

**NETHERLANDS***Summer 2001***Executive Summary**

1. The new Netherlands Competition Act entered into force on 1 January 1998. In 2001 the process is started of evaluating this law as well as the functioning of its enforcer, the Netherlands Competition Authority (NMa). We will inform the OECD on the outcomes of this process and possible changes in the Dutch Competition Act in the next annual report to be presented to the CLP.

2. In chapter 1 of this annual report we focus on the implementation of the recommendations made in chapter 3 of the OECD report on 'regulatory reform in the Netherlands', written in 1999.

3. Some efforts would still have to be made, if we were to fully implement all OECD recommendations. If the legislative proposal to change the NMa into a ZBO (Independent Governmental Body) passes parliament in autumn as expected, this would certainly be an important result.

4. The first recommendation of the OECD was "Apply the new law vigorously." Meanwhile, the NMa made significant progress in strengthening the enforcement of competition law and policies and deals with cases effectively, as is illustrated in chapter 2.

5. Besides, the OECD recommended continuing to ensure adequate competition law enforcement in regulatory regimes for public utilities. Most exemptions to the Competition Act will expire in the next few years. A possible test for a vigorous competition regime in the Netherlands is whether the 'regulatory authorisation exemption' in article 16 will expire on 1/1/2003, without being replaced by a new provision. As the OECD stated: "The competition law will be more effective as a tool for reform when the exemption expires." This may however strengthen the call for instructions to the NMa to clarify how it should deal with the supervision on competition in certain regulated and politically sensitive sectors, such as the labour market or environmental services.

6. Issues that attracted much attention in press and parliament were the treatment of small and medium sized companies and the attitude of the NMa towards branch organisations (business associations). The NMa provided clarity by issuing important guidelines on co-operation (see chapter 1.b).

**Changes to competition laws and policies, proposed and adopted*****Summary of new legal provisions of competition law and related legislation****Transparency directive*

7. On July 16, 2001 the Bill "Amendment of the Competition Act (implementation of an Amendment of the EC Directive on transparency)" was sent to the Lower House. The purpose of this Bill is the implementation of directive nr. 2000/52/EC of the Commission of the European Communities of 26 July 2000 (OJ L 193) amending Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (OJ L 195). By this Bill liabilities are laid down

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in the Competition Act to maintain separate accounts for different activities by certain undertakings, to keep that information at the disposal of the Commission for five years and to supply it to the Commission when she considers it necessary so to request. Through this Bill also legal provisions are made in the Competition Act to the enforcement of those liabilities.

### *Gas*

8. As of August 20th 2000 the Gas Act is in force. The Dutch gas market will gradually be opened. End users contracting big quantities are already free to choose their supplier. In 2004 all consumers are eligible. A possible acceleration in 2003 is under investigation by a project group in which market parties are seated. Competition is accommodated through Third Party Access (TPA) to the grid. For the national grid negotiated TPA has been chosen and for the distribution grid this is regulated TPA. An independent Regulator (DTe, a division of the NMa) has been charged with the supervision.

9. The transition to a liberalised market does not pass without a blow. The temporary Guidelines on indicative tariffs and conditions for transportation from the Regulator evoked resistance from the existing gas companies. At present market parties are consulted on the Permanent Guidelines.

10. Results so far from the Gas Act are that 30 % of the volume of free customers changed from supplier and transport tariffs of the national grid are down 6,5 %.

### ***Other relevant measures, including new guidelines***

11. Ever since the Competition Act took effect, NMa has adhered to the practice of taking a fairly extensive and well reasoned decision in all cases involving the notification of proposed concentrations. From the start, the public versions of these decisions were actively publicised on NMa's website. Due to the relatively large number of decisions, NMa quickly acquired experience and developed a standard practice in taking decisions. In certain cases, a decision now has no or little added value for the standard practice that has been developed. Such cases lend themselves to settlement by means of a summary, concisely argued decisions.

### **Guidelines on co-operation**

12. In May 2001, the NMa has published guidelines for the assessment of co-operation between (smaller) companies. On request of Parliament and trade and industry, the role of business associations in co-operation agreements is being dealt with particularly in the guidelines. The aim of the guidelines is to provide more clarity on the criteria used by the NMa in applying competition law in case of co-operation agreements. Apart from explaining the relevant provisions in national law, the guidelines also give information on the relation with the European legal framework on co-operation agreements. For instance, the guidelines make clear that the NMa will normally apply the Commission guidelines on horizontal and vertical co-operation agreements to national cases. Furthermore, explanations and examples are given on the practical assessment of some specific co-operation agreements, e.g. agreements on mutual recognition, exchange of information, formation of models for cost calculation and joint purchase via a business association.

***Government proposals for new legislation****Independence of the NMa*

13. Another OECD-recommendation was: "The Minister has announced the intention to give NMa maximum independent status as soon as possible, meaning that the minister would lose the power to issue instructions in individual cases"

14. Under the present Competition Act the Minister of Economic Affairs is entitled to issue instructions to the Director General in individual cases. After a three-year period it would be considered whether the competition authority could be transformed into an independent body, meaning the Minister of Economic Affairs would lose the power to issue instructions in individual cases. The Minister stated that the power to give instructions in individual cases was to be exercised with maximum restraint to ensure independent oversight. Indeed, so far neither the previous Minister nor the present Minister has given such an individual instruction.

15. In March 2001 government introduced a bill into parliament in order to grant the competition authority the status of a so-called independent governmental body. If this bill is accepted the Director General will no longer be a civil servant and accountable to the Minister of Economic Affairs. The Minister will be then merely responsible for policy matters. Hereto the Minister can issue general instructions. Furthermore the Minister is still responsible for the functioning of the organisation in general, through the budget mechanism, as well as the representation in international organisations as far as the competition authority is taking position on behalf of the member-state the Netherlands.

16. Finally, the Minister will still have the authority to grant a licence to merge because of weighty reasons of general interest after previous denial by the Director General.

*New transport legislation*

17. The government intends to charge the NMa with the power of supervision of specific rules regarding competition in the railway sector (conform EU directive 2001/14), in particular:

1. supervision of efficient and non-discriminatory distribution of infrastructural capacity to transport companies;
2. supervision on the access to important services, owned by one of the transport companies (stations, maintenance, etc).

18. Furthermore parliament is expected to discuss a government proposal for privatisation of the main Dutch airport Schiphol, which includes proposals to introduce Schiphol at the stock exchange as well as to regulate competition at Schiphol.

19. It is proposed that the NMa will regulate tariffs and the conditions for all aviation activities of Schiphol. These sector specific competition rules build upon Article 24 of the Dutch Competition Act, i.e. the prohibition to abuse a position of economic dominance, including cross subsidies. The legislative proposal includes a system of negotiated access with mandatory publication of indicative tariffs and conditions, mandatory consultation of air transport companies and the possibility of bilateral negotiations. In case of disputes, the NMa may settle them, take interim measures, and impose sanctions.

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20. Regarding tariffs and conditions the principles of non-discrimination, fairness and objectivity are applied. This implies that the full aviation tariffs should be cost oriented and conditions for access not restrictive of competition. NVLS will have separate accounts for different activities (in accordance with the demand of transparency) and the DG NMa will be responsible for approving the system for allocating costs.

21. Agreements on quality will be taken in service level agreements between NVLS and air transport companies. The NMa can control the fairness of the quality standards offered by NVLS through a benchmark (for instance an international comparison with other major airports). This on the one hand is a way to protect the interests of the airport Schiphol and on the other hand diminishes the risk of goldplating.

### ***Further OECD Recommendations***

#### *Special exemptions*

22. Further OECD recommendations were: "Decisions on the timing of phasing out special provisions - for price fixing for newspapers and resale price maintenance for books and music, and the general 'regulatory authorisation' exemption - will measure the seriousness of the Netherlands' commitment to competition. When the transition periods end, so should the exemptions." and "Exemptions for joint tendering in contracting and for certain shopping centre lease provisions deserve close scrutiny in light of competition problems the Netherlands has experienced in the construction and retail sectors. Exemptions for publishing are problematic. ..., it is doubtful that no less anti-competitive way could be found to achieve the policy goal."

23. The different exemptions phase out automatically, usually after ten years. In some cases their effects will be evaluated, possibly in the context of the evaluation of the Competition Act mentioned in the first paragraph of this report.

24. In 2000 the Dutch government already started an evaluative investigation, in which the effectiveness of the system of resale price maintenance for books is the main issue. In this context alternative ways to realise cultural policy goals and to stimulate competition between schoolbook-retailers are investigated. A discussion about the future of the system of fixed book prices, however, is not to be expected before the beginning of 2002.

#### *Independent advocacy*

OECD: "The competition body, NMa, should be authorised to engage in independent advocacy."

25. As also explained in last year's annual report and referred to in chapter 3 of this report, the NMa is involved in independent advocacy. The NMa does report on the effects on competition of intended or existing legislation, for instance by parliament or individual ministries. Furthermore, the NMa has a press and publicity department, which is not controlled by other authorities. The NMa also contributes to official hearings. This role of the NMa is considered important.

#### Supervision of public utilities/regulated sectors

"Application of competition policy in regulated sectors should be clarified to reduce policy uncertainty and risk of failure. Government recommendations on the competencies of NMa and sectoral regulators are well-conceived, but are badly implemented. Nma does not have clear power over decisions with substantial competitive effects. ... Vigorous oversight is needed by the expert competition authority."

26. The well-conceived policy referred to by the OECD aims at integrating sectoral regulatory supervision and competition policy enforcement as such. Traditionally this means that co-operation protocols are signed between the NMa and sectoral regulators, clarifying what their respective powers are.

27. The Dutch energy sector regulator (DTe) charged with supervision of the electricity and gas sector, however, is conceived as a chamber (division) of the NMa. To further stimulate the oversight by the expert competition authority the Dutch government has recently decided to integrate the Dutch telecommunication authority (OPTA) as a sectoral chamber in the National Competition Authority (NMa) in 2005. This organisational reshuffling prevents inconsistent application of competition rules under the new European competition regime for the communication sector (ONP), in which sector specific and general competition rules converge.

28. As mentioned above, transport regulations will be enforced by the NMa, another chamber being added for this purpose. In other words, the above OECD recommendation is taken into account in developing sectoral regulations and supervision.

PBO's

"Undertake a systematic review of laws and regulations, including those of trade associations and institutions like the PBO's [statutory industrial organisation bodies], against the principle that any restriction on competition must be clearly demonstrated to be in the public interest."

29. In the law concerning the PBO's (public boards for regulating specific economic sectors) it is traditionally mentioned that PBO-regulations should not be in conflict with 'healthy' conditions for competition. In 1999 this law was amended and since that time PBO's are obliged to re-evaluate their regulations every four years. They are also asked to take into account the criteria of the Competition Act, while drafting regulations.

30. PBO regulations are to be approved by other public entities (ministers and/or the Social Economic Counsel).

31. In 2003 the provision made in article 16 of the Competition Act (see above) will end. From that moment the NMa will be the position to check whether PBO regulations are accordance with the criteria of the Competition Act.

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### Enforcement of competition law and policies

#### *Summary of activities of the NMa regarding anticompetitive practices, including agreements and abuses of dominant positions*

##### *Exemptions*

#### **Exemptions falling under the transitional regime**

Remaining in 1999	414
Completed in 1999	244
Remainder of the interim applications for exemption	170

32. At present, more than 85% of the total number of applications for exemptions, submitted under the transitional regime, have been processed.

#### **Regular applications for exemptions**

Remaining in 2000	46
Received in 2000	25
Completed in 2000	31
Remainder of applications for exemption in 2000	40

#### **Orientations**

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

Remaining in 1999	93
Received in 2000	217
Completed in 2000	188
Remainder of the orientations in 2000	122

#### **Complaints**

Remaining in 1999	72
Completed in 2000	78
Remainder of the complaints in 2000	124

#### **Ex officio investigations**

34. In comparison to 1999, the number of ex officio investigations trebled. Leaving aside the so-called follow-up inspections, 13 investigations were in progress in 2000

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

### Follow-up Inspections

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

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

### *Summary of activities of courts regarding anticompetitive practices, including agreements and abuses of dominant positions:*

36. There is no system in which national courts have to inform the NMa or any other authority about cases concerning the Competition Act. As far as the NMa knows there were 18 cases in which the Competition Act was applied.

### *Description of significant cases, including those with international implications*

#### *Case 426/Hoogovens Staal b.v./Ruhrkohle Handel Inter GmbH.*

37. Hoogovens Staal B.V. applied for an exemption for the benzene agreement entered into with Ruhrkohle Handel Inter GmbH. Hoogovens is a manufacturer of aluminium and steel. The German company Ruhrkohle produces, amongst other products, glues and coatings based on benzene. This agreement stipulates that Hoogovens is obliged to supply its production of crude benzene to Ruhrkohle and that Ruhrkohle is obliged to purchase the supply. In addition a scheme has been agreed in terms of which Ruhrkohle undertakes to finance the investments necessary for the benzene extraction plant. The agreement was entered into for 15 years.

38. Ruhrkohle filed a complaint against the agreement because Ruhrkohle was of the opinion that the agreement contained in the contract limited competition.

39. Findings: Crude benzene is obtained as a by-product of coke ovens, as used by Hoogovens, and serves as a basic raw material for the production of benzene. Benzene is used in the production of glues and coatings.

40. The market for crude benzene is at least a European market in size. Various producers of crude benzene are active in Europe. In the Netherlands there are no consumers of crude benzene.

41. Crude benzene is therefore not traded in the Netherlands. The consequence of the agreement is that the supply of crude benzene on the respective markets increased. In addition, without the agreement Hoogovens would never have started producing crude benzene. Furthermore it must be noted that on the

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basis of agreements with regard to the market risk and the financing of investments, Hoogovens only acts as a supplier to Ruhrkohle. The quantity of crude benzene that Hoogovens supplies also constitutes only a small part of the total quantity that Ruhrkohle requires, given its processing capacity. Ruhrkohle may purchase the rest from other producers. Finally, the agreement does not result in co-ordination of the behaviour of parties on the market for crude benzene. Since crude benzene is not traded in the Netherlands, the agreement does not have the effect of limiting trade in the Netherlands.

42. The application for an exemption and the complaint were dismissed.

43. An administrative appeal was filed against this decision.

### *Cases 145 and 652/CZ/VGZ/OZ Procurement Co-operative*

44. During the year 2000 the NMa took several decisions concerning the health care sector.

45. One case concerned a procurement co-operative. The healthcare insurers applied for exemption for their joint venture in the area of the joint procurement of outpatient care and medical aids.

46. Findings: The healthcare insurers CZ, VGZ and OZ had a joint market share on the Dutch market for health insurance of approximately 30 percent. On the regional markets for the procurement of outpatient care and medical aids in the southern regions of the Netherlands they have a joint market share of more than 90 percent. Although the joint venture did not procure care on an exclusive basis, in practice it appeared that they almost exclusively conducted negotiations jointly in almost all instances. A single position of power with regard to procurement had, in fact, arisen due to the large market share of the joint venture in the southern regions of the country. The sales opportunities for care providers were extremely limited as a result. On the supply side, the market was competitive and there was no real resistance. It was therefore not reasonable to assume that the possible economic advantages outweighed the disadvantaged of this concentration on the procurement markets. The application for exemption was rejected.

### *Cases 1131, 1151 and 1250*

47. Another health care sector case concerned the system often used in the Netherlands in which existing practitioners influence the setting up of new practices.

48. Complaint: NMa received complaints from psychologists in the primary healthcare sector with regard to the national policy applied by Netherlands Institute van Psychologen (NIP; Netherlands Institute for psychologists) in relation to the setting up of practices by psychologists in the primary healthcare sector. The Regional Organen Eerstelijns-psychologen (ROEP; Regional Bodies for Psychologists in the Primary healthcare Sector) implemented this policy. NIP set criteria, for instance, with regard to the size of practices, as a result of which a limited number of practices were available per region. In addition, a Practice Committee of NIP decided whether a practice was available for new psychologists in the primary healthcare sector.

49. NIP's policy with regard to the setting up of practices, based on a horizontal agreement, violated article 6 of the Competition Act. As a result of this horizontal agreement, existing businesses were able to influence the entry of newcomers. In addition, approximately 80 percent of health insurers accepted this policy with regard to the setting up of practices and only reimbursed treatment by a primary healthcare psychologist, if the psychologist was a member of NIP. Potential entrants were confronted with an additional barrier to entry due to the policy with regard to the setting up of new practices. This policy

therefore had a direct effect on the number of players on the market for primary psychologists for this reason it limited competition. An administrative appeal was filed against this decision.

*Case 1012/Van Eck Havenservice B.V.*

50. The NMa also decided in a case concerning collective labour agreements.

51. Complaint: Van Eck Havenservice B.V. is active in the area of the temporary secondment of Harbour personnel in the Rotterdam Harbour. The complaint filed by Van Eck Havenservice was against SHB Havenpool Rotterdam B.B. and Stichting Samenwerkende Havenbedrijven Rotterdam (SSHb; Foundation of Co-operating Harbour Companies in Rotterdam). In essence, the complaint related to the preferential rights granted to SHB, and the supposed abuse that SHB made of its dominant position on the market for the hiring of additional, temporary labour in the harbour of Rotterdam. In accordance with the preferential rights, SHB had a preferential right to supply temporary stevedores to undertakings in the Rotterdam Harbour. If SHB could not meet the demand, these undertakings were required to hire in stevedores through SHB from other recognised undertakings. This obligation and the preferential rights were set out in the Harbour Agreements of 1994 and had been confirmed subsequently in a number of collective labour agreements.

52. Findings: The preferential rights were set out in the form of a collective agreement and were the result of collective negotiations between organisations representing employers and employees. With regard to the aim of the agreement, it must be noted that collective agreements with regard to employment and conditions of employment fell outside of the scope of regulations governing competition. In addition, there was no evidence that SHB demand excessive prices. For this reason and because an investigation into the company's profits would have been costly, it was deemed inopportune to carry out an investigation to establish whether the prices demanded by SHB were excessive. The complaint was dismissed because it had not been established that article 6 and/or article 24 of the Competition Act had been violated.

**Statistics on number, size and type of mergers notified and/or controlled under competition laws**

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

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

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### **Concentrations with Multiple Notifications**

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

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

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

### ***significant cases.***

#### *Case 1528/Wegener Arcade – VNU-dagbladen*

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

#### *Readers' market*

58. Daily newspapers differ from other information media, such as magazines, radio and television and Internet, in relation to a number of characteristics (price, quantity and depth of information, topicality, frequency of publication, method of presentation etc.). From the perspective of readers, they therefore constitute a separate product market. An investigation was carried out to establish the extent to which national daily newspapers should be distinguished from regional daily newspapers. The Director-General of NMa concluded that both types of daily newspapers belong to the same markets, but noted in relation to this that in assessing the consequences of the concentration, it had to be taken into account that regional daily newspapers constituted a separate market segment and are each other's closest competitors.

59. In Gelderland (the merging of the newspapers Arnhemse Courant, Gelders Dagblad and De Gelderlander) and in Zeeland (the area of overlap of the newspapers Zeeuwse Courant (PZC) and BN/De Stem), Wegener would acquire an exceptionally strong position following the takeover, while the national newspapers in these areas had much smaller market shares. Since a single undertaking would control the regional newspapers, incentives to competition would largely disappear. Furthermore new entrants to the daily newspaper markets would be confronted with considerable barriers to entry. To remove the dominant position of the new combination in the Gelderland region, Wegener would have to dispose certain regional newspapers of De Arnhemse Courant and most of the editions of Gelders Dagblad. Since the area of overlap in Zeeland was far more limited in size (only Zeeland Flanders), a less far-reaching solution was

chosen for this region. To ensure the independence of PCZ and BN/De Stem and distribution in Zeeland Flanders for the other region a solution was devised that guaranteed the continues independent existence of both newspapers.

### *Advertising Market*

60. In demarcating the advertising markets it was important to seek clarity on the coverage that advertisers wished to achieve, the various media that could use to advertise and the target group(s) that they wished to reach with a particular advertisement. Advertising media for national coverage therefore belong to a different market than regional and local advertising media. Research carried out by NMA showed that a distinction had to be made, on the one hand, between regional newspapers and house-to-house newspapers, which were good substitutes for each other with regard to advertising space, and, on the other hand, other advertising media by which they could not readily be substituted. This pointed to separate markets for advertising space in regional and local newspapers. On the advertising market, Wegener would acquire an exceptionally strong position in the Gelderland region and in part of Zeeland after the takeover. After the takeover, Wegener's market share in this region would far exceed 50%, partly as a result of the fact that it would own not only a large number of the house-to-house newspapers, but also (almost) all the regional daily newspapers. The position of the most important competitors in these regions was considerably weaker. Research showed that the competitive pressure from alternative advertising media, such as folders and the Internet, was limited. To avoid the emergence of a dominant position on the advertising market, Wegener would dispose of certain house-to-house newspapers in the overlapping area in Zeeland and would dispose of nine newspapers in the Gelderland region.

### *Press Services*

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

### *Case 2141/Rémy Cointreau and Bols*

62. Findings: Rémy and Bols had considerable market shares in potential markets for brandy, cognac and armagnac. Depending on the method of demarcation, Rémy and Bols would have a combined market share on these markets varying from 30 percent to more than 60 percent. Rémy and Bols would still at least three times larger than their largest competitors on the cognac market.

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63. This distance between Rémy/Bols and their competitors was an historic distance. The market for cognac is an established market and certainly not a growth market. No new entry into this market that would discipline the behaviour of Rémy/Bols could be expected. In addition, after the concentration Rémy/Bols could offer a wide range of drinks with strong brand names. In combination with the considerable market share in the area of cognac, it appeared that this would result in a strong competitive position in relation to both consumer and competitors. It was not certain whether customers would be able to offer sufficient resistance to the bargaining power of Rémy/Bols. All these factors led to the provisional conclusion that there was reason to assume that a dominant position could arise or be strengthened.

64. After having been informed of the provisional assessment of the consequences of the proposed concentration, the parties amended their original notification. They granted an irrevocable power of attorney/instruction to sell by auction all the activities of Bols in relation to the Joseph Guy brand.

65. The buyer of the 'cognac company Joseph Guy' had to be fully independent of Rémy, Bols and their group companies and had to have such financial resources and expertise that it could continue Joseph Guy as an active competitor of Rémy and Bols, in all respects subject to an assessment by NMa. As a result of the amendment to the concentration, the combined market share of Rémy and Bols on potential markets for brandy or for cognac and armagnac would not exceed 20 percent. If a further distinction were made between cognac/armagnac, on the basis of price/quality category, the combined market share on the market for US qualities was even less than 10 percent; on the markets for VSOP qualities, the increase in market share was small. In addition, the presence of the Joseph Guy brand on the market as a competitor of R brand on the market as a competitor of Rémy/Bols, was guaranteed.

66. It could be concluded that there was no reason to assume that a dominant position would arise or would be strengthened as a result of the concentration.

67. This was the first case in which the NMa accepted remedies in the first part of a concentration procedure.

### ***The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies***

68. The NMa has an advisory role concerning new legislation, especially legislation in which the NMa will be given new competencies or which regards competition matters, for instance laws concerning liberalisation of sectors.

**Resources of competition authorities***Resources overall***Annual budget in 2000**

	<b>Personnel</b>	<b>Products &amp; Services</b>	<b>Total</b>
NMa	NLG 14.442.000	NLG 7.129.000	NLG 21.571.000
DTe	NLG 2.598.000	NLG 5.809.000	NLG 8.407.000

Number of employees (person-years): In 2000 the number of staff increased to 141, excluding DTe, consisting of:

Economists:	19
Lawyers:	66
other professionals:	8
support staff:	48

Human resources (person-years) applied to: <sup>1</sup>

1. Enforcement against anticompetitive practices; 48
2. Merger review and enforcement; 16
3. Advocacy efforts. 27

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<sup>1</sup> Excluding unfair or misleading practices, which fall under consumer protection provisions of the law, where these exist.