1. This report can be considered an update to the 1998 annual report on competition policy in the Netherlands with reference number DAFFE/CLP/WD(99)24/15.

I. Changes to competition laws and policies, proposed or adopted

1. Summary of new legal provisions of competition law and related legislation

2. On 1 July 1999 the Netherlands Electricity Regulatory Service (DTc) formally became a department of the NMa.

3. Furthermore, from 1 January 2000, the exception made for supervision of concentrations in the financial and insurance sectors was withdrawn. As from this date, concentrations involving credit institutions, financial institutions or insurers are also subject to supervision of concentrations under the Competition act, providing that they meet the turnover criteria, and are not subject to supervision of concentrations by the European Commission. A protocol for co-operation in cases of emergency was signed between the NMa, the Netherlands Central Bank (DNB) and the Insurance Chamber (VK).

4. Although the possibility formally exists under the Dutch Competition Act, the Minister has, like in 1998, not given any instruction to the director general of the NMa in 1999.

5. The NMa dealt with a large number of requests for exemptions, notified before 1 April 1998 under a transition regime, as well as a large number of appeals and complaints about (assumed) agreements and abuse of power. The NMa also received and dealt with a large number of mergers and concentrations within the context of the preventive concentration control.

6. On 10 August 2000 a new Dutch Gas Act entered into force. DTc and NMa enforce this Act simultaneously. DTc is largely responsible for the executive and supervisory functions foreseen in the Act, while NMa settles possible disputes.

7. In the annual report the director general notes that 1999 was still dominated largely by the processing of the more than 1,000 requests for exemption submitted during the NMa’s first year of operations and the continual intake of concentration requests and complaints. The reduction in the number of new request created scope for other activities. During 2000, this will be used first and foremost to investigate hidden cartels and abuses of dominant positions. The NMa hopes to realise a shift in enforcement policy from a reactive to a more pro-active approach.

8. The Minister of Economic Affairs reported to Dutch parliament that she supports this pro-active approach and— in general— a further intensification of the enforcement of the competition law by the NMa. In this context especially the interests of consumers should be taken into account, a.o. by ensuring a transparent application of competition law. The Minister would also like to see the NMa actively engaged in network sectors (utilities), especially in case of liberalisation and privatisation. Furthermore she
announced an investigation regarding a possible adaptation of thresholds in concentration control. Finally she applauded the fact that the newly established NMa had issued its first fines.

2. **Other relevant measures, including new guidelines, exemptions and dispensations**

9. On 22 December 1999 the European Commission adopted a block exemption for vertical agreements which replaces the existing block exemptions for exclusive take-up agreements, sole trading and franchising. The new Regulation was introduced on 1 January 2000 and took effect from 1 June 2000. Pursuant to the Competition Act, this also applies to purely Dutch cases, as EC exemption regulations apply to strictly national cases.

10. The NMa has made a brochure about the effects of the vertical agreements exemption which is available by downloading from its website.

3. **Government proposals for new legislation**

11. On 15 September 2000 the Dutch Council of Ministers has accepted a proposal of the Minister of Economic Affairs to change the status of the NMa into a so called autonomous administrative organisation. Now this proposal is sent to parliament.

12. European developments are especially significant in the Dutch case. Not only is European Law applicable in the Netherlands as in other Member States. EC-exemptions are also directly incorporated in the Netherlands through the Articles 12, 13 and 14 of the Competition Act. At least three important European developments should be mentioned here. First the new regime for vertical agreements as mentioned above. Secondly the White Paper on modernisation of the rules implementing articles 81 and 82 of the EC treaty. Thirdly, the ongoing discussion about the European regime for horizontal agreements. These will have consequences for the enforcement of the Dutch competition policy. These developments will be taken into account within the context of the evaluation of the Competition Act in 2001, and changes can be proposed to parliament within that context.

II. **Enforcement of competition law and policies**

a) **Action against anti-competitive practices: including agreements and abuses of dominant positions, and Mergers and acquisitions: statistics on number, size and type of mergers notified and/or controlled under competition laws**

13. In 1999 the NMa received 16 new requests for exemption from the prohibition as laid down in article 6 of the Act (comparable to article 81 of the Treaty). In 1999 a total of 259 requests for exemption were completed, this includes not only requests subject to the transitional regime (notified prior to 1 April 1998), but also to requests notified after that date or requests which, after further examination, were split in several requests.

14. Furthermore, the NMa received 92 complaints regarding a suspected infringement of article 6, and/or 24 of the Act (comparable to article 82 of the Treaty, abuse of dominant position). In 1999 a total of 89 formal complaints were completed.
15. During 1999, 158 notifications of proposed concentrations were submitted, 18 of these cases were also notified to a foreign competition authority. In 1999 a total of 146 notifications of concentrations were completed (6 notifications were withdrawn). The NMa decided that a licence was required on six occasions in 1999, the same number as in 1998. In 1999, three applications for concentration licenses were completed (1 application was withdrawn).

16. Finally, in 1999 a total of 32 administrative appeals were settled, compared with 10 in 1998. In two cases the appeals were upheld and in two others partially upheld. The remainder were rejected or declared inadmissible. At the end of 1999 13 appeal cases were pending before the Rotterdam District Court. Seven appeal cases were withdrawn by the undertakings concerned in the course of the year, before or after the director general of the NMa filed a defence.

b) Description of significant cases

17. For this subject the reader is referred to the NMa and DTe Annual Report 1999 in which chapter three and five give an insight in general themes and some brief discussions of cases (see website www.nma-org.nl).

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

18. Advocating competition is a responsibility of the Ministry of Economic Affairs, which has a.o. led to the launch of the Market Operation, Deregulation and Legislative Quality (MDW) Operation (see the OECD Review of Regulatory Reform in the Netherlands). In this context, the Ministry investigates the bottlenecks (incl. regulations) encountered by consumers and industry in the pursuit of free and fair competition and addresses them.

19. The NMa is involved in advocacy as well. Several requests have been made to the NMa to report on the effects on competition of intended or existing legislation, by parliament as well as individual ministers. This advocacy role of the NMa is considered important. An example is an advice given to State Secretary of Transport and Public Works regarding licensing of Wireless Local Loop in the telecommunications sector. Another example is an advice given by NMa and OPTA together regarding the access to the cable.

20. Furthermore the NMa co-operates with OPTA (the supervisory authority for the post and telecommunications sector), the Media Commission and other supervisory authorities such as The Netherlands Central Bank (DNB) and the Insurance Chamber (VK). Also in the field of enforcement the NMa co-operates with other organisations such as the Department of Public Prosecutions and the Economic Surveillance Department (ECD).

IV. Resources of the NMa (1999)

I. Resources overall

a) Annual budget

- personnel: 14,594,000 Dutch guilders
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- material: 9,537,000 Dutch guilders

b) Number of employees (persons):

- Support staff: 36
- Economists: 24
- Lawyers: 55
- Other professionals: 9
- All staff combined: 124

Source material: