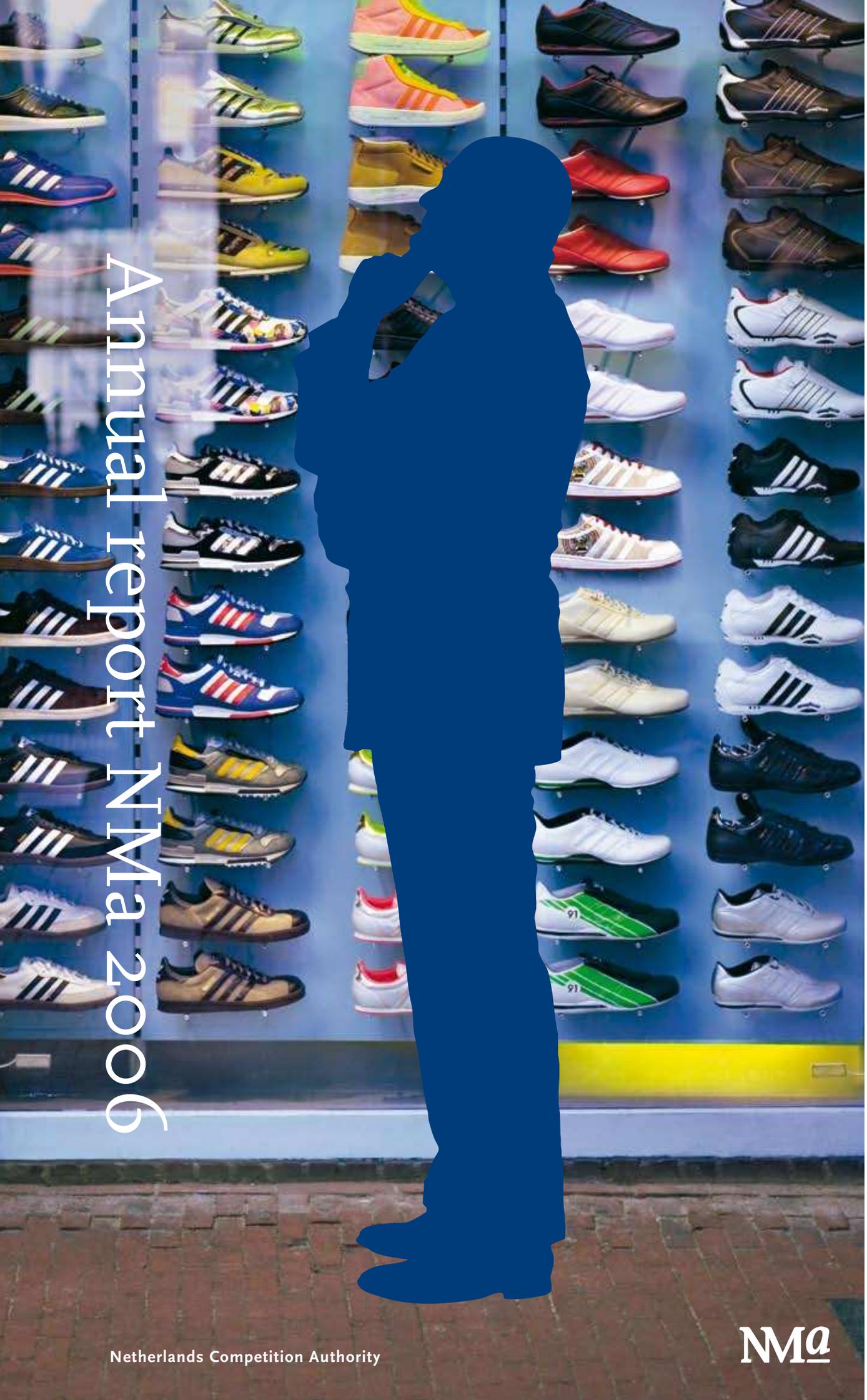


**MAKING MARKETS WORK**

**Annual report NMa 2006**



## Foreword

‘Making markets work requires a *joint effort*’. This variation on our mission statement provided the theme to the presentation of the NMa Agenda in January 2006. Involving consumers, business, fellow enforcement and regulatory authorities and politicians is vital to really making markets work. It is crucial for us to be in contact with our environment. For this reason, our policy plans are annually submitted to consultation prior to being published in the NMa Agenda. We welcome tip-offs and complaints, and give out as much information as we possibly can, for the benefit of business and discerning consumers alike. Here you may think of the recent launch of ConsuWijzer, a consumer information desk. In doing our job, we communicate with the market on a daily basis. This helps us develop a keen eye for market characteristics, which is necessary to finding the right balance in enforcement and to minimalising the administrative burden on business. In other words: the Netherlands Competition Authority (NMa) cannot and will not operate on its own.

Mutual trust and understanding are a prerequisite for any *joint effort* to make markets work. That is why we take great delight in sharing with you the ‘story of the NMa’. Its constitutive chapters, entitled ‘The mission’, ‘The strategy’, ‘The expertise’, ‘The effects’ and ‘The organisation’ make up the story of 2006, providing you with an answer to questions such as ‘What is the mission of the NMa?’, ‘What strategy has the NMa set out?’ and ‘What does the NMa actually do in practice?’. We conclude with a preview of 2007. The silhouette on the front of this annual report, fully profiled on the back cover, symbolises our wish to profile the NMa and put a ‘face’ to our work. The multicoloured cover image reflects the diversity of the markets that we deal with. In addition to the table of contents, various shades of blue, corresponding to the six chapters of this report, will help you ‘navigate’ and find information at a glance. There is a similar structure to each chapter of this report. First of all, the chapter title is briefly explored, followed by four colourful pages presenting a number of case histories under the heading of ‘In practice’. These sections highlight different facets of our work. Here you will also meet several of our members of staff, in dialogue with representatives of the business community and various colleagues working at fellow enforcement and regulatory authorities. The remaining pages to each chapter further explain our work over 2006.

We have successfully completed a more concise, yet informative annual report. More so than in previous years, you will find additional information on our website. A special page on [www.nmanet.nl](http://www.nmanet.nl) (under the menu item for Annual Report) provides a search engine that gives access to cases and relevant case law over 2006. Here you will also find this annual report, featuring a number of appendices, as well as previous annual reports, NMa Agendas (including the Agenda for 2006 and 2007) and useful links. You may also submit your reaction to this annual report here. By way of a bonus, the website offers a series of brief interviews referred to under ‘In practice’.

We look back on ‘a good year’. At the same time, we look forward to the year ahead, which marks our tenth anniversary. These are bound to be turbulent times, due to political developments. On behalf of the Board of the Netherlands Competition Authority, I would like to add that my sincere wish for 2007 is to make markets work, now and in future, for your benefit. I have full trust that by working together, we can do just that.

Pieter Kalbfleisch  
Chairman of the Board



A large, stylized handwritten signature in black ink, consisting of a long horizontal stroke and a large, looped initial 'P'.

# Annual Report NMa 2006

This is the story of the NMa.  
A story about a mission,  
about sanctions and guidance.  
A story about our people, about  
their knowledge of markets,  
the importance of independence  
and the aspiration to have an impact.

This is the story of the NMa in 2006.

**MAKING MARKETS WORK**

The mission

This is a story about the past,  
the future and markets today.

— THE MISSION



**René Jansen, Member of the Board:** “The importance of fair competition has become increasingly evident over the past ten years. As a regulator also, the NMa has now clearly defined its role .”

We are heading towards our tenth anniversary. We have developed into an organisation that is reckoned with. Our mission of ‘making markets work’ is the guiding principle.

#### Starting out

We started out in 1998, with a demand-oriented approach after receiving a deluge of cases submitted under the new Competition Act. At the time, we entered uncharted territory and still needed to ‘make our mark’. The pioneering nature of NMa activities has been evident up until today. Our core values have not changed: we aim to be effective, decisive, authoritative and realistic.

#### Broadening our base

On having worked our way through the vast bulk of cases, we gradually embarked on the age of ‘pro-active policy’. We continually developed new methodologies and procedures. We initiated market research and forensic investigations. These are a cornerstone to our work. It will always be important for the NMa to investigate, as research findings present the groundwork for our enforcement.

#### Fine-tuning

For several years now, we have lived in the age of ‘the effect’. In many kinds of ways, we want our activities to have an impact. This relates to all aspects of our work: investigation, sanctioning, regulation etcetera. The NMa therefore continually aims at fine-tuning the balance between the various means of enforcement at our disposal. By improving our grasp of effects, we learn to choose the right mix of sanctions and guidance. In this way, we boost our efficiency and minimise the administrative burden.



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# 1 What is the mission of the NMa?

‘Making markets work’. That is what the legislator expects us to do. We stimulate the sound operation of markets and enforce effective competition. A competitive environment promotes innovation, dynamics and efficiency, thus improving the competitive strength of the Netherlands. Businesses can be assured of a level playing field. Consumers benefit by an improved price/quality ratio and a wider range of choice. Competition brings forth prosperity.

## Tasks

The statutory tasks of the NMa comprise the enforcement of the Competition Act, the Electricity Act 1998, the Gas Act, the Passenger Transport Act 2000, the Railway Act and the Aviation Act. Also, the NMa is entrusted with enforcement of Article 81 and 82 EC Treaty within the Netherlands.

The NMa was given sector-specific powers and authority for the energy and transport sectors. Their implementation lies with two ‘chambers’ within the NMa: the Office of Energy Regulation (DTe) and the Office of Transport Regulation. We create synergy between the supervision of compliance with the Competition Act and sector-specific regulation. We also consider it important to cooperate with fellow enforcement and regulatory authorities, as well as work together at an international level.

## Outlook

Healthy competition is a primary condition for markets to function well. In the most effective and efficient way possible, we aim to prevent and remove restraints to competition. Companies may not impede competition by entering into agreements with competitors (cartel prohibition). In addition, they shall refrain from abusing a dominant position. Mergers and acquisitions may create such a dominant position. In instances where a viable level of competition cannot be achieved or is undesirable, we set out to attain the advantages of direct competition, passing on its benefits to consumers. We take a selective approach; we make choices by establishing priorities and selecting the most suitable instrument. In this process, it is of vital importance to strike a balance between imposing enforcement measures and creating room for development, as also between sanctioning and guidance. In this way, markets may work unhindered by excess administrative burdens.

### The NMa in previous years

**Foreword 1998:** “Many fascinating issues have crossed our path, and have been given plenty of attention in the media. The upshot of this has been that as the ‘cartel watchdog’ we were approached by many different parties, with Dutch industry realising before too long that the coming into effect of the Competition Act had forever changed the culture of the Dutch economy.”

**1999:** “Looking both forward and back, the predominant conclusion is one of satisfaction over the dynamic start made by the NMa in its second year of operations, but also that the many changes that lie ahead mean that the time for consolidation has not yet arrived.”

**2000:** “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. (...) Newspaper headlines no longer refer uncomfortably to ‘the cartel police’, but use the regulators own name.”

## The importance of competition

Competition brings forth prosperity. This principle cannot be emphasised too much nowadays, judging by the fact that the merits of competition are brushed aside all too easily from time to time. More so now than before, it is important for the NMa to remain visible and be effective. Markets must work and should continue to do so. This requires a constant effort on the part of enforcement and regulatory authorities as well as the political and business community, though critical consumers themselves also have a role to play. The NMa establishes that competition has noticeably improved. By tackling cartels and abuse of dominance, the NMa removes entry barriers to markets. These NMa interventions result in considerable benefits to society and provide business opportunities in a more open sector. The NMa also wants to prevent impediments to competition, for instance by assessing the potential effects of mergers and acquisitions as well as the impact of sector-specific regulation.

It is impossible for the NMa to manage on its own. Cooperation on a national as well as European level is vitally important. The Netherlands are not an island. Under the EC Treaty, the Netherlands cooperate with other EU Member States. Competition policy constitutes an important area for such collaboration. In helping create an internal, integrated market, the Netherlands contribute to a stronger and more dynamic European economy. Our open economy, in particular, benefits from innovative capacity and efficiency. Raising the level of competition is not an aim in itself. It should be considered a point of departure for building towards a more sustainable future, reflecting fundamental choices in structuring society: favouring a sound investment climate, the Dutch consumer and a prosperous Netherlands.

### The NMa in previous years

**Foreword 2001:** “The processing of applications for exemption for agreements that restrain competition developed as planned in 2001. (...) There is now more room for actually investigating and instituting proceedings against hardcore cartels. (...) The capacity that has been freed up is used to develop further methods for planned investigations into unacceptable competition practices.”

**2002:** “The investigation of infringements and the implementation and enforcement of competition rules and energy legislation is now well established. Experience and case law is developing. In the year under review, the NMa also chose to invest in the organisation and technology that supports investigations.”

**2003:** “The changes occurring within Europe mean that undertakings are increasingly required to make their own assessment of whether or not the collaborative ventures into which they enter are legally permissible. (...) When taking new paths in enforcement of competition law and regulation, the NMa and DTe are open to the opinions of market players about feasibility, effectiveness and viability.”

## The year 2006 in brief

The NMa Agenda 2006 outlined NMa enforcement policy and identified the areas of attention prioritised for the year ahead. The Agenda was drafted on the basis of a public consultation document published in the autumn of 2005. The NMa aims for transparency by stating the results and effects of its policy in this annual report. For the sake of clarity, the NMa Agenda 2006 is taken as an explicit point of reference. The annual report has a wider scope, however, as NMa activities go beyond the framework of the NMa Agenda. The areas of attention set out in the Agenda 2006 comprise the energy and transport sectors, both subject to regulation, as well as the healthcare sector, media and communication markets, the construction industry, the financial sector and liberal professions. In these areas we have lived up to our promises. We are proud of this result.

Media reports on the NMa focused on our core business of handling cases. The large number of cases in the construction industry, completed over 2006, exemplify this. In this sector, the NMa has imposed a total fine amounting to more than EUR 300 million. Regrettably, this does not bring to an end our handling of construction cases. In December 2006, we issued another two statements of objections for infringements committed before and after the Parliamentary Committee of Inquiry in 2002.

The expanding economy generates an increasing number of merger decisions, for instance in healthcare markets. In 2006 various healthcare markets showed interesting developments in the field of competition. The health insurance market is now in motion. Gradually, the contours of a national market have become visible. This meets a longstanding political wish.

In other areas of attention, and beyond, fine results have been achieved also. The NMa took on market research in the energy market and financial sector. Its analysis of codes of conduct and professional regulation among the liberal professions is nearing completion. The level of competition is bound to increase. Furthermore, various markets have been the subject of systematic and thorough analysis over 2006. This has resulted in specific enforcement programmes, which are to yield results in 2007. In 2006 the NMa also profited from its continuous investments in staff and their expertise. It has made further progress in the field of knowledge management, for instance by initiating the Bureau of the Chief Economist and by launching an in-house Legislation Centre and Appeal Centre. Sharing knowledge will benefit efficiency.

#### Sector-specific regulation

In the energy sector, the focus was on consumer protection and raising awareness. The NMa processed complaints and settled disputes. Monitoring prices is also important to consumer protection. The ConsuWijzer.nl website gives information on consumer rights and deals with a wide range of queries, helping consumers to take a more critical stance. The Office of Transport Regulation was given an important new task under the amended Aviation Act. The calculation system applied by Schiphol to establish the costs and revenues of aviation activities provided at the airport must now be submitted to the NMa for approval.

The advantages of synergy among the sector-specific regulators, DTe and the Office of Transport Regulation, and general competition enforcement – cartels, abuse of a dominant position and merger control – are becoming more and more apparent. This is illustrated by the Vision Document Mergers on the Energy Markets, published in November 2006. The informal opinion on the introduction of the OV Chip Card system is yet another fine example. Our staff's expertise and readiness to cooperate with one another, in combination with a wide arsenal of instruments, have resulted in an efficient and unequivocal approach. This is also important to achieving effects by working *together*.

#### The NMa in previous years

**Foreword 2004:** "Research was conducted into the quantification of economic results to produce an analysis of relevant 'outcomes'. The NMa and DTe do so in this annual report with a certain degree of reserve, because they are aware that the methodology for quantifying 'outcomes' is still being developed."

**2005:** "By means of this annual report we hope to increase your understanding of NMa activities (...). It is our aim to make visible the results and effects of NMa policy as achieved by the people and means that constitute the NMa. Also, we would like to increase our own understanding of the effects of NMa policy. Reflection is important to a learning organisation."

## The Agenda for 2007

On 9 January 2007 the NMa presented a new Agenda, outlining its policy principles for the new year. In brief:

- The maxim governing 2007 is: ‘cases, cases, cases’, well-suited to the working style of NMa staff: effective, decisive and realistic.
- Our performance is and will remain focused on being effective, involving quantitative effects as well as more qualitative ones. The latter include our aim to change patterns of thought in the sector.
- We are not blind to the administrative burden imposed on business as a result of our work. In all our activities over 2007 we will take into account the aim of reducing administrative burdens to a minimum.
- Since the start of the NMa we have benefited from cooperating with fellow competition and regulatory authorities. In 2007 also, the NMa will choose to cooperate if possible.
- In 2007 we aim to go about our business as a learning organisation. In the current employment market, it is eminently important to invest in people, their expertise and securing this expertise.

Over the past few years, you have seen the NMa involved in a process of change, which is set to continue into the near future. The NMa’s development is ongoing.

The strategy

‘Making markets work’  
often demands change.  
It may prove a troublesome  
process or run smoothly  
and at times even spontaneously.



**Peter Plug, Director of DTe:** “Regulation and general competition enforcement are different games entirely. Yet, they share a common vision. Our approach will vary for each individual case, as all markets are unique in their own way.”



In practice  
**ConsuWijzer**

**2 THE STRATEGY**

ConsuWijzer

Bestand Bewerken Beeld Favorieten Extra Help

Vorige Zoeken Favorieten

Adres <http://www.consuwijzer.nl/>

**C** → **consuWijzer** Praktisch advies over uw rechten als consument

Ik wil advies over

- Internet, telefonie, kabel en post
- Energie
- Elektronica en huishoudelijke apparatuur
- Huis en tuin
- Zorg en welzijn
- Vakantie en vrije tijd
- Vervoer
- Kleding en textiel
- Geld en verzekeringen

Zoek →

Actuele consumentenzaken

- 01-04-07 • De nummerinformatiedienst 118 verdwijnt
- 21-03-07 • Lokkertjes blijken grootste misleiding
- 20-03-07 • Gecombineerde telecommunicatiediensten in trek
- Meer

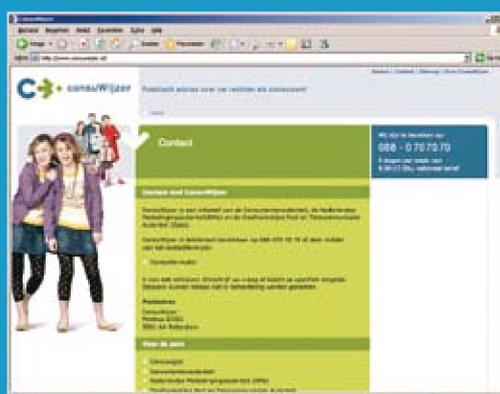
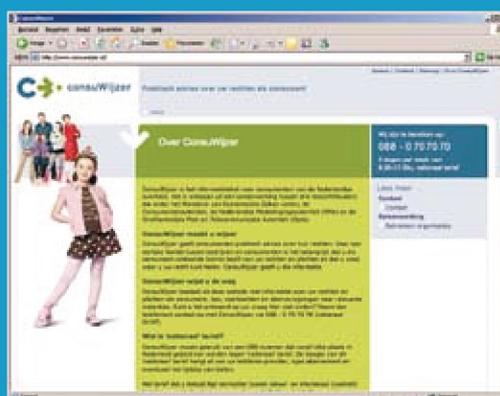
Bekijk de televisiespot

## In practice ConsuWijzer

### Introduction

We are in active dialogue with our environment, communicating in various ways while doing so. We regularly publish consultation documents, inviting the response from all parties interested. We also urge consumers to submit tip-offs, complaints and other kinds of information by contacting ConsuWijzer at [www.consuwijzer.nl](http://www.consuwijzer.nl) or on 088 070 70 70. ConsuWijzer is a consumer helpdesk which gives out practical advice on consumer rights. The helpdesk is jointly operated by the NMa, the Consumer Authority and OPTA. Cooperation among these authorities has resulted in a 'one-stop shop' for all consumer queries. By combining forces and

expertise, while also serving the purpose of reducing the administrative burden, the helpdesk provides optimal services. Consumers may submit complaints and ask for information on their legal position. Critical consumers too contribute to making markets work, as discerning customers force companies to compete. Also, ConsuWijzer functions as an important indicator of market development, pointing towards possible structural problems. Reports submitted may contain highly valuable information, strongly enhancing our effectiveness.



[www.consuwijzer.nl](http://www.consuwijzer.nl)

### ConsuWijzer

ConsuWijzer See: *'The strategy', Information services, p 19* receives many kinds of queries, complaints and tip-offs. Tip-offs and queries that cannot be adequately processed by ConsuWijzer staff are forwarded to the NMa, OPTA or the Consumer Authority. In case of the NMa, these usually concern technical queries on the Competition Act, the Electricity Act, the Gas Act and the various Transport Acts. Queries and complaints on structural problems (that we have the power to address) are also forwarded. Consumer switches from one energy supplier to another regularly provide grounds for complaint. Customers often receive their final settlement too late. Within the NMa, such

issues are being dealt with by DTe. In responding to the queries and complaints that are forwarded to us, we consider the degree to which the problem at hand is of a structural nature. If this proves to be the case, we will deal with the matter by intervention. In this way, complaints on aggressive canvassing methods have resulted in a code of conduct drawn up by the energy sector. This Code of Conduct Consumer and Energy Supplier [Gedragscode Consument en Energieleverancier] was established on the express wish of the NMa and applies to all suppliers associated in EnergieNed, the branch organisation for energy companies. The code of conduct contains regulation on canvassing and customer retention policy

See: *'The Agenda': Energy, p 44*

Reineke Keijzers-Bouma, Coordinating Manager Back Office DTe, NMa:  
“Many consumers contact ConsuWijzer with complaints about canvassing. We tell them about the code of conduct and point out that energy companies need to comply.’.”

John Appeldoorn, Operational Director Greenchoice: “We fully endorse this code of conduct. The NMa did well to urge its implementation. At the introduction of the code, we carefully checked our procedures.”



A healthy competitive culture is our prime focus. Bearing this in mind, we will impose sanctions. Sometimes, though, we look for dialogue. At all times, our intention is to find the best way of making markets work.

#### Sanctions

We impose sanctions in case of an infringement of the Competition Act or any other act for which we have powers of enforcement. Our sanctioning programme includes fines and periodic penalty payments. The construction industry is a case in point, as numerous fines were imposed on the sector. Sanctioning is at the heart of our work, not as an end in itself, but as a means of prevention.

#### Alternatives

The imposition of sanctions does not always represent the most effective enforcement instrument. If a company or sector shows willingness to do its utmost in order to effect a cultural change, the NMa may choose to solve the case at hand through dialogue. The sector-specific regulators within the NMa may impose sanctions, but also have regular meetings with the sector in order to bring about changes and improvements. In this way, the NMa provides guidance in the process of establishing self-regulation (which may include the introduction of a professional code of conduct, for instance).

#### Information

We enter into debate and set up dialogue on the importance of competition continuously. This will help promote a healthy competitive culture in the Netherlands. We also contribute by providing information on what we do, making available a huge number of merger decisions on our website, for instance. These inform about competitive relations over 2006. Businesses (and consumers) may thus learn about our outlook on competition and anticipate NMa policy decisions. This is also an efficient way of making markets work.

## 2 How does the NMa realise its mission?

Our mission is rooted in the law. This part of the annual report, entitled ‘The strategy’, will deal with the way in which we realise our mission. The NMa employs a wide range of instruments and strategies. These may entail sanctions, but can also aim to guide behaviour in a less severe manner, by pressing for changes in regulation, for instance. In order to do our job well, we try to gather and give out as much information as possible. To this end, we cooperate with fellow competition and regulatory authorities *See: ‘The expertise’: National cooperation, p 28*. Of course, we will account for how we realise our mission.

Strategy does not bear too much abstraction. It needs to be put into practice. This annual report, by means of the parts entitled ‘The expertise’ and ‘The Agenda, shows the practical outcome of NMa strategy in terms of regulation, market studies, alternative means of enforcement and sanctions. This part of the annual report will first set out the general principles on which our strategy is based.

### 2.1 Accountability

The NMa’s accountability for activities over 2006, as set out in this annual report, is twofold. First of all, the NMa is being held accountable by the Minister of Economic Affairs for the activities of the NMa Autonomous Administrative Authority [Zelfstandig Bestuursorgaan]. The Minister of Transport, Public Works and Water Management holds the NMa accountable for the activities of the Office of Transport Regulation. Also, the legislator must be fully informed about the NMa’s work. The Minister of Economic Affairs will therefore present the NMa’s annual report to Parliament. This is referred to as ‘vertical accountability’.

In addition, the NMa is accountable towards consumers, the business community, various interest groups and fellow competition and regulatory authorities. In daily practice, these parties regularly deal with the NMa and have a right to know why the NMa chooses to act in a particular way, how it goes about its work and what effects it generates. This is referred to as ‘horizontal accountability’.

The NMa annually completes the cycle of accountability. The cycle commences with the NMa Agenda, announcing NMa plans for the year ahead. In the course of the year, the NMa regularly communicates on its work. *See: ‘The strategy’: Information, p 19; ‘The expertise’: Information services, p 35 and ‘In practice’: Communication, p 92* At the beginning of the year the NMa publishes its Annual Bulletin, which summarises the most important results of the previous year. It is jointly issued with the next NMa Agenda. The annual report then brings the cycle to a close.

#### The NMa Agenda 2006

The NMa Agenda marks the starting point of the accountability cycle. The Agenda is drawn up after a public consultation round, through which the NMa maintains its close contacts with society. The NMa Agenda clearly defines what can be expected of the NMa. The NMa Agenda 2006 set out the theme of ‘making markets work’. It emphasised the need also to involve business and consumers in our effort to improve competition. The NMa indicated that it would particularly focus on healthcare, media and communications markets, the construction industry, the financial sector and liberal professions *See: ‘The Agenda’, p 44*. In 2006, the NMa also paid specific attention to the quality of its performance. The NMa Agenda provides the starting point for this annual report.

### 2.2 Sanctions

In 2006 the NMa took important steps towards consolidating the guidelines on the setting of fines for infringements under the NMa’s power of authority into a single Fining Code [Boetecode]. This code will incorporate current fining practice, particularly relating to the Guidelines on the Setting of Fines of 2001, as also provisions governing the setting of fines pursuant to other fining powers

under the Competition Act [Mededingingswet], the Electricity Act [Elektriciteitswet] and the Gas Act [Gaswet] and – in time – the Railway Act [Spoorwegwet] and the Aviation Act [Wet luchtvaart]. *[the NMa Guidelines on the Setting of Fines are available at [www.nmanet.nl](http://www.nmanet.nl)].* As in the case of all guidelines, the NMa remains within the statutory boundaries of the Competition Act and any other applicable regulations.

Since 2001, the NMa has provided guidelines for determining the level of fines for infringements of the prohibition on cartels or abuses of a dominant position (sections 6 and 24 of the Competition Act and Articles 81 and 82 of the EC Treaty) by means of the Guidelines for the Imposition of Fines of 2001. Prevention is the guiding principle, which includes both special prevention (penalising individual infringements and preventing repetitions) and generic prevention (using deterrents to ensure that undertakings do not infringe the Competition Act). On the basis of this principle, the NMa applies a fine base derived from the turnover realised during the infringement through the sale of goods and services to which the infringement relates, or the so-called ‘turnover involved’. The basic fine amounts to 10% of the turnover involved multiplied by a factor between 0 and 3, depending on the seriousness of the infringement. The duration of the infringement is expressed in the turnover involved.

## ‘Boetes voor 123 bedrijven wegens kartelafspraken’ NRC | 31-05-2006

The NMa has not yet published guidelines to setting fines for infringement of sector-specific legislation. Prevention is also the guiding principle in this area, but the NMa has opted for another fine base. The turnover involved is not, by default, a suitable criterion in dealing with infringements of energy and transport legislation. This is mainly due to the fact that infringements, or the interests to be protected, cannot be linked to a certain turnover or cannot easily be valued in money terms, and because by their nature the (statutory) norms are primarily directed towards (market) organisation. For this reason, the NMa opted for a fine base derived from the statutory maximum or the total turnover of the offender.

### Verification of the cessation of cartel practices

In May 2006, the NMa carried out follow-up investigations involving a number of undertakings. During company visits, investigations were carried out to ascertain whether companies had actually complied with commitments made earlier to cease anti-competitive behaviour. In addition, the NMa examined whether previously sanctioned companies and business associations had resumed or continued their former cartel behaviour. The NMa announced the follow-up investigation in general terms through the media.

#### 2.2.1

##### Leniency

The Leniency Office was established through the introduction of the Leniency Guidelines [Richtnoeren Clementietoezegging] in July 2002. The Office may grant fine immunity or a reduction of a fine to companies that are or have been involved in a cartel, if they notify the NMa of the cartel in question and cooperate in the investigation into the cartel. In 2006, the NMa received 11 leniency applications submitted by parties in various markets. In most cases, these resulted in the granting of fine immunity (which is only available to the first party to notify the NMa) or a considerable reduction in the fine. In this way, the Leniency Programme makes a substantial contribution to detecting and destabilising cartels. As from April 2006, the Office is housed under the Antitrust Department (the Office was previously part of the Merger Control Department). In 2006, its activities involved processing new applications for leniency submitted by parties in a variety of sectors and settling applications for leniency submitted by companies in the construction industry. Owing to the unprecedented scale of the cartel investigation, the so-called ‘Construction Case’ must be labelled as exceptional. It required the NMa to take a special approach. Meanwhile, however, regular rules and procedures have come to apply to these cases as well.

In 2006, the NMa started a review of its own leniency programme, taking into account extensive experience acquired over the years and the newly published European Model Leniency Programme. This European Model Leniency Programme was formulated on the basis of national input and its aim is to harmonise the programmes which exist alongside each other within Europe. *See: 'The expertise': International cooperation, p 29* The NMa has seized the opportunity to increase awareness of the existence and operation of the leniency programme among members of the business community and legal profession by publishing new Guidelines in 2007. The NMa aims to be accessible and therefore attaches particular importance to a clear and fair application of these Guidelines.

## 2.3 Several alternatives

### 2.3.1 Alternative enforcement

The NMa is aware of the various modes of enforcement available. The enforcement method is of considerable importance to the NMa's effectiveness. Following an investigation, the NMa may decide on using an alternative instrument. The compliance programme agreed with the branch organisation of pharmacies, KNMP, is a fine example. *See: 'The Agenda': Healthcare, p 54* The NMa also issues informal opinions, such as the opinion on the OV Chip Card [OV-chipkaart]. *See: 'The Agenda': Transport, p 61 and 'In practice': Synergy, p 76*

In 2006 the NMa issued 22 informal opinions. In deciding to honour a request for an opinion, NMa applies a 'yes, provided that'-policy to which the following requirements apply cumulatively:

- the matter must raise a new legal issue;
- a considerable social and/or economic interest must be at issue; and
- it must be possible to form an opinion on the basis of information provided by the applicant, in other words, without the need for the NMa to carry out further substantive research.

The NMa will not issue an opinion if a similar case is being dealt with by the NMa, the European Commission or any other competition authority, or if a relevant case is before the courts.

### 2.3.2 Remedies in merger control

The aim of merger control is to prevent the creation or strengthening of dominant positions. Dominant positions may restrict competition and, for this reason, mergers which have this effect may not be realised. In practice, it occurs fairly often that companies propose so-called 'remedies'. These are proposals aimed at removing competition concerns. If the NMa agrees to these, the parties may realise the merger or acquisition subject to the remedies. The NMa monitors compliance. If parties do not adhere to the remedies, the NMa may impose a fine or periodic penalty payment. In 2006, remedies were proposed in three cases after the NMa had identified competition concerns. In all three cases, the parties proposed divesting the activities which caused the competition concerns. NMa approved of this.

Though difficult to discern, the so-called anticipation effects of merger control are nevertheless of considerable importance. The NMa has conducted research into the effect of its merger control activities. Parties anticipate merger control policy by deciding against a merger or acquisition. Research findings established that almost 20% of mergers planned by companies are not realised or are realised in an amended form because companies and their advisers take into account the NMa's suspected response beforehand. As part of research activities, the consultancy firm Twynstra Gudde interviewed 15 competition lawyers employed at various law firms. The lawyers indicated that in their view NMa decisions were very transparent as well as predictable and, as a result, they were able to anticipate how the NMa would act. Approximately 12% of the merger plans of companies (15 mergers per year) are pursued in an amended form due to the anticipation effect. Approximately 6% of the initiatives (7.5 per year) are abandoned by the parties themselves due to the anticipation effect. The research indicates that the anticipation effect has improved over the years. Companies appear to anticipate the NMa's response by not continuing to merge and maintaining the status quo, or by adjusting their plans in line with the action they expect the NMa to take.

## 2.4 Information

### Contacting the NMa

Tip-offs, reports and complaints are of considerable importance to NMa. In order to establish sound enforcement practices, the NMa requires information about markets, submitted by market parties themselves. Companies may query and tip off the NMa on the subject of markets, competition and regulation through its website at [www.nmanet.nl](http://www.nmanet.nl). The website also contains a great deal of information on NMa decisions, the latest news and current regulation.

#### ConsuWijzer

Up until mid-2006, the NMa had its own information line for consumers. Since July 2006, consumers can obtain information and submit tip-offs and complaints at ConsuWijzer ([www.consuwijzer.nl](http://www.consuwijzer.nl), tel 088-070 70 70). ConsuWijzer is a joint initiative of OPTA, the Consumer Authority and the NMa. The desk gives practical advice on the rights of consumers, gives answers to questions and provides sample letters, information and tips, so that consumers can prepare themselves well *See: 'In practice': ConsuWijzer, p 12* In addition, the NMa still operates a business information line (0800-0231885).

Table 1: Contacts in 2006

Contacts in 2006	NMa Information Line (January to July 2006)	ConsuWijzer (July up to and including December 2006)	NMa Business Desk (July up to and including December 2006)	Total
Number	6,158	3,010	2,096	11,264

Since 2005, citizens may also tip off the NMa about anti-competitive practices through Meldpunt M (a service for reporting crime anonymously). In 2006, 10 anonymous tip-offs were received through this channel, which were passed on to NMa.

### Submission of tip-offs, reports and complaints

In 2006, work was done to prepare a number of tools for the submission of tip-offs, reports and complaints. To ensure that the NMa has the necessary data at its disposal, a 'Decision Application Form' will be introduced in 2007. This is consistent with the government's aim to make forms as comprehensible as possible.

Tip-offs and reports are as valuable as formal complaints. This is closely related to the fact that the NMa is required to enforce the Competition Act 'in the public interest'. In other words, the NMa will only be able to investigate a possible infringement following a complaint if doing so serves the interests of the Dutch economy sufficiently. Since the NMa has a limited number of employees and limited resources, and the number of complaints is many times greater than the number of investigations which NMa can conduct, the NMa has to set priorities and make choices.

### Discussion on competition culture in NMagazine

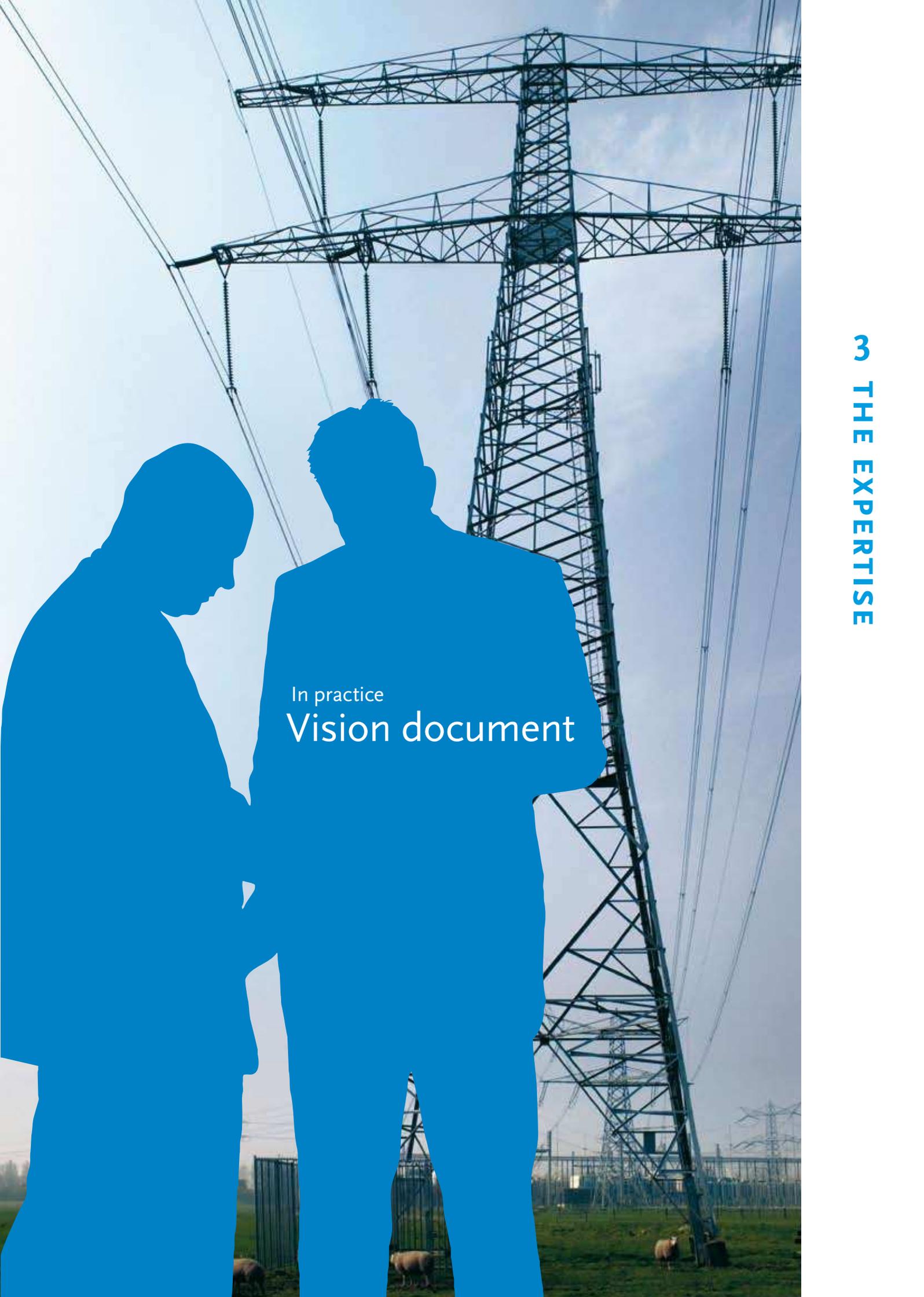
The NMa publishes a number of editions of NMagazine each year. This magazine provides a platform for discussion and information on healthy competition in the Netherlands. In the course of 2006, NMagazine was redesigned. This revamping was prompted, on the one hand, by the desire to make the dialogue which the NMa conducts with its environment more visible and, on the other hand, by cost savings.

The expertise

Market knowledge is the key,  
gathering knowledge the start,  
using expertise the essence.  
Compliance with the law is the aim.

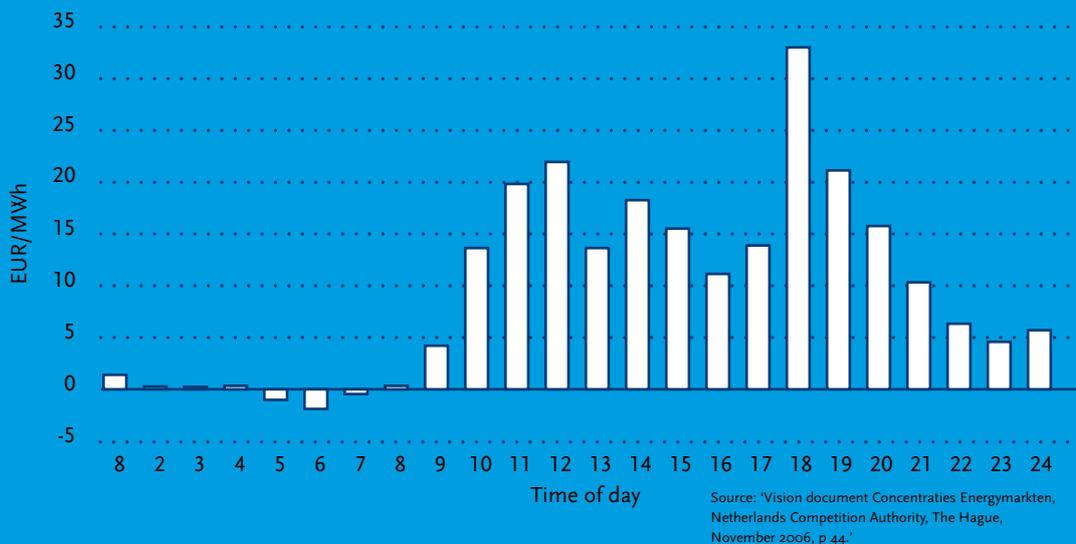


Hans Schönau, Director of the Merger Control Department: “Only part of our knowledge is available in writing; most of it lies in the heads of members of staff. We face the challenge of making it available to all NMa staff and must take care of long-term preservation also.”

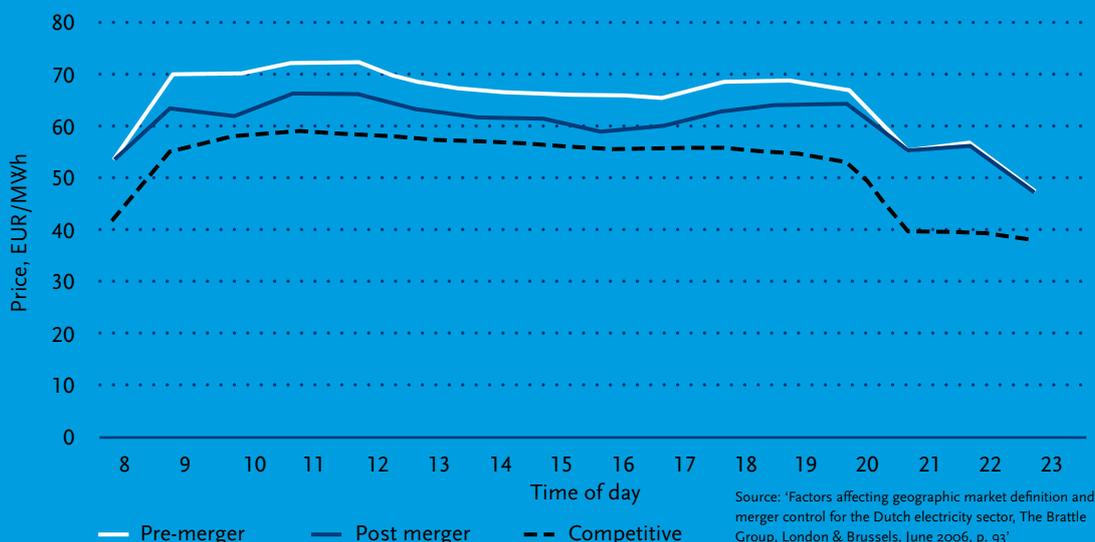
The image features a large, blue-tinted photograph of two men in business suits. They are shown in silhouette, looking down at a document held by the man on the right. The background consists of a tall, lattice-structured power line tower with multiple cross-arms and insulators, set against a clear sky. The overall scene suggests a professional meeting or a site visit related to the energy sector.

In practice  
Vision document

Average price differences per hour between the Netherlands and Germany, October 2005 – September 2006



Dutch prices predicted by the Cournot model before and after a Nuon-Essent merger



## In practice Vision document

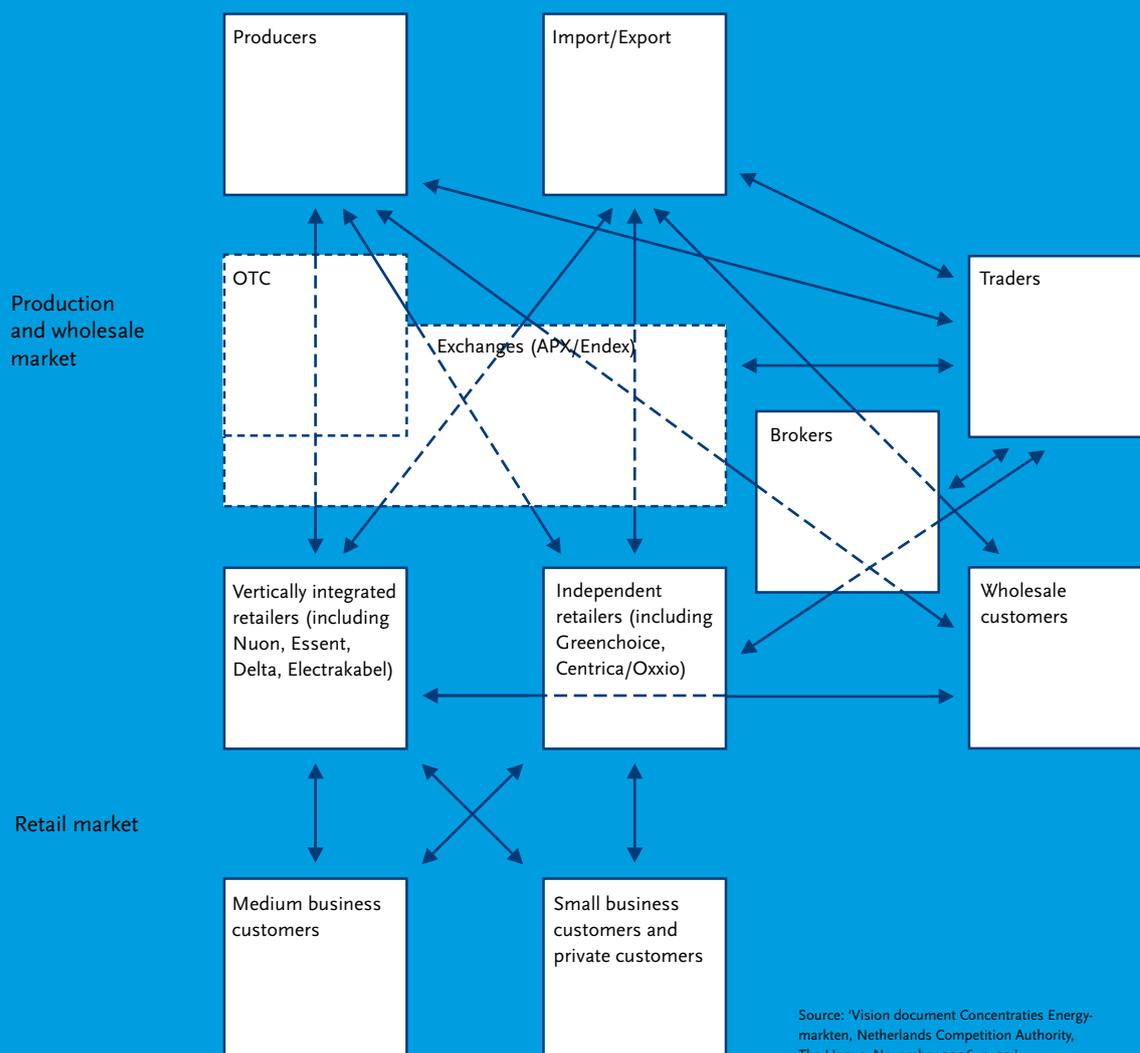
Knowledge is important. It is gained by performing various kinds of research: we investigate complaints submitted to ConsuWijzer, for instance, but we also regularly embark on research by taking the initiative ourselves. A fine example of the latter is the investigation leading up to the Vision Document on Mergers on the Energy Markets. By issuing vision documents as well as informal opinions, we give out advice to companies ('guidance') and ministries ('advocacy'). Our organisational structure – which is labelled a 'chamber model' – enhances efficiency in gathering knowledge by way of research. Alongside specific knowledge of the Competition Act, we now also have in-house knowledge of specific sectors.

### Vision document Mergers on the Energy Markets

In November 2006 the NMA published a vision document providing insight into how we assess domestic and cross-border mergers and acquisitions in the electricity sector. See: 'The expertise', Market research, p 27. In preparation of this vision document, we published a consultation paper, which yielded a significant number of substantiated reactions. Energy companies in the Netherlands and abroad submitted their response. In addition, we also received input from advisors, customer associations and academia. Meetings were held with a number of important players in the energy sector. The vision document is based on a sector study. It also incorporates the reactions to the consultation document.

The energy markets in Europe are in a state of flux. Mergers and acquisitions, often with cross-border dimensions, have become a focus of attention.

Electricity market diagram



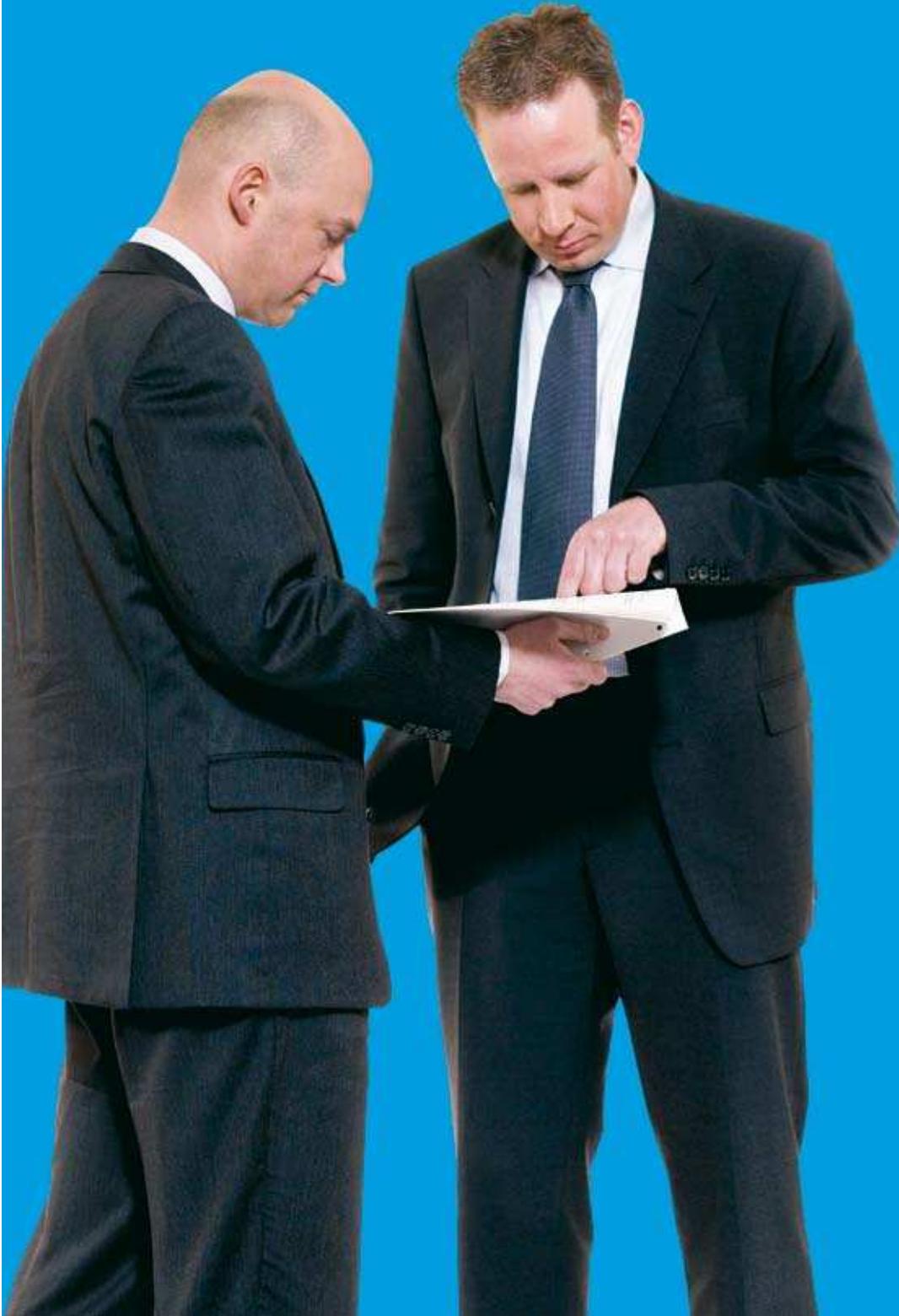
In 2006 Dutch media provided almost daily reports on advancing bids for concentration and their desirability in light of the assumed increase in international competition. By drafting the above-mentioned sector study, we seriously prepared for a possible merger between two major energy companies in the Netherlands. In preparing the sector study, the NMa project team involved closely collaborated with an economic bureau. Under the authority of the team, this bureau set up an investigation to identify the relevant geographical market and the merger's potential effects on competition. The relevant geographical market was established by applying common statistical methods taken from European competition practice. Alongside, a model analysis was carried out. We used various kinds of assessment methods to determine in what way potential concentrations could affect competition. These methods varied from charting

levels of concentration in terms of market shares to using simulation models, imitating the actual state of competition in the electricity market. The team consisted of staff from the Antitrust Department, Merger Control Department and DTe. During their investigation of the complex electricity market, set within in a European context, the team learnt a great deal about economic analyses and quantitative assessment methods. Research activities thus helped expand fields of expertise among staff at various NMa departments.

### 3 THE EXPERTISE

Marcel Vermeulen, Staff member at DTe, NMa “By combining our general knowledge of competition law and sector-specific expertise we have shown that for the time being a North West European electricity market is not yet forthcoming”.

Jan de Maa, Expert at Merger Control department, NMa “The NMa will therefore need to make a critical assessment of any merger between major electricity companies. Of course, we have the option of imposing conditions, bearing in mind all market developments”.



Our environment changes under the influence of legislation and case law, the growing importance of cooperation with fellow competition and regulatory authorities and the political climate. We are a learning organisation, so our knowledge grows accordingly.

#### Gathering knowledge

Knowledge is of immense importance to us. Market research provides the backbone to our work. We regularly issue vision documents, for example. We often gather knowledge by making use of open sources such as the Internet, research reports and other publications. At times sources prove inaccessible. We may then decide on pursuing an investigation ourselves by undertaking (unannounced) company visits, for instance.

#### Using knowledge

The market knowledge and experience of our staff is being called upon on a daily basis. All cases highlighted in this annual report make use of expertise that is available within the NMa. Education and training are a focus of attention. It is also essential that as much information as possible is retained and made easily accessible for NMa staff.

#### Spreading knowledge

Those in quest of information, should also give out information. We therefore frequently issue press releases. By exposing our findings and motives, we advertise our mission more widely and provide greater insight to businesses, consumers, ministries and politicians. These parties may anticipate on our activities and learn from our findings, thus enhancing compliance with the various laws which we enforce.

## 3 What kind of expertise does the NMa apply?

Previous parts of this annual report dealt with our mission and how we go about realising it. This chapter will focus on the knowledge used by the NMa. Knowledge of markets and legal developments is indispensable to the NMa's daily work. The NMa is therefore keen to gather and retain knowledge and invests much time and effort in doing just that. We regularly carry out market research in order to enlarge our knowledge and equip us in our advisory role towards business, consumers, ministries and the political community. We closely follow developments in the legal field and apply them to our daily business. We also focus on cooperating with competition and regulatory authorities at a national and international level. This generates new knowledge, while existing knowledge may be shared. Such an efficient approach will also reduce the administrative burden on business.

### 3.1 Market research

A number of markets are being structurally monitored by the NMa. In addition, the NMa performed several market studies in 2006. In so doing, it increased its knowledge of the markets concerned. Such knowledge may serve specific future investigations.

#### 3.1.1 Financial Sector Monitor

In specific instances, the NMa will publish its research findings, as illustrated by the monitor for the financial markets. In 2006 the Financial Sector Monitor (FSM) [Monitor Financial Sector] was issued for the fourth year running under the theme of 'New markets, new risks'. New markets provide new opportunities. Entrepreneurial skills may flower, existing market relations no longer prevail and innovations are given a chance. The emergence of new markets may have various causes, relating to innovations and changing needs among consumers, for instance. Also, two developments in particular prove to be catalysts for change: the retreating state and increasing individualisation. New markets show strong competition. Market relations are not yet established and customers are still to commit themselves to specific providers of choice.

## 'Stop voorspellen premies'

FD | 12-12-2006

Yet, 'new markets' may also be prone to substantial competitive risks. The annual theme of the FSM is therefore threefold: new markets, new risk bearers, new risks. Risks are diverse. At times, market players also are new and may not always be conscious of the anti-competitive impact of their behaviour. Players may show a stronger tendency for entering into mutual consultation. Also, consultation between the retreating state and the private sector often gives rise to mutual consultation among providers. In case of providers entering from adjacent markets, cross subsidising strategies may be employed in a particular market. Such potential causes for market failure and high risks prompted the NMa to prioritise five parts of the financial sector – new markets – for increased monitoring. These comprise the markets for health insurance, disability insurance, collective pension schemes, PIN payments and the European payment system. The state is retreating from the first three markets. Consumers show a greater need for freedom of choice and demand a wider range of products. As a result, new markets and submarkets emerge. The two latter sectors witness new markets emerging as a result of renewal at the supply side of the market or because of international market expansion.

The degree of novelty determines to what extent competitive relations within a market are subject to change. However, the NMa established that a number of new markets, investigated by the FSM 2006, did not show any increase in the risk to competition. In other markets it is necessary to remain vigilant. Here the monitor will continue to be active. In 'The Agenda' you will find more information on this topic. See: 'The Agenda': Financial sector, p 49

### 3.1.2 Energy

**Wholesale Gas Monitor and Wholesale Electricity Monitor:** The NMa annually publishes a wholesale market monitor for electricity and gas. In addition, a consumer monitor was published for the first time in 2006. In the wholesale gas monitor, the NMa concludes that competition in the electricity sector has slightly improved, mainly as a result of increased transparency. In the gas market, however, hardly any improvement was noted. In order to achieve improvement, it is important that a European or North West European market emerges. See: 'The Agenda': Energy, p 46

**Consumer Monitor:** The consumer monitor – monitoring the small retail market – sets out that Dutch consumers have as yet little confidence in the way the energy market operates. Though it is manifest that energy companies function better, consumers seem not to have experienced anything of the sort as yet. With a view to inspiring confidence, consumers should be given the opportunity to compare energy companies in a simple way. This requires the information provided to be of an accessible, comprehensible, complete and correct nature. The monitors have been made available on our website under the menu item for Jaarverslag

#### Sector inquiry concentration energy markets

The energy markets in Europe are in a state of flux. Mergers and acquisitions, often with cross-border dimensions, have become a focus of attention. In November 2006 the NMa published its vision document on "Concentrations on the Energy Markets" ["Concentraties Energiemarkten"] See: 'In practice': Vision document, p 22 This document will help companies gain insight into how the NMa assesses domestic and cross-border mergers and acquisitions in the electricity market. The NMa also advised on the development of markets by means of this document. Evidently, research activities involved contribute to the NMa's knowledge of current market practice.

Though some developments indicate an emerging North West European market, the NMa found that the electricity markets in Europe are of a predominantly domestic nature. The NMa would therefore have to impose conditions on a merger between two major Dutch energy companies in order to prevent a loss of welfare for end users. The vision document makes clear that future mergers of this kind may impede competition in the market for electricity production and wholesale trading in electricity during peak hours (from 7.00 am to 23.00 pm) and in the consumer market for electricity supplies. International competition in these markets is as yet insufficiently strong to discipline the market power of parties involved. Creating additional capacity for cross-border connections constitutes a basic requirement for the efficient operation of electricity markets in Europe and for establishing competitive prices for Dutch business (which is on the whole strongly internationally-oriented) and for end users. Substantial price differences exist between the Netherlands, Germany and Belgium. The import capacity that is now effectively available (ranging between 3,600 and 3,850 Megawatt) is not large enough to allow wholesale users and retail users (consumers) to benefit from the lower price level abroad. The effectively available import capacity needs to be expanded by an amount of at least 3000 Megawatt for a North West European market to materialise. With a view to competition, the national electricity network operators in the Netherlands, Germany and Belgium should develop a capacity and investment plan providing for the additional cross-border capacity that needs to be realised between the national networks at a North West European level. In assessing the impact of mergers on the Dutch markets, the NMa will take into account the dynamics of domestic and international market developments. In this regard, it cannot be ruled out that remedies of a temporary, flexible kind, for periods linked to the *de facto* emergence of a North West European market, may be accepted.

### 3.1.3 Petrol

In 2006 the NMa published its scan of the petrol market over 2005. This is to be the final edition of the scan. One of the concluding remarks states that price competition among motorway petrol stations seems to be lagging behind, while filling stations along the subsidiary network of main roads are in strong competition. In 2005 major companies retained their large market share in motorway petrol stations, in spite of the fact that a number of petrol stations came up for auction. On the basis of the scan, the NMa advised the Minister of Economic Affairs and the Minister of Finance to evaluate auction procedures.

### 3.1.4 School textbooks

As announced in the NMa Agenda 2006, the NMa monitored developments in the school textbook sector. It carried out a market 'scan', which charted the level and nature of competition in this market on the basis of extensive desk research and supplementary interviews. The conclusions to the market scan show a lack of price incentives. This is due to the fact that parties paying for the costs of school-books, i.e. the parents of pupils, do not determine which books are required. The NMa takes the view that the abolition of fixed prices for school textbooks in 2005 has not resulted in an increase in competition throughout the chain, as price incentives have in essence remained the same. The NMa has informed the Minister of Education, Culture and Science and the Minister of Economic Affairs of its research findings, as these may help shape policy.

### 3.1.5 Rail monitor

At a conference in early 2006, the Office of Transport Regulation with the NMa presented the conclusions to the rail monitor. The scope of the railway monitor covers all railway companies, the railway infrastructure operator and remaining parties entitled to services in the railway market. The most important question explored in the rail monitor relates to the problems encountered by railway companies on a daily basis. The monitor is to be an annual publication. It will appear from this monitor whether improvements to competition have indeed materialised over the years. The results of the monitor provide information on:

- compliance with the Railway Act;
- problems experienced by railway companies in complying with the Railway Act;
- barriers encountered by railway companies, impeding competition;
- the functioning of the Office of Transport Regulation.

The conclusions to the monitor 2005 are that the railway market considers capacity allocation and charging fees to be the main issues of concern. The Office of Transport Regulation subsequently prioritised these topics in its regulation policy for 2006. *See: 'The Agenda': Transport, p 59*

## 3.2 National cooperation

### 3.2.1 Cooperation NMa – Ministry of Economic Affairs (EZ)

Relations between the NMa and the Ministry of Economic Affairs are governed by a cooperation charter. However, individual cases dealt with by the NMa cannot be the subject of cooperation. The Ministry of Economic Affairs is responsible for drawing up and implementing policy. Staff members of the NMa and the Ministry meet once every other fortnight to discuss policy matters affecting the NMa. In addition, there are formal meetings between the Board of the NMa, the Minister of Economic Affairs and heads of the civil service. The NMa and the Ministry coordinate the handling of questions submitted by MPs. In this regard, the Ministry takes the lead and informs the NMa on the basis of its specific expertise. This approach also applies to the development of new legislation and policy memos that have or may have an effect on the NMa.

### 3.2.2 Cooperation with fellow competition and regulatory authorities

In order to raise efficiency and effectivity, the NMa cooperates with fellow competition and regulatory authorities if possible. In view of its mission 'to make markets work', which aims to benefit consumers,

the NMa highly values its relationship with the Consumer Association [Consumentenbond]. The NMa takes part in regular meetings with the Consumer Association, for instance on the subject of the NMa Agenda. The NMa Agenda 2006 outlined that cooperation with the Authority for the Financial Markets [Autoriteit Financiële Markten], the Central Bank of the Netherlands [De Nederlandsche Bank], the Public Prosecution Service [Openbaar Ministerie] and the Tax Inspection Office [ECD/FIOD] was to be a focus of attention in dealing with the financial sector. In 2006 cooperation was mainly achieved by ad hoc meetings and coordination in reaction to market developments.

#### Cooperation NMa-OPTA (Independent Postal and Telecommunications Authority)

The NMa and OPTA [Onafhankelijke Post and Telecommunicatie Autoriteit] have been working together for a long time. In 2006 OPTA and the NMa cooperated in preparing and launching ConsuWijzer. Cooperation activities also involved mutual consultation on specific cases, staff secondments and advisory activities. In view of mergers in the telecommunications sector, OPTA staff were seconded to the NMa. In addition, OPTA issued opinions commenting on the NMa's review of mergers in the telecommunications sector. For its part, the NMa assisted in OPTA investigations and provided a course on investigative methods. Finally, both authorities advised the ministry on frequency licensing procedures. OPTA and the NMa jointly advised the Minister of Economic Affairs on the issuance of GSM licenses.

#### Cooperation NMa- NZa (Dutch Health Authority)

On the effectuation of the Act Market Structure Healthcare [Wet Marktordening Gezondheidszorg (Wmg)], sector-specific competition law was introduced in healthcare. Pursuant to the Wmg, the NZa [Nederlandse Zorgautoriteit] may impose obligations on healthcare providers or health insurers that deploy appreciable market power. In October 2006 the NMa and NZa revised their protocol for collaboration. The protocol also deals with parallel powers. In common areas of supervision, the NZa will first act on the basis of the Wmg, prior to NMa enforcement pursuant to the Competition Act. Cases affecting cross-border trade between Member States of the European Union constitute an exception to this rule. Under these circumstances, European rules determine that national law is to take precedence, thus setting out that the NMa comes before the NZa. The protocol is the basis for sound cooperation. Alongside, more detailed agreements have been concluded on procedural matters of a more practical kind.

#### Cooperation NMa – Dutch Media Authority [Commissariaat voor de Media]

The NMa and the Dutch Media Authority have intensified mutual relations by means of a round table meeting on parallel powers in particular fields of work. The authorities took the opportunity to expound their views on media markets. The NMa chose to explore these in terms of competition. The Media Authority is responsible for the Media Act [Mediawet] and related provisions for quality, diversity of information supplies and fair access to media..

### 3.3 International cooperation

The NMa takes the view that international cooperation contributes to a more efficient performance. Various international networks provide a forum for the exchange of information and development of best practices. This is relevant to the fields of economic, sector-specific and general competition law. Sector-specific cooperation is dealt with in 'The Agenda'. See: *'The Agenda': Energy and Transport, p 44 and p 59*

#### 3.3.1 European Competition Network (ECN)

The European Competition Network is made up of national competition authorities and the European Commission. The main objective of cooperation is to tackle infringements that affect cross-border trade among European Member States and guarantee a uniform application of European competition law.

### ECN Working groups

ECN comprises a number of working groups that focus on specific issues. In 2006 the working group on leniency in particular achieved important results by drafting a new European Model Leniency Programme, as presented in September. This programme shall contribute to the convergence of national leniency programmes. *See: 'the strategy': Sanctions, p 16*

The Chief Competition Economists-ECN working group, established in 2005, is a network of economists striving for greater uniformity in the economic underpinning and analysis of cases. During the meeting held in September 2006, the Office of the Chief Economist with the NMa delivered several papers on 'outcome' and 'exploitative abuse'. Alongside its participation in ECN working groups, the NMa also contributes to a number of sectoral subgroups: Banking, Securities, Insurance, Food, Pharmaceuticals, Liberal Professions, Railways, Media, Healthcare, Energy, Motor Vehicles, Telecom and IT, Information and Communication and Sports.

### 3.3.2 Advisory committees

Under section 14 of EU Directive 1/2003, the European Commission consults with an advisory committee before it issues a final decision. For discussion of individual cases, advisory committees consist of representatives of competition authorities in the Member States. The NMa highly values participation, as Commission decisions may have an impact on national practice. The NMa is therefore keen to give its point of view in this advisory body. In 2006 the NMa attended ten committees on cartel cases and nine committees on mergers.

### 3.3.3 European Competition Authorities (ECA)

Since 2001 the ECA has provided a cooperative platform for competition authorities gathered in the CEES (Common European Economic Space) and the EFTA (European Free Trade Area). ECA primarily functions as a think tank. In May 2006 the directors and chairmen of competition authorities participating in ECA met in Nice. They discussed a report issued by the ECA Financial Services Subgroup. Also, the issue of sanctions was discussed. The NMa contributed to an analysis of sanctioning regimes among European competition authorities.

#### Report ECA Financial Services subgroup

This report was drawn up under the chairmanship of the NMa. It outlines views on the development of a single European payment market, as put forward by 29 European competition authorities. The report observes that the current retail payment markets feature high entry barriers, a high level of concentration, network effects, poor transparency and high switching costs for bank clients. As of yet, competition in these markets remains limited, despite the efforts of national authorities to realise improvements. If European integration yields economies of scale and also stimulates competition, bank clients will benefit as a result of sharper pricing. However, the effect of European integration may turn out to be a great deal less positive, or negative even, if integration has an adverse, limiting effect on competition. The national competition authorities in Europe take the view that several aspects of the internal market for payment services have not been sufficiently considered from the perspective of competition law. On the basis of this report, the European Commission, in conjunction with a number of national competition authorities, has set up a Task Force that will look into this more deeply. *See: 'The Agenda', Financial sector, p 51*

### ECA: exchange of staff

The NMa participates in an ECA exchange programme in order to learn from the experience of competition authorities abroad and gather information on relevant investigations. In 2006 exchanges took place with the Danish and Norwegian competition authorities.

### 3.3.4 International Competition Network (ICN)

The International Competition Network (ICN) annually organises a number of meetings for staff working at competition authorities worldwide. During the annual ICN conference the NMa presented a *Chapter on Digital Investigation*. This outlines *best practices* in the field of digital research techniques.

#### Cartel Workshop

The NMa organised this year's ICN Cartel Workshop, which took place in The Hague. Employees from 51 different authorities took part. The four-day Workshop is an important forum for sharing experiences and discussing developments in the field of competition. The Workshop focused on cartel investigation. Various countries highlighted their research methods.

## ‘Internationale oefening baart mededingingskunst’ FD | 16-11-2006

### 3.3.5 OESO

The Netherlands is an OECD member state. The OECD (Organisation for Economic Cooperation and Development) operates a competition committee. In 2006 the NMa participated in three working parties, which met several times in the course of the year. Also, the NMa contributed to these working groups by submitting papers.

### 3.3.6 International visits

In 2006 the NMa welcomed several foreign delegations, including parties from Russia, China, Vietnam and Hungary. Within the framework of the so-called TAIEX programme, set up by the European Commission, the NMa received a Bulgarian delegation. The TAIEX programme is an educational programme, intended for countries that will shortly join the European Union and as a consequence have to apply European competition law. The Bulgarian delegation showed specific interest in the NMa's knowledge and expertise of the telecommunications sector.

## 3.4 Knowledge and quality management

### 3.4.1 Knowledge management project

It is highly important to the quality of NMa work that knowledge is being gathered, documented and made available (internally). The NMa fosters an organisation-wide knowledge sharing culture. This allows synergy to occur between sector-specific regulation and general competition enforcement. In 2006 the 'Knowledge management' project was initiated. This project aims to improve access to knowledge sources at hand. To this end, a digital 'Knowledge portal' was developed, that integrates and provides easy access to various knowledge systems already in use within the NMa. A search engine makes available documents relating to all cases and projects. In addition, the system offers a platform for discussion on work-related topics, thus enhancing knowledge sharing practices. In 2007 this project will continue to support various initiatives in the field of knowledge management.

### 3.4.2 Reviews

The NMa aims for a more structural approach towards reviews in the decision-making process. This concerns internal as well as external reviews. The NMa internally appoints critical readers, that take on the role of the 'devil's advocate'. Towards the end of 2006, the NMa decided on installing a so-called 'Review Panel'. This panel of external specialists will independently judge the analyses made in strategically important cases. A contract with the State Advocate was concluded to serve this purpose.

In 2006 the Netherlands Court of Audit [Algemene Rekenkamer] performed an organisational screening of the NMa (not including its sector-specific regulatory chambers). It also assessed in what way the Minister of Economic Affairs took up responsibility towards the NMa. The Court of Audit has indicated that its findings report will be published in the course of 2007. The NMa regards the audit investigation as a further impulse to quality improvement. It is intent on implementing the report's recommendations in the second half of the year.

Finally, it is important to mention that the NMa employs a complaint officer, who handles complaints submitted by business and consumers on the subject of alleged unjust treatment by the NMa. Five complaints have been submitted. In case of one complaint, it was established that procedures had indeed been flawed, as outlined by the complainant, though he had been informed about the issue raised in a correct and timely manner. Two complaints were not pursued any further, as complainants showed no interest in doing so. The NMa resolved remaining complaints by providing further explanation.

The NMa received 3.75 stars in the category 'Rating Enforcement' in the academic journal, Global Competition Review (GCR). This rating relates to the year 2005. GCR publishes an annual comparison of competition authorities. For this rating, GCR compared 38 competition authorities from 30 countries. These stars are awarded by the editorial board of GCR on the basis of research conducted amongst a large panel of competition lawyers, company lawyers and economists, and on the basis of questionnaires sent to competition authorities. The NMa's rating has been consistently high with scores of 3.5 in 2002, 3.75 in 2003 and four stars in 2004, out of a maximum of five stars that can be awarded.

#### 3.4.3 Centres of expertise

The NMa has also set up centres of expertise that have been equipped to efficiently secure, implement and distribute available expertise within the organisation.

The **Office of the Chief Economist** provides economic analyses in important cases. Its activities also comprise the development of economic methods for detecting competitive problems. In addition, the Office gathers relevant economic expertise, which is made available to the rest of the organisation. Lastly, the office looks into the economic and social effects of the NMa's work. This enhances the quality and effectiveness of enforcement activities.

In 2006 the **Legislation Centre** was launched. The team involved advises on law and regulation and contributes to legislative processes on behalf of the NMa. Also, the centre is charged with organisational regulation (including the mandate under which the NMa operates).

The **Appeals Centre** was also established in 2006. The team involved coordinates and handles appeal cases of the NMa. It also takes responsibility for the analysis of case law, pertaining to the NMa particularly. Court rulings on NMa decisions are an important source of knowledge, useful to future cases. The Appeals Centre ensures the direct application of learning points to day-to-day work

#### 3.4.4 Developments in legislation

##### Amendment to Competition Act

On 31 October 2006 the House of Representatives of the Dutch Parliament approved an amendment to the Competition Act [Wijziging van de Mededingingswet als gevolg van de evaluatie van die wet (AMEW)]. The amendment is under review in the Senate at the time of production of this annual report. The NMa does not wish to anticipate the political decision-making process. It will therefore not discuss the nature of the statutory changes involved in this annual report. In 2007 and later years, the proposed amendment may have significantly enhance the effectivity of NMa performance..

## Costs Framework Decision

Pursuant to the 'NMa Costs Framework Decision', promulgated in late 2006, the NMa is under the statutory obligation to level fees to compensate for costs incurred while issuing various types of decisions. A decision following a merger notification involves a fee of EUR 15,000, a decision following a license application involves a fee of EUR 30,000. Remaining decisions entail a fee of EUR 2,000. Fees are due at the moment of issuance of a decision and are collected by the NMa.

## Energy

In 2006 various developments took place in the area of energy legislation which, for the sake of clarity, have been listed in the table below.

Table 1: Developments in energy legislation

Act/Regulations/Order-in-Council	Date	Summary
Independent Network Management Act [Wet onafhankelijk netbeheer]	01-01-07	Rules on the independence of electricity grid and gas network managers.
Supplementary Act to Gas and Electricity Act [Veegwet]	13-12-07	This Act is intended to amend a number of minor lacunae in the Electricity and Gas Acts. It introduces: <ul style="list-style-type: none"> <li>– fines for the infringement of licensing provisions (Electricity Act);</li> <li>– the possibility of introducing further rules on bank guarantees;</li> <li>– the possibility of making exceptions for multi-site agreements.</li> </ul>
EU Regulation 1775/2005 (Implementation) Act [Wet Verordening 1775/2005] – gas transmission networks	13-12-06	Supplementary requirements for natural gas transmission networks (high-pressure networks) dealing with transparency and non-discrimination, particularly in relation to an optimal use of the network
Consumer Protection (Enforcement) Act [Wet handhaving Consumentenbescherming]	29-12-06	The NMa may request information from energy companies on behalf of the Netherlands Consumer Authority [Consumentenautoriteit].
Electricity (Amendment) Act [Wijziging Elektriciteitswet i.v.m. richtlijn warmtekrachtkoppeling]	23-05-06	Act in relation to the adoption and implementation of EU decisions in relation to energy, postal services and telecommunication.
Regulations in Relation to the Disconnection of Small Electricity and Gas Users [Regeling afsluiten elektriciteit en gas kleinverbruikers]	01-12-06	Regulations on the termination of transmission or supplies of electricity and gas to small consumers.
Regulations in Relation to the Evaluation of the Gas Act and the Electricity Act of 1998 [Regeling evaluatie Gaswet en Elektriciteitswet 1998]	03-03-06	Conditions in relation to the contents of the report on the evaluation of the Electricity Act of 1998 and the Gas Act.
Decree in Relation to Security of Supply Pursuant to the Electricity Act of 1998 [Besluit leveringszekerheid Elektriciteitswet 1998]	06-12-06	Regulations to prevent interruptions to the supply of electricity to small consumers as a result of the cessation of business of a licenced supplier for whatever reason (for instance, as a result of insolvency or a moratorium on payments).

## Transport

### Amendment to the Aviation Act

An amendment to the Aviation Act came into force on 19 July 2006. This Act assigned a new task to the NMa, namely regulating the tariffs and conditions for the aviation activities which Schiphol provides to airline companies. The system for allocating costs and revenues from Schiphol's aviation activities must be submitted to the NMa for approval. This system is the basis for determining the

tariffs which Schiphol charges for the use of the airport by airline companies. The assessment by the NMa resulted in a draft decision for approval of the allocation system, after Schiphol had made a few amendments to the original system submitted. This decision was made available for inspection at the beginning of 2007. See: *'The Agenda': Transport, p 60*

#### *Passenger Transport Act [Wet personenvervoer 2000]*

In 2006, the Office of Transport Regulation advised the Ministry of Transport, Public Works and Water Management with regard to the amendment of the Passenger Transport Act. The amendment came into force on 1 January 2007. The Amendment Act assigned a new regulatory task to NMa, assessing whether local transport companies separate rail (tram and metro) and bus activities in their financial accounts. In addition, this Act extends the task of the Office of Transport Regulation by 10 years. The background to this amendment is to provide local transport companies with the opportunity to issue tenders for bus and rail transport separately. Tenders for bus transport must be issued before 2009 and rail transport before 2017. See: *'The Agenda': Transport, p 59*

### 3.4.5 Conclusions drawn from case law in 2006

#### *Assessment framework: the need to investigate the context and appreciability*

Following European case law, there is a clearly discernible trend in national case law towards a greater emphasis by the courts on the economic effects of prohibited practices. In the absence of any concrete (proven) facts, the court does not readily accept that certain practices or agreements are anti-competitive by object. This sets requirements to evidence presented by NMa. The Trade and Industry Appeals Tribunal [CBB] stated in the *Secon* and *Modint* cases at the end of 2005 that an investigation was necessary into the factual and economic context within which practices occur ('context examination'). This is necessary to render plausible the case for practices or agreements of anti-competitive object. Furthermore, NMa must render plausible that parties involved do not have a negligibly small position on the market ('appreciability examination'). Both of these investigations are separate from the investigation into the concrete effects of the practices under consideration ('examination of the effects'). The latter investigation must take place in case of practices that are anti-competitive by effect, not by object. Within this assessment framework, the Court of Rotterdam issued a number of rulings in 2006.

#### *Rulings of the Court of Rotterdam*

##### *Bovag*

The Court ruled that a distinction must be made between evident and non-evident intention to restrict competition. Obstructing entry to the market by (potential) competitors or attempting to force (potential) competitors out of the market, according to the Court, is an example of an evident intention to restrict competition, for which a limited examination of the context is sufficient.

##### *Psychologists*

In this case, according to the Court, NMa had not adequately examined the role of the referring general practitioner and the health insurer in referrals to psychologists and psychotherapists. In the changing context of healthcare, without a further examination of the context NMa could not conclude that the prices recommended by the professional associations of psychotherapists in themselves had the effect of restricting competition.

##### *Mobile operators*

In the ruling of the Court in relation to the infringement by mobile operators as a result of the jointly agreed reduction in their payments to dealers, the Court ruled that NMa's examination of the context was adequate to present a plausible case that in coordinating the subsidies for post-paid subscriptions, three of the five operators had intentionally restricted competition.

### Oxxio

The Court ruled that NMa had presented a plausible case that Oxxio had infringed section 95m of the Electricity Act, by using evidence consisting of voice logs of telephone conversations and instructions which Oxxio had given to the call centre which it had contracted. A remarkable difference with the infringement of the prohibition on cartels was that the disadvantageous consequences for consumers were assumed to have occurred without these having to be proven.

#### Ruling of the Trade and Industry Appeals Tribunal

**Nuon/Reliant:** The negative effects of practices may also play an important role in merger cases. The central question in the proceedings before the Trade and Industry Appeals Tribunal was the standard of proof which the Tribunal imposes and the intensity with which the Tribunal assesses the evidence in the case of a so-called 'prospective analysis'. In assessing the merger of Nuon and Reliant, it was not sufficient for the NMa to apply the usual analysis based on the structural characteristics of the market (market shares and the degree of concentration), due to the special characteristics of the electricity production and wholesale market. For this reason, the NMa examined whether these undertakings had the opportunity and incentive to behave strategically and whether this opportunity would increase as a result of the merger. In addition, the NMa simulated the consequences of this behaviour for wholesale prices on the basis of two model analyses. In applying such analysis, according to the Tribunal, the NMa must present a plausible case that the expected strategic behaviour may, in fact, occur and that this behaviour will occur more often due to the merger. In the opinion of the Tribunal, the NMa was not sufficiently able to show plausibly that such strategic behaviour occurs now and would occur in the future. The NMa should therefore not have imposed conditions on auctions as part of its merger clearance

### Interested parties

In competition cases, in particular, the question arose as to whether the position of the buyer or consumer must be distinguished from that of a competitor. In the case of *Elektrobureau A*, it emerged from the ruling of the Tribunal that an undertaking, which complains about the practices of a competitor or practices which may distort competition on the market on which this undertaking itself is active, is an interested party. In three rulings at the beginning of 2007, the Court of Rotterdam ruled that undertakings which make complaints must be deemed to be interested parties because it is plausible that the practices of which they complain may affect competition relationships in the market on which they are active.

## 3.5 Information services

### Advice

By giving advice, NMa disseminates much of the knowledge which it acquires. Ministries may use such advice in formulating policy ('advocacy'). For instance, in 2006 NMa gave advice in relation to market research into the petrol market and a scan of the market for school textbooks. Informal opinions are also a source of information ('guidance'). These include, for instance, informal opinions on the OV Chip Card system, an electronic payment system for public transport, and regional representation.

### ConsuWijzer

At various points, this annual report includes numerous references to ConsuWijzer. This joint venture involving NMa, OPTA and the Consumer Authority [Consumentenautoriteit] is also an important means by which NMa provides information. Critical consumers are important for a healthy culture of competition. See: *'the strategy': Information services, p 19 and 'In practice': ConsuWijzer, p 12*

# ‘Consument kan terecht op Consuwijzer.nl’

Dagblad de Limburger | 07-10-2006

## Website

The NMa website ([www.nmanet.nl](http://www.nmanet.nl)) is an important source of information. For instance, NMa decisions published on the website. The NMa website also provides an overview of meetings attended by NMa employees at which they give presentations. These meetings focus on increasing awareness of and understanding for NMa's work in society. By doing so, NMa explains topics in various ways and comments on developments in the area of competition. This year, the website will also pay more attention to the annual report. The link to the 'annual report' will provide you with more information. Further information on the website is provided at the back of this annual report. See 'In practice':

*Communication, p 92*

## The NMa in the media

NMa published 49 press releases and 56 news bulletins, of which 4 press releases and 18 news bulletins focused on DTe's activities. One press release and 4 news bulletins contained news about the Office of Transport Regulation. NMa observed that the majority of its press releases and news bulletins relate to the areas of attention, Healthcare, Energy, the Construction Industry and the Media and Communication markets. The two most important issues with which NMa reached the news in 2006 were the (larger) merges which occurred in the Netherlands (such as the merger of Ahold and Konmar) and the conclusion of the cases in the construction industry. In 2006, NMa gave 32 interviews to RTV, daily newspapers and trade journals.

Table 2: De NMa in the media

Area of attention	Press releases	News bulletins	Interviews
Healthcare/Liberal Professions	10	11	4
Financial sector	1	0	1
Energy sector	7	21	7
Transport sector	1	6	
Construction industry	10	2	5
Media and communication sector	3	6	
<b>Total</b>	<b>32</b>	<b>46</b>	<b>17</b>



## The Agenda

Being accountable means  
being open towards consumers,  
business and politics.  
Before, during and afterwards.

# 4 THE AGENDA



**Tjark Tjin-A-Tsoi, Director of the Antitrust Department:** “The NMa Agenda helps give insight into our plans and is a means to accountability. Of course, we will also respond to developments occurring in the coming year.”



In practice

# The investigation into the construction industry

In practice

# The investigation into the construction industry

Since 2004, the NMa has annually released an Agenda for the year ahead. The NMa Agenda takes into account factors at play in society, such as market developments and signals given out by market parties. The draft document is submitted to various external consultees prior to publication, inviting response. The Agenda aims to provide insight into how the NMa plans to fulfill its mission to 'make markets work'. In this way, the NMa wishes to be as clear as possible about its capacity allocation policy aimed at achieving a maximally beneficial effect in terms of competition. The construction sector has been listed as an area of attention in the NMa Agenda for several years in a row. See: *'The Agenda': Construction industry*, p 57

## Background

Following the media revelation of secret financial accounts (now known as the "Bos-accounts") at a major Dutch construction company in November 2001, the construction industry became the focal point of attention. A Parliamentary Committee of Inquiry was subsequently installed. In February 2004 newspaper publications again indicated the existence of secret, 'black' accounts. This new case involved a construction company in the Housing and Utility Engineering sector [B&U]. Shortly afterwards, the Government and Parliament issued an urgent appeal, calling on the construction industry 'to come clean'.

This encouraged a wave of leniency applications (providing evidence) to the NMa. The NMa subsequently undertook several company visits. As a result, the NMa was able to draw up statements of objections on the basis of this material in the course of 2004 and 2005. In 2006 the NMa faced a serious challenge: in the autumn of 2005 hundreds of construction companies in the Housing and Utility Engineering sector had received a statement of objections, outlining their participation in illegal concerted practices. As in legal procedures involving other sectors of the construction industry, the following question proved equally relevant to the Housing and Utility Engineering sector: how should the NMa vigorously handle this enormous case load and realise an industry-wide change of culture? Previously, politicians had already expressed a clear wish for granting the industry the opportunity 'to come clean' quickly and avoid entanglement in long-winding legal procedures.

The NMa designed an accelerated sanctions procedure for a quick and efficient processing of an unprecedented number of cases. In essence, such a procedure entails that the companies concerned appoint a joint representative, who is then authorised to pursue a collective appeal on their behalf against the conclusions presented in the statement of objections. Mr Blankert took on this role with regard to the Housing and Utility

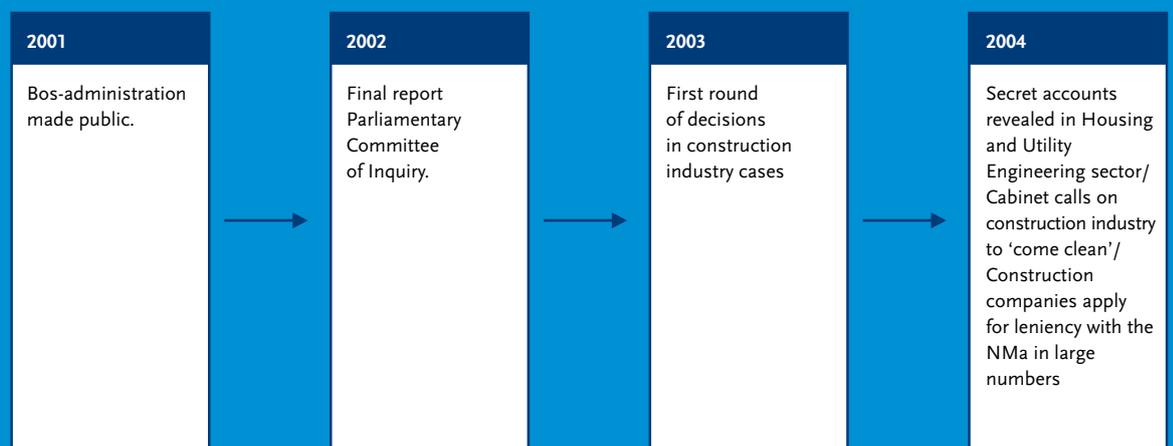


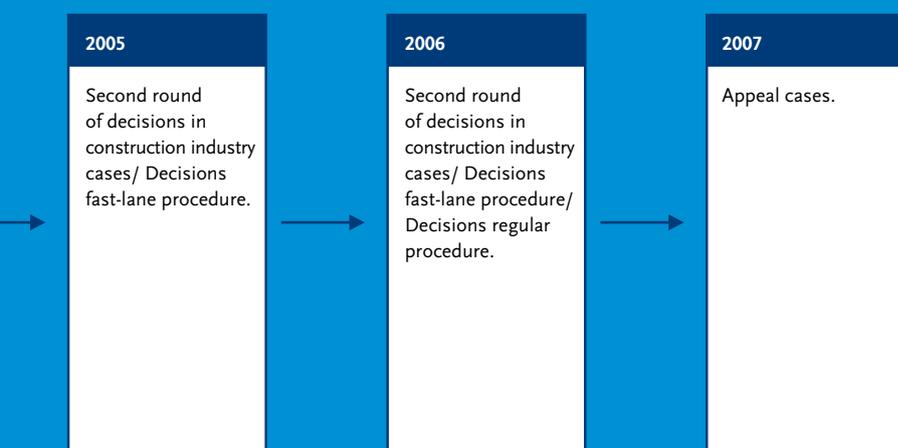
Table 1: Scheme construction affairs

Subsector	Decisions in fast-lane procedure	Decisions in regular procedure	Number of cases fast-lane 2006	Number of cases regular 2006	Fine amount Fast-lane 2006 (EUR)	Fine amount Regular 2006 (EUR)	Fine amount Total 2006 (EUR)
Civil Engineering and Infrastructure (GWW)	29-3-2005	1-9-2006	Not app.	41	Nvt	2,174,900	2,174,900
Installation Engineering	20-10-2005	1-9-2006	Not app.	18	Nvt	4,173,107	4,173,107
Housing and Utility Engineering (B&U)	29-6-2006	25-10-2006	596	62	70,603,138	5,847,777	76,450,915
Cable and Pipeline Construction	30-5-2006	25-10-2006	73	5	11,947,301	0	11,947,301
Horticultural Services	30-5-2006	25-10-2006	54	4	2,962,060	59,416	3,021,476
Concrete Products	11-7-2006	Not app.	33	0	7,011,026	Nvt	7,011,026
<b>Total</b>			<b>756</b>	<b>130</b>	<b>92,523,525</b>	<b>12,255,200</b>	<b>104,778,725</b>

Engineering sector. During a number of meetings he listed the viewpoints of the construction companies involved and put these forward in a hearing at the NMa. The accelerated procedure also set out that companies were to renounce on their right to have the dossier disclosed to them individually. This saved a great deal of time, as the NMa did not have to organise hearings and opportunities for dossier inspection in hundreds of separate cases. On taking part in the accelerated procedure – involving thorough-going cooperation - companies were awarded a 15 per cent fine reduction. This percentage needed to be sufficiently high to stimulate companies into entering the accelerated procedure, but were not to rule out

regular procedures as a viable option. Fining provisions also addressed the issue of avoiding bankruptcy as a result of fines imposed.

The accelerated procedure resulted in Mr Blankert representing more than 90 per cent of the companies mentioned in the statement of objections. Following the efficient processing of these 596 cases in the Housing and Utility Engineering sector (against a total of 658 cases), sanctions decisions in the accelerated procedure were issued in June 2006. More than 90 per cent of companies concerned had 'come clean': an optimal result achieved in a limited case-handling time.



Leoniek Los, Policy Advisor on Employment Affairs and Education, Bouwend Nederland 'The accelerated procedure provided the sector with an excellent opportunity 'to come clean' rapidly. At first, we needed to find our way, but in close consultation with the NMa and by maintaining a positive approach on both sides we managed to complete procedures in a satisfactory way. The accelerated procedure surely proved its worth.'

Pierrette Gaasbeek, Senior Advisor, Legal Department, NMa 'The effect of accelerated procedures in the construction industry worked both ways, allowing the NMa carefully to process an unprecedented number of cases, while the sector could now quickly 'come clean'. Companies that preferred otherwise, still had the option of entering the regular procedure.'



Many eyes are on the NMa. This requires clear accountability. In providing this, we adhere to our mission of making markets work and welcome debate.

#### Consumers

Consumers are important to the NMa. We welcome tip-offs and complaints. The NMa keenly subscribes to consumer-oriented initiatives. We want to raise consumer awareness of opportunities for choice and show how NMa policy benefits consumers. Increasingly, consumers will realise that by taking a critical stance they can themselves promote competition too.

#### Business

We inform companies (and consumers) about the sectors that have been selected as areas of attention, the selection method applied, and the general purpose of enforcement and regulation policy. The annual publication of the NMa Agenda is one of several key means to providing such information. This approach should help companies realise in what way the NMa can help them seize opportunities. At the same time, companies need to know that the NMa takes a tough approach to dealing with infringements.

#### Politics

Politicians have set us a clear task. We want to point out how we go about fulfilling this task. The NMa aspires to transparency, efficiency and effectiveness. Our choices should therefore be clear and well-founded. We aim to visualise the effects of our work whenever possible. Our annual report marks an important stage in the process of accountability.

## 4 What does the NMa do?

Previously, the section called ‘The Strategy’ explained in what way we aim to carry out our mission. The next section, under the heading of ‘Expertise’, explored how we gather, use and distribute our knowledge. The part of the annual report now at hand, entitled ‘The Agenda’, deals with the practical aspects of ‘making markets work’. It aims to describe our daily work, providing an outline of the main NMa activities over the past year. All enforcement instruments available to us will come up for discussion. NMa activities relate to the prioritised areas of attention set out in the NMa Agenda 2006, though the NMa was also active in other fields. Its scope is not in any way limited to the Agenda. The survey of NMa cases provided here is not exhaustive. At [www.nmanet.nl](http://www.nmanet.nl) (under the menu item of Annual Report) you will find a search engine providing access to all cases dealt with in 2006. The following areas of attention were selected for 2006:

- 1 Energy
- 2 Transport
- 3 Construction industry
- 4 Liberal professions
- 5 Media and communications markets
- 6 Healthcare
- 7 Financial sector

### 4.1 Energy

What was in the NMa Agenda 2006?

The consultation round for the NMa Agenda confirmed that monitoring the energy markets is still considered necessary. One of the areas emphasised in relation to this is consumer protection. Transparency is important in this regard. In 2006 the NMa will take an integrated approach to the energy sector; it will apply both general competition legislation and specific legislation. *The NMa-Agenda 2006 (and 2007) is available on our website under the menu item Annual Report.*

It is DTe’s role to make energy markets work as effectively as possible. In the energy sector this involves safeguarding access to networks, maintaining a sufficient level of transparency (access to essential information) and protecting consumers against the possible abuse of powers that are often inherent to the position of providers. The NMa promotes this by creating conditions conducive to the effective and efficient functioning of the market and a sufficient appreciation of consumers interests.

#### 4.1.1 Focus on consumers

Following a decline in consumer confidence on the energy market in previous years, the NMa was resolved on contributing to the restoration of trust in 2006, wherever possible. The NMa called on energy companies to set up a joint code of conduct in 2005. This had been prompted by alarming signals on aggressive canvassing methods and incorrect communications relating to requests for switching in the energy market. In the summer of 2005, especially, the number of complaints rose significantly. Providers publicly accused one another of improper practices. In media and political circles too the issue was at the centre of attention. This was one of the reasons for a decline in consumer confidence in the energy market.

In line with its restrained approach to intervening in the free market, the NMa provided the sector with an opportunity to propose a solution to the problems under consideration. This resulted in the Code of Conduct Consumer and Energy Providers [Gedragscode Consument en Energieleveranciers] which has been of effect since 1 September 2006, applying to all providers within EnergieNed *See: ‘In practice’: ConsuWijzer, p 12*

By means of this code of conduct, the sector shows its willingness and capability to resolve problems by itself. This creates wider support for the criteria applied. If warranted, the NMa may still intervene

on the basis of the law, and will continue carefully to monitor the opportunities for consumers to choose an energy provider on the basis of sound information.

The information desk ConsuWijzer, launched in the summer of 2006, also focuses on the consumer.

See: 'The strategy': Information, p 19

# 'Consumenten vinden markt voor energie ondoorzichtig'

FD | 4-11-2006

## Sustainable energy

In the field of sustainable energy, work was done to further refine the so-called 'electricity label', which informs about the source of electricity. In 2006 the NMa mainly focused on compliance with regulation, improving the practicability of regulation and further adjusting electricity labels in accordance with consumer wishes. This has resulted in a reliable, comprehensible and uniform electricity label for each energy provider, allowing consumers to take into account the source of energy, in addition to price and service considerations, when choosing a provider.

### Monitoring the reliability of providers

In order to keep energy companies alert and inform consumers on the quality of administrative processes, the NMa publishes a so-called 'scorecard' every three months. By means of this scorecard consumers are informed about the performance of individual energy companies as concerns timely billing. On this issue, the NMa is satisfied with the improvements that were realised by energy companies over 2006.

For the first time ever, all scores for the market as a whole were above the norm. Nevertheless, individual companies fall short of the mark. Though the focus on administrative transactions has led to improvements in timeliness, the NMa still receives a relatively large number of questions and complaints, for instance on the issue of meter registration procedures when switching providers; the NMa will continue to monitor this in 2007.

At the start of 2006 the NMa imposed periodic penalty payments on Oxxio for failure to eliminate its administrative backlog. The backlog involved the dispatch of annual settlements and was to be eliminated on 1 February 2006 at the latest. In March 2006 it became apparent on inspection, also involving a company visit by the NMa, that Oxxio had complied with the injunction.

In the autumn the NMa withdrew a supply license for failing to comply with license conditions. This measure had not been implemented before. The company concerned no longer complied with the conditions set out for energy providers. The NMa received complaints from customers on the company's structural inaccessibility. In addition, the company failed to comply with agreements outlining adequate complaint and dispute processing and did not provide its customers with annual or final settlements.

## Profits of energy companies

During the summer the NMa initiated an investigation into the profits of energy companies. The investigation aimed at finding out about the source of profits and their allocation. It is important for consumers to know whether or not they are being charged excessively. Conclusions are expected for 2007.

Apart from the investigation into profits, the NMa annually fixes the maximum tariffs and price caps to be levied by a network operator for its energy transport activities. The NMa regulates the network operators as they are monopolists by nature. There is no competition incentive, therefore, to optimise the price-quality ratio. Two regulatory periods have passed since 2001, during which the NMa stimulated the sector to be more effective by imposing a price cap, also referred to as the 'x-factor'. As a result, consumers benefited by a total amount of more than EUR 1.1 billion.

*See: 'The effects', p 70*

#### Quality service reports on interruptions by network operators

Network operators annually report on the quality of their services. These reports monitor the duration of power interruptions and the level of compensation awarded in such cases. A serious power cut occurred in Haaksbergen in November 2005. The investigation into this power failure was completed in the course of 2006 and has been made available at [www.minez.nl](http://www.minez.nl). Consequently, the compensation scheme for end users was amended on the basis of this investigation. The quality service reports issued in 2006 may be consulted on our website [www.nmanet.nl](http://www.nmanet.nl) under the menu item of Annual Report.

#### 4.1.2 Current developments in energy markets

Being the energy market regulator, the NMa closely monitors energy market developments. If possible, it aims to stimulate and direct such developments. Expert knowledge of the market is indispensable to effective regulation. Such expertise makes it possible for the NMa to give out advice to companies and ministries. NMa activities over 2006 comprised:

- Publishing market monitoring studies *See: 'Expertise': Market monitoring, p 27*
- Performing the sectoral investigation into concentrations on the energy markets *See: 'Expertise': Market monitoring, p 27*
- Actively contributing to creating North West European energy markets

#### North West European electricity and gas markets

Over the past few years, the NMa has taken a number of important steps towards developing integrated North West European markets for electricity and gas. The NMa actively participates in various international initiatives for gas and electricity. These involve collaboration with market parties in order to find practical solutions to trade barriers. In the field of gas the NMa chairs the Gas Regional Initiative for the region North/ North West. This regional initiative commenced in the summer of 2006 and has produced action plans prioritising six topics: interconnection, hub development, coordination among regulators, transparency, gas balancing and gas quality. Meanwhile, the action plans have given rise to the dispatch of various questionnaires. These aim to bring into focus specific bottlenecks in the market.

#### Implementation market coupling electricity

In November 2006 an NMa decision opened the way for market coupling of the electricity markets in Belgium and France. Market coupling is a market-based mechanism that allows a more efficient allocation of day-ahead cross-border capacity between the Netherlands, Belgium and France.

Market coupling is an important step towards further regional market integration. Its implementation will allow for more efficient cross-border trade by guaranteeing an optimal use of existing available day-ahead capacities between the three countries. In preparing its decision the NMa took into account that remaining auction rules in the three countries (pertaining to year and month capacity) were to be further harmonised as of 1 January 2007. Furthermore, electricity exchanges involved in the market coupling programme will disclose trade data for market monitoring purposes. Also, market coupling will be extended to include other countries.

### Regional integration of electricity markets

In addition to market coupling, regulators in Belgium, France and the Netherlands (CREG, CRE and the NMa) consider the advanced harmonisation of trade regulation to be of undiminished importance in order to realise further market integration. The three regulators have in the meantime involved the German and Luxemburg regulators in a collaborative agreement working towards a stronger regional integration of electricity markets. A joint action plan, involving the regulators in the Benelux, Germany and France, is expected for spring 2007.

### Annual capacity auction 2007

The annual auction of transport capacity at the interconnector Netherlands-Germany now involved two rounds (September and November 2006) instead of a single round, as was the case previously. A total amount of 1300 Megawatt (MW) was auctioned instead of the usual 900 MW. TenneT – the national high voltage grid operator – was granted a temporary exemption from a number of provisions in the NetCode. The exemption will be lifted as soon as the Code provides for a new transport capacity allocation scheme. The European Court of Justice rejected the present scheme put forward in the NetCode.

#### Informal opinion Gas Transport Services (GTS)

In September 2006 the NMa issued an informal opinion on the GTS investment proposal to expand the Dutch network for high caloric value gas. The NMa found that current transport capacity in the high caloric network insufficiently safeguards future supply security. The NMa also concluded that an investment is both necessary and justified in order to safeguard supply security, now and in future. With a view to the expected demand for (additional) transport capacity and a decline in gas supplies from abroad, the NMa primarily considered opportunities for Dutch consumers to profit from the network expansion in its assessment of the investment proposal. For instance, consumer profit may result from lower gas prices or higher supply security. The NMa has provided GTS with the opportunity to submit an enhanced proposal.

#### 4.1.3 Regulatory developments

In 2006 the Electricity Act 1998 and the Gas Act were evaluated with a focus on the impact of statutory provisions on energy supplies. Also, an assessment was made of DTe's internal organisation, specifically investigating the effectivity of its market monitoring activities. Research results will be discussed in Parliament in the course of 2007. No further details were available at the time of publication of this annual report.

## 4.2 Media and communications markets

What was in the NMa Agenda 2006?

*Developments make it crucial for a competition authority to operate on the basis of high-quality and up-to-date market knowledge. The aim of enforcement is to give a wide berth to innovation in these sectors and to ensure that consumers receive the maximum benefit from this.*

*The NMa-Agenda 2006 (and 2007) is available on our website under the menu item of Annual Report.*

At present, media and communications markets are characterised by rapid innovation and integration. As a result, companies active in this market find that their market positions too are subject to change. Dynamics and innovation in these markets should not be restricted by impediments to competition.

#### 4.2.1 Mergers and acquisitions

##### Cable

The NMa approved of the sale of Essent Kabelcom to private equity funds Cinven and Warburg Pincus (owner of Casema and Multikabel). The European Commission had referred the case to the Netherlands ('reasoned submission'). The merger creates the largest cable company in the Netherlands. Essent Kabelcom and Casema/ Multikabel jointly provide services to 55 per cent of Dutch homes that subscribe to cable television. Consumer choice remains unaffected, as the regions in which cable companies operate do not overlap. The NMa's investigation focused on whether the increased buying power of the merged company in relation to providers might adversely affect the choice of television channels offered to consumers. The investigation also looked at possible adverse effects on up-and-coming alternatives, such as digital television and DSL television (via internet). These could not be established.

##### Broadband internet

The NMa will carry out an in-depth investigation into the intended KPN/ Tiscali acquisition. A thorough initial investigation established that the acquisition might possibly impede competition in markets for broadband internet. Tiscali operates as an internet service provider (ISP) and offers internet services to consumers and other end users (the retail market). Tiscali also deploys its own DSL network, which offers services to other ISPs, the so-called wholesale market. KPN's market share would increase by 5 per cent as a result of the acquisition, resulting in an overall market share of about 50 per cent. It is apparent from the abovementioned initial investigation that the acquisition does not seem to leave Tiscali's wholesale customers any viable alternatives. Also, entry barriers to setting up an alternative network prove to be high. Moreover, the acquisition seems likely to hamper any effort on the part of remaining market parties to increase their combined market power. This would diminish the competitive strength of ISPs.

##### KPN – Nozema

In 2006 the NMa also assessed the acquisition of Nozema by KPN. The acquisition was conditionally cleared. KPN is under the obligation to sell a number of its high broadcasting masts to an independent third party approved of by the NMa, within a period of two years after the NMa's decision. This prevents competition in the market for the transmission of wireless radio signals from being impeded.

##### Fine for late merger notification

The NMa imposed a fine of EUR 17,500 each on Airfield Holding B.V. and Chellomedia Programming B.V. (formerly UPC Programming B.V.) for prematurely finalising the acquisition of Canal+ N.V. The Competition Act prohibits the effectuation of a takeover prior to notification with the NMa. At the time, UPC took over Canal+ from Airfield. On signing the acquisition agreement, UPC received authority over Canal+ on the basis of specific rights of approval. It was only after concluding this agreement that parties notified the NMa of the acquisition. In 2005 the NMa finally approved the takeover by granting a license to the companies concerned.

#### 4.2.2 Cartels and dominant positions

##### Examination of internal data protection procedures within KPN

KPN has access to call data pertaining to customers of competing providers, who make use of KPN's long-established telephony network. Over the past few years the NMa has received several complaints and signals on this issue. KPN should have dividing 'walls' within its organisation in order to ensure that company divisions dealing with the commercial sales of fixed telephony services do not have access to call data belonging to customers (private and business) that make use of the KNP network but register with another provider. By means of company visits, meetings with KPN staff and an investigation into KPN's computer systems, the NMa examined if and how customer data were 'walled off'. The NMa did not find any indications that KPN uses customer call data in a way that

contravenes the Competition Act. Nevertheless, KPN promised to improve its internal walling off of customer call data, these being sensitive from the point of view of competition. Meanwhile, the telecommunications company has tightened up internal procedures regulating access to customer call data. KPN has also intensified internal communications on the subject of walling off such data.

#### Software branch

As promised in the NMa Agenda, the NMa and a number of businesses active in the software branch have exchanged ideas on the legal bounds of competition law, as relevant to the production of software and related services. The round table meeting focused on the role of open source software. Parties were called upon to notify the NMa of any signals, tip-offs and complaints.

#### Market scan school textbooks

As promised in the NMa Agenda 2006, the NMa has monitored developments in the school textbook industry and issued an advisory report that was submitted to the Minister of Education, Culture and Science. *See: 'Expertise': Market monitoring, p 28*

#### Concert organisation and ticket sales

Ticket Service, TicketBox and Mojo have removed exclusivity clauses from their contracts or have indicated that they will do so shortly. Ticket Service and Ticketbox focus on the presale of tickets for Music, sports and dance events. Mojo is active in the market for artist contracting and events organisation. The investigation followed signals from the market indicating that Mojo shielded off international artists. The NMa did not find sufficient evidence to establish such practices. The investigation was therefore dropped. The measures outlined above are likely to improve opportunities for market entrants in the concert organisation and ticket sales industry.

## 'NMa: geen sprake van Mojopolie'

Volkskrant | 21-07-2006

### 4.3 Financial sector

What did the NMa Agenda 2006 say?

The financial sector will also remain an area of attention for the NMa in 2006. The important developments in payment services and the insurance market are the reason for further research in these areas. The Financial Sector Monitor carries out permanent economic research into competition in the various submarkets of the financial sector.

*The NMa-Agenda 2006 (and 2007) is available on our website under the menu item of Annual Report.*

#### 4.3.1 Sectors under scrutiny

The section called 'Expertise' gave background information on the Financial Sector Monitor (FSM).

*See: 'Expertise': Market monitoring, p 26* This paragraph will highlight a number of the sectors monitored.

#### Health Insurance

On the coming into force of the Health Insurance Act on 1 January 2006, a new health insurance market was established. National health insurance funds and private insurances have been replaced by a single obligatory basic insurance, with the option of taking out supplementary insurance.

Consumers now have greater freedom to engage the services of a health insurer of their own choice. Consumer choice will help determine whether health insurers, up until now strongly regionally oriented, will start competing on a national level, or whether the market is to assume a regional character.

Consumer behaviour indicates a trend towards a national health insurance market. For some parts of the Netherlands, it is too early as yet to rule out the emergence of structural competitive patterns that deviate from the national market. Particularly in the northern and southern parts of the Netherlands a number of large health insurers still operate regionally. Health insurer switches occur less frequently here than in the western and eastern part of the country. Also, it is still unclear in what numbers customers will switch in the coming years. From the point of view of competition, attention should be particularly focused on health insurers' efforts to acquire a share of the market outside of their central area of operation, the emergence of a market for collective contracts and the negotiation policy pursued by healthcare providers. The NMa will continue its monitoring activities. *See: 'The Agenda': Healthcare, p 54*

#### Occupational disability insurance

Over the past few years, the market for occupational disability insurance has been partly privatised. Risks have been transferred from the state to employers, employees and self-employed persons. Insurers have responded by introducing new products. The FSM has reviewed three disability insurance markets.

The WIA, succeeding the WAO, allows new supplementary insurances to be taken out by employees, also referred to as 'gap insurances'. In addition, employers may now choose to remain with the UWV or retain risks themselves. Both markets are still in the earliest phase of development. In the market for WIA-gap insurance policies, the market structure and the behaviour of providers do not give any reason for further investigation. The range of products offered by insurers varies and the market is not highly concentrated. The market structure for insurance products geared to companies that retain risks in the WGA does give cause for further monitoring. For the time being, this market shows a high concentration of companies. The expected entry of new parties may, however, positively affect the structure of this market.

Also, the WAZ for self-employed persons was abolished. A substitute insurance is on offer in the market. Indicators such as a high degree of concentration and high switching costs may point to a decline in competition. Further investigation may prove useful in this market. Also, supplies in part of the market for WAZ-insurances, involving the so-called 'safety-net scheme', do not seem to comply with the demands of self-employed workers.

#### Collective pension schemes

Pension funds also come under the enforcement control of the NMa. Their competitive relations to insurers are regulated by means of a clear task delineation and a prohibition on outside activities. It is obligatory for employees to join a pension fund. Conditions to this and competitive implications are being analysed by the NMa. Pension funds operate as providers of collective supplementary pension schemes, and sometimes also take on their implementation. The market for collective pension schemes, particularly with regard to implementation, is in a state of flux. Increasingly, a market emerges for the administration and implementation of pension schemes. The introduction of an internal European market for pension companies may also affect market relations. The FSM tentatively outlines three developments in particular: the separation of policy and implementation tasks within pension funds, particularly relating to administrative issues and asset management, the renewal of section 16 of the Dutch Competition Act and the European pension fund IORP. Greater clarity on the competitive implications of these developments will arise over time.

## PIN payments

Since 2004 PIN contracts have been transferred from Interpay to individual banks, who may enter into bilateral contracts with their clients, large and small retailers using payment machines. This structural change has had a positive effect on the level of competition in the market for PIN contracts. The Financial Sector Monitor 2005 concluded that there was burgeoning competition in the market for PIN contracts. The FSM for 2006 further investigated competition in the market for PIN contracts. It concluded that the positive effects of the structural change are now becoming visible. The average PIN tariffs which banks charge retailers have dropped by more than one eurocent, thus exceeding the rate agreed upon in the Payment Services Covenant [Convenant Betalingsverkeer]. The percentage of retailers switching to another provider of PIN services has increased from 3 per cent in 2005 to 5 per cent in 2006. Unlike retailers, banks have not yet actively canvassed for customers. More than has previously been the case, banks should compete for the favour of the consumer. This is important to enhancing competition in this market. Developments relating to a European payment market will affect the market for PIN contracts. The NMa therefore will continue to monitor this market.

## European payment system

Payment transactions necessarily require a high level of standardisation and cooperation, giving cause for careful monitoring by European competition authorities. The NMa closely cooperates with fellow European NCAs and will continue to report on this in 2007. See: 'Expertise': *International cooperation*, p 30

From 2008 onwards, the Single European Payment Area (SEPA) will be introduced. The aim of SEPA is to create a single European payment area for giro payments. This should result in cheaper and easier domestic and cross-border payments, removing the distinction between domestic and cross-border payments. Payments will be harmonised according to standards that banks have agreed upon in the European Payments Committee (EPC). Establishing a European payment market will benefit banks, private parties and businesses in three ways. It may realise economies of scale as the high fixed costs involved in payment systems are spread out over a greater number of transactions. Opportunities for competition may improve as a result of national frontiers, which divide technical infrastructures, becoming less relevant. SEPA also allows a more efficient use of payment instruments. An increase in price transparency directs consumers towards more efficient payment instruments and will raise the overall level of efficiency in payments.

As an international payment market, SEPA is still in design, though measures proposed have taken on an air of concreteness insofar that assumptions can be formulated as to the future market situation. The implementation of SEPA entails a number of potential competitive risks. First of all, the transition from national to European payment systems may provide an incentive for market parties to coordinate their activities with regard to that transition. Secondly, current providers may have the incentive to introduce barriers to entry. Rules drawn up by EPC will therefore have to be examined with a view to possible anti-competitive implications. Thirdly, the competition between various payment brands operating within a specific payment standard is of vital importance to the emergence of an efficient European payment system. Unbundling various products and services may contribute to creating sufficient competition among payment brands. Finally, it is important that Member States further harmonise the framework within which interchange fees are assessed.

## 4.4 Healthcare

What was in the NMa Agenda 2006?

To guarantee sound competition in this sector, it is crucial that the incentives to compete are not weakened, for instance by the formation of cartels or the emergence of parties with a dominant position. It is plausible that the NMa will be confronted in 2006 by a continued trend towards concentration of healthcare providers and health insurers.

*The NMa-Agenda 2006 (and 2007) is available on our website under the menu item of Annual Report.*

The introduction of the Health Insurance Act [Zorgverzekeringswet] and the Healthcare Market Organisation Act [Wet marktordening gezondheidszorg (WVG)] in 2006 has brought significant changes to the healthcare system. Insurers, healthcare providers and consumers were given more room to make their own decisions. The reforms have proved to be of great consequence to the role of market parties and have changed enforcement policy. The official launch of the Dutch Health Authority [Nederlandse Zorgautoriteit (NZA)] on 1 October 2006 marked the arrival of a new 'market supervisor' in healthcare. A collaboration protocol outlines the division of tasks between the NMa and NZA. See: 'Expertise': National cooperation, p 29 The NMa will see to it that parties act in accordance with the Competition Act and will provide information.

### 4.4.1 Mergers and acquisitions

The trend towards concentration in the healthcare sector has continued into 2006. It proved especially relevant to organisations operating under the Exceptional Medical Expenses Act [AWBZ]. Often, licensing conditions were imposed. The table below gives an outline of the most interesting healthcare cases in 2006 (additional information on these cases is given below).

Table 2: mergers and acquisitions in healthcare

Healthcare sector	Result of notification	Year in which license app. was submitted	Result of license application in 2006
<b>Hospitals</b>			
Stichting Ziekenhuis Walcheren – St. Oosterscheldeziekenhuizen	License requirement imposed in 2005	2005	License application withdrawn
<b>Health insurers</b>			
VGZ – Univé	Concentration cleared	Not applicable	
Delta Lloyd – Menzis – Agis	Concentration cleared	Not applicable	
<b>AWBZ</b>			
St. Pantein – STBNO	Concentration cleared after remedy proposal	Not applicable	
St. Zorggroep West- and Midden-Brabant – St. Amarant	License requirement imposed in 2006	2006	Parties refrain from submitting a license application
St. Amstelring – St. Zonnehuisgroep Amstelland	License requirement imposed in 2006	2006	Parties refrain from submitting a license application
St. GGZ Noord-Holland Noord – St. GGZ Dijk and Duin	License requirement imposed in 2006	2006	Parties refrain from submitting a license application
Oosterlengte – Thuiszorg Groningen – Sensire	License requirement imposed in 2005	2005	License application withdrawn
De Basis – Thuiszorg Gooi and Vechtstreek – Vivium	License requirement imposed in 2006	2006	License application withdrawn
Laak & Eemhoven – Amant	License requirement imposed in 2006		License application withdrawn (Feb. 2007)
St. Zorggroep Noord-Limburg – St. Thuiszorg Midden-Limburg – St. Land van Gelre and Gulick	License requirement imposed in 2006	2006	License granted unconditionally

## Hospitals

After an initial investigation into the intended concentration between Stichting Ziekenhuis Walcheren en Stichting Oosterscheldeziekenhuizen, the NMa concluded that the merger might possibly create a dominant position involving these two Zeeland hospitals in the region of Walcheren, Noord-Beveland, Zuid-Beveland and Schouwen-Duiveland. On receiving the license application, the NMa pursued an in-depth investigation. It investigated whether the merger would yield quality benefits outbalancing potential negative effects of the merger. NMa concerns related to the freedom of choice available to patients in this region, as only one independent hospital would remain after the merger. Because of a lack of viable alternatives open to patients, the post-merger hospital would not have sufficient incentives for competition. The hospitals argued that the merger would bring efficiency benefits outweighing possible negative effects. The NMa concluded that these benefits had not been sufficiently substantiated. The hospitals also emphasised the powerful position of the insurer, which would compensate for any dominant position on the part of the two hospitals in the event of a merger. Following the issuance of a statement of issues, parties decided on withdrawing their license application.

## Health insurers

In June 2006, VGZ and Univé notified the NMa of their intended merger. The intended merger between health insurers Delta Lloyd, Agis en Menzis was notified in August 2006. These were the first merger notifications submitted by health insurers following the introduction of the Health Insurance Act on 1 January 2006. Subsequently, the NMa looked into how the Health Insurance Act has affected the way in which the product market and geographic market are defined. *See: 'The Agenda': Financial sector, p 49* It was established that these mergers do not create a dominant position in the national and provincial health insurance markets, so the NMa cleared both concentrations. The purchase market for healthcare services was not separately investigated, as this market is very closely related to the sales market.

It was also examined whether a collective dominant position could emerge in the health insurance market. The NMa concluded that this is not the case at present, judging by the strong negotiating position of insurance collectives, current innovation processes in the sector and the fact that the market situation is not yet stable. Delta Lloyd, Agis and Menzis have indicated that they will examine other merger options.

### Exceptional Medical Expenses Act [AWBZ]

#### *Concentration cleared after remedy proposal*

After investigation the NMa cleared the concentration between health organisations Stichting Pantein (Pantein) and Stichting Thuiszorg Brabant Noord-Oost (STBNO). However, conditions were imposed. STBNO is a provider of home care services. Pantein provides nursing-home and convalescent-home care, as well as home care services. The NMa concluded after an initial investigation that the merger in the region of Land van Cuijk may result in the emergence or strengthening of a dominant position in the markets for home care (personal care, nursing care and domestic care). The already strong position of STBNO in this region would significantly increase as a result of the merger with Pantein, and only a very small competitor would remain. In order to address problems with regard to competition, parties will hive off some of their activities in the field of personal home care, home nursing care and domestic home care to Zorggroep VDA, a new market entrant in the region. As a result, clients will continue to have a choice of alternative providers in the home care market.

#### *License application withdrawn*

In August 2005 the NMa concluded after an initial investigation that the concentration of the health organisations Stichting Thuiszorg Groningen/Stichting Sensire (TZG/Sensire) and Stichting Oosterlengte may lead to the emergence or strengthening of a dominant position. NMa concerns related to extramural services (personal care, nursing care and domestic care) provided within the region of the Groningen healthcare agency. The NMa did not establish any possible restriction to competition in markets for intramural care services (provided in convalescent and nursing homes)

under the AWBZ. However, competition in the said markets for extramural care services under the AWBZ in the region of the Groningen healthcare agency could indeed be impeded significantly as a result of high combined market shares following the merger. It seemed likely that other health organisations would not exert sufficient competition pressure. An in-depth investigation, focusing on the extent to which the health agency had sufficient purchase power to discipline the merging parties, did not result in a merger decision, as notifying parties withdrew their license application following the NMa's statement of issues released in February 2006.

In November 2005 the NMa concluded after an initial investigation that the concentration of the health organisations Thuiszorg Gooi en Vechtstreek, De Basis and Vivium, located in the region of 't Gooi, may lead to the creation or strengthening of a dominant position in the markets for psychogeriatric convalescent-home care (for people suffering from geriatric illnesses such as dementia), nursing-home care as well as home nursing services. The second phase investigation assessed the markets for psychogeriatric convalescent-home care as well as personal care and nursing at home. Also, the NMa further investigated potential opportunities for Thuiszorg Gooi and Vechtstreek to act as a so-called 'gate keeper'. In doing so, parties would use their market position to refer their home care clients to nursing homes that are to be part of the newly formed group. Following the merger, the parties concerned could take up a very strong position in the field of home care and convalescent-home care. In November 2006 they withdrew their licence application following a statement of issues released by the NMa.

#### 4.4.2 Cartels and dominant positions

##### Pro-active investigation into the role of healthcare agencies

In 2006 the NMa organised a second roundtable meeting with healthcare agencies in order to gain further insight into the role of healthcare agencies in the market for extramural care services under the AWBZ and the nature of competition among healthcare providers. Points of discussion included procurement practices and guidance of clients. Healthcare agencies play an important role in stimulating competition between providers in the AWBZ-sector. In its assessment of cases, the NMa regularly invites healthcare agencies to give their view on an intended merger or answer queries on local market circumstances.

##### Guidelines for the healthcare sector

In 2002 the NMa published Guidelines including an outline of various forms of collaboration. It is set out that healthcare providers may appoint a healthcare broker while negotiating with a health insurer. At the time this new form of mediation had not yet been implemented. It emerged from practical experience that the NMa guidelines required further specification as to what is permitted when employing the services of a healthcare broker.

##### Compliance programme branch organisation KNMP

On the basis of market signals the NMa started an investigation into possibly anti-competitive behaviour of the Royal Dutch Society for the Advancement of Pharmacology [Koninklijke Nederlandse Maatschappij ter bevordering der Pharmacie (KNMP)] and its members. In mid 2006 the investigation was dropped after KNMP had promised to instigate a compliance programme. A compliance programme, in short, comprises a set of measures and procedures necessary to safeguarding compliance with the Competition Act. The KNMP appointed a compliance officer, who is responsible for investigating, terminating and preventing anti-competitive practices.

# ‘Prijsafspraken apothekers aan banden gelegd’

Trouw | 05-07-2006

## Health insurers – collective policy discounts

Media reports and a complaint submitted by the Health Insurance Consumer Association [Verbond van Zorgverzekerden] prompted an investigation into possible coordinated practices among health insurers in providing discounts to collective health insurance policies. The NMa concluded that no such coordinated practices among health insurers could be established. Furthermore, the Health Insurance Consumer Association received an offer put forward by five insurers in the course of the investigation. This also removed the ground for the complaint.

## Generic brand medicine

In mid 2006 the NMa terminated its investigation of a number of manufacturers of generic brand medicine and the branch association concerned. Signals from the market pointed to possible price agreements between a number of medicine manufacturers. The evidence at hand proved insufficient to justify further investigation.

### Informal opinion

At the request of the NZA, the NMa issued an informal opinion on the issue of regional representation. *See: ‘the strategy’, p 18* On the basis of information provided, the NMa set out that the Competition Act is not applicable to negotiations between health organisations, the dominant health insurer in the region and the regional representative on the issue of tariff approval/ fixing by the NZa. Such consultation is to be regarded as a preliminary act to drawing up an NZa decision. Health insurers may enter into mutual negotiations through a regional representative, as this is now required for the NZa to fix the budgets of health organisations in the so-called A-division. In its informal opinion the NMa emphasises that other kinds of potential practices implemented by the regional representative have not been taken into consideration. The informal opinion strictly applies to the consultative meetings mentioned above.

## 4.5 Liberal professions

### What was in the NMa Agenda 2006?

The NMa intends to make a permanent contribution to improving competition in the liberal professions. The traditional instruments, such as reports, interdicts and fines, are not always the most efficient way of doing so. The NMa has therefore opted initially to use instruments such as advocacy and providing information in these sectors.

*The NMa Agenda 2006 (and 2007) is available on our website under the menu item of Annual Report.*

The liberal professions are in a state of development, ever more so in the last few years. This calls for regular critical evaluations of regulation in the liberal professions, as provided by law and set out in rules drawn up by professional organisations themselves. As early as 2004 the NMa embarked on an analysis of professional self-regulation and codes of practice among architects, accountants, the legal profession and the notary profession. In these analyses, the central question was whether professional self-regulation and codes of conduct are necessary and proportional to the sound exercise of these professions. Restrictions to competition among the abovementioned professional groups may be necessary to guarantee specific public interests with regard to services provided, but it is important that professional organisations should always bear in mind the competitive impact of rules and regulation. The liberal professions have an important economic role, that is essential to other sectors

of the economy also. Improving competition within these professional groups may have a positive effect on economic performance in other sectors.

#### Architects

Within the framework of its 2006 analysis, the NMa conducted meetings with the professional organisations concerned: the Royal Institute of Dutch Architects [Koninklijke Maatschappij tot Bevordering der Bouwkunst Bond van Nederlandse Architecten (BNA)] and the Dutch Professional Organisation of Urban Designers and Planners [Beroepsvereniging van Nederlandse Stedebouwkundigen en Planologen (BNSP)]. These meetings resulted in a number of changes to self-regulation. Codes of conduct should not hinder or stop clients from switching to another architect. Architects have therefore been given greater opportunity to engage clients that have previously contracted another architect. Also, changes have been made to the rules on contacting colleagues about a new project due to arise within a similar building to the one in which an architect is working. The NMa expects these alterations to promote the level of competition among architects and provide a wider range of choice to clients when selecting an architect. This may improve the quality of architectural services provided. NMa analysis of self-regulation among architects has now come to an end.

#### Notary profession

The NMa conducted a series of meetings with the professional organisation concerned: the Royal Society for the Notary Profession [Koninklijke Notariële Beroepsorganisatie]. By subsequently issuing a consultation document on 30 March, the NMa invited the opinion of a wide range of parties involved in the market for notary services, including private and business users. They were queried on the issue whether current forms of self-regulation were considered to be necessary and proportional to the sound exercise of the notary profession. These included the prohibition on awarding provision and specific limitations regarding the use of intermediaries and the outsourcing of services. The consultation document was not sent out until the government had officially reacted to the report issued by the Committee on the Evaluation of the Notary Act. The consultation round was officially closed off by means of a round table meeting on 4 December 2006, in which various respondees and a number of interested parties participated. A final report is expected for the first half of 2007.

#### Legal profession

Likewise, the NMa conducted a series of meetings with the professional organisation involved: the Netherlands Bar Association [Nederlandse Orde van Advocaten]. Following this, the NMa invited the opinion of a wide range of interested parties, including private and business users of legal services, who were asked to give their opinion by responding to a consultation document. The question under consideration was whether current forms of self-regulation were considered to be necessary and proportional to the sound exercise of the legal profession and the protection of customers. More specifically, rules prohibiting particular collaborative associations and the direct approach of potential clients were the subject of consultation. The consultation document was not sent out until the government had officially reacted to the report issued by the Committee on the Legal Profession. After taking note of the reactions to the consultation document, the NMa will in the course of 2007 convene a round table meeting inviting respondees and interested parties. Subsequently, the NMa will draw up its final report on self-regulation among architects.

#### Accountants

In 2006 the NMa conducted a series of meetings with the professional organisations concerned: the Royal Dutch Institute for Registered Accountants [Koninklijk Nederlands Instituut van Register-accountants (NIVRA)] and the Dutch Association for Accountants and Administrative Advisors [Nederlandse Orde van Accountants-Administratieconulenten (NOvAA)]. Almost simultaneously, various legislation processes were completed. Recently, the Directive 2006/43/EC, the Act on the Enforcement of Accountants Organisations [Wet toezicht accountantsorganisaties (Wta)] and the Decision on the Enforcement of Accountants Organisations [Besluit toezicht accountantsorganisaties

(Bta)]. On the basis of this regulation, NIVRA and NOvAA have drawn up many new directives and supplementary regulation, while removing regulation that had now become obsolete. The NMa commented on these directives and supplementary regulation from the perspective of competition. At the close of 2006, some new directives and supplementary regulation had not yet been implemented. The process will be completed in the course of 2007. The NMa will then announce its findings on self-regulation among accountants.

## 4.6 Construction industry

What was in the NMa Agenda 2006?

The extensive sanctions procedures, whereby undertakings were given the opportunity to participate in an accelerated procedure, will be completed in 2006. In the coming year, the construction sector will therefore remain an important sector for the NMa's work. The ultimate aim is to make these markets work through efficient operations and innovation, resulting in prosperity gains.

*The NMa Agenda 2006 (and 2007) is available on our website under the menu item of Annual Report.*

### Background

In December 2002 the Parliamentary Committee of Inquiry into the Construction Industry professed to be shocked at the vast scale of 'structural cartel formation, drawing on deep-rooted practices and the culture of the construction industry'. The Committee report stated that it was now high time 'to do away with these ingrained practices and implement structural changes'. Those involved should 'come clean' in order to establish 'new business relations'.

Despite intense efforts over 2003 at investigating possible infringements in the construction industry, resulting in a series of sanctions decisions imposing a fine totalling more than EUR 100 million on some twenty construction companies, the NMa established in early 2004 that the business community showed little initiative to develop new business relations. At around this time, media reports on large-scale fraud in the Housing and Utility Engineering subsector [B&U] appeared. Shortly afterwards, the government and the NMa issued an urgent appeal calling on the construction industry to come clean. This would also involve openness about past practices.

The government called on construction companies to submit a leniency application to the NMa before 1 May 2004. Largely on the basis of these leniency requests (2004 and 2005) a large number of statements of objections were drawn up, resulting in almost 1400 cases to be dealt with. During 2006 sanctions were imposed in the majority of these cases. A huge challenge, as the NMa had never been before handled such a large number of cases. To allow quick and efficient case-processing and contribute to an industry-wide cultural change, the NMa introduced an accelerated (fast-lane) procedure for the construction industry, which had been specially designed to suit circumstances in the construction industry in this period. *See: 'In practice': The investigation into the construction industry, p 40*

### Completed procedures in 2006 (fast-lane and regular)

By mid-2006, fast-lane procedures in the subsectors Cable and Pipeline Construction, Horticultural Services, Housing and Utility Engineering and Concrete Products had been completed. As a result, 90 per cent of cases had now been dealt with. In the second half of the year, the focus was on regular (normal) sanctions procedures involving companies that had contested the conclusions set out in the statements of objections.

Over all, the NMa imposed a total fine amount exceeding EUR 104 million on the abovementioned six subsectors. Also taking into account previously imposed fines, the sum total for these subsectors now stands at EUR 240 million and at more than EUR 300 million industry-wide. In 2006, the NMa refrained from fining in 107 cases. In conjunction with earlier decisions relating to the construction industry, this entails that participation in an infringement could not be established in 8 per cent of cases.

### In retrospect

In a relatively short period of time, the NMa has successfully taken to task an entire, wide-ranging industry. Fast-lane procedures completed in 2006 were a success in terms of a high participation percentage (90%) and relatively low appeal percentage (10%). The procedure offered the majority of construction companies the opportunity to come clean. By now, the NMa focuses on administrative and judicial appeal procedures, which are ongoing in about 10% of cases. In November 2006 the first batch of decisions on appeal were drawn up in the fast-lane procedure in the Civil Engineering and Infrastructure [GWW] (32 cases) and Installation Engineering (12 cases) subsectors.

#### New statements of objections and decisions in the construction industry and related sectors

Though no longer a spearhead of NMa policy, as set out in the agenda for 2007, the construction industry requires continuous attention. The sector should now be acquainted with the prohibition on anti-competitive agreements. However, the NMa realises that a cartel culture spanning a period of well over ten years cannot be put to an end overnight. This is attested by the fact that the NMa again drew up statements of objections related to the construction industry towards the end of 2006.

## ‘Bouwfraudeaffaire kan zich herhalen’

Cobouw | 26-10-2006

This concerns a statement of objections against nine manufacturers of various types of prefabricated concrete floor elements. They are under suspicion of having carried on cartelistic practices following the presentation of the findings of the Parliamentary Committee of Inquiry in 2002. They participated in cartel agreements from the start of 1998 up until the end of 2003. In addition, a statement of objections was drawn up against nine manufacturers of concrete decorative paving stones. They are under suspicion of having entered into cartel agreements in the period from early 1998 up until the end of 2005. In both these investigations, the NMa made use of evidence submitted by a number of manufacturers. These manufacturers have chosen to participate in the NMa's leniency programme.

Finally, towards the end of 2006, sanctions were imposed on a number of galvanisation companies for market sharing offences. In the period starting on 1 January 1998 up until 1 July 2002, they shared customers based in the Netherlands. The NMa contends that these practices served a common purpose and aimed at perpetuating a division of customers. In setting fines, the NMa took into consideration evidence submitted by companies in the sector as part of various leniency applications. In total, companies were fined an amount exceeding EUR 3 million. One of the cartel participants remained exempt. This company was the first to inform the NMa about the cartel and was granted fine immunity as a result. The NMa underlines that its approach towards newly found cartels in the construction industry will go 'back to normal', based as such on regular sanctions procedures and involving fining procedures according to the generally applicable fining guidelines. See: *'the strategy'*:

*Sanctions, p 16*

## 4.7 Transport

What was in the NMa Agenda 2006?

Within the NMa, the Office of Transport Regulation is responsible for compliance with transport legislation. Strict regulation of competition on the transport markets is necessary for as long as undertakings acquire a (temporary) monopoly through privately granted concessions or, alternatively, on the basis of licences granted for transport or the management of infrastructure. The aim of the transport acts is to avoid a situation where undertakings can abuse their market position.

*The NMa Agenda 2006 (and 2007) is available on our website under the menu item of Annual Report.*

### 4.7.1 Sector-specific regulation

The Office of Transport Regulation within the NMa is responsible for sector-specific regulation of transport markets. Its regulatory tasks are based on the Passenger Transport Act 2000 [Wet Personenvervoer 2000 (Wp2000)], Railway Act [Spoorwegwet (Sw)] and the Aviation Act [Wet luchtvaart (Wl)].

#### Passenger transport

In regulating the Passenger Transport Act 2000, the NMa found that local transport companies increasingly meet the obligation of issuing a statement that outlines financial relations between local public transport companies and related subsidiary transport companies. This is necessary to prevent means derived from public transport from being used to finance activities in other, related markets. Also, the Office of Transport Regulation advised the Minister of Transport, Public Works and Water Management on the amendment to the Passenger Transport Act. See: 'Expertise': *Developments in legislation*, p 34 Following questions submitted to the NMa Information Line and ConsuWijzer over 2006, there were approximately 30 instances in which the Office of Transport Regulation issued advice on transport-related topics to business and consumers. In most cases, questions related to tariffs and conditions applicable to railway and bus transport as well as taxi services.

#### Railway transport

At the start of 2006, the Office of Transport Regulation published the Railway Monitor [Spoormonitor], from which it extracts particular areas of attention for the coming year. See: 'Expertise': *Market research*, p 28 The most important areas of attention for 2006 are capacity management and charging fees. Improved capacity allocation for the railway network will benefit the overall circulation on the network. Regulation of charging fees is required in order to stimulate the railway transport sector to contribute more to covering costs.

#### Capacity management

In 2006 the focus was on the network statement [netverklaring]. The network statement, annually drawn up by network operator ProRail, should contain all relevant information on services provided by ProRail, capacity acquisition and allocation and other services, and the use of railway infrastructure. It is important for new entrants in the railway market that information is complete and easily accessible. On the basis of information given in the network statement, railway companies may submit specific requests for railway network capacity. In 2006 Pro Rail greatly improved the Network Statements 2006 and 2007. Facing penalty payments, it made the final necessary adjustments. The network statement now gives complete information.

# 'NMa wil helderheid bij ProRail'

FD | 30-08-2006

In 2006 the Office of Transport Regulation dealt with a complaint submitted by the freight transport company Dillen & Lejeune Cargo NV (DLC) against ProRail on the issue of capacity allocation.

Judging by the unsafe conditions of the railway line between Budel-Weert, the Office of Transport Regulation indicated that ProRail had not been capable of allocating capacity to DLC. Nonetheless, it should have provided DLC with better information.

#### Charging fees

Charging fees are tariffs levied on railway companies by the network operator for access to the railway network. Various regulatory measures have proved necessary here. Firstly, it was apparent from research that the access agreement concluded between the railway companies and the operator ProRail did not arrange for performance targets. Such targets are obligatory by law and stimulate parties to improve their performance on the railway network and reduce disruptions to services. The NMa pressed for a retroactive agreement on performance targets with which parties finally concurred.

Furthermore, the Office of Transport established that provisions for charging reservation fees, as contained in the Network Statement, have a discriminatory impact. On the basis of these findings, ProRail amended the provisions. Research also showed that budgeted costs entered for non-centrally controlled areas (Niet Centraal Bediende Gebieden (NCBG)) by ProRail proved too high. As a result, charging fees needed to be adjusted downwards. ProRail refunded an amount of EUR 3.43 million to transport companies.

#### *International cooperation in the railway sector*

According to Directive 2001/14/EC, from which the liberalisation of the railway sector within the EU takes its cue, regulators in the EU Member States shall cooperate and share information in order to force back entry barriers for (new) railway companies. The Office of Transport Regulation met with new regulators, including its Belgian and Czech counterparts, and participated in various international conferences. The Office of Transport Regulation has also actively contributed to cooperation in the railway corridors Rotterdam – Genua and Rotterdam – Lyon, which was initiated by the international Ministries of Transport.

#### *Informal opinion on cooperative buying group Vivens*

Vivens will jointly purchase gas oil and electricity for the entire railway market. In addition, Vivens will operate tank installations belonging to ProRail. Vivens will need to amend its statutes to secure the independent nature of decisions on participating in Vivens and guarantee open access to tank installations for non-members. Also, a number of concerns were pointed out to Vivens, which in practice may give rise to infringements. By means of this informal opinion, the NMa contributes to transparent, non-discriminatory energy purchasing for railway companies. In this case also, synergy between general competition enforcement and sector-specific regulation was at play, as the Office of Transport Regulation cooperated with the NMa's Antitrust Department and its Office of Energy Regulation.

#### *Aviation*

On 19 July 2006 an amendment to the Aviation Act [Wet luchtvaart] came into force, laying down that the system for calculating the costs and benefits of aviation services provided by Schiphol shall be submitted to the NMa for approval. See: 'The expertise': *Developments in legislation*, p 33

#### *Maritime pilotage services*

The NMa advised the Ministry of Transport, Public Works and Water Management on the issue of maritime pilotage services. It issued a Practicability and Enforcibility Test [Uitvoerbaarheids- en Handhaafbaarheidstoets] for the new Market Monitoring Registered Pilotage Services Bill [wet Markttoezicht registerloodsen] and advised on the decision relating to this Bill. The Bill was brought before the House of Representatives of the Dutch Parliament in December 2006. Parliament is expected to pass the Bill in the course of 2007. After the Bill comes into effect, the Office of Transport Regulation will expand its range of tasks.

#### 4.7.2 Mergers and acquisitions

##### Connexxion acquisitions do not create a dominant position

The market for public transport was liberalised on the basis of the Passenger Transport Act 2000 [Wet personenvervoer 2000]. Licenses to operate bus, tram, metro and regional railway services are now open to public procurement. The public transport market may be characterised as a bidding market. Transport companies compete for often large concessions, which are granted to a transport company for a maximum of 8 years (barring exceptional circumstances). Competition is therefore more intense than in non-bidding markets, in spite of high market shares. At present, three large transport companies are active in the Netherlands, Arriva, Connexxion and Veolia, competing for various large concessions. Connexxion is the main player. At the end of December, the NMa cleared the acquisition of the municipal transport company GVU in Utrecht and the local transport company Novio in Nijmegen by Connexxion. The NMa does not expect the takeover to cause GVU en Novio, relatively small bus transport companies and important competitors to Connexxion, to exit the market. Moreover, the acquisition will not result in a significant deterioration of the competitive position of other important transport companies.

#### 4.7.3 Cartels and dominant positions

##### OV Chip Card

In the autumn of 2006 the NMa issued an informal opinion on the OV Chip Card system, a new electronic payment system for public transport. The system will be launched nationally on 1 January 2009 and is expected to become the new standard payment system in public transport, replacing the so-called 'strippenkaart', which is used in buses, trams and metros, and railway tickets. The system has been developed by Trans Link Systems (TLS), a collaborative venture of five public transport companies, Netherlands Railways [de Nederlandse Spoorwegen (NS)], Connexxion, GVB, RET en HTM. TLS is responsible for development, implementation and management of the system.

In its informal opinion, the NMa signalled two competitive risks. Firstly, the system under consideration lacked an independent appeals procedure for public transport companies, if they were to be denied access to the OV Chip Card system. Following this observation, TLS has introduced an independent arbitration procedure that processes complaints submitted by public transport companies excluded from the system. Also, the NMa pointed out that the NS owns 55% of TLS shares and, accordingly, has related powers of authority, which poses a risk, as the NS might keep competitors from gaining access to the Chip Card system. This brings along a large responsibility for the NS to safeguard that the board of TLS can independently decide on the interpretation of access conditions to the OV Chip Card system, thus preventing any disruptions to competition. *See: 'In practice': Synergy, p 76*

### 4.8 Activities outside the scope of the NMa Agenda

#### What was in the NMa Agenda 2006?

*This Agenda does not alter the fact that the NMa will continue to respond to current developments in 2006. The NMa Agenda 2006 (and 2007) is available on our website under the menu item of Annual Report.*

Of course, the NMa should not restrict its activities to the prioritised areas of attention set out in the NMa Agenda. This concerns mergers and acquisitions first and foremost, but is in many cases also relevant to investigations into cartels and dominant positions. Below a number of cases will be highlighted. Information on further cases may be obtained through the search engine available on our website under the link of 'Annual Report'.

#### 4.8.1 Mergers and acquisitions

##### Pork

In February the NMa cleared the acquisition of Slachthuis Groenlo by Dumeco, part of the Sovion group. Both parties are active in the field of pig and sow slaughtering and pork processing and sales. After investigation, the NMa concluded that the geographical market for pig and sow slaughtering services has cross-border dimensions and that combined market shares do not render it likely that a dominant position is created or strengthened in the purchase markets for pigs and sows for slaughter. In the markets for pork processing and sales also, Sovion market shares will not create or strengthen a dominant position.

##### Savoury snacks

Another concentration case involves Smiths and Duyvis. In April 2006 the NMa cleared the acquisition of Duyvis by Smiths Food Group (part of PepsiCo) after a merger enquiry. Parties will have a strong combined position in the market for savoury snacks, but the concentration will not create or strengthen a dominant position. The NMa found that supermarkets may exert sufficient buying power on the post-merger company. Besides, there are sufficient opportunities for market entry. Also, consumers and wholesale buyers will continue to have a sufficient choice of savoury snacks, including supermarkets' own brands and other brand products.

##### Sugar

In September 2006 the NMa decided on pursuing an in-depth investigation into the concentration of Koninklijke Coöperatie Cosun U.A. and CSM Suiker B.V. The companies will achieve very high combined market shares, possibly impeding competition in the Dutch sales market for sugar. Following a license application, the NMa will thoroughly investigate the geographic dimension of the sugar market. Due to the coming into effect of the Common Market Organisation for sugar on 1 July 2006, the main question to be addressed relates to whether or not this market will comprise an area beyond the Netherlands. Such an analysis is important to establishing the parties' combined position in the sugar market. The NMa therefore decided that a merger license is required.

##### Supermarkets

At the end of October 2006, the NMa cleared Ahold's acquisition of 29 Konmar supermarket branches. This required a modification of the original merger notification submitted by Ahold on the basis of a so-called regional analysis by the NMa. The NMa had identified potential restrictions to competition in a number of local markets for the sale of daily consumer goods via supermarkets. On a national level, the addition of 29 Konmar stores to Ahold's market share is limited, but in a number of local markets the merger may create high combined market shares, reducing Ahold's incentives to compete. The remedy proposal put forward by Ahold entails selling off several AH and C-1000 stores to a competitor in a number of regions. Also, Ahold has committed itself not to set up new supermarkets in two newly built shopping centres. On the basis of this modification, dominant positions are prevented from being created or strengthened and consumers will continue to have a sufficient choice of supermarkets in these regions. The European Commission referred the case to the Netherlands ('reasoned submission').

#### 4.8.2 Cartels and dominant positions

##### Statement of objections Grids

In 2006 the NMa investigated a possible infringement of the Competition Act/ EC Treaty by companies active in the grid manufacturing sector. Grids can have various purposes and are used in utility engineering, civil engineering and infrastructure, offshore, shipbuilding and the petrochemical industry. The investigation resulted in a statement of objections against five companies, active in grid production and grid sales. The NMa suspects these companies of having entered into cartel deals in

the period from January 1998 to March 2004, involving market sharing activities, price-fixing and collusive tendering for grids of a specific size. Four companies have applied for leniency.

#### Statement of objections Horticultural Services

In 2005 the NMa imposed a fine on eight providers of horticultural services. These companies are suspected of coordinating their bidding behaviour prior to five invitations to tender for contract in public procurement schemes for horticultural maintenance in the city of Maastricht. It was subsequently established that further companies may have been involved. The NMa therefore further investigated these five public procurement programmes. This resulted in a statement of objections against one of the companies under scrutiny.

#### Textile

A special case involves the CNV Services Federation [CNV Dienstenbond (CNV)] against the Association for Wholesale Retailers in the Textile Business [Vereniging van Grootwinkelbedrijven in Textiel (VGT)]. In the first half of 2005, it proved impossible for trade unions to reach an agreement with the VGT on a new collective labour agreement. The collective labour agreement for 2002-2004 expired, leaving a void. The VGT then advised its members to apply unilaterally modified employment conditions to contracts for new personnel. Subsequently, the CNV Services Federation submitted a complaint to the NMa. The CNV Services Federation argued that the advice issued by the VGT amounted to an illegal price agreement, contravening section 6 of the Competition Act. Deviating from its primary decision, the NMa on appeal ruled that the claim of the CNV Services Federation could be maintained, though the request to intervene was dismissed. The NMa agrees with the CNV Services Federation that settled case law, exempting collective labour agreements from the prohibition on cartels, should not be applied. After all, no collective labour agreement was established; the issue concerned a unilateral action on the part of the employers' association. The complaint was dismissed on other grounds, in that it lacked sufficient priority.

The NMa is of the opinion that it should show particular restraint in intervening in a dispute that in essence deals with employment relations and in which the protection of social interest is at stake. The NMa takes the view that a civil court judge is in a better position to rule on such cases. Bearing this in mind, the NMa has investigated whether, on the face of it, the behaviour of VGT evidently restricts competition. This was not the case. The advice issued by VGT, within its particular context, did not aim to impede competition in this sense. The impact on consumer prices of clothing and textile was found to be too unsure and indirect to justify a more in-depth investigation and the allocation of resources to this end.

## ‘Blokker speelt niet langer met Toys’R’Us’

BN/De Stem | 16-03-2006

#### Toys

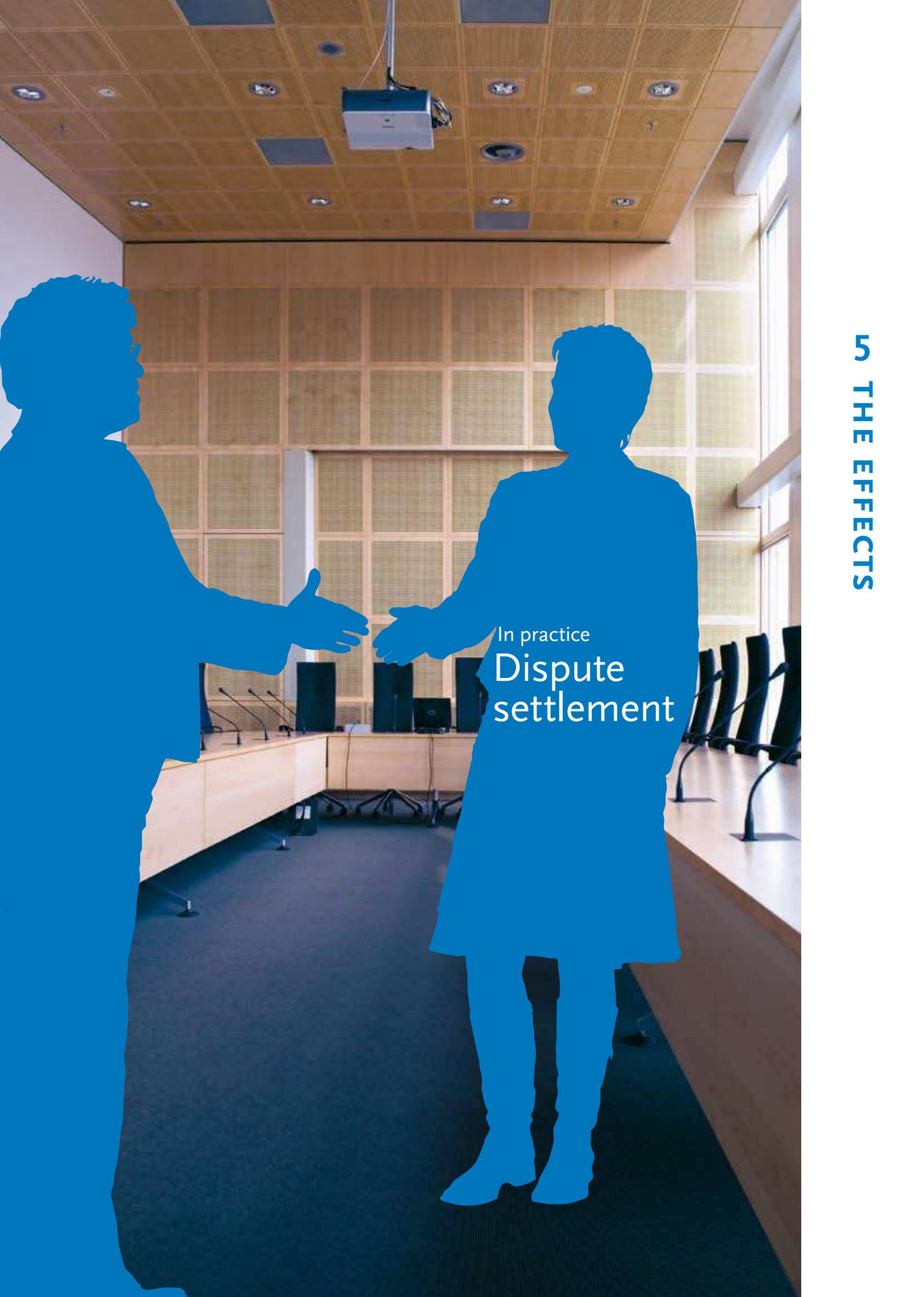
The toy chain Toys ‘R’ Us and Blokker Holding B.V., owner of Intertoys and Bart Smit, have taken measures to promote competition on the toy market in the Netherlands. The companies were urged to do so by the NMa. An NMa investigation showed that Blokker was closely involved with its competitor Toys ‘R’ Us. Blokker has now relinquished its controlling say in Toys ‘R’ Us. A further measure relates to the abolition of the Supervisory Board of Toys ‘R’ Us, which included a Blokker representative. The measures ensure that the toy chain Toys ‘R’ Us can be active on the toy market as a fully-fledged competitor of Blokker. The NMa will continue closely to monitor the toy retail market, which is characterised by a high degree of concentration.

The effects

Do we actually make markets work?  
'To measure is to know'  
and helps us improve.  
To 'give you your money's worth'  
is our goal.



Monique van Oers, Director, Legal Department:  
"The effects of our work are at times hard to quantify.  
A healthy competitive culture, involving critical consumers  
as well as companies, is multi-faceted."



In practice  
**Dispute  
settlement**

In practice

## Dispute resolution

The effects of action which we take are not only of a quantitative economic nature. For instance, cartels are not only harmful economically, but are also forbidden by law and socially undesirable. To achieve the most favourable effect, optimal compliance is more important than maximum enforcement. Dispute resolution within this framework appears to be an effective instrument. We can use the instrument of dispute resolution in the energy and transport sectors. By doing so, we can make concrete statements about the way in which the respective legislation must be applied, so that the parties can resolve their dispute efficiently without, for instance, unnecessarily burdening the courts with these disputes at a later stage.

Consumers who have a dispute with a grid manager can present this to us. Since 14 July 2004, the Electricity Act and the Gas Act have offered the possibility of dispute resolution. In general, we take a decision on an application within three months. The decision is binding on the parties involved. As a result, dispute resolution often produces a direct result for the consumer. A visible effect of dispute resolution is the fact that, after we have been called in, grid managers often try to reach an amicable

arrangement with their consumers. Some disputes, for instance, are even resolved before the parties are heard. Another visible effect of dispute resolution is the fact that grid managers and business consumers use the low-threshold dispute resolution procedure to obtain decisions which provide an interpretation of obligations arising from the Electricity Act and the Gas Act.

Disputes in which we have taken enforceable decisions relate to the scope of the statutory obligation to provide connections, the permissibility of general terms and conditions, the permissibility of transmission and connection tariffs, and various complaints about the way in which consumers are informed by the grid manager.

In 2006, dispute resolution appeared to meet a clear demand from business and private consumers for a quick solution to problems with grid managers. In 2005, we received 35 applications. In 2006, we received 64, of which 44 have been settled. In the last quarter of 2006, the number of applications for dispute resolution doubled relative to the preceding quarters. We expect the popularity of dispute resolution to increase further in 2007. In the first quarter of 2007, 20 applications were already being processed.

## **NMa: DLC will not yet be granted capacity by ProRail on the main railway route Budel-Weert**

6 September 2006

ProRail cannot be reproached for failing to grant transport capacity to Dillen & Le Jeune Cargo NV on the route Budel-Weert. This has been ruled by the NMa in a dispute between freight transport provider Dillen & Le Jeune Cargo and the rail operator ProRail. However, ProRail should have informed DLC in a more timely and thorough manner.

Dillen already submitted a capacity request for the Budel-Weert track section in December 2004. ProRail has up till now refused to grant this request due to unsafe conditions on the track. DLC regrets this as, because of this situation, it is less efficient in providing freight transport services on the main track.

The NMa concludes that ProRail is indeed responsible for providing access to and maintaining the safety of the track. Still, it cannot be held accountable for not yet having ordered the implementation of necessary works. ProRail has done its utmost to order the implementation of necessary works, but was not granted permission to do so by local authorities.

*Source: NMa press release*

## 5 THE EFFECTS

Ans Ruijken, Unit Manager, Legal Department, NMa “Dispute settlement is a good example of an instrument with immediate, tangible effects. For instance, it has a positive effect on good grid management. An example of this is the improvement in the way in which consumers are informed by their grid managers.”

Joke Mels, Senior Specialist Market & Regulation, ENeco NetBeheer B.V.

“Dispute settlement promotes the quality of grid management. Following the settlement of disputes, we redesigned our procedures on a number of occasions.”



Research into the effects of competition enforcement and market regulation is in development, in the Netherlands as well as abroad. We actively take part in debate on the subject, involving policy makers and scholars.

#### Impact on the market

In accord with our mission, we intervene to make specific markets work better. The effect is the degree to which a market works better as a result of our intervention. We are keen to describe effects and, if possible, quantify them. In doing so, the NMa improves its ability to tackle the problems that prove most relevant and apply the instruments that are most appropriate

#### Impact on the economy as a whole

We aim to generate prosperity by having an economic impact. This effect is expressed by calculating the increase in prosperity resulting from NMa policy over a particular period of time. We publish these quantitative effects in our annual report and other publications. This chapter will give you further information on the estimates for 2006.

#### Our Agenda

We want to address the right problems. Therefore, we consult society with a view to setting priorities. This does not, however, in any way affect our independence in setting out plans for the year ahead. These are published in the NMa Agenda. The effect is the degree to which these problems (and those outside the scope of the Agenda) have been dealt with. Our annual report is a means to accountability. It sets out in what way NMa performance has yielded benefits to society. In this way, we account for our activities and results.

## 5 What is the effect?

Previous parts of this annual report have described our mission, how we wish to implement it, the knowledge we use and how we then put this into practice. This part entitled ‘The Effects’ describes how important it is for us to have an overview of the effects of our work. We will discuss, in particular, the impact of our activities on the economy.

### 5.1 The effect of the NMa’s work

Since 2004, the NMa has calculated the effects of its regulatory activities on a structural basis. The NMa wishes to show that its work provides benefits to society. To do so, the NMa makes the economic effects of its activities measurable and visible. In its calculations, the focus is primarily on the (short-term) effect on prices and volumes supplied. Ensuring that markets work better also contributes to qualitatively better products, innovation and more efficient methods of production, as well as higher labour productivity. The outcomes, which become apparent mainly in the medium term, are difficult to calculate and to attribute to concrete interventions by the NMa. For this reason, these effects are not calculated separately, although potentially they may be considerable.

## ‘Mededingingsautoriteit pionier in Europa’

NRC | 21-06-2006

#### 5.1.1 Method of calculating direct effects

The approach to calculating the direct, short-term effects of interventions by the NMa is based on the approach which was also applied and discussed in the annual reports for 2004 and 2005 *See the annual reports on [www.nmanet.nl](http://www.nmanet.nl)*. In the case of enforcement action based on the Competition Act, this approach takes into account the direct damage caused by a cartel (section 6 of the Competition Act) and the abuse of a dominant position (section 24 of the Competition Act) as well as the damage that is prevented by blocking a merger in case it were to lead to parties acquiring unacceptable market dominance. In the calculation, a direct relationship must exist between the attributable effects and action taken by the NMa. In other words, only formal decisions are taken into account in the calculation.

This involves cases where:

- an infringement has been proven (and a sanction has been imposed);
- a merger is blocked;
- a proposed merger has undergone far-reaching amendments as a result of intervention by the NMa, or remedies have been imposed; *See: ‘The strategy’: Several alternatives , p 18*
- a proposed merger is withdrawn as a result of intervention by the NMa.

With regard to the last group of cases, the calculated effect accounts for 70% in the measurement, in line with the method used by OFT. As regards regulation, consideration is given to the effects of price regulation by DTe for regional electricity grids and gas networks.

The effect is twofold and consists of a price effect and allocation effect. The price effect means that consumers have to pay a higher price due to a cartel or the abuse of a dominant position. In the case of a merger, the parties would have been able to increase their prices if the merger had not been blocked or amended. In both situations, consumers have paid ‘too high’ a price or would have done so. In the case of regulation, the calculation method also involves price differences, but then resulting from regulation. This Price differences are then multiplied by the volume of sales and the price effect

is calculated accordingly. The allocation effect relates to a change in the volumes purchased. Due to the higher price, certain consumers will no longer purchase products. They ‘disappear’ from the market. This causes a loss of prosperity, the so-called ‘dead-weight loss’.

### 5.1.2 Benefits of network regulation

In the NMa’s earlier annual reports, attention was also paid to the benefits of grid regulation on the markets of regional managers of electricity grids. In addition to the electricity market, DTe also regulates the gas market. On this market, networks also play a crucial role. These networks can be characterised as natural monopolies. To protect end-users from possible monopolistic behaviour of suppliers, the suppliers are subject to regulation. On the gas market, the first regulatory period related to the years 2002 to 2004. This only involved small end-users (up to 170,000 m<sup>3</sup> a year). The second regulatory period extends from 2005 up to and including 2007 and, in addition to small end-users, also includes wholesale end-users. See: ‘The Agenda’: Energy, p 44

To calculate the benefits of regulation, a so-called ‘counterfactual’ must be used, that is, the situation which would exist without regulation. In this counterfactual analysis, it is assumed that the network tariff increases annually by at least the rate of inflation. The actual rate is limited by price caps imposed by regulation. The purpose of these price caps is to promote efficiency. By comparing the actual development of tariffs with the development of tariffs in line with inflation (the counterfactual), the price effect of regulation can be derived. To arrive at the total benefit, this price effect is multiplied by the volume purchased.

Figure 1: Benefits of the regulation of gas networks and electricity grids (x EUR million, at prices for 2006)

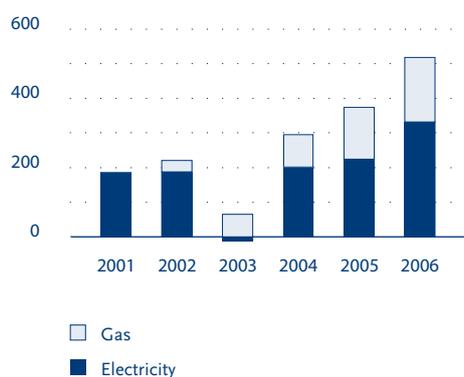


Figure 1 shows the benefits of regulation of the gas and electricity markets for the years 2001 up to and including 2006 (at prices for 2006). The benefits of regulation amounted to more than EUR 500 million in 2006. The benefits in the case of gas are lower than those for electricity because the turnover of regional gas network managers was lower than that of regional electricity grid managers. On the other hand, however, higher price caps were imposed in the gas sector (compare the average annual price cap of approximately 3% in the case of electricity with the price cap of approximately 3.8% in the case of gas). In 2003, the benefits in the case of electricity were negative. This is due to the dismissal of the original x factors in the ruling of the Trade and Industry Appeals Tribunal in the Nuon – Reliant case in 2003. If the total effect for electricity and gas over a period of six years is considered, the advantage of regulation for consumers may be quantified as an amount exceeding EUR 1.8 billion.

### 5.1.3 The benefits of the NMa’s work

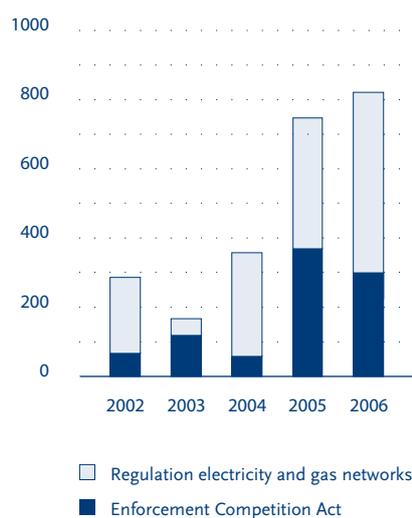
Decisions taken by the NMa are the point of departure for the method of calculation used. However, market parties may file administrative and judicial appeals against these decisions. If these administrative or judicial appeals are ultimately declared to be well-founded, in full or in part, with regard

to the material assessment, or if the NMa decides not to institute further proceedings, the effects calculated earlier are removed entirely from the calculation. In 2006, there were four cases which resulted in an adjustment to the effects calculated earlier due to amendments of the decision or a court ruling. In total, corrections amounting to more than EUR 500 million were made in respect of earlier years. These amendments are already reflected in Figure 2 below.

With regard to competition enforcement, the effect relates to 21 cases, of which 12 cases involve antitrust regulation and 9 cases relate to merger control. In most cases relating to antitrust regulation, detailed information is available on the price effect, which is then used in the calculation. In cases where no detailed information is available, a standard rule is applied whereby the price effect is assumed to be 1%. This standard rule is also applied in merger cases. The economic effect of the 21 cases amounted to more than EUR 300 million in 2006. The economic effect calculated is therefore slightly lower than that for 2005. Mainly the larger cases in the construction industry investigation were processed in 2005.

The final calculated effect, in other words, including the benefits of network regulation, amounted to more than EUR 800 million in 2006 (see Figure 2). As a result, the total amount will be slightly higher than in 2005. The figure below shows the benefits of regulation.

Figure 2 Benefits of enforcement and regulation under the Competition Act and sector-specific regulation (in EUR millions, at prices for 2006)



The data presented are conservative estimates, specifically focused on short-term price and volume effects. More dynamic effects, such as innovation and improvements in productivity, are not taken into account in this calculation. If these other effects were to be included, the estimate of the effect of NMa enforcement and regulatory activities is expected to be much greater.

## 5.2 Anticipation of NMa enforcement by companies in the SME sector

In addition to the effects directly related to the NMa's activities, the NMa's activities also affect spontaneous compliance with the Competition Act. This contributes to optimal compliance with the Act and is therefore essential to achieving the NMa's aim, namely 'making markets work'. However, spontaneous compliance is difficult to quantify. In 2005 an initial attempt was made to obtain an insight into such spontaneous compliance within the SME sector. The research bureau EIM collected data from more than 2500 companies in the SME sector (1-100 employees). Approximately 99% of all

companies fall into this category. In 2006, this measurement was repeated amongst approximately 2,250 companies. Since the data collection methods of both measurements are comparable, it is possible to examine whether the observed threat of competition and/or the underlying forces have changed.

### The research

In the research, six forces which may exercise competitive pressure were considered, namely:

- direct competitors;
- bargaining power of end-users;
- bargaining power of suppliers;
- (potential) entrants;
- substitutes; and
- the institutional framework, in the form of action taken by the NMa, amongst others.

Two statements were formulated for each of these forces, which indicate their intensity. Of these six forces, ‘bargaining power of buyers’ and ‘direct competitors’ have the greatest effect. This is an indication that in most markets, normal forces of competition do their work. Action taken by the NMa is also important, but is of a different order of magnitude. This is not strange and shows that the NMa provides a framework within which the other competitive forces can do their work. Table 1 shows the average scores for the competitive forces ‘internal competition’, ‘power of buyers’ and ‘the importance of the Competition Act and the NMa’ for the years 2005 and 2006. Of these three forces, only the average score for ‘the Competition Act and NMa’ has increased significantly. This means that anticipation of enforcement by the NMa by companies in the SME sector has increased both relatively and absolutely.

Table 1 Average score for competitive forces

Competitive forces	Average score 2005	Average score 2006
Direct competitors	3.04	3.06
Power of buyers	3.34	3.29
Competition Act/ NMa	2.40	2.58

*Companies give a score to each statement on a five-point scale from 1 (disagree entirely) to 5 (agree entirely).*

In Table 2, the statements in relation to the Competition Act and the NMa are considered in more detail. In 2006, more than 31% of companies interviewed indicated that statements by the competition authority had ‘strongly influenced’ their company’s decisions. In 2005, this figure was almost 24%. In response to the statement ‘The NMa is very active in market’, almost 23% of companies stated that they were in agreement, or were entirely in agreement with this statement. This is a significant increase of more than 5% compared to 2005. The average score for the statement ‘statements by the competition authority have a strong influence on the way in which we do business in our market’ is higher than for the statement ‘The NMa is very active in our market’. This is logical since the NMa has to set priorities and can only be active on a limited number of markets. However, it is an indication that action taken by the NMa in a particular market has indirect effects on other markets.

Table 2: NMa guidance

Statement	% in agreement + entirely in agreement 2005	% in agreement + entirely in agreement 2006
Statements by the competition authorities have a strong influence on the way in which we do business in our market	23.7	31.4
The NMa is very active in our market	17.2	22.6

The organisation

We cherish our independence  
and follow our own path:  
acting in an effective,  
decisive and realistic way.



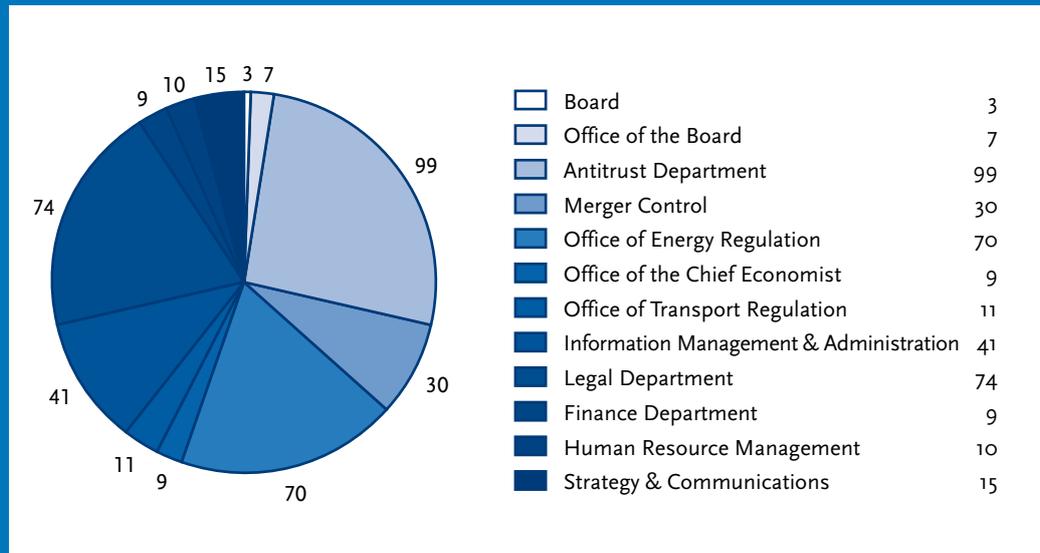
Marga Zuurbier, Director of the Office of  
Transport Regulation:

“The NMa promotes a culture of debate. This is not an end in itself, but should strengthen our policy, deepen our understanding and raise the level of transparency.”



In practice  
Synergy

FTEs for each organisational unit within the NMa



## In practice Synergy

### Departments within the NMa

The NMa comprises a number of organisational divisions. In addition to various support departments, the NMa also includes two chambers – the Office of Transport Regulation and DTe – and three main departments – the Antitrust Department, the Merger Control Department and the Legal Department.

As a rule, organisational divisions operate independently. Handling cases, however, regularly requires the combined expertise of various departments. Such cases clearly attest to the merit of synergy as a major source of strength for the NMa. It is necessary to add that the Competition Act lays down that investigation activities shall be clearly separated from operations involving legal judgment, resulting in a statement of objections. For this reason, investigation is solely to be carried out by the Antitrust Department and Merger Control Department, whilst the Legal Department draws up sanctions decisions if required and processes appeals.

### Cooperation on informal opinion OV Chip Card

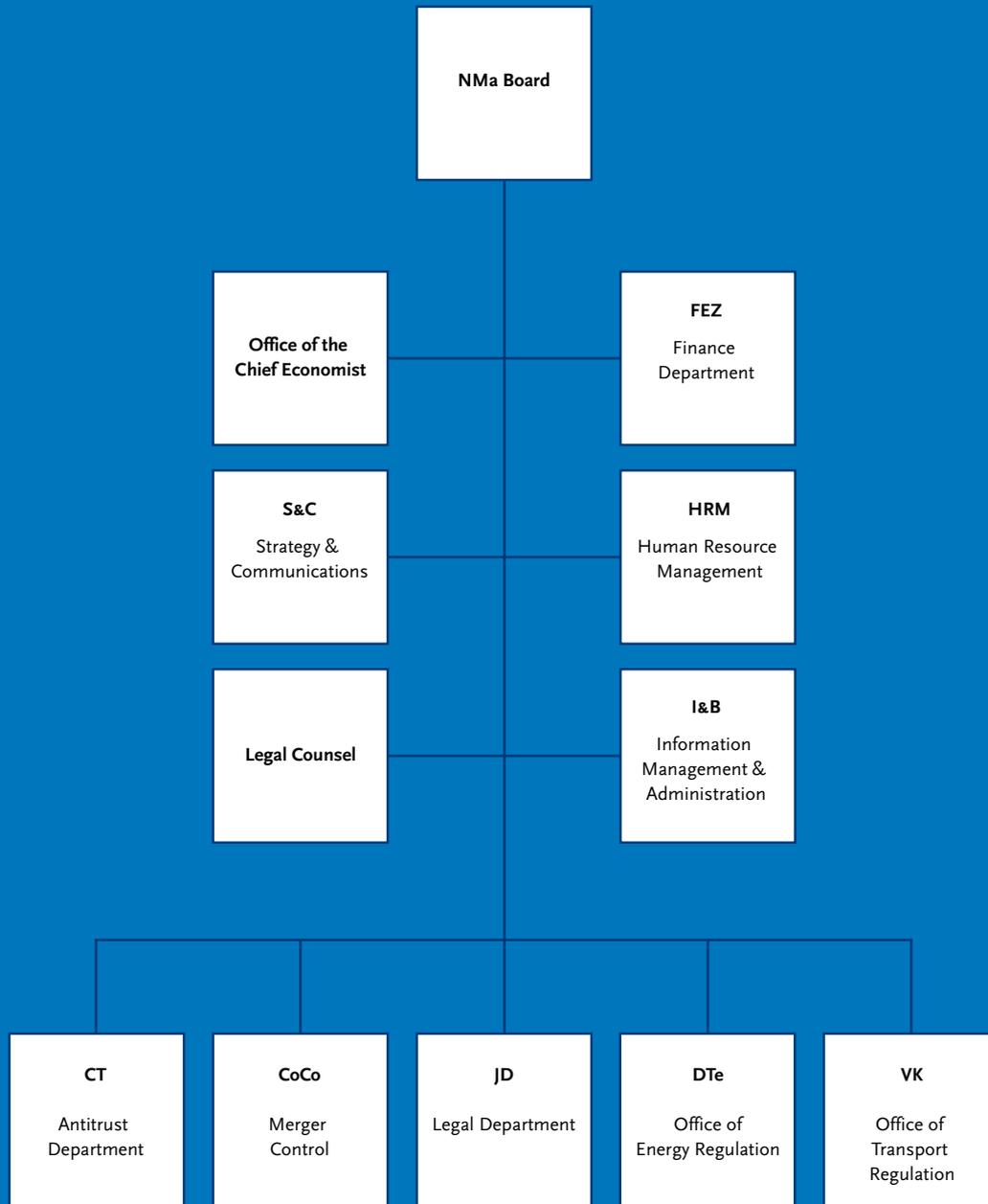
The informal opinion on the OV Chip Card provides a lively illustration of the cooperation between various departments within the NMa. In the autumn of 2006, the NMa issued an informal opinion on the OV Chip

Card system, a new electronic payment system for public transport that is to replace train tickets and 'strippenkaarten'. In the informal opinion, we outlined two possible risks to competition. First, the system under consideration lacked an independent appeals procedure for public transport companies, if they were to be denied access to the OV Chip Card system. Second, we established that there is a possible risk of competitors being excluded from the Chip Card system by NS, as NS owns a 55% stake in TLS and may deploy related powers of authority.

See: 'The Agenda': Transport, p 61

The intended introduction of the Chip Card system was tested against sections 6 and 24 of the Competition Act. The bulk of the investigation was therefore carried out by the Antitrust Department. A thorough understanding of the market, however, required sector-specific expertise of the public transport market. This called for cooperation between the Antitrust Department and the Office of Transport Regulation. A special project group was formed to facilitate an exchange of information.

Organisation chart



Renée Elzinga, Division Head with the Regulatory Affairs & Compliance NS Groep NV

“The NMa’s strength lies in its capacity to coordinate, to combine expertise and share knowledge. Though sector-specific regulators do not deal with cases involving general competition issues, a joint point of reference does indeed bring advantages.”

John de Vries, Member of staff with the Antitrust Department, NMa

“The Office of Transport Regulation is the external reference point for the transport sector in issues of competition. Though the Antitrust Department took on the major part of the investigation. Still, judging by the specific expertise of the Office of Transport Regulation, this is only natural. We operate as one.”



Our people work together on the principle of flexibility and trust. We aspire to synergy. We have grown and lived through many changes. Tasks have accumulated over the years.

#### Starting out

In our early days a small group of people faced a huge caseload. DTe was incorporated within the NMa, taking care of energy-related tasks. Expertise and experience rapidly increased within our young organisation.

#### Broadening our base

In the course of the years, many new statutory tasks were added to our legal base. The Office of Transport Regulation came into being. Investigations into the construction industry peaked. We actively recruited young and experienced new staff to take on the workload.

#### Fine-tuning

In 2005 the NMa was given the status of an Autonomous Administrative Authority [Zelfstandig Bestuursorgaan]. Stability prevails; our tasks are clearly set out, we are well acquainted with markets and aim for steady development. Our market expertise and the effectivity of our work should continue to expand in years to come.

## 6 What are the means employed by the NMa?

Previous parts of this annual report, entitled 'The strategy', 'The expertise' and 'The Agenda', outline NMa activities. Under the title heading of 'The effects' it was established that society benefited by approximately EUR 800 million as a result of NMa performance. We highly value our people and aim to manage their work efficiently. Our operational organisation aims to offer optimal support, as reflected in its human resource management, ICT policy and financial management.

### 6.1 Organisation

Since July 2005 the NMa has operated as an Autonomous Administrative Authority [Zelfstandig Bestuursorgaan] headed by a Board. The year 2006 witnessed very few major changes to the organisation. The NMa's Office of the Chief Economist was formally launched. In April 2006 the Leniency Office was transferred to the Antitrust Department. Also, the Appeals Centre and Legislation Centre were given formal status within the organisation in 2006. See: 'The expertise': Knowledge and quality management, p 32

### 6.2 Personnel

HRM policy maintained its focus on three objectives: positioning the NMa as employer of choice, innovative capacity and good employment practices. These have been translated into concrete results. The table below shows realisation figures for 2006:

Table 1: The NMa as an employer of choice

Critical success factor	Monitoring instrument	NMa norm	Realisation rate NMa over 2006
The NMa as an employer of choice	Duration of vacancies	85% of vacancies filled within 3 months	80%
	Exit rate permanent staff during first year of employment (entry numbers divided by exit numbers for first year of employment)	Max. 5%	0%
	Ratio male/female	50% – 50%	52% – 48%
	Percentage of women in MD functions (Scale 14 and up)	32%	42%
	Level of occupancy	95%	95,9%
	Integrity	No incidents	No incidents
Innovative capacity	Mobility rate (established for the level of occupancy on reference date 31 December 2006)	Min. 10% – max. 20%	Entry rate 26.5%
			Internal mobility rate 12.7%
			Exit rate 18.8%
	Percentage of total salaries spent on education	3%	2.9%
Good employment practices	Absenteeism due to illness (not including maternity leave)	Max. 3.8%	4.35%
	Results of exit interviews (feedback process)	75% of exit numbers	76%

### The NMa as an employer of choice

It is regularly the case that NMa staff members with 3 to 5 years of work experience wish to pursue their careers outside of the NMa. This necessitated an extra recruitment effort by HRM and directors. As a result, the duration of vacancies was just short of the norm, though the NMa succeeded in reaching a level of occupancy per 31 December 2006 that is slightly above the norm. Growing pressure in the job market, particularly involving the legal profession and economists, has had an effect on the NMa. As in previous years, it has proved difficult to recruit experienced staff (5 to 7 years of work experience).

In 2006 the total number of vacancies was 230. This includes internal mobility numbers (48) and entry numbers (182). Entry numbers may be divided into permanent staff (59), fixed-contract staff (100) and student internship placements (23). In total 2053 job applications were processed, exceeding the number for 2005 by 300. On 31 December 2006 the total number of staff employed at the NMa was 378 (356.2 fte). This reference date for 2005 yielded a total number of 366. These figures do not include trainees and temporary employees. As in 2005, the average age of NMa staff was 37.

The NMa has improved the quality of its recruitment communications. In 2006 a quick scan of recruitment communication practices with the NMa was carried out by the consultancy firm Synergie. Its recommendations were taken up in 2007. Aiming to profile the NMa as an employer of choice, a recruitment team of NMa staff is now 'on the road'. They attend job fairs and university career days, providing information on employment opportunities with the NMa. In 2006 the NMa organised two 'in house days' to allow advanced students to get to know the NMa. In addition, the NMa undertook a total of eleven employer presentations at job fairs and similar events during 2006.

### Innovative capacity

As outlined above, data for the NMa in 2006 show a further increase in entry and exit numbers; the internal mobility rate stands at 12.7% with the exit rate at 18.8%. The entry rate for 2006 is 26.5%, so the NMa was able to fill most vacancies. The NMa strives for diversity in expertise and experience among its staff. Flexible employability is regarded as highly important. In addition, candidates are selected on grounds of specific sector-related expertise and professional background. The NMa also bears in mind the need to maintain a well-balanced workforce in terms of expertise and experience.

#### Career development policy

In consultation with the NMa works council, the Board has revised career development policy at the NMa. This policy is based on an analysis of selection procedures and career development within the NMa. The main policy objectives are to increase the attention for career and mobility issues in the annual assessment interviews and simplify procedures for issuing and filling vacancies, also involving related rules of play for salary growth and periodic quantitative accounting for recruitment results and improvement.

Career development policy also entails further extending the NMa's educational policy. It was decided that managerial staff will also be offered a tailor made course programme to help deal with their increased and more explicit responsibility for career development and mobility among employees. In 2006, staff attended a total of 609 courses and training programmes (internal and external). Costs amounted to 2.9% of total salaries. Of course, providing internal company courses brought down costs. This result comes close to the NMa norm of 3%; in 2005 2.6% of total salaries was spent.

### Good employment practices

Following a decline to 3.5% in 2005, absenteeism due to illness has in 2006 risen to 4.35%. Short-term absenteeism (less than 6 weeks) stands at 2.21%, absenteeism for longer periods (exceeding 6 weeks) reached 2.14%. These figures clearly show that health policy and cutting down on absenteeism, should be given more attention, within the socio-medical teams for instance. The importance of these issues will be emphasised to an even larger extent.

#### Employee participation

In 2006 the Board and the NMa works council [Ondernemingsraad] met six times. The works council advised on career development policy, setting up back offices with DTe and the Antitrust Department (with a view to launching ConsuWijzer) and cooperation between the Merger Control Department and Antitrust Department. One of the members of the works council is represented in the departmental works council of the Ministry of Economic Affairs.

### 6.3 Staff support services

#### ICT

A knowledge organisation like the NMa cannot do without a sound and solid ICT structure. In 2006 a so-called knowledge portal was designed, which incorporates and gives access to all available digitally preserved information. See: *The Expertise: knowledge and quality management, p 31* Also, a Document Management System was introduced. This digitisation project will gradually be implemented over the next two years. In 2006 the NMa also started work on renewing and expanding its management information system. Information security also is an important issue, prompting the NMa to invest in specific policy measures as well as technical innovation in order to prevent damage.

#### Integrity

Pursuant to an amendment to section 61a of the General Civil Service Regulation [Algemeen Rijksambtenarenreglement], the Ministry of Economic Affairs published an integrity code, binding all civil servants employed at the Ministry of Economic Affairs, thus also including NMa staff. This new integrity code considers and at times reconsiders a wide variety of issues, reflecting on the importance of integrity and dealing with rules of conduct, the whistle-blower scheme, professional disciplinary and sanctioning measures as well as the complaint regime applicable to cases of inappropriate conduct. It is standard procedure for new NMa staff to be requested to submit information on outside work and ownership of stocks and shares. If necessary, such ownership is tested against NMa rules of conduct. In addition, staff are annually requested explicitly to state compliance with the agreements that are in force. In 2006 there were no incidents relating to issues of integrity.

### 6.4 Finance

#### NMa

This section provides summary financial report for 2006, pertaining to the civil service apparatus of the NMa, thus including DTe and the Office of Transport Regulation also. The Ministry of Economic Affairs allocates a budget for personnel costs and the cost of equipment and supplies. This is allocated to the NMa by means of a budget letter. The NMa and the Ministry use cash-based accounting; cash expenditure is a logical consequence of this.

#### Valuation policies

All amounts are reported at their nominal value. Accounts receivable are reported for the full amount until they are deemed to be bad debts and are therefore deemed to be irrecoverable.

#### NMa (Civil service apparatus)

In terms of liabilities and expenditure, the most important consideration is that the NMa did not exceed its budget. As to cash expenditure, the budget underrun amounts to EUR 4.9 million. Part of the expenditure is expected to occur in 2007. As to income, budget realisation amounts to 98%. In 2006, the level of reported income stands at EUR 147.1 million. The largest part of this income consisted of fines, imposed in 2006 and previous years. In 2006 fines imposed amounted to a total of EUR 114.1 million. On 31 December 2006 the NMa had received bank guarantees amounting to approximately EUR 19 million as security for fines which had been imposed.

## Total amounts for 2006

Table 1 Realisation in comparison to budget letter (in EUR x1000)

Description	Liabilities	Expenditure	Income
Budget letter	40,692	41,249	150,619
Realisation	40,544	36,349	147,193
Budget underrun	148	4,900	3,426
Budget overrun (%)	0.36%	11.88%	2.27%

## Liabilities

Table 2 Liabilities specified for the NMa and DTe (amounts in EUR)

Description	Budget granted for 2006	Realisation 2006	Realisation 2005
Personeel NMa incl. Transportkamer	22,416,000	22,242,181	18,743,240
Personeel DTe	5,248,000	4,692,219	4,103,573
Totaal personeel	27,664,000	26,934,400	22,846,813
Materieel NMa incl. Transportkamer	8,984,000	12,089,760	12,179,482
Materieel DTe	4,044,000	1,519,625	3,744,588
Totaal materieel	13,028,000	13,609,385	15,924,070
<b>Totaal</b>	<b>40,692,000</b>	<b>40,543,785</b>	<b>38,770,883</b>

In 2006 the NMa liabilities for personnel expenses increased as compared to 2005. This can be explained in a number of ways. The NMa was granted an additional budget for completing sanctions procedures in cases pertaining to the construction industry. See: *'The Agenda': Construction industry, p 57* and *'In practice': The investigation into the construction industry, p 40*. In addition, the NMa budget was raised with a view to supporting the operational management of the Consumer Authority. A third cause relates to a series of ad hoc-budgets for current research granted to DTe. See: *'The Agenda': Energy, p 44*

## Expenditure

Table 3 Expenditure (amounts in EUR)

Description	Budget granted for 2006	Realisation 2006	Realisation 2005
Personnel NMa incl. Office of Transport			
Regulation	23,009,000	19,649,227	18,362,268
Personnel DTe	5,248,000	4,471,310	4,025,464
Total personnel	28,257,000	24,120,537	22,387,732
Equipment and supplies NMa incl.			
Office of Transport Regulation	8,946,000	9,179,303	10,567,857
Equipment and supplies DTe	4,046,000	3,049,163	2,409,262
Total equipment and supplies	12,992,000	12,228,466	12,977,119
<b>Total</b>	<b>41,249,000</b>	<b>36,349,004</b>	<b>35,364,851</b>

NMa expenditure included the expenditure for the Office of Transport Regulation. The Office of Transport Regulation is financed by the Ministry of Transport, Public Works and Water Management through the budget of the Ministry of Economic Affairs. See: *'The Agenda': Transport, p 59*. In 2006 cash disbursements for the Office of Transport Regulation amounted to EUR 1,297,360. The gap between the budget for 2006 and realisation in 2006 is partly to be explained by an absence of bills for rent (approximately EUR 2 million).

The breakdown of personnel expenditure and expenditure for equipment and supplies (payments) for the entire NMa organisation is as follows.

Table 4 Expenditure (amounts in EUR)

General ledger account number and Description	Budget granted for 2006	Realisation 2006	Realisation 2005
<b>Personnel</b>			
400000 Total salaries		18,952,796	19,106,262
400001 Overtime work		16,419	15,417
400002 Special payments/ Small gifts personnel		544,539	545,279
400019 Health and safety		3,206	1,018
410000 Student internship allowances/ commission reimbursements		16,495	9,781
410020 Interim management		343,386	169,162
410021 Consultancy (organisation)		80,520	191,998
410031 Hardware implementation/ software development		31,987	0
410033 Temporary staff		3,265,731	1,608,045
415002 Education		532,733	442,204
415003 Recruitment		249,363	191,790
415004 Other (personnel)		10,251	16,616
416012 Redundancy schemes		72,977	90,161
440033 Subscription fees / Membership fees		129	0
<b>Total personnel</b>	<b>28,257,000</b>	<b>24,120,537</b>	<b>22,387,733</b>
<b>Total equipment and supplies</b>	<b>12,992,000</b>	<b>12,228,466</b>	<b>12,977,119</b>
<b>Total general</b>	<b>41,249,000</b>	<b>36,349,004</b>	<b>35,364,852</b>

As in 2005 cash-based accounting was also used in 2006. The cash budget has not therefore been specified for each general ledger account number. In 2006 temporary staff expenses increased as compared to 2005. This is mainly due to temporary staff needed to complete sanctions procedures in cases pertaining to the construction industry. Total salaries in 2006 have declined as a result of exit numbers and delayed filling of vacancies.

#### Income

Table 5 Income (amounts in EUR)

Description	Budget granted for 2006	Realisation 2006	Realisation 2005
NMa	0	144,617,095	104,878,192
DTe	0	2,575,943	2,695,282
<b>Total</b>	<b>0</b>	<b>147,193,038</b>	<b>107,573,474</b>

The table above sets out the income figures for the NMa and DTe. NMa income is mainly from payments of fines and Legal interest. The fines and legal interest amounting to a total of EUR 1,186,076 that were restituted to companies in 2006 were deducted from this income. DTe income is based on the Energy Costs Framework [Kostenverhaal Energie ] [link: Dutch State Gazette 12 April 2006, no 73]. Pursuant to this decision, the costs of DTe are made payable to the sector. Benefits are included in the budget and accounting of the Ministry of Economic Affairs. In 2006 DTe also made use of its power to impose fines. See: 'The Strategy': Sanctions, p 16

## Fines receivable by the NMa and DTe reported as memorandum items

Table 6 Debts and fines receivable reported as memorandum items on 31 December 2006 (amounts in EUR).

Description	2005	2006
NMa	262,150,169	175,082,290
DTe	231,861	290,861
<b>Total</b>	<b>262,382,030</b>	<b>175,373,151</b>

Receivables relate to fines imposed on companies by the NMa and DTe, increased by the current legal interest. At the end of 2006 the Office of Transport Regulation did not have any receivables. As at 31 December 2006, the NMa had received approximately EUR 20 million in bank guarantees as security for fines imposed. Also, the NMa had an escrow account (a deposit with a notary) as at 31 December, amounting to approximately EUR 135,000. The decrease as compared to 2005 is due to fine collection in the fast-lane procedures for the construction industry.

### ZBO [Autonomous Administrative Agency] Board of the Netherlands Competition Authority

This section provides the financial report for 2006 for the civil service apparatus of the Board of the Netherlands Competition Authority, operating as an Autonomous Administrative Agency [Zelfstandig Bestuursorgaan (ZBO)]. The ZBO NMa is granted a budget for personnel costs by the Ministry of Economic Affairs. This is allocated by means of a budget letter.

#### Valuation policies

All amounts are reported at their nominal value.

#### Total amounts for 2006

Table 1 Realisation as compared to the budget (amounts in EUR)

Description	Expenditure
Budget letter	550,000
Realisation	549,261
Budget underrun	739
Percentage	0.13%

Expenditure over the period of 1 January 2006 - 31 December 2006 comprises salaries and reimbursements for the Members of the Board.

### Publication of Top Incomes Paid from Public Funds Act [Wet openbaarmaking uit publieke middelen gefinancierde topinkomens (Wopt)]

In accordance with the Publication of Top Incomes Paid from Public Funds Act [Wet openbaarmaking uit publieke middelen gefinancierde topinkomens (Wopt)], which came into force on 1 March 2006, the incomes of civil servants and employees in other sectors financed by public funds, exceeding the taxable income salary of ministers, are published. For the combined NMa and ZBO over 2006, this applies to the income of the Chairman of the Board. In 2006 he was remunerated on the basis of a non-civil service appointment as a Member of the Board. In total, this amounted to EUR 216,790. In the first half of 2005 Mr Kalbfleisch, then Director-General of the NMa, was remunerated on the basis of the position he held as a civil servant. In the second half of the year he was remunerated on the basis of a non-civil service appointment as a Member of the Board. In total, this amounted to EUR 215,489. The calculation method for top incomes applied in the Annual Report 2006 differs from the method applied in the Annual Report 2005. As a result, the salary amount for 2005 deviates from figures published in the Annual Report 2005. This is due to pension scheme contributions for employees. These had not been taken into account in 2005. This is a point of concern for the entire civil service.

## Bedrijfsvoeringsparagraaf

### Verantwoordelijkheden and toetsingen

De opzet van deze paragraaf sluit aan bij de opzet van het departementale Annual Report van het Ministerie van Economische Zaken. De Raad van Bestuur van de NMa is integraal verantwoordelijk voor een doelmatige and effectieve werking van

de interne processen, zodat de risico's van het niet realiseren van doelstellingen optimaal worden beheerst. Wat betreft de niet-financiële processen kunnen de interne processen and de daarop van toepassing zijnde beheersmaatregelen echter nimmer absolute zekerheid bieden dat zich geen onvolkomenheden van belang zullen voordoen.

Om deze verantwoordelijkheid te kunnen dragen is een geheel van instrumenten ingezet. Op het gebied van planning, control and verantwoording zijn dit het werkplan, maandrapporthages, kwartaalrapporthages, kwartaalgesprekken, halfjaarrapportage and jaarrapportage. Wat betreft personeelsbeleid gaat het om functioneringsgesprekken, beoordelingen, persoonlijke ontwikkelplannen, functiebeschrijvingen, loopbaanbeleid, opleidingen, integriteitsbeleid and individueel werkplannen. Voorts betreft het (evaluatie van) procesbeschrijvingen and (Information)beveiliging. Niet in de laatste plaats vindt op voorgeschreven and gestructureerde wijze besluitvorming plaats in de vergadering van de Raad van Bestuur. Onderdeel van de voorgeschreven and gestructureerde wijze waarop dat gebeurt, is dat indieners van agendapunten voor de vergadering van de Raad van Bestuur in moeten gaan op de aspecten: - "eventuele consequenties / risico's (personele, financiële, maatschappelijk, politiek, bestuurlijk e.d.)", - "Relatie/afhankelijkheid andere documenten/processen", - "Afgestemd met..." and - "Andere opinies binnen de NMa".

### Rechtmatigheid van de begrotingsuitvoering

Op grond van het vorenstaande verklaren wij dat de interne processen op doelmatige and effectieve wijze hebben geleid tot het realiseren van doelstellingen, tot de totstandkoming van beleidsinformatie and tot een goed niveau van financieel and materieel beheer. Uit de interne controles, de controles van de Audit Dienst and het toezicht vanuit de directie Financieel Economische Zaken van het Ministerie van Economische Zaken, is niet gebleken dat er sprake is van onrechtmatigheden van enig belang met betrekking tot verplichtingen, uitgaven, ontvangsten and Saldibalans. De rechtmatigheid van de verplichtingen, uitgaven, ontvangsten and Saldibalans is daardoor naar onze mening voldoende gewaarborgd.

### Knelpunten bij het realiseren van Doelstellingen

In het afgelopen jaar hebben zich bij het bereiken van de doelstellingen wel diverse knelpunten voorgedaan die onder meer met behulp van bovenstaande instrumenten zijn gedefinieerd and zoveel mogelijk opgelost.

Het aantal concentratiemeldingen is in 2006 met 70% toegenomen ten opzichte van 2005. Ook de complexiteit van deze zaken is in 2006 toegenomen. Dit heeft onder meer geleid tot het inzetten van medewerkers uit andere directies dan de directie Concentratiecontrole (met name de directie Concurrentietoezicht), hetgeen van invloed is geweest op de bereikte resultaten aldaar (bijvoorbeeld doorlooptijden).

Het aannemen and behouden van medewerkers met de noodzakelijke kwaliteit and expertise and persoonlijke vaardigheden (vooral op senior-niveau) is NMa-breed een knelpunt. Dit vindt zijn oorzaak in de concurrentie die op het gebied van de arbeidsvoorwaarden bestaat met het bedrijfsleven and andere toezichthouders. Er was in 2006 sprake van een relatief hoge uitstroom, gecombineerd met het moeizaam kunnen aantrekken van senior en/of hoog gekwalificeerd personeel. Ook dit is van invloed geweest op de behaalde resultaten.

De onzekerheid over de invulling van nieuwe wettelijke taken and het uitblijven van duidelijkheid omtrent eventuele uitbreiding van de formatie hiervoor, bemoeilijken het daadkrachtig reageren. Dit betreft bijvoorbeeld de wijziging van de Mededingingswet als gevolg van de evaluatie van die wet (AMEW), de Wet Onafhankelijk Netbeheer and enige verwoerwetten.

Het opsporen van kartels wordt steeds lastiger. Ondernemingen zijn steeds meer bekend met de NMa. Als zij de wet bewust overtreden, gebeurt dit met meer vernuft. Dit maakt goed recherche- and inlichtingenwerk steeds belangrijker, maar ook arbeidsintensiever and complexer. Door uitspraken in 2006 van de rechtbank Rotterdam and het College van Beroep voor het bedrijfsleven (CBB), zijn tevens de bewijsrechtelijke eisen die gesteld worden aan het vaststellen van een inbreuk op de Mededingingswet zwaarder geworden. Om beide knelpunten met voldoende resultaat op te lossen zijn maatregelen genomen, maar dit heeft zijn weerslag gehad op de noodzakelijke omvang and daardoor in de doorlooptijd van onderzoeken.

### Verbetering van de bedrijfsvoering

Aangaande de kwaliteit van dossiervorming kan het volgende worden gemeld. De Audit Dienst heeft bij haar eind 2005 gepubliceerde operational audit ("Van rapport naar besluit") tekortkomingen geconstateerd met betrekking tot de borging van tactische and strategische besluitvorming binnen de dossiers. Naar aanleiding hiervan zijn binnen directies stappen ondernomen, zoals het implementeren van een nieuwe procedure voor dossiervorming – zodat een goede dossiervorming kan worden gewaarborgd – and het actualiseren van procedures and te gebruiken formats, zodat rapporten and dossiers op dezelfde wijze and conform huidige inzichten zijn opgebouwd. In 2006 zijn belangrijke stappen gezet voor een structurele verbetering. In 2007 zal dit proces verder verbeterd worden.

In 2007 wordt ingezet op een NMa-brede versterking van de juridische keten – and dus de juridische kwaliteit van NMa-besluiten and -producten. Concreet betreft het mogelijkheden voor het (structureel) vormgeven van kritische reviews zowel intern (bijvoorbeeld door het Economisch Bureau) als extern. Voor dit laatste is een contract gesloten met betrekking tot advisering door de Landsadvocaat op belangrijke beslissingen in zaken. Ook worden er joint teams gevormd tussen directies.

Den Haag, 8 mei 2007



Pieter Kalbfleisch  
Voorzitter Raad van Bestuur NMa

## Status jaarrekening

De verkorte jaarrekening van de NMa over 2006 zoals opgenomen in dit Annual Report, is gebaseerd op het departementale Annual Report 2006 van het Ministerie van Economische Zaken and de interne jaarrekening van de NMa over 2006. De Algemene Rekenkamer, die het departementale Annual Report jaarlijks onderzoekt, zal op de derde woensdag in mei haar oordeel hierover in een rapport aan de Staten-Generaal aanbieden. In dit rapport kunnen opmerkingen worden gemaakt over het financiële beheer en/of de jaarrekening van de NMa. De Auditdienst van het Ministerie van Economische Zaken heeft bij de interne jaarrekening van de NMa over 2006 een goedkeurende verklaring verstrekt.

## Accountantsverklaring

Wij hebben de in dit Annual Report NMa 2006 in hoofdstuk 6.4 opgenomen verkorte jaarrekening van de NMa over 2006 gecontroleerd. De verkorte jaarrekening bestaat uit:

- de staten van verplichtingen, uitgaven and ontvangsten met de financiële toelichtingen daarbij;
- de posten van de saldbalans van de NMa per 31 december 2006 met de toelichting daarbij;
- de in dit Annual Report NMa 2006 in hoofdstuk 6.4 opgenomen bedrijfsvoeringparagraaf over de comptabele rechtmatigheid van de uitkomsten van de begrotingsuitvoering over 2006;

### Verantwoordelijkheid van de Raad van Bestuur van het ZBO NMa

De Raad van Bestuur van het ZBO NMa is verantwoordelijk voor het opmaken van de verkorte jaarrekening van de NMa die de uitkomsten van de begrotingsuitvoering getrouw dient weer te geven, alsmede voor het opstellen van de bedrijfsvoeringparagraaf, beide in overeenstemming met de Comptabiliteitswet 2001 and de daaruit voortvloeiende regelgeving. Deze verantwoordelijkheid omvat onder meer: het ontwerpen, invoeren and in stand houden van een intern beheersingssysteem relevant voor het opmaken van and getrouw weergeven in de financiële overzichten van de uitkomsten van de begrotingsuitvoering zodanig dat deze geen afwijkingen van materieel belang als gevolg van fraude of fouten bevatten, het kiezen and toepassen van aanvaardbare grondslagen voor financiële verslaggeving and het maken van schattingen die onder de gegeven omstandigheden redelijk zijn.

### Verantwoordelijkheid van de accountant

Onze verantwoordelijkheid is het geven van een oordeel over de verkorte jaarrekening op basis van onze controle. Wij hebben onze controle verricht in overeenstemming met Nederlands recht. Dienovereenkomstig zijn wij verplicht te voldoen aan de voor ons geldende gedragsnormen and zijn wij gehouden onze controle zodanig te plannen and uit te voeren dat een redelijke mate van zekerheid wordt verkregen dat de financiële overzichten geen afwijkingen van materieel belang bevatten.

Een controle omvat het uitvoeren van werkzaamheden ter verkrijging van controle-Information over de bedragen and de toelichtingen in de financiële overzichten. De keuze van de uit te voeren werkzaamheden is afhankelijk van de professionele oordeelsvorming van de accountant, waaronder begrepen zijn beoordeling van de risico's van afwijkingen van materieel belang als gevolg van fraude of fouten. In die beoordeling neemt de accountant in aanmerking het voor het opmaken van and getrouw weergeven in de financiële overzichten van de uitkomsten van de begrotingsuitvoering relevante interne beheersingssysteem teneinde een verantwoorde keuze te kunnen maken van de controlewerkzaamheden die onder de gegeven omstandigheden adequaat zijn maar die niet tot doel hebben een oordeel te geven over de effectiviteit van het interne beheersingssysteem van de NMa. Tevens omvat een controle onder meer een evaluatie van de aanvaardbaarheid van de toegepaste grondslagen voor financiële verslaggeving and van de redelijkheid van schattingen die de Raad van Bestuur van het ZBO NMa heeft gemaakt, alsmede een evaluatie van het algehele beeld van de financiële overzichten.

Wij zijn van mening dat de door ons verkregen controle-Information voldoende and geschikt is als basis voor ons oordeel.

### Oordeel

Wij zijn van oordeel dat de verkorte jaarrekening op alle materieel van belang zijnde aspecten in overeenstemming is met de jaarrekening waaraan deze is ontleend.

Voor het inzicht dat vereist is voor een verantwoorde oordeelsvorming omtrent de getrouwe weergave van de financiële Information van de NMa and voor een toereikend inzicht in de reikwijdte van onze controle dient de verkorte jaarrekening te worden gelezen in samenhang met de volledige jaarrekening, waaraan deze is ontleend, alsmede met de door ons daarbij op 15 maart 2007 verstrekte goedkeurende accountantsverklaring.

Den Haag, 8 mei 2007

Auditdienst van het Ministerie van Economische Zaken



Drs. P.H. Staats RA  
Senior auditor



P.H.M. Verschoore RA  
Audit manager

## Status jaarrekening

De verkorte jaarrekening van het ZBO NMa over 2006 zoals opgenomen in dit Annual Report, is gebaseerd op het departementale Annual Report 2006 van het Ministerie van Economische Zaken and de interne jaarrekening van het ZBO NMa over 2006. De Algemene Rekenkamer, die het departementale Annual Report jaarlijks onderzoekt, zal op de derde woensdag in mei haar oordeel hierover in een rapport aan de Staten-Generaal aanbieden. In dit rapport kunnen opmerkingen worden gemaakt over het financiële beheer en/of de jaarrekening van het ZBO NMa. De Auditdienst van het Ministerie van Economische Zaken heeft bij de interne jaarrekening van het ZBO NMa over 2006 een goedkeurende verklaring verstrekt.

## Accountantsverklaring

Wij hebben de in dit Annual Report NMa 2006 in hoofdstuk 6.4 opgenomen verkorte jaarrekening van het ZBO NMa over 2006 gecontroleerd. De verkorte jaarrekening bestaat uit:

- de staat van uitgaven met de financiële toelichting daarbij;
- de in dit Annual Report NMa 2006 in hoofdstuk 6.4 opgenomen bedrijfsvoeringparagraaf over de comptabele rechtmatigheid van de uitkomsten van de begrotingsuitvoering over 2006.

### Verantwoordelijkheid van de Raad van Bestuur van het ZBO NMa

De Raad van Bestuur van het ZBO NMa is verantwoordelijk voor het opmaken van de verkorte jaarrekening van het ZBO NMa die de uitkomsten van de begrotingsuitvoering getrouw dient weer te geven, alsmede voor het opstellen van de bedrijfsvoeringparagraaf, beide in overeenstemming met de Comptabiliteitswet 2001 and de daaruit voortvloeiende regelgeving. Deze verantwoordelijkheid omvat onder meer: het ontwerpen, invoeren and in stand houden van een intern beheersingssysteem relevant voor het opmaken van and getrouw weergeven in de financiële overzichten van de uitkomsten van de begrotingsuitvoering zodanig dat deze geen afwijkingen van materieel belang als gevolg van fraude of fouten bevatten, het kiezen and toepassen van aanvaardbare grondslagen voor financiële verslaggeving and het maken van schattingen die onder de gegeven omstandigheden redelijk zijn.

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Den Haag, 8 mei 2007

Auditdienst van het Ministerie van Economische Zaken



Drs. P.H. Staats RA  
Senior auditor



P.H.M. Verschoore RA  
Audit manager



The NMa in 2007

A new chapter begins.  
Our mind is set on the future.

↳ THE NMA IN 2007



**Gert Zijl, Member of the Board:** “Competition in the past ten years has provided the basis for a sound economic climate. An effective NMa will in future also contribute to a dynamic, innovative economy.”



In practice  
**Communication**

↳ THE NMA IN 2007

## In practice Communication

### Visibility

As a rule, we publish a press release or news bulletin following a decision. In doing so, we give insight into our activities and provide accountability. We also make clear to companies that we take a tough approach to infringements. In this way, communications contribute to law enforcement. We help markets work better, not only by communicating on sanctions, but by giving out brochures and guidelines on legislation and NMa procedures as well. We also publish a so-called Communication calendar.

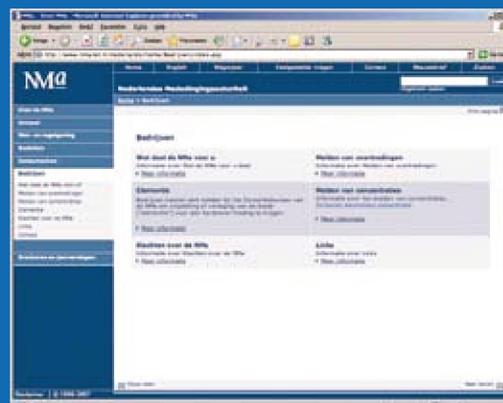
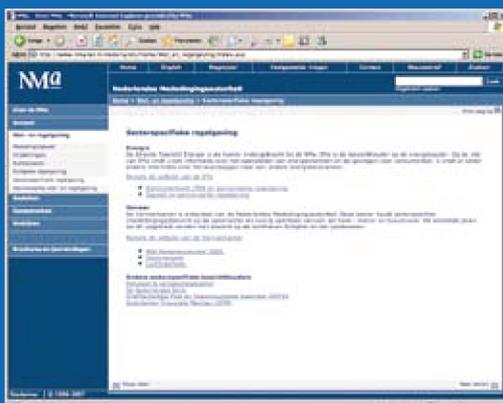
Our 'communication protocol' sets out the principle aspects of our communication practice. Further information on this topic is available on [www.nmanet.nl](http://www.nmanet.nl). Visibility helps raise the number of tip-offs, complaints and other kinds of reporting, as submitted to ConsuWijzer for instance. This may trigger new investigations.

### The website

The website is of key importance to our information services. See: 'the strategy', *Information*, p 19 and 'Expertise', *Information services*, p 36. With a view to transparency and providing good service, all press releases, public decisions, brochures and annual reports are made available on [www.nmanet.nl](http://www.nmanet.nl). For further information on the contents and structure of our website, we have included pictures of our homepage in this report (see right).

Our website features a special page referring to items linked to this Annual Report. A search engine will help you find all cases dealt with in 2006. The various parts of the Annual Report, appendices and background documents can be downloaded in PDF-format. This page also gives a survey of previous annual reports and NMa Agendas.





Judith Wentzler, Communications Advisor, Strategy & Communications Department, NMa “Communicating also involves managing expectations. Businesses that we deal with often worry about how their reputation may be affected. Our ‘communication protocol’ gives an outline of our communication policy. Businesses may safely assume that we confer with fellow competition and regulatory authorities wherever possible”.

Natascha Boudewijn, Head of Corporate Communications, Dutch Health Authority (NZA) “The NMa and NZa both monitor the healthcare market. It is important for us to coordinate communications if necessary. The outside world should have a clear grasp of our respective responsibilities: what are the NMa’s tasks and what are ours? We have taken care that good arrangements are in place here”.



The publication of the NMa Agenda is the starting point of the annual cycle of accountability. Our wish for 2007 is to make markets work even better. We have full trust that we can count on your support.

#### Effectivity

In 2007, as before, we will implement the full range of instruments at our disposal. In this respect, the forthcoming amendment to the Competition Act will play an important role. We look for specific modes of cooperation with fellow competition and regulatory authorities in 2007 and hope to establish a joint Market Monitoring Code. External reviews of our activities will also be relevant to the effectiveness of our performance over 2007. At the moment, we await the findings of the organisational review performed by the National Court of Audit.

#### Visualising effects

We visualise the effects of our work. The Office of the Chief Economist will play an important role in providing the economic underpinning of strategically important cases. A reduction of the administrative burden is high on the agenda for 2007. Our focus on case-handling time attests to this. The relationship between innovation, intellectual property right (IPR) and competition is also a point of attention for 2007.

#### Areas of attention

The Agenda for 2007 lists the following areas of attention: energy, transport, media and communications markets, the financial sector and healthcare. We expect the number of mergers and acquisitions to remain high. The first results of investigations carried out on the basis of our new enforcement portfolio are also expected for 2007.

## Colophon

Text and editing

NMa

The Hague

Design and production

Total Identity

The Hague

Photography

Kato Tan

Amsterdam

Printing

Thieme Amsterdam B.V.

Amsterdam

The quotes and newspaper headlines featured in this Annual Report as well as the contents of the interviews available at [www.nmanet.nl](http://www.nmanet.nl) serve to illustrate the public relevance of NMa activities and should not be taken as a reflection of NMa policy.

