows). The more important it is to be familiar with a particular information product, the more time and money it requires to switch products because users have to learn to use the new information product. In addition, if the compatibility between the various information products is limited, it is soon clear to users that the best course of action is to purchase the most widely used system. Under these circumstances, a market soon develops in which the winner controls almost the entire market. The Windows operating system is a good example of such an information product.

In assessing cases, the analysis in accordance with competition law will take into account the special characteristics and specific aspects of the markets relating to information technology.

4.2 Legal Proceedings

4.2.1 *Confidentiality of Company Data in Proceedings*

In almost every case dealt with by NMa one or more interested parties provides information on its own company. The Competition Act guarantees in various articles that confidential data will, in fact, be treated confidentially. It is therefore important that whoever submits data indicates whether and, if so, which data are confidential, in his opinion. These confidential data must be included as a separate addendum or a (public) version of the document must be included from which the confidential information has been removed. In practice, this is not always done with due care. Partly for this reason, it is NMa's standard practice that the addressee(s) of a decision are given the opportunity to indicate whether the decision contains data that must be kept confidential. Only after this is a public version of the decision drawn up, which is published, for instance, on the Internet.

It is conceivable that a difference of opinion arises between the parties involved and NMa with regard to the question of which information should and which information should not be regarded as confidential. The Competition Act indicates what action should be taken in a number of such cases. If a difference of opinion arises, for instance, during proceedings in relation to an exemption or in a concentration case, the Act stipulates that the information that the party involved regards as confidential may not be published before the Director-General of NMa has taken a formal decision in this regard and the party in question has been given a week in which to challenge this decision. A legal challenge to a decision such as this may be made by filing an administrative appeal and by applying for a preliminary ruling from the Presiding Judge of the District Court of Rotterdam (Administrative Law Section). In a number of other proceedings –for instance, the complaints procedure– no legal provision has been made. In this regard, NMa has no authority to take a decision in relation to publication, against which the party involved may appeal or seek a preliminary ruling. NMa wishes to ensure, as far as possible, that the same situation applies to these parties as would apply in relation to the confidentiality procedure provided by statute. In these cases, NMa therefore sets out its intention to publish the decision in a letter. The party involved is given a week in which to take action to prevent publication.

If a judicial appeal is filed against a decision taken by NMa, it is partly beyond the control of NMa whether information, considered confidential by the provider, is made available to a third party. The Act requires NMa to submit all documents relating to the case to the Court. NMa may, however, request that certain confidential documents or data be kept from other parties to the proceedings. Initially NMa requested that all data be kept confidential, which had been marked as confidential by the undertakings that had submitted these data to NMa. The idea behind this was that, insofar as these undertakings were themselves a party to the proceedings (for instance, because they had filed a judicial appeal), they had all the data at their disposal. They would themselves therefore have to protests against disclosure of their data to other parties. The Court, however, did not agree to this method

of operation. Confidentiality is upheld if NMa is able to provide sound arguments why the confidentiality of certain data in respect of a specific third party, who is a party to the proceedings, should be maintained. The simple fact that an undertaking has requested confidentiality is not sufficient. The practical consequence of this is that undertakings that wish NMa to request confidentiality in proceedings, must provide sound arguments for this when making this request. In practice, it is a good idea if parties who request confidentiality, provide a public version of the document in question from which they have removed the sensitive data.

4.2.2 Standard Practice in Imposing Fines

NMa may impose a fine in the event of a breach of article 6 of the Competition Act (the prohibition on cartels) or article 24 of the Competition Act (prohibition on the abuse of a dominant position). The fines are high, namely a maximum of one million guilders or, if this is greater, 10% of the annual turnover of the undertakings involved in the violation.

The legislature assumed that a fine of 10% of annual turnover was high, in other words, that the fine would make a significant impact on the party on whom this fine was imposed. NMa takes this into account in imposing fines. In procedures that may result in the imposition of a fine on a relatively small undertaking to which the maximum fine of one million guilders applies, the undertaking in question is given the opportunity of stating its turnover. In principle, a fine exceeding 10% of this turnover will not be imposed. It is certainly possible therefore that a small undertaking will receive a lower fine than a large undertaking for the same offence.

In determining the amount of the fine, NMa in any event takes into account the seriousness and duration of the offence. Offences may be serious due to the type of behaviour or due to the (intended) effect. Price agreements, agreements to divide markets or action with the intention of eliminating a competitor, for instance, are very serious. Price discounts, discrimination and loyalty schemes (discounts) by undertakings with a dominant position are also serious. Vertical agreements, on the other hand, are often less serious. In determining the seriousness of the offence, NMa considers the effect that the offence has had. The joint market share of the offenders is an important indicator in this regard. In addition to the effect on the market, NMa also takes into account the scope of the agreements in question. Agreements to divide markets, which extend to the entire Dutch market, justify a higher fine than price agreements between the same parties that only relate to a local market. A higher fine is also imposed on undertakings that take the initiative in committing the offence, compared to 'accomplices'.

With regard to the duration of the offence, the European Commission increases its fines for every year that the offence has been committed. NMa is also of the opinion that this principle may be used to good effect in the Dutch context. Circumstances other than the seriousness and duration of the offence may also be taken into account in determining the amount of the fine. A recurring offender, a company that has offended previously, may expect to be dealt with more severely than a 'first offender'. On the other hand, it is to the benefit of the offender to cooperate in the investigation, to terminate the offence and to repair any damage caused. Finally, in cases in which the extent of the unjustly acquired advantage can be determined, NMa imposes a fine that is considerably higher than this advantage, in order to achieve the intended effect of imposing the penalty. An undertaking which informs NMa of its own accord that a breach of the prohibition on cartels has been committed, in which it is involved, and provides the necessary evidence before NMa starts an investigation, may expect to receive a considerable reduction in the fine compared to other offenders, provided the undertaking in question immediately ceases committing the offence and subsequently cooperates in the investigation carried out by NMa.

In addition to breaches of the prohibition on cartels and the abuse of positions of dominance, NMa may also impose fines on undertakings that do not give prior notice of mergers or acquisitions and on individuals who do not fulfil their legal obligation to cooperate in investigations. The fines in this regard, NLG 50,000 and NLG 10,000 respectively, are low in comparison to the interests involved. A situation must be avoided where the regulation of competition and the monitoring of concentrations are frustrated as a result. For this reason, in principle NMa imposes the maximum fine, unless there are exceptional mitigating circumstances.

4.2.3 Orders Subject to a Penalty

If a breach of the Competition Act is committed and the offence continues, NMa may impose an order subject to a penalty. An order subject to a penalty may be imposed, not only if the prohibition on cartels is violated or in cases of abuse of a dominant position, but also to enforce

competition. This may be done, for instance, if an organisation refuses to make certain commercial data available.

The purpose of imposing an order subject to a penalty is to ensure that the offence ceases, or to prevent its repetition. The order stipulates the action that must be taken or the action that must cease. Compliance with the order is enforced by means of a penalty, which the perpetrator is required to pay if he does not comply with the order. The decision in which an order is imposed includes a period of grace during which the offender may carry out the order without forfeiting the penalty.

It is possible to file an administrative appeal and subsequently a judicial appeal against the order subject to a penalty, in accordance with the provisions of article 63(1) of the Competition Act. Filing an appeal has the effect of suspending the decision The periods stipulated in the decision will not commence and the order subject to a penalty will not take effect while the administrative appeal or judicial appeal is being processed.

The Competition Act, however, does provide for exceptional situations. In accordance with article 63(2) of the Competition Act, NMa is granted the authority to determine expressly in a decision that the suspensive effect of an administrative or judicial appeal has been waived, so that the period of grace commences one day after notice of the decision is served. NMa may exercise this authority if exceptional and important circumstances are present. NMa therefore has to weigh up the interests involved. Opinions differ with regard to the nature of this weighing up of interests. The Presiding Judge of the District Court of Rotterdam made a ruling in this respect in the case of De Telegraaf/NOS - HMG, filed by NOS and HMG, following the decision taken by NMa on 16 February 2000.

In practice, this decision meant that the refusal by NOS and HMG to provide programme listings could not be terminated by means of the immediate enforcement of the order subject to a penalty. The order subject to a penalty required NOS and HMG to supply De Telegraaf with the weekly programme listings, subject to reasonable conditions. For every week that NOS and HMG did not supply the listings, they would forfeit a penalty of NLG 50,000. The Presiding Judge of the Court, however, was of the opinion that this was not proportionate to the financial loss incurred by De Telegraaf. In addition, the risk that NOS and HMG would suffer irreversible consequences was greater than the risk incurred by De Telegraaf.

In granting NMa this authority, the legislature had given as its reason for doing so the fact that suspending the enforcement of the order may be especially damaging to the party on whose behalf the order is imposed. Partly on these grounds, the Presiding Judge of the District Court of Rotterdam interpreted article 63(2) of the Competition Act to mean that NMa may (only) resort to waiving the suspensive operation of an appeal if there is a reasonable expectation that the disadvantage to the party, in whose interests the order subject to a penalty is imposed, will not only be serious, but that this will also undoubtedly be substantially greater than the disadvantage to the party on whom the order subject to a penalty is imposed[15]. It is apparent from this that the Court is not satisfied with a simple weighing up of interests, in which the interests of the opposing parties are weighed up against each other.

In addition to the above framework for the weighing up of interests, the Court stated that the assessment depends largely on the circumstances of the case and that it is important to consider whether the suspensive effect of an appeal will have irreversible consequences. If this is the case, there is every reason for the immediate enforcement of the order subject to a penalty. It is also important to consider whether the financial disadvantage is proportionate to the financial disadvantage to the party on whom the order subject to a penalty is imposed.

The interpretation given to the required weighing up of interests by the Presiding Judge raises the question as to whether, in practice, NMa's authority to waive the suspensive effect of an appeal is an effective vehicle for law enforcement.

4.3 Monitoring of Concentrations

In the year under review, various topics were raised regarding the application of the provisions of the Competition Act in relation to the regulation of concentrations.

NMa received fewer questions from advocates and undertakings with regard to the interpretation of concepts used in the Act than in previous years. It is clear that after three years the regulation of concentrations is a well-known phenomenon in the Dutch corporate sector. A number of topics will be discussed briefly below.

15 Presiding Judge of the District Court of Rotterdam, 22 June 2000, in case 1/Holdingmaatschappij De Telegraaf vs NOS-HMG.

4.3.1 *Acquiring Control: Temporary Control and the Rules Applicable to Statutory Two-Tier Entities*

The regulation of concentrations involves the monitoring of transactions that bring about a permanent change in the structure of undertakings. As a result of transactions or preparations for transactions, an undertaking may obtain control over another undertaking, although this may be a temporary situation. This may be the case, for instance, if shares are acquired with the aim of placing these immediately with professional investors. Transactions of such short duration are not regarded as a concentration in terms of article 27 of the Competition Act. In this regard, see case 2210/Arcorima - Beter Horen.

The application of the rules applicable to statutory two-tier entities does not mean that the majority shareholder will not be able to exercise decisive influence, in terms of article 26 of the Competition Act. In order to acquire control, it is not necessary that one should be able to influence the day-to-day state of affairs of the company. It is sufficient that one is able to influence the company's strategic and commercial policy. In addition, it is not important whether the shareholder actually exercises control. The point is that, irrespective of the limitations imposed by the rules applicable to statutory two-tier entities, the shareholder has the possibility of exercising control. Two examples of actual cases dealt with by NMa are case 2014/HIM Furness - Koops and case 1710/Schuitema - A&P.

4.3.2 *Calculating Turnover: Taxes*

How the joint turnover of the undertakings involved is calculated is important in determining whether NMa must be notified of the intention to bring about a concentration. The turnover is calculated in accordance with article 377(6) of Book 2 of the Netherlands Civil Code on the basis of net turnover. This subsection stipulates that the net turnover is understood to be 'the income from the supply of products and services by the undertaking of the legal entity, after the deduction of discounts and the like and other taxes levied on the turnover.' The phrase 'taxes levied on the turnover' must not be understood narrowly within the framework of the Competition Act. In this regard, NMa follows the European Commission in not taking taxation into account. According to the European Commission, this provision refers to indirect taxation, such as taxes on alcoholic drinks, since this has a direct relation to turnover. Although certain taxes, such as the motor vehicle and motorcycle tax and the tax on waste, are not based directly on turnover, these must not be taken into account in calculating turnover within the framework of article 29 of the Competition Act. The guiding principle is that the calculation of turnover must provide a correct assessment of the actual economic importance of the undertakings involved in the concentration.

Leaving aside the scope of the regulation of concentrations, this method of calculating the net turnover is important in determining the penalty in the event of a breach of the Competition Act (see article 57 of the Competition Act) and in granting exemptions in minor cases from the prohibition on agreements that limit competition (see articles 7 and 8 of the Competition Act).

4.3.3 *Financial Sector*

From the start of the year under review, the exception made for concentrations in the financial sector ceased to apply. The regulation of these concentrations, previously the responsibility of the Dutch Central Bank and the Dutch Insurance Supervisory Board, are now carried out by NMa.

NMa commissioned two studies in preparation for the regulation of concentrations in the financial sector. The firm Nera (National Economic Research Associates) based in London carried out research into the Dutch insurance sector, while the Netherlands Economic Institute [Nederlands Economisch Instituut, NEI] conducted research into the Dutch banking sector. These outlines of the sectors do not contain definitions of the relevant markets, but serve as a frame of reference, on the basis of which NMa will be able to approach the financial markets.

In applying the provisions in relation to the regulation of concentrations contained in the Competition Act to concentrations in the financial sector, different criteria apply than the general turnover thresholds contained in article 29 of the Competition Act. In order to determine whether the regulation of concentrations applies, it is necessary first of all to establish whether the combined global turnover realised by the undertakings involved amounts to NLG 250 million. In doing so, the turnover of credit institutions and financial institutions is substituted by an amount equal to one tenth of their fixed and current assets. The turnover of insurers is substituted by the value of their gross premium income. The second threshold applied (a turnover of at least NLG 30 million in the Netherlands) is substituted in the case of credit institutions and financial

institutions by tangible fixed assets in the Netherlands amounting to at least NLG 50 million and, in the case of insurers, gross premium income received from residents of the Netherlands amounting to at least NLG 10 million.

In the year under review, NMa received notification of and assessed a number of concentrations in the financial sector.

In case 1694/Detam Pensioen Services - Relan Groep no decision was taken as to whether it was necessary to assume, on the one hand, the existence of a market for portfolio management and, on the other, a market for the administration of group pension schemes, or whether there is a single market for fund management, which includes both the administration of these schemes and the management of group pensions, early retirement schemes and education and training funds on behalf of third parties. The markets on which these activities take place are national markets. If a market for portfolio management, in general, is assumed to exist, the geographical size of this market is European or global.

NMa received a number of notifications involving venture capital companies active in the area of providing risk capital to unlisted companies. This is the private equity market. This market must be distinguished from participating in listed companies and the provision of capital other than risk capital. Although further segmentation was considered, it was decided not to segment the private equity market further (cases 1768/NIB - Alpinvest en 1968/GIMV - Fincon). It was concluded that the geographical dimensions of these markets were at least national. Consideration was also given to the fact that it may be important in assessing a concentration to take into account the activities of companies in which the venture capital companies have a controlling interest.

With regard to insurance policies, it was concluded, in compliance with the policy of the European Commission, that the various types of insurance policies (such as life-insurance, non-life insurance and health insurance) may be regarded as separate product markets, because they are not mutually substitutable. In addition, in line with earlier cases, it was confirmed that private health insurance policies and health insurance funds are separate markets. In case 1711/Rijnmond - Levob, a distinction between individual and group health insurance policies was taken into account, as was the distinction between insurers that supply their products themselves, the so-called direct writers, and insurers that provide their products through insurance brokers. With regard to non-life-insurance policies, it was not necessary to take a decision on whether a further distinction ought to be made between fire insurance and technical insurance (case 1967/Delta Lloyd Schadeverzekeringen - Albingia). In all these cases, no decision was taken on the geographical size of the various markets and in certain cases it was concluded that a national market should be assumed.

In a number of cases a vertical relationship existed in relation to insurance products. In case 1712/AEGON - Jast - Kamerbeek further attention was given to the insurance brokering market. The possibility of distinguishing between life insurance and non-life insurance or making a distinction between the business and personal insurance markets at this level was left open. The decision in case 1924/Achmea - Gak Holding is not only concerned with this relationship, but also with the vertical relationship between health, safety and welfare services, and health insurers. Attention was drawn to the fact that the market for health, safety and welfare services is a new and developing market.

4.3.4 *Amendment to the Competition Act*

As of 1 January 2001, the amendments to the Competition Act took effect. These were brought about by the introduction of the Transport (Carriage of Persons) Act of 2000 [Wet personenvervoer 2000 (Netherlands Government Gazette, 2000, 314)]. An important amendment with regard to the regulation of concentrations is the addition of a third subsection to article 37. This subsection stipulates that the period of four weeks within which NMa must be given notice of whether a licence is required commences on the first day after NMa receives the notification, provided this is not a Saturday or Sunday or an official public holiday. This means that the period of notice of a concentration received by NMa on Friday will generally commence on the following Monday.

4.3.5 *Summary Settlements*

Ever since the Competition Act took effect, NMa has adhered to the practice of taking a fairly extensive and well-reasoned decision in all cases involving the notification of proposed concentrations. From the start, the public versions of these decisions were actively publicised on NMa's website. Due to the relatively large number of decisions, NMa quickly acquired experience and developed

a standard practice in taking decisions. In certain cases, a decision now has no or little added value for the standard practice that has been developed. Such cases lend themselves to settlement by means of a summary, concisely argued decisions.

The settlement of relatively straightforward cases by means of a summary decision may reduce the burden on companies. Firstly, timesavings may result from the quicker settlement of cases. In 2000, in general, the duration of concentration cases settled by means of summary decisions was between two and three weeks. This is considerably shorter than the four weeks in which NMa normally has to take a decision. Cases settled by means of summary decisions will also seldom or never require consultation with regard to whether and which data referred to in the decision is of a confidential nature and may not be included in the public version. Settlements by means of summary decisions also result in timesavings for NMa. The specific description of each case in decisions takes time, as this must be done meticulously. From the perspective of the effective utilisation of available capacity, this situation was no longer desirable. An analysis of decisions taken in the period 1998-1999 showed that NMa could expect to settle 25% of cases by means of summary decisions.

A proposal to draw up guidelines for the way NMa settles certain straightforward cases was placed on NMa's website in the year under review for a consultation period lasting a month. No reactions to this proposal were received. Following this, a decision in which the guidelines were set out was published in the Netherlands Government Gazette[16]. The Decree in Respect of the Settlement of Notifications of Concentrations by Means of Summary Decisions sets out the conditions applicable to summary settlements. In essence, these are as follows. Firstly, NMa should not have received responses from third parties containing relevant objections. Secondly, there should be no dispute as to whether or not a concentration will occur and the nature of this, nor the identity of the undertakings involved or a dispute as to whether the concentration is subject to regulation. Finally, it should be clear that the concentration does not give rise to objections from the perspective of competition. The possibility that a dominant position will arise or be strengthened as a result of the concentration must be excluded. This is the case if there is no horizontal or vertical relationship in the activities of the undertakings involved. If such relationships do exist, the concentration may affect an existing market[17]. If a horizontal or vertical relationship does exist, but the combined market share of the undertakings is below certain limits[18], the case may also be settled by means of a summary decision. In such cases, the market in question must have been defined in earlier cases dealt with by NMa or the European Commission and sufficient reliable information must be available with regard to the size of the market. In such cases, it is not necessary to carry out market research[19].

4.3.6 Publication of Decisions

In the year under review, the question was raised as to the basis of NMa's authority to publish decisions relating to the regulation of concentrations on the Internet. NMa has adopted this following standpoint in this regard. The basic principle in relation to the implementation of the Competition Act is that decisions taken under the Competition Act must be transparent. Its decisions provide insight into the way NMa arrives at its opinion. The publication of decisions is therefore necessary to ensure transparency in the implementation of the Competition Act. This applies to decisions in relation to concentration cases, both in the first stage and in the second stage. Publication is also in the interests of interested third parties, who have to be given the opportunity to examine whether they wish to appeal against the decision in question. The Internet is a medium that is accessible to everyone and which lends itself well to the publication of decisions. NMa's website is a frequently consulted source of information for undertakings, advocates and other parties interested in competition law. The publication of decisions via NMa's website ensures broad accessibility. In addition, publication has an important preventive effect. The publication of decisions contributes to broad awareness of the norms set out in the Act and therefore to the enforcement of the Act. The publication of decisions is therefore an essential part of the application of the Competition Act.

16 Decree in Respect of the Settlement of Notifications of Concentrations by Means of Summary Decisions [Besluit afdoening concentratiemeldingen d.m.v. verkort besluit], Decree of 4 August 2000, promulgated in Netherlands Government Gazette 150 of 7 August 2000.

17 In terms of article 1(h) of the Decree in Respect of the Provision of Data in Accordance with the Competition Act [Besluit gegevensverstrekking Mededingingswet], decree of 17 October 1997, Bulletin of Acts and Decrees 485, 1997, amended by decree of 27 April 2000, Bulletin of Acts and Decrees 222, 2000.

18 15% in the case of a horizontal relationship and 20% in the case of a vertical relationship.

19 In terms of article 1(i) of the Decree in Respect of the Provision of Data in Accordance with the Competition Act, op. cit.

New Forms

The new Concentration Notification Form is based on the amended Decree in Respect of the Provision of Information in Accordance with the Competition Act[20] that took effect on 1 July 2000. A number of important changes have been made to the form and the accompanying explanatory notes (which also apply to the Licence Application Form). The changes involved, for instance, corrections, clarifications, requests for additional data and additional documents, and the addition of a question relating to additional restrictions.

In the new explanatory notes accompanying the forms, a clearer explanation is given of the undertakings that are considered to be 'undertakings involved' in a proposed concentration. This is important, for instance, in answering the question as to whether the turnover thresholds, as described in article 29 of the Competition Act, have been reached. Furthermore the new explanation states that if an undertaking involved is part of a group, as referred to in article 24b of Book 2 of the Netherlands Civil Code, the activities of the entire group must be taken into account in answering the question as to whether there is a market that may be affected or that should be researched.

The new notification form includes a request to submit market research that the undertaking involved has at its disposal. Of course, if the notification includes references to other reports, these reports should also be submitted. Previously NMa often requested parties that submitted a notification to provide these reports. In addition to the question as to which markets have to be researched, an additional question has been included with regard to the size of these markets, both in terms of value and volume. A question has been included in relation to each market affected by the concentration, in which the names and addresses are requested of the five most important competitors and customers of each of the undertakings involved. Previously this was only requested in relation to the markets that were to be researched. Data in relation to branch organisations and the like are also requested. Previously it was necessary to ask parties to submit answers to these questions as a supplement to the notification.

The earlier version of the form did not include a question on additional restrictions. This question was asked when NMa sent confirmation that it had received the notification. The new form contains a question relating to this.

A statement must be given of all agreements that contain additional restrictions, in the opinion of the parties. NMa may be requested to make a ruling in relation to these. In the explanatory notes it is mentioned that article 10 of the Competition Act, in which the exception to article 6 is made for additional restrictions, is legally applicable. The exception may therefore apply to an agreement irrespective of whether NMa has made a ruling in relation to the agreement.

20 Decree of 27 April 2000 amending the Decree in Respect of the Provision of Data in Accordance with the Competition Act in respect of a limited increase of the data to be provided on notification of a concentration, Bulletin of Acts and Decrees 2000, 222.

5 Other Topics Relating to NMa

5.1 Advice

In the year under review NMa has given advice to Ministries on various issues. Advice was given on two occasions at the request of the Ministry of Transport, Public Works and Water Management with regard to the allocation of frequencies. Advice was given to the Ministry of Economic Affairs with regard to the certification scheme for estate agents. At the request of the Ministry of Finance, an opinion was given on covenants with regard to the reallocation of filling stations. In addition, together with OPTA, an opinion was given in relation to the (possible) behaviour of undertakings in the telephony market to the switching out of Internet traffic in a report on the switching out of Internet traffic.

5.1.1 *Advice on Digital Video Broadcasting - Terrestrial*

At the end of 1999, the Ministry of Transport, Public Works and Water Management requested advice from NMa with regard to a number of competition issues relating to the proposed auctioning of frequencies for the commercial use of Digital Video Broadcasting Terrestrial (hereinafter 'DVB-T'). NMa presented its advice on 21 January 2000.

DVB-T is digital television broadcasting through the atmosphere. By applying new digital techniques, it is possible to transmit more data through one and the same frequency channel (referred to as multiplex). DVB-T therefore allows for efficient use of the available frequencies.

The policy proposal provides for an initial period of a number of years in which DVB-T will be used mainly to provide television broadcasting services. The development of other (interactive) services that can be offered using DVB-T, will still be in its infancy in the initial period and will develop along with the development of these services, using other infrastructures. It is assumed that the development of cable digitisation and the convergence of the broadcasting and telecommunications infrastructures will continue.

NMa's advice is based on the assumption that DVB-T is positioned on a product market for the transmission of television signals and television-related signals. DVB-T will experience competition mainly from cable companies on this market. In the future DVB-T will possibly experience competition from providers that make use of (other) telecommunication networks and systems, such as UMTS and ADSL. It is possible that as a result of the development of new services, in a few years DVB-T will be positioned on a broader product market, which also include these new services. The providers of other infrastructures will be another source of competition on this broader market. In its advice, NMa indicated that DVB-T might bring about increased competition between the various infrastructures. It might be an alternative for the transmission of television broadcasting services, which at present are offered mainly through the cable.

The advice given by NMa concludes that the future operator of DVB-T will not necessarily hold a position of dominance simply by virtue of operating this infrastructure. If cable companies participate in the auctioning of the DVB-T licence, this may have the effect that DVB-T will not be successful for strategic reasons. After all, cable companies have an interest in protecting their strong positions in their supply areas. To avoid strategic, defensive use of the licence, the auction may be held subject to the condition that cable operators are excluded from participating, unless they are part of a consortium together with other parties to the auction and provided that they do not have a decisive role in decision-making within the consortium.

5.1.2 *Advice on Radio Frequencies: Zero Base*

Due to the scarcity of frequencies for radio broadcasting, the Ministry of Transport, Public Works and Water Management is preparing a reallocation of radio broadcasting frequencies, a so-called zero base. To implement the zero base, the Ministry is preparing to auction licences for commercial FM and medium wave (AM) radio broadcasting.

At the beginning of November, the Ministry asked NMa to given advice on whether the implementation of the 'zero base' project might give rise to restraints on competition. NMa presented its advice on 1 December.

The lots on offer to commercial broadcasters at the auction consist of eight national FM packages (including one for a news station), 73 regional FM frequencies and 12 AM frequencies. According to the government's policy with regard to the zero base, the combination of national and regional FM licences is not permitted. The Lower House of the Dutch Parliament passed a motion in which it is proposed that undertakings may acquire not only one, but two national FM licences. NMa considered both options.

In its advice NMa concentrated on the question of whether granting a licence would actually limit competition considerably on the relevant market, in terms of article 3.6 of the Telecommunications Act. This provision is aimed at preventing inadmissible dominant positions.
An assessment was therefore made as to whether dominant positions could arise or be strengthened if the zero-base auction were to take place as proposed.

Radio broadcasters offer listeners a free product and sell advertising time on the basis of their ratings. The various radio broadcasting companies compete for listeners. The listener ratings that the various radio broadcasters are able to achieve are translated directly into the tariff that broadcasters may charge for the time allocated to broadcasting advertisements. In order to assess the position of a radio broadcaster, it is therefore necessary to define the relevant market on which the radio broadcaster offers advertising time. The net turnover that the radio broadcasters generate in this area was taken as the basis for assessing their competitive positions. Since the net turnover of these undertakings is not public knowledge, these were estimated on the basis of calculations.

A commercial broadcasting station that acquires a national FM package, will experience competition from other commercial broadcasters that have also acquired a national FM package and strong competition from the national public broadcasting stations, which jointly offer broadcasting time for advertisements through STER. They will also experience competition from broadcasters that acquire regional FM frequencies. These broadcasters also jointly offer advertising time for national advertisements.

The degree to which the various national commercial FM broadcasters are able to reach listeners via the FM frequencies will be vastly improved by the reallocation of frequencies. As a result, these broadcasters will be in a better position to compete with the public broadcasting companies for the patronage of advertisers. This will also result in increased parity in the relative competitive positions of the national commercial FM broadcasters than is the case at present.

Partly due to this, it was concluded that there was no reason to assume that a dominant position would arise or be strengthened if an undertaking were to acquire an FM package. This conclusion would also apply if a single undertaking were to be allowed to acquire two national FM packages. It was also concluded that companies acquiring regional FM frequencies and AM frequencies will experience strong competition and that there is no reason to assume that the acquisition of these frequencies would result in the emergence or strengthening of a dominant position.

5.1.3 *Certification Scheme for Estate Agents*

In November of the year under review, the Ministry of Economic Affairs asked NMa to give its opinion on the outline of a draft certification scheme for estate agents. This scheme relates to the abolition of the legal protection of the title of estate agent. NMa presented its opinion on 4 December. In line with its earlier decisions, NMa indicated that a certification scheme might affect a market in a variety of ways. On the other hand, certification may result in a situation where the certified parties distinguish themselves from non-certified parties (for instance, by means of a mark of quality). In this way, certification may be used as a means of competing on the market. On the other hand, the conditions of a certification scheme may also affect the market behaviour of the certified parties. In order to remain outside the scope of the prohibition, contained in article 6 of the Competition Act, a certification scheme with a broad following (or one which is expected to have a broad following) may not contain restraints on competition and the scheme must satisfy the requirements of objectivity, transparency and independence, and provide for the acceptance of other systems with similar guarantees (by means of dispensations).

5.1.4 *Opinion on Covenants in Relation to the Location of Filling Stations*

At the end of May 2000, the Ministry of Finance and representatives of Vereniging Nederlandse Petroleum Industrie (VNPI) [Association of the Dutch Petroleum Industry] and Vereniging Particuliere Rijkswegvergunning Tankstations (VPR) [Association of Private National Highway Licensed Filling Stations] requested NMa to give its opinion on whether two covenants entered into between the State of the Netherlands, on the one hand, and VNPI and VPR, on the other, complied with the Competition Act. NMa gave its opinion on 20 July.

The covenants are the result of discussions between the State, NNPI, and VPR on alternative solutions to the unsatisfactory operation of the Dutch petrol market. These discussions on alternatives resulted from resistance by market parties to the conclusions of three departmental working groups. These conclusions, in turn, resulted from

the recommendations made by the Petrol Market working group of the Market Forces, Deregulation and Legislative Quality Project [Project Marktwerking Deregulering en Wetgevingskwaliteit] in 1998. The Petrol Market working group recommended increasing the opportunities for new entrants to enter the petrol market and the promotion of price competition.

Although the content of the covenants does not violate the Competition Act and their aims may even be deemed to promote competition, NMa concentrated on a number of points. NMa indicated that a system of allocation, where the proceeds of every initial auction of a location for a filling station go to the party entitled to the location prior to the auction, means that this party would be able to make the highest bid without incurring any risk. As the winner of the auction, he would be able to pay this amount to himself. It was concluded that this scheme would slow down the intended dynamism and transfer of locations and would be particularly disadvantageous to new entrants to the market. It was recommended that the provision dealing with this problem should be clarified.

In the covenants, the parties were not prohibited from owning two or more filling stations on the same highway in the same direction, although they were prohibited from selling the same brand within a radius of 25 kilometres. The argument given for this was that selling brands was a more important element in competition than the legal ownership of (usufructuary rights to) the locations. This does not take into account the fact that automobile fuel is a homogenous product. The outlet is the most important factor affecting competition.

The method of consultation could raise doubts with regard to the transparency, impartiality and objectivity of the State and, as a result, with regard to the contents of the covenants. Existing and future market parties are dealt with differently. This is not consistent with the aims of the Market Forces, Deregulation and Legislative Quality Project, namely to 'shake up' the existing rigid structure, to critically evaluate existing interests and to offer new entrants more opportunities.

5.1.5 Report on Switching out Internet Traffic

As a result of the increasing scarcity of capacity on KPN's telephone network, in 1999 plans were developed to switch Internet traffic out of KPN's fixed public telephone network. As a result, a special series of numbers was made available for Internet access, which will allow Internet traffic to be identified closer to source on KPN's fixed public telephone network. After this traffic has been identified, it can be switched out and redirected outside the fixed public network for voice telephony. This separate processing of Internet traffic will result in more efficient handling of this traffic.

In a joint report by NMa/OPTA on the switching out of Internet traffic, published in June of the year under review, NMa and OPTA gave their opinion on the (possible) behaviour of undertakings on the telephony market from which Internet traffic is switched out. From the perspective of the Telecommunications Act and the Competition Act, both regulators have indicated in this report how they could act in the event of possible disruptions to the market for the switching out of Internet traffic and how they will approach issues in this area.

From the perspective of the Competition Act, the report indicated which situations constitute an abuse of a dominant position, against which NMa could act. Since abuse is only possible if a company holds a dominant position on the relevant markets, the relevant markets and dominant positions on these markets were discussed fairly extensively.

If there is a separate relevant market for network infrastructure linked to the switching out of Internet traffic at the level of local exchanges, KPN could most probably be regarded as an undertaking with a dominant position on this market. If a separate relevant market does not exist for the network infrastructure linked to the switching out of Internet traffic, then various methods of transmitting data traffic between the Internet Service Provider and the end user through the telephone network must exist on the same relevant market. In this case, it should be possible to substitute the infrastructure to which Internet traffic is switched by the local exchange with a combination of the regional infrastructure, from which Internet traffic has not been switched out, and the national infrastructure, to which Internet traffic is switched. It would have to be possible to combine various methods of transmitting data in such a way that both of these infrastructures may jointly be regarded as a single market. In this second situation, it is clear that KPN also has a dominant position.

KPN is the only market player with a finely meshed network right down to the level of local exchanges. If Internet traffic is switched out at the level of local exchanges, KPN has certain advantages compared to other parties because it is better able to process Internet traffic at this

location, in other words in the most efficient and cheapest way, via a data network. Competitive telecommunications companies will generally only be able to receive Internet traffic at the level of the trunk exchanges. This means that the traffic of competitive telecommunications companies will have to take a longer route through the telephone network, which is less efficient for data traffic, and will therefore incur relatively higher costs. In this situation, due to the lower costs incurred by KPN, KPN would be able to offer substantially cheaper access to the Internet. KPN will therefore be able to reinforce its already strong position on the market for Internet access.

5.2 Cooperation within the Regulatory Framework

5.2.1 *Cooperation with OPTA*

NMa has entered into a cooperation protocol with OPTA in which both regulators have agreed how they will cooperate in relation to matters of mutual importance. In December 2000 the protocol was revised, particularly with a view to its readability.

In 2000 NMa and OPTA considered numerous topics jointly. These included advice given to Ministries, such as advice on the Cable Memorandum [Kabelnota], comments by NMa on draft consultation documents drawn up by OPTA, comments by NMa on draft designations by OPTA of parties as parties with an appreciable position of dominance on the market, verbal responses by NMa to a large number of subjects, such as tariff differentiation and discounts; cooperation in responding to the European Commission and in relation to expert meetings organised by the European Commission; the necessary discussions with regard to the revision of the Open Network Provision (ONP) regime; responses by NMa to draft decisions in relation to disputes submitted to OPTA (or to OPTA and NMa jointly), involving assessment of the draft decision by NMa in relation to possible breaches of the Competition Act.

In many of the responses, verbal comments were first given on a draft, which were then followed by an official response to a new draft. In giving responses, NMa gives substantive comments, in addition to an assessment on the basis of the Competition Act.
A number of the instances in which advice and responses were given are discussed below. In addition, the joint NMa/OPTA report on the switching out of Internet traffic from the telephony network is discussed separately.

NMa and OPTA jointly advised the government on the recently published Cable Memorandum. Following this NMa and OPTA set up a joint Internet team to analyse the market for Internet access. At the beginning of 2001, market players will be consulted on the basis of a consultation document.

NMa is closely involved in the problems relating to price squeezing on the market for fixed telephony. A price squeeze occurs if the margin of KPN's competitors on the market for fixed telephony services across KPN's network is too low because the difference between the interconnection tariff and the end-user tariff is too small.

On the basis of the cooperation protocol, OPTA has taken the lead in a number of cases submitted to both NMa and OPTA. NMa has cooperated with OPTA, for instance, by indicating what the effects might be on competition. The most intensive cooperation occurred in relation to the dispute between Canal+ and UPC with regard to access to Amsterdam's cable network and the tariff charged for this.

NMa has given verbal, and to a lesser extent written, comments on draft decisions designating KPN as a party with an appreciable position of dominance on the market for fixed public telephony, the designation of KPN as a party with an appreciable position of dominance on the market for leased lines and the designation (on appeal) of Libertel as a party with an appreciable position of dominance on the markets for mobile telephony.

5.2.2 *Cooperation with the Ministry of Housing, Spatial Planning and the Environment.*

On the basis of environmental regulations, producers and importers are obliged to take measures to collect waste products. In most cases, they fulfil their obligations jointly by notifying the Minister of Housing, Spatial Planning and the Environment of their intention to set up a joint waste disposal system. These joint notifications are usually based on a number of contracts, in which the undertakings make agreements or exhibit behaviour that may be subject to the prohibition contained in article 6 of the Competition Act.

It is possible for them to apply for exemption from this in accordance with article 17 of the Act. On request, the Minister of Housing, Spatial Planning and the Environment may decree that an agreement with regard to a waste disposal fee is generally binding, if this is in the interests

of the efficient disposal of waste materials. In the light of the above, from the perspective of legal certainty, it is desirable that the Ministry of Housing, Spatial Planning and the Environment and NMa coordinate the procedures stipulated in Environmental Management Act [Wet Milieubeheer] and the Competition Act.

The agreements in this regard were set out in a protocol between the Ministry of Housing, Spatial Planning and the Environment and NMa, which was signed on 5 September 2000. If a draft notification or a draft application to have an agreement declared generally binding is submitted, the Ministry of Housing, Spatial Planning and the Environment will request the party that submitted the draft notification or application to ascertain and to give an indication of whether the system of waste disposal contains restraints on competition, in terms of article 6 of the Competition Act. If this is the case, or if it is unclear, the Minister of Housing, Spatial Planning and the Environment will advise the party who submitted the notification or application to apply to NMa for an exemption. NMa will then take a preliminary decision on the aspects of the information submitted by the parties that relate to competition law. The Minister of Housing, Spatial Planning and the Environment will take into account NMa's preliminary decision in his draft decision on the notification or request to have an agreement declared generally binding. NMa will then process the application in accordance with the procedures prescribed in the Competition Act.

5.2.3 *Cooperation with the Dutch Central Bank and the Dutch Insurance Supervisory Board*

Good contact was maintained with the Dutch Central Bank and the Dutch Insurance Supervisory Board in 2000. Regular consultation takes place and information is exchanged. In 2000 no cases occurred which required the implementation of the protocol drawn up in 1999.

5.3 Communication

5.3.1 *Customer Satisfaction Survey amongst NMa's Customers*

In order to obtain insight into how the services it provides are rated, NMa carried out research in this area in 2000. The customers surveyed were advocates and companies. The survey consisted of a printed questionnaire that had to be returned. Questions were asked with regard to the way NMa functions as a whole and the way separate sections within NMa function, as well as with regard to the various aspects of the services it provides. Finally, respondents were asked to rate a number of specific aspects of the way NMa operates.

Survey amongst Advocates

In total 80 advocates participated in the survey, the results of which may be considered to be representative. The most important conclusion from the survey amongst advocates is that NMa achieves a satisfactory score for all the items dealt with in the survey. The advocates gave NMa the following ratings:

General functioning:	6.9
Service orientation:	7.1
Expertise:	7.1
Meticulousness:	7.0
Knowledge of the various markets:	6.4

The advocates that were positive about the idea that public authorities should play a more active role in relation to competition and market forces were more positive in their assessments of the work done by NMa than advocates who regard government involvement as a limitation on freedom. Two thirds were of the opinion that NMa bases its decisions on sound arguments.

The respondents were positive about NMa's accessibility by telephone. Where contact takes place by e-mail, respondents were of the opinion that NMa responds fairly quickly. The respondents were also positive about the way NMa deals with requests for information. Almost two thirds of respondents were satisfied with this. The respondents were less positive about the time taken to process dossiers, the speed with which answers were given to questions and the time required to reach a decision. In this regard, the experience of some parts of NMa was that they did not act quickly. With regard to the organisation's image, NMa is regarded as a reasonably transparent, unambiguous, easily accessible and professional organisation.

Survey amongst Companies

In total, 293 companies participated in the survey, the results of which may be considered to be representative. Amongst companies, NMa was also given a satisfactory rating in relation to all aspects, although the ratings given to all the aspects were slightly lower than those given by the advocates.

General functioning:	6.6
Service orientation:	6.6
Expertise:	7.0
Meticulousness:	6.8
Knowledge of the various markets:	5.9

The opinions that companies hold with regard to NMa are also affected by the way they view the involvement of public authorities in markets. In general, the companies were positive about their contacts with NMa. In relation to these questions, the views held by the companies did not differ or differed only slightly from those held by the advocates. With regard to the image of the organisation, the opinions held by the companies hardly deviated at all from those held by the advocates. Both the advocates and the companies questioned were positive about their contact with NMa's staff in relation to the handling of dossiers.

The conclusions of the customer satisfaction survey are a reason for NMa to further optimise its operations and to give critical consideration to a number of procedures. In relation to the item 'knowledge of the various markets' an important step was taken in 2000. The staff of the Research, Regulation and Exemptions section [Onderzoek, Toezicht en Ontheffingen] was divided into clusters, whose work will focus on particular sectors. This will make it possible to accumulate specific knowledge of the sectors.

There is also room for improvement with regard to the provision of services. Attention will also be given to this in 2001. Another important point of criticism, the length of time required to process dossiers, may be improved by aiming for quicker settlements, on the one hand, and by providing more clarity with regard to the expected time required to deal with dossiers, on the other. If periods agreed earlier are exceeded, this will have to be communicated more clearly.

Since this survey provides insight into the state of affairs at the time of the survey (year-end 2000), the survey will be repeated periodically in order to ascertain whether the situation has improved or worsened. A customer satisfaction survey will be held amongst DTe's customers in 2001.

5.3.2 Transparency

In order to inform the public of decisions taken by NMa and, in doing so, to promote the enforcement of the Competition Act, all decisions will be made available through NMa's website. Advice given, consultation documents and the like will be published on the website to provide as much insight as possible into the cases dealt with by NMa. Some of this information is also available in English. In relation to NMa's international activities, it is NMa's intention to place more English versions of documents on the website. In 2000, the website was visited on average more than 3500 times a month. In addition, it is possible to subscribe to the website's mailing list. Subscribers receive an automatic e-mail message as soon as new information is published on the website.

In the second half of 2000, information meetings were held in cooperation with VNO-NCW in relation to the consequences of the Competition Act, in particular the consequences for small and medium-sized enterprises. During these meetings the new European block exemption for vertical agreements was discussed. NMa has drawn up a brochure on this, which has been distributed to small and medium-sized enterprises.

5.4 Personnel

In 1999, after the first year of the new Competition Act, it was clear that NMa's organisation was too small. On the basis of an estimate at that moment of the organisation's workload, the capacity of NMa/DTe was increased in 1999 by 34 full-time equivalents to 120 full-time equivalents. In 2000 the actual development of the organisation's workload became even clearer. The actual workload, particularly in relation to complaints, orientations/ prenotifications, notifications of concentrations, reports and administrative and judicial appeals, is considerably greater than the projected workload when NMa was set up.

When NMa was launched, it was estimated that it would produce approximately 600 products. In practice, this has proved to be approximately 1650. In the past year, changes have been made to NMa's capacity to take account of the workload, as this has developed in practice. In December 2000 it was proposed that NMa/DTe's capacity should be increased to 180 full-time equivalents.

Employees

In the past year, the number of staff increased by 33 employees to 141. The outflow of staff amounted to 20 employees, or a staff turnover of 8%. As a result, staff turnover halved compared to 1999. The average age of NMa's staff was 35.8 years (females 33.8 years and males 37.8 years).

Recruitment Activities

In 2000 considerable time and energy was invested in participating in career fairs at universities. By means of presentations and workshops, NMa presented itself well to people confronted with their first choice of a job. This was partly the reason that the inflow of promising new graduates increased.

Training

Providing staff with good and ample opportunities for training is an important focus of NMa's personnel policy. The fact that NMa's staff are able to receive good further education and are therefore able to acquire broad experience in a wide variety of aspects of competition work, should make NMa attractive on the labour market. For this reason, in addition to the usual training activities, an additional amount of NLG 550,000 was spent on training in relation to the definition of markets, controlling criminality, investigations and technical aspects of the Electricity Act. An amount of 5.1% of the personnel budgets is now spent on training (compared to 2.6% in 1999).

5.5 Finance

NMa/DTe's budget amounted to NLG 23,718,000 for the year 2000. Since additional staff have been recruited in order to enable the organisation to deal with the expected increase in its workload, halfway through the year budget overruns were apparent in relation to personnel expenditure. In the second half of 2000, the budget was adjusted to NLG 29,431,000.

NMa/DTe's expenditure in the year under review was as follows:

	Personnel	Products & Services	Total
NMa	14,442,000	7,129,000	21,571,000
DTe	2,598,000	5,809,000	8,407,000
Total	17,040,000	12,938,000	29,978,000
Revenues DTe	-	-	2,382,000
Balance charged to the budget of the Ministry of Economic Affairs			27,596,000

In the year under review all administrative processes that have an impact on the financial administration were described and set out in an administrative handbook. In the coming year, this will also be done in relation to the primary processes.

5.6 Computerisation and Automation

ICT Activities Initiated and Realised in 2000

On 1 March 2000, the knowledge management system, KenNet became operational. The extensions to the Prisma System, which were started in 1999, were completed in September 2000, for instance by creating a link to KenNet. In mid-2000, DTe started the development of a Data Storage System. The system will come into use at the beginning of 2001 and will be evaluated after three months.

At the beginning of July 2000, the BIBIS '98 system for use by the library was purchased and implemented. The rest of the year was used to enter data and test the system. In August and September 2000, the backup system CALAXY came into operation. Due to the growth of NMa, it was necessary to expand the telephone exchange and to make changes to the patch panel. In October 2000, the management of NMa's telephone services was outsourced to KPN Telecom.

Implementation of the Regulations in Respect of the Securing of Civil Service Information

During the year the Audit Department carried out an audit of information security. Its findings have been set out in the report 'Audit 2000 Regulations in Respect of the Securing of Civil Service Information' [Audit 2000 Voorschrift Informatiebeveiliging Rijksdienst' (VIR)]. At the beginning of 2001 a plan of action will be drawn up listing the activities aimed at solving the problems that have been identified.

6 The Year 2000 in Figures

The following sections will provide quantitative data on the most important products produced by NMa/DTe, accompanied by explanatory notes.

In the year under review, NMa dealt with a large number of cases. There was a sharp increase in the number of cases settled by means of decisions, informal opinions and the withdrawal of applications by the parties involved for other reasons. NMa/DTe processed and settled a total of 896 cases. A total of 651 cases were processed in 1999. The increase in production therefore amounts to 37%. This may be subdivided as follows.

Number of cases	1999	2000	Increase in the number of cases	Increase as a percentage
NMa/DTe	651	896	245	+ 37 %
NMa	600	773	173	+ 28 %
DTe	51	123	72	+ 141 %

Figure 6.1 Cases Processed in 2000

6.1 Regulation of Competition

The regulation of competition focuses mainly on terminating cartels or imposing penalties on cartels and undertakings that abuse dominant positions.

Cartels are agreements between undertakings (for instance, contracts or decisions) or de facto coordinated behaviour that restrain competition on (a part of) the Dutch market. Since 1 January 1998, a general prohibition on cartels has been in force. Agreements that limit competition may include a wide range of aspects of the commercial policy of undertakings, such as the setting of prices, the division of markets or sources of supply, supply conditions and limitations on production or sales. The prohibition on cartels applies to all forms of agreements that restrain competition, irrespective of whether these are made in writing or verbally, or whether they are horizontal or vertical. In addition, restraints on competition may also occur if undertakings coordinate their market behaviour, even though they may not have made explicit agreements in this regard.

An undertaking that holds such a dominant position that it hardly has to consider other markets players (competitors, suppliers, customers or end users) may constitute a threat to an open and free market if it abuses its dominant position. This may be the case, for instance, if an undertaking charges extremely high prices, imposes unreasonable supply conditions, refuses to supply certain customers, charges different prices for the same services, forces competitors out of the market or prevents new undertakings from entering the market, for instance, by charging extremely low prices. Holding a dominant position, as such, is not prohibited. The undertaking only violates the Competition Act if it abuses its dominant position.

Cases dealt with within the framework of the regulation of competition do not always result in a formal decision. Giving informal opinions, as a vehicle for law enforcement, clearly has its advantages. Firstly, undertakings are provided effectively and efficiently with the clarity they require to assess their own (intended) market behaviour against the norms provided by the Competition Act. This promotes compliance with the Competition Act. Secondly, this method of operation has the advantage for NMa that a large number of cases can be settled within a short period. This releases capacity that can be used to give more attention to the cases that require considerable attention.

An informal opinion usually involves the question of whether certain behaviour or cooperation does or does not fall within the scope of the Competition Act. On the basis of existing case law, a good assessment can be made in the majority of cases. If it is established that the Competition Act does apply, the next stage in the procedure (complaint, application for an exemption or notification of a concentration) may result in a formal decision. In other cases, the parties are given a reason to change their market behaviour in order to comply with the Competition Act. In these cases, the complaints or application for exemption is often withdrawn.

In practice, the processing of cases in relation to the regulation of competition usually involves the following:

- processing applications for exemption;
- detecting and investigating breaches of the Competition Act, both on the basis of complaints and on NMa's own initiative;
- carrying out orientations (cases that do not qualify as applications for exemption or as complaints); usually this involves requests for an opinion on an aspect of competition law and requests for advice;
- monitoring compliance with earlier decisions taken by NMa;
- cooperating in EC investigations following violations of EC competition rules.

In the following sections, each of these topics and the

way in which these matters are dealt with will be discussed in turn.

6.1.1 Applications for Exemption

Agreements that limit competition may qualify for exemption if they meet a number of criteria stipulated in this regard. Exemptions must be applied for in each individual case. A transitional scheme applied to agreements that existed at the moment that the prohibition on cartels took effect (1 January 1998). If an application for exemption was submitted before 1 April 1998, the agreements in question are not prohibited for as long as NMa has not taken a decision on the application.

6.1.1.1 Numbers of Applications for Exemption

The Figures for Exemptions That Fall under the Transitional Regime

From this overview it appears that the completion of applications for exemption submitted under the transitional scheme occurred at a steady pace. At present, more than 85% of the total number of applications for exemption, submitted under the transitional regime, have been processed.

Description	Numbers	
Situation at the beginning of 1998	1040	
Correction for the splitting of dossiers	86	
Total number of interim applications for exemption		1126
Completed in 1998	486	
Remaining in 1998	640	
Completed in 1999	226	
Remaining in 1999	414	
Completed in 2000	244	
Remainder of the interim applications for exemption		170

Figure 6.2 Situation with Regard to Applications for Exemption under the Transitional Regime

The Figures for Regular Applications for Exemption

In addition to the large number of applications for exemption under the transitional regime, regular applications for exemption were also submitted. All applications for exemption submitted after 31 March 1998, belong to this category. The quantitative situation is as follows.

Description	Numbers	
Situation at the beginning of 1998	89	
Completed in 1998	57	
Remaining in 1998	32	
Correction for the splitting of dossiers	29	
Received in 1999	16	
Completed in 1999	31	
Remaining in 1999	46	
Received in 2000		25
Completed in 2000		31
Remainder of applications for exemption in 2000		40

Figure 6.3 Situation with Regard to Regular Applications for Exemption

A remarkable feature of Figure 6.3 is the increase in the number of regular applications for exemption. It appears that on average ten more applications for exemption are received each year. The number of completed applications remained at the same level as 1999.

6.1.1.2 Method of Settling Applications for Exemption in 2000

Applications for exemption may be settled in a variety of ways, namely, by means of decisions, informal opinions and spontaneous withdrawals. The diagram in Figure 6.4 gives an overview of the various modes of settling applications.

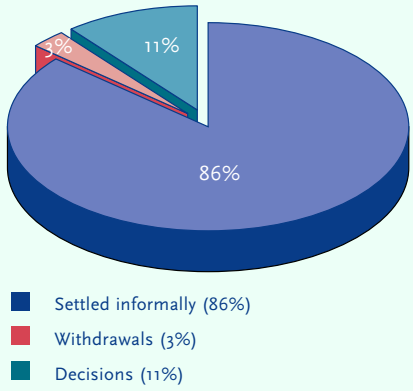

Figure 6.4 Modes of Settling Exemptions

In 2000 86% of the total number of applications for exemption were settled informally. Within the category of applications for exemption that were settled informally, there is a considerable degree of diversity. In addition, in 3% of cases, the application for exemption was withdrawn on the initiative of the party that submitted the application, without an informal opinion. Finally, a

formal decision was taken in the case of 11% of completed applications for exemption.

Informal Opinions

In Figure 6.5, the informal opinions are subdivided into four categories, on the basis of the outcome of the proceedings. The quantitative distribution amongst these categories of informal opinions is as follows.

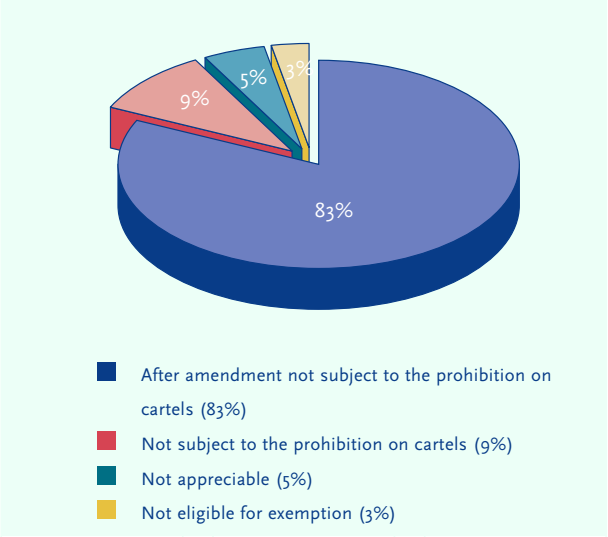

Figure 6.5 Distribution of Informal Opinions

Not Subject to the Prohibition on Cartels

In 9% of cases, following an investigation by NMa it was concluded in the informal opinion that there was no conflict whatsoever with the prohibition on cartels and that an exemption was therefore not required. In principle, this means that the case handler in question reached the conclusion that there was no reason to grant an exemption because there was no question of a conflict with the prohibition on cartels. This opinion was reached on the basis of the information submitted by the parties.

Not Appreciable

In 5% of cases it was clearly ascertained that the prohibition on cartels had not been breached because there was no appreciable restraint on competition. In these cases, the opinion was based on the information that the parties had submitted to NMa.

After Amendment, Not Subject to the Prohibition on Cartels

In 83% of cases, an informal opinion was given which referred to amendments made to similar schemes on the suggestion of NMa. After the schemes were amended, they were no longer subject to the prohibition on cartels. A large number of cases, in particular in the health-care sector, were settled in this way.

Subject to the Prohibition on Cartels and Not Eligible for Exemption

In 3% of cases, the parties withdrew their application for exemption after it became clear, while the application was being processed, that NMa would not grant an exemption.

Formal Decisions

Figure 6.6 provides an overview of the outcomes of formal decisions taken in relation to applications for exemption.

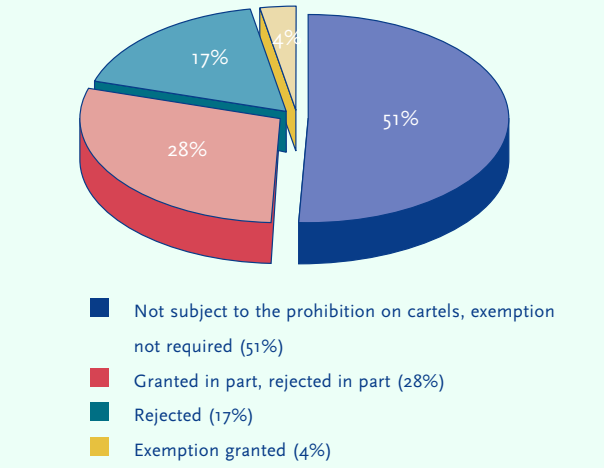

Figure 6.6 Conclusions of Formal Decisions

In 4% of cases, an exemption was granted without question. In 51% of cases the conclusion was reached that the prohibition on cartels had not been breached and it was therefore not necessary to grant an exemption. In 17% of cases an exemption was refused. In addition to the partial rejection of applications, the last category also included the granting of a partial exemption for another part of the applications. This applied to 28% of cases.

Overview of Applications for Exemption Completed in the Period 1998-2000

For the period from 1998 to 2000, the following quantitative overview may be given of the settlement of applications for exemption. This relates to the total number of interim applications for exemption and regular applications for exemption.

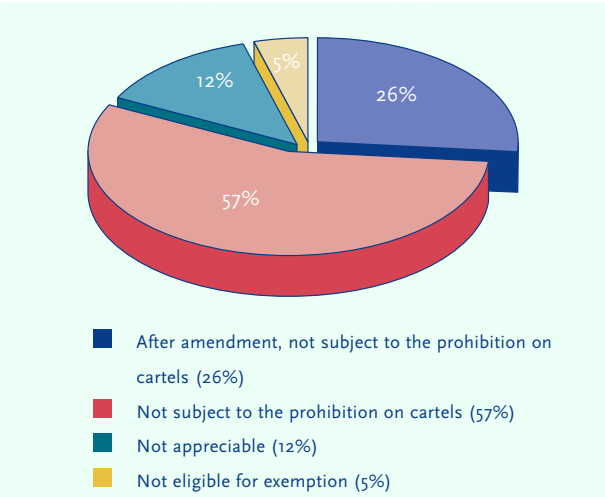

Figure 6.7 Applications for Exemption Completed by Means of an Informal Opinions in the Period 1998-2000

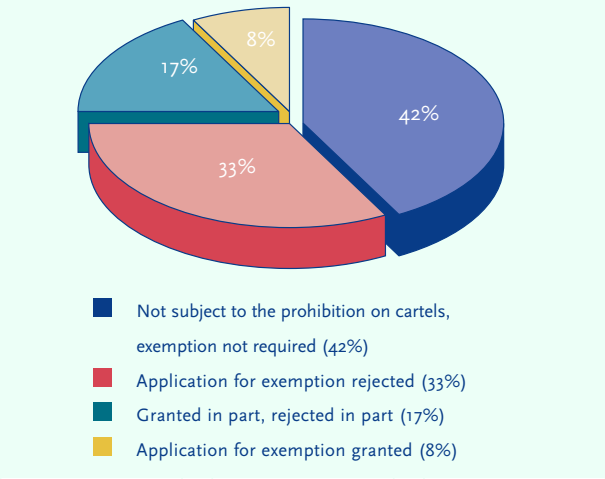

Figure 6.8 Applications for Exemption Settled by Means of a Formal Decision in the Period 1998-2000

6.1.2 Complaints

Description	Numbers
Situation at the beginning of 1998	266
Completed in 1998	139
Remaining in 1998	127
Received in 1999	92
Completed in 1999	89
Remaining in 1999	130
Received in 2000	72
Completed in 2000	78
Remainder of the complaints in 2000	124

Figure 6.9 State of Affairs in Relation to Complaints

The number of complaints submitted in 2000 was slightly lower than in 1999. Figure 6.9 illustrates the state of affairs at year-end 2000.

6.1.3 Orientations

Orientations are cases that cannot be qualified as an application for exemption or as a complaint. These usually relate to requests for an opinion in relation to an aspect of competition law or requests for advice.

Description	Numbers
Received in 1998	28
Completed in 1998	12
Remaining in 1998	16
Received in 1999	148
Completed in 1999	71
Remaining in 1999	93
Received in 2000	217
Completed in 2000	188
Remainder of the orientations in 2000	122

Figure 6.10 State of Affairs in Relation to Orientations

A remarkable feature is that the number of orientation cases has increased significantly in the year under review. The increase amounts to almost 50%. Some of these are the result of a change in the method of registering cases (some letters which were registered as complaints in the past, are now regarded as orientations). Other cases may be explained by an increased need in society to be informed of the opinion of NMa on certain aspects of competition law. In addition, the number of occasions on which NMa was asked to give advice increased.

6.1.4 Ex Officio Investigations

Ex officio investigations are investigations into possible breaches of the Competition Act initiated by NMa. Such investigations may result from information obtained by NMa from a variety of sources, such as market studies, reports in the media, tips and the like, that give rise to such 'cause for suspicion' that an investigation is required.
In comparison to 1999, the number of ex officio investigations trebled. Leaving aside the so-called follow-up inspections, 13 investigations were in progress in 2000. This increase is the result of NMa's proactive law enforcement policy which was adopted and which commenced in the year under review.

Ex officio investigations	Numbers
Investigations started in 1998	2
Completed in 1998	0
Remaining in 1998	2
Started in 1999	3
Completed in 1999	2
Remaining in 1999	3
Started in 2000	10
Completed in 2000	5
Remaining ex officio investigations in 2000	8

Figure 6.11 State of Affairs in Relation to Ex Officio Investigations

6.1.5 EC Verifications

Both in 1999 and 2000 NMa carried out three verifications on the premises of undertakings at the request of the European Commission, because the European Commission suspected the involvement of Dutch undertakings in violations of article 81 of the EC Treaty.

6.1.6 Follow-up Inspections

Follow-up inspections are inspections carried out by NMa by virtue of its function aimed at verifying compliance with decisions taken earlier by NMa. In general, it appeared from these inspections that the parties in question had complied properly with these decisions. The first follow-up inspections took place in the year under review.

Description	Numbers
Started in 2000	8
Completed in 2000	6
Remaining follow-up inspections in 2000	2

Figure 6.12 State of Affairs in Relation to Follow-up Inspections

6.2 Regulation of Concentrations

The Competition Act is based on a system of preventive testing. This means that NMa must be notified beforehand of every concentration that falls within the scope of the Competition Act (the so-called major concentrations), so that the concentration can be assessed. As long as NMa has not been notified of a concentration and has not had the opportunity to assess it, the realisation of the concentration is prohibited. The procedure for assessing concentrations provided for in the Competition Act consists of two stages: the notification stage and the licensing stage.

6.2.1 Notification Stage

In the notification stage, NMa investigates whether there is reason to suspect that the concentration will result in the emergence or strengthening of a dominant position, as a result of which competition on the Dutch market will be obstructed significantly. If no suspicion exists, NMa is required to inform the undertakings in question that a licence is not required for the concentration and has to do so within four weeks of receiving the notification. The undertakings in question may then realise the concentration. If there is a suspicion, NMa is required to inform the undertakings in question that a licence is required for the concentration. The undertakings in question must then apply for a licence for the concentration.

6.2.2 Licensing Stage

The company must apply to the Director-General of NMa for a licence. NMa must take a decision on the application for a licence within 13 weeks. The concentration is prohibited during the period in which the application is being assessed. If the period of 13 weeks lapses without NMa having taken a decision, the licence is deemed to have been granted.

In the licensing phase, NMa investigates whether the proposed concentration will indeed result in the emergence or strengthening of a dominant position, as a result of which competition on the Dutch markets would be obstructed significantly. In order to arrive at a judgment, NMa has to define the relevant markets and ascertain the market share of the undertakings involved in the concentration and that of their competitors. NMa then carries out an investigation, for instance, into the opportunities open to third parties to enter the market and the extent to which customers and suppliers are dependent on the company that is to be formed.

The licence will not be granted if it appears that the proposed concentration will indeed result in the emergence or strengthening of a dominant position, as a result of which competition on the Dutch markets will be obstructed significantly. In this case the concentration continues to be prohibited and the concentration has to be abandoned. If ultimately there is no question of the emergence of a dominant position or the strengthening of a dominant position, the licence will be issued and the undertakings in question may proceed to realise the concentration. A licence may be granted subject to limitations and conditions.

6.2.3 *Provision of Information by Undertakings*

The notification of a proposed merger must contain comprehensive information on the undertakings involved, turnover data, the nature of the concentration, the market(s) affected by the concentration and the position on the market(s) of the undertakings involved, the most important competitors and customers on these market(s) and agreements that provide proof of the proposed concentration.

A Concentration Notification Form is obtainable from NMa and must be used in notifying NMa of the proposed concentration. This form can also be downloaded from NMa's website (www.nma-org.nl). If NMa concludes during the notification stage that supplementary information is required, it may request the information required from the company concerned. In this case, the 'clock' is stopped until the supplementary information has been received. The same applies in the licensing stage.

Following the amendments to the Decree in Respect of the Provision of Data in Accordance with the Competition Act[21], the obligation on the part of the notifying party to provide data and documents has been extended slightly. This necessary extension has been limited as far as possible. Providing the various data and documents together with the notification obviates the need to request these during the proceedings and often results in quicker processing of cases. The amendments have been included in the new Concentration Notification Form, which was approved on 19 December 2000[22].
In 2000, NMa was notified of 197 proposed concentrations. A total of 187 cases were settled by means of a decision. These may be subdivided as follows.

Category	Notified Concentrations	Completed in 2000	Withdrawn in 2000	Submitted in 2000 and Still under Consideration
Notifications of concentrations	197	197	8	19
Applications for a concentration licence	4	4	0	0
Applications in accordance with article 40 of the Competition Act	1	1	0	0
Applications in accordance with article 35(3) and 42(3) of the Competition Act	1	4	0	0

Figure 6.13 Overview of the Settlement of Concentration Cases

21 *Decree of 27 April amending the Decree in Respect of the Provision of Data in Accordance with the Competition Act [Besluit gegevensverstrekking Mededingingswet in relation to the limited increase in the data to be provided in giving notification of a concentration, Bulletin of Acts and Decrees, 2000, 222.*

22 *Cf. chapter 4.4.*

The average total time taken to process a concentration case in the notification stage was 34 days in the year under review. The average total time taken to process cases completed in the year 2000 in the licensing stage was 141 days. In more than half of the total number of cases, it was necessary to request supplementary data in the notification stage. It regularly occurs that supplementary data are necessary because the undertakings' proposal with regard to the concentration is not concrete enough. In these cases, notification is given too early and insufficient information is available to be able to assess the transaction.

In many cases comparable supplementary questions were asked. It appears that notifications often lack data with regard to the size of the markets in question, on which the parties base their data with regard to their market shares. Questions were also regularly asked regarding the position of the undertakings in question on various alternative, defined product or geographical markets, if the parties had not dealt with the definition of the markets in their notification.

Joint Turnover of the Undertakings Involved	No. of Notifications of Concentrations
250-500 million	24
500-1,000 million	34
1,000-2,000 million	25
2,000-5,000 million	24
> 5,000 million	80
Total	187

Figure 6.14 Total Number of Concentrations Subdivided According to the Joint Turnover of the Undertakings Involved

Figure 6.14 shows the breakdown of the joint turnover of the undertakings involved, which notified NMa of a proposed concentration.

Figure 6.15 shows the sectors in which the undertakings involved operate.

Sectors	No. of Concentrations
Construction	33
Energy and recycling	16
Financial services	12
Retail and wholesale	40
Transport	10
Healthcare	4
Telecommunications and media	7
Hospitality/leisure	3
Manufacturing of products	39
Other services	23
Total	187

Figure 6.15 Total Number of Concentrations Subdivided According to Sectors

6.2.4 *Concentrations with Multiple Notifications*

When the turnover thresholds stipulated in the European Concentration Directive No. EC/4064/89 of 30 June 1997 was amended by the Council of Ministers of the European Union, it was agreed that the Member States would record the number of concentrations in relation to which notification was given in the Member State and in another EU Member State.

A question in this regard has been included on the Concentration Notification Form.

Of the 197 notifications of concentrations received by NMa in 2000, competition authorities in other EU Member States had been notified of 34.

Notifications	Total
Notification given in two Member States:	13
The Netherlands and Belgium	5
The Netherlands and Germany	7
The Netherlands and Sweden	1
Notification given in three Member States:	11
The Netherlands, Germany and United Kingdom	1
The Netherlands, Germany and France	1
The Netherlands, Germany and Belgium	2
The Netherlands, Italy and Germany	2
The Netherlands, Ireland and Austria	1
The Netherlands, Denmark and Ireland	1
The Netherlands, Germany and Austria	1
The Netherlands, Germany and Spain	1
The Netherlands, Germany and Greece	1

Figure 6.16 Overview of Concentrations of Which Notification Was Also Given in Other Member States

Continuation of figure 6.16.

Notifications	Total
Notification given in more than three Member States:	10
The Netherlands, Germany, Ireland and Austria	2
The Netherlands, Germany, Finland, Austria and Portugal	1
The Netherlands, France, Belgium, Portugal and Spain	1
The Netherlands, Finland, Germany, Italy, United Kingdom, Portugal and Spain	1
The Netherlands, Germany, Ireland, Italy and Austria	1
The Netherlands, Ireland, Sweden and Germany	1
The Netherlands, France, Germany, Austria and Belgium	1
The Netherlands, Germany, Ireland, Italy and Austria	1
The Netherlands, Germany, United Kingdom and Ireland	1
Total	34

6.3 Decisions on Appeal and Decisions Imposing Penalties

Competition law is subject to national procedural rules. On the whole, the general procedures of administrative law apply, as set out in the General Administrative Law Act, but the Competition Act provides supplementary procedural rules and rules that deviate from the provisions of the General Administrative Law Act.

6.3.1 *Decisions on Appeal*

In principle, legal protection is offered in relation to all decisions taken by NMa. This takes the form of a judicial appeal to the Administrative Court. This applies to all decisions taken by NMa, which conform to the definition of a 'decision', in terms of article 1:3(1) of the General Administrative Law Act. Administrative appeals and judicial appeals may only be filed by an interested party, in terms of article 1:2 of the General Administrative Law Act. Appeals filed by parties who are not interested parties are not admissible. Recourse to the administrative appeals procedure is possible in the case of a decision in relation to an application for exemption and decisions in relation to penalties. Recourse directly to the judicial appeals procedure is possible in relation to the regulation of concentrations, with the exception of special cases. After an interested party has been informed of a decision, the interested party may file an objection with the Decisions, Administrative Appeals and Judicial Appeals Department of the Dutch Competition Authority, which should, in

principle, include the reasons for this. In practice, parties that file administrative appeals often request a deferment in order to have the time to submit the additional information on which they wish to base their appeal (for instance, in order to carry out further research). NMa considers this permissible provided the grounds for appeal are submitted within a reasonable period.

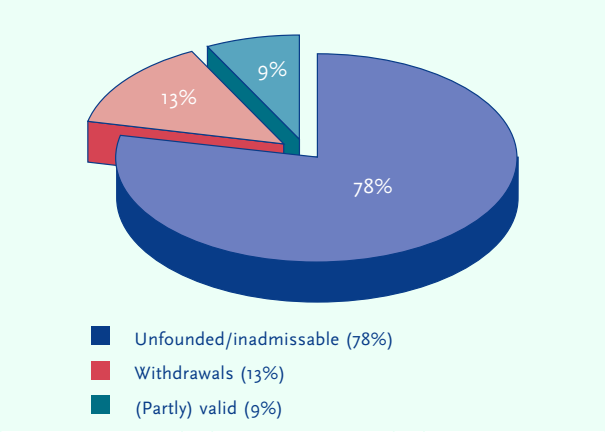

Figure 6.17 Decisions on Administrative Appeals (with the Exception of Administrative Appeals Dealt with by DTe)

In the year under review, the Decisions, Administrative Appeals and Judicial Appeals Department dealt with 23 administrative appeals, of which 3 appeals were withdrawn[23]. After receiving the grounds on which the administrative appeal is based, a hearing is organised for the interested party or parties, at which the appeal can be explained and questions can be asked by the civil servants handling the case. After the hearing, a decision is taken in relation to the administrative appeal. This decision involves a full review of all facts and circumstances relating to the case. In principle, a decision in relation to the administrative appeal is taken within ten weeks, or within a reasonable period after this with the consent of the parties.

The administrative appeal may be declared to be valid, unfounded or inadmissible. In the year under review 18 administrative appeals were declared to be unfounded and/or inadmissible and 2 administrative appeals were declared to be partly valid and partly unfounded (see figure 6.19). If an administrative appeal is declared to the valid, a decision taken by NMa earlier will be fully or partially revoked or amended. This was the case, for instance, in the year under review due to the fact that new facts came to light, as a result of which NMa revised its opinion on appeal[24]. The administrative appeals procedure may require considerable time, particularly if the case in question involves numerous parties and (other) interested parties appear at the hearing to express their opinions. It also occurs that third parties request deferment in order to provide information, or request that the hearing be held at a later date. Finally, the fact that the relationship between various cases and decisions must be taken into account also plays a role. For this reason, a decision in a particular case may be withheld pending the outcome of another case.

6.3.2 *Decisions Imposing Penalties*

In the case of decisions in which a penalty or an order subject to a penalty is imposed on a party, the party in question has recourse to an administrative appeals procedure, which involves a so-called independent Administrative Appeals Advisory Committee. Within the framework of this procedure, advice is given by an independent committee before NMa takes its decision. The members of this Committee are not employed by the Ministry of Economic Affairs. If NMa deviates from the advice given by the Committee in taking its decision on the administrative appeal, it must clearly state its reasons for doing so in the decision. The Administrative Appeals Advisory Committee hears both the interested party or parties and NMa. After this, the Administrative Appeals Advisory Committee advises NMa in writing. The interested parties are informed of the advice at the same time as they are informed of NMa's decision in relation to the administrative appeal. In the year under review, in one case a decision on an administrative appeal was taken after taking into account the advice of the Administrative Appeals Advisory Committee[25]. Given the special nature of this administrative appeals procedure, the legislature stipulated a longer period in which the decision is to be taken than the period that applies to administrative appeals without an external committee. This is necessary, because cases, in which penalties are imposed due to violations of the prohibition on cartels or the prohibition on the abuse of a dominant position, have proved to be complex cases, which sometimes require additional market research.
In case 952/Notaries, further market research was carried

23 Figure 6.17 does not take into account administrative appeals against decisions taken by DTe. In this regard, see chapter 3.

24 Cf. case 492/VBN.

25 This relates to the decision in case 650/Sepp Norsk Hydro, against which an administrative appeal has been filed.

26 In the year under review, NMa did not take a decision on the administrative appeal against the decision in case 952/Notaries.

27 Cf. case 1774/Verkerk Horn and case 1316 HWS Holding / Scheuten.

28 The penalty was imposed due to the violation of article 34 of the Competition Act.

out on the advice of the Committee. The parties involved were again given the opportunity to express their opinions on this market research verbally during a hearing, before NMa takes a decision on the administrative appeal[26].

In accordance with the Competition Act, this procedure applies to penalties in relation to the prohibition on cartels or the prohibition on the abuse of a dominant position. Certain penalties in relation to breaches of the regulation of concentrations were added to this in the Decree in Respect of the Setting up of an Advisory Committee for Administrative Appeals under the Competition Act, as amended in the year under review. This relates, for instance, to penalties imposed for late notification of a concentration[27] or for the submission of incomplete data in the notification or licensing stages of a concentration case.

Decisions Imposing Penalties	**6**
Fines in relation to the regulation of concentrations	2
Imposition of penalties	1
Imposition of fines/penalties	1
Decisions not to impose a fine and/or a penalty	2
Decisions on administrative appeals against decisions imposing penalties	1

Figure 6.18 Overview of Decisions Imposing Penalties

In the year under review, six decisions (in first instance) imposing penalties were taken, against which five administrative appeals were filed. In case 1316/ HWS Holding - Scheuten an administrative appeal was not filed against the decision imposing a penalty and the fine imposed was paid by the parties in mid-January 2001[28]. In two of the six cases referred to, a decision was taken not to impose a fine or an order subject to a penalty, because the parties, after consulting NMa, had changed their behaviour in certain respects in such a way that it complied with the Competition Act.

6.4 DTe in Figures

In accordance with the Electricity Act of 1998 and the Gas Act, grid managers (electricity), network managers (gas) and licence holders are obliged to submit tariff proposals to DTe for the following year. DTe assesses these proposals and ultimately approves the tariffs. In the case of electricity, the structure of the tariffs and the system applied in assessing the proposals is set out in the Tariff Code. With regard to the technical aspects of regulation, particularly in relation to the electricity grids, the Grid Code, the System Code and the Measurement Code have been developed. Both the grid managers, acting jointly, and DTe may initiate a procedure to amend these Codes. With regard to gas, DTe has started drawing up a so-called technical agenda. This is a list of the technical items that have to be worked out in more detail to ensure the proper operation of the gas market.

In 2000 DTe took 123 decisions, of which 122 related to electricity and one to gas. A total of 71 decisions were taken in relation to tariffs. These decisions are decisions relating to individual grid managers or licence holders involving both transmission and connection tariffs, and supply tariffs. In this category of decisions relating to tariffs, six decisions involved the amendment of an original decision on transmission tariffs for 2000 taken in December 1999. A total of 24 decisions were taken in relation to connection tariffs for 2000. The remaining 41 decisions related to connection and transmission tariffs for 2001 and supply tariffs for the first quarter of 2001. The next category of decisions involved the so-called X-factor decisions in relation to grid managers. A total of 29 decisions were taken in relation to efficiency discounts (price caps).

In 2000 DTe took 6 decisions amending the technical codes or the Tariff Code. A total of 16 decisions were taken in relation to administrative appeals against earlier decisions taken by DTe. These decisions on administrative appeals were settled by DTe, as agreed. In relation to gas, one decision was taken, namely the Guidelines for 2001 in relation to indicative tariffs and conditions.

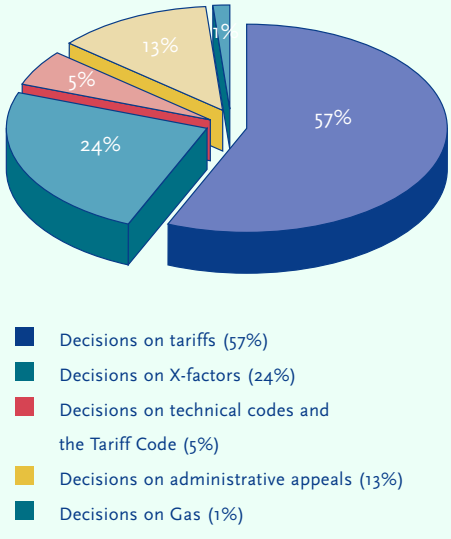

Figure 6.19 Overview of Decisions Taken by DTe

7 The Decisions

In 2000 various cases received considerable interest due to the NMa's findings in relation to the case or the importance of the case for a particular market. Businesses, lawyers and the media followed these cases with great interest. This chapter provides a concise discussion of these cases. The complete overview of decisions taken by NMa is included in Annex 1. The complete texts of the decisions taken by NMa in 2000 are available at the internetsite: www.nma-org.nl.

7.1 Decisions with Regard to the Monitoring of Cartels and Abuse of Dominant Positions

In 2000 NMa investigated a large number of applications for exemption and complaints of violations of the prohibition on cartels and/or abuse of a dominant position. A number of decisions are discussed in this paragraph. As far as possible these have been grouped per sector or activity. The order is as follows: the primary and manufacturing industries, recycling, the construction sector, the agricultural sector, the retail and wholesale trade, the healthcare sector, the transport sector, media and telecommunications and commercial services.

Primary and Manufacturing Industries

Case 426/Hoogovens Staal B.V./Ruhrkohle Handel Inter GmbH.

Application: Hoogovens Staal B.V. applied for an exemption for the benzene agreement entered into with Ruhrkohle Handel Inter GmbH. Hoogovens is a manufacturer of aluminium and steel. The German company Ruhrkohle produces, amongst other products, glues and coatings based on benzene. This agreement stipulates that Hoogovens is obliged to supply its production of crude benzene to Ruhrkohle and that Ruhrkohle is obliged to purchase the supply. In addition a scheme has been agreed in terms of which Ruhrkohle undertakes to finance the investments necessary for the benzene extraction plant. The agreement was entered into for 15 years.
Complaint: Ruhrkohle filed a complaint against the agreement because Ruhrkohle was of the opinion that the agreement contained in the contract limited competition.
Findings: Crude benzene is obtained as a by-product of coke ovens, as used by Hoogovens, and serves as a basic raw material for the production of benzene. Benzene is used in the production of glues and coatings. The market for crude benzene is at least a European market in size. Various producers of crude benzene are active in Europe. In the Netherlands there are no consumers of crude benzene. Crude benzene is therefore not traded in the Netherlands. The consequence of the agreement is that the supply of crude benzene on the respective markets increased. In addition, without the agreement Hoogovens would never have started producing crude benzene. Furthermore it must be noted that on the basis of agreements with regard to market risk and the financing of investments, Hoogovens only acts as a supplier to Ruhrkohle. The quantity of crude benzene that Hoogovens supplies also constitutes only a small part of the total quantity that Ruhrkohle requires, given its processing capacity. Ruhrkohle may purchase the rest from other producers. Finally, the agreement does not result in coordination of the behaviour of parties on the market for crude benzene. Since crude benzene is not traded in the Netherlands, the agreement does not have the effect of limiting trade in the Netherlands. The application for an exemption and the complaint were dismissed.
An administrative appeal was filed against this decision.

Recycling

Case 115/Stichting Auto en Recycling [Foundation for Automobile Recycling]

Application: Stichting Auto en Recycling (ARN) applied for an exemption for the Recycling Contribution Agreement for Motor Vehicles of 1997 [Overeenkomst Verwijderings-bijdrage voor auto's 1997] and the system of recycling car wreckage associated with this, known as Auto Recycling Nederland (ARN). The recycling system is a joint initiative of the producers/importers of cars, garages, accident repair companies and automobile disassembly companies. The system provides for the environmentally responsible recycling of automobile wrecks. In accordance with the system, manufacturers and importers are required to pay a recycling contribution of NLG 150 when a car enters the market. This contribution is used for the environmentally friendly recycling of the car wreckage. It appears from the Recycling Contribution Contract of 1997, entered into by the parties, that the consumer ultimately pays the recycling contribution, as it is compulsory to pass this on. In implementing the recycling system, ARN decides on the car disassembly, collection and recycling companies, with which it enters into contracts, on the basis of objective quality criteria and, in part, through inviting tenders.
Findings: In determining the level of the recycling contribution, competition in relation to this cost element is excluded. The obligation to pass on this cost to the consumer amounts to coordination of market behaviour in respect of part of the way the price is determined.
The way in which contracts are entered into by ARN with

automobile disassembly, collection and recycling companies and the contents of the contracts, however, do not limit competition. ARN exercises its contractual freedom and a number of obligations ensure the effective functioning of the collection system. Before the Competition Act came into effect, however, the Minister of Housing, Spatial Planning and the Environment declared this agreement to be generally binding for the period from 1 January 1998 up to and including 31 December 2000. Consequently, the temporary exemption of article 16 of the Competition Act applies to the agreement and article 6 of the Competition Act does not apply to the obligation to pass on the fixed charge of NLG 150. The Director-General of NMa determined that an exemption was not required, since part of the Recycling Contribution Agreement did not violate the Competition Act and the rest was subject to a statutory exemption applicable until 31 December 2000.
An administrative appeal was filed against this decision.

Case 197/ADMES

Application: The co-operative association of waste strippers, ADMES U.A., applied for exemption for its Articles of Association and its regulations. ADMES acts as an intermediary and advises its members on the most effective ways of processing and removing waste. The association's membership is comprised of various undertakings from various branches that produce waste as a consequence of their core activity. ADMES enters into agreements with and on behalf of its members for the supply of products and services in relation to waste. ADMES therefore fulfils the role mainly of a procurer of services in relation to the processing and removal of waste on behalf of its members.
Findings: ADMES is regarded as a procurement organisation in the area of waste removal. NMa investigated whether joint procurement results in limitations on competition. The markets on which the members operate usually do not overlap. Where that might be the case, the services provided by ADMES were so insignificant for the undertakings in question that this did not significantly affect competition in respect of their core activity. ADMES only has a 0.3% share of the market for the procurement of services in the area of the removal and processing of waste. Furthermore the undertakings are at liberty to have their waste processed by organisations other than ADMES. This joint procurement therefore does not have the effect of limiting competition. Equally the information collected and processed by ADMES does not limit competition, as the members do not have access to this. The application for exemption was rejected because an exemption was not required.

Case 294/Vereniging van Afvalverwerkers [Association of Operators of Waste Recycling Plants in the Netherlands]

Application: Vereniging van Exploitanten van Afvalverwerkingsinrichtingen in Nederland (VVAV) applied for an exemption for its Code of Practice in Relation to Restructuring [Gedragscode Herstructurering]. The Code of Practice contains agreements between waste tip operators with regard to the minimum tariffs, which are charged by other members for the dumping of waste. Almost all the active operators of waste tips are affiliated to VVAV.
Findings: The agreement, of which NMa has been notified, should be qualified as a horizontal price cartel. The participants in the Code of Practice could not determine tariffs of their own which were below the agreed minimum tariffs. Price competition between the participants was therefore limited. VVAV argued that the final processing of waste should be seen as a utility function and that the exemption contained in article 11 of the Competition Act applied to this. It was acknowledged that waste processing was an essential activity in society. However, there was no statutory provision or explicit decision by a public authority in which VVAV had been issued with instructions in relation to recycling. The exemption therefore did not apply. In addition, VVAV referred to the necessity of restructuring and rationalising the sector. There was, however, no evidence of restructuring, no capacity reduction plan, no formation of funds and no timetable within which the restructuring was to be realised were presented.
The application for exemption was therefore rejected.

Construction Sector

Cases 530, 456 en 534/Vereniging van Nederlandse Installatiebedrijven [Association of Dutch Installation Companies]

Application: Vereniging Nederlandse Installatiebedrijven (VNI) is a branch organisation to which entrepreneurs may affiliate who install, for instance, installations for central heating, ventilation, gas and water supply and sanitation. VNI submitted an application for exemption of its Articles of Association, its standing rules and accompanying regulations, and the consumer brochure Zonneboiler [Solar Boiler]. NMa investigated whether the provisions of these regulations with regard to the objectives of VNI, the procedure for joining VNI and the standard prices referred to in the consumer brochure limited competition.
Findings: As one of the objectives contained in its Articles of Association, VNI states its intention to combat unfair competition and to take measures to ensure responsible

pricing in the sector. The objective gives VNI the opportunity to impose prices on its members. Price agreements are amongst the most serious limitations referred to in competition law, which do not qualify for exemption. Membership of VNI is only open to installers who are recognised by EnergieNed (in the case of gas and electricity) or by VEWIN (in the case of water). Membership of VNI should be viewed as a system of approval, since its members may use the VNI logo to present themselves as qualified and professional installers in contrast to non-VNI members. Systems of approval that satisfy the criteria of openness, transparency, independence and the acceptance of guarantees comparable to the criteria stated in the scheme do not limit competition. The requirement that members have to be recognised by VNI is open and objective, since at present there are no systems other than the schemes provided by EnergieNed and VEWIN, which guarantee the safety of gas and water installations. To ensure that unreasonable obstacles are not put in the way of new members who wish to join VNI, a low-threshold recourse for appealing against the rejection of an application for membership to a body largely independent of VNI must be offered. In accordance with VNI's scheme, competitors decide whether a new member may join and it is only possible to appeal to the Council of Members, consisting of members of VNI. Finally, a diploma from an educational institution belonging to VNI is required for membership of specific groups of undertakings. Due to this requirement, VNI allows no room for people who have acquired knowledge and expertise by other means. This objection may be met by stipulating objective qualifications instead of this requirement, which may also be met by completing other courses and educational programmes. With regard to the inclusion of standard prices in the consumer brochure, NMa determined that this could not (or could no longer) be regarded as a violation of article 6 of the Competition Act, since the brochure in question had been withdrawn by VNI and was no longer distributed. The application for exemption was rejected, since the schemes in part did not limit competition and in part did not meet the requirements for exemption.
An administrative appeal was filed against this decision.

Agricultural Sector

Case 357/Unieholding Nimwegen

Application: Dumeco B.V., Hendrix Vlees B.V, Sturko Meat B.V. and Beheermaatschappij Gebroeders Jansen Wesepe B.V. are the four largest pig abattoirs in the Netherlands. The application for exemption that was filed related to the joint takeover of Van Swelm-Nuy Vlees B.V. and the formation of a joint venture, Unieholding Nimwegen, through which the takeover was to be implemented. Through this takeover the joint venture would acquire control of Slachthuis Nijmegen B.V.
Findings: The corporate structure that was created had the sole purpose of rationalising Slachthuis Nijmegen and removing a competitor from the market. This was a violation of article 6 of the Competition Act. As this application did not fulfil the criteria for exemption, it was decided to dismiss the application for exemption.

Case 1237/Stichting Keten Kwaliteit Melk [Foundation for Quality in the Milk Production Chain]

Application: Stichting Keten Kwaliteit Melk (KKM) applied for exemption for the Regulations of Affiliation [Reglement Aangeslotenen] and the Regulations for the Recognition of Livestock Companies [Erkenningsreglement veehouderijbedrijven], which contained KKM's quality assurance system for farm milk. In accordance with this system, at the request of a dairy farmer, KKM issued the farmer with a 'Recognition Certificate', if this dairy farmer met the criteria set by KKM. These criteria, which extended beyond the existing statutory requirements, related to the method of production and not to the quality of the milk. Eleven milk-processing companies were affiliated to KKM, with a joint market share of more than 98%. Articles 9 to 12 of KKM's Regulations of Affiliation stipulated that as of 1 January 2000 milk-processing companies affiliated to KKM could no longer purchase milk from dairy farmers who were not recognised by KKM.
Findings: the regulations applicable to obtaining recognition by KKM, as included in the Recognition Regulations, could be regarded as objective, transparent and non-discriminatory. A dairy farmer could appeal to an independent foundation against any decision taken by KKM in relation to an application for recognition. Membership of KKM was also open to foreign dairy farmers and the system provided for the recognition of equivalent (foreign) systems. These aspects of KKM's system did not limit competition and were therefore not in violation of the prohibition contained in article 6 of the Competition Act.

Articles 9 to 12 of the regulations of affiliation, however, did limit competition because the milk-processing companies affiliated to KKM were limited in their freedom to decide from which dairy farmers they wished to purchase their milk. In addition, it was made impossible for dairy farmers who meet all the statutory requirements, but

were not recognised by KKM, to sell their milk. The market share of milk-processing companies that were not affiliated to KKM was too small (less than 2%) to offer realistic opportunities for selling their milk. During the processing of the application for exemption, however, the applicant withdrew these provisions. Consequently it was decided that exemption was not required. As a warning, the decision indicated that if one or more milk-processing companies were to continue their market behaviour, originally based articles 9 to 12 of the Regulations of Affiliation, after these had ceased to apply, they would violate the Competition Act.

Retail and Wholesale Trade

Case 120/Vereniging van Keurslagers [Association of Certified Butchers]

Application: Vereniging van Keurslagers (VvK) [Association of Certified Butchers] applied for exemption for its Keurslagersformule [Quality Butcher Formula]. This formula and the accompanying rights and obligations were set out in the Articles of Association, the Standing Rules, the Trade Mark Regulations and the VvK Handbook. The members affiliated to VvK sold meat products to consumers through their butcheries. In addition to the members of VvK, food companies (supermarkets, evening shops and mobile shops), specialist shops and other trading channels, such as hawkers, department stores and farmers, were also active on this market.
Findings: VvK had to be regarded as a joint venture for the exploitation of the Quality Butcher Formula. In accordance with this formula, the members of VvK undertook to comply with the policy of VvK with regard to the maintenance and improvement of quality, education and innovation, procurement, promotion and advertising and the promotion of their joint formula through the use of uniform emblems and trademarks. Part of the policy involved charging recommended prices for advertised products. Although it was not the aim of this policy to limit competition, such co-operation could lead to undesirable transparency and the exchange of information, for instance, with regard to pricing. It was concluded, however, that the Quality Butcher Formula, and the recommended prices included in this, did not violate article 6 of the Competition Act. After all, VvK's members were free to set their own prices, both with regard to advertised products and non-advertised products. The recommended prices only applied to advertised products, but these advertising campaigns involved on each occasion at most three products out of a large number of butchery products and lasted for a maximum of two weeks. Furthermore the advertising campaigns were not separate activities, but were part of the Quality Butcher Formula, which itself promoted competition. In conclusion, the joint market share of the members of VvK was only between 2 and 10 percent. An exemption was therefore not required.

Case 262, 714 en 715/Pharmacon

Application: Stichting Drogistenfederatie Pharmacon [Foundation of Chemist Shops, Pharmacon] is an umbrella organisation in the chemist branch. Its main aim is to promote the quality of sales of medicines for personal care (painkillers, vitamins and such like). Pharmacon applied for an exemption for the following schemes:

- Recognition and Scheme for Retailers for the Supply of Personal Care Medicines;
- Certification Scheme for Retailers for the Supply of Personal Care Medicines; and
- System of Approval for Educational Institutions in the Chemist Branch.

Findings: A resignation and certification scheme is permissible under article 6 of the Competition Act, if the recognition system fulfils the following criteria: openness, transparency, acceptance of the equivalent qualifications offered by other systems and independence. Furthermore the system of approval may not contain other limitations on competition. All three of the schemes met the four criteria mentioned above, in that the schemes were freely accessible and third parties were not excluded in advance. During the procedure, Pharmacon removed a quantitative requirement from the System of Approval for Educational Institutions and from the Certification Scheme for Retailers for the Supply of Personal Care Medicines with regard to the issuing of recommended prices. In addition, the three schemes did not contain any other limitations on competition and consequently did not violate article 6 of the Competition Act.
An exemption was therefore not required.

Case 272/Nederlandse Kleding Conventie [Netherlands Clothing Convention]

Application: Modint, an association of clothing suppliers, and Modint Credit & Finance B.V. applied for an exemption for the so-called NTKC conditions. These involved the sale, delivery and payment conditions that could be used by members of Modint (Netherlands Clothing Convention Section). Modint members could enter into an agreement with Modint Credit & Finance B.V., which entitled them to use the NTKC conditions subject to payment. Modint recommended entering into such an agreement. In practice

it appeared that almost all the members entered into such an agreement.
Findings: The maximum payment discount, the maximum del credere discount (remuneration for central payments to the procurement organisation) and the maximum turnover incentive premium (remuneration for an increase in turnover achieved by the customer) in the NTKC conditions limited the members of Modint in their freedom to determine sales prices. The maximum discounts could be regarded as horizontal price agreements and such agreements have the aim of appreciably limiting competition. It was necessary to give consideration to the question of whether the maximum discounts were eligible for exemption. This did not appear to be the case. It was not shown that the maximum discounts resulted in an improvement in production or distribution, which was passed on to users. It was also not shown why the maximum discounts were necessary.

The application for exemption was rejected as the maximum discounts did not meet the criteria for exemption and the rest of the NTKC conditions did not contain limitations on competition in terms of article 6 of the Competition Act.

Cases 701/Kamerbeek versus Koster and 1122/Breitling Watches

Application: M. Koster & Zonen v.o.f. (also known as Breitling Nederland) had entered into an exclusive sales agreement in accordance with which Koster had been given the exclusive right to import Breitling watches into the Netherlands. For the purposes of the (further) sale of Breitling watches Koster entered into selective distribution agreements with jewellers. Koster selected the jewellers on the basis of a number of qualitative and quantitative criteria. Koster could designate jewellers, who meet the selection criteria, as Breitling retailers. Koster requested the Director-General of NMa to grant an exemption for the selective distribution system that it used.
Complaint: Kamerbeek Juwelier B.V. is a jeweller which sells a varied assortment of jewellery articles at an A location in Nijmegen, including watches in the more expensive price range. Kamerbeek filed a complaint against Koster's selective distribution system. Kamerbeek was of the opinion that competition was limited by the fact that Koster, in recognising Breitling retailers, not only took qualitative criteria into account, but also selected on the basis of quantitative criteria.
Findings: The selective distribution agreement and the method by which Breitling retailers were recognised limited competition, since the selection system was not only based on qualitative criteria, but was also based on quantitative aspects. If Koster was of the opinion that a sufficient number of Breitling retailers had been designated in a particular region, all further applications were rejected, even if the jewellers fulfilled all the stipulated selection criteria. This resulted in a discriminatory recognition and selection system. The selective distribution agreement and the policy with regard to the regional distribution of outlets were eligible for exemption, since the inclusion of quantitative aspects in the selection procedure ensured, in this specific case, the promotion of distribution and an improvements, for instance, in service. Breitling S.A. only supplied a limited number of Breitling watches for the Dutch market. Limiting and spreading the number of potential Breitling retailers who are supplied, guaranteed a representative assortment and minimum stocks, greater freedom of choice for consumers and increased efforts in promoting sales on the part of the Breitling retailer. In addition, the top range of the watch markets also includes other brands, so that there was sufficient competition. An exemption was granted for a period of ten years. The complaint was dismissed.

Healthcare

Case 181/Zorgkantoren [Healthcare Agencies]

Application: Zorgverzekeraars Nederland (ZN) requested an exemption for the agreement between the Administration Agencies Responsible for the Implementation of the Exceptional Medical Expenses Compensation Act (AWBZ Agencies) and the Mandate Agreement arising from this entered into between the AWBZ Agencies and the Healthcare Agencies. In accordance with the Mandate Agreement, the AWBZ Agencies gave the Healthcare Agencies a mandate to implement the Exceptional Medical Expenses Compensation Act on their behalf. The Healthcare Agencies were given authority to enter into cooperation agreements, as a consequence of which they were responsible for procuring care. As a consequence of providing a mandate, the AWBZ Agencies no longer carried out an independent procurement policy and the care providers were confronted with a concentration of procurement activities. The Ministry of Health, Welfare and Sport appointed one healthcare insurer for each region, which carries out the tasks of the Healthcare Agency. In total there are 31 Healthcare Agencies in the Netherlands.
Findings: The procurement of care in relation to the Exceptional Medical Expenses Compensation Act is an economic activity that may be considered to be separate from the implementation and administrative tasks and subsidy policy within the framework of the Exceptional

Medical Expenses Compensation Act. With regard to their procurement policy, the AWBZ Agencies had to be regarded as undertakings, in terms of article 6 of the Competition Act, insofar as they had sufficient freedom to affect the performance of care providers. The relevant markets related to the procurement of a wide variety of types of care, which by law have to be supplied in natura to those insured under the Exceptional Medical Expenses Compensation Act. The care package included, in particular, long-term care, which was consequently difficult to insure, provided by institutions such as nursing homes, institutions for the handicapped, institutions for home care and hospitals (if the duration of nursing care exceeds one year). With regard to the procurement of care from institutions, the parties had a mutual obligation to enter into a contract subject to fixed tariffs. With regard to care are provided by independent professional practitioners, only care provided by independent psychiatrists fell within care package covered by the Exceptional Medical Expenses Compensation Act. With regard to the procurement of care, since 1992 independent professional practitioners have not been subject to a contractual obligation and fixed rates were substituted by maximum rates. Consequently, in principle, AWBZ Agencies have room for negotiation in this area and therefore, with regard to competition, they can negotiation on quality and rates.

Since within this category the Exceptional Medical Expenses Compensation Act covers only the care provided by independent psychiatrists, the profit that AWBZ Agencies can make by adopting an alert procurement policy is relatively small. In addition, within the present AWBZ system, there is no economic incentive to actually utilise the room for negotiation that is available, since the healthcare insurers, in their capacity as AWBZ Agencies, budget for administration expenses, but not for AWBZ care. Finally, the mandates given to Healthcare Agencies have no consequences for the markets for the procurement of care outside of the scope of the Exceptional Medical Expenses Compensation Act and on markets for the sale of hospital or private health insurance.

It was concluded that the AWBZ Agencies only have room for negotiation with regard to the procurement of the services of independent psychiatrists. In accordance with present legislation and regulations and the application of these, it could be assumed that there was no actual competition that could be limited appreciably by the Mandate Agreement. Consequently the prohibition contained in article 6 of the Competition Act was not violated. An exemption was not required.

Cases 145 and 652/CZ/VGZ/OZ Inkoopcombinatie [Procurement Cooperative]

Application: The healthcare insurers CZ (Tilburg), VGZ (Nijmegen) and OZ (Breda) applied for exemption for their joint venture in the area of the joint procurement of outpatient care (general practitioners, pharmacists etc.) and medical aids (hearing aids, orthopaedic shoes etc.).
Findings: The healthcare insurers CZ, VGZ and OZ had a joint market share on the Dutch market for health insurance of approximately 30 percent. On the regional markets for the procurement of outpatient care and medical aids in the southern regions of the Netherlands they have a joint market share of more than 90 percent. Although the joint venture did not procure care on an exclusive basis, in practice it appeared that they almost exclusively conducted negotiations jointly in almost all instances. A single position of power with regard to procurement had, in fact, arisen due to the large market share of the joint venture in the southern regions of the country. The sales opportunities for care providers were extremely limited as a result. This applied particularly to outpatient care and medical aids because patients always purchased these in the region in which they live. On the supply side, the market was competitive and there was no real resistance. It was therefore not reasonable to assume that the possible economic advantages outweighed the disadvantages of this concentration on the procurement markets. The application for exemption was rejected.

Cases 767/Zorg en Zekerheid and 141/Theo de Graaf Brillen/Contactlenzen B.V.

Application: Onderlinge Waarborgmaatschappij Zorg en Zekerheid Verzekeringen U.A. (Zorg en Zekerheid) applied for an exemption for the standard contract that they had entered into on behalf of their policyholders with 73 opticians who were members of Nederlandse Unie van Optiekbedrijven (NUVO) [Netherlands Union of Opticians]. In accordance with the standard contract, NUVO opticians agreed to provide policyholders of Zorg en Zekerheid with glasses or contact lenses at a fixed price or at a fixed discount.
Complaint: Theo de Graaf Brillen/Contactlenzen B.V. is a member of NUVO, but decided not to participate in Zorg en Zekerheid's standard contract. Theo de Graaf claimed that in entering into the standard contracts with various opticians, Zorg en Zekerheid has violated article 6 of the Competition Act. In addition, Theo de Graaf instituted civil proceedings as a result of which the Court suspended the agreements contained in the standard contract pending a ruling by NMa.
Findings: The Director-General of NMa ruled that the aim

of the standard contract was to initiate a joint advertising campaign for a period of three years for Zorg en Zekerheid, on the one hand, and for the NUVO opticians who participated, on the other. Within the framework of this campaign, the standard contract contained fixed prices and fixed discounts that limited competition between the NUVO opticians participating in the campaign. This was an appreciable limitation on competition because 44 percent of opticians located in the area in which Zorg en Zekerheid did business had signed the contract. In with addition, 36 percent of the inhabitants in Zorg en Zekerheid's area of operation benefited from the standard contracts. An exemption for the system of fixed prices and discounts was not granted, partially because the system goes further than is necessary for the success of a joint advertising campaign. The application for exemption was rejected and the complaint was consequently settled.

Case 995/Organisatie van Nederlandse Tandprothetici [Organisation of Dutch Dental Prostheticians] versus Health Insurers and Zorgverzekeraars Nederland

Complaint: Organisatie van Nederlandse Tandprothetici (ONT) filed a complaint against individual health insurers and Zorgverzekeraars Nederland (ZN), partly on behalf of its members. ONT was of the opinion that health insurance funds abused an individual or, alternatively, a collective dominant position on the market for the procurement of dental prostheses. According to ONT this abuse consisted of making a distinction with regard to tariffs and other conditions for dental prostheses between dental prostheticians, on the one hand, and dentists, on the other. Furthermore ONT claimed that the health insurance funds had coordinated their behaviour through ZN with regard to the procurement of dental prostheses. According to ONT this coordination could be regarded as a form of appreciable limitation on competition in terms of article 6 of the Competition Act.
Findings: There are only two suppliers active on the regional markets for the procurement of dental prostheses as a result of the collective negotiations by care providers, namely ONT and the association representing the interests of dentists, NMT. It was concluded that the health insurance funds neither individually nor collectively had a dominant position on the market for the procurement of dental prostheses. After all, the health insurance funds could not adopt an independent position in relation to the care providers (ONT and NMT), due to the presence of a countervailing force presented by these care providers. This lack of independence was further reinforced by the limited opportunities that health insurance funds had to choose their supplier of dental prostheses, both with regard to services and with regard to the location at which the service was provided. This part of the complaint was dismissed.

In addition, ONT claimed that consultation occurred or, alternatively, that agreements existed between the health insurers with regard to the reimbursement of dentists or, in this case, dental prostheses. The care sector is subject to complex legislation and regulations. The parties operating on the markets have entered into a large number of interrelated, usually multiparty agreements, which is common practice in the care sector. A large number of these practices have been the subject of applications for exemption currently under consideration by NMa. This part of the complaint was therefore not considered in isolation. Partly due to the availability of people and resources, the Director-General of NMa did not consider it opportune to rule on the supposed violation of article 6 of the Competition Act in advance of other related applications for exemption. An administrative appeal was filed against this decision.

Cases 1131, 1151 and 1250/Policy with Regard to the Setting up of Practices by Psychologists in the Primary Healthcare Sector

Complaint: NMa received complaints from psychologists in the primary healthcare sector with regard to the national policy applied by Nederlands Instituut van Psychologen (NIP) [Netherlands Institute of Psychologists] in relation to the setting up of practices by psychologists in the primary healthcare sector. The Regionale Organen Eerstelijns-psychologen (ROEP) [Regional Bodies for Psychologists in the Primary Healthcare Sector] implemented this policy. NIP set criteria, for instance, with regard to the size of practices, as a result of which a limited number of practices were available per region. In addition, a Practice Committee of NIP decided whether a practice was available for new psychologists in the primary healthcare sector.
Findings: NIP's policy with regard to the setting up of practices, based on a horizontal agreement, violated article 6 of the Competition Act. As a result of this horizontal agreement, existing businesses were able to influence the entry of newcomers. In addition, approximately 80 percent of health insurers accepted this policy with regard to the setting up of practices and only reimbursed treatment by a primary healthcare psychologist, if the psychologist was a member of NIP. Potential entrants were confronted with an additional barrier to entry due to the policy with regard to the setting up of new practices. This policy therefore had a direct effect on the number of

players on the market for primary healthcare psychologists and for this reason it limited competition.

Notwithstanding this conclusion in relation to these cases, it was decided not to institute proceedings on the grounds of this infringement, since NIP, of its own accord, had withdrawn the policy in relation to the setting up of practices without having been informed of the complaints. The complexity of legislation and regulations in the healthcare sector and the history of the sector were also taken into account in this regard. An administrative appeal was filed against this decision.

Cases 590, 1570 and 1972/Amicon Zorgverzekeraar and Independent Physiotherapists

Application: Amicon Zorgverzekeraar and Koninklijk Nederlands Genootschap voor Fysiotherapie (KNGF) [Royal Dutch Society for Physiotherapy] applied for exemption for the standard contract that Amicon used for the procurement of physiotherapeutic care. The standard contract had resulted from negotiations between Amicon and representatives of the contracted physiotherapists in Amicon's area of operation. In addition, the so-called Commissie van Overleg (CvO) [Consultation Committee], which included representatives of Amicon and the contracted physiotherapists, decided which physiotherapists would receive a contract and for what volume.
Complaint: The firm of physiotherapists, Fysiotherapie-maatschap Sanders-Klink, filed a complaint against the above-mentioned standard contract.
Findings: By negotiating at a regional level, all physiotherapists offered their services subject to the same conditions. By jointly deciding within the Consultative Committee who could treat how many patients and where, the parties involved had jointly divided up the market for the procurement of physiotherapeutic care at the regional level. An important aspect of this was that competitors could decide who was allowed access to the markets. In practice, this resulted in a fixed group of contracted physiotherapists and the exclusion of new entrants. Furthermore this was in direct conflict with the intention of the legislature, which had introduced market forces to some extent into the way the market for the procurement of care operated at the beginning of the nineties.

It was concluded that the Result of Consultation [Uitkomst van Overleg] was exempted from the prohibition on cartels in accordance with article 16 of the Competition Act. As required by law, the Health Insurance Funds Council [Ziekenfondsraad] had approved the Result of Consultation. Agreements with regard to tariffs, the setting up of practices, and distribution and volume, which were not covered by the Result of Consultation, were prohibited, in accordance with article 6 of the Competition Act, and did not qualify for exemption. The collective agreements with regard to the quality of care and administrative procedures did not limit competition. The complaint filed by Sanders-Klink with regard to article 24 of the Competition Act was dismissed and it was decided not to draw up a report with regard to article 6 of the Competition Act.

Transport

Cases 273/ Vereniging Vrije Vogel versus KLM and 906/Swart versus KLM

Complaint: Vereniging Vrije Vogel (VVV) and Mr Swart filed a complaint against KLM, as they were of the opinion that KLM had abused its dominant position by charging extremely high prices for flights to Curacao and, in particular, to Aruba. On the basis of agreements between the Dutch government and the government of the Netherlands Antilles, KLM and ALM (the Antillean airline company) were designated as airline companies entitled to carry out scheduled flights on these routes. As ALM was not in a position to do so, in practice, KLM was the only company that was entitled to carry out scheduled flights to these destinations.
Findings: The tariff was tested on the assumption that an excessive tariff could result from excessively high costs, possibly in combination with excessively high profits. NMa investigated the costs incurred by KLM on the routes to Curacao and the Antilles and a number of other comparable destinations. From this investigation, it emerged that the costs which KLM charged for flights to the Antilles had been allocated reasonably from a commercial perspective. It was noted, however, that the costs for the route to Curacao were higher than other comparable destinations. This was the result, however, of the fact that less cargo was transported to the Antilles, flights to other destinations made use of different aircraft and the joint operating agreements with ALM incurred costs. It was determined that the tickets sold in the Netherlands in total did not make a more than proportional contribution to the company's income. Finally, the actual profits on routes to Curacao and the Antilles were offset against the standard earnings. It was concluded that there was no evidence of excessive profits and excessive tariffs. KLM therefore had not abused a possible dominant position. The complaint was dismissed. With regard to Mr Swart, it was not established that his situation was sufficiently different to that of other users. He was therefore not deemed to be an interested party.

Case 1012/Van Eck Havenservice B.V.

Complaint: Van Eck Havenservice B.V. is active in the area of the temporary secondment of Harbour personnel in the Rotterdam Harbour. The complaint filed by Van Eck Havenservice was against SHB Havenpool Rotterdam B.V. and Stichting Samenwerkende Havenbedrijven Rotterdam (SSHB) [Foundation of Cooperating Harbour Companies in Rotterdam]. In essence, the complaint related to the preferential rights granted to SHB, and the supposed abuse that SHB made of its dominant position on the market for the hiring of additional, temporary labour in the harbour of Rotterdam. In accordance with the preferential rights, SHB had a preferential right to supply temporary stevedores to undertakings in the Rotterdam Harbour. If SHB could not meet the demand, these undertakings were required to hire in stevedores through SHB from other recognised undertakings. This obligation and the preferential rights were set out in the Harbour Agreements of 1994 and had been confirmed subsequently in a number of collective labour agreements.
Findings: The preferential rights were set out in the form of a collective agreement and were the result of collective negotiations between organisations representing employers and employees. With regard to the aim of the agreement, it must be noted that collective agreements with regard to employment and conditions of employment fell outside of the scope of regulations governing competition. In addition, there was no evidence that SHB demands excessive prices. For this reason and because an investigation into the company's profits would have been costly, it was deemed inopportune to carry out an investigation to establish whether the prices demanded by SHB were excessive. The complaint was dismissed because it had not been established that article 6 and/or article 24 of the Competition Act had been violated.

Media and Telecommunications

Cases 1405/Metro Holland B.V. and NS-Stations B.V. and 1584/Sp!ts B.V. versus Metro Holland B.V. and NS-Stations B.V.

Application: Metro Holland B.V. and NS-Stations B.V. filed an application for exemption for the agreement in which NS-Stations (railway stations) granted Metro Holland exclusive rights to distribute its free newspaper Metro on NS stations. Metro and Sp!ts are free newspapers in tabloid format, which are distributed nationally and are financed by advertisements. Metro is distributed through baskets on approximately 200 NS stations and on 43 underground stations in Rotterdam. Sp!ts is distributed on the squares in front of approximately 120 NS stations and at several underground stations in Rotterdam, in baskets at underground stations in Amsterdam, at bus stations, in buses and in various branches of Bruna and AKO at NS stations (railway stations).
Complaint: The complaint filed by BasisMedia B.V. (formerly Sp!ts B.V.) related firstly to the exclusive contracts that Metro Holland had entered into with NS Stations, as a result of which BasisMedia was required to develop alternative distribution methods. Secondly, BasisMedia was of the opinion that NS Stations abused a dominant position by refusing Sp!ts access to NS stations. Consequently this newspaper was of the opinion that it was prevented from distributing its newspapers to train passengers.
Findings: Firstly consideration was given to the claim that an exclusivity clause for a period of five years was not necessary to enable Metro Holland to market a national daily newspaper. An investigation was then carried out to establish whether the agreement, of which NMa had been notified, appreciably limited competition. Consideration was given, in particular, to the accessibility for existing competitors and new entrants. In addition, another important aspect that was taken into account was the fact that the market for national daily tabloids in the Netherlands was a new and dynamic product market, which was still in a growth phase.

It was concluded that BasisMedia, despite the existence of the exclusivity clause, was able to enter the market for national daily tabloids, that there were sufficient opportunities to compete with Metro and that there were sufficient opportunities for growth. New undertakings also had realistic and concrete opportunities to obtain or develop sufficient outlets. The exclusive agreement between Metro Holland and NS Stations was permitted for the time being. Attention should be given to any future increases in the number of exclusive contracts and the cumulative effect of these on access to the markets. The application for exemption and the complaint filed by BasisMedia, namely that the exclusive contract violated article 6 of the Competition Act, was dismissed for these reasons.

The complaint filed by BasisMedia, namely that NS Stations had abused a dominant position, was dismissed. Given the content and the advertisements, the newspaper Sp!ts did not target train passengers exclusively. Furthermore Sp!ts had managed to acquire a strong position on the market for national daily tabloids by using alternative methods of distribution. Following an investigation, it was concluded that the distribution points at NS stations were not essential for entry into

this market. An administrative appeal was filed against this combined decision.

Case 1715/Libertel (Master Agreement)

Application: Libertel Groep B.V. (now Libertel N.V.) applied for exemption for the Master Agreement for Mobile Communication Services [Mantelovereenkomst Mobiele Telecommunicatiediensten], which prohibits large commercial consumers from reselling Libertel subscriptions to third parties. By means of this agreement Libertel wished to prevent end users from acting as resellers of its services. Large commercial consumers could therefore only purchase the products for their own use.
Findings: By means of the prohibition on reselling imposed on large commercial end users, the opportunity for these users to compete as resellers at the level of retail trade or at any other level was excluded. In the opinion of NMa, this did not mean, however, that competition at the various levels of trade was reduced, limited or rendered unfair. After all, the competition between undertakings that operate at the same level of trade was maintained. Furthermore it appeared from the de facto decisions taken by the European Commission and from past rulings of the Court of Justice of the European Communities that a supplier could distinguish between levels of trade at which a customer operated to ensure the integrity of its distribution system. If Libertel had not been allowed to include the prohibition on reselling, it would have been denied the possibility of making the above-mentioned distinction. The Director-General of NMa came to the conclusion that the prohibition on reselling, included in the Master Agreement for Mobile Communication Services, did not violate article 6 of the Competition Act. An exemption was therefore not required.

Commercial Services

Case 429/Samenwerkingsmaatschap Accountantskantoren [Cooperative Partnership of Accountancy Firms]

Application: Samenwerkingsmaatschap Accountants-kantoren (SMA) [Cooperative Partnership of Accountancy Firms] applied for an exemption for its partnership contract and its accompanying conditions. The joint venture had been entered into by a number of accountancy firms. The main aim of SMA was to enter into large accountancy and consultancy assignments for the joint account of the partners, which would not have been feasible for the individual firms.
Findings: As a consequence of the joint venture, a new supplier would enter the market for accountancy and administrative services for large listed undertakings. This would result in an increase in competition on the markets. The partnership contracts stipulated how assignments acquired by an individual partner above a certain percentage would be divided amongst this partner and SMA. It was established that the method of distribution would not affect competition between the firms making up the partnership and competition with other small and medium-sized accountancy firms. The non-competition clause in the partnership contract would also not have the effect of limiting competition. In essence, the scheme meant that a firm that left the partnership would be bound by the method of dividing contracts for a further year. A firm that left the partnership would not be compelled to join another joint venture and SMA's customers were at liberty to remain with a firm that left the partnership. The application for exemption was dismissed, as the agreements were not subject to article 6 of the Competition Act.

Case 1010/Bond van Nederlandse Architecten [Union of Dutch Architects] versus the Municipality of The Hague

Complaint: Bond van Nederlandse Architecten (BNA) [Union of Dutch Architects] filed a complaint against the municipality of The Hague. BNA argued that the municipality of The Hague, in relation to the development of an office complex at the location 'De Groene Schenk', had exercised force with regard to the choice of architects and was therefore of the opinion that the municipality had violated the Competition Act. The municipality of The Hague and two project developers had entered into a joint operating agreement with regard to the development of the office complex. The agreement stipulated, for instance, how the municipality of The Hague and the project developers would select architects who were eligible for the design of the office buildings to be constructed. The municipality of The Hague and the project developers all made recommendations with regard to the choice of architects. On the basis of this, a list was drawn up with the names of 10 to 15 architects. The project developers could choose architects from this list for the realisation of the offices, but they were also entitled to deviate from this list, provided agreement was reached with a supervisor appointed by the parties.
Findings: It was established that the municipality of The Hague had acted as a company in terms of the Competition Act. The municipality of The Hague was the owner of the ground and exploited this commercially, since the ground, after construction, would be leased.

To a certain degree, the project developers had limited themselves in their choice of architects through the method of selection, but this method of selection was nothing other than the exercising by the owner of the ground and the builders of their right to select the architects.

It was concluded that the method of selection, as set out in the agreements between the municipality of The Hague and the project developers, did not aim to obstruct, limit or distort competition. An investigation was also carried out to establish whether the agreement had the effect of limiting competition. The agreement between the parties involved related to seven office buildings that were to be built. This was only a marginal portion of the total market for architectural services and/or the market for architectural drawings for utility construction in the Netherlands. There was therefore no appreciable effect on competition. There was also no reason to assume that the parties involved had a dominant position. Nevertheless it was noted that it was difficult to comprehend how the behaviour in question, in which the parties, in principle, did nothing other than exercise their due right to select architects, might be construed as abuse. The complaint was dismissed.

Cases 235 and 1189/Contactorgaan Hypothecair Financiers and Gedragscode Hypothecaire Financieringen [Forum of Mortgage Financiers and the Code of Practice for Mortgage Loans]

Application: Contactorgaan Hypothecair Financiers (CHF) [Forum of Mortgage Financiers and the Code of Practice for Mortgage Loans], to which almost all providers of mortgage loans in the Netherlands are affiliated, applied for exemption for its Code of Practice for Mortgage Loans [Gedragscode Hypothecaire Financieringen]. The Code of Practice had, amongst other aims, the aim of protecting consumers from excessive mortgages. This Code of Practice contained clauses with regard to the provision of information, the resolution of disputes, an interest rate for testing purposes (a method for calculating the amount of a mortgage), charges in the event of additional or early redemption and redemption-free mortgages.
Findings: The clauses with regard to the provision of information and the resolution of disputes did not limit competition in this specific case and therefore did not require exemption. The clauses with regard to the interest rate for testing and the charges in the event of additional or early redemption did limit competition, but had the effect of improving distribution and transparency for customers and the flexibility and security of complex mortgage loans with a long life to maturity, and left sufficient room for competition. An exemption was granted for these clauses for a period of 10 years.

The provision with regard to the maximum rate that could be charged for the redemption-free parts of a mortgage was an exception to the exemption that was granted. This provision had a direct effect on the components of mortgages, as consumers were not able take out a standard mortgage with a redemption-free portion that was larger than the stipulated maximum. This limited the customers' freedom of choice and those who adhered to the Code of Practice were not allowed to offer a standard mortgage with a larger redemption-free portion.
An exemption was not granted for this clause.

Case 1337/Wilders, Bureau for Sustainable Energy Projects versus Municipality of Leiden and the energy distribution company, Energie en Watervoorziening Rijnland

Complaint: Wilders, Bureau for Sustainable Energy Projects, is a company which is involved, for instance, in the importing, sale and installation of solar panels. Wilders filed a complaint against the municipality of Leiden and the energy distribution company, Energie en Watervoorziening Rijnland (EWR).
Wilders was of the opinion that EWR had abused its dominant position by refusing Wilders' customers subsidies for the purchase of solar panels and by only offering subsidies for the purchase of solar panels from the SunPower project, in which EWR itself participated. The complaint against the municipality of Leiden related to the subsidy scheme for the Leiden region. The municipality of Leiden only granted subsidies if EWR also subsidised the purchase of solar panels.
Findings: The municipality of Leiden had granted subsidies in its capacity as a public authority. The municipality of Leiden could therefore not be regarded as an undertaking in terms of the Competition Act with regard to the granting of subsidies. This meant that the Competition Act did not apply to the behaviour of the municipality of Leiden, which was the subject of this complaint. In relation to the implementation of the Energy Distribution Act [Wet energiedistributie] it must be noted that pursuant to the duty imposed by the government in relation to promoting the efficient and environmentally healthy use of energy, EWR was entitled to collect money and spend this money in the fulfilment of the duty that had been assigned to it. The duty assigned to EWR had to be considered a public sector duty and not a business activity. With regard to the granting of subsidies, EWR could therefore not be deemed

to be a company in terms of the Competition Act. This Act was therefore not applicable. The complaint was dismissed.

7.2 Decisions on Concentrations

In this section, cases will first be discussed in which a licence was required and after this the cases in which a licence was not required. Finally a case will be discussed in which an exemption was granted in accordance with article 40 of the Competition Act.

7.2.1 Cases Requiring a Licence

The intended concentrations described in this section have one feature in common, namely that NMa concluded in the notification phase that a dominant position might arise or be strengthened, which could significantly obstruct competition in the respective markets. A licence was therefore required in these cases.

Case 1528/Wegener Arcade – VNU-dagbladen

Parties and market(s): In 1999 Wegener Arcade stated its intention to take over VNU Dagbladen, as well as its intention to sell the newspaper De Limburger to N.V. Holdingmaatschappij De Telegraaf immediately after the acquisition (see Case 1538/De Telegraaf – De Limburger). The activities of Wegener and VNU Dagbladen, as publishers of regional newspapers and house-to-house newspapers, overlapped in two areas: in the region of Gelderland, Overijssel and Utrecht and in the region of Zeeland and North Brabant. After the takeover Wegener would be almost the sole supplier of regional newspapers in the entire area in which the undertakings' activities overlapped and it would be the largest publisher of house-to-house newspapers with a considerable advantage. With regard to the daily newspapers, a distinction could be made between the readers' market and the advertising market. With regard to house-to-house newspapers only advertising markets could be distinguished. An investigation was also carried out to establish what the consequences would be of the concentration of press services (the supply of information and copy to the media).

Readers' Market

Daily newspapers differ from other information media, such as magazines, radio and television and Internet, in relation to a number of characteristics (price, quantity and depth of information, topicality, frequency of publication, method of presentation etc.). From the perspective of readers, they therefore constitute a separate product market. An investigation was carried out to establish the extent to which national daily newspapers should be distinguished from regional daily newspapers. The Director-General of NMa concluded that both types of daily newspapers belong to the same markets, but noted in relation to this that in assessing the consequences of the concentration, it had to be taken into account that regional daily newspapers constituted a separate market segment and are each other's closest competitors. In Gelderland (the merging of the newspapers Arnhemse Courant, Gelders Dagblad and De Gelderlander) and in Zeeland (the area of overlap of the newspapers Zeeuwse Courant (PZC) and BN/De Stem) , Wegener would acquire an exceptionally strong position following the takeover, while the national newspapers in these areas had much smaller market shares. Since a single undertaking would control the regional newspapers, incentives to competition would largely disappear. Furthermore new entrants to the daily newspaper markets would be confronted with considerable barriers to entry. To remove the dominant position of the new combination in the Gelderland region, Wegener would have to dispose of De Arnhemse Courant and most of the editions of Gelders Dagblad. Since the area of overlap in Zeeland was far more limited in size (only Zeeland Flanders), a less far-reaching solution was chosen for this region. To ensure the independence of PCZ and BN/De Stem and distribution in Zeeland Flanders, a solution was devised that guaranteed the continued independent existence of both newspapers.

Advertising Market

In demarcating the advertising markets it was important to seek clarity on the coverage that advertisers wished to achieve, the various media that they could use to advertise and the target group(s) that they wished to reach with a particular advertisement. Advertising media for national coverage therefore belong to a different market than regional and local advertising media. Research carried out by NMa showed that a distinction had to be made, on the one hand, between regional newspapers and house-to-house newspapers, which were good substitutes for each other with regard to advertising space, and, on the other hand, other advertising media by which they could not readily be substituted. This pointed to separate markets for advertising space in regional and local newspapers. On the advertising market, Wegener would acquire an exceptionally strong position in the Gelderland region and in part of Zeeland after the takeover. After the takeover,

Wegener's market share in this region would far exceed 50%, partly as a result of the fact that it would own not only a large number of the house-to-house newspapers, but also (almost) all the regional daily newspapers. The position of the most important competitors in these regions was considerably weaker. Research showed that the competitive pressure from alternative advertising media, such as folders and the Internet, was limited. To avoid the emergence of a dominant position on the advertising market, Wegener would dispose of all house-to-house newspapers in the overlapping area in Zeeland and would dispose of nine newspapers in the Gelderland region.

Press Services

Three press services were active in the Netherlands, which supplied a comprehensive package of press services ('full-line press services'): ANP, Geassocieerde Pers Dienst (GPD) and Zuid-Oost Pers (ZOP). GPD and ZOP were editorial press services. ANP only competed to a limited extent with the other two press services and was largely complimentary. The Director-General of NMa concluded that there was a separate national market for full-line editorial press services. Wegener had a strong position within GPD. In addition to extra regional newspapers, as a result of the takeover of VNU Dagbladen, Wegener would also acquire control of ZOP. Wegener would also become by far the largest consumer of editorial full-line press services. Wegener would be in a position to demand better prices for itself and could possibly leave GPD, with unfavourable consequences for GPD. Furthermore ZOP would disappear as an independent press service. It was likely that ZOP and GPD would form a joint venture. This would have been to the disadvantage of ZOP's customers. To meet these objections, Wegener guaranteed that contracts with ZOP/VNU would be honoured. Comparable services at the same rates would be offered to customers using the services of ZOP/VNU. Wegener 's strong position within GPD would be weakened by selling off Arnhemse Courant and most of the editions of Gelders Dagblad and by guaranteeing that Wegener would sell De Limburger (to De Telegraaf or to a third party). Wegener appealed against this decision.

Case 1538/De Telegraaf – De Limburger

In the year under review, the Director-General of NMa granted a conditional licence for the takeover of Dagblad De Limburger by N.V. Holdingsmaatschappij De Telegraaf. De Telegraaf notified NMa in 1999 of its intention to take over Uitgeversmaatschappij De Limburger B.V. from Wegener Arcade N.V. The activities of De Telegraaf and De Limburger, as publishers of regional daily newspapers and house-to-house newspapers, overlapped in the province of Limburg.

Readers' market

As in the case of Wegener/VNU, NMa assumed that the daily newspapers operated on a separate market. In the province of Limburg, De Telegraaf-groep would acquire an exceptionally strong position after the takeover, as it would own both regional daily newspapers (De Limburger and Limburgs Dagblad). Furthermore De Telegraaf was a national daily newspaper with the largest market share in this province. As a result of the concentration, De Telegraaf would acquire a market share in excess of 80 percent. In this case, De Telegraaf based its argument on the failing company defence. De Telegraaf argued that the advantages of synergy that could be obtained by taking over De Limburger were necessary for the continuation of its own subsidiary, Limburgs Dagblad, which was performing poorly. The Director-General of NMa did not uphold this claim. In accordance with decisions taken in past cases by the European Commission, this defence may be used if the 'failing' company would have to exit the market in the short term if the takeover did not take place, if the other company would take over the market share of the failing company even if the concentration did not take place and if no alternative transaction were possible that would affect competition to lesser degree. On the basis of an audit carried out on the instructions of NMa, it was concluded that Limburgs Dagblad was not a viable concern in the medium to long term. In the short term, it would have to exit the market. The criterion that the 'other company' should subsequently acquire the entire market share was also not met. It was probable, however, that Limburgs Dagblad could not be sold to a third party. To eliminate the dominant position that would arise on the readers' market for daily newspapers following the takeover, De Telegraaf-groep undertook to guarantee the commercial and editorial independence of De Limburger and Limburgs Dagblad. With this aim in mind, both daily newspapers would form part of separate companies with their own commercial and financial policies and would each have their own independence editorial boards. De Telegraaf-groep guaranteed the independence of both publications for an indefinite period.

Advertising Market

As in the case of the decision in the Wegener/VNU case, NMa assumed the existence of a separate market for

advertising space in regional and local newspapers. De Telegraaf and De Limburger had a combined market share on this market of approximately 65 percent, as they controlled the regional daily newspapers, De Limburger and Limburgs Dagblad, and a large number of house-to-house newspapers. As a result of the takeover, the two largest parties would merge, while the market shares of the competitors in this region would be considerably smaller. To eliminate the dominant position that would arise on the market for advertising in regional and house-to-house newspapers, all the house-to-house newspapers belonging to Limburger Weekbladpers would be sold. In addition, De Telegraaf-groep undertook to ensure that the house-to-house newspaper De Trompetter would continue as a separate entity. An appeal was filed against this decision.

Case 1628/Laurus – Groenwoudt

Parties and market(s): The Director-General of NMa had earlier determined that a licence was required for the takeover of the supermarket division of Groenwoudt Groep by Laurus N.V. After an initial investigation, it was concluded that for the time being there was reason to assume that, as a result of the planned takeover, a dominant position could arise or be strengthened at a particular location and/or on regional markets for the retail trade in daily consumer products through supermarkets. As a result de facto competition on these markets could be significantly obstructed. It was decided that further research should be carried out to establish whether the takeover would indeed result in a dominant position. Laurus operates under the supermarket formulas Konmar, Super de Boer, Edah, Spar and Basismarkt. Groenwoudt operates under the formulas Groenwoudt, Nieuwe Weme and Lekker & Laag.

In the first phase of the investigation locations were identified where Laurus and Groenwoudt would jointly acquire a strong position on the local market. In addition it was stated that a national market could be deemed to exist if there was a chain effect and a uniform commercial policy. In order to assess at which geographical level the consequences of the takeover ought to be analysed, NMa analysed local areas in which it was concluded in the first phase that the parties would acquire a strong position and carried out research into the way supermarkets respond to their competitors. In addition, NMa commissioned external research bodies to carry out research into price and service differences between supermarkets within a single formula, into the relationship between the local competitive positions of supermarkets and their price and service levels, and into the distribution of supermarkets throughout the Netherlands.
Finding(s): On the basis of the research that was carried out, the Director-General of NMa concluded that, in assessing the consequences of this takeover, it had to be assumed that there was a national market for the sale of daily consumer products through supermarkets. Research showed that the density of supermarkets in the Netherlands was very high. Almost every consumer in the Netherlands could reach a supermarket within five minutes. In the vicinity of a supermarket that belongs to one of Groenwoudt's or Laurus's formulas there was almost always at least one other supermarket and usually more than one. It was established that a knock-on effect occurred in the Netherlands. Since the areas from which supermarkets drew their customers overlapped, they ultimately competed with each other at the national level. In addition, supermarket organisations that operated nationally, including the parties in this case, followed a uniform commercial policy (for instance, with regard to prices, assortment and service) for the entire formula in the Netherlands. Consequently the undertakings competed at a national level with other supermarket chains. Laurus and Groenwoudt would acquire a combined market share in the Netherlands of approximately 26 percent. The largest competitor was Ahold, which, including Schuitema, had a market share of approximately 39 percent. Due to the above, a dominant position would arise or be strengthened as a result of the takeover. The Director-General of NMa therefore granted a licence for the realisation of the takeover.

Case 1710/Schuitema – A&P

Parties and market(s): Schuitema N.V. gave notice of its intention to take over A&P Holding B.V. Following an initial investigation, the Director-General of NMa decided that a licence was required for this concentration. Schuitema is a wholesale organisation that supplies 464 independent supermarket companies with products and services through subsidiaries. These companies mainly operate the C1000 stores, a formula developed by Schuitema, and the smaller Kopak A&P formula, a supermarket organisation that operates 125 supermarkets through its own branches under the A&P supermarket formula. A&P also operates 6 hypermarkets under this formula (formerly 'Maxis').
Finding(s): Ahold owned 73% of Schuitema's shares. In the opinion of NMa, Ahold had control of Schuitema due to this interest. For the purposes of assessing the concentration in question, Ahold and Schuitema were therefore considered is to be a single entity. Assuming

that the market was a national market, Ahold (including Schuitema) and A&P would acquire a combined market share in the Netherlands of approximately 42 percent. This ensured that the parties would have a very strong position on the market for the sale of daily consumer products through supermarkets. This was strengthened by the strong position that the parties had on the procurement market for daily consumer products (procurement organisations T.S.N. and Albert Heijn). A number of mitigating factors had to be offset against this. The second largest player on the market (Laurus), with a market share of approximately 26 percent, was a player of stature. The parties would also have to take into account the competitive pressure of regional supermarket chains, which were often strong. In addition, supermarkets experience a certain degree of competitive pressure from other distribution channels, such as specialist stores. The Director-General of NMa concluded that, as a result of the intended concentration, a dominant position would not arise or be strengthened. A licence was therefore granted.

7.2.2 No Licence Required

In the case of a number of notifications, it appeared on the assessment of the proposed concentration, that the parties would acquire a dominant position. Research carried out by NMa showed for various reasons that the strong dominant position would not limit competition unacceptably on the respective market(s). In the following cases a licence was therefore not required.

Case 2141/Rémy Cointreau – Bols

Parties and market(s): A licence was not required for the takeover of Koninklijke Erven Lucas Bols N.V. by Rémy Cointreau S.A. This decision was taken after Rémy and Bols had amended their original notification, as a result of which all the activities of Bols in relation to cognac, insofar as these related to the brand Joseph Guy, would be disposed of and would not form part of the concentration.

Findings: Rémy and Bols had considerable market shares in potential markets for brandy or for cognac and armagnac. Depending on the method of demarcation, Rémy and Bols would have a combined market share on these markets varying from 30 percent to more than 60 percent. Rémy and Bols would still at least three times larger than their largest competitors on the cognac market. This distance between Rémy/Bols and their competitors was an historic distance. The market for cognac is an established market and certainly not a growth market. No new entry into this market that would discipline the behaviour of Rémy/Bols could be expected. In addition, after the concentration Rémy/Bols could offer a wide range of drinks with strong brand names. In combination with the considerable market share in the area of cognac, it appeared that this would result in a strong competitive position in relation to both consumers and competitors. It was not certain whether customers would be able to offer sufficient resistance to the bargaining power of Rémy/Bols. All these factors led to the provisional conclusion that there was reason to assume that a dominant position could arise or be strengthened.

After having been informed of the provisional assessment of the consequences of the proposed concentration, the parties amended their original notification. They granted an irrevocable power of attorney/instruction to sell by auction all the activities of Bols in relation to the Joseph Guy brand. The buyer of the 'cognac company Joseph Guy' had to be fully independent of Rémy, Bols and their group companies and had to have such financial resources and expertise that it could continue Joseph Guy as an active competitor of Rémy and Bols, in all respects subject to an assessment by NMa. As a result of the amendment to the concentration, the combined market share of Rémy and Bols on potential markets for brandy or for cognac and armagnac would not exceed 20 percent. If a further distinction were made between cognac/armagnac, on the basis of price/quality categories, the combined market share on the market for US qualities was even less than 10 percent; on the markets for VSOP qualities, the increase in market share was small. In addition, the presence of the Joseph Guy brand on the market, as a competitor of Rémy/Bols, was guaranteed. It could be concluded that there was no reason to assume that a dominant position would arise or would be strengthened as a result of the concentration.

Case 2082/BAM – NBM-Amstelland

Parties and market(s): BAM intended to take over NBM-Amstelland Bouw & Infra, NBM-Amstelland Services and NBM-Amstelland Assurantiën. Both parties were active on the following markets or market segments: civil engineering and utility construction, land preparation, road construction and hydraulic engineering, and installation. In addition, both parties were active in the production of asphalt through participating interests in asphalt plants.
Finding(s): Irrespective of whether the markets for civil engineering and utility construction were demarcated nationally, regionally or, alternatively, internationally, the

parties did not have a market share on these markets larger than 15 percent. Exceptions to this were the regions of Groningen, Flevoland and North Brabant, where the parties had a market share of 20 percent to 30 percent in the market for land preparation, road construction and hydraulic engineering. With regard to assessing the consequences of the concentration in the area of the production of asphalt, a precise geographical demarcation was not necessary, as no problems would arise on the smallest conceivable geographical market. As a consequence of the concentration, BAM would acquire exclusive control of Asfaltcentrale Limburg in Stein. At a number of other plants, a change in control (jointly with one or more other participants) would occur in favour of BAM. On the national asphalt market, the parties would acquire a combined market share of 20 to 30 percent, if the entire production of the asphalt plants over which BAM had exclusive control were to be attributed to BAM. If the production were distributed proportionately amongst the controlling parent companies, this market share would be 10 to 20 percent. If a regional demarcation of the market were assumed, in some regions the parties would acquire a maximum combined market share of 35 percent, if the entire turnover were to be attributed to them, and a share of 10 to 40 percent if the turnover were attributed proportionately.

In the case of the asphalt plants, it was the parent companies (road construction companies) that purchased the asphalt. A large number of road construction companies with participating interests in various asphalt plants were active on the asphalt market. In the areas in which BAM was not active, it had to rely on asphalt from asphalt plants controlled by competing road construction companies. It was conceivable that this would have a disciplining effect on the price that Asfaltcentrale Limburg charged third parties. There was also sufficient (potential) competitive pressure from the region around Stein and from Belgium and Germany.

The Director-General of NMa concluded that it was not plausible that BAM could operate independently of its competitors on the asphalt market and that consequently there was no reason to assume that a dominant position could arise or be strengthened as a result of the concentration. A licence was therefore not required for the realisation of the concentration.

Case 1997/Buhrmann Ubbens – Krijt Krommenie

Parties and market(s): Notification was received of the takeover of Krijt Krommenie B.V. by Buhrmann-Ubbens B.V. Buhrmann is active worldwide in the area of office products, paper and paper products, and printing systems. In the Netherlands Buhrmann is active, for instance, as a wholesaler of vinyl foil and bulk cardboard. Krijt is also active in the Netherlands as a wholesaler of vinyl foil, processing machines and bulk cardboard. Vinyl foil is used in the 'sign industry' to make images and text. Three national wholesale markets were distinguished in relation to processing techniques: (i) uncoated, colourless vinyl foil for silkscreen applications, (ii) uncoated, coloured vinyl foil processed by means of plotting and cutting and (iii) coated, colourless vinyl foil for digital printing techniques. With regard to the national wholesale trade in bulk cardboard, a distinction was considered between cardboard for (i) cardboard packaging, (ii) printing and printing-related applications and (iii) cardboard for silkscreen printing. As this did not affect the final assessment of this case, however, a definitive demarcation was not required.
Finding(s): The precise market shares in the area of vinyl foil were not known. The parties themselves estimated that they had a market share of 20-30 percent. Consequently they were the largest players on the vinyl foil market. An investigation carried out by NMa, however, showed that the competition was sufficiently strong to exercise competitive pressure. The manufacturers provided a counterbalance to the wholesalers on their procurement markets and were actively involved in the retail market. A number of strong competitors were also active on the bulk cardboard market. The parties were strongest in the area of cardboard for silkscreen printing. Cardboard for silkscreen printing is mainly used for displays in stores and other advertising materials. Other materials could also be used for this, in addition to cardboard for silkscreen printing, so that there was sufficient competitive pressure. Under these circumstances, there was no reason to assume that a dominant position would arise or be strengthened as a result of the concentration and consequently a licence was not required for the realisation of the concentration.

Case 1860/JVH Holding – Errèl Holding

Parties and market(s): Notification was given of a transaction involving the acquisition of all the shares of Errèl Holding by JVH Holding, as a result of which JVH would acquire exclusive control of Errèl. The activities of JVH and Errèl overlapped in the area of the operation and trade in slot machines. There are two types of slot machines: game machines and gambling machines.
Finding(s): JVH and Errèl jointly had a strong position in the trade in slot machines. According to the parties,

a distinction had to be made between the development and production of slot machines, on the one hand, and the sale of slot machines to operators, on the other. Since this did not affect the substantive assessment of this case, however, it was not necessary to make this distinction. From a geographical perspective it was clear that the market should be assumed to be a European market, because competition in the Netherlands occurs (indirectly) between various European manufacturers. There was no need, however, to define the exact geographical demarcation. If it was assumed that the market was a European market, the joint market share both in the area of production and in the area of sales to operators was not larger than 10 percent. If it was assumed that the market was the Dutch market, the joint market share in the area of sales to operators was at most 40 percent. It was concluded that there was no reason to assume that a dominant position would arise or be strengthened as a result of the concentration. A further consideration in this regard was the fact that the barriers to entry to this market were relatively low.

Case 1781/UPC – Eneco K&T Groep

Parties and market(s): United Pan-Europe Communications N.V. (UPC) gave notice of its intention to take over Eneco K&T-Groep. The parties are active in the area of operating fixed communication networks by offering, for instance, the distribution of radio and television signals, telephony and Internet access by means of the cable. In the situation at the time and, it was expected, in the foreseeable future, television, telephony, Internet access and other information services would become separate markets. The most important item in the investigation of this case was the distribution of radio and television signals. In accordance with earlier decisions (see, for instance, Case 1396/UPC – A2000 in the Annual Report for 1999), it was assumed that the distribution of radio and television signals through cable networks constituted a market.
Finding(s): The activities of cable companies are limited to their supply areas. If it was assumed that the regional markets were the size of the supply area, then there was no overlap between the activities of the parties. The joint market share of the parties on the national market was 36 percent. This could have been of importance to broadcasters, who wished to reach a national audience, since they aim to reach the largest possible audience. Various broadcasting stations indicated that they required minimum transmission coverage.

In accordance with the Media Act, the cable companies are obliged to transmit a basic package of at least 15 television stations and 25 radio stations by law. The Telecommunications Act gives OPTA authority to issue binding instructions if a broadcaster and an operator of a cable network cannot reach agreement on access to the cable network or, for instance, the transmission tariff payable by the broadcaster. OPTA and NMa have jointly determined 'Guidelines for Disputes in Relation to Access to Cable Networks' [Richtsnoeren met betrekking tot geschillen over de toegang tot de kabel]. The situation with regard to consumers was that for the time being they were and would remain dependent on the cable operator active in the supply area in which they have a cable connection. The customers' freedom of choice was therefore not limited directly as a result of the concentration. Taking into account market share, in combination with the applicable regulations, there was no reason to assume that a dominant position would arise or would be strengthened as a result of the concentration.

Case 1707/TDI – Mediamax

Parties and market(s): Despite their large market shares, a licence was not required for the takeover of Mediamax Group B.V. by TDI Holdings Limited. TDI and Mediamax are both active in the area of outdoor advertising. For the purposes of this case, in assessing the takeover it was not necessary to decide whether outdoor advertising should be assumed to be a single market or whether separate markets for bus shelters, billboards, public transport and other forms of outdoor advertising should be assumed. With regard to competition in the area of outdoor advertising, bus shelters and billboards, it was concluded that competition in these areas occurred at a national level. It was not necessary to determine the geographic demarcation of the outdoor advertising market(s) for public transport and other forms of outdoor advertising, since this did not affect the substantive assessment of this case.
Finding(s): As a result of the takeover, TDI and Mediamax would have acquired a market share of 30-40 percent of the market for outdoor advertising. Broken down into the various forms of outdoor advertising, the market shares in the area of bus shelters would be 40-50 percent, billboards 30-40 percent, public transport 60-70 percent and, in the area of other types of outdoor advertising, 10-20 percent. In addition to the high market shares mentioned above, the barriers to entry to the market(s) were higher due to the long-term nature of the contracts and the so-called 'English clauses' (the right to equal the best offer made during the tender procedure retrospectively and therefore to retain the concession). No evidence was found that pointed to a collective dominant position of the two

largest suppliers on the market(s) for outdoor advertising, bus shelters and billboards. Although these markets are inflexible on the supply side, due to the long-term contracts, this is an existing barrier to entry. As a consequence of the takeover, however, the scope of the clauses referred to was extended. Despite the large market shares referred to, it was concluded that after the takeover numerous suppliers could be contracted for an outdoor advertising campaign with national coverage. In addition, at present in almost all cases municipal contracts are put out to tender and the municipality or municipalities invite numerous outdoor advertising companies to submit a tender. None of the municipalities interviewed objected to the proposed takeover. TDI and Mediamax also experienced competitive pressure in relation to advertising media that could not be considered part of the outdoor advertising market(s). The purchasers of outdoor advertising, namely large advertisers and media procurement firms, were a structural counterbalance. The Dutch outdoor advertising market was also a growth market. Finally, almost all the advertisers, media procurement firms and competitors that were interviewed stated that the takeover of Mediamax by TDI would have no (disadvantageous) consequences for them. On the basis of the above, despite their large market shares, it was concluded that there was no reason to assume that a dominant position would arise or be strengthened as a result of the takeover.

Case 1960/Cebeco – Motrac Vormec

Parties and market(s): Coöperatie Koninklijke Cebeco Groep U.A. gave notice of its intention to take over all the shares of Motrac Landbouw B.V. and Vormec B.V. from Pon Holdings B.V. The activities of Cebeco and Motrac and Vormec overlapped in the area of the importing and wholesale trade in agricultural, compact and narrow-row tractors and agricultural machinery.
Findings: If the market shares of the parties in the area of small square-bale presses were added up, this would have resulted in a joint market share in the Netherlands of 30-60 percent. As a result of the cancellation of a distribution agreement with a producer of bale presses, however, it was certain that this market share would fall to 10-20 percent in 2001. In the area of tractors, the market shares of the parties were between 20 and 50 percent, depending on the demarcation of the market. The fact, however, that the parties, as importers of tractors, were largely dependent on the behaviour of the manufacturers of tractors was taken into account. These are international, financially strong companies that are in a position to find alternative distributors or to distribute their products themselves. A large number of international producers are also not active in the Netherlands. The dynamic nature of the market was also taken into account. One competitor, for instance, acquired a market share of 10 to 20 percent in two to three years.

On the basis of these and other considerations, it was concluded that there was no reason to assume that a dominant position would arise or be strengthened as a result of this concentration.

Private Label Production

A number of cases involving concentrations in the year 2000 involved companies which, in addition to their own brands, manufactured products under the brand names of, for instance, supermarket organisations.

Cases 2033/Van Dijk – Brinkers en 2047/Van Dijk – Van den Bergh

In the decision in Case 2033/Van Dijk – Brinkers, consideration was given to the fact that the production of products under customers' brand names has a different character to the production of products under the manufacturer's brand names. Production under the customer's brand is limited simply to production; the retailer or wholesaler invests in the distribution and marketing of the products. The activities of the manufacturer are limited to making production capacity available to the contractor in question. NMa considered the possibility of distinguishing this as a separate activity. In assessing the consequences of the concentration, it was not necessary to decide whether a separate market for making capacity available for the production of vegetable fats or fats for deep-frying and oils should be distinguished in this case.
In Case 2047/Van Dijk – Van den Bergh, due to the fact that the commercial risk with regard to the production under the customer's brand lay largely with the contractor, consideration was given to the question of whether the corresponding market share should be allocated fully to the manufacturer, or whether it should be (partially) allocated to the retail traders. The European Commission had indicated earlier that allocating the market share fully to the manufacturer might cause the position of the manufacturer to be overestimated. The Commission pointed out in this regard that in assessing the allocation of market share, it was important to take into account whether retail traders are able to find alternative manufacturers for their own brands. A contributing factor in this regard was whether there was overcapacity on the market or whether alternatives

existed abroad and the cost of transport.
In the case in question, at the moment at which the concentration was assessed, it was concluded that there was overcapacity, both in the Netherlands and abroad, on the market for the production of vegetable fats and fats for deep-frying, the products central to this case. Due to the relatively low cost of transport, it was possible for retail traders to seek alternatives abroad for the production of their own brands. It was therefore concluded that it was reasonable not to allocate the (entire) market share associated with the production of products under the customer's brand to the parties.

In both cases the Director-General of NMa had no reason to assume that a dominant position would arise or be strengthened as a result of the concentration and no licence was therefore required.

7.2.3 Exemption in Accordance with Article 40 of the Competition Act

In accordance with article 34 of the Competition Act, it is prohibited to bring about a concentration before the Director-General of NMa has been notified of the intention to do so and four weeks have passed since notice was given. In the case below, the Director-General of NMa granted the parties an exemption from the prohibition, in accordance with article 34, so that the parties were able to realise the concentration immediately.

Case 2015/Europe Automatic – Atag

Parties and market(s): The takeover of Atag Kitchen Division (declared insolvent) by Europe Automatic Holding B.V. is a case in which exemption was granted from article 34 of the Competition Act. The parties pointed out that if the transaction were to be postponed, Atag Kitchen Division would immediately fall in value due to the fact that customers would turn to other manufacturers/suppliers on the market, which, in the opinion of the parties, was a competitive market.
Finding(s): The Director-General of NMa was of the opinion that in this specific case and under these circumstances irreparable consequences would result if the waiting period were taken into account before the concentration could be realised. Important considerations in this regard were the fact that Atag Kitchen Division had been declared insolvent, the speed required to bail out the company and to guarantee the continuation of Atag Kitchen Division and the unavoidable fall in the value of Atag Kitchen Division, if the transaction were to be postponed.

7.3 Decisions on Administrative Appeals

The number of decisions on administrative appeals in the year under review increased sharply, compared to the preceding year. The Annex contains a list of these decisions. A number of decisions that attracted interest are discussed below.

Cases 199/Roodveldt, 209/Pegasus and 227/Nilsson & Lamm

Contested decision: In 1998 the Director-General of NMa refused to grant an exemption for the system of individual vertical price maintenance that Roodveldt Import B.V., Nilsson & Lamm B.V. and Stichting Uitgeverij en Boekhandel Pegasus used in their terms of delivery for the importing of foreign books.
Administrative appeal: Roodveldt, Pegasus and Nilsson & Lamm appealed against the dismissal of their request for exemption. Separate decisions were taken in respect of the three decisions on the same substantive grounds. The appeal rested on three arguments. Firstly, Roodveldt, Pegasus and Nilsson & Lamm were of the opinion that they could benefit from the exemption granted by the Minister of Economic Affairs in 1997, in accordance with the Economic Competition Act, in respect of the Trading Regulations [Reglement Handelsverkeer] of Koninklijke Vereeniging ter bevordering van de belangen des Boekhandels (KVB) [Royal Association for the Promotion of the Interests of Bookshops].

In Case 1561/Free Record Shop versus KVB, the Director-General of NMa had concluded that the exemption from the prohibition on collective price maintenance, in accordance with the Competition Act, which took effect on 1 January 1998, subject to the application of the transitional provisions, remains valid until 1 January 2005. In addition, Roodveldt, Pegasus and Nilsson & Lamm argued that the Director-General of NMa had applied the Competition Act incorrectly, since the low turnover of the undertakings involved meant that there was no appreciable limitation on competition. Thirdly the parties claimed that there was evidence of unjust discrimination, a breach of the substantiation principle and the principle of care.
Findings: The Director-General of NMa concluded that the agreements in relation to individual vertical price maintenance did not fall under the exemption granted by the Minister of Economic Affairs, in accordance with the Economic Competition Act, and had an appreciable effect of limiting competition. This was apparent, in particular, from the fact that the market was characterised historically

by price maintenance (the series of individual vertical price maintenance agreements jointly had the same effect as collective vertical price maintenance), there were a number of undertakings active on the market for imported foreign books, the products were heterogeneous and the undertakings involved concentrated on specific segments of the market. The arguments put forward by the parties with regard to the low turnover, the existence of parallel imports and the limited opportunities for competition between the various brands did not detract from this, in NMa's opinion.
The Director-General of NMa dismissed this appeal.

Case 269/Breakdown and Salvaging Services

Contested decision: In 1999 the Director-General of NMa granted an exemption for a period of five years for a group scheme in relation to breakdown and salvaging activities for private cars stranded as a consequence of an accidents on the motorway network or the subsidiary road network. The Incident Management Salvaging Scheme [Bergingsregeling Incident Management (BIM)] provides for the creation of a central incident room. Eight emergency services that work for various insurance companies are involved in this scheme. They had combined a number of activities in relation to salvaging in Stichting Incident Management Nederland (Stichting IMN). NMa granted an exemption for the system because quicker and adequate salvaging of stranded personal vehicles promotes safety and reduces traffic congestion.
Administrative appeal: The emergency centre insurer, Partner Assistance S.A. (IPAS), appealed on the grounds that Stichting IMN had set up a central emergency centre and that this emergency centre was located on the premises of Verzekeraarshulpdienst B.V., a competitor of IPAS.
Findings: During the consideration of this appeal, NMa noted that the positive effect of BIM only applied to the subsidiary road network. This was not a reason, however, for NMa to revoke or to limit the scheme to the motorway network. It was assumed that BIM would expand to include the subsidiary road network in the foreseeable future. For this reason, NMa instructed Stichting IMN to report on the results of the negotiations in mid-2001. NMa regarded the way Stichting IMN had organised and operated the central incident room as a matter internal to Stichting IMN. Since it was an internal matter, it did not provide grounds for reconsidering the original decision. The Director-General of NMa therefore dismissed IPAS's appeal. IPAS appealed against this decision.

Cases 771/Protocol for Electricity Production and Distribution Companies and 1150/Avebe et al. versus SEP et al.

Contested decision: In 1999 the Director-General of NMa rejected an application for exemption for the Protocol for Electricity Production and Distribution Companies in which agreements were made with regard to costs and tariffs for the supply and purchase of electricity for the years 1997 up to and including 2000. The Protocol falls within the scope of article 16 of the Competition Act. Consequently the prohibition on cartels did not apply and an exemption was therefore not necessary. In addition, a complaint lodged by Avebe and three other undertakings in the industry was rejected.
Administrative appeal: Four partners of total energy power plants, including Avebe, argued in their administrative appeals that as a result of the Protocol the payments that total energy producers received from their customers had been reduced. The tariffs that the four partners of the total energy plants had agreed with their customers were amended when the Protocol took effect. This amendment had unfavourable financial consequences for the total energy plants.
Findings: Lodging an administrative appeal against a decision is reserved for interested parties. Before proceeding to review the decisions, NMa sought to establish whether the four partners of the total energy plants were interested parties. One of the criteria defining an interested party is the existence of an interest directly affected by the decision. Avebe et al. had not acted on behalf of the company (the total energy plants), because the other partners of the total energy plants had not consented to this. Avebe et al. had therefore acted in the interests of the company as individual partners. The interests of the four partners could not be identified with the interests of the company. For this reason, Avebe et al. did not have their own, direct interest in the decision, but an interest derived from the interests of the total energy plants. The Director-General of NMa therefore dismissed the appeals. Avebe appealed against this decision.

Case 374/Stichting Saneringsfonds Varkensslachterijen [Reorganisation Fund for Pig Abattoirs]

Contested decision: In 1999 the Director-General of NMa refused to grant an exemption for reorganisation agreements entered into with pig abattoirs, insofar as these included limitations on production.
Administrative appeal: Stichting Saneringsfonds Varkens-slachterijen (SSV) and various pig abattoirs lodged an administrative appeal against this decision. The parties

argued that NMa should not have refused the exemption as the European Commission had approved the reorganisation schemes in the regulations governing state subsidies. In the opinion of the parties, before taking its decision NMa should first have consulted the European Commission, since the schemes had been presented to the European Commission for exemption. The parties were of the opinion that Regulation 26/62 prevented the application of the Competition Act. Finally the parties argued that the reorganisation agreements in question met the conditions for exemption, contained in article 17 of the Competition Act. The provisions with regard to the maximum number of slaughters that could be carried out at the other locations, should have been considered to be limitations on capacity necessary for the reorganisation.

Findings: In assessing the government subsidies involved, the European Commission had not given consideration to the way the reorganisation would be implemented by means of specific reorganisation agreements. Consultation beforehand with the European Commission was not necessary because the Directorate-General Competition had stated in a letter that problems in relation to competition could be assessed within the framework of national legislation since, from an economic perspective, the emphasis in this case lay in the Netherlands. Furthermore the Commission had not made a ruling, as referred to in article 2(2) of Regulation 26/62. Consequently this regulation did not prevent the application of article 6 of the Competition Act. From past decisions of the European Commission, it could be deduced that, in principle, limiting capacity was realised by a prohibition on investing in expansion. Production ceilings, which specified the number of slaughters that could be carried out utilising normal capacity, functioned as production agreements or limits on production. Consequently, in this regard the agreements did not satisfy the requirement of indispensability, as referred to in article 17 of the Competition Act. It was therefore correct that the limits on production contained in the reorganisation agreements had not been deemed eligible for exemption. The Director-General of NMa dismissed the administrative appeal. SSV and a number of other pig abattoirs appealed against this decision.

Case 275a/Libertel

Contested decision: In 1999 the Director-General of NMa rejected an application for exemption of Libertel's Service Provider Agreement. In this agreement Libertel granted certain undertakings a non-exclusive right to offer mobile telephone subscriptions through the Libertel network in the Netherlands.

Administrative appeal: In the administrative appeal Libertel argued that a number of provisions of the Service Provider Agreements did not violate the Competition Act, contrary to the ruling by the Director-General of NMa. In so far as these did fall within the scope of article 6 of the Competition Act, Libertel was of the opinion that the exemption contained in article 16 of the Competition Act applied to the Service Provider Agreements, due to the special statutory framework applicable to the telecommunications sector. Furthermore, according to Libertel, there was no question of individual vertical price maintenance. In addition, with regard to the criteria for approval applicable to the transfer of subscriber databases, as contained in the Service Provider Agreements, Libertel argued that there was no question of a restriction on competition, since the criteria for approval were necessary to protect investments that had already been made. In any event, in Libertel's opinion, the Service Provider Agreement satisfied the conditions for exemption, in accordance with article 17 of the Competition Act.

Findings: NMa could not concur with the argument put forward by Libertel with regard the application of article 16 of the Competition Act. The Telecommunications Act [Telecommunicatiewet] and the Telecommunications Facilities Act [Wet op de telecommunicatievoorzieningen] did not contain an obligation to enter into the Service Provider Agreements in question. In addition, on the basis of the Explanatory Memorandum and the Preamble of the Telecommunications Act it could not be concluded that, as a consequence of the special regulation of competition in the telecommunications sector, the Competition Act did not apply. The administrative appeal brought by Libertel in relation to vertical price maintenance was, however, upheld. On the basis of the facts presented by the parties in the administrative appeal, NMa concluded that the Service Providers were free to determine the resale price charged to subscribers. Consequently, there was no evidence of a breach of article 6 of the Competition Act. With regard to the requirement that the transfer of subscribers by Service Providers to third parties had to be approved, Libertel had not shown that this was necessary to ensure efficient, high-quality and reliable distribution. Partly due to the limited number of players on the market, the fact that Libertel itself was active as a Service Provider and, in addition, had at its disposal its own telecommunication network, and the fact that Libertel exercised direct influence on whether (or not) new players entered the market through the requirement that the transfer of subscribers had to be approved, the Director-General of NMa ruled that there was an appreciable limitation on competition, as referred to in article 6 of the Competition Act. The administrative

appeal brought by Libertel against the dismissal of an application for exemption, in accordance with article 17 of the Competition Act, was dismissed. Libertel had not adequately shown what investments it had made to support the operations of Service Providers and the implementation of Service Provider Agreements and the way the required approval contributed to this. Unipart Group Limited appealed against this decision (see Case 275b).

Case 275b/Libertel

Contested decision: In 1999 the Director-General of NMa rejected an application for the exemption of Libertel's Service Provider Agreement (see Case 275a/Libertel). *Administrative appeal:* Unipart Group Limited (hereinafter: Unipart) lodged an appeal against this decision. At the time that this application for exemption was submitted, UniqueAir Services S.A. Telecommunications (a subsidiary of Unipart) had entered into a Service Provider Agreement with Libertel. Unipart requested the Director-General of NMa to regard it as an interested party. In its opinion, UniqueAir was an interested party due to the fact that it was involved as a party to the agreement for which exemption had been sought. The contested decisions would have legal consequences for Unipart for this reason. *Findings:* The Director-General of NMa concluded that Unipart could not be regarded as an interested party and dismissed the administrative appeal filed by Unipart. In submitting its administrative appeal, Unipart had indicated that it wished to strengthen its position before the Civil Court. The action brought by Libertel, against which Unipart wished to institute civil proceedings, dated from a period prior to the date of the principal decision. Up until the date of the principal decision, the Service Provider Agreement had applied provisionally, in accordance with article 100 of the Competition Act. The ruling on the administrative appeal in respect of the principal decision could not add or detract from the validity of the Service Provider Agreement in the period of relevance to Unipart. Prior to the date of the principal decision, Unipart had also withdrawn fully from the Dutch market and the Service Provider Agreement between it and Libertel had also been cancelled. Unipart Group Limited appealed against this decision.

Case 492/Vereniging van Bloemenveilingen in Nederland [Association of Dutch Flower Auctions]

Contested decision: In 1999, following an application by Vereniging van Bloemenveilingen in Nederland (VBN) [Association of Dutch Flower Auctions], the Director-General of NMa had granted an exemption with regard to agreements relating to the supply regulations used by the members of VBN for the sale of flowers and plants by means of the auction clock. The supply regulations related to the specification of the quality, sorting and packaging of floristry products. In particular, certain criteria formulated by VBN and used in issuing packaging codes (so-called 'fustcodes') were investigated in more detail. *Administrative appeal:* Snelcore B.V., a producer of synthetic packaging, and VBN filed an administrative appeal against the above-mentioned decision. The administrative appeal brought by Snelcore was, in part, against the ruling granting an exemption for ten years for the criterion applied in issuing a packaging code for 'compliance with the waste policy'.

VBN's administrative appeal was against the ruling by the Director-General of NMa that:

(1) the criterion that there had to be 'sufficient demand' for a particular type of packaging for the granting of a packaging code limited competition, in terms of article 6 of the Competition Act;
(2) the criterion of 'compliance with the waste policy' extended further than was strictly necessary and limited competition, in terms of article 6 of the Competition Act;
(3) the settlement system for single-use packaging limited competition, in terms of article 6 of the Competition Act;
(4) the criteria for the granting of a packaging code, qualified by NMa as limitations on competition, and the existing settlement of single-use packaging had an appreciable effect on competition.

Findings: The Director-General of NMa dismissed the administrative appeal filed by Snelcore. The choice to use a specific material (a certain plastic) for single-use packaging for transportation was not dealt with in this case.

The administrative appeal filed by VBN was upheld in part and was dismissed in part. With regard to the above-mentioned administrative appeals it should be noted firstly that in the case of perishable products, such as flowers and plants, the speed of the auction process and the logistical support are essential and that it is necessary to make certain demands on the packaging (with regard to its dimensions and quality) to ensure that the logistical process operates smoothly. Conditions directly related to the logistical process of an auction are therefore not a limitation on competition in terms of article 6 of the Competition Act.

(1) The criterion of 'sufficient demand' was clarified during the administrative appeal. The issue is not whether there is a sufficient number of parties that require the

packaging (demand in a quantitative sense), but whether there is a demand in a qualitative sense: does the packaging offer added value or a new function with advantages for the logistical process. Only if the latter were the case, would packaging codes be granted. By applying this qualitative criterion, a situation could be avoided where the granting of an unlimited number of packaging codes undermined the proper functioning of the auction process in front of the clock. In addition, it was still possible for packaging codes to be granted for newly developed packaging, which was not (yet) sold in large quantities. In the light of this evidence, part of which was new, NMa ruled that there was no limitation on competition, in terms of article 6 of the Competition Act. The administrative appeal filed by VNB was therefore upheld in relation to this point.

(2) The administrative appeal with regard to the criterion of 'compliance with the waste policy' was dismissed. It was not shown that the statutory provisions applied, as a result of which this criterion would no longer fall within the scope of article 6 of the Competition Act.

(3) With regard to the settlement system, NMa ruled that the system was necessary for the proper functioning of the auction process in front of the auction clock. The logistical process of moving products in front of the clock did not allow florists full freedom to choose their own packaging: packaging which differed significantly, with regard to its dimensions, or was of lower quality, could seriously damage the logistical process. The settlement system did not go further than was necessary for this process. VBN's objection that the settlement system did not limit competition, in terms of article 6 of the Competition Act, was therefore upheld.

(4) In the light of the above, the objection made by VBN with regard to whether the criteria had an appreciable limitation on competition, was only relevant to the criterion of 'compliance with the waste policy'. This objection was dismissed: this constituted an appreciable limitation, since more than 85 percent of the total turnover of the members of VBN was derived from floristry products produced in the Netherlands and approximately 80 percent of the total turnover of the members of VBN was sold by means of the auction clock.

Snelcore appealed against this decision.

Case 882/Amicon Zorgverzekeraars

Contested decision: Amicon Zorgverzekeraar, a healthcare insurer, entered into cooperation agreements with pharmacists for the issuing of medical aids to people insured by health insurance funds. Amicon applied to NMa for exemption for these agreements. The price agreements included in the cooperation agreements limited competition, according to NMa, and did not satisfy the conditions for exemption. The prices included in the agreements were aimed at limiting competition between the members of the association of pharmacists. The freedom to set prices and to pass on cost advantages to Amicon were limited or, at least, were significantly reduced as a result of this. For the rest there was no evidence of limitations on competition and an exemption was therefore not required.

Administrative appeal: Mr Trooster, a pharmacist in Goor, filed an administrative appeal and presented the following arguments:

(1) In the contested decisions insufficient attention had been given to the exceptional nature of the healthcare market.

(2) NMa had been incorrect in assuming that Apothekersvereniging Oostnederland (AVON) [The Association of Pharmacists in the East of the Netherlands] had taken a decision in terms of article 6 of the Competition Act; after all, the pharmacists who were members of AVON had always been free to accept or decline the offer made by Amicon.

(3) From the parliamentary proceedings in relation to the Competition Act, it appeared that collective negotiations were permitted, as long as no pressure or coercion was brought to bear on individual care providers to accept the result. Furthermore Amicon had opted to conduct collective negotiations with a view to fulfilling its duty of care towards its insured.

(4) Mr Trooster argued that Amicon was charged with a duty in the economic interests of the general public, due to the duty of care set out in the Health Insurance Act [Ziekenfondswet]. Consequently, Mr Trooster argued, article 11 of the Competition Act was applicable and article 6 of the Competition Act should be declared to be inoperative.

Findings:

(1) With regard to the nature of the market, NMa referred to the room intentionally created by the legislature in the 1980s and 1990s for competition, both between health insurers and between pharmacists, and the fact that a selective policy with regard to contracts and individual negotiations with pharmacists (and other possible suppliers) was certainly possible, particularly in the area of medical aids, without detracting from Amicon's duty of care towards its insured. Equal access of the insured to care did not require standard pricing on the basis of agreements

between the healthcare insurer and individual pharmacists (or other suppliers).

(2) Decision-making by consensus, which was adhered to by all the members (in their own interests), was subject to article 6 of the Competition Act. In addition, sufficient elements were present in the process by which the cooperation agreements had come about to justify characterising the agreements as de facto mutually coordinated behaviour, in accordance with European case law.

(3) Mr Trooster referred to a statement made by the Minister of Economic Affairs during the debates on the Competition Bill with regard to collective negotiations in the healthcare sector. The Director-General of NMa stated that, in general, he was not obliged to adhere to statements made by the Minister during the parliamentary proceedings. In the case in question, however, the statements quoted, taking into account their context, might be explained in accordance with European legal practice and the room that the legislature had wished to create for the operation of market forces in the care sector. Under no circumstances could collective negotiations replace separate individual negotiations entirely, as in the case of Amicon and AVON. Contrary to the opinion of Mr Trooster, the collective behaviour on the part of the pharmacists was not a consequence of the exceptional nature of the market and could therefore not be regarded as a response to a 'unilateral' initiative on the part of Amicon. If Mr Trooster assumed that no pressure or coercion had been brought to bear, he had failed to take into account that pressure had been exerted in the form of de facto social pressure and in the form of an economic constellation of interests formed over a number of years, from which individual pharmacists could not escape easily.

(4) In the administrative appeal, the price agreements were tested against the provisions of article 11 of the Competition Act. This did not give cause for a reversal of the contested decision. Article 11 of the Competition Act only applied if Amicon was responsible for managing a service that was in the economic interests of the general public, in accordance with a statutory provision, and the performance of the special duty with which Amicon was charged would be obstructed by the application of article 6 of the Competition Act. Both conditions had to be met. As NMa had ruled in the administrative appeal that there was no question of a duty, the performance of which had been obstructed, there was no further need to consider whether Amicon was responsible for managing a service that was in the economic interests of the general public, pursuant to its duty of care in accordance with the Health Insurance Act.

The Director-General of NMa dismissed the administrative appeal filed by Mr Trooster.
Mr Trooster lodged an appeal against this decision.

7.4 Decisions Imposing Sanctions

The Competition Act grants the Director-General of NMa the authority to impose sanctions and/or orders subject to penalties in certain cases. In the year under review, this authority was exercised on a number of occasions. The decisions in question are discussed below.

7.4.1 Orders Subject to a Penalty Due to a Refusal to Supply Products and Services

Case 1/De Telegraaf versus NOS and HMG

Complaint: In 1998 N.V. Holdingmaatschappij De Telegraaf filed a complaint with NMa against Nederlandse Omroep Stichting (NOS) and RTL/Veronica de Holland Media Groep S.A. (HMG). De Telegraaf was of the opinion that NOS and HMG had abused their dominant position by refusing to provide De Telegraaf with a weekly overview of radio and television programmes broadcast by public broadcasting corporations, and RTL4, RTL5 and Veronica respectively. In addition, De Telegraaf requested NMa to impose an order subject to a penalty to enforce the supply of the information in question.
Findings: NMa determined that NOS and HMG had abused their dominant position by keeping the weekly programme information to themselves and by refusing to make this information available to other interested parties, such as De Telegraaf. NMa had made it possible for the parties to determine the conditions and the price subject to which the programme information would be made available through voluntary negotiations. NOS had not shown a willingness to enter into negotiations on the supply of programme information, other than genre information (programme overviews providing listings according to the nature of the programmes). In the opinion of NMa, the payment demanded by HMG was very high, compared to the payments required in other instances for programme listings. In NMa's opinion, the offer that had been made had to be equated with a refusal to supply the information.
Order subject to a penalty: On 16 February 2000, NMa decided to impose an order subject to a penalty on both NOS and HMG to compel them to supply the weekly

programme listings to De Telegraaf. After the publication of this decision on 16 February 2000, NOS and HMG were given four months to arrange this. NOS and HMG had to supply De Telegraaf with the weekly programme listings, subject to reasonable and non-discriminatory conditions and at a reasonable price. Even if NOS and HMG had lodged an administrative appeal and an appeal to the Court, they were not permitted to wait for a ruling before they started supplying the programme information. The Director-General of NMa had withheld the suspensive effect of an administrative appeal and an appeal to the Court, in accordance with article 63 of the Competition Act. NOS and HMG lodged an administrative appeal against this decision. The Director-General did not reach a decision on this administrative appeal in the year under review. In addition, NOS and HMG requested the presiding judge of the Court in Rotterdam to grant a preliminary injunction suspending the decision. The presiding judge of the Court granted the preliminary injunction.

7.4.2 Fine and Order Subject to a Penalty Due to a Breach of the Prohibition on Cartels

Case 757/Chilly and Basilicum versus Secon Group

Complaint: Chilly B.V. and Basilicum B.V., operators of the fashion chains The Store and The Sting, submitted a complaint to NMa against G-Star International B.V., a subsidiary of Secon Group B.V. The complaint was against the prohibition on reselling products, included in the general conditions of G-Star.
Findings: From the investigation carried out by NMa, it appeared that G-Star nad used the general conditions of Secon Group. The general conditions were also used by other subsidiaries of Secon Group. NMa therefore decided to extend its investigation to the entire Secon Groep. During the investigation it became apparent that the general conditions of Secon Group included a prohibition on reselling, as well as conditions with regard to recommended prices. In accordance with these conditions, customers (retailers, chain stores, departmental stores and procurement organisations) were not permitted to sell clothes in a branch other than the branch for which the clothes were ordered. In addition, clothing could not be resold to other customers. On the basis of the conditions with regard to recommended prices, the customers could not offer their products at lower prices. Since customers could not deviate from the recommended prices without the permission of Secon Group, the recommended prices had to be regarded, in fact, as obligatory fixed prices. NMa concluded that by making use of the prohibition on reselling and the conditions with regard to recommended prices, Secon Group had limited competition between its customers. The use of general conditions containing provisions that resulted in a prohibition on reselling and fixed recommended prices violated article 6 of the Competition Act.
Fine: NMa imposed a fine of NLG 500,000 on Secon Group. The offences were attributed to Secon Group, as it had drawn up the general conditions and had made these available to its subsidiaries. In determining the amount of the fine, NMa took into account the limited duration of the offence (January 1998 to June 1998) and the fact that Secon Group had voluntarily amended a number of conditions.
Order subject to a penalty: In addition, NMa imposed an order subject to a penalty on Secon Group to the effect that Secon Group and its subsidiaries were to refrain in future from the behaviour for which the fine was imposed. Secon Group was required to inform its customers of the termination of the prohibited conditions (the prohibition on reselling and the recommended prices), subject to a penalty if this was not done within the specified period. The penalty amounted to NLG 10,000 for every day that Secon Group did not comply with this order. The amount beyond which Secon Group would not forfeit a penalty amounted to NLG 200,000.
Administrative appeal: Secon Group lodged an administrative appeal against this decision. The administrative appeal was presented to the Competition Act Administrative Appeals Advisory Committee.

7.4.3 No Violation in Accordance with Article 24 of the Competition Act, No Fine

Cases 1185/GlasGarage Rotterdam versus Carglass, 121/F. van der Kraan Autoruitenservice, 127/Autoglas Brabant Combinatie, 128/ARAM Autoglasservice Van Aefst and 1057/Vereniging Autoglasspecialisten Nederland (Vasned) [Dutch Association of Car Glass Specialists]

Complaints: Following various complaints NMa initiated an investigation into the discount systems used by the glass repair company Carglass B.V. in its contracts with non-life insurers. The complainants were of the opinion that Carglass bound insurers to it by means of a system of discounts and bonuses and, in doing so, prevented competitors from having access to these insurers.
Findings: NMa assessed the discounts that Carglass granted non-life insurers, such as quantum discount scales, group bonuses and communication bonuses, against the provisions of the Competition Act.

Discounts that have the effect or the aim of limiting competition, such as preventing access by competitors to customers, are in breach of article 24 of the Competition Act. From past rulings of the European Court of Justice it appeared that a supplier with a position of power were permitted to grant discounts arising from cost savings, but were not permitted to offer discounts or incentives to promote the loyalty of the customers in question.

NMa determined that the quantum discounts that Carglass granted to insurers reflected cost savings and therefore did not constitute abuse in terms of article 24 of the Competition Act. The group bonuses, which Carglass granted to a number of insurers, in addition to the quantum discounts already granted, could not be regarded as a reflection of cost savings, in the opinion of NMa. These group bonuses contained loyalty elements that would constitute abuse, in terms of article 24 of the Competition Act, if the company had a dominant position. In order to establish whether Carglass held a dominant position, it was necessary, in the opinion of the Director-General of NMa, to conduct a further investigation into, for instance, the sustainability of this position and the effect of possible countervailing power on the part of the insurers. To increase the transparency of the discount system, Carglass announced that it would include a description of the quantum discounts in writing in the contracts with all the insurers. Furthermore Carglass declared that it would cease to use the system of group bonuses as of 1 January 2001. In the opinion of NMa, by making the above-mentioned amendments, Carglass's bonus system had been amended so as to comply with the Competition Act: the system was transparent, the quantum discounts were scaled and reflected cost savings as a result of economies of scale and the group bonuses had been abolished. NMa did not consider it necessary to conduct a further investigation into the position of Carglass on the markets to establish whether the undertaking held a de facto dominant position, since there was no question of abuse. NMa did not impose a fine. Vereniging Autoglasspecialisten Nederland (Vasned) filed an administrative appeal against this decision.

Case 25/Holland Dier Identiteit [Holland Animal Identity] versus Koninklijke Nederlandse Maatschappij voor Diergeneeskunde [Royal Netherlands Veterinary Association]

Complaint: Two veterinary surgeons filed complaints against Koninklijke Nederlandse Maatschappij voor Diergeneeskunde (KNMvD) [Royal Netherlands Veterinary Association], the professional association of veterinary surgeons. The complaints were mainly against the regulations governing publicity, contained in the Veterinary Surgeons' Code [Code voor de Dierenarts]. Of its own accord, NMa extended its investigation to include a larger number of regulations, including the standing orders and tariffs of KNMvD.
Findings: The Director-General of NMa established that KNMvD had negotiated with representatives of organisations representing companies regarding tariffs and had subsequently published the results of these negotiations. In addition, the Executive Board of KNMvD was advised by a Tariff Committee, set up for this purpose, on tariffs and profit margins, and this advice was subsequently communicated to the members of KNMvD by means of publications. The aim of this was to coordinate the level of prices charged and, in any event, the coordination of prices was certainly made easier. Such behaviour was prohibited in accordance with article 6 of the Competition Act. These acts promoted joint price-fixing, in breach of the prohibition on cartels, even if the prices in question were recommended prices. In addition, KNMvD had committed the offence of dividing customers and markets, which was also in violation of article 6 of the Competition Act. A veterinary surgeon, who wished to exercise his profession as a veterinary surgeon at any particular location, was required to notify the Professional Practice Supervision Committee [Begeleidingscommissie praktijkuitoefening] of KNMvD of his intention in good time, which subsequently gave advice on the intention to set up a practice. Furthermore a veterinary surgeon was not permitted to practise his profession at any location if he foresaw or, within reason, could be deemed to be in a position to foresee that this could result in a disproportionate disadvantage to another veterinary surgeon. In addition, a veterinary surgeon (including a veterinary surgeon who already had a private practice) was not permitted to practise veterinary science within the so-called 'practice customer base' of another veterinary surgeon. As in the case of the notification requirements, these prohibitions imposed by KNMvD were also in breach of article 6 of the Competition Act, since they limited the opportunities to establish a practice. As a result of this, competition between established veterinary surgeons and potential entrants to the market were affected directly. In addition, the members of KNMvD were limited in their freedom to use important instruments of competition, such as the publication by the veterinary surgeon in question of (better) market and pricing conditions. This resulted in limitations on the incentive to offer such conditions and, by doing so, to increase the veterinary surgeon's customer base.

Fine: In determining whether a fine and, if so, what fine should be imposed, the following circumstances, amongst others, were taken into account. Immediately after the Competition Act took effect, KNMvD had contacted NMa and had at all times shown its willingness to withdraw or amend the regulations in question. The most 'serious' regulations, which violated the Competition Act, resulting in price agreements and the division of markets, were amended and made to comply with the Competition Act. With regard to the other regulations, KNMvD had submitted an application for exemption, in accordance with the transitional regime provided for in article 100 of the Competition Act, so that these were still valid at the time. During the procedure, these schemes were withdrawn or replaced by permissible schemes. In the light of this, NMa deemed it inopportune to impose a fine on the grounds of a breach of article 6 of the Competition Act.

7.4.4 Fine Due to the Failure to Give Notification of a Concentration

Case 1774/Verkerk-Horn

Case: Holding Hobbycentrum Hans Verkerk B.V. gave notification of its intention to take over two subsidiaries of Horn Beheer B.V. The concentration had already been implemented before the obligatory period of notice had passed and before NMa had taken a decision on the notification.
Findings: NMa ruled that Hobbycentrum Hans Verkerk and Horn Beheer had violated article 34 of the Competition Act and that this breach could be attributed to both undertakings. In accordance with article 74 of the Competition Act, in the event of a breach of article 34 of the Competition Act, each company to which the breach could be attributed could be fined an amount of NLG 50,000, unless mitigating circumstances were present. With regard to the claims made by the parties that organisational and financial reasons necessitated the premature realisation of the concentration, the Director-General of NMa noted that these did not constitute mitigating circumstances. In accordance with article 40 of the Competition Act, the parties could have applied for an exemption from the prohibition contained in article 34 of the Competition Act. NMa stated that it was its task and not the task of the parties themselves, to decide whether a premature concentration was permissible.
Fine: NMa imposed the maximum fine of NLG 50,000 on both Holding Hobbycentrum Hans Verkerk and Horn Beheer. This was the first fine that NMa had imposed due to actions in conflict with article 34 of the Competition Act. Holding Hobbycentrum Hans Verkerk B.V. and Horn Beheer B.V. filed an administrative appeal against this decision.

Case 1316/ Heywood-Scheuten

Case: J.B.H. Scheuten Management B.V. and Heywood Williams Group plc restructured two jointly owned undertakings. They only notified NMa of this notifiable concentration after the concentration had already been effected. This violated article 34 of the Competition Act, since notification had to be given prior to realising the concentration. Of their own accord, the parties consulted NMa and subsequently entered into a 'standstill agreement'. At the request of the parties, NMa provided (informal) written confirmation that the possible offence had ceased to be committed as a result of the 'standstill agreement'.
Findings: NMa attributed the breach of article 34 of the Competition Act to Mr Scheuten/ Scheuten Management and Heywood. The argument put forward by the parties that the concentration was complicated, was not accepted. The parties could have sought legal advice and consulted NMa beforehand. In determining the amount of the fine, the Director-General of NMa took the following mitigating circumstances into account. Not only had the parties consulted NMa of their own accord, they had also entered into a 'standstill agreement' and had received (informal) written confirmation from NMa that the possible offence had ceased to be committed.
Fine: NMa decided to impose a fine of NLG 40,000 each on Mr Scheuten/ Scheuten Management and Heywood.

Annex I Decisions Taken by NMa/DTe in 2000

1. Decisions in Relation to Applications for Exemptions

Exemptions granted

No.	Parties	Date	Sector	Brief Description
1122	Breitling watches	09-02-2000	Retail trade	In accordance with article 17 of the Competition Act, the application for exemption from the prohibition contained in article 6 has been allowed for a period of 10 years

Article 6 of the Competition Act Partially Non-Applicable; Application for Exemption Rejected in Part

272	Nederlandse Kleding Conventie [Netherlands Clothing Convention]	20-12-2000	Retail trade	The applicant had not complied with the conditions for exemption, as contained in article 17 of the Competition Act
530, 534, 456 590,	Vereniging van Nederlandse Installatiebedrijven [Association of Dutch Installation Companies]	25-09-2000	Construction	The applicant had not complied with the conditions for exemption, as contained in article 17 of the Competition Act*
1972	Amicon Zorgverzekeraar and an Independent Physiotherapist	15-12-2000	Healthcare	The applicant had not complied with the conditions for exemption, as contained in article 17 of the Competition Act

The Application Does Not Fall within the Scope of Article 6 of the Competition Act and Exemption Is Therefore Not Required.

115	Stichting Auto en Recycling [Foundation for Motor Vehicle Recycling]	05-04-2000	Recycling	The temporary exemption from article 16 of the Competition Act will apply until 31-12-2000*
120	Vereniging van Keurslagers [Association of Certified Butchers]	12-07-2000	Retail trade	No appreciable limitation on competition
181	Zorgkantoren [Healthcare Agencies]	10-03-2000	Healthcare	No appreciable limitation on competition
197	ADMES Intrakoop coöperatieve	21-09-2000	Recycling	No appreciable limitation on competition
346	inkoopvereniging voor gezondheids- en seniorenzorg U.A. [Intrakoop Procurement Association for Healthcare and Care for the Aged]	18-08-2000	Healthcare	No appreciable limitation on competition
426	Hoogovens Staal B.V. and Ruhrkohle Handel Inter GmbH	04-05-2000	Primary and manufacturing industry	No appreciable limitation on competition*
429	Samenwerkingsmaatschap accountantskantoren [Cooperative Partnership of Accountancy Firms]	21-12-2000	Commercial services	No appreciable limitation on competition
479	Engels Holding B.V.	31-03-2000	Commercial services	No appreciable limitation on competition
262, 714, 715	Pharmacon	19-10-2000	Healthcare	The recognition and certification schemes met the criteria of openness and transparency and the criteria applicable to the granting of dispensations, so that there is

* An administrative appeal was filed against this decision.

No.	Parties	Date	Sector	Brief Description
				no question of a limitation on competition.
1237	Stichting Keten Kwaliteit Melk [Foundation for Quality in the Milk Production Chain]	14-03-2000	Agriculture	No appreciable limitation on competition
1405	Metro Holland B.V. and NS-Stations B.V.	11-08-2000	Media	No appreciable limitation on competition*
1601	See Buy Fly minimum discount campaign	20-12-2000	Retail trade	No appreciable limitation on competition
1715	Libertel: master agreement	21-11-2000	Telecomm.	No appreciable limitation on competition
Denied				
294	Vereniging van Afvalverwerkers [Association of Waste Recyclers]	19-12-2000	Recycling	The applicant had not complied with the conditions for exemption, as contained in article 17 of the Competition Act
357	Unieholding Nimwegen B.V.	13-11-2000	Agriculture	The applicant had not complied with the conditions for exemption, as contained in article 17 of the Competition Act
145, 652	Procurement cooperation agreement between the health insurance funds VGZ/OZ/CZ	13-10-2000	Healthcare	The applicant had not complied with the conditions for exemption, as contained in article 17 of the Competition Act
767	Onderlinge Waarborgmaatschappij Zorg en Zekerheid Verzekeringen U.A.	19-04-2000	Healthcare	The applicant had not complied with the conditions for exemption, as contained in article 17 of the Competition Act
Exemption Granted in Part, Denied in Part				
235, 1189	Contactorgaan Hypothecair Financiers en Gedragscode Hypothecaire Financieringen [Forum of Mortgage Financiers and the Code of Practice for Mortgage Loans]	04-05-2000	Commercial services	In accordance with article 17 of the Competition Act, the application for exemption from the prohibition contained in article 6 of the Competition Act has been allowed in part for a period of 10 yearsi

2. Complaints

In Accordance with Article 6 of the Competition Act

426	Ruhrkohle Handel Inter GmbH versus Hoogovens Staal B.V.	04-05-2000	Primary and manufacturing industry	The complaint was rejected since article 6 of the Competition Act was not applicable*
701	Kamerbeek versus Koster	09-02-2000	Retail trade	The complaint was rejected as an exemption had been granted for the selective distribution system for a period of 10 years
1044	The Public Works Department of the Municipality of Rotterdam versus Hogenboom Spijkenisse B.V., Aannemingsbedrijf J. Baas B.V. and H.I.G. Kabels en Leidingen B.V.	22-12-2000	Construction	The plaintiff did not present a plausible case that article 6 of the Competition Act had been violated

* An administrative appeal was filed against this decision.

No.	Parties	Date	Sector	Brief Description
1131, 1151, 1250	Policy with regard to the setting up of practices by psychologists in the primary healthcare sector	01-03-2000	Healthcare	The grounds for the complaint had ceased to exist*
In Accordance with Article 24 of the Competition Act				
274	Nawijn versus Stichting Registratie Gezelschapsdieren Nederland [Netherlands Foundation for the Registration of Pets]	31-10-2000	Commercial services	The complaint was rejected since article 24 of the Competition Act was not applicable
273, 906	Vereniging Vrije Vogel versus KLM and Swart versus KLM	08-11-2000	Transport	A plausible case that abuse had occurred was not presented. In addition, Mr Swart is not an interested party in terms of the General Administrative Law Act [Algemene wet bestuursrecht]
1114	Dutch Farm Veterinary Pharmaceuticals B.V. versus Dopharma International B.V.	27-06-2000	Healthcare	The complaint arising from a refusal to supply products was rejected due to the absence of a dominant position.
1337	Wilders, bureau for sustainable energy projects versus Municipality of Leiden and the energy distribution company Energie en Watervoorziening Rijnland	29-02-2000	Commercial services	Article 24 of the Competition Act did not apply as there was no evidence of business activities
In Accordance with Article 6 and/or Article 24 of the Competition Act				
141	Theo de Graaf Brillen en Contactlenzen B.V. versus Onderlinge Waarborgmaatschappij Zorg en Zekerheid Verzekeringen U.A.	19-04-2000	Healthcare	The application for a decision in accordance with article 56(1) of the Competition Act was denied
995	Organisatie van Nederlandse Tandprothetici [Organisation of Dutch Dental Prostheticians] versus health insurers and Zorgverzekeraars Nederland	20-04-2000	Healthcare	There was no evidence of a dominant position, in terms of article 24 of the Competition Act
1010	Bond van Nederlandse Architecten [Union of Dutch Architects] versus the Municipality of The Hague	04-05-2000	Commercial services	There was no evidence of a dominant position, in terms of article 24 of the Competition Act, nor was article 6 of the Competition Act applicable*
1012	Van Eck Havenservice B.V.	14-12-2000	Transport	There was no plausible evidence of a dominant position, in terms of article 24 of the Competition Act, nor was article 6 of the Competition Act applicable
1145	Electronic Warning Systems B.V. and ABN Amro Assuradeuren B.V. and Stichting Kwaliteitsborging Preventie [Foundation for Quality Assurance in Prevention]	30-05-2000	Commercial services	There was no plausible evidence of a dominant position, in terms of article 24 of the Competition Act
1426	Nederlandse Juweliers- en Uurwerkbranche [Dutch Association of Jewellers and Watchmakers] versus See Buy Fly	20-12-2000	Retail trade	The complaint was rejected since article 6 of the Competition Act was not applicable

* An administrative appeal was filed against this decision.

No.	Parties	Date	Sector	Brief Description
1583	Van de Berg versus the Municipality of Apeldoorn	22-12-2000	Construction	There was no evidence of abuse, in terms of article 24 of the Competition Act, and there was no evidence of agreements or de facto mutually co-ordinated behaviour, in terms of article 6 of the Competition Act
1584	Sp!ts B.V. versus Metro Holland B.V. and NS-Stations B.V.	11-08-2000	Media	There was no evidence of abuse, in terms of article 24 of the Competition Act, and article 6 of the Competition Act does not apply*
1570	Sanders versus Amicon Zorgverzekeraar	15-12-2000	Healthcare	The application for a ruling in accordance with article 56(1) of the Competition Act was rejected. There was no evidence of a dominant position, in terms of article 24 of the Competition Act

Reports

1616	Vereniging ter bevordering van de Garnalenhandel [Association for the Promotion of the Shrimp Trade] and a number of Dutch, German and Danish organisations representing producers in the shrimp fishery industry	14-12-2000	Agriculture	Suspected violation of article 6 of the Competition Act due to price-fixing, setting of quotas and division of the market
1767	Various taxi control centres in Rotterdam	16-11-2000	Transport	Suspected violation of article 6 of the Competition Act

* An administrative appeal was filed against this decision.

3. Decisions on Notifications (Article 37(1) of the Competition Act)

No Licence Required

Number	Parties	Date	Sector
1606	Origin Nederland B.V. and N.V. Eneco	22-03-2000	Computer service and IT companies etc.
1671	N.V. Interpolis/Spaendonck Groep and Spint B.V.	11-02-2000	Insurance and pension funds
1672	N.V. Interpolis/Spaendonck Groep and Spaendonck AA	11-02-2000	Commercial services
1674	Holding Hobbycentrum Hans Verkerk B.V., Ter Aar	14-02-2000	Retail trade
1675	Stichting Ziekenhuis Rijnstate, Zevenaar	31-01-2000	Healthcare
1677	Monoliet Holding B.V. and Cement-Roadstone Holdings plc.	29-02-2000	Production of building materials
1682	SBS Broadcasting S.A and Strengholt B.V. and Publimusic B.V.	06-03-2000	Radio and television
1686	Bio Thermische Conversie B.V. and Icopower B.V. and Econergy Productie Moerdijk B.V.	11-02-2000	Environmental services
1690	Holding AVR-Bedrijven N.V. and N.V. Avira	03-02-2000	Energy
1692	Bayer B.V. and Agrevo Nederland B.V.	31-01-2000	Production of chemical products
1693	United Technologies Corporation and Electrolux	12-01-2000	Production of electrical appliances and instruments
1694	Detam Pensioen Services and Relan Groep	11-02-2000	Insurance and pension funds
1695	Arma Van den Ban groep and Reedijk Banden Import B.V.	03-02-2000	Automobile parts and accessories
1696	N.V. Nutsbedrijf Haarlemmermeer and Westfälische Gasversorgung Beteiligungs GmbH	31-01-2000	Energy
1699	Computer Services Solutions Holding N.V. and Lacis Groep B.V.	21-01-2000	Computer service and IT companies etc.
1705	Colijn Beheer B.V. and Strukton Groep N.V.	19-01-2000	Construction
1706	Hopman-Groep B.V. and N.V. Bouwfonds Nederlandse Gemeenten	19-01-2000	Real estate project development
1707	TDI Holdings Limited and Mediamax Groep B.V	27-03-2000	Advertising agencies etc.
1711	N.V. Verzekeringsmaatschappij Rijnmond and Levob Zorgverzekering N.V.	21-02-2000	Insurance and pension funds
1712	Stichting Administratiekantoor JAST and Kamerbeek Groep B.V.	25-02-2000	Insurance and pension funds
1716	Charles André S.A. and N. Gentenaar Beheer B.V.	01-02-2000	Logistical services
1736	Coöperatie Koninklijke Cebeco Groep U.A. and La Royale Holding B.V.	06-03-2000	Abbatoirs and meat processing
1737	Viacom Inc. and CBS Corporation	24-02-2000	Television productions
1740	Industri Kapital 2000 Ltd. and Fortex B.V	14-02-2000	Rental/processing of textiles
1741	Oetker B.V. and Koopmans Consumenten Producten B.V.	16-02-2000	Production of foodstuffs
1742	Renault Véhicules Industriels S.A. and Bedrijfswagen Import Nederland B.V.	10-02-2000	Trade in motor vehicles
1756	Academisch Ziekenhuis Groningen and Stichting Beatrixoord	24-08-2000	Healthcare
1759	Nutsbedrijf Amstelland Holding N.V., Energie Delfland N.V., N.V. ENECO, et al.	21-04-2000	Energy
1762	GE Power Controls Belgium B.V. and B.A. en Odink & Koenderink B.V.	24-02-2000	Production of electrical appliances and instruments
1768	NIB Capital N.V. and Alpinvest Holding N.V.	29-02-2000	Investment companies
1769	NeSBIC Groep B.V. and Industria Beheer B.V.	15-02-2000	Production of other products
1778	Menken Beverages B.V. and Krings Fruchsaft AG	17-03-2000	Production of foodstuffs
1780	De Bruin Transport Groep and Vos Logistics Nederland B.V.	03-03-2000	Transport
1781	United Pan-Europe Communications N.V. and Eneco K&T Netwerkdiensten B.V.	27-03-2000	Telecommunications
1790	Eerste Nederlandse Cement Industrie (ENCI) N.V. and Beamix Holding B.V	03-03-2000	Production of building materials
1791	FKI plc and HMA Power Systems B.V	13-03-2000	Production of electrical appliances and instruments

Number	Parties	Date	Sector
1792	Leicester Square Holding B.V. and Kader Advertising Holding B.V.	08-03-2000	Advertising agencies etc.
1804	Pinkroccade N.V. and ASZ Automatisering Sociale Zekerheid B.V.	22-03-2000	Computer service and IT companies etc.
1805	Coöperatie ABC u.a. and Reuling Intervar B.V.	22-03-2000	Agricultural services
1806	Lucent Technologies EMEA B.V. and Deltakabel B.V.	27-03-2000	Telecommunications
1807	Computer Associates International Inc. and Sterling Software Inc.	16-03-2000	Computer service and IT companies etc.
1808	Addasta Holding B.V. and Eussi Meijers B.V.	05-04-2000	Wholesale trade
1809	N.V. Interpolis and Commit Beheer B.V.	14-04-2000	Financial services
1811	Stork N.V. and Interlas Beheer B.V.	27-03-2000	Rental of machinery and equipment
1812	Autobytel, N.V. Holdingmaatschappij De Telegraaf and Pon Holdings N.V.	26-06-2000	Internet information services
1814	Koninklijke IBC B.V. and Pytter Pilger B.V.	04-04-2000	Construction
1815	Megapool Holding B.V. and Horn Beheer B.V.	04-04-2000	Retail trade
1820	Kamps AG and Quality Bakers B.V	28-03-2000	Production of foodstuffs
1821	Nieuwe Hollandse Lloyd Schadeverzekeringsmaatschappij N.V. and Eagle Star Reinsurance Company Limited Holland	15-03-2000	Insurance and pension funds
1831	Compass Partners European Equity Fund LP and Wittenborg A/S	05-04-2000	Production of machines and equipment
1834	The Post Office and NPD Holding B.V.	04-04-2000	Postal and courier services
1838	Euretco N.V. and Bilcon Handelmaatschappij B.V.	31-03-2000	Retail trade
1840	Hal Hout Holding B.V. and Houtgroep Eecen Nederland N.V.	21-04-2000	Wholesale trade
1843	Bakkersland B.V. and Banketfabriek Van Hees Holding B.V.	06-04-2000	Production of foodstuffs
1844	UBS Capital B.V. and ZVN Zorgvoorzieningen Nederland N.V.	19-04-2000	Healthcare support activities
1848	ABN AMRO Bouwfonds Nederlandse Gemeenten N.V., Proverko Ontwikkeling B.V. and Proverko Woningbouw B.V.	01-05-2000	Real estate project development and trade
1850	Deutsche Post International B.V. and Correct Express Beheer B.V.	15-06-2000	Postal and courier services
1851	Albron B.V. and Antoin Petit B.V.	17-04-2000	Canteens and catering
1853	Heijmans Bouw- en Vastgoed- ontwikkeling B.V., Hijbeek Zwijndrecht B.V., Hijbeek Projektontwikkeling B.V. and Koverma B.V.	08-05-2000	Construction
1860	JVH Holding B.V. and Errel Holding B.V	31-05-2000	Slot machines
1872	Dura Vermeer Groep N.V. and Proverko Bouwgroep B.V.	01-05-2000	Construction
1879	NS Stations B.V. and Gemeentelijk Havenbedrijf Amsterdam	31-07-2000	Harbour services
1880	Tulip Computers N.V. and 2L International B.V.	04-05-2000	Computer services and IT agencies etc.
1882	Neways Electronics International N.V. and Ripa Holding B.V.	29-05-2000	Production of electrical appliances and instruments
1889	N.V. SDU formerly Staatsdrukkerij/Uitgeverij and Holding Enschedé/SDU B.V.	15-05-2000	Printers/publishers
1890	Citadel Holding B.V. and A.R.M.-Stokvis B.V.	17-05-2000	Trade in motor vehicles
1894	Stichting Estrade Wonen, Stichting Woongoed Rotterdam and Stichting Vestia	25-05-2000	Rental of and trade in real estate
1899	N.V. NUON ENW and N.V. Maatschappij tot Gasvoorziening Gelders Rivierengebied	31-05-2000	Energy
1901	Dixons B.V. and Mega Media B.V.	07-06-2000	Retail trade
1902	Stichting Woonzorg Nederland and Stichting Landelijke Katholieke Bouwcorporatie voor Bejaarden	09-06-2000	Rental of and trade in real estate
1904	Hotelplan Internationale Reisorganisatie B.V. and Reisburo Van Staalduinen B.V.	16-06-2000	Hospitality industry

Number	Parties	Date	Sector
1905	Holding AVR-Bedrijven N.V. and Gebr. Coppens Bergen op Zoom B.V.	27-07-2000	Environmental services
1909	AIR Holdings N.V. and Stern Beheer N.V.	26-05-2000	Filling stations
1913	N.V. Holdingmaatschappij De Telegraaf and APM Business Partners N.V.	19-06-2000	Internet information services
1914	NeSBIC Groep B.V., Automatiserings Adviescentrum B.V. ('AAC'), Reijers Computers B.V. ('Reijers') and Cosmos Automatisering B.V.	26-05-2000	Computer service and IT companies etc.
1920	N.V. Eneco and Energiebedrijf Midden-Holland N.V.	09-11-2000	Energy
1921	Falck A/S Group 4 Securitas (International) B.V.	15-06-2000	Security and detection
1924	Achmea Holding N.V. and GAK Holding B.V	22-06-2000	Activities related to insurance and pension funds
1925	Tyco International Limited and Philips Projects	07-06-2000	Security and detection
1930	Pearson Plc and MarketWatch com Inc.	15-06-2000	Internet information services
1931	GlobeGround GmbH and Aero Groundservices B.V.	09-06-2000	Airport ground services
1932	Heijmans Infrastructuur en Milieu B.V. and Van Hees Vastgoed B.V.	27-06-2000	Construction
1933	Westvaco Corporation and Impac Group, Inc.	23-06-2000	Production of packaging materials
1934	Nimox N.V. and Van der Meulen Ansems Verhuur en Leasing B.V.	14-06-2000	Trade in motor vehicles
1935	Landis Group N.V. and Detron Group N.V.	15-06-2000	Computer service and IT companies etc.
1937	Van Seumeren Holland B.V. and Mammoet Transport B.V.	20-06-2000	Transport
1938	Coöperatie ABC u.a. and Coöperatie Twente Achterhoek	14-06-2000	Production of animal feed
1942	ABN AMRO Bouwfonds and Van Erk Projecten B.V.	28-06-2000	Real estate development
1944	Harsco Corporation and SGB Group Plc.	16-06-2000	Production of other products
1945	Fabricom Installatie-techniek B.V. and MeFa Holding B.V.	27-06-2000	Electrical and mechanical engineering and wholesale trade
1955	Grontmij Bouw en Vastgoed N.V. and Technical Management B.V.	21-07-2000	Construction
1958	Damen Shipyards Group N.V. and Koninklijke Schelde Groep B.V.	16-06-2000	Shipbuilding
1959	Raab Karcher Bouwstoffen B.V. and De Waardt Groep B.V.	12-07-2000	Production of building materials
1960	Coöperatie Koninklijke Cebeco Groep u.a. and Motrac Landbouw B.V. and Vormec B.V.	14-08-2000	Wholesale trade in agricultural machinery
1967	Delta Lloyd Schadeverzekeringen N.V. and Albingia Versicherungs-Aktiengesellschaft	10-07-2000	Insurance and pension funds
1968	GIMV N.V. and Advies -en Beheersmaatschappij Fincon B.V	06-07-2000	Financial services
1971	Rijnconsult Holding B.V. and Ordina Beheer N.V.	06-07-2000	Computer service and IT companies etc.
1980	Lincoln Electric Holdings Inc. and Charter Plc.	26-07-2000	Production of machines and equipment
1981	UBS Capital B.V. and Katwijk Farma Holding B.V.	29-06-2000	Pharmaceutical industry
1987	Portaal Woonstichting and Portaal Woonstichting Leiden	02-08-2000	Rental of and trade in real estate
1989	Creyf's B.V. and VDN-Groep B.V.	20-07-2000	Other commercial services
1990	RWE Aktiengesellschaft and VEW Aktien gesellschaft	03-08-2000	Energy
1996	Kebo Holding B.V. and Vianen Holding B.V.	25-07-2000	Production of building materials
1997	Burhmann-Ubbens B.V. and Krijt Krommenie B.V.	07-08-2000	Printers/publishers
1998	Visserij maatschappij Kennemerland and Schmidt Zeevis Rotterdam B.V.	04-08-2000	Production of foodstuffs
1999	Intres B.V. and Combifoto Holding B.V.	24-07-2000	Retail trade
2001	Autobinck Holding N.V. and Autobedrijf Noteboom Rotterdam B.V.	18-07-2000	Trade in motor vehicles
2008	Nobia AB and Poggenpohl Möbelwerke GmbH	01-08-2000	Production of other products
2009	TNO Beheer B.V. and Holland Metrology N.V.	27-09-2000	Certification and inspection of measuring equipment
2012	The Carphone Warehouse Group Ltd. and Road Phone Telecom N.V.	31-07-2000	Retail trade

Number	Parties	Date	Sector
2014	HIM Furness N.V. and PMK Holding B.V.	22-09-2000	Trade in motor vehicles
2015	Europe Automatic Holding B.V. and Atag N.V.	22-08-2000	Production of machines and equipment
2023	Hewlett Packard Company, Douwe Egberts B.V., DECEM B.V., Sara Lee Household and Body Care Nederland B.V.	26-09-2000	Computer service and IT companies etc.
2029	Rodamco Continental Europe N.V. and Amvest Vastgoed B.V.	18-09-2000	Real estate development
2031	B&S International B.V. and Paul Wholesale B.V.	12-09-2000	Wholesale trade
2032	Cement Roadstone Holdings Plc. and Dijkbouw Beheer B.V.	10-08-2000	Retail trade
2033	Van Dijk Expl. Mij. BV and Brinkers Marg. Fabr.	13-09-2000	Production of foodstuffs
2038	Samsung Electronics Co Ltd. and Amfo Electronics B.V. etc.	24-08-2000	Wholesale trade
2041	AVR Recycling N.V. and Arcadis Heidemij Realisatie Grondreiniging B.V.	28-11-2000	Soil decontamination
2045	Pon Holdings B.V. and ROBA Almelo B.V.	24-08-2000	Trade in motor vehicles
2047	Van Dijk Exploitatiemaatschappij B.V. and Van den Bergh Nederland B.V.	19-09-2000	Production of foodstuffs
2051	Advent International Corporation, Vinnolit Monomer GmbH & Co KG, Vintron GmbH	29-09-2000	Production of PVC
2052	Almafin N.V., Jureko Property Holding B.V. etc. and Gran Dorado Port Zélande B.V.	07-09-2000	Holiday homes and holiday parks
2054	Intres B.V. and Combifoto Holding B.V.	30-08-2000	Retail trade
2059	Westvaco Corporation and Sony Music Printing B.V.	20-09-2000	Production of packaging materials
2064	Kamps AG and Bakkerij Schothuis	20-09-2000	Production of foodstuffs
2065	Verbrugge Terminals B.V. and N.V. Haven van Vlissingen	26-09-2000	Stevedoring, transshipment and storage activities
2068	Clondalkin Group B.V. and Frievaart Holding B.V.	09-10-2000	Production of packaging materials
2081	Perot System Investments B.V., Customer Management Services of KPN N.V.	28-09-2000	Computer service and IT companies etc.
2082	Koninklijke BAM Groep and NBM Amstelland B.V.	31-10-2000	Construction
2085	VINCI S.A.and Groupe GTM	18-10-2000	Building installations
2087	SPIE Trindel Europe B.V. and Electron Beheer B.V.	29-09-2000	Electrotechnical installations
2088	Autobinck Holding N.V. and Brezan Holding B.V.	21-09-2000	Automobile parts and accessories
2090	Stichting Pasteurziekenhuis and Stichting Ignatiusziekenhuis and Stichting Interconfessioneel Ziekenhuis De Baronie	04-10-2000	Healthcare
2092	TESSAG Technische Systems & Services AG and Smit Transformatoren N.V.	16-10-2000	Production of transformers
2094	Koninklijke Vendex KBB N.V. and It's Electronic Holding B.V.	01-11-2000	Retail trade
2097	Amicon and Coöperatieve Geové RZG u.a.	11-12-2000	Insurance and pension funds
2100	Ordina N.V. and Relan ICT B.V.	11-10-2000	Computer service and IT companies etc.
2103	CSM N.V. and Continental Sweets Netherlands B.V.	12-10-2000	Production of foodstuffs
2106	Stern Groep N.V. and Carplaza Holding B.V.	06-10-2000	Trade in motor vehicles
2109	Koninklijke IBC B.V. and Opstalan Holding B.V.	01-11-2000	Production of building materials
2114	Etos B.V. and Boots Stores B.V.	23-10-2000	Retail trade
2122	Plukon Poultry Holding B.V. and CAS Pluimvee B.V.	17-11-2000	Abbatoirs and meat processing
2129	Essent N.V. and N.V. Nutsbedrijven Maastricht	06-11-2000	Energy
2130	Eneco Holding N.V. and Gasdistributie Zeist en Omstreken	02-11-2000	Energy
2133	Rook Beheer B.V. and F.P. Bos en Zoon Beheer B.V.	03-11-2000	Production of building materials

Number	Parties	Date	Sector
2134	Houdstermaatschappij Dekker B.V. and Janssen de Jong Productie B.V.	03-11-2000	Production and trade in concrete
2135	PinkRoccade N.V. and TAS Groep N.V.	30-10-2000	Computer service and IT companies etc.
2139	Stern Groep N.V. and Auto Vandermeer Amersfoort B.V.	30-10-2000	Trade in motor vehicles
2140	HSBC Private Equity ltd. and Caradon Plumbing Limited and Caradon Heating Europe B.V.	09-11-2000	Production of sanitary systems
2141	Rémy Cointreau S.A. and Koninklijke Erven Lucas Bols N.V.	19-12-2000	Production of foodstuffs
2144	United Technologies Corporation and Specialty Equipment Companies Inc.	09-11-2000	Production of refrigeration equipment
2147	Omnigraph Group B.V. and Blikman & Sartorius B.V.	09-11-2000	Distribution and maintenance of printing presses
2155	NIB Capital N.V. and Itho B.V.	02-11-2000	Trade in installations systems
2162	Aalberts Industries N.V. and Mogema Holding B.V.	27-11-2000	Production of industrial components
2163	VastNed Offices/ Industrial N.V. and Uni-invest N.V	04-12-2000	Real estate/investments
2164	Royal Nederland Schadeverzekering N.V. and AXA Schade N.V.	23-11-2000	Insurance and pension funds
2167	Summit Motors Nederland N.V. and Blijdorp Beheer	17-11-2000	Trade in motor vehicles
2168	N.V. Delta Nutsbedrijven and Phoenyx B.V.	29-11-2000	Energy
2169	Stichting Pensioenfonds ABP and VIB N.V.	13-12-2000	Real estate/investments
2171	Bridgepoint Capital ltd., Alcontrol B.V. and Biochem Food B.V.	23-11-2000	Laboratory research
2176	Koninklijke Ahrend N.V. and Samas-Groep N.V.	07-12-2000	Office equipment
2177	Fabricom Groep N.V. and Axima B.V.	15-11-2000	Electrical and mechanical engineering
2181	Sligro Beheer B.V. and Prisma Food Beheer B.V.	15-11-2000	Retail trade in daily consumer products
2182	Pon Holdings B.V. and Kreek Holding B.V.	30-11-2000	Trade in motor vehicles
2185	N.V. Nuon and Norit N.V.	06-12-2000	Water purification
2189	Aalberts Industries N.V. and Hartman Groenlo Beheer B.V.	05-12-2000	Production of installation systems
2192	Datema Groep Rotterdam B.V. and Hellman International Forwarders GmbH	18-12-2000	Logistical services
2193	Stichting Volkshuisvestingsgroep Woonbron and Stichting Maasoevers	05-12-2000	Social housing
2208	Gilde Participaties B.V. and Peijnenburg B.V	08-12-2000	Production of foodstuffs
2211	Van der Sluijs Holding Statendam B.V. and Gebr. Jongste Beheer B.V.	29-12-2000	Filling stations
2214	N.V. Waterleidingmaatschappij Oost-Brabant and N.V. Waterleidingmaatschappij Noord-West-Brabant	19-12-2000	Energy
2218	Bandenspecialist Hofka + Sampermans B.V, Stoof Autobanden B.V., De Hoeve Autobanden B.V.	13-12-2000	Automobile parts and accessories
2224	Gilde Participaties B.V. and Croky Chips B.V.	13-12-2000	Production of foodstuffs
2225	Janssen de Jong Groep B.V. and Hercuton B.V.	22-12-2000	Construction
2226	Van Gansewinkel Groep B.V. and Hanze Milieu Groep	29-12-2000	Recycling
2235	Charles Vögele Fashion B.V. and Confedex B.V.	15-12-2000	Retail trade
2236	Pon Holdings B.V. and AVC Beheer B.V.	27-12-2000	Wholesale trade in consumer electronics
2237	GTI N.V. and HCG Industrieservice B.V.	28-12-2000	Electrical and mechanical engineering
2238	Vivendi Environnement S.A. and Electricité de France	21-12-2000	Energy
2239	N.V. Nuon and Feenstra Verwarming B.V.	29-12-2000	Electrical and mechanical engineering
2244	Ratcliffe and ICI Chemicals Ltd and Crosfield Ltd.	22-12-2000	Production of basic chemicals

Number	Parties	Date	Sector
2249	TDG B.V. and Transport-Centrale Gelderland B.V.	29-12-2000	Logistical services
2252	Stonehaven Holding B.V. and Ahrend N.V.	22-12-2000	Office equipment
2265	AAC Groep B.V. and Buhrmann N.V.	29-12-2000	Computer service and IT companies etc.

Licence Required

1628	Laurus N.V. and Groenwoudt Groep	14-02-2000	Retail trade in daily consumer products
1710	Schuitema N.V. and A&P Holding B.V.	22-02-2000	Retail trade in daily consumer products

Decisions on Applications for Licences (in Accordance with Article 44(1) of the Competition Act)

1528**	Wegener Arcade N.V. and VNU Dagbladen B.V.	13-03-2000	Printers/publishers
1538	N.V. Holdingsmaatschappij De Telegraaf and Uitgeversmaatschappij De Limburger B.V.	05-12-2000	Printers/publishers
1628	Laurus N.V. and Groenwoudt Groep	03-07-2000	Retail trade in daily consumer products
1710	Schuitema N.V. and A&P Holding B.V.	24-07-2000	Retail trade in daily consumer products

Decisions in Accordance with Article 40 of the Competition Act

2015	Europe Automatic Holding B.V. and Atag N.V.	18-07-2000	Production of machines and equipment

Decisions in Accordance with Article 35(3) of the Competition Act

1628*	Laurus N.V. and Groenwoudt Groep	26-05-2000	Retail trade in daily consumer products
1710*	Schuitema N.V. and A&P Holding B.V.	26-05-2000	Retail trade in daily consumer products
2059	Westvaco Corporation and Sony Music Printing B.V.	27-12-2000	Production of packaging materials

Decisions in Accordance with Article 42(3) of the Competition Act:

1710*	Schuitema N.V. and A&P Holding B.V.	11-10-2000	Retail trade in daily consumer products

* An administrative appeal was filed against this decision.

** An appeal was filed against this decision.

4. Decisions Imposing Sanctions

No.	Parties	Date	Sector	Brief Description
1	Holdingmaatschappij De Telegraaf	16-02-2000	Media	The Director-General of NMa imposed an order subject to a penalty on NOS and HMG, requiring them to supply programme listings to De Telegraaf. In addition, in accordance with article 63(2) of the Competition Act, the suspensive effect of a possible appeal was withheld.*
25	Holland Dier Identiteit [Dutch Animal Identity] versus KNMvD and KDA	06-07-2000	Healthcare/veterinary sector	The Director-General of NMa decided against imposing a fine and/or an order subject to a penalty.
757	Chilly/Basilicum versus G-Star	12-01-2000	Retail trade	The Director-General of NMa determined that conditions with regard to minimum recommended prices, a prohibition on reselling and recommended prices, contained in the general conditions of Secon Groep B.V. violated article 6 of the Competition Act. A fine of NLG 500,000 was imposed on Secon Groep B.V. In addition, an order subject to a penalty was imposed requiring Secon Groep B.V. to remove the conditions that gave rise to the infringements.*
121 127 128 1057 1184 1185	Glasgarage Rotterdam versus Carglass	19-10-2000	Insurance and pension funds (excluding obligatory social insurance contributions)	With regard to the actions that were the subject of the report of 16 June 1999, the Director-General of NMa decided against imposing a fine or an order subject to a penalty on Carglass B.V., since Carglass had amended the system it used for granting group bonuses.*
1316	HWS Holding and Scheuten	13-10-2000	Production of glass	The Director-General of NMa determined that a breach of article 34 of the Competition Act could be attributed to Heywood Williams Group Plc and Mr J.B.H. Scheuten/J.B.H. Scheuten Management and imposed a fine of NLG 40,000 on Heywood Williams Group Plc. and a fine of NLG 40,000 jointly on Mr J.B.H. Scheuten/J.B.H. Scheuten Management, for which both are jointly and severally liable.
1774	Verkerk and Horn	28-06-2000	Retail trade	The Director-General of NMa imposed a fine due to the realisation of a concentration before the Director-General of NMa had taken a decision on the notification. The maximum fine of NLG 50,000 was imposed on each of the two undertakings that had effected the concentration.*

* An administrative appeal was filed against this decision.

5. Decisions on Administrative Appeals

No.	Parties	Date	Sector	Brief Description
199 209 227	Roodveldt Import Pegasus Nilsson & Lamm	22-08-2000	Retail trade in books, magazines, and office and school requisites	The Director-General of NMa declared that the administrative appeal against the rejection of the application for exemption of the system of vertical price maintenance in respect of foreign books, contained in the terms of delivery, was unfounded.
228	VEBIDAK	23-02-2000	Construction	The administrative appeal against the refusal to grant an exemption for a scheme, whereby an association of businesses determined the length of the guarantee period offered by its members, was declared to be unfounded.*
234	Centrale Organisatie voor de Vleessector [Central Organisation for the Meat Sector]	10-03-2000	Abattoirs and meat processing	The Director-General of NMa declared the administrative appeal to be unfounded. The applicant had not complied with the conditions for exemption, as contained in article 17 of the Competition Act.*
269	Takel en Berging	23-03-2000	Transport services	The decision, in which an exemption was granted for the Incident Management Salvaging Scheme [Bergingsregeling Incident Management (BIM)], was upheld in the ruling on the administrative appeal. *
275a	Libertel	08-09-2000	Telecommunications	The Director-General of NMa upheld the administrative appeal filed by Libertel, in so far as it was directed against the ruling that article 2(1) of the Service Provider Agreement, in combination with Annex 1 of the Service Provider Agreement, results in vertical price maintenance and is therefore in breach of article 6 of the Competition Act, and declared the remainder of the administrative appeal to be unfounded.*
275b	Libertel	08-09-2000	Telecommunications	The Director-General of NMa declared the administrative appeal filed by Unipart to be inadmissible.*
374	Saneringsregeling Varkens-slachterijen [Reorganisation Fund for Pig Abattoirs]	24-03-2000	Abattoirs and meat processing	The administrative appeal against the withholding of an exemption with regard to production limitations, contained in the reorganisation agreement in respect of pig abattoirs, was declared to be unfounded.*
461	Federatie agrotechniek [Federation of Agricultural Technology Companies]	20-07-2000	Agricultural services (excluding veterinary services)	The Director-General of NMa declared the administrative appeal against the granting of an exemption from article 6 of the Competition Act to be unfounded.

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

No.	Parties	Date	Sector	Brief Description
492	Vereniging van Bloemenveilingen in Nederland (VBN)[Association of Dutch Flower Auctions]	18-09-2000	Horticultural companies and services, agriculture and market gardening.	The Director-General of NMa declared that the administrative appeal filed by Snelcore was unfounded in all respects. The appeal filed by VBN was upheld in part and for the rest VBN's appeal was declared to be unfounded.*
650	Norsk Hydro Energy B.V. versus N.V. Samenwerkende Elektriciteits-productiebedrijven (Sep)	27-03-2000	Electricity	The administrative appeals were declared to be unfounded and inadmissible respectively. The fine of NLG 14 million imposed on Sep for the abuse of a dominant position was upheld.*
771	Sep Protocol	22-08-2000	Production and distribution of electricity, natural gas, steam and hot water	The Director-General of NMa declared that the administrative appeal was inadmissible because three of the plaintiffs had exceeded the periods in which the administrative appeal had to be submitted and furthermore because none of the plaintiffs could be deemed to be interested parties, in terms of the General Administrative Law Act.*
882	Amicon, a healthcare insurer, and Mr J.F.G. Trooster, a pharmacist from Goor	13-12-2000	Healthcare	The Director-General of NMa declared the administrative appeal filed by Mr J.F.G. Trooster to be unfounded in all respects.
1150	Avebe versus Sep	22-08-2000	Mineral oil and natural gas extraction and related services	The Director-General of NMa declared the administrative appeals to be inadmissible because the plaintiffs could not be deemed to be interested parties, in terms of the General Administrative Law Act.*
1225	Unipart versus Libertel	08-09-2000	Telecommunications	The Director-General of NMa declared the administrative appeals filed by Unipart to be inadmissible.*
1400	Nellen Seeds versus Nederlandse Vereniging voor Zaaizaad en Plantgoed	15-05-2000	Agriculture	The administrative appeal was declared to be inadmissible due to a lack of sufficient personal interest.
1561	Free Record Shop (FRS) versus KVB	27-06-2000	Publishers and printers	The Director-General of NMa declared the administrative appeal filed by FRS to be unfounded. The exemption granted in accordance with the Economic Competition Act continues to apply in accordance with the Competition Act.*
1777	United Technologies Corporation and Holland Heating Carrier Holding	21-07-2000	Production of machines and equipment	The Director-General of NMa declared the administrative appeal against part of the decision in relation to the concentration, against which an administrative appeal could be instituted, to be unfounded.*
1839	Plaintiff	16-06-2000	Services	The administrative appeal filed by the plaintiff was declared to be unfounded due to a lack of sufficient personal interest.

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

No.	Parties	Date	Sector	Brief Description
1903	J.A. van Marion	27-07-2000	Postal services and telecommunications	The Director-General of NMa declared the administrative appeal to be unfounded because Mr J.A. Marion could not be deemed to be an interested party, in terms of the General Administrative Law Act.

6. Decisions Taken by DTe in 2000 in Relation to Electricity

Decisions Taken by the Director of DTe in Relation to the Determination of Tariffs for 2000 for Connections to the Grid Managed by the Grid Manager

Number	Parties	Date
024	Determination of the connection tariffs of Netbeheerder Centraal Overijssel	18-09-2000
025	Determination of the connection tariffs of Continuon Netbeheer	18-09-2000
026	Determination of the connection tariffs of Delta Netwerkbedrijf	18-09-2000
027	Determination of the connection tariffs of EdelNet Delfland	18-09-2000
028	Determination of the connection tariffs of Elektriciteitsnetbeheer Utrecht	18-09-2000
029	Determination of the connection tariffs of Eneco Netbeheer	18-09-2000
030	Determination of the connection tariffs of ENET Eindhoven	18-09-2000
031	Determination of the connection tariffs of Essent Netwerk Brabant	18-09-2000
032	Determination of the connection tariffs of Essent Netwerk Friesland NW-ZO	18-09-2000
033	Determination of the connection tariffs of Essent Netwerk Limburg	18-09-2000
034	Determination of the connection tariffs of Essent Netwerk Noord	18-09-2000
035	Determination of the connection tariffs of EWR Netbeheer	18-09-2000
036	Determination of the connection tariffs of InfraMosane	18-09-2000
037	Determination of the connection tariffs of Netbeheer Midden-Holland	18-09-2000
038	Determination of the connection tariffs of Netbeheer Nutsbedrijven Weert	18-09-2000
039	Determination of the connection tariffs of Netbeheer Zuid-Kennemerland	18-09-2000
040	Determination of the connection tariffs of Noord West Net	18-09-2000
041	Determination of the connection tariffs of ONS Netbeheer	18-09-2000
042	Determination of the connection tariffs of Rendo Netbeheer	18-09-2000
043	Determination of the connection tariffs of TenneT	21-09-2000
044	Determination of the connection tariffs of Transportnet Zuid-Holland	21-09-2000
045	Determination of the connection tariffs of Westland Energie Infrastructuur	18-09-2000
070/071	Amendment of Decisions Nos 031 and 033 for official reasons	14-11-2000

Decisions by the Director of DTe in Relation to the Determination of Efficiency Discounts (Price Caps) for the Period from 2001 up to and Including 2003

047	Determination of the efficiency discount (price cap) of Netbeheerder Centraal Overijssel	22-09-2000
048	Determination of the efficiency discount (price cap) of DELTA Netwerkbedrijf	22-09-2000
049	Determination of the efficiency discount (price cap) of EdelNet Delfland	22-09-2000
050	Determination of the efficiency discount (price cap) of Essent Netwerk Noord	22-09-2000
051	Determination of the efficiency discount (price cap) of Elektriciteitsnetbeheer Utrecht	22-09-2000
052	Determination of the efficiency discount (price cap) of ENECO NetBeheer	22-09-2000
053	Determination of the efficiency discount (price cap) of ENET Eindhoven	22-09-2000
054	Determination of the efficiency discount (price cap) of Netbeheer Zuid-Kennemerland	22-09-2000
055	Determination of the efficiency discount (price cap) of Essent Netwerk Friesland NW-ZO	22-09-2000
056	Determination of the efficiency discount (price cap) of InfraMosane	22-09-2000
057	Determination of the efficiency discount (price cap) of Essent netwerk Limburg	22-09-2000
058	Determination of the efficiency discount (price cap) of Netbeheer Midden-Holland	22-09-2000
059	Determination of the efficiency discount (price cap) of NuonNet (in the process of being established)	22-09-2000
060	Determination of the efficiency discount (price cap) of ONS Netbeheer	22-09-2000
061	Determination of the efficiency discount (price cap) of Essent Netwerk Brabant	22-09-2000
062	Determination of the efficiency discount (price cap) of RENDO Netbeheer	22-09-2000
063	Determination of the efficiency discount (price cap) of TenneT	22-09-2000
064	Determination of the efficiency discount (price cap) of Transportnet Zuid-Holland	22-09-2000

No.	Parties	Date
065	Determination of the efficiency discount (price cap) of Netbeheer Nutsbedrijven Weert	22-09-2000
066	Determination of the efficiency discount (price cap) of Westland Energie Infrastructuur	22-09-2000
067	Determination of the efficiency discount (price cap) specifically in relation to the Uniform National Tariff for Producers [Landelijk Uniform Producententarief (LUP)]	22-09-2000
076 up to and including 083	Amendments to Decision Nos 063, 064, 065, 050, 057, 061, 067 and 062	01-12-2000

Decisions by the Director of DTe in relation to the determination of connection and transmission tariffs for 2001

001	Amendment of Decision No. 1999-018 in respect of the transmission tariffs of EDON Netwerk	26-01-2000
002	Amendment of Decision No. 1999-023 in respect of the transmission tariffs of PNEM Netwerk	26-01-2000
003	Amendment of Decision No. 1999-025 in respect of the transmission tariffs of MEGA Limburg Netwerk	26-01-2000
004	Amendment of Decision No. 1999-019 in respect of the transmission tariffs of Frigem Netwerk	26-01-2000
005	Amendment of Decision No. 1999-009 in respect of the transmission tariffs of Eneco Netbeheer	26-01-2000
022	Amendment of Decision No. 1999-028 in respect of the transmission tariffs of Continuon Netbeheer	06-09-2000
085	Determination of the connection and transmission tariffs for 2001 Netbeheerder Centraal Overijssel	Dec. 2000
086	Determination of the connection and transmission tariffs for 2001 DELTA Netwerkbedrijf	13-12-2000
087	Determination of the connection and transmission tariffs for 2001 EdelNet Delfland	13-12-2000
088	Determination of the connection and transmission tariffs for 2001 Essent Netwerk Noord	13-12-2000
089	Determination of the connection and transmission tariffs for 2001 Elektriciteitsnetbeheer Utrecht	13-12-2000
090	Determination of the connection and transmission tariffs for 2001 ENECO NetBeheer	13-12-2000
091	Determination of the connection and transmission tariffs for 2001 ENET Eindhoven	13-12-2000
092	Determination of the connection and transmission tariffs for 2001 Netbeheer Zuid-Kennemerland	13-12-2000
093	Determination of the connection and transmission tariffs for 2001 Essent Netwerk Friesland NW-ZO	13-12-2000
094	Determination of the connection and transmission tariffs for 2001 InfraMosane	13-12-2000
095	Determination of the connection and transmission tariffs for 2001 Essent netwerk Limburg	13-12-2000
096	Determination of the connection and transmission tariffs for 2001 Netbeheer Midden-Holland	13-12-2000
097	Determination of the connection and transmission tariffs for 2001 NuonNet (in the process of being established)	13-12-2000
098	Determination of the connection and transmission tariffs for 2001 ONS Netbeheer	13-12-2000
099	Determination of the connection and transmission tariffs for 2001 Essent Netwerk Brabant	13-12-2000
100	Determination of the connection and transmission tariffs for 2001 RENDO Netbeheer	13-12-2000
101	Determination of the connection and transmission tariffs for 2001 TenneT	13-12-2000
102	Determination of the connection and transmission tariffs for 2001 Transportnet Zuid-Holland	13-12-2000
103	Determination of the connection and transmission tariffs for 2001 Netbeheer Nutsbedrijven Weert	13-12-2000
104	Determination of the connection and transmission tariffs for 2001 Westland Energie Infrastructuur	13-12-2000
105	Uniform National Transmission Tariff for Producers for 2001	13-12-2000
125/126	Amendment for official reasons to Decision Nos 101 and 104	21-12-2000

Decisions of the Director of DTe in relation to the determination of supply tariffs for 2001

106	Determination of the supply tariffs for 2001 Centraal Overijsselse Nutsbedrijven	19-12-2000
107	Determination of the supply tariffs for 2001 Continuon Energielevering (in the process of being established)	19-12-2000
108	Determination of the supply tariffs for 2001 DELTA Nutsbedrijven	19-12-2000
109	Determination of the supply tariffs for 2001 ENECO	19-12-2000
110	Determination of the supply tariffs for 2001 Energy Delfland	19-12-2000
111	Determination of the supply tariffs for 2001 ENECO Energie Zuid-Kennemerland	19-12-2000
112	Determination of the supply tariffs for 2001 ENECO Energie Midden Holland	19-12-2000
113	Determination of the supply tariffs for 2001 EnerMosane	19-12-2000
114	Determination of the supply tariffs for 2001 Essent Energie Brabant	19-12-2000

No.	Parties	Date
115	Determination of the supply tariffs for 2001 Essent Energie Friesland NW-ZO	19-12-2000
116	Determination of the supply tariffs for 2001 Essent Energie Limburg	19-12-2000
117	Determination of the supply tariffs for 2001 Essent Energie Noord	19-12-2000
118	Determination of the supply tariffs for 2001 Nutsbedrijf Regio Eindhoven	19-12-2000
119	Determination of the supply tariffs for 2001 ENECO Energie Weert	19-12-2000
120	Determination of the supply tariffs for 2001 Westland Energie Services	19-12-2000
121	Determination of the supply tariffs for 2001 ONS Energie	19-12-2000
122	Determination of the supply tariffs for 2001 REMU Levering	19-12-2000
123	Determination of the supply tariffs for 2001 RENDO	19-12-2000

Decisions of the Director of DTe on Administrative Appeals Lodged with DTe

013	Decision on the administrative appeal against Decision No. 1999-002 in relation to the determination of tariff structures	19-06-2000
016	Decision on the administrative appeal against Decision No. 1999-005 in relation to the determination of part of the technical conditions	17-07-2000
017	Decision on the administrative appeal against Decision No. 1999-006 in relation to TenneT's tariffs for 2000	24-07-2000
020	Decision on the administrative appeal against Decision No. 1999-007 in relation to the determination of the Uniform National Producers' Tariff [Landelijk Uniform Producententarief]	31-08-2000
046	Decision on the administrative appeal against Decision No. 1999-028 in relation to the determination of grid tariffs for 2000 for Delta Netwerkbedrijf	15-09-2000
069	Decision on the administrative appeal against Decision No. 1999-024 028 in relation to the determination of grid tariffs for 2000 for ENet Eindhoven	13-10-2000
075	Decision on the administrative appeal against Decision No. 1999-008 028 in relation to the determination of grid tariffs for 2000 for TZH	21-11-2000
128	Decision on the administrative appeal against Decision No. 1999-021 028 in relation to the determination of grid tariffs for 2000 for Netbeheerder Centraal Overijssel	21-12-2000
129	Decision on the administrative appeal against Decision No. 1999-028 in relation to the determination of grid tariffs for 2000 for DELTA Netwerkbedrijf	21-12-2000
130	Decision on the administrative appeal against Decision No. 1999-013 in relation to the determination of grid tariffs for 2000 for Edelnet Delfland	21-12-2000
131	Decision on the administrative appeal against Decision No. 1999-017 in relation to the determination of grid tariffs for 2000 for Elektriciteitsnetbeheerder Utrecht	21-12-2000
132	Decision on the administrative appeal against Decision No. 1999-009 in relation to the determination of grid tariffs for 2000 for ENECO Netbeheer	21-12-2000
133	Decision on the administrative appeal against Decision No. 1999-026 in relation to the determination of grid tariffs for 2000 for InfraMosane	21-12-2000
134	Decision on the administrative appeal against Decision No. 1999-020 in relation to the determination of grid tariffs for 2000 for RENDO Netbeheer	21-12-2000
135	Decision on the administrative appeal against Decision No. 1999-027 in relation to the determination of grid tariffs for 2000 for Netbeheer Nutsbedrijven Weert	21-12-2000
136	Decision on the administrative appeal against Decision No. 1999-014 in relation to the determination of grid tariffs for 2000 for Westland Energie Infrastructuur	21-12-2000

Decisions of the Director of DTe in Relation to the Determination of the Technical Conditions

011	Decision amending the Grid and System Codes (quality criteria)	12-04-2000
068	Decision amending the Tariff Code (abolition of the Uniform National Producers' Tariff on imports and the introduction of a tariff for the creation of reserves)	16-11-2000

No.	Parties	Date
074	Decision amending the Grid Code (auction). This decision must be read in conjunction with a	16-11-2000
073	separate decision in respect of the reserving of capacity with priority for TenneT	
127	Decision amending the System Code (programme management)	19-12-2000
124	Decision amending the Grid and System Codes (compulsory supply of power for the elimination of limitations on transmission and for control and reserve power)	21-12-2000

Decisions of the Minister of Economic Affairs in Relation to the Determination of Supply Tariffs and Amendments to These, Based on the Advice of the Director of DTe

006	Decision amending Decision No. 1999-038 of the Minister of Economic Affairs in relation to the supply tariff of EDON Levering	15-02-2000
007	Decision amending Decision No. 1999-039 of the Minister of Economic Affairs in relation to the supply tariff of FRIGEM leveringsbedrijf	15-02-2000
008	Decision amending Decision No. 1999-046 of the Minister of Economic Affairs in relation to the supply tariff of MEGA-Limburg	15-02-2000
009	Decision amending Decision No. 1999-044 of the Minister of Economic Affairs in relation to the supply tariff of PNEM Energielevering	15-02-2000

Decisions of the Minister of Economic Affairs in Relation to the Determination of Reverse Supply Tariffs and Amendments to These, Based on the Advice of the Director of DTe

010	Decision amending Decision No. 1999-051 of the Minister of Economic Affairs in relation to reverse supply tariffs	15-02-2000

7. Decisions Taken by DTe in 2000 in Relation to Gas

019	Determination of the Temporary Guidelines for 2001, as referred to in articles 13 and 18 of the Gas Act	25-08-2000

Advice Given by DTe in 2000 in Relation to Electricity

	Exemption from the obligation to appoint a grid manager	31-01-2000
	Efficiency discounts (price caps) applicable to licence holders	26-09-2000
	Conditions applicable to the auction of import capacity	09-11-2000

Annex II Court Rulings

1. Rulings of the (Presiding Judge of the) District Court of Rotterdam

Contrary to the provisions of the General Administrative Law Act, only the District Court of Rotterdam is competent to hear appeals filed in accordance with the Competition Act. The appeals that reached a conclusion in the year under review are listed below. In addition, the rulings of the presiding judge of the District Court of Rotterdam on requests to grant preliminary injunctions, as referred to in article 8:81 of the General Administrative Law Act are also listed.

District Court of Rotterdam

Number	Parties	Date	Brief Description
51	Stibat	28-06-2000	The appellant withdrew the appeal.
MEDED 99/382-SCR MEDED 99/459-SCR	Loke versus CBR	12-04-2000	The appeal was directed against the rejection of the complaint brought against CBR, on the grounds that CBR was not a company. The Court declared the appeal to be unfounded.
MEDED 99/602-SCR	VBBS	04-02-2000	The appeal was directed against the fact that the administrative appeal against a provisional ruling with regard to the assessment of an application for exemption had been dismissed. The District Court declared the appeal to be unfounded.
MEDED 00/573-SIMO MEDED 00/874-SIMO MEDED 00/875-SIMO	Wegener	16-10-2000	The District Court upheld the appeal filed by Wegener and reversed the decision by the Director-General of NMa, granting a licence, in respect of two conditions and limitations, subject to which the concentration licence was granted. The appeals filed by the Editorial Board of Wugo-middagbladen et al. were declared to be inadmissible.
1583	Limburger and De Telegraaf	14-09-2000	The appellant withdrew the appeal.
1705	Strukton – Colijn	04-04-2000	The appellants withdrew the appeal.
MEDED 00/1617-SIMO	Mr van Marion -postboxes	12-09-2000	The appeal brought by Mr Van Marion was declared to the inadmissible due to his failure to pay the Court registry fee. The appellant filed an objection to this.

Presiding Judge of the District Court of Rotterdam

VMEDED 98/2245-POE	Telegraaf versus NOS and HMG	22-06-2000	NOS and HMG petitioned the Court to have the decision taken by the Director-General of NMa on 16-02-2000 suspended. This petition was granted with regard to the lifting of the suspensive effect of the order subject to a penalty.
492	Vereniging van Bloemenveilingen [Association of Dutch Flower Auctions]	22-09-2000	The application for a preliminary injunction was withdrawn.
VMEDED 00/1409-DLD	Limburger and De Telegraaf	19-07-2000	The application to suspend the conditions, subject to which the concentration licence of 12 May 2000 had been granted, was denied.

Number	Parties	Date	Brief Description
1956	Laurus and Groenwoudt	08-06-2000	The application of for a preliminary injunction was withdrawn.
1947	Dental Prostheticians	04-07-2000	The application of for a preliminary injunction was withdrawn.

2. Rulings of the Trade and Industry Appeals Tribunal

The District Court of Rotterdam is competent to rule on appeals against decisions taken by the Director-General of the Netherlands Competition Authority. It is possible to appeal to the Trade and Industry Appeals Tribunal against decisions of the District Court of Rotterdam. The Trade and Industry Appeals Tribunal was the only competent court under the Economic Competition Act, the precursor of the Competition Act. The Trade and Industry Appeals Tribunal passed judgment in relation to two appeals against decisions taken by the Minister of Economic Affairs in accordance with the Economic Competition Act. In addition, the President of the Trade and Industry Appeals Tribunal ruled on an application made by a third interested party for a preliminary injunction, pending an appeal to the Tribunal.

No.	Parties	Date	Brief Description
AWB 97/1573 and 1574 9000	Betapress B.V., AKO B.V. versus the Minister of Economic Affairs. Edipress International B.V. and Bruna B.V. were also parties to the petition.	08-12-2000	Article 24 of the Economic Competition Act; the Tribunal ruled that the ruling on these grounds was not germane to the action brought by the parties and dismissed the appeals.
AWB 98/1150, 98/1151, 98/1152 9010	Vereniging het Nederlands Uitgevers-verbond [Dutch Publishers Association], et al. versus the Minister of Economic Affairs. Kommunikatie service bureau KSB was also a party to the action.	12-01-2000	Article 10, 12 of the Economic Competition Act; decision in relation to horizontal price maintenance; articles 6, 17, 100, 103 of the Competition Act; appeals declared to be unfounded.
No. AWB 00/503 9500	F. van der Schaar versus the Director-General of NMa	19-06-2000	An application by a third interested party for a preliminary injunction, pending an appeal to the Tribunal, so that the applicant' s driving instructor would be able to accompany him during his driving test, was denied.

3. Rulings of Dutch Courts

The Competition Act may also be raised in proceedings involving different markets. The Civil Court hears these actions, often in interlocutory proceedings.

Court	Date	Cases	Number	Subject
Presiding judge in Alkmaar	13-01-2000	WINO/FTP Vis B.V. versus Coöperatieve Producentenorganisaties Wieringen U.A. et al.	462/1999 JJ	Price-fixing and market protection measures taken by organisations representing producers; Vo. 3759/92
Court of Appeal of The Hague	27-01-2000	Stichting Kraamzorg De Eilanden versus Zilveren Kruis U.A.	98/632	Article 24 of the Competition Act; cooperation agreement
Presiding judge in The Hague	07-02-2000	Denda Multimedia B.V. versus KPN Telecom B.V.	KG 00/123	Article 6 and 24 of the Competition Act; pricing of CD-telephone book; vertical price maintenance
Presiding judge in Leeuwarden	14-02-2000	Van de Steege versus Friese Ekologische Zuivel B.V.	2000/17	Article 6 of the Competition Act; purchasing of milk; Stichting Keten Kwaliteit Melk (KKM) [Foundation for Quality in the Milk Production Chain]
District Court of Middelburg	29-03-2000	Windpark Roggeplaat B.V. versus N.V. Delta Nutsbedrijven	645/1998	Article 24 of the Competition Act; payment of the Regulatory Energy Tax [Regulerende Energy Belasting (REB)]
District Court of Amsterdam	03-05-2000	The Store B.V. versus G-Star International B.V.	H 99.1494	Article 6 of the Competition Act; distribution agreement
District Court of Amsterdam	03-05-2000	Municipality of Amsterdam versus [defendant]	H 98.1557	Article 24 of the Competition Act; leasing of grant; land lease system
District Court of Amsterdam	03-05-2000	Municipality of Amsterdam versus [defendant]	H 98.2865	Article 24 of the Competition Act; leasing of grant; land lease system
Presiding judge in The Hague	12-05-2000	Union of European Football Associations (UEFA) versus European Tickets 2000	KG 00/522	Article 6 and 24 of the Competition Act; system for selling entrance tickets for EURO 2000
Court of Appeal, Arnhem	01-08-2000	J.B.H.F. Goos versus Hanos Apeldoorn B.V. et al.	99/339	Article 6 of the Competition Act; agreement to determine the relations hip between the parties; public order
Court of Appeal, 's-Hertogenbosch	03-08-2000	OZ Zorgverzekeringen U.A. et al. versus Medeco B.V.	KG C000042/BR	Article 24 of the Competition Act; cooperation agreement
Court of Appeal, Amsterdam	31-08-2000	WINO/FTP Vis B.V. versus Coöperatieve Producentenorganisatie Wieringen U.A. et al.	222/00KG	Article 24 of the Competition Act; organisations of producers; price discrimination
Presiding judge in Arnhem	27-09-2000	N.V. Provinciale Noordbrabantse Energiemaatschappij et al. versus N.V. Electricteitsproductiemaatschappij Oost- en Noord Nederland et al.	KG 2000/556	Article 6 of the Competition Act; electricity sector protocol
Presiding judge in Roermond	18-10-2000	Meulen Bouwpromotie B.V. et al. versus Mulleners Vastgoed B.V.	41032/ KGZA 00-240	Article 6 and 24 of the Competition Act; operating agreement; municipal price regulations
Presiding judge in Arnhem	24-10-2000	Electrabel N.V. versus N.V. Samenwerkende elektriciteitsproductiebedrijven	KG 00-569	Article 6 of the Competition Act; cooperation agreement

Court	Date	Cases	Number	Subject
Presiding judge in Arnhem	24-10-2000	Meulepas versus Zuivel Coöperatie Campina Melkunie U.A.	KG 2000/632	Article 6 and 24 of the Competition Act; purchasing of milk; Stichting Keten Kwaliteit Melk (KKM) [Foundation for Quality in the Milk Production Chain]
Court of Appeal Leeuwarden	29-11-2000	T.J. Lindeboom versus Albert Heijn B.V. et al.	9900269	Article 6 and 24 of the Competition Act; branch protection; relevant market
Presiding judge in Breda	13-12-2000	Alles Over Wonen Lokaal B.V. versus Uitgeversmaatschappij Zuid-West-Nederland B.V.	90586 KG ZA 00-589	Article 6 and 24 of the Competition Act; provisional order subject to a penalty in accordance with article 83 of the Competition Act; refusal of advertisements

The names of companies and organisations that are parties to these proceedings have been translated into English where this provides insight into the activities of the organisations in question. Not all of these organisations have official English translations of their names. The translations of the names of the organisations provided here are not official translations in all cases.

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