

NMa Annual Report 2007

Signals



Key figures NMa in 2007

The figures below were previously published in the NMa Annual Bulletin (January 2008)

	2005	2006	2007	Comments 2007
Statement of Objections and fines				
Number of formal investigations under competition law	20	26	25	
Number of formal investigations resulting in a Statement of Objections (establishing a reasonable suspicion that the Competition Act was infringed)	10	5	4	
Number of investigations completed by means of an alternative instrument	2	7	10	
Number of cases in which the formal investigation was terminated due to insufficient evidence	8	14	11	
Number of cases in which a fine/ periodic penalty payment was imposed	8	13	6	7 sanction cases were completed, resulting in a fine in 6 instances.
Total fines in competition cases (x € million)	141.2	114.1	9.5	
Complaints and informal opinions				
Complaints settled in relation to infringements of the Competition Act	174	112	65	Decline in number of complaints is partly due to new complaints processing procedures.
Informal opinions	46	22	0	Many parties request for a meeting with the NMa instead of an informal opinion.
Mergers				
Notifications of mergers, acquisitions and joint ventures (mergers)	80	135	108	
Notifications withdrawn	5	5	7	
Exemption from the waiting period	2	0	1	
Decisions on notifications of mergers	80	119	106	
License required for the merger	5	8	4	
License applications	5	5	5	
License applications withdrawn	0	3	3	
Decisions on applications for a license	7	2	3	In 2005 3 out of 7 decisions concerned an amendment to the license granted
Transport				
Railway Act				
Number of investigations Office of Transport Regulation	-	32	10	Last year, within the framework of an investigation into the performance agreement, ProRail and 23 railway companies were confronted with their failure to draw up a protocol. This year only one investigation was carried out.
Number of formal investigations resulting in a Statement of Objections	-	8	4	
Number of investigations completed by means of an alternative instrument	-	22	3	
Number of cases in which no infringement was established	-	-	3	
Number of completed sanctions cases	-	5	1	
Number of completed complaints relating to the Railway Act	-	3	2	
Aviation Act				
Number of requests for tariff assessment resulting in a decision	-	-	3	
Approval decision on cost allocation system	-	-	1	
Passenger Transport Act 2000				
Completed cases involving local transport companies	5	1	12	
Number of cases resulting in a court ruling	1	1	1	
Energy				
Method decisions	19	24	25	Method decisions are not adopted on an annual basis. In 2007 tariff decisions were not adopted either. This accounts for a total of 52 decisions.
Implementation decisions	81	156	74	Decline in number of enforcement decisions is paralleled by increase in number of dispute resolution cases.
Enforcement decisions	46	27	10	
Advisory notices to the Minister of Economic Affairs	10	6	12	
Dispute resolution	18	45	64	
Number of energy cases in which a fine/ period penalty payment was imposed	12	1	2	
Total fine amount in energy cases (x € million)	0.5	0.1	0.3	
Administrative appeals				
Completed administrative appeals in competition cases	53	125	107	65 construction cases
Completed administrative appeals in energy cases	41	34	44	
Completed administrative appeals in transport cases	-	4	2	
Judicial appeals				
Judicial appeals completed by the Court of Rotterdam against decisions in relation to competition	29	28	33	
Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to competition	8	5	10	
Judicial appeals completed by the Court of Rotterdam against decisions in relation to energy	-	1	-	
Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to energy	29	20	31	
Budget and personnel				
Total budget granted	€ 39 million	€ 40.6 million	€ 45.7 million	Increase in tasks due to Independent Network Operation Act [wet Onafhankelijk Netbeheer (Splitsingswet)] and increase in number of merger notifications due to lowering of thresholds in healthcare.
Number of employees on 31 December	367	380	392	
Ratio male/ female	51%/49%	52%/48%	51%/49%	
Average age of staff	37	37	37	

NMa Annual Report 2007

Signals

Foreword

This is the tenth annual report of the Dutch Competition Authority (NMa) – ten years in which the economic benefits of the Competition Act and the work of the NMa have become visible to all.

Before 1998, the Netherlands was known as a ‘cartel paradise’. Nowadays, we see that cartels – though they continue to exist – must go to great lengths to keep their activities hidden from view. Strict legislation and increased efforts contribute to adequate detection. Market parties are now using decisions made by the NMa on mergers and acquisitions to assess, for example, whether a particular merger will succeed or not. It was recently calculated that the DTe’s regulation of network operators in the 2001 – 2007 period resulted in consumer savings of € 1.9 billion. The Office of Transport Regulation is now a permanent fixture in the rail sector and does much more besides, such as regulating a number of Schiphol Airport’s activities.

Although it would seem obvious to devote a lot of attention in this annual report on ten years NMa, we have consciously decided not to do that. The NMa has chosen to celebrate its anniversary with a conference on 5 March 2008 and a book full of interesting essays by a selection of authors.

Although this annual report contains an overview of some of the defining moments in our history, the main emphasis is on the work we did in 2007. That emphasis is consistent with the character of the people and the organisation – that is, effective, decisive and realistic. The essence of our work involves bringing problems in the area of competition to light and where possible solving them in an efficient way. We use all the opportunities

available to us through legislation, such as sanctions, alternative enforcement, dispute resolution and regulation.

This annual report is more concise than in previous years. That, too, is a conscious choice and is consistent with our aim of focusing on the essence of our work. The report describes the main events of 2007 and briefly explains them. More than ever, this report lets the market speak for itself. The NMa expresses itself through its activities; in the interviews that you can read in this annual report, market parties react to those activities. The report’s beautiful design and photography help to create a cohesive whole by illustrating our relationship with the market regarding the use of signals. As usual, our website – www.nmanet.nl – contains more information about the work of the NMa. To find all the cases the NMa dealt with in 2007, you can use the search function under the ‘Annual Report’ menu item.

The work of the NMa will carry on into its second decade. The Netherlands is no longer a cartel paradise, but not every sector has yet gone through the necessary cultural change. Mergers and acquisitions are an abiding phenomenon, with periodical peaks and dips. In the years to come, the energy and transport sectors will continue to attract the attention of the NMa. The subject of competition regulation is often a complex one and in the courts the burden of proof must satisfy ever higher requirements. So there are plenty of challenges ahead!

On behalf of the Board, I would like to express the wish and the confidence that we are making markets work now and in the future, just as we have in the past ten years.



P. Kalbfleisch
Chairman of the Board
The Hague, April 2008

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“Our activities contribute to consumer prosperity”

The Board

6 An interview with the three men who make up the Board of the Netherlands Competition Authority (NMa) gives rise to some interesting observations about competition regulation in the Netherlands. Pieter Kalbfleisch, René Jansen and Gert Zijl look back on 2007 and on ten years of regulation by the NMa. Regulation under the motto: ‘making markets work’.

Thinking differently about competition

During the past ten years, people have started thinking differently about competition. “Nowadays it’s crystal clear that cartels are harmful and that they are therefore prohibited. But we still need effective regulation”, warns Kalbfleisch. “Although the Netherlands is no longer the cartel paradise it was before 1998, it would be naive to think that there are no cartels anymore.” Jansen recalls the wave of mergers of the past years. “We have to prevent the development of companies with such a dominant position in the market that they can ignore the wishes of consumers.” Zijl points to the energy and transport sectors requiring attention. “It’s a great thing that there is now more consumer confidence in the energy market, but it can and must increase even more.”

The development of regulation

Kalbfleisch looks back with satisfaction on the way the NMa developed over the past ten years. “By eliminating many old habits in our early years, we helped to create a more dynamic economy. We grew exponentially as we took on new tasks. Many people see the inquiry into the construction sector as the high point of our short history. Nowhere in the world were so many cartels broken so quickly and so effectively. But we shouldn’t identify the NMa with just that inquiry. We do much more than that.”

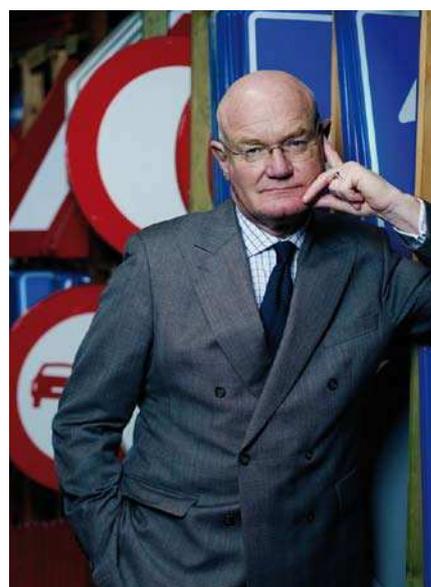
Authority

“The NMa succeeded in building up authority, but authority is like trust: you gain it slowly but you can lose it very quickly”, says Gert Zijl. “You have to earn authority inch by inch. Authority isn’t the same as powers and responsibilities you build it up by the way you handle it. The NMa didn’t build up its authority by just taking firm action but also by proposing solutions that were accepted by all parties.”

Trust and the imposition of sanctions

Kalbfleisch explains why the NMa does more than just impose sanctions. “Our message to the market is clear: we take action against breaches of the law and we help to avert problems regarding competition. I believe that issuing warnings, guiding people in the right direction and providing explanations also help to achieve effective regulation. By doing these things, we can sometimes reduce the risk of violations at an early stage. Intervention afterwards often causes much more inconvenience for the business sector. Pro-active measures are much more appropriate in this day and age, when citizens judge their government on its performance, which must be efficient and cause as little inconvenience as possible.” Zijl adds: “As part of our aim to reduce the administrative burden for energy companies, in 2007 the NMa structured a number of regulatory tasks in a more ‘signal-based’ way. One result of this measure is that some requests for information have become defunct.”

Kalbfleisch believes that an enforcement authority must use the appropriate standards and deploy all the available instruments to do so. “We don’t have those instruments for nothing.” Jansen agrees, and points out that changes in rules of conduct and the introduction of compliance programmes also have a long-term effect. “I think it’s good to be able to trust



“It would be naive to think that there are no cartels anymore.”

Pieter Kalbfleisch

companies sometimes. But when we see deliberate behaviour that's really harmful, we always act very firmly, of course. We concentrate on sectors in which there's a risk of violations that can cause serious damage to the Dutch economy. We explain those choices in our annual plan, the 'NMa Agenda', but the element of surprise is still an important part of our strategy."

Free role

In 2006, the Netherlands Court of Audit conducted an investigation into the NMa's operations. In its report published in May 2007, the Court of Audit recommended that the criteria for alternative enforcement by the NMa should be communicated clearly. Kalbfleisch has a clear view on this. "An authority must be able to make its own decisions up to a certain point in terms of what, how and when it wants to do something. If you set the criteria too precisely, market parties will use them to their advantage whenever it suits them. That hinders us from acting effectively and efficiently, and that's why we're going to try to find a middle way." Kalbfleisch is happy with the Court of Audit's conclusion that the NMa has developed its regulation instruments effectively in most areas and says that the NMa is implementing many of the recommendations in the report.

Stimulating compliance

The members of the Board feel trusted by the legislators, who once again granted the NMa new powers and responsibilities in 2007. Of these, the amendments to the Competition Act particularly stand out. Jansen is convinced these will increase the deterrent effect of competition law. "Where necessary, we act firmly – and now we have the capacity to do that even more. Just look at the fines for administrators. We want competition to be a factor that companies take into account in their considerations. That 'spontaneous' compliance is difficult to quantify,

but it is nonetheless an important effect of our work. After all, competition is a vital guarantee of freedom of choice for consumers."

Hard work

When we turn our attention to the year 2007, each of the Board members chooses his own angle. Jansen expresses his appreciation for the efforts made to conclude the huge number of concentration regulation cases properly and on time. "That required a lot of hard work from people who normally track down cartels, but nevertheless great progress has been made in cartel investigations in the various sectors." The NMa imposed fines which totalled almost € 10 million. Reports were drawn up on 24 companies, and 16 companies were introduced to alternative enforcement.

The health care market

Jansen expects the merger trend in the health care market to continue beyond 2007, albeit to a lesser extent than in the past year. "I expect a greater focus on issues of collective dominance, the formation of oligopolies. We already saw that among the health care health insurers, for example, where we had the Achmea-Agis case at the same time as the acquisition of Delta Lloyd by CZ. Because of this clustering, we had to make in-depth analyses of oligopolies. These issues may not be very popular with the media, but they're vitally important for the development of our work."

"Good regulation is very much needed because this market is growing all the time", says Jansen. "In the second place – and this is even more important for us – it's a market in which market forces have been introduced. If something is wrong, we have to act quickly. Otherwise the idea can take root that the NMa has allowed it already."



"You have to earn authority inch by inch."

Gert Zijl

8 Transport: Schiphol

“Many people think that the NMa only focuses on cartels and sometimes on mergers, but we do much more than that. ‘Making markets work’ also means regulating the energy and transport sector”, says Zijl. “In 2007, our Office of Transport Regulation invested a lot of time and knowledge into investigating how Schiphol determines its prices. The Office also made extensive preparations for the introduction of the Market Monitoring Registered Pilotage Services Act on 1 January 2008, among other things.”

Energy: savings of € 1.9 billion

According to Zijl, regulation of the energy sector has proven its worth. An assessment of the regulatory system that the NMa used from 2001 to 2007 has shown that regulation by the NMa led to savings to a total of € 1.9 billion in transport costs on customers’ bills. “This means that the results of our activities really do contribute to consumer prosperity.”

Competition on the North-Western European gas market

In the energy sector in 2007, numerous developments took place on a European level, says Zijl. “For example, the NMa chaired the joint venture of regulators aimed at getting the European gas markets to ultimately merge into one market. The plan involves the region of Northern France, Belgium, Luxemburg, the western part of Germany and the Netherlands. But it’s also about a Russian pipeline and a pipeline to the UK. We want the gas suppliers on the North-Western European market to be able to compete with each other. A lot will still have to be done to really turn it into a single market.”

The NMa Agenda 2008

“The NMa’s role in the energy sector is a good example of guidance-based regulation”, says Kalbfleisch. “It’s not for nothing that the 2008 NMa Agenda bears the motto ‘leading the way by visible enforcement action’.” The NMa Agenda provides insight into the NMa’s plans. In 2008, the regulator will focus particularly, but not exclusively, on the health sector, financial services, the food and agricultural industry, energy, transport and the postal sector.”

Regulation in the future

Kalbfleisch takes a look into the future of regulation. “Our knowledge of markets is growing and the methods we’re using to trace cartels, which are going deeper underground, are improving. Because there is now a greater chance of getting caught, cartels are becoming less stable. I therefore expect an increase in the use of our leniency scheme. At the same time, we’re now seeing a trend towards more civil enforcement; articulate consumers are standing up for their rights. The NMa will also try to guide companies in the right direction earlier and in that way limit the risks to competition in good time. I’d like to sum it up as advocacy and guidance.”

The NMa in 10 years time

When asked whether he thinks the NMa will still exist in ten years time, Kalbfleisch replies firmly. “Absolutely. An economy that has competition as an important rule cannot survive without an independent and objective referee. I look forward to the NMa’s future with confidence.”



“Competition is an important guarantee of the consumer’s freedom to choose.”

René Jansen

Mission, vision and tasks

10 Mission

'Making markets work.' This is what the legislators want the NMa to do. It is our task to ensure effective competition and in that way help create markets that function properly. The effects of this mission are becoming ever clearer. Companies now realise that the NMa acts to remove competition constraints that can limit their chance of success. Innovative and creative entrepreneurship inspires new products and production methods that can both stimulate competition and make companies (more) competitive. That increases the competitiveness of the Netherlands. In the end, consumers will benefit from a better price-quality ratio and greater choice. In a nutshell, competition generates prosperity.

Vision

Healthy competition is a basic precondition for a properly functioning market. Our aim is to prevent and remove restraints to competition in the most effective and efficient way possible. Companies are prohibited from making agreements with competitors that may impede competition (cartel prohibition). In addition, companies with a dominant position are prohibited from abusing that position. Companies can also acquire a dominant position through mergers and acquisitions. In situations in which effective competition is not possible or desirable, our aim is to reap the benefits of direct competition between businesses to the extent possible and pass on those benefits to the consumer. We work selectively, which means that we make choices by defining priorities and by choosing the most appropriate instrument. Our work is all about the balance between taking action and creating space for developments, between imposing sanctions and exerting influence.

Tasks

The NMa has the legal authority to enforce the Competition Act, the 1998 Electricity Act, the Gas Act, the 2000 Passenger Transport Act, the Railways Act and the Aviation Act. Since 1 January 2008, this list also includes the Market Monitoring Registered Pilotage Services Act. The NMa has also been entrusted with enforcing Articles 81 and 82 of the EC Treaty in the Netherlands.

In the energy and transport sectors, the NMa has a number of sector-specific tasks and powers. The execution of these tasks rests with the 'Offices': the Office of Energy Regulation Board (DE) and the Office of Transport Regulation. Inside the NMa, therefore, you could say that there is 'unity in diversity' – that is, general competition regulation combined with sector-specific regulation. Even though these are different branches, the main focus is always on a coordinated view of the markets in question and the desired style of regulation. This synergy is the power of the 'office model' in the NMa. Cooperation and harmonisation with other (market) regulators (such as OPTA and NZa) and in the international sphere also play a significant role in enabling the NMa to regulate effectively.

Chronology of 10 years NMa

A selection of some of the most noteworthy events since the foundation of the NMa.

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- 1997 * The Dutch Cartel Authority (in formation) becomes the Netherlands Competition Authority (NMa).
- * Official inauguration of the NMa on 25 November 1997. Special guest: H.R.H. Prince Willem-Alexander.
- 1998 * The new Competition Act comes into force on 1 January 1998.
- * Deadline for submitting applications for exemption: Midnight on 31 March 1998. Total: 1040.
- * The Electricity law comes into force on 1 August 1998: DTe is founded.
- * The NMa rejects the merger between RAI and Jaarbeurs.
- 1999 * The European Commission adopts the "White Paper on Modernisation" on 28 April 1999.
- * The NMa deals with a large number of exemption applications; the remainder are mainly health sector cases.
- 2000 * The EC block exemption for vertical agreements comes into force on 1 January 2000.
- * The Gas Act comes into force on 10 August 2000.
- * The NMa is more pro-active: ten new investigations, two reports and six fine decisions.
- 2001 * Working visit by H.M. Queen Beatrix, March 2001.
- * The NMa publishes Guidelines for the health sector.
- * The NMa launches an investigation into cartel agreements in the construction sector.
- 2002 * Start of the Office of Transport Regulation (in formation) on 1 January 2002.
- * The NMa publishes its first leniency scheme on 28 June 2002.
- * The NMa fines mobile telecom operators, currently amounting to € 37.8 million.
- 2003 * Visit of H.R.H. Princess Maxima, April 2003.
- * The NMa files sixteen reports this year and takes fourteen fine decisions (€ 135,5 million).
- * The NMa founds the Financial Sector Monitor with the support of the Ministry of Finance.
- 2004 * The option to grant an exemption is removed from the Competition Act.
- * NMa strictly regulates the administrative processes of energy companies after market liberalisation.
- * The NMa fines a group of banks and Interpay, currently amounting to € 14 million.
- 2005 * The Railways Act comes into force on 1 January 2005.
- * On 1 July 2005, the NMa becomes an Autonomous Administrative Authority headed by a Board.
- * An NMa investigation shows that almost 20 percent of companies take the NMa's decisions into account when considering a merger.
- 2006 * On 1 April 2006, the NMa sets up its Economic bureau.
- * The Consumer Authority, the OPTA and the NMa set up ConsuWijzer.
- * The NMa publishes the Vision Document Mergers on the Energy Market.
- 2007 * The Office of Transport Regulation judges that Schiphol must lower its aviation tariffs.
- * The NMa advises the Minister about the tasks and activities of network operators after a split.
- * The NMa concludes most of the objection procedures in the investigation into the construction sector.
- * The Competition Act is amended and the NMa is granted significant extra powers.

Part 1

Areas of focus

- 12 By describing the NMa's main activities during the past year, this part shows how the NMa puts its motto – 'making markets work' – into practice. The sectors in which the activities described took place included:
- * Energy
 - * Transport
 - * Health
 - * Finance (including business services)
 - * Media and communication

These sectors attracted the NMa's specific interest. They were designated in advance as areas of focus in the 'NMa Agenda', the publication in which the NMa announces its plans for the year to come. When selecting areas for special attention, the focus is on the market structure and behaviour and its social relevance. A sector requires more attention when the structure of the market entails the risk of disrupting competition. Furthermore, signals received about the actual behaviour of market parties also have an influence. With this type of risk-oriented enforcement, the impact of the NMa's activities is always of primary importance.

Needless to say, many activities were also carried out outside these areas of focus. The summary of our activities in this part is therefore not exhaustive. For an overview of all cases in 2007, visit our website, www.nmanet.nl, and use the search function under the 'Annual Report' menu item.

Energy

Part 1 | Chapter 1

The mission of the NMa's Office of Energy Regulation is to enable the energy markets to function as effectively as possible. In 2007, the focus was on consumer confidence, internationalisation of the wholesale market, and the regulation of network operators. In 2007, the NMa changed its approach to the market somewhat. It embedded the reduction of the administrative burden into the organisation. Requests for information are now harmonised with the sector and the primary focus is on the need for certain information, whereas in the past the NMa took a comprehensive approach. The frequency of certain requests has also been reduced. It is remarkable that energy companies indicate that the various current information requests have a high added value for their own business operations.

Consumer confidence growing

Consumer confidence in the energy market increased slightly in 2007 as opposed to 2006. That is demonstrated by the market monitoring report for consumers published every year by the NMa. Consumers are happier with the administrative services provided by the energy companies and the way complaints are handled. Consumers also believe that the reliability of information from energy companies is improving. Nevertheless, the NMa concludes that consumers are still reluctant to switch from one supplier to another. There are various reasons for this. Consumers say they are satisfied with the existing situation, are afraid that something will go wrong if they make the switch, are not interested in energy, or feel they do not have enough transparent information about the market.

“Consumers often find the available information obscure. There is a lot of ground to be gained here.”

Peter Plug, Director of the Office of Energy Regulation of the NMa

In order to lower the threshold for switching from one supplier to another, the NMa first focused on improving the supply of information and the level of transparency. Among other things, it formulated requirements for the price information published by the energy companies on their websites. For example, the NMa formulated requirements for the price information published by the energy companies on their websites. From now on, energy companies must publish their tariffs including VAT, energy tax and transport costs, so that they are easier to compare. Energy companies whose websites did not yet comply with this new norm by the end of 2007 were issued a binding instruction by the NMa at the start of 2008. The NMa also conducted a study in 2007 into the quality of websites for comparing the prices of energy suppliers. That study showed that since the start of liberalisation in 2004 the quality of comparison sites has improved considerably and remains stable.

Secondly, it is vital for consumer confidence that mistakes in bills and switches are avoided as much as possible. The NMa uses a 'scorecard' to monitor the performances of energy companies. This scorecard shows that performances improved in 2007. Almost all energy suppliers have made progress in sending the final bill after a customer's address change or supplier switch. However, it was found that too often energy bills still contain errors. Therefore, in addition to punctuality the NMa will now also include the accuracy of energy bills in its scorecard.

Lastly, consumer confidence is boosted when complaints are handled properly. The NMa again conducted a consumer survey in 2007 on the handling of complaints. This follow-up survey showed that the quality of the way complaints are handled is indeed getting better, although there is still plenty of room for improvement in this area. Studies have shown that Dong and E.ON still do not have an adequate procedure for handling complaints. They have two months to rectify this. If they fail to do so, they can expect to be fined by the NMa. This is specified in the binding instructions that were issued to the two energy companies.

Competition stagnating on the wholesale market

The wholesale markets for gas and electricity are developing slower than was hoped. The annual monitoring report shows that competition on the wholesale market for electricity is stagnating. As a result, Dutch consumers are paying tens of

- 14 euros more for electricity than consumers in neighbouring countries. According to the NMa, more efficient use and expansion of cross-border interconnectors is required to stimulate competition in the Netherlands.

The same applies to the wholesale market for gas. The annual monitoring report on the wholesale market for gas has identified a number of serious bottlenecks that are obstructing competition on the Dutch market. For example, the potential for gas import, gas storage and quality conversion is not being utilised to the full, while market parties have stated that this is exactly what they are missing. Further integration of the gas markets in North Western Europe is necessary to enable Dutch consumers to benefit more from the advantages of liberalisation. The NMa therefore remains active in diverse European platforms in order to promote the internal market.

The conclusions of the gas monitor are consistent with detailed advice sent by the NMa to the Minister of Economic Affairs in October 2007. In the report, the NMa proposes a large number of measures to stimulate the gas market. The measures are primarily aimed at improving the centralised trade in gas at the Title Transfer Facility (TTF). In addition, the proposals are in line with the Minister's strategy to turn the Netherlands into the gas roundabout of North-Western Europe.

Market integration essential

The investigations and monitoring reports show that further integration of the markets in North-Western Europe is required to improve the position of Dutch consumers. The European Commission took an important step towards further integration in September 2007 with the publication of a sizeable package of proposals for new and improved regulations for the energy markets. This so-called 'third package' is intended to remove obstacles to a single internal energy market. The NMa sees the package as an important step in the right direction, and is studying the proposals through the European Regulators Group for electricity and gas (ERGEG) and preparing their implementation. At the moment, it is not certain when and to which extent the proposals will be adopted.

That is why the NMa believes it remains essential to vigorously continue the current regional initiatives. The NMa will remain

active on a variety of European platforms in order to promote the internal market. In 2007, the affiliated regulators of the Gas Regional Initiative (GRI), which the NMa is currently chairing, signed a Memorandum of Understanding (MoU) to this effect. The MoU contains clear agreements about the regulation of cross-border affairs and the exchange of information. Other important consultations are taking place in the Pentalateral Forum, in which all interested parties from the Benelux, Germany and France are represented. In 2007, the five countries signed an agreement to realise mutual market links from January 2009 onward.

Monitoring and regulation of network management deemed necessary

In 2007, the NMa demonstrated the need for the monitoring and regulation of network operation with its evaluation of the regulatory system. The magnitude, origin and spending of the profits of Delta, Eneco, Essent and Nuon for the period 2001–2007 were investigated. The main conclusion was that regulation by the NMa has generated total savings of € 1.9 billion on consumers' bills. However, the investigation also revealed that the regulation could have been even more effective. In 2004 and 2005, the energy companies made a total of € 393 million more profit than the NMa considered to be reasonable. Although these profits were made within the existing legal framework and therefore involve no unlawful practices, the NMa has decided to tighten the regulation to prevent major differences between reasonable and realised profits. That is why, in the summer of 2007, the NMa published strict new draft regulatory methods for the period 2008–2010.

The regulatory regime is linked to the reliability and quality of the networks. In 2007, the NMa published an evaluation of the investment policies of the various network operators that are recorded in their so-called 'quality and capacity documents'. That evaluation showed that in the short term there is no reason to doubt the quality of the Dutch gas and electricity network. However, from 2008 onward the NMa will pay more attention to the state of the network, primarily to make sure that reliability is maintained in the case of stricter regulation. In addition, with the prospect of the ownership split of energy companies an economic assessment of the value of the networks is needed.

Fines and other decisions

In 2007, the NMa imposed a fine of € 95,000 on NRE Network B.V. for three infringements of the 1998 Electricity Act. It was found that this company charged around 2,500 business customers excessive transmission prices in the course of 2004. NRE Network was also fined € 180,000 after charging consumers an excessively high periodic connection tariff. NRE has since adjusted its tariffs and is paying back the excess amounts paid.

The NMa also tightened the compensation scheme for victims of power cuts. This scheme ensures that customers have an automatic right to compensation by the network operator if they suffer lengthy power cuts. The new compensation scheme is aimed at giving network operators a stronger financial incentive to quickly resolve problems in the network.

The NMa stated its opinion in two disputes and in a recommendation to the Ministry of Economic Affairs about the lack of transmission capacity for new connections to TenneT's high voltage network. At the end of 2006, the number of connection applications for large-scale production on the Maasvlakte and in Eemshaven was found to exceed the available capacity. This shortage also impeded the return delivery of electricity from the regional networks to the high voltage network, which has had a direct impact on the growth of local production capacity. The NMa again confirmed that national and regional network operators have a joint responsibility to facilitate transmission for all customers. In a recommendation to the Ministry of Economic Affairs the NMa also proposed a number of improvements to resolve the current bottlenecks and indicated the alternatives that are available to prevent these problems in the future.

Mergers and acquisitions in the energy sector

Merger Nuon-Essent falls through

In May 2007, the NMa decided that if a merger were to take place between Essent and Nuon there are sufficient reasons to assume that it would create or strengthen a dominant position in parts of the gas and electricity markets.¹ The merger application was withdrawn in early September because the parties concerned said that the conditions for successful completion of the merger were insufficient at that time.

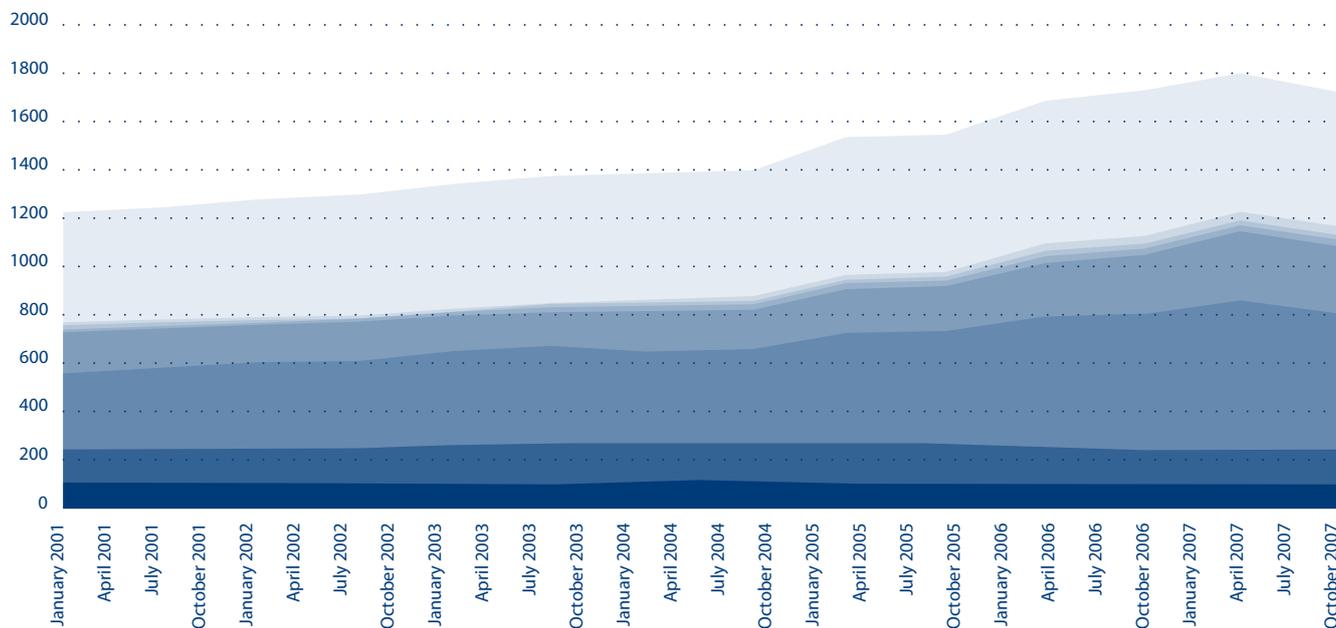
¹ This involves the market for the production and wholesale trade in electricity, the market for the supply of electricity to small-scale consumers, the market for the supply of gas to small-scale consumers and the 'imbalance market'.

Facts & figures

Important information about the energy market

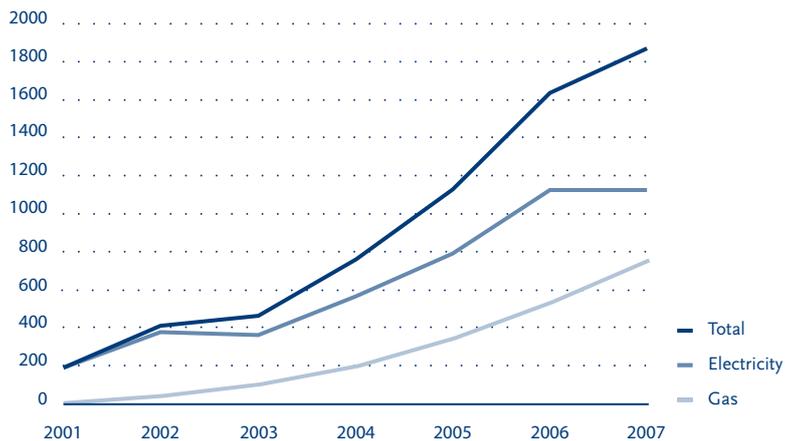
16 Historical development (average household)

Saving on energy bills (cumulative)



Saving on energy bills (cumulative)

Saving (in millions of euros)



- Taxation
- Periodic connection fee for gas
- Meter rental for electricity
- Meter rental for gas
- Delivery of electricity
- Delivery of gas
- Transport and connection of electricity
- Transport of gas

Switching behaviour of customers

Number of switches for electricity and gas

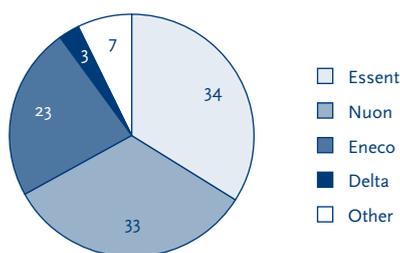
Description	Number of switches for electricity	Number of switches for gas
July 2004	58,505	33,144
August 2004	32,943	16,887
September 2004	49,136	32,299
October 2004	87,641	17,738
November 2004	47,526	37,270
December 2004	109,619	48,554
January 2005	35,823	42,868
February 2005	31,868	27,010
March 2005	43,425	30,433
April 2005	37,568	19,757
May 2005	39,837	43,858
June 2005	36,042	43,445
July 2005	40,018	34,244
August 2005	42,030	27,711
September 2005	34,562	27,893
October 2005	37,511	30,431
November 2005	33,485	32,663
December 2005	66,151	38,917
January 2006	34,755	28,360
February 2006	30,240	26,566
March 2006	37,158	33,777
April 2006	26,476	23,305
May 2006	30,389	24,514
June 2006	30,984	25,413
July 2006	37,232	32,695
August 2006	29,285	29,469
September 2006	29,401	28,534
October 2006	30,409	24,111
November 2006	26,541	24,096
December 2006	77,092	36,163
January 2007	39,692	32,032
February 2007	64,528	61,042
March 2007	43,185	35,891
April 2007	60,500	56,326
May 2007	40,678	40,379
June 2007	46,382	48,995
July 2007	40,930	37,436
August 2007	45,080	42,294
September 2007	45,558	40,530
October 2007	43,923	41,505
November 2007	42,786	39,406
December 2007	129,909	73,431

Market shares of energy companies in the energy network

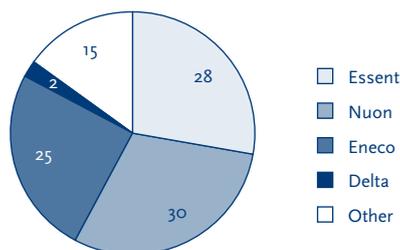
The market share of the energy companies in the energy network is calculated by relating the income from the regulated activities to the income from the regulated activities of all energy companies together.

The data partly comes from the tariff declarations of the relevant network operators.

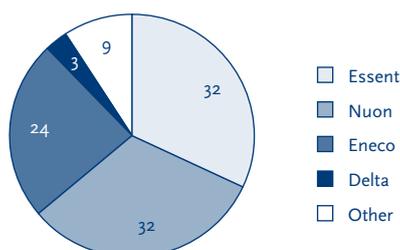
Electricity in %



Gas in %



Electricity + Gas in %



Transport

Part 1 | Chapter 2

- 18 The mission of the NMa's Office of Transport Regulation is making transport markets work. In early 2007, the Office of Transport Regulation published its first 'enforcement calendar', in which it specifies, where possible, when its annual regulation takes place. With this calendar, the NMa hopes to minimise any inconvenience to businesses and inform the parties being regulated as soon as possible whether they are complying with the law. In 2007, regulation was largely conducted according to this calendar.

“The calendar provides a clear picture of the annually recurring regulatory tasks of the Office of Transport Regulation.”

Marga Zuurbier, Director of the NMa's Office of Transport Regulation

Schiphol Airport reduces aviation tariffs

In April, the NMa approved the system for allocating expenditure and income from aviation activities at Schiphol Airport after the airport authority had implemented a number of changes. This was the first decision that the NMa took on the basis of the new Aviation Act. Furthermore, the NMa adopted a decision in response to three requests for a review of the airport charges set by Schiphol Airport. After an investigation based on the request submitted by KLM, the NMa decided that Schiphol Airport had to reduce its charges because it wrongly did not on-charge a number of deductible cost items (bonuses and setbacks). This means that Schiphol Airport can charge the airlines € 36.8 million less. Schiphol implemented this reduction less than one week after the decision was taken, but also lodged an objection to the NMa's decision.

Railway competition has increased

In early 2007, the NMa published the second Rail Monitor, which showed among other things that compliance with the Railways Act and railway competition have increased. The Monitor also showed that the processes related to the Network Statement (“Netverklaring”), charging fees and access agreements leave room for improvement. The NMa has

therefore focused on these points in its monitoring activities. In 2007, the NMa also contributed to the evaluation of the Railways Act conducted under the responsibility of the Ministry of Transport, Public Works and Water Management.

Capacity distribution

In late 2007, six parties lodged a complaint with the Office of Transport Regulation about ProRail's distribution of capacity over the rail infrastructure. These parties claim that ProRail has allocated them too little rail capacity. The NMa's mediation in response to the complaint of passenger carrier Connexion has led to agreement between Connexion and ProRail on the capacity allocated to Connexion. The other complaints will be resolved in 2008.

The Betuwe Line was put into operation in 2007. Many of the management tasks on this line are being carried out by Keyrail. ProRail is responsible for the other management tasks. Under pressure from the NMa, clear agreements on the competencies of the two rail infrastructure operators were announced so that market parties know exactly where they stand. The NMa also mediated in a dispute between ProRail and goods carrier ACTS on ProRail's intention to temporarily remove the rail network from service in order to perform maintenance tasks. This meant that the carrier would temporarily be unable to use train routes for which it had signed an agreement with ProRail. Through this mediation, the parties agreed on a solution. In a judgment, the NMa warned ProRail that in the future it cannot just remove capacity already allocated to parties. Furthermore, after conducting its own investigation the NMa informed ProRail that it could not withdraw any capacity from other parties for its own use. ProRail should apply for the requisite capacity for its own maintenance and management in the annual timetable.

Charging fee

In early 2007, the NMa investigated the discount applied by ProRail to the 2007 charging fee that freight carriers must pay for access to the railways. The NMa has no objection to the discount, because it is not part of the user fee system. Furthermore, an investigation was conducted into the performance scheme agreed between rail companies and the operator. The scheme was found to be an improvement over the 2006 scheme. In 2007, an improved performance system for 2008 was also

agreed. In 2008, the NMa will test the effectiveness of this improved scheme.

At the end of 2007, agreement was also reached with goods carriers and the operators ProRail and Keyrail on the user fee for the coming four years (2008–2011). The NMa must wait until 2008 to test whether the user fees comply with the laws and regulations because the operators still have to supply data on the costs and the system used. It will therefore not be possible to announce the results of the investigation into the user fee until some time in 2008.

Preparations for monitoring pilotage services

In 2007, the NMa advised the Minister of Transport, Public Works and Water Management on the monitoring of pilotage services – among other things, by issuing two Practicability and Enforceability tests² related to the new regulations. The Market Monitoring Registered Pilotage Services Bill was passed by the Lower House on 5 June 2007 and by the Upper House on 18 December 2007, and has been in force since 1 January of this year. Last year, together with the sector, the NMa already started making preparations for regulation and enforcement of this act.

Organisational division municipal transport companies

The NMa inspected whether all municipal transport companies have introduced an organisational division between their public transport and non-public transport activities. For example, Amsterdam's municipal transport company is now in compliance with the law on this point in the way it operates the IJ-ferries, as adjudged by the NMa in a court ruling. In addition, the NMa tested the financial statements of the municipal transport companies on their transparency of the financial flows between the corporate body where public transport is executed and the subsidiaries and sister companies. It found that all six of the municipal transport companies were acting in accordance with the law.

² The Office of Transport Regulation conducts a practicability and enforceability test in response to an amendment to the law proposed by the Ministry of Transport, Public Works and Water Management. The test examines whether the tasks specified in the amendment can be carried out by the Office of Transport Regulation and whether the Office can continue to perform its enforcement activities on the basis of those new tasks.

“Our relationship is very constructive actually”

Pieter Verboom

20 Schiphol Airport and the NMa are due to meet in court in 2008 after the airport authority lodged an appeal against one of the regulator's decisions. However, CFO Pieter Verboom of the Schiphol Group says: “Regulation by the NMa has made us a more robust organisation.”

It was as recently as July 2006 that the NMa started regulating the Schiphol Airport tariffs and conditions for the aviation services it provides to the airlines. Before that, the Minister of Transport, Public Works and Water Management was the regulator, but it was based on much fewer regulations. Does Schiphol think that the NMa has enough expertise in the sector? “Absolutely”, says Verboom. “I'm impressed by the NMa's preparations and meticulousness. They started studying our sector well before the new Aviation Act came into force. And I believe their report reflects that expertise. But we disagree on certain accounting figures. That's why we're lodging this appeal.”

How do you feel about being under the permanent regulation of the NMa?

Verboom: “I think permanent regulation is fine. The question is rather: do we have a monopoly? We're always busy with cost control and improving our competitive position with respect to Paris, London and Frankfurt in particular. Large airports operate in an international competitive arena. Twenty-three percent of our operating result is aviation and is therefore regulated. The rest is not regulated and involves income from property, consumer activities, parking and international activities.”

Is there a big difference between regulation by the Ministry of Transport, Public Works and Water Management in the past and by the NMa now?

Verboom: “There is a very noticeable difference, yes. For the accounting figures over 2005–2006 we had to make assumptions because we had

no terms of reference. We therefore used rules approved by the Ministry of Transport, Public Works and Water Management. But the NMa didn't accept those rules. We believe that the NMa is interpreting the law too strictly. It surprised us that some of our costs not were accepted.”

Both you and the NMa say that the debate on this issue was quite uncompromising at times given the differing priorities and interests. How is your relationship with the regulator now?

Verboom: “Very constructive actually. It's just that we don't always agree with each other. For example, about the tariffs. In the tariff year up to 1 November 2008, we've had to charge the airlines a whopping 36.8 million euro less. For example, we have to make an estimate of the chemicals we need in the course of the year to keep the runways free of snow. That's more one year and less the next. So you could say: one year you have a lucky break, and the next year you don't – okay. But no, if our estimate of those costs is too low, the difference has to be paid by the airport and if our estimate is too high, we have to pay back the difference to the sector. That's surely not the way it's supposed to be?”

What do you think could be improved by the NMa?

Verboom: “Although the NMa has remained within the legal time frames, I had hoped that they would come up with a decision faster. We had to announce the tariffs on 1 November, but we only received their document shortly before that – yet we ourselves have to discuss these matters six months in advance, and have to draw up all kinds of estimates. Our airlines, the entire sector have to enter the prices in their systems. I made it clear to the NMa that we thought they were very late. Other than that, the debate was very constructive. We learned a lot from the process.”

What do you think regulation will look like ten years from now?

Verboom: “I'd need a crystal ball to answer that question. This sector is developing so fast that it's impossible to look so far into the future. Will regulation still be national or will it have become international? I wouldn't know, but as I said, we operate in an international competitive arena. It is safe to say that regulation will be useful and necessary on that level, too, but nobody can predict how this will be organised.”



The healthcare sector

Part 1 | Chapter 3

- 22 The quality, accessibility and affordability of the health service must be safeguarded, even in the long term. That is why the government has decided to partially abolish central control and allow market forces in a number of areas of the health sector. Healthy competition should encourage health care providers and health insurers to gear their products and services closely to the demand of patients and to work in a cost-effective way.

On the basis of the Competition Act, the NMa regulates the areas in which the health sector has been opened up to market forces. The NMa ensures that the changing market structure – scale increases, more cooperative ventures and sometimes fewer players (an oligopolistic market structure) – does not have a detrimental effect. To do this, it particularly examines whether there is healthy competition and enough freedom of choice for patients. It also does this categorically when testing mergers and acquisitions in the health care and the health insurance sector. As announced in the ‘NMa Agenda 2007’ the NMa also paid a lot of attention in 2007 to providing accurate information to market parties about what is and is not permitted under the Competition Act and about the differentiation of roles, competencies and responsibilities between the NMa and the Dutch Health Care Authority (NZa). The NMa worked closely with the NZa, whose task is to regulate a health sector which is gradually developing into an increasingly free market. Among other things, the NZa gave the NMa its opinion in a number of merger cases (after consulting with the IGZ). In its turn, the NMa advises the NZa by, for example, commenting on the drafts of consultation documents and monitors (advocacy).

Cooperation in the health sector clearly defined by Health Sector Guidelines

It is important to make information available because market parties want to start new cooperative ventures in a changing environment. Such ventures can help to significantly improve the quality of health care but they may not stand in the way of competition. After all, in an atmosphere of competition businesses operate more efficiently, try to achieve (even) better quality and are more innovative.

In practice, many forms of cooperation in the health sector are not in conflict with the competition rules. However, by entering into mutual agreements or by forming business concentrations

parties can obstruct market forces or make them impossible – either intentionally or unintentionally. That is why market parties must follow certain rules. To help the sector to comply with the law, the NMa issued updated ‘Health Sector Guidelines’ in 2007. These guidelines clearly explain what is and is not permitted under the Competition Act – for example, the extent to which health care providers may cooperate with each other. Market parties can use these guidelines – which contain many practical examples – to find out whether certain forms of cooperation and conduct meet the requirements of the Competition Act. The Guidelines also explain the criteria used by the NMa to evaluate concentrations in the health sector.

Home care institutions suspected of market sharing

In the past, the NMa mainly used capacity to provide guidance to the health sector. At sector association meetings and conferences, the NMa explained the application of the Competition Act. More and more, however, the NMa is receiving indications of possible violations of the Competition Act. In 2007, the NMa conducted a number of dawn raids to home care institutions suspected of market sharing agreements. During these visits, on-site searches were conducted for evidence of possible violations. In late 2007, this investigation resulted in two initial reports, which were sent to the parties concerned. In 2008, the NMa will decide whether sanctions are to be imposed as a result of that investigation.

Hofpoort Hospital not impeded by cartel

The NMa has dealt with a complaint from the Hofpoort Hospital in Woerden. The hospital wanted to set up an independent treatment centre for ear, nose and throat operations, but said it was obstructed from doing so by the regional representative who makes agreements with the hospital on behalf of the various

“Market sharing restricts the freedom of consumers to choose the type of health care they want.”

Gerard Bakker, Director of the Antitrust Department of the NMa

health insurers. The regional representative body did not want to approve the financing of the independent treatment centre. The NMa does not consider the actions of the regional representative to be in conflict with the Competition Act, given that the hospital has the possibilities to open an independent treatment centre even without the approval of the regional representative body. The hospital's complaint about the role of the regional representative body during the negotiations was not deemed to be valid either, with reference to the policy rules of the Dutch Health Authority, which state that market parties are obliged to jointly come up with a proposal, after which the NZa determines the price.

Mergers and acquisitions in the health sector

Lower thresholds for reporting intended concentrations

On 1 January 2008, the NMa lowered the turnover threshold for the obligation of hospitals, institutions subject to the Exceptional Medical Expenses Act (AWBZ) and other health care institutions to report concentrations to the NMa. The limit above which the organisations are obliged to report is now € 55 million joint turnover per year (the previous limit was € 113 million). This is also subject to the rule that two or more of these institutions must each individually have achieved a turnover in the Netherlands of more than € 10 million (was € 30 million). This also applies to institutions that provide both health care and other economic activities. To prevent institutions that provide limited care (for example, cleaning companies that provide a small amount of household help) from also being included this scheme, a third lower limit was added. Plans only need to be reported if at least two of the companies in question each individually obtain more than € 5.5 million of their turnover from health care activities.

The NMa wants to keep the burden on health care institutions to a minimum. In 2007, it therefore started designing a notification form specifically for health care institutions, so that parties can provide accurate information in an efficient way. That reduces the NMa's need for additional information.

Investigations into mergers of health care institutions

Further investigation was conducted into two mergers of mental

health institutions. These involved the intended merger between Stichting Adhesie, Stichting Mediant, Stichting RIAGGz over de IJssel and Stichting Zwolse Poort in the regions of Overijssel and Gelderland. The NMa also examined in detail the intended merger between Stichting AMC de Meren and Stichting JellinekMentrum in the Amsterdam health sector region. The merger of these health care institutions may obstruct competition in the markets for clinical and non-clinical mental health care for adults and the elderly. For patients in the Amsterdam region, just one other provider with comparable services would remain after the merger. In Overijssel and Gelderland, the most obvious alternative provider of clinical mental health care for patients would even disappear completely. The follow-up investigation deals with two questions. Firstly, the question of how much pressure of competition is being exerted by mental health institutions in the surrounding areas. Secondly, the question of whether patients will be left with enough choice. In the end, the four institutions from Overijssel and Gelderland withdrew their permit application on 3 December 2007 because one of the institutions stepped down for the moment.

Other health sector concentrations on the NMa website

In 2007, much of the Nma's work focused on mergers and acquisitions in the healthcare sector. For an overview, go to the special annual report page on the Nma website, www.nmanet.nl, and use the search function to display the cases. Just select 'Sector Zorg', the subject 'Concentratie' and the search result 'Besluit inzake concentraties'.

“The NMa has an eye for the interests in our area”

Marcel Visser

24 [The Laurentius Hospital could easily have merged. In early 2007, nothing stood in the way of a merger between the Laurentius Hospital in Roermond and the Sint Jans Gasthuis in Weert. Once the legal requirements had been satisfied, following an initial investigation the NMa stated that the merger could go ahead. Everything was in order. In the end, however, the hospitals decided not to merge after all. An overview of a process.](#)

The aim was to arrive at an administrative merger by mid-2007. That would be followed a year later by the legal merger. According to manager Marcel Visser of the Laurentius Hospital, increased pressure was the reason for the intended merger.

[Quality and finances](#)

“That pressure was twofold: it concerned both quality for patients and finance. On the quality side the Health Care Inspectorate and the medical research groups are placing with ever higher demands, for example. What also played a role here was that a hospital needs volume. That means you have to perform enough operations to keep your quality up to standard. On the financial side, the health insurers were putting pressure on our organisation to work as efficiently as possible.”

The merger was not the only option, says Visser. “There are always other options. For example, we can do more through and within our network in Northern and Central Limburg. We had worked together with the Sint Jans Gasthuis in Weert in several areas for many years. That was one of the reasons why cooperation in the shape of a merger seemed logical. Lateralisation would have been another option. That means that you start shifting specialisations. But this can cause certain problems: the city with the hospital that has more specialisations – and therefore

more specialists – is happy with that scenario, but the other city isn't. If you had a unified administration, a process like that would run much more smoothly.”

[Correct and businesslike](#)

The initial contact with the NMa dates from the autumn of 2006. Administrative Secretary Roger Kerff, assisted by lawyers, attended these meetings as the responsible person for this task at the Laurentius Hospital. “In the prenotification documents, we explained the merger plans. The NMa familiarised us with the procedure, which took just under two months. The contact with the people at the NMa was always very correct and businesslike. We had to comply with a huge number of pretty technical but formally clear requirements. One important requirement was that we had to map out the impact of the merger on patients. We were not allowed to acquire an economically dominant position.”

“The thing is, the Sint Jans Gasthuis and ourselves are located in a pretty unique area in the Netherlands. You won't find a narrower area anywhere in the country – you have Belgium on one side and Germany on the other. Our area of operation and that of the Sint Jans Gasthuis border each other. Patients here are prepared to travel some distance to the hospital of their choice. The question was: is the NMa looking at the merger in the context of the nearby facilities in the neighbouring countries and the rest of the region, or just in the context of Roermond and Weert? We were far from certain they would decide to take the first approach. NMa's rejection of the merger in Zeeland between the hospitals in Vlissingen and Goes added to that uncertainty. That happened because of the situation in the surroundings there and the economically dominant position that the NMa believed the merger would create.”

[Balanced opinion](#)

To the relief of both hospitals, the NMa approved the planned merger straight away once a number of requirements had been met. A more detailed investigation was not considered necessary.

Visser: “I think the NMa took into consideration the fact that we're operating in such a narrow area. The geographical location definitely played a part.” The outcome changed his opinion of the NMa. “Before then, I thought that the NMa – based on hearsay – was an organisation that based its decisions mainly on economic interests. Whereas the focus in the health sector should be on quality. But its decision showed that the NMa had an eye for the interests of our area. We now have a more balanced opinion of the NMa.”

[Difference of opinion](#)

The merger fell through in the end. Visser: “That wasn't due in any way to the details of the merger, as the merging parties were in full agreement on that score. The problem was down to differences of opinion about the way the transition to the new organisation should take place. We wanted a phased, open process and the Sint Jans Gasthuis wanted to record more of the details in advance. However, we continue to work together with the Sint Jans Gasthuis through a number of specialists and both laboratories. But a merger would be a step too far for now. What's next? We've decided to intensify health care in North and Central Limburg by cooperating with the St. Jans Gasthuis and VieCuri.”



Financial and business services

Part 1 | Chapter 4

- 26 The financial sector was an important area of focus for the NMa in 2007. The NMa is investing a great deal in acquiring greater knowledge of this sector because of its intricate market structures, sometimes with relatively few (but large) market parties (a tendency towards oligopolies). The sector is characterised by complex products and continuous developments, such as the creation of a single European payment market and developments in the field of health insurance and pensions. The ‘Financial Sector Monitor’ team is helping to build up that knowledge.

Towards a single European payment market

The Netherlands will soon be part of a single large European payment market that will no longer make a distinction between domestic and foreign payments. Just as it is now possible to pay with the same coins and banknotes in fifteen euro countries, in the future that will also be possible with transfers, direct debit and banker’s cards. Due to economies of scale and a more efficient use of payment instruments, cross-border competition can lead to lower costs for payment traffic, which will also benefit

“The agreements that the banking world is making in this context may not go further than strictly necessary.”

René Jansen, Member of the Board of the NMa

consumers. For the Dutch market, the NMa is monitoring whether the transition to a European payment market satisfies the legal competition rules. Agreements between market parties associated with the introduction of the payment market are being investigated by the NMa. To map out the competition risks on a national level, the NMa has drawn up the consultation document ‘The road to European payment traffic’. In this document, the NMa asks the various parties concerned to respond to the expected impact of the new payment market on competition in payment traffic. Based on the reactions to this document, the NMa wants to determine the strategies being followed by individual market parties and the views of the parties involved on general market developments as a consequence of the European payment market.

Furthermore, in 2007 the NMa participated in the SEPA Task Force of the European Competition Network (ECN). In this Task Force the competition authorities are analysing the competition risks of the transition to the European payment market. By doing this, the competition authorities want to make it clear to the sector how they view the agreements being made between the banks within the context of the European payment market.

Currence amends articles of association

In the first quarter of 2007, the NMa completed its investigation into Currence, the owner of ‘collective’ payment products such as Pin and Chipknip. In its outlook expressed in 2005, the NMa emphasised that none of the shareholding banks in Currence may influence the decision whether (potential) competitors, competing products or services are granted access to the payment market.

In May 2006, the NMa launched an investigation after President-Commissioner Ms. A. Jorritsma and Director Ms. A. van der Veer had resigned because they believed the shareholding banks were using their influence to shape Currence’s decision-making. This would impede entry to the payment market and get in the way of innovation. The investigation did not produce sufficient evidence of a violation of the Competition Act. However, the investigation did reveal that the governance structure that was in place from December 2004 to mid-2006 contained too few safeguards to guarantee truly independent decision-making by Currence. To ensure that this does happen in the future, the commissioners affiliated with the banks resigned and were replaced by independent commissioners, and Currence’s articles of association were amended.

Investigation into credit loans

In response to complaints and to its own market investigation, the NMa paid a number of unannounced company visits in this sector. One of these investigations involved credit loans to small and medium-sized enterprises. This investigation is still ongoing.

Real estate agents draw up compliance programme

After receiving a complaint from Vereniging Eigen Huis (the consumer organisation for home owners in the Netherlands) the NMa launched an investigation into possible anti-competitive

behaviour by the Dutch Association for Real estate Agents (NVM) and its members. After intervention by the NMa, the sector organisation and its members promised to draw up a compliance programme. In short, a compliance programme is a package of measures and procedures intended to ensure compliance with the Competition Act. The NMa then halted the investigation but continued to closely monitor the situation. In the third quarter, it was announced that the NVM had decided not to introduce a number of rules that an initial NMa investigation showed could be harmful for competition. The sector organisation said it is working on an alternative plan to realise its quality objectives. The NMa welcomes every alternative plan that promotes the development of competition in the real estate market

Mergers and acquisitions in the financial sector

The NMa has approved the acquisition of online investment bank Alex by BinckBank. According to the NMa, the acquisition will not disrupt competition on the market for transaction mediation for private investors. Besides the new combination, there will still be enough alternative providers for private investors to choose from. Moreover, it is relatively easy as a provider to become active in this market.

“More transparency, more choice”

Jeroen Stoop

28 More transparent. According to Jeroen Stoop, founder and Managing Director of Makelaarsland.nl, these two words describe the way competition is developing in the Dutch real estate market. This is giving consumers more choice. But regulation by the NMa is still necessary, says Stoop.

Makelaarsland is an Internet real estate agency that operates nationwide. Makelaarsland does not show prospective buyers around its properties. “The owners know enough about the house and the neighbourhood anyway”, says Stoop. But Makelaarsland.nl does perform the other tasks of a real estate agent, such as valuing properties, giving advice on the asking price, presenting properties on Funda, and arranging negotiations and purchase agreements.

“Since we started, there’s been quite a hullabaloo on the Dutch real estate market. Traditional real estate agents initially said our idea simply wouldn’t work – and yet there were soon dozens of real estate agencies that combined the old and the new real estate market (on the Internet). At the start, this didn’t make things very transparent for consumers. Because it’s not really clear what real estate agencies actually do. But what we do is clear and transparent. And the NVM is also working in that direction: it is making a much clearer distinction between the tasks of the real estate agents for the buyer and for the vendor. Don’t forget: when most people decide to buy a house they never stop to ask themselves what they, as a potential house buyer, can expect from the real estate agent of the person selling them that house.”

Will there be more nationwide real estate chains – or will it continue to be regional?

Stoop: “Most real estate agents are individual,

small offices. There are just a few with nationwide coverage: Era, Garantie and of course ourselves. I don’t expect many more joining us. In fact, the NVM isn’t a chain either – it’s a nationwide organisation that particularly takes very good care of the smaller offices. In doing this, the NVM is performing an important task. Although we have sometimes suffered from the consequences of the NVM promoting the interests of its members, that doesn’t mean that we’re not on speaking terms with them.”

You said you were happy with the NMa when it scrutinised the compliance regulations and possible anti-competition measures in the real estate market. Can you explain why you were happy about that?

Stoop: “The NMa played an important role in the legal battle around the restriction of competition. The NMa said to the NVM: ‘Stop, we’re warning you!’ Because of this, the NVM did not introduce certain rules – or in any case postponed the introduction of those rules. This concerned, for example, the obligation to have a house viewed at least once by a real estate agent and the obligation for a real estate agent to be present when the purchase agreement is being signed. The intervention of the NMa gives consumers more freedom of choice. What it meant for me and my organisation? Well, it’s not as if we suddenly started to experience tremendous growth. But what I am happy with is that I no longer have to wage a legal battle. That’s saving a lot of time and costs. And we can spend that money on our marketing activities.”

How does increased competition affect people who want to buy a house?

Stoop: “The Jaap.nl and Zoekalhuizen.nl home portals can now display every house that’s up for sale – just as Funda can in turn display the houses being offered by these two portals.

That has reduced the dominant position of the largest site, Funda. Such a development is always good for consumers, who are really happy about it. At our head office in Heerhugowaard, grateful customers keep bringing us more cake than we can eat ...”

How do you think the real estate market will look ten years from now?

Stoop: “If I base my prediction on market surveys – including one commissioned by us – around half the people will be using a selling agent and the other half a purchasing agent. Which means they opt for service. At the moment, those percentages are much lower: thirty percent have a selling agent and approximately a quarter call in a purchasing agent. As well as that – although this is just guesswork – I think that notaries will play a less prominent role during the transfer. I think other parties will be allowed to do that. And that too will save consumers money.”

What do you think will be the role of the NMa ten years from now?

Stoop: “First of all: I think competition will regulate itself more quickly. That’s because more and more people are choosing to be independent and develop themselves. New initiatives will start up faster as a result. This means that the role of the NMa will diminish – but it will never disappear completely. For example, we may see Internet platforms becoming too powerful and something will have to be done about that.”

And what if Makelaarsland.nl becomes so big that the NMa starts keeping a close watch on you?

Stoop laughs. “I look forward to the day when I have to worry about that! For now, I think the best thing is to let tomorrow take care of itself.”



Media and communication markets

Part 1 | Chapter 5

- 30 The NMa paid special attention in 2007 to the media and communication markets. Innovation and integration in these markets are taking place rapidly. Because of the fast changes in these markets, the market positions of the businesses active in them also change very quickly. The NMa ensures, for example, that competition restrictions or an unjustified tendency towards an oligopolistic market structure do not hamper innovation and dynamism.

Removal of obstacles to the purchase of advertising space

At the insistence of the NMa, the Regulatory and Regulatory Board for the Advertising Sector (“ROTA”) has scrapped the ‘stacking ban’. This ban meant that publishers were not allowed to sign advertising contracts with more than one advertiser at the same time. By abolishing the ban on ‘stacking’ advertising space, advertisers can now form purchasing concentrations more easily, which enables them to insist on higher discounts from the publishers. This leads to a reduction in the advertising costs for companies, which can in turn lead to lower prices for their products and services. Partly on the basis of the pledge made by the ROTA, the NMa has decided not to pursue its investigation into this organisation.

Publishers launch their own compliance programmes

Telegraaf Media Groep, PCM Publishers and Nationale Regiopers Dagbladen have each set up their own compliance programmes. This involves a package of measures and procedures the publishers will use to embed compliance with the Competition Act into their business operations. Among other things, each publisher will appoint its own ‘compliance officer’, who will operate independently of the sales departments and will play a proactive role in preventing, investigating and halting possible constraints to competition. The NMa welcomes this initiative because it reduces the chance of violations. Needless to say, compliance programmes are not intended to replace regular monitoring by the NMa.

Proper evaluation of tariffs of collective management organisations hardly possible

Collective management organisations have an economically dominant position and the NMa ensures they do not abuse

that position. For example, collective management organisations collect the contributions that users, such as café owners, have to pay to performers. Unlike other markets, it is difficult to calculate a cost price. After a critical analysis of its possibilities for intervention, the NMa deems that on the basis of the Competition Act it cannot accurately assess whether the tariffs of collective management organisations, such as copyright organisations, are too high.

Apple not guilty of tying

The NMa has rejected a complaint made by the Dutch Consumers’ Organisation (Consumentenbond) about computer company Apple. According to the NMa, Apple is not guilty of abusing its dominant position with the tying of its iPod portable music and media player and its iTunes online music store. Consumers that purchase music through Apple’s Internet store can and may play that music on devices other than an iPod. Furthermore, consumers can transfer music purchased at other music stores to their iPod. There is therefore no abuse of a dominant position.

Price fixing not allowed for the self-employed in collective labour agreements (CAOs)

In a vision document the NMa states that self-employed people without personnel may not fix (hourly) prices through a collective labour agreement. Minimum prices restrict the capacity of self-employed people to distinguish themselves from their competitors and may result in clients and consumers paying excessively high prices. The NMa only intervenes if people who are really self-employed make agreements that noticeably restrict competition.

Ticket sales agencies keep to agreements

A follow-up inspection by the NMa has shown that Ticket Service Nederland and TicketBox have removed stipulations that may restrict competition from their contracts. In doing so, these agencies that focus on the presale of tickets for music, sports and dance events have kept to the pledges they made earlier. The majority of the contracts were found to be satisfactory. In response to the follow-up inspection, Ticket Service has adjusted 11 of a total of 86 inspected contracts. Thanks to these changes, consumers can acquire tickets in several new ways, including e-ticketing.

Cable companies not abusing their dominant position

In response to a complaint made by KPN, the NMa concluded that cable television companies UPC, Essent Kabelcom and Casema Multikabel have not abused an economically dominant position. Among other things, KPN claimed that these cable companies are infringing on the Competition Act by selling analogue and digital packages of radio and television, by charging predatory prices and by providing an unlawful cross-subsidy between analogue and digital packages. The NMa concluded that the disputed practices do not constitute an infringement of the Competition Act and has rejected KPN's complaint.

KPN allowed to take over Tiscali

After an in-depth investigation, the NMa approved the acquisition of Tiscali by KPN. Following the acquisition, KPN's market share will increase by around 5%, which means the telecom giant will be providing approximately 50% of the Dutch households with Internet services. However, the NMa believes that this will not give rise to or strengthen an economically dominant position that would have a negative impact on competition on the markets for broadband Internet. The NMa found no concrete evidence that the acquisition of Tiscali will restrict the collective strength of the remaining suppliers of broadband through DSL. It also found that after the acquisition, the remaining DSL parties and cable companies will still be able to counterbalance KPN to a sufficient extent.

Mergers and acquisitions in media and communication markets

Mecom may acquire Wegener after divesting itself of free local papers

After Mecom had adjusted its original acquisition plan, the NMa approved the acquisition of Wegener by UK media corporation Mecom. The adjustment means that Mecom will divest itself of most of the free local papers published by its subsidiary De Trompetter. This will safeguard competition on the market for local and regional advertisements in the eastern region of North Brabant and Limburg. Without the adjustment, parties would acquire a very strong position on the market for local and regional advertisements in the eastern part of North Brabant.

“If the takeover plan hadn't been adjusted, Wegener might have dropped out as a competitor in Limburg.”

Aad Kleijweg, Acting Director of
the NMa's Merger Control Department

Other activities related to general competition regulation

Part 1 | Chapter 6

- 32 The year 2007 was characterised by decisions on administrative appeal. In April and May, the NMa took 13 decisions on administrative appeal in the ‘fast-lane’ procedure in the earthworks, road-building and hydraulic engineering sector. In October, the NMa made 28 decisions on administrative appeal in various subsectors. In the course of 2008, the NMa expects to complete the remaining appeal procedures (more than 40) in both the ‘fast-lane’ and the regular procedure in various subsectors. In November, the first court case took place. The Rotterdam court is expected to handle more than 50 construction appeals in 2008.

Million euro fine for tree nurseries

In November 2007, the NMa imposed fines of more than € 1 million on seven tree nurseries for participating in prohibited cartel agreements from January 1998 up to the end of February 2004. The companies in question had met in different configurations before submitting tenders to local governments for tree nursery products such as trees and shrubs. The case was brought to light after a tip from FIOD/ECD. During its investigation, some of the evidence used by the NMa was provided by two companies as part of their request for leniency. Leniency applicants were given discounts of 65% and 15%, respectively. Besides imposing a fine on this cartel, following its investigation into the tree nurseries the NMa also reprimanded the Dutch Federation of Tree Nurseries (NBvB) for providing its members with price recommendations. The NMa demanded that the NBvB immediately stop this practice. A recent follow-up inspection showed that the NBvB no longer does this, as a result of which the NMa has decided not to conduct any further investigations.

Fine for suppliers of metal grilles

The NMa has fined suppliers of metal grilles a total amount of over € 2.7 million for participating in a cartel. To ‘protect’ themselves from mutual competition, the companies did regularly meet to harmonise the prices for grilles by drawing up price lists. For major contracts, the companies jointly determined which of them would be awarded the contract and for which price. In addition, the companies made agreements every year on the distribution of their market shares. The NMa launched the investigation after one of the parties informed the NMa about the cartel in return for fine immunity. Two other parties

later submitted pleas for leniency. In response, they received discounts of 15% and 10%, respectively. This case shows that the leniency programme is an important instrument in investigations and that companies are well rewarded when they report cartels to the NMa at an early stage.

“It is exactly the dynamism on the market, partly caused by the pressure of competition, that is prompting businesses to save costs and innovate.”

Monique van Oers, Director of the NMa’s Legal Department

Fines for the concrete sector

The NMa has imposed fines of more than € 5.5 million on 18 companies in the construction sector for participating in cartel agreements. The fines follow two statements of objections that the NMa drew up at the end of 2006. The case involved companies that are active in the field of ornamental paving products, broad-slab floors and ribbed cassette floors. The fact that the companies continued their cartel practices for a long time, even after the Parliamentary Committee of Inquiry into the Construction Industry had completed its investigation into the construction case at the end of 2002, was taken into account when determining the severity of the fines. In the ornamental paving case, seven of the nine participating businesses were granted leniency discounts. In the case involving the broad-slab floors and ribbed cassette floors, four of the nine participating businesses were granted leniency discounts.

Fine for refusing to cooperate

The NMa imposed a fine of € 10,000 on a person who refused to cooperate in a cartel investigation. Everybody is obligated to offer any type of cooperation that can be reasonably requested. This obligation also applies to ex-employees of companies. It is the first time that the NMa has imposed a fine in line with the new maximum fine. On 1 August 2004, the maximum fine was raised from € 4,500 to € 450,000.

Suspicion of cartel in traffic regulation

At the end of 2007, a report was made out against companies that produce traffic regulation devices and systems, which were suspected of violating the cartel prohibition. The NMa used evidence supplied by a number of these producers. This is the last 'fast-lane' procedure to be dealt with using the special approach to the construction sector.

Investigation into the rules of conduct of the Royal Notarial Professional Association (KNB)

The NMa has investigated the rules of conduct of the Royal Notarial Sector Association (Koninklijke Notariële Beroepsvereniging, KNB), for possibly unnecessary restrictions to competition. The final report contains concrete recommendations to the KNB to remove any threat to competition. The KNB has already stated it will propose a number of changes to its members.

Mergers and acquisitions

Green light for flower auction merger

After an in-depth investigation, the NMa decided that the merger between Aalsmeer Flower Auction and FloraHolland would not have a negative effect on competition. The merger has not created or strengthened a dominant position. The NMa's investigation focused on the question of whether the sales and purchasing channels outside the auction are a realistic alternative for growers and buyers. As part of the investigation, around 1500 growers and dealers of ornamental plant cultivation products were interviewed. The dealers that make use of the auctions are mostly wholesale businesses and florists. The NMa also interviewed competing parties and experts, including foreign auctions and Internet auctions. The investigation showed that sufficient numbers of growers and buyers of ornamental plant products view the alternative channels as realistic options. The new auction combination will therefore not be able to raise its prices or allow its services to deteriorate, because the growers and dealers will then resort to other sales and purchase channels.

Sugar merger approved

Koninklijke Coöperatie Cosun was given approval for the purchase of all shares in CSM Suiker. Last year, the

European Union launched the reform of the sugar sector. It was investigated whether this reform is causing the sugar market to internationalise and whether that in turn is causing an increase in foreign competition. The NMa decided that the concentration will not create a dominant position on the market for the sale of sugar. Foreign providers have access to the Dutch market and Dutch buyers have sufficient fall-back options for the purchase of sugar abroad. The transport costs are not a prohibitive factor for either industrial sugar or consumption sugar.

Activities in the European Competition Network

The NMa is an active member of the European Competition Network (ECN), in which all European competition authorities and the European Commission are participating in order to enforce European competition rules. The aim of the ECN is to track down and punish dishonest competition faster and more effectively. In 2007, the NMa attended 11 advisory committees in the ECN and responded to more than 35 requests for information from other member states and international organisations. In 2007, concrete agreements were made on the joint execution of sector investigations in cross-border cases, the so-called 'joint sector inquiries'. The advantage of this type of cooperation is that investigations can be conducted much more efficiently and businesses do not receive numerous uncoordinated requests for information.

Part 2

Themes

- 34 Part 1 of this annual report described the NMa's main activities in the past year and showed how the NMa puts its motto 'getting markets to work' into practice. Part 2 focuses on a number of themes that played a prominent role in the work of the NMa in 2007.

These themes are:

* **Developments in legislation**

The amendments to the Competition Act signify an important change in the legislation

* **Compliance with the legislation**

Sanctions ensure compliance, but the NMa gives companies and natural persons the opportunity to avoid sanctions if they apply for leniency in good time. The NMa measures the extent to which companies comply with the Competition Act. Every year, the NMa also calculates the amount that enforcement saves society and the consumer.

* **The NMa and the consumer**

The economy is essentially a process of supply and demand, where the parties demanding the products and services – the consumers – can exercise a huge influence on the behaviour of the suppliers – the companies on the market. The work of the NMa and the interests of consumers therefore have an impact on each other.

* **The way the NMa does its work**

The NMa attaches great value to the external testing of its working method. In 2007, the Netherlands Court of Audit published a report on the way the NMa functions.

The work of the NMa is not, of course, limited just to the areas of focus specified in the NMa Agenda. This part focuses on a number of other prominent activities, such as sanctions that the NMa imposed in 2007 and the NMa's cooperative activities in the European Competition Network (ECN).

Developments in legislation

Part 2 | Chapter 7

This chapter deals with a number of the more striking amendments that were made to the relevant legislation in 2007. They signify a further strengthening of the role of the NMa as a market authority. In several cases, the amendments provide the NMa with new or more extensive powers and therefore more (refined) options for enforcing the law. In some cases, (new) legislation is even resulting in new tasks. In those cases, the legislators deem the NMa to be the authority best equipped to regulate (new) markets. The NMa considers this to be a sign of confidence in the work it has done over the past ten years.

Amendments to the Competition Act

As of 1 October 2007, the Competition Act was amended in a number of areas. These amendments strengthen the deterrent effect of competition law. The table at the end of this chapter displays an overview of the main amendments.

Entering and searching residences

With this new power, the NMa can enter homes without the permission of the occupants and conduct a search. This is important, because a greater knowledge and awareness of the competition regulations is making it increasingly difficult to track down prohibited agreements. The amendment makes it more difficult to hide documents from the NMa. This new power will only be deployed after the necessary authorisation has been obtained from the delegated judge, who can also be present during the investigation.

Administrative fines for actual coordinators and commissioning parties

The NMa can impose fines on administrators, managers and other employees of companies who coordinate violations of the Competition Act or commission these types of violations, such as cartels. The maximum fine is € 450,000. The NMa also takes into account the seriousness and duration of the violation and the circumstances under which the violation was committed. In principle, the NMa will only impose a sanction if the company is also to be fined.

Pledges

From now on, during an investigation into violations of the Competition Act the NMa can accept pledges from companies and record them in a decision. Parties then pledge to change

their behaviour in certain ways. The decision ensures that the NMa can, if necessary, enforce such pledges. The benefit of this instrument is that behaviour that restricts competition can be prevented or brought to an end without the need for a lengthy and expensive procedure. Pledges are in principle not accepted if behaviour that restricts competition was clearly the company's aim.

“The core question is how we as the NMa handle the new powers. It is quite possible that we will deploy the new instruments in the short term.”

Pieter Kalbfleisch, Chairman of the Executive Board of the NMa

Merger control

The NMa's merger control has been brought further in line with European competition law. When assessing mergers, the focus is now more on the question of whether competition is being restricted by a merger and less on whether it is being caused by an economically dominant position. From now on, besides mergers and acquisitions, cooperative joint ventures will also be inspected.

In addition, parties that are taking part in a merger can make proposals during the first phase of an investigation (called *remedies*) to remove competition objections by the NMa. In the past, this option was only possible if the NMa had conducted an in-depth investigation during the permit phase (second phase). The new '2007 Remedies Guidelines' also make it easier for companies to anticipate requirements defined by the NMa for the submission of proposals. This streamlines the procedure for the companies in question.

36 Independent Network Management Act

In 2007, wide-ranging discussions were held on 'public and independent network management'. The Minister of Economic Affairs decided in June to definitely split the vertically integrated energy companies along ownership lines. The NMa contributed to the debate on splitting with the publication of two investigations: one investigation into the risks for network management during the acquisition of Indaver by energy company Delta, and one general investigation into the risks for independent network management with the current regulations. One important conclusion of the latter investigation was that in the split situation the independence of network management is safeguarded in the strongest possible way. Nevertheless, risks can never be eliminated completely and it will always be necessary to regulate network management in order to safeguard the public interest and independence.

Market Monitoring Registered Pilotage Services Act

In 2007, the NMa advised the Minister of Transport and Public Works on the regulation of pilotage – for example, by issuing two Workability and Enforceability tests³ for the new regulations. The Market Monitoring Registered Pilotage Services Act was passed in the Lower Chamber on 5 June 2007 and in the Upper Chamber on 18 December 2007 and has been in force since 1 January 2008. To prepare itself properly for the enforcement of this law, in 2007 the NMa made arrangements, together with the sector, for the regulation of this law.

Passenger Transport Act 2000 (Wp2000)

On 1 January 2007, an amendment to the Passenger Transport Act 2000 came into force. The new regulatory tasks (regulation of the financial flows between rail and bus traffic) were worked out in the 'inspection protocol for municipal transport companies'. The municipal transport companies can use this protocol to issue the statutory declaration in 2008.

³ A workability and enforceability test is performed by the Transport Department in response to a proposed amendment by the Ministry of Transport, Public Works and Water Management. The Department tests whether tasks specified in the amendment are workable for the Transport Department and whether it can actually perform its enforcement role on the basis of these new tasks.

Facts & figures

Overview of the main amendments to the Competition Act (Mw)

Amendment	Where in the Mw?	Description/information
Pledges	Chapter 5A	Promised change of behaviour of parties in a decision.
Entering residences	Article 55	Entering and searching a home without the permission of the occupant.
Sanctions for actual managers	Core in articles 56 and 75a	Preventing administrators, managers and other employees of companies from managing or commissioning a violation of the Competition Act.
Structural measure	Article 58a	Enforcing changes in the structure of a company to prevent violations in the future.
Consumer organisations as interested parties	Article 93	Under certain conditions, consumer organisations acquire a formal status in procedures at the NMa.
Binding instruction	Article 56	Sanction whereby the NMa instructs a party to comply with the law in a way to be described at a later date.
Higher limit for exemption (inflation adjustment)	Article 7, clause 1	Goods: € 5,5 million turnover. Services: € 1.1 million turnover
Introduction of a market share criterion	Article 7, clause 2	Joint market share < 5% and turnover involved < € 40 million.
Recoupment from sector associations	Article 68a	More options for recouping a fine when a sector association is unable to pay.
Exception to cartel prohibition	Article 16	Certain collective labour agreements, sector pension schemes and professional pension schemes do not come under art. 6 Mw.
Affixing seals	Articles 54 and 70b	It is also possible to affix seals during office hours. If seals are broken, the NMa can impose fines to a maximum of € 450,000 or 1% of annual turnover (if more).
Periods of limitation	Articles 64 and 82	The period of limitation of a violation is interrupted due to certain investigative activities. The time limits have been brought more into line with European law.
Testing norm regulation of concentrations	Article 41	When assessing concentrations, the emphasis is more on whether competition is being obstructed by a concentration and less on whether it is being caused by an economically dominant position.
Cooperative 'full function' joint ventures	Article 27	From now on, these will be tested by concentration regulation.
Remedies	Article 37	During the first phase of an investigation, parties can make proposals to remove obstacles to competition.

Compliance with the legislation

Part 2 | Chapter 8

- 38 The mission of the NMa is ‘to make markets work’. To do this, compliance with the laws that it is enforcing is crucial. That requires effective and efficient competition enforcement within markets, in which the NMa can act quickly. This is achieved by imposing sanctions on violators, but the NMa regularly insists on changes in certain rules at an early stage. The NMa believes in the power of combining instruments and can opt for a refined balance in these instruments because it is easier to see the effects of its actions. Risk-oriented enforcement in the right measure also ensures that regulation causes as little inconvenience as possible for companies. In this way, the NMa hopes to create a situation in which the market anticipates the competition rules. By keeping its distance where possible, the NMa illustrates its confidence in the market. That does mean, however, that companies or natural persons that nonetheless violate the competition regulations can expect to pay high fines.

Fining code 2007

The new ‘Fining code 2007’ underscores this idea. The Code explains how fines are calculated for violations of the Competition Act. The NMa is the first enforcement authority in Europe to formulate fining rules for violations of energy and transport legislation. The existing fining rules for the cartel prohibition and the prohibition on the abuse of an economically dominant position have essentially remained the same. Given the legal precedents and the experiences gained up to this point, there was no reason to review those fining rules. The new rules do however include the various new powers assigned to the NMa as a result of the October 2007 amendment to the Competition Act.

“The special fining guidelines for the construction sector are not included. That unique procedure is a thing of the past.”

René Smits, legal adviser at the NMa

Methods for determining the fine

In the Fining code, three methods are used to determine the amount of the fine. The particular method used depends on the type of violation. If the cartel prohibition and abuse prohibition is violated, the NMa uses the method it has applied since 2001, based on the turnover involved in that infringement. For other violations of the competition regulations and for violations of the energy and transport legislation, the fine is derived from the company’s total turnover in the Netherlands. This includes the supply of energy without a delivery permit or the fact that there are no agreements between the transporters and the rail manager. These violations are divided into six categories, each linked to the seriousness of the violation. For each category, a thousandth of the total turnover and a minimum fine apply, which are taken as the starting point for calculating the fine. The third method calculates the fine on the basis of the violator’s income and assets. This method is used for violations by natural persons.

New leniency programme

In line with the new Fining code and the NMa’s new powers, new ‘Leniency Guidelines’ were introduced on 10 October 2007. Leniency means that companies and natural persons are eligible for an exemption from or reduction of their fine if they themselves provide information to the NMa about cartels in which they are involved. One consequence of the new leniency rules is that companies have a greater chance of being caught because a cartel can now include several participants that are vying with each other for an exemption.

An exemption is granted on condition that individual companies and/or persons report themselves to the Leniency department of the NMa and lend their full cooperation. In this way, the first person who asks for leniency, whether it is a company or a person, can avoid having to pay a fine. Besides the fact that the new leniency programme now accommodates natural persons, it also includes more benefits for aspiring informants that act quickly. Lawyers working on behalf of a company or individual can check whether their client has a chance of a full exemption from a fine (category A). That status is only available if the NMa has not yet launched an investigation. If leniency category A is still available, the lawyer must submit the plea for leniency straight away. If the NMa specifies that this particular category is no longer available,

the lawyer and his client must decide whether they still want to submit a plea for leniency.

A person applying for leniency can be granted that leniency depending on the following: the time the plea was submitted, the question whether the NMa has already launched an investigation into the cartel, and the value of the information accompanying the plea for leniency.

Tabel 1 Leniency categories

Position in the leniency ranking	Investigation NMa already started?	Category	Fine-reduction
1st	No	A	100%
1st	Yes	B	60–100%
2nd or subsequent			
Possibly	Eventueel	C	10–40%

Anticipating regulation by the NMa

An effective leniency programme increases the (perceived) chance of being caught while stiff fines increase the deterrent effect. That strategy is and remains crucial for effective enforcement, because it leads to more ‘spontaneous’ compliance with the law. In order to measure the business sector’s anticipation of enforcement by the NMa, every year the NMa conducts a telephone survey among medium-sized and small businesses into the perceived pressure of competition. The investigation shows how these companies make allowances for the NMa’s activities. More than a quarter of companies indicated that the decisions of competition authorities influenced the way they did business in the market. This demonstrates that the NMa must remain active at all times to keep transparency up to standard.

Ten years of the Competition Act and the NMa

Companies were also asked how competition has developed in the ten years since the Competition Act was passed and how the NMa has contributed to this. Almost two-thirds of companies were of the opinion that in the past ten years competition has increased to a greater or lesser extent. More than 20% of these companies believe that the NMa has contributed to this increase.

Companies are very aware of the NMa’s existence and they admit that the organisation has an important role to play. This is shown

by how companies respond when asked what they would do if they encountered dishonest competition. More than 31% of companies said they would contact the NMa. In reply to an open question as to why they sometimes would not submit a complaint, the companies mainly answered that they were too small or they would try to solve the problem themselves. In addition, some companies would sometimes call in a third party, such as the sector association.

Calculating the effects

Conservative estimates show that enforcement and regulation by the NMa over 2007 resulted in savings for consumers of more than 615 million euros. Every year, the NMa structurally calculates the effects of its enforcement and in so doing makes its activities in the Dutch economy measureable and visible. These calculations only relate to the direct short-term effects of formal decisions. That means that anticipation of the NMa’s activities – for example, the supervision of mergers and acquisitions – is not included in the figures. Other activities of the NMa, such as issuing guidelines, informal viewpoints and alternative enforcement, are also not included in this calculation of the effects because they are difficult to measure. They definitely do have an effect, however, as they make the rules of the game in the market ever clearer.

“Effect measurements underpin the legitimacy of competition legislation and its enforcement.”

Jarig van Sinderen, Chief Economist at the NMa

International conference

Measurement of the economic effects of competition enforcement has increased in the past few years. Various countries calculate the intensity of these effects or look into the best way to do this. The NMa, one of the pioneers in this area, organised a conference in 2007 to discuss the subject with academics, experts and policy employees from the Netherlands and abroad. The conference dealt with topics such as the usefulness and necessity of measuring the effects and the techniques that can be used to calculate those effects.

“Leniency reflects a change in culture”

Maarten Meulenbelt

40 Admitting to membership of a cartel and working together with the NMa can save companies from having to pay stiff fines. That seems easy, but competition lawyer Maarten Meulenbelt says that use of the leniency scheme should not be underestimated. “Companies that discover a cartel in their own ranks must make sure that they get to the bottom of it. The process often makes a deep impression on the employees involved.”

Meulenbelt, who works for the international law firm Howrey, is an old hand in the business. Besides the NMa, he has also submitted requests for leniency on behalf of clients to competition authorities in other European countries and to the European Commission. He also advises and helps companies to develop and implement compliance programmes.

Change in culture

In the Netherlands, the use of the leniency scheme has increased over the past two years. According to Meulenbelt, this is due to a change in culture with regard to cartels. “On a European level, increasingly higher fines are being imposed on companies and more and more countries are penalising the individuals involved in the cartel as well as the companies themselves. Furthermore, companies involved in cartels are realising more and more that they can actually escape without paying a fine, while their competitors can end up having to pay fines of tens of millions of euros.”

Requests for leniency do not always lead to full remission of the fine (immunity). “If others get there first, you end up in a lower leniency category or you even miss out on leniency altogether. That is why it often involves a race against time. Firstly because competitors are never sure whether someone else will contact the NMa. You can enquire about that at the

NMa, but you are not free of obligation when you do so. If the NMa is prepared to tell you whether leniency is still available, you must apply for leniency straight away. That is what we call ‘the prisoner’s dilemma’ built into the scheme. And if you do make such an application, you have to immediately hand over a large amount of information.”

Grey areas

The leniency scheme was not introduced so that people can work out whether something is prohibited or not. It is only intended to track down substantial cartels. “But there are also some grey areas”, says Meulenbelt. “Now that the exemption option has been abolished, companies themselves have to assess whether a cooperative relationship is on balance positive or negative for the competition.”

Meulenbelt actually considers ‘hard-core’ cartels to be very simple in a legal sense. “The question is never whether a particular price agreement or market sharing is permitted or not.

The only thing that matters is whether there is enough proof. That connects up with the area of compliance – that is, internal measures taken by companies that must prevent the formation of cartels and any manifestation of cartels.” And off the record is not permitted either, Meulenbelt says, whether it applies to conversations between competitors or to communication inside companies.

“People in commercial positions sometimes like to express themselves enthusiastically in emails or internal documents. However, expressions such as ‘we’re going to blow the competition out of the water’ are really more expressions of internal sales enthusiasm than signs of unlawful activities. Regulators must be careful not to get carried away by that kind of enthusiasm, but the NMa is well aware of that. In compliance

programmes, we do point out that a company’s personnel must ask themselves how emails may be interpreted three, four or five years down the line. The NMa has very advanced IT systems that it uses to sift through servers. Whoever thinks that an email becomes untraceable after you press the ‘Delete’ button is way behind the times.”

Pressure rising

Meulenbelt does not want to create the impression that leniency is something that companies should apply for as a matter of course. “Besides the chance of avoiding sanctions by the NMa, there is also the possibility of civil prosecution and in cases of fraud also criminal prosecution. Moreover, one of the conditions for leniency is that you cooperate proactively, which means cooperation that goes further than your legal obligation. Moreover, if you don’t keep to that cooperation, you can lose your right to leniency. And the pressure doesn’t just go away. It really is a very serious exercise.”

“Often, the internal discovery of a cartel inside a company is also a traumatic experience for the people involved. It is not a very pleasant feeling to be questioned about it, either by the police or the NMa. As well as that, it goes against your instincts to contact the authorities and tell them that something is wrong. That’s not something you do on the spur of the moment. But the risk of a hefty personal fine definitely gets people thinking about whether they should apply for leniency.”

All in all, Meulenbelt believes that the NMa is a customer-friendly organisation. “You soon build up a feeling of trust with the leniency employees. After all, unearthing all that information has mutual benefits: the NMa wants to track down harmful cartels and the companies want to limit the damage caused by sanctions as much as they can.”



The NMa and the consumer

Part 2 | Chapter 9

- 42 This section illustrates how the NMa and the interests of consumers converge. The role of consumers is not to be underestimated. The economy is essentially a system of supply and demand, where the people demanding the products and services – the consumers – can have a significant influence on the behaviour of the suppliers – that is, the companies on the market. Besides imposing sanctions and other measures, the NMa provides information about the tangible, harmful consequences of behaviour that restricts competition. It also explains the importance of the sector-specific regulation of the energy and transport markets – for example, in press releases and news reports and also, since 2007, in its quarterly bulletin. The website www.nmanet.nl is an important source of information. Added to this, lectures and articles increase the general understanding of the competition regulations. It is important for companies and consumers to be aware that violations of competition law cost the Netherlands huge amounts of money every year.

500,000 ‘hits’ for ConsuWijzer

The NMa wants to be as accessible and transparent as possible. In order to do our work properly, we like to provide and receive as much information as we can. ConsuWijzer, which was created specially for consumers, is the information desk that consumers can turn to for information, practical tips and advice on their rights. It is an initiative of the three authorities of the Ministry of Economic Affairs: the Consumer Authority, the NMa and OPTA. ConsuWijzer is used to help communicate clearly with consumers, who in turn can use it to file complaints. In October 2007, ConsuWijzer celebrated its first anniversary. During the last year, consumers visited ConsuWijzer more than 500,000 times, particularly on the subject of taking out (unnoticed and/or unwanted) subscriptions with suppliers of energy or telecom, the purchase of products through the Internet, and problems related to guarantees. Signals received in this way are vitally important for the NMa, because we can use them for our enforcement activities.

Example: the consumer and energy

Good regulation of the energy market is vitally important for consumers, but also of course for business users, grid operators and suppliers. One much discussed investigation published by the NMa in 2007 was its evaluation of the regulatory system for

grid operators, also called the ‘profit investigation’ (see Part 1, Chapter 1, Energy). During the period 2001–2007, regulation by the NMa resulted in total savings of € 1.9 billion on customers’ transport bills. This comes to an average saving of € 45 per year on a bill of € 470 per year for customers with gas and electricity connections.

“The size of the profits showed that the regulation of the tariffs for energy transport can be stricter.”

Gert Zijl, member of the Executive Board of the NMa

The reason NMa itself conducted an evaluation of the regulatory system was firstly due to the start of the new regulatory period in 2008. In addition, various signals had been received from the market and the political sphere that made it a suitable moment for an evaluation. For example, consumer organisations wanted to know whether consumers must subsidise the profit made from regulated network management, while the grid operators themselves repeatedly said that the existing prices were too low for them to be able to invest properly in the quality and capacity of the network. That could have put the security of supply in jeopardy.

The debate around the regulation of tariffs clearly shows the cutting edge on which the NMa must operate. A regulator has the task of protecting the consumer against the monopoly of the grid operator and of safeguarding the security of supply at the same time. The “efficient network management” that the NMa wants to achieve must not result in underinvestment in the network. The prices for network management are therefore determined on the basis of the ‘standard yield’; a yield that is high enough for energy companies to recover their investments and that also guarantees that customers do not pay too much.

The profit investigation in 2007 showed that, on average, the energy companies had made more profit than the agreed standard yield. This resulted in calls in the media and in the

political sphere to force the energy companies to ‘pay back’ that amount to consumers. That turned out to be impossible, however. After all, the profits had been made within the boundaries of the existing legal framework. Nonetheless, the findings of the investigation did prompt the NMa to fine-tune the regulatory framework for the new regulatory period.

On the way to a regulated meter market

In 2007, the first step was taken to introduce a regulated meter market for small-scale consumers of electricity and gas (households and small business consumers). In late 2007, the NMa defined the maximum tariffs for electricity meters for 2008. Since 1 January 2008, there has been a single uniform maximum measurement tariff for all types of electricity meters used by households and small business consumers that are managed by grid operators⁴. This measurement tariff amounts to € 24.47, excluding VAT, and it is determined on the basis of the average measurement tariffs used by grid operators in 2005. In 2008, preparations will be made to ensure that gas regulated measurement tariffs can also be determined from 2009 onward.

The reason for the introduction of measurement tariff regulation is the inadequate operation of the (free) meter market. In the October 2006 market monitor for small-scale consumers, the NMa stated that the average tariffs for the meter rental of electricity between 2001 and 2006 rose by around 83% even though consumers received no extra services or any other benefit in return. The aim of tariff regulation is to halt the rise in the measurement tariffs on the one hand and to prepare the way for the introduction of the ‘smart meter’ on the other hand.

In mid-2008, the Lower Chamber is expected to approve the nationwide introduction of a new type of meter for small-scale consumers of electricity and gas: the ‘smart meter’. These smart meters can be read remotely, which can provide huge benefits. Consumers will have more options for saving energy, will receive (much) more information about their levels of consumption, and will no longer have to fill in and mail meter-reading cards. It will also signify the end of the estimates of meter readings by grid operators. To guarantee that consumers can (continue) to switch

suppliers as smoothly as possible, it is also important that all smart meters satisfy the same (technical) requirements and that there is a fully regulated meter market. This means that in the run-up to the introduction of the smart meters in 2009, and for an expected period of six years afterwards (in which this ‘roll-out’ will have to be fully realised), the NMa will actively work to develop the regulation of the meter market. Consumers, suppliers, grid operators and measuring companies will all be affected by this regulation.

⁴ Grid operators are responsible for the transport of electricity and gas from production locations to the customer through the electricity and gas network.

The functioning of the NMa

Part 2 | Chapter 10

- 44 The NMa believes that the potential for effectively enforcing the legislation has increased in the past years. That is leading to an efficiently functioning NMa whose enforcement activities are causing as little inconvenience as possible. It is important that not only the NMa is convinced of this, but also society as a whole. That is why it is important to have our work (externally) tested.

Netherlands Court of Audit positive

In 2006, the Netherlands Court of Audit conducted an investigation into the NMa's operations. In many of the areas it investigated, the Court of Audit was positive about the way the NMa's role as a competition enforcement authority. In its final report presented in May 2007, the Court of Audit wrote: "For the most part, the NMa has well-developed enforcement instruments".

The Court of Audit concluded, for example, that the division between investigation and sanctioning in the organisation is properly safeguarded. This is important, because not only does the NMa investigate cases involving cartels and abuse, it also imposes sanctions when it encounters violations. The Court of Audit believes that there are sufficient safeguards present to protect this statutory division of functions and that these safeguards work properly in daily practice.

"We're proud that the Netherlands Court of Audit confirmed that the NMa has developed so well and has already achieved a great deal in its relatively short existence."

Pieter Kalbfleisch, Chairman of the Executive Board of the NMa

Recommendations of the Court of Audit

In response to a number of recommendations nevertheless made by the Court of Audit, the NMa is already busy developing plans and implementing improvements. For example, the Court of Audit expressed its appreciation for the way the NMa now displays the effects of its enforcement. In addition, the throughput times of cases must also continue to improve.

The role of other public interests

The Court of Audit concluded that the NMa should balance the relationship between economic and non-economic interests against each other in a better and clearer way. Non-economic interests include the interests of the environment, efficiency and the promotion of quality. The NMa already takes these types of interests into account in its decisions, so the important thing is the way it makes this process transparent. The NMa will carry through this recommendation by making its motives for these types of issues even more transparent than they had been until now.

Alternative enforcement

The Court of Audit has recommended the clear communication of the criteria for alternative enforcement by the NMa. Alternative enforcement is enforcement without the use of legally defined instruments such as a fine, a periodic penalty payment, a pledge decree or binding instructions. For example, it can entail holding informal talks with parties or airing views informally. The aim is the same as when imposing sanctions, namely to ensure compliance with the competition regulations. The NMa will opt for alternative enforcement if that increases the efficiency and/or effectiveness of the enforcement. Important aspects to be considered when making this choice include effectiveness, the preventative effect of heavy fines and equality before the law.

The amendment to the Competition Act entails that NMa can now use the pledge decree. Whereas in the past alternative enforcement was deployed, in the future a pledge decree will probably be drawn up regularly as part of general competition enforcement. Therefore, in every case in the future involving this type of regulation, alternative enforcement will probably be used less. Therefore, the NMa will not compile and publish guidelines for alternative enforcement, but will look for other ways to demonstrate how any alternative enforcement will be deployed in the future.

Global Competition Review

The NMa was awarded a 3.5 star in the 'Rating Enforcement' category by science magazine Global Competition Review (GCR). The rating dates from 2006 and was awarded after GCR had made a comparison between 38 competition authorities. The NMa has always received a good rating, with scores of 3.5 star

in 2002, 3.75 in 2003, 4 in 2004 and 3.75 star in 2005. In its report, GCR says that the playing field is becoming increasingly levelled, and there are ever fewer differences in the analytical skills of the leading authorities. The NMa scored less than authorities in countries such as the United States, the UK and the European Commission, but scored the same as eleven other countries, including Canada and France. The stars are awarded by the editorial board on the basis of questionnaires filled in by the competition authorities, but also on the basis of a survey conducted among a large panel of competition lawyers, corporate lawyers and economists.

Three complaints about the NMa's performance

Companies or consumers can contact the Complaints Officer if they believe they have been badly treated by the NMa. In 2007, the Complaints Officer received three complaints related to the activities of the NMa. These involved cases in which the complainants thought that the NMa had a duty to act while the NMa believed it lacked the power to do so. One complaint was essentially rejected, although the NMa did admit that it should have responded to a letter from the complainant. In the second case, a detailed explanation by the NMa was sufficient. The third complaint was also rejected.

“We’re not expecting anybody to perform miracles”

Pieter Zevenbergen

46 According to Pieter Zevenbergen, member of the Board of the Netherlands Court of Audit, the NMa has settled in well during its relatively short existence. He bases this view on the report on the NMa’s activities published by his institute in May 2007. “But although the NMa is functioning satisfactorily as far as its legal objectives are concerned, there were – as always – a number of marginal comments.”

The investigation conducted in 2006 was part of the Netherlands Court of Audit’s strategy to examine the characteristics of public administration as defined by the United Nations. “In addition to the quality of legislation, these characteristics also include regulation and accountability”, explains Van Zevenbergen. “The NMa is not the only market authority in the Netherlands. For example, we also have the OPTA for the telecommunication sector as well as the Financial Markets Authority. We chose to deal with the NMa first. That will be followed by the others, depending on the need and the time we want to invest in it.”

What was the aim of the investigation?

“The free market is a remarkable economic phenomenon. Whereas on the one hand the freedom of parties to associate is a basic right, on the other hand there is also the need for regulation to guarantee sufficient competition. We were especially curious about how that regulation was structured and to what extent the objectives laid down by law are being achieved by the NMa. After all, the NMa is the only competition enforcement authority so even if the parties involved do not like the NMa they have nowhere else to turn to.”

“We also looked at the somewhat precarious relationship with the Ministry of Economic Affairs. After all, they bear the ultimate

responsibility, while the NMa enjoys the independence of an independent regulator.”

What can be improved according to the report?

“We believe that the throughput times of some investigations can be too long. It is in the interest of citizens and companies to know exactly where they stand without delay. During an investigation, companies are stuck in a very dependent position. Long throughput times prevent them from reacting adequately to current market developments. Added to that, we’ve noticed that you have to be very alert to economic shifts if you want to act effectively against the formation of cartels. We therefore think it would be a good idea for the NMa to enforce more on the basis of its own market analyses.”

What made a positive impression?

“The way the ‘Chinese Walls’ function, for example – that is, the division between investigation and sanctioning. We singled that out because politically and with regard to the outside world this is such a sensitive issue. We found that the statutory regulations and procedures are being complied with on a consistent basis and that from high to low there is a good culture for maintaining that division of functions.”

“Another positive recommendation to the NMa was that it should continue applying alternative enforcement. Our investigation shows that dialogue can be just as effective an instrument as a financial fine. And if that dialogue doesn’t succeed in bringing about a change in behaviour, the NMa can still always show its teeth.”

When you make these types of recommendations, do you also take the NMa’s physical capabilities into account?

“Yes and no. We’re not expecting anybody to perform miracles. Or to put it another way, you

can’t do everything at the same time. But that doesn’t absolve you from the obligation to define priorities. We therefore don’t demand miracles on a regular basis, but we do want the NMa to look at the whole picture. You can ask whether the NMa is actually large enough for the Netherlands, but it is up to the Minister to decide what this institute may cost.”

Is the report also intended to hold a mirror up to the NMa?

“That’s always a useful exercise. As a Court of Audit we commissioned a peer review at one stage, where we asked fellow Courts of Audit in Norway, South Africa and the UK to examine our institute and our products. That came up with some remarks that were well worthy of consideration and that definitely helped us.”

What surprised you most about the investigation?

“That at the end of the day my ideas prior to the investigation fell into place like pieces of a puzzle. For example, the way the NMa functions, the difficult independent relationship with the ministry and the way of reporting to the Lower Chamber turned out to be the coherent whole that we hoped it would be.”

Hoped but not expected?

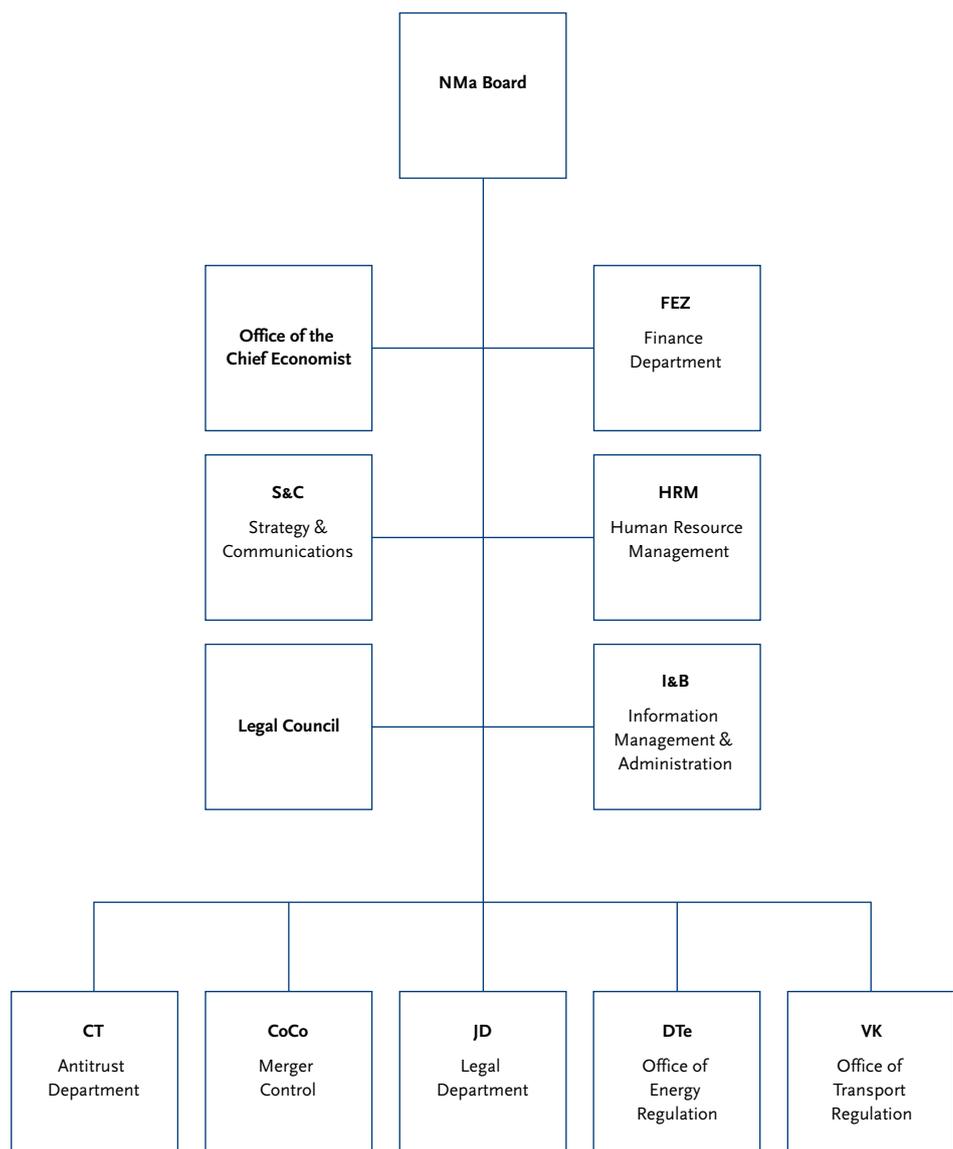
“Let me put it this way: an American colleague once said ‘in God we trust, all the rest we audit’. If the investigation confirms the outcome according to the book, that’s a good result. But it’s not something you can guarantee beforehand.”



Part 3

The organisation

- 48 Since July 2005, the NMa has functioned as an Autonomous Administrative Authority (ZBO), headed by a Board. In 2007, no major organisational changes took place at the NMa. There was, however, a partial reorganisation of the Office of Energy Regulation (DTe). In 2007, extensive preparations were made to merge the Merger Control and Antitrust Department into a new Competition division from June 2008 onwards.



Personnel

Part 3 | Chapter 11

The NMa's HRM policy has the following aims:

- 1 to attract new employees
- 2 to provide employees with tailor-made support to help them with their jobs and careers
- 3 to support managers in the execution of their duties
- 4 to provide good working conditions and have an acceptable level of absence through illness.

With respect to the above, the following table displays a number of indicators with the results achieved in 2007.

Influx

The first objective of the HRM policy is to ensure an adequate influx of high-quality new employees. After all, the percentage of people leaving the organisation in 2007 was almost 20%, a figure that the organisation obviously wants to reduce. The job market is still very tight. Nonetheless, the NMa has succeeded in balancing the number of employees leaving the organisation with the number of new employees, but it did require more time to achieve this. For organisations like the NMa, all these factors mean that additional efforts are required to recruit good people and keep them in the organisation. That is one of the reasons why communication on the job market has become a top priority for the NMa. To achieve this, the NMa wants to create a strong image as an employer, differentiating that image according to the various target groups. The NMa wants to be permanently visible, to make specific use of recruitment resources such as the Internet and open days for the job market and in-house, and to make extensive use of its own network of employees as well as recruitment and selection bureaus. On 31 December 2007, the NMa had 392 employees (374.3 FTEs).

Table 2 Critical success factor: Personnel scores

Monitoring instrument	NMa-norm	Realised in 2007
Influx	minimum 10% – maximum 20%	21.69%
Outflow	minimum 10% – maximum 20%	19.90%
Level of occupancy	95%	96%
Percentage of women in MD positions (S14 and higher)	32%	40.9%
Male/female ratio	50% – 50%	51.3% – 48.7%

Table 3 Critical success factor: Results of communication on the job market

Monitoring instrument	NMa-norm	Realised in 2007
Duration of vacancies	85% filled within three months	79.8%
Participation in job market open days	12 times per year	15
In-house open days at NMa	2	5

Employee development

The second objective involves permanent, effective and customised support for employees so that they can develop in their jobs and in their careers at the NMa. Ample use was made of the training courses that were provided in 2007. Additionally, at the start of 2007 the NMa drew up a new career policy that was worked out in a project plan with numerous measures. The basic principles of the plan are employability, internal mobility, training courses and fewer internal rules and procedures. In 2007, plans were also developed for a permanent training programme for the NMa's young academics, which will be implemented in 2008.

Table 4 Critical success factor: Training and development

Monitoring instrument	NMa-norm	Realised in 2007
Number of instruction/training courses launched in 2007	450	523
Percentage of average earnings spent on training courses	3%	4.21%
Information from exit interviews (organise feedback)	75% of people leaving the organisation have exit interviews	77.6%

Support for managers

Thirdly, the NMa focuses on permanent, effective and customised support for managers in relation to their management tasks. For this group, too, a start was made in 2007 with the development of a separate training programme, which will be implemented in 2008.

50 Working conditions and absence through illness

The fourth objective involves creating working conditions that lead to reduce workloads and the level of absence through illness and increase job satisfaction. In 2007, the NMa's absence through illness figures rose to 5.74%. Absence through illness of less than six weeks was 2.49%, while absence through illness that lasted six weeks or longer came to 3.25%. The total figure is a definite increase compared to 2006, when the total was 4.35%. In order to manage the level of absence through illness more effectively, a number of additional measures were taken in 2007 to supplement the existing instruments, for example in the area of absenteeism supervision. On top of that, an employee satisfaction survey was held in 2007, the results of which will be published in 2008.

Table 5 Critical success factor: Absence through illness

Monitoring instrument	NMa-norm	Realised in 2007
Absence through illness	Maximum 3.8%	5.74%

Employee participation

In 2007, seven meetings were held between the Board ('the administrator') and the Works Council (OR). Among other things, the Works Council issued its recommendations regarding the intended merger of the Merger Control and Antitrust Department divisions. One of the Works Council members is represented in the Departmental Works Council (DOR) of the Ministry of Economic Affairs.

Finance

Part 3 | Chapter 12

This chapter contains the summary 2007 financial report of the NMa's civil service apparatus, including the DTe and the Office of Transport Regulation. The Ministry of Economic Affairs allocates resources for personnel and materials to the NMa by means of a budget letter. The NMa (and the Ministry of Economic Affairs) use cash-based accounting. Cash expenditure is a logical consequence of this.

NMa (civil service apparatus)

The most noteworthy item is that the NMa did not exceed its budget in terms of liabilities or expenditure. The NMa therefore stayed within the budget. On liability level, the NMa underspent by just over € 1 million. The NMa already informed the Ministry of Economic Affairs in August 2007 that it would not spend this € 1 million. With respect to its cash expenditure, the NMa underspent by € 1.7 million. Part of the expenditure is expected to be realised in 2008. With respect to income, 93% of the budget was realised. In 2007, the level of reported income was approximately € 25.9 million. The majority of this income is from fines imposed in 2007 and the years prior to that. In 2007, fines worth a total of € 22.5 million were received. On 31 December 2007, the NMa had received around € 11.8 million worth of bank guarantees from companies as security for fines it had imposed.

Total overview 2007

Table 6 Realisation with respect to the budget letter (in thousands of euros).

Description	Liabilities	Expenditure	Receipts
Budget letter	45,761	48,192	27,819
Realisation	44,139	46,463	25,914
Underspending	1,622	1,728	1,904
Underspending [%]	3.54%	3.59%	6.85%

Pricing principles

All amounts are included at their nominal value. The full amount of the receivables continues to be included until they are declared uncollectable after being considered to be irrecoverable.

Liabilities

Table 7 Liabilities (amounts in euros)

Description	Allocated Budget 2007	Realisation 2007	Realisation 2006
Total personnel	30,651,000	26,823,604	26,934,400
Total materials	15,110,000	17,315,258	13,609,385
Total	45,761,000	44,138,863	40,543,785

In 2007, there was an increase over 2006 in the NMa's liabilities for expenditure on materials. There are a number of important reasons for this. The NMa received extra funds following the extension of its tasks due to the Independent Network Operation Act and the Order in Council for lowering notification thresholds in the health sector. In addition, an increase in the workforce was allocated due to the autonomous growth in the number of merger notifications. In 2007, there was a change in the administration as a result of which the NMa and the DTe are entered under the same budget position. The split between NMa and DTe in 2006 is specified in the annual report for that year.

Expenditure

Table 8 Expenditure (amounts in euros)

Description	Allocated Budget 2007	Realisation 2007	Realisation 2006
NMa personnel	30,651,000	27,495,191	24,120,537
NMa materials	17,541,000	18,968,453	12,228,466
Total	48,192,000	46,463,644	36,349,003

The NMa's expenditure includes the expenditure for the Office of Transport Regulation and DTe. The Office of Transport Regulation is financed by the Ministry of Transport and Public Works through the budget of the Ministry of Economic Affairs. The difference between the 2007 budget and realisation in 2007 is explained on the one hand by the increase in the liability budget and on the other hand by old liabilities that were paid in 2007, such as rent and service costs.

52 As was the case in 2006, cash-based accounting was also used in 2007. The cash budget was therefore not distributed over ledger accounts. That is why the 'Allocated budget' column is empty. Due to the increase in personnel, there was also an increase in personnel-related costs, such as the costs of salaries, training courses, once-off extras / small gifts for personnel. Because it was not possible to immediately cover the increase with permanent personnel due to the labour shortage and uncertainty regarding the increase in personnel, the gap was filled with temporary employees. This resulted in higher expenditure for the items of 'interim management' and 'temporary employees and other hired personnel'. In 2007, the NMa was allocated a temporary budget for cases pertaining to the construction industry. This expenditure was also entered in the 'temporary employees and other hired personnel' ledger account. The amount came to € 1,116,193.

Table 9 Expenditure (amounts in euros)

Ledger account and description		Allocated budget 2007	Realisation 2007	Realisation 2006
<i>Personnel</i>				
400000	Salary costs		19,780,919	18,952,796
400001	Overtime		21,506	16,420
400002	Once-off extras / Small gifts personnel		666,263	544,539
400019	Welfare		9,374	3,206
410000	Apprenticeship and commission payments		27,860	16,496
410020	Interim management		817,944	343,386
410021	Advice on organisation and staffing		95,717	80,520
410031	System development		0	31,987
410033	Temporary employees and other hired personnel		4,731,573	3,265,731
415002	Training		833,140	532,733
415003	Recruitment and selection		319,911	249,363
415004	Other personnel costs		2,123	10,252
416012	Redundancy schemes		188,862	72,978
440033	Subscriptions and membership fees		0	129
<i>Total</i>	<i>Total personnel</i>		27,495,191	24,120,537
<i>Total</i>	<i>Total materials</i>		18,968,453	12,228,466
Total	General total	48,192,000	46,463,644	36,349,003

Income

Table 10 Income (amounts in euros)

Description	Allocated budget	Realisation	Realisation
	2007	2007	2006
NMa	23,000,000	22,191,119	144,617,095
NMa fees	2,200,000	1,104,500	0
DTe	2,619,000	2,619,087	2,575,943
Total	27,819,000	25,914,706	147,193,038

The above table displays NMa's and DTe's income. The NMa's income mainly involves the payment of fines and legal interest by companies. The receipt of the fees is based on the NMa's cost recovery decision [see Staatsblad 2006 717].

DTe's income is based on the 2007 Energy Cost Recovery scheme [see Staatscourant, 13 April 2007, issue 72]. In 2007, fines repaid to companies and legal interest totalling € 259,832 were deducted from this income. In 2007, DTe also utilised its capacity to impose fines (see also Part I, chapter I, 'Energy'). Unlike 2006, in 2007 the NMa did not enter compensation paid to companies as income but as regular liabilities and payments.

Fines receivable by the NMa and DTe reported as memorandum items

Table 11 Outstanding debts and receivables reported as memorandum items as of 31 December 2007 (amounts in euros)

Description	2006	2007
NMa	175,082,290	147,776,435
DTe	290,861	1,861
Total	175,373,151	147,778,296

The receivables relate to the fines imposed on the business sector by the NMa and the DTe, plus the legal interest accrued. The Office of Transport Regulation had no outstanding receivables at the end of 2007.

On 31 December 2007, the NMa possessed bank guarantees worth a total of € 11,809,462. This amount includes an escrow account (deposited with a notary) containing € 135,626. The decrease compared to 2006 was caused by collection of the fines, the collected receivables of DTe, and decisions on administrative and judicial appeals.

In 2008, two bank guarantees worth € 488,971 have been returned. In addition, at the meeting held on 5 February 2008, the Board made a decision on an administrative appeal, which lowered the above-mentioned receivables amount by € 12,336,000.

ZBO Board of the Dutch Competition Authority

This section includes the summary financial reports of the NMa ZBO (Autonomous Administrative Agency) over 2007. The Ministry of Economic Affairs allocates resources to the ZBO for personnel costs by means of a budget letter.

Table 12 Realisation versus budget (amounts in euros)

Description	Liabilities	Expenditure
Budget letter	568,000	568,000
Realisation	558,998	558,998
Underexpenditure	9,002	9,002
Percentage	1.58%	1.58%

Pricing principles

All amounts are included at their nominal value.

Act on Disclosure of Top Income Earners in Publicly Funded Sectors (Wopt)

The WOPT Act, which came into force on 1 March 2006, stipulates the disclosure of incomes in government and other sectors that are financed from public funds and are higher than the taxable salary of Ministers. For the ZBO, this relates to the income of the Chairman of the Board over 2007.

In 2007, Mr Kalbfleisch was remunerated on the basis of a non-civil service appointment as Chairman of the Board. In total, this amounted to € 222,689.

Business operations

Part 3 | Chapter 13

54 Responsibilities and testing

The structure of this section is in line with the structure of the departmental Annual Report of the Ministry of Economic Affairs. The Board of the NMa is integrally responsible for the efficiency and effectiveness of the internal processes to ensure that the risks of non-realisation of the objectives are optimally controlled. For the non-financial processes, however, the internal processes and the applicable control measures can never provide absolute certainty that no significant defects will occur.

To enable this responsibility to be assumed, a complete set of instruments has been deployed in the area of planning, control and accountability (plan of action, monthly reports, quarterly reports, quarterly meetings, half-yearly report and annual report), personnel policy (performance interviews, abridged assessments, personal development plans, job descriptions, career policy, training courses, integrity policy and individual plan of action), process descriptions (and their evaluation), and security (including information security). Last but not least, decision-making takes place in a prescribed and structured manner at the Board meetings. This prescribed and structured manner entails, among others, that people submitting agenda items for the Board meeting must address the following aspects: “possible consequences/risks (personnel, financial, social, political, administrative, etc.)”, “relationship with or dependence on other documents/processes”, “coordinated with...” and “other opinions within the NMa”.

Legitimacy of the budget implementation

On the basis of the above, we declare that the internal processes have efficiently and effectively led to the realisation of objectives, to the development of policy information and to a good level of financial and material management. The internal audits, the inspections by the Audit Department and the supervision by the Board of Financial Economic Affairs of the Ministry of Economic Affairs show that there have been no unlawful acts of any significance with respect to liabilities, expenditure, income and the trial balance. In our opinion, this sufficiently guarantees the legitimacy of the liabilities, expenditure, income and trial balance.

In 2007, an investigation was also conducted by the Netherlands Court of Audit which focused on the question of whether there are enough safeguards for the independent, honest, transparent, legitimate, efficient and effective implementation of general regulation and whether there is sufficient public accountability with regard to this regulation. Based on the numerous points it investigated, the Court of Audit was positive about the way the NMa is operating. With regard to the points for improvement, the Court of Audit has ascertained that on many of those points the NMa is already busy developing and planning improvements. In its reaction, the NMa indicated how it wishes to respond to the recommendations.

Bottlenecks in the achievement of the objectives

In the past year, there were a number of bottlenecks that made it difficult to achieve the objectives. Where possible, these bottlenecks were resolved using the abovementioned instruments:

- The percentage level of absence through illness was 5.74% in 2007. This is higher than our norm of 3.8%. It meant that less capacity than planned was available.
- In 2007, the NMa worked on a merger of two divisions; an exercise like this always involves uncertainty and the extra use of communication.

- Employing and retaining employees with the necessary quality and expertise (especially at the senior level) and personal skills is a bottleneck throughout the NMa. This is because we have to compete in the field of employment conditions with the business sector and other regulators, for example. In 2007, we had relatively high numbers of people who left the organisation in combination with the abovementioned difficult situation with regard to attracting senior and/or highly qualified personnel. This also had an impact on our results and/or throughput times.
- The uncertainty about the interpretation of new legal tasks and the lack of clarity on expanding the number of personnel to handle these tasks are making it difficult to react decisively. This is relevant, for example, to the AMEW, the Independent Network Operation Act, the Order in Council on the lowering of the notification threshold in the health sector, and the Pilotage Act.
- On 7 February 2007, the Administrative Jurisdiction Division of the Council of State passed judgment in the appeal against the decision of the Arnhem court in the Gazelle case, which is a case in principle about the applicability of the Government Information (Public Access) Act. The Department upheld the court’s decision that stated that articles 90 and 91 of the Competition Act do not include a special, exhaustive disclosure regulation that supersedes the Government Information (Public Access) Act. This means that the Government Information (Public Access) Act is applicable. Because the NMa works with confidential information from competing companies, petitions based on the Government Information (Public Access) Act not only require a great amount of extra work, but also pose a potential risk to the realisation of its objectives for that reason. This is also noticeable in the throughput time, where the NMa cannot always satisfy the punctuality requirement.

Improving business operations

In 2007, important steps were taken to merge the Antitrust and Merger Control Department. Following this merger, the NMa should be able to respond more effectively to the current number of reports about concentrations and make better use of its knowledge of the market. The actual merger will take place in 2008.

In 2007, the first steps were taken to create a Document Management System. The first phase involves converting incoming documents into digital files. This is intended to make dossier documents more accessible. In the first quarter of 2008, further decisions will be made on the basis of the pilot that was conducted.

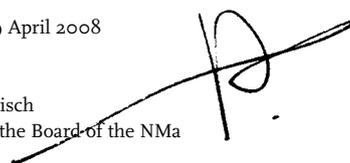
In 2007, a financial report instrument was introduced that enables budget holders to view up-to-date financial reports themselves. In 2008, this instrument will be extended to other aspects of management information.

In the area of recruitment and selection, in 2007 steps were taken to shorten throughput times. Given the abovementioned bottlenecks, additional activities will be necessary in 2008. These will focus on the qualitative strengthening of the recruitment and selection process and creating a clear profile for the NMa.

The ultimate aim of shared office space for all has not yet been achieved. In 2007, however, more NMa employees were housed in the same tower. In 2008, the NMa will do more to realise this objective.

The Hague, 9 April 2008

Pieter Kalbfleisch
Chairman of the Board of the NMa



Accountantsverklaringen

Part 3 | Chapter 14

Status jaarrekening

De verkorte jaarrekening van de NMa over 2007 zoals opgenomen in dit jaarverslag, is gebaseerd op het departementale jaarverslag 2007 van het Ministerie van Economische Zaken en de interne jaarrekening van de NMa over 2007. De Algemene Rekenkamer, die het departementale jaarverslag 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 deze interne jaarrekening in het kader van de controle, bedoeld in artikel 66 van de Comptabiliteitswet, gecontroleerd en hierbij een goedkeurende verklaring verstrekt.

Accountantsverklaring

Wij hebben de in dit jaarverslag NMa 2007 in Deel 3, Hoofdstuk 12 opgenomen verkorte jaarrekening, die deel uitmaakt van de interne jaarrekening van de NMa over 2007, gecontroleerd. De verkorte jaarrekening bestaat uit:

- de staten van verplichtingen, uitgaven en ontvangsten met de financiële toelichtingen daarbij;
- de posten van de saldbalans van de NMa per 31 december 2007 met de toelichting daarbij;
- de in dit Jaarverslag NMa 2007 in Deel 3, Hoofdstuk 13 opgenomen bedrijfsvoeringparagraaf over de comptabele rechtmatigheid en de getrouwe weergave van de uitkomsten van de begrotingsuitvoering over 2007.

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 en de daaruit voortvloeiende regelgeving. Deze verantwoordelijkheid omvat onder meer het ontwerpen, invoeren en in stand houden van een intern beheersingssysteem relevant voor het opmaken van en 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 en toepassen van aanvaardbare grondslagen voor financiële verslaggeving en 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 en zijn wij gehouden onze controle zodanig te plannen en 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-informatie over de bedragen en 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 en getrouw weergeven in de financiële overzichten van de uitkomsten van de begrotingsuitvoering relevante interne beheersingssysteem teneinde een verantwoorde keuze te kunnen maken van de controle-werkzaamheden 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 en 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-informatie voldoende en 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 informatie van de NMa en 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 14 maart 2008 verstrekte goedkeurende accountantsverklaring.

Den Haag, 9 april 2008

Auditdienst van het Ministerie van Economische Zaken

Was getekend

Drs. P.H. Staats RA
Senior auditor

Was getekend

P.H.M. Verschoore RA
Audit manager

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The quotes and interviews featured in this Annual Report serve to illustrate the public relevance of NMa activities and should not be taken as a reflection of NMa policy.

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