

**Unclassified**

**DAF/COMP/AR(2013)32**

Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

**08-Oct-2013**

**English - Or. English**

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

DAF/COMP/AR(2013)32  
Unclassified

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE NETHERLANDS**

**-- 2012 --**

**30-31 October 2013**

*This report is submitted by the Netherlands to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 30-31 October 2013.*

**JT03345820**

**Complete document available on OLIS in its original format**

*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*

**English - Or. English**

## TABLE OF CONTENTS

Executive summary .....	3
1. Changes to competition laws and policies, proposed or adopted .....	3
1.1 Summary of new legal provisions of competition law and related legislation .....	3
1.2 Other relevant measures, including new guidelines.....	3
1.3 Government proposals for new legislation .....	3
2. Enforcement of competition laws and policies.....	4
2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions .....	4
2.2 Mergers and acquisitions .....	5
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies.....	6
4. Resources of competition authorities .....	7
4.1 Resources overall.....	7
4.2 Human resources.....	7
4.3 Period covered by the above information .....	8
5. Summaries of or references to new reports and studies on competition policy issues.....	8

## **Executive summary**

1. In 2012 the Netherlands Competition Authority (NMa) saw the start of preparations for the opening of the new Netherlands Authority for Consumers and Markets (ACM), which launched on 1 April 2013. The ACM was created through the consolidation of the Netherlands Competition Authority (NMa), the Netherlands Independent Post and Telecommunication Authority (OPTA) and the Netherlands Consumer Authority (CA). Many resources in 2012 were devoted to the development of the new authority. Nonetheless, despite the capacity that needed to be diverted to managing the transition, the NMa remained a vigilant enforcer of competition law in 2012. The NMa's success was acknowledged in the 4 star rating from the GCR for its 2012 performance.

2. Competition efforts in 2012 were primarily focused on healthcare; the financial and business services industry; and the processing industry. In the field of merger control, the authority conducted two more in-depth reviews than in 2011 – eight compared to six – despite the overall number of mergers notified declining slightly. One merger was blocked. The Netherlands Competition Authority kept up its degree of enforcement vis-à-vis restrictive practices, with 13 decisions in 2012, compared to seven in 2011. For the most part these related to cartels, of which the three largest cases concerned cartels that operated in the bell peppers, silverskin onions and taxi services sectors. The Authority pursued three abuse cases in 2012 compared to five in 2011, although none of these have yet led to sanction decisions. The total amount of fines issued in 2012 was EUR 36.9 million. The courts ruled in the Authority's favour in 54 % of the appeals in 2012.

### **1. Changes to competition laws and policies, proposed or adopted**

#### ***1.1 Summary of new legal provisions of competition law and related legislation***

3. New rules on competitive neutrality entered into effect on 1 July 2012 under the Dutch Act on Government and Free Markets. This Act will operate alongside the Competition Act. It aims to control how government undertakings compete with commercial undertakings. It establishes policies that governments must adhere to when they pursue economic activities, either themselves or through their public undertakings. A transitional period of two years applies for conduct that already existed prior to the Act's ratification. A team has been established with the authority to monitor compliance with the Act and to provide guidance to governments and businesses about the new rules and related enforcement matters.

4. A new Act of 12 July 2012 amending the Dutch Electricity Act 1998 and the Dutch Gas Act (implementation of directives and regulations regarding electricity and natural gas) provides for the implementation of the European Union's Third Energy Package.

5. In addition the Railway Act 2012 came into force providing for the implementation of various European Directives.

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

6. No other measures.

#### ***1.3 Government proposals for new legislation***

7. In October 2012, the Dutch House of Representatives passed the bill establishing the ACM, the new Netherlands Authority for Consumers and Markets (ACM). The ACM is a consolidation of the Netherlands Competition Authority (NMa), the Netherlands Independent Post and Telecommunication Authority (OPTA) and the Netherlands Consumer Authority (CA). The bill was discussed in the Dutch Senate in 2013, and the Authority was launched on 1 April 2013.

## 2. Enforcement of competition laws and policies

### 2.1 *Action against anticompetitive practices, including agreements and abuses of dominant positions*

#### 2.1.1 *Summary of activities of competition authorities and courts*

- The NMa issued 13 decisions in 2012 in the field of restrictive practices. Of these four concerned cartels, one concerned an obstruction case, two concerned commitment decisions. and 6 ended with alternative methods of enforcement.
- The NMa meted out EUR 36.9 million (approx. USD 48.8 million) in fines.
- The NMa carried out dawn raids in 7 cases at 34 different locations in 2012. Several of these involved cross-border investigations where we cooperate closely with neighbouring countries and the European Commission.
- The NMa received 10 leniency applications between 1 January and 31 December 2012.
- The consumer benefits generated by the Authority's interventions in 2012 are estimated at EUR 250 million, which is the 3-year rolling average of the first-year effects of decisions taken in 2010, 2011 and 2012.

8. Decisions of the Netherlands Competition Authority may be appealed at first instance to the Rotterdam District Court, and at second (and last) instance to the Trade and Industry Appeals Tribunal (CBb). In 2012, the courts ruled in the NMa's favor in 54 % of the rulings. This percentage is lower than in 2011 (down from 83% in 2011).

9. The last appeal cases against the NMa's fining decisions as part of the 'come clean' program in the construction industry were completed in 2012. In addition, the courts and the CBb also addressed a number of fundamental issues such as the scope of the right to remain silent, the obligation of parties to respond to the Authority's requests for information and the enforcement of antitrust rules in the health care sector.

10. In April 2012, the Rotterdam District Court annulled two decisions for fines in the home care industry. The NMa had issued the fines because two home care institutions, 't Gooi and Kennemerland, were deemed to have made illegal market partitioning agreements. The Court ruled, however, that there was not enough evidence that this market was characterized by a sufficient degree of competition in which these agreements could lower competitive pressure.

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

##### 2.1.2.1 *'NMa fined two cartels in the agricultural sector'*

11. **Bell pepper cartel:** Bell pepper grower cooperatives UWG and Rainbow were fined a total of EUR 14 million for participation in a price-fixing cartel between May 2006 and February 2009 together with sales organization ZON. Through their cartel, these undertakings kept purchase prices artificially high. In addition, they agreed on using minimum prices, to 'respect' each other's customers, and to manipulate the prices at ZON's produce auctions. Both UWG and Rainbow were each imposed a fine of EUR 7 million. Sales organization ZON was granted immunity under the Competition Authority's leniency

programme.. Another firm was involved in the cartel as cartel facilitator and was fined EUR 5,000. This fine marked the second time the NMa fined a cartel facilitator.

12. **Silverskin onion cartel:** Five undertakings that grow and process silverskin onions were fined over EUR 9 million for participation in a cartel between 1998 and 2010. These are TOP (EUR 6,275,000), VECO (EUR 1,139,000), CROP (EUR 1,012,000), Thopol (EUR 450,000) and Primofin (EUR 450,000). The fine was calculated on the basis of European turnover. The combined production volume of the Dutch undertakings involved in this cartel represents 70 % of European-produced silverskin onions. Annual sales of silverskin onions in the EU are roughly EUR 15 million.

13. **Taxi cartel:** The Authority fined a cartel of taxi firms in the Rotterdam area, for bid-rigging arrangements relating to contracts for transporting students, seniors, disabled individuals, and the sick. Considering the role that six executives at these three firms played in these violations, they were each imposed an individual fine of up to EUR 120,000.

#### 2.1.2.2 *'Construction industry: completion of all construction fraud cases'*

14. In late-2012, the Dutch Trade and Industry Appeals Tribunal (CBb), the highest court in the Netherlands on antitrust matters, completed all 'come clean' cases. As a result of the construction industry fraud cases handled between 2001 and 2005, the NMa imposed a considerable number of fines on companies in the construction industry. Over 1400 companies were fined for price-fixing agreements and market-sharing agreements. In 2012, the CBb ruled in the last 'come clean' cases. We are now able to look back on the results. A total number of 57 cases came before the courts, of which 37 went all the way to the CBb. In the end, 82% of all cases were ruled in the NMa's favour.

## 2.2 *Mergers and acquisitions*

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

15. The Netherlands Competition Authority employs a two-tier system of merger analysis. All mergers, above a certain threshold, must be notified to the authority. The Authority reviews the merger in the notification phase (phase I) and passes judgement as to whether the proposed merger ought to be challenged. If the merger is challenged, parties must then apply for a licence in phase II.

16. A total of 91 mergers was filed with the Netherlands Competition Authority in the period between 1 January and 31 December 2012. 9 merger cases were challenged; 4 merger cases were cleared subject to remedies in the notification phase, 5 required a licence. Of the latter, 2 were granted a licence after an in-depth review, 1 was granted a licence with remedies after an in-depth review, and 1 merger was blocked. In one case, the parties involved did not start the in-depth review procedure.

### 2.2.2 *Summary of significant cases*

#### 2.2.2.1 *'Merger between snack producers under certain conditions'*

17. In October 2012, NMa was informed that the 2 largest frozen snack producers in the Netherlands, *Buitenfood* and *Ad van Geloven*, abandoned their plans for a proposed merger. Research conducted by the NMa showed that the merger would create a too large market share for frozen snacks sales to supermarkets. The NMa decided to approve the merger under the condition that, for a period of 6 years, the merging companies would give a competitor the possibility to use *Buitenfood's* existing brand name, *van Dobben*. After this period, the brand name had to be repelled and could not be used any longer, so called 'rebranding'. However, the parties decided to withdraw their merger plans because they could not agree on the terms of collaboration.

#### 2.2.2.2 'Licence declined for the acquisition of Bolletje'

18. In December 2012, the NMa announced to reject the acquisition of *A.A. ter Beek*, producer of the famous Dutch *Bolletje*, by Continental Bakeries. The NMa indicated that the acquisition would form a threat to the price level of *beschuit*, the Dutch equivalent of rusks. The acquisition would create a single large producer on the market for *beschuit*, with a market share of 70-80%. *A.A. ter Beek* and Continental Bakeries proposed as a remedy to sell one of their production lines for *beschuit* to a competitor. The NMa, however, did not accept the proposal as there was no reason to assume that a new competitor would enter this market soon after the acquisition.

#### 2.2.2.3 'Fox is allowed to take over Eredivisie Media en Marketing'

19. The Netherlands Competition Authority approved the acquisition of *Eredivisie Media en Marketing* (EMM) by Fox International Channels (Fox). With the acquisition, Fox received a 51% market share in the company that holds the rights for coverage of live soccer matches in the Netherlands. The NMa investigated the effect of the acquisition on the exploitation of broadcasting of soccer matches on television. The Dutch Media Act mandates that soccer match summaries are broadcasted on Sunday evenings on an open channel that can be received by at least 75 % of all Dutch households, without any additional costs. The match summaries are currently broadcasted by NOS, one of the major Dutch public stations. That license expires on July 1, 2014. If EMM decided to broadcast the match summaries on a new television station once the NOS license expires, the license period would be limited to six years at the most. That period is needed for positioning a new station in the market.

#### 2.2.2.4 Hospital mergers

20. In 2012, the Competition Authority evaluated various hospital mergers. For some, the Authority decided that no licence was required because the merger would not create a significant threat to competition. For 3 mergers, the Authority did request that parties apply for a licence. In these situations, competitive pressure was feared to drop, which could affect the affordability, diversity and quality of health care in the newly formed hospitals. After investigation, the Authority decided that the mergers were allowed in all three cases. The underlying argument for approval was that, since the beginning of 2012, health insurance companies have more incentives to purchase critically and discipline hospitals with respect to quality and prices.

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

21. In order to fulfil its mission of "making markets work", the NMa sought to optimise the synergies between pure competition enforcement and its other tasks. Advocacy and guidance are important tools in achieving long-term competition enforcement goals.

22. The Netherlands Competition Authority conducted a study in 2012 into the consumer's purchasing behaviour in the energy sector. The study revealed that consumers could save up to €488 on their annual electricity bill if they would choose to switch providers. This led the Authority to start a campaign through its consumer contact point, ConsuWijzer which developed and introduced an online tool for consumers to facilitate choosing and switching between different energy providers.,

## 4. Resources of competition authorities

### 4.1 Resources overall

#### 4.1.1 Annual budget

23. In 2012, the NMa's annual budget fell by EUR 1 million to EUR 44.4 million (approx. USD 58.7 million). The competition-related budget was EUR 16.5 million (approx. USD 21.9 million).

#### 4.1.2 Number of employees

24. 372 people were employed in 2012, which was 23 less than the year before. 185 people (including secretarial assistance and paralegals) were actively involved in competition enforcement. Of the 185 employees working on competition enforcement, 155 were non-administrative staff. Of these, 119 worked in the Competition Department; 17 in the Legal Department; 4 in the Office of the Chief Economist; 11 in the Strategy and Communication Department; and 4 in the Office of Board of Directors:

	Legal	Economic	L & E	Other	Total
Competition department	51	34	1	33	119
Office of the Chief Economist	0	3	0	1	4
Legal department	15	0	1	1	17
Strategy & Communication	5	1	0	5	11
Board of Directors	3	1	0	0	4
Total	74	39	2	40	155

'Other' includes: Business, Mathematics, Accountancy, Political science, Communication studies, and Engineering physics.

25. These figures exclude the support staff associated with competition enforcement (such as library, archive, human resources and mailroom), staff of the Offices of Energy Regulation and Transport Regulation and the part of the Legal Department that is dedicated to those Offices.

### 4.2 Human resources<sup>1</sup>

#### 4.2.1 Enforcement against anticompetitive practices

- Anti-cartel: 90 FTE
- Abuse of dominance: 8 FTE

#### 4.2.2 Merger review

- Mergers: 20 FTE

#### 4.2.3 Advocacy efforts

- Various: 14.5 FTE

<sup>1</sup> These figures represent FTE, as some people work half time on projects.

26. (This includes, for example, Monitor Financial Sector; drafting of/providing information regarding regulations; issuing informal guidelines; sector specific and general public targeted education regarding the NMa's leniency program; publishing articles, holding bilateral meetings with other competition authorities; and giving speeches and holding seminars on both national and international competition related issue).

**4.3 Period covered by the above information**

27. 1 January 2012 to 31 December 2012.

**5. Summaries of or references to new reports and studies on competition policy issues**

Baarsma, B., Kemp, R.G.M. , van der Noll, R. , Seldeslachts, J. (2012). Let's Not Stick Together: Anticipation of Cartel and Merger Control in The Netherlands. *De Economist - Quarterly Review of The Royal Netherlands Economic Association* 160 (2012) 4. - ISSN 0013-063X - p. 357 - 376.

Broek, S. van den, Kemp, R.G.M. , Verschoor, W.F.C. , de Vries, A. (2012). Reputational penalties to firms in antitrust investigations. *Journal of Competition Law and Economics* 8 (2012) 2. - ISSN 1744-6414 - p. 231 - 258.

Kemp, R.G.M., Kersten, N. , Severijnen, A.M. (2012). Price Effects of Dutch Hospital Mergers: An Ex-post Assessment of Hip-Surgery. *De Economist - Quarterly Review of The Royal Netherlands Economic Association* 160 (2012) 3. - ISSN 0013-063X - p. 237 - 255.

Kemp, R.G.M., Sinderen, J. van , Mulder, M. , Borkent, K. , Cordeweners, J. , Leliefeld, D. (2012). Outcome van Nma-optreden : Resultaten voor 2011. NMa working paper no. 7.

Petit, L. (2012). The Economic Detection Instrument of the Netherlands Competition Authority: The Competition Index. NMa Working Paper No. 6.