

Unclassified

DAF/COMP/AR(2015)45

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

27-Oct-2015

English - Or. English

Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE

DAF/COMP/AR(2015)45  
Unclassified

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

-- 2014 --

**27-28 October 2015**

*This report is submitted by the Netherlands to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.*

**JT03385145**

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.....	5
1.1 Summary of new legal provisions of competition law and related legislation .....	5
1.2 Other relevant measures, including new guidelines .....	5
2. Enforcement of competition laws and policies .....	7
2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions .....	7
2.2 Mergers and acquisitions .....	9
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies .....	10
4. Resources of competition authorities .....	11
4.1 Resources overall.....	11
4.2 Human resources .....	12
5. Summaries of or references to new reports and studies on competition policy issues .....	13
5.1 Reports and Studies .....	13
5.2 Bibliography of publications by ACM experts.....	15

## EXECUTIVE SUMMARY

1. ACM aims to promote options and opportunities for consumers and business. To achieve this, we have a toolkit with various instruments, allowing us to solve problems in different ways. The Streamlining Act of 1 August 2014 has been essential for us in this regard. As a result of this act, the Establishment Act on the Netherlands Authority for Consumers and Markets (ACM), and the laws that ACM enforces have been amended. With these amendments, the different powers, enforcement tools and procedures of the three predecessors of ACM (the Netherlands Consumer Authority, the Netherlands Competition Authority (NMa) and the Netherlands Independent Post and Telecommunications Authority (OPTA) have been harmonized, streamlined, and simplified, thereby creating a clear and uniform set of rules for the organisation to follow in its relations with market players.<sup>1</sup>

2. In February 2014, ACM launched a consultation of its strategic agenda, using both roundtables and online discussions to allow stakeholders and the wider public to participate. Based on the results, ACM set out six proposed themes to focus on for the period 2014-2015. The themes selected for the Agenda 2014-2015 are: the online consumer, the willingness to invest in energy networks and telecom networks, public procurement, health care consumers, switching barriers for consumers (particularly in health insurances and energy contracts), and entry to the banking industry.<sup>2</sup> In 2016, following public consultation, we will launch a new agenda, continuing some of the themes from the previous agenda, and adding new themes for 2016 –2017.

3. As a multidisciplinary authority, at ACM we are alert to interaction between different domains. We can tackle a sector from different angles. For example, there are problems in the housing market in the Netherlands, which were exposed by the economic crisis. We were able to address issues from different angles. We had competition fines in the foreclosure auctions cases, upheld at first instance in 2014, we had a 2014 report on entry barriers on the banking market, which followed on from our investigation into mortgage margins in 2013. We tackled unfair fees in the housing rental market, with a commitment decision based on consumer protection legislation.

4. Another notable development in 2014 was the release of a vision document on competition and sustainability, which was followed by a test case in the form of the so called ‘chicken of tomorrow’ arrangement between supermarkets and suppliers. In addition, ACM published a document on its strategy and enforcement priorities with regard to vertical agreements, which will serve as a guideline for future activity on this topic.

5. ACM was particularly active on the topic of (local) governments acting as market players. Following new regulation on this subject, ACM published the Government and Free Markets Test, which provides an indication of compliance with the rules. In addition, a detailed study into the effects of the Act was published, including recommendations for improvement.

---

<sup>1</sup> See: <https://www.acm.nl/en/publications/publication/13190/Rules-of-the-Netherlands-Authority-for-Consumers-and-Markets-have-been-harmonized/>

<sup>2</sup> See: [https://www.acm.nl/en/about-acm/mission-vision-strategy/2014-2015-acm-agenda-/2014-2015-acm-agenda/](https://www.acm.nl/en/about-acm/mission-vision-strategy/2014-2015-acm-agenda-/2014-2015-acm-agenda-/)

6. One of the ways of solving market problems is of course by coming down heavily on those who cheat. ACM fined investment firms because the firms had decisive influence on the behaviour of the companies directly involved in the cartel. This type of action has a deterrent aim as it ensures that competition concerns are dealt with by firms before they make investment decisions.

7. The outcome of the work that the Netherlands Authority for Consumers and Markets (ACM) carried out in 2014 amounted to EUR 1.2 billion.

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

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

- ACM Streamlining Act

8. On August 1, 2014, the Streamlining Act came into force.<sup>3</sup> As a result of this new legislation, the Establishment Act of the Netherlands Authority for Consumers and Markets (ACM), and the laws that ACM enforces have been amended. ACM was established on April 1, 2013. It is the first European authority that brings together consumer protection, competition oversight and sector-specific regulation in a single organization. With these amendments, the different powers, enforcement tools and procedures of the three predecessors of the Netherlands Authority for Consumers and Markets (ACM) have been harmonized, streamlined, and simplified, thereby creating a clear and uniform set of rules for ACM. Some of the changes include;

- it is no longer statutorily required to set up an advisory committee on administrative appeals in competition cases, which brings the rules in line with those applying to consumer cases.
- all fines must be paid within six weeks, except in the case of administrative appeal.
- information that has become available through one legal procedure, may now be used for another legal task within ACM.

9. The legislation introduces about fifty such procedural changes, designed to make ACM a more efficient and effective regulator.

- Dutch Act on Government and Free Markets

10. The Dutch Act on Government and Free Markets<sup>4</sup>, an amendment to the Dutch Competition Act, was introduced in January 2012, and took effect, after a two-year transition period, in July 2014. The Act aims to create a legal framework in which the government can offer goods and services on a commercial basis, for example when operating local swimming pools and parking garages. The law does not apply to government activities in transport and energy where sector specific legislation applies. Most importantly, governments acting as undertakings are now obliged to include all integral costs into the prices of their product or service and are no longer allowed to give preferential treatment to their own government enterprises over their competitors. This law includes all ventures that are not covered by state aid legislation. However, the new rules do not apply to public-interest activities. Municipalities are allowed to decide for themselves what activities they define as public interest.<sup>5</sup> The Act on Government and Free Markets will be evaluated this year.

### 1.2 Other relevant measures, including new guidelines

- Dutch Heat Act

---

<sup>3</sup> Establishment Act of the Authority for Consumers and Markets (2014)  
<https://www.acm.nl/en/publications/publication/13190/Rules-of-the-Netherlands-Authority-for-Consumers-and-Markets-have-been-harmonized/>

<sup>4</sup> See: <https://www.acm.nl/en/publications/publication/10811/NMa-begins-enforcement-of-Dutch-Act-on-Government-and-Free-Markets/>

<sup>5</sup> See section 3 for more information.

11. In 2014, ACM issued a formal opinion on the enforceability and implementation of this legislative proposal. ACM is of the opinion that a study should be conducted on the principle that consumers who get their energy through a heat network should not pay more than they would pay if they had a natural-gas connection. In April 2015 the Minister of Economic affairs announced that the Heat Act will be evaluated this year. He plans to amend the law based on the outcomes of this evaluation.<sup>6</sup>

- Proposal for regulating private sector parking tariffs

12. In 2014, ACM issued a formal opinion on the enforceability and implementation of this parliamentary proposal for legislation aimed at regulating private sector parking tariffs to provide for tariffs per minute for short-term parking. ACM questioned the necessity of the legislation and whether it was necessary for ACM to have a monitoring rule as proposed. The proposal has not yet been decided upon in parliament.<sup>7</sup>

- Competitive neutrality

13. In March 2014, ACM launched [the Government and Free Markets test](#) This is an online test which local governments, provinces, the central government and water authorities can use to see whether the rules of conduct laid down in the Dutch Act on Government and Free Markets apply to their situation. This Act does not provide for the imposition of fines. ACM also collected several illustrative and practical examples to explain the working of the new legislation and published them in a book, titled 'If public employees become entrepreneurs'.

14. In March, and April ACM conducted analyses and issued decisions to provide more insight into the interpretation of the new Act. Finally, ACM conducted three audits at local governments at their request to gain experience in the application of the rules of conduct in practice.<sup>8</sup>

- Proposal to increase the statutory maximum fines for i.a. competition law infringements

15. In 2014, ACM issued a formal opinion on the enforceability and implementation of this proposal for legislation of the Ministry of Economic Affairs aimed at increasing the statutory maximum fines for competition law infringements from 'EUR 450,000 or – if this is more - 10% of the total worldwide turnover' to 'EUR 900,000 or – if this is more - 10% of the total worldwide turnover'. In addition, specifically for cartels, the 10% will be multiplied by the number of years the infringement took place up to a maximum of 40%. Furthermore, the statutory maximum fines for individuals involved in the infringing behaviour of the undertaking will be raised from EUR 450,000 to EUR 900,000. In the case of recidivism, the applicable statutory maximum will be doubled.

---

<sup>6</sup> See: <https://www.acm.nl/en/publications/publication/13818/ACM-favors-study-into-the-Dutch-Heat-Act/> and <https://www.consuwijzer.nl/energie/warmte/bericht-warmtewet> (in Dutch)

<sup>7</sup> See: <https://www.acm.nl/nl/publicaties/publicatie/13019/Standpunt-ACM-op-het-initiatiefwetsvoorstel--parkeertarieven-per-minuut/> (in Dutch)

<sup>8</sup> See: <https://www.acm.nl/nl/onderwerpen/concurrentie-en-marktwerking/oneerlijke-concurrentie-door-de-overheid/oneerlijke-concurrentie-door-de-overheid/> (in Dutch) more information on this study is available in section 3 and 5.1

## 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

Activities of competition authorities and courts	
Anti-cartel	89
Dominance-related issues	18
Other, e.g. advocacy)	22

16. Four investigations were closed in 2014. Two of the investigations culminated in commitments. ACM issued 1 cartel decision in 2014, concerning the role of investment firms in a flour cartel. ACM imposed fines of approximately EUR 2 million.

17. In 2014, the District Court of Rotterdam and the Dutch Trade and Industry Appeals Tribunal (CBb) issued 90 rulings about the 21 different laws that ACM enforces. This is a similar number to the previous year. Reviews of fining decisions revealed that both courts assess all pieces of evidence very carefully, in order to determine whether the evidence is sufficient. In this respect, in a health care case, the Court held that the existence of a non-compete clause was insufficient concrete evidence to establish an anticompetitive agreement between the parties about not entering each other's areas in the region of 'Midden-IJssel'.<sup>9</sup>

18. In the silverskin onions<sup>10</sup> and flour cases, the court confirmed that very dissimilar practices can constitute a single violation. Each of these practices can individually be an implementation of the same, common plan/objective to coordinate various market practices. In these cases, the court went one step further in the interpretation of the concept of a "single continuous infringement". Furthermore, in the silverskin onions case the court confirmed that on the basis of Regulation 1/2003 ACM could take into account 'relevant sales' that is realised in other EU countries for calculation of the fine.<sup>11</sup>

19. In the CBb's opinion, fines for breaching a seal can only be imposed on those that have actually breached the seal. Where a hired security guard of a multi-tenant building had breached the seal despite the precautionary measures that had been taken, ACM was not allowed to impose a fine.

20. If leniency statements are contested by fellow cartel members, ACM must put forward sufficient additional evidence. Since this was missing in the insulated-glass case, there was insufficient evidence of participation in the cartel by two non-leniency applicants. Also, the court pointed out to ACM that it should be more critical of the way leniency statements are given. Asking closed questions carries a risk of influencing statements and can make them inadmissible.<sup>12</sup>

<sup>9</sup> See: <https://www.acm.nl/nl/publicaties/publicatie/13683/Uitspraak-CBb-in-zaak-Midden-IJssel/> (in Dutch)

<sup>10</sup> See: <https://www.acm.nl/en/publications/publication/12894/District-Court-of-Rotterdam-rules-in-silverskin-onion-cartel/>

<sup>11</sup> See: <https://www.acm.nl/en/publications/publication/12894/District-Court-of-Rotterdam-rules-in-silverskin-onion-cartel/>

<sup>12</sup> See: <https://www.acm.nl/nl/publicaties/publicatie/12869/Uitspraak-Rechtbank-Rotterdam-in-kartelzaak-isolerend-dubbelglas-bewijs-onvoldoende/> (in Dutch)

21. Leniency statements providing insight into how a specific group of traders at foreclosure auctions had influence over the purchase prices of properties in their favour were accepted as evidence by the District Court. Additional evidence was available and this convinced the court that each of the traders involved took part in a joint scheme to influence the auction prices. Each of them did so with different frequencies and at different scales.<sup>13</sup>

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

- Investment firms liable for actions of controlled businesses in flour milling cartel

22. The fining of investment firms that owned companies that were active in a cartel in 2014 set a new precedence. ACM had previously imposed fines on various companies that had been involved in the flour cartel. These flour producers had a combined market share of approximately 65 percent. At the time, the investment firms that have now been fined successively owned one of the producers involved. Investment firms usually manage one or more funds. Funds hold shares of businesses, and these shares are usually resold after a while. However, ACM is of the opinion that investment firms, too, can be held responsible for the behaviour of the firms they own (through those funds), particularly if the investment firm in question has decisive influence. ACM has concluded that this was the case with the investment firms which have now been fined.<sup>14</sup>

- The ‘Chicken of tomorrow’ (Competition and Sustainability)

23. The ‘Chicken of Tomorrow’ is the name for sustainability arrangements made between producers and retailers, regarding the complete replacement of regularly-produced broiler chicken meat that is currently part of the standard product range of supermarkets. The arrangements concerning the ‘Chicken of Tomorrow’ constitute a restriction on competition. ACM assessed these agreements in accordance with its 2014 position paper on Competition and sustainability, which explains how ACM assesses sustainability initiatives that may violate the competition rules, and focuses particularly on the application of article 101(3) TFEU to these agreements.

24. ACM’s analysis has revealed that the Chicken of Tomorrow agreements do not meet the criteria for exemption. Most importantly because the sustainability arrangements as currently designed do not generate any net benefits for consumers. In that assessment, the benefits and costs for consumers with regard to animal welfare, the environment and public health have explicitly been taken into account in a willingness to pay study.<sup>15</sup>

25. In addition, the Authority questions the necessity of excluding less animal friendly products from the market. Sales volumes of more sustainably produced chicken meat have increased in recent years. For example, the Dutch Society for the Protection of Animals has a star-rating system, called the Better Life label. With regard to this label, no far-reaching agreements or production quotas have been made that restrict competition. This is a politically sensitive topic in the Netherlands. The Ministry is keen to encourage the agricultural sector to invest in sustainability initiatives. ACM believes it is important to ensure that the impact of such initiatives for consumers and for consumer choice is considered.

---

<sup>13</sup> See: <https://www.acm.nl/nl/publicaties/publicatie/13832/Uitspraak-rechtbank-Rotterdam-in-zaak-executieveilingen/> (in Dutch)

<sup>14</sup> See: <https://www.acm.nl/en/publications/publication/13716/ACM-imposes-fines-on-investment-firms-in-cartel-case/>

<sup>15</sup> See: <https://www.acm.nl/en/publications/publication/13761/Industry-wide-arrangements-for-the-so-called-Chicken-of-Tomorrow-restrict-competition/>

## 2.2 *Mergers and acquisitions*

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

Actions	Number
Decisions on notifications	72
Withdrawn notifications	11
Exemptions from the waiting period (derogation requests)	9
Approved with remedies	0
Licence applications	3
Licence applications withdrawn	0
Decisions on licence applications	1
Total	96

26. In 2014, 3 merger cases were reviewed under the in-depth procedure. This can be broken down as follows: 1 merger was granted a licence, 2 merger analyses rolled on into 2015 and no merger filings were blocked or were resolved with remedies in 2014. None of the challenged mergers was abandoned by the merging parties. However, 11 mergers were abandoned in the first phase. Four of these applications were unnecessary, as the mergers did not require notification.

27. The ACM employs a two-tier system of merger analysis. All mergers, above a certain turnover threshold, must be notified to the authority. The ACM reviews the merger in the notification phase (phase I) and decides whether the proposed merger ought to be challenged. If the merger is challenged, parties must then apply for a licence in phase II.

#### 2.2.2 *Summary of significant cases*

- Reinier Haga group & Langeland (Hospitals/Health care)

28. In the Netherlands, competition in the health care sector has been increased in past years. The government has introduced more and more incentives in order to get health care providers to compete with each other for the favour of patients. They can compete on, for example, price, service, specialization, and innovation. ACM has observed that individuals look at hospitals critically, and increasingly make conscious choices. There have been thirteen hospital merger cases since 2011. Defining the scope of the relevant geographical market(s) involved and assessing countervailing buyer power of insurers remain important challenges for ACM in this field. ACM assesses whether sufficient options for patients will continue to exist, taking travel times into consideration. In this specific case the client council was positive about the merger and the likely increase in healthcare quality.<sup>16</sup> Healthcare insurers were more reluctant as they feared a dominant hospital (provider) with which price negotiations would become more difficult. In ACM's opinion, the presence of nearby hospitals ensures that enough options continue to exist for health insurers to negotiate on price, quality, and accessibility of the hospitals.

16 See: <https://www.acm.nl/en/publications/publication/14134/ACM-clears-acquisition-of-LangeLand-hospital-by-Reinier-Haga-Group/>

- KPN - Reggefiber

29. In 2008, telecoms operator KPN notified ACM of its intention to purchase 51% of Reggefiber, a fiber glass company. This was approved subject to remedies. When KPN wanted to extend its share in Reggefiber from 51% to 60%, ACM had to assess whether the previously accepted remedies attached to the 2008 joint-venture remained useful in the 2014 market environment. ACM found that the planned acquisition would produce a shift in the balance of power in Reggefiber, thereby rendering the 2008 conditions inapplicable. Following a phase 2 investigation, ACM did not impose remedies in the KPN/Reggefiber case of 2014, because of the sufficiency of the regulatory regime underpinning the telecom sector.

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

30. ACM keeps track of the latest trends and developments for consumers and businesses. ACM looks at competition and consumer protection law and policy, and also specifically at the energy, telecommunication, transport and postal services industries. Ministries send ACM proposals for draft legislation/regulation, which could be of influence on the tasks that ACM has to implement, for ACM to conduct an implementation test. In the implementation test, ACM addresses the following issues –

- the degree to which the draft legislation/regulation can be implemented and enforced effectively.
- the effects on ACM in terms of personnel, organization and finances
- possibilities to increase the effectiveness and efficiency of the proposed legislation/regulation

31. ACM publishes the implementation test after the relevant decision has been published by the relevant Minister.

32. ACM participates at an appropriate level, where necessary, in discussions concerning the formulation and implementation of other policies.

- Dutch Heat Act

33. In 2014, ACM published its implementation test on this legislative proposal. ACM is of the opinion that a study should be conducted on the principle according to which consumers that get their energy through a heat network cannot pay more than they would have paid if they had a natural-gas connection. The Heat Act will be evaluated this year.<sup>17</sup>

- Proposal for regulating private sector parking tariffs

34. In 2014, ACM published its implementation test on a parliamentary proposal for legislation regulating private sector parking tariffs to provide for tariffs per minute for short-term parking. ACM questioned the necessity of the legislation and whether it was necessary for ACM to have a monitoring rule as proposed. The proposal has not yet been decided upon in parliament.<sup>18</sup>

---

<sup>17</sup> See: <https://www.acm.nl/en/publications/publication/13818/ACM-favors-study-into-the-Dutch-Heat-Act/>

<sup>18</sup> See: <https://www.acm.nl/nl/publicaties/publicatie/13019/Standpunt-ACM-op-het-initiatiefwetsvoorstel--parkeertarieven-per-minuut/> (in Dutch)

- Proposal to increase the statutory maximum fines for i.a. competition law infringements

35. In 2014, ACM published its implementation test on a proposal for legislation from the Ministry of Economic Affairs aimed at increasing the statutory maximum fines for competition law infringements from ‘EUR 450,000 or – if this is more - 10% of the total worldwide turnover’ to ‘EUR 900,000 or – if this is more - 10% of the total worldwide turnover’. In addition, specifically for cartels, the 10% will be multiplied by the number of years the infringement took place up to a maximum of 40%. Furthermore, the statutory maximum fines for individuals involved in the infringing behaviour of the undertaking will be raised from EUR 450,000 to EUR 900,000. In case of recidivism the applicable statutory maximum will be doubled. ACM has publicly expressed concerns as this means deviating from the 10% maximum that is common in most EU member states. The proposal has not yet been decided upon in parliament.

- Dutch Act on Government and Free Markets<sup>19</sup>

36. The Dutch Act on Government and Free Markets aims to create a legal framework in which the government can be commercially active in the market. ACM has studied the impact of the new legislation<sup>20</sup>, focusing on three sectors; commercial-waste collection, commercial exploitation of sports facilities, and parking garages. ACM’s study establishes that while municipalities are largely observing the law, the new rules only help to realize competitive neutrality among government organizations and commercial businesses to a limited degree.<sup>21</sup> ACM’s view is that the law could be improved, for example by adding a *de minimis rule*, which would set a minimum threshold for enforcement. The Dutch Ministry of Economic Affairs will evaluate the Dutch Act on Government and Free Markets this year. The sector scans are part of ACM’s contribution to that evaluation.

#### 4. Resources of competition authorities

##### 4.1 Resources overall

###### 4.1.1 Annual budget

- The 2014 budget from the Ministry of Economic Affairs was: EUR 695.305 (Dollars 956.739).
- Total expenses were EUR 67.879.178 (Dollars 93.401.748)
- Total income was 51.230.659 (Dollars 70.493.386).
- **The competition-related budget was: EUR 15.5 million (Dollars 21.328.000).**<sup>22</sup>

###### 4.1.2 Number of employees

37. 527 people work at ACM (including temporary staff). This figure includes staff who deal with aspects other than competition, such as those who deal with the regulation of Energy, Telecom, Post and Transport; as well as those who work on Consumer Protection and the support staff who cover all of these

<sup>19</sup> See section 1.1. for more information on the Act.

<sup>20</sup> See section 5 for more information on this study.

<sup>21</sup> See: <https://www.acm.nl/en/publications/publication/14140/Limited-effect-of-Dutch-Act-on-Government-and-Free-Markets-on-sports-facilities-parking-garages-and-waste-collection/>

<sup>22</sup> Calculated with the exchange rate of 1-1-2014; EUR/USD = 1,376

areas from within the legal department, communication and strategy department, and the Office of the Chief Economist.

38. 155 people are involved in competition enforcement. Of these, 104 work in the Competition Department, 32 in the Legal Department, 8 in the Office of the Chief Economist, 8 in the Strategy and Communications Department; and 3 are members of the Board. The table below offers a more refined overview of the (educational) background of these employees.

Department	Legal	Economic	L&E	Other	Total
Competition Department	46	24	4	30	104
Office of the Chief Economist		7	1		8
Legal Department	29	1	1	1	32
Members of the Board	2	1			3
Strategy & Communication	3	3		2	8
Total	80	36	6	33	155

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

39. There are 346 non-administrative competition (NAC) staff employees.

#### 4.2 *Human resources*<sup>23</sup>

40. It is difficult to specify how many staff deal specifically with competition, because at ACM, we use mixed teams in appropriate cases. In addition, we have experts in the regulatory sectors who work on merger and dominance cases in the regulated sector. Therefore the numbers presented below have to be considered as rough approximations.<sup>24</sup>

##### *Enforcement against anticompetitive practices:*

Anti-cartel: 89fte

Abuse of dominance: 18fte

##### *Merger review:*

Mergers: 26fte

<sup>23</sup> These figures represent FTE, as some people work half time on projects.

<sup>24</sup> Period covered by the information below: 1 January 2014 to 31 December 2014

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

### 5.1 Reports and Studies

- Study into barriers to entry to the Dutch retail banking sector

41. ACM's 2013 study on mortgage margins revealed a correlation between increasing margins and decreasing market entry in the Dutch banking sector.<sup>25</sup> This prompted ACM to perform a study into barriers to entry to the Dutch retail banking sector. Lowering barriers to entry is an effective way to encourage competition. The study of ACM resulted in a report that consists of nine recommendations, addressed to the Dutch Minister of Finance, for lowering existing barriers to entry without any adverse effects on financial stability.<sup>26</sup> In reaction to the recommendations in the report, the Minister of Finance has instructed Actal (the Dutch Advisory Board on Administrative Burdens) to investigate whether regulation in this area could be reduced and simplified.<sup>27</sup> In addition, a separate regulatory framework for credit unions has been adopted by the Senate in 2015.<sup>28</sup> When this framework will take effect has not yet been decided.

- Vision document on competition and sustainability

42. ACM finalized its vision document on competition and sustainability in 2014. In this document ACM explains to what degree sustainability initiatives of businesses are compatible with competition law. ACM shows what room there is for collaboration initiatives with regard to sustainability. This is explored in further detail in the vision document and illustrated with various examples.<sup>29</sup>

- Competitive neutrality

43. The Netherlands Authority for Consumers and Markets (ACM) has assessed how the Dutch Act on Government and Free Markets, an amendment to the Dutch Competition Act, functions in practice in three sectors.<sup>30</sup> These three sectors are commercial-waste collection, commercial exploitation of sports facilities, and operating parking garages. ACM has established that, in these sectors, the law is observed by municipalities, but that it only helps to ensure a level playing field for government organizations and commercial businesses to a limited degree.

44. The government is active in all these sectors, and it potentially competes with commercial businesses. That is allowed, but, in that case, the government must comply with a number of rules of conduct such as including all costs in their prices. However, those rules do not apply to public-interest activities. Municipalities are allowed to decide for themselves what activities fall under that category.

45. ACM concludes that, with regard to sports facilities and parking garages, so-called 'public-interest decisions' are often used. In such decisions, municipal councils decide that, for example, their local

<sup>25</sup> See: <https://www.acm.nl/en/publications/publication/11426/Profit-margins-on-mortgages-have-increased-as-banks-must-meet-ever-stricter-requirements/>

<sup>26</sup> See: <https://www.acm.nl/en/publications/publication/13257/Barriers-to-entry-into-the-Dutch-retail-banking-sector/>

<sup>27</sup> Minister of Finance (2014), p.9.

<sup>28</sup> Wet toezicht kredietunies, zie: [https://www.eerstekamer.nl/wetsvoorstel/33949\\_initiatiefvoorstel\\_agnes](https://www.eerstekamer.nl/wetsvoorstel/33949_initiatiefvoorstel_agnes).

<sup>29</sup> Vision Document - Competition & Sustainability (2014) <https://www.acm.nl/en/publications/publication/13077/Vision-document-on-Competition-and-Sustainability/>

<sup>30</sup> See sections 1.2 and 3 for more information on the Act.

sports centres are a core task of the municipality, and that they are so important to the public interest that it is undesirable to include all costs in the prices. That way, municipalities believe they are able to offer sports facilities at affordable prices, making it accessible for a broad audience. Commercial exploitation of parking garages, too, can be a public-interest activity, according to municipalities, in order to prevent nuisance from improper parking on the street. Most municipalities believe that commercial-waste collection is not a core task, and say they comply with the rules.<sup>31</sup>

46. A recent case involved the Dutch municipality of De Marne, which failed to include all costs in its tariffs for marina berths. As a result, it competes unfairly with commercial marinas. De Marne has stated that it will soon pass a resolution declaring that it runs a number of marina berths as a public-interest activity. The Dutch Act on Government and Free Markets will then no longer apply to these berths. With regard to another marina, the municipality is currently looking into the option of passing on the integral costs. If the municipality decides to do so, the Dutch Act on Government and Free Markets will no longer be violated.<sup>32</sup>

- ACM's strategy and enforcement priorities with regard to vertical agreements

47. In this publication, ACM gives insight into its strategy and enforcement priorities with regard to “vertical” agreements. A vertical agreement is an agreement between two or more undertakings that are active at different levels of the same distribution chain of goods or services. The agreement could relate to the conditions of the purchase, sale or resale of the respective goods or services. ACM makes it clear in the paper that in its enforcement actions, ACM particularly focuses on those agreements that negatively affect consumers.<sup>33</sup>

---

<sup>31</sup> See: <https://www.acm.nl/en/publications/publication/14140/Limited-effect-of-Dutch-Act-on-Government-and-Free-Markets-on-sports-facilities-parking-garages-and-waste-collection/>

<sup>32</sup> See: <https://www.acm.nl/en/publications/publication/14708/Dutch-municipality-De-Marne-competes-unfairly-with-other-marinas/>

<sup>33</sup> ACM's strategy and enforcement priorities with regard to vertical agreements (2015) <https://www.acm.nl/en/publications/publication/14226/ACMs-strategy-and-enforcement-priorities-with-regard-to-vertical-agreements/>

## 5.2 *Bibliography of publications by ACM experts*

- Fonteijn, C. (2014) “The importance of innovation in the detection of anticompetitive practices”, (New Frontiers of Antitrust, 21 February 2014, Paris), *Concurrences Review*, 2.
- Sánchez, P.A. (2015) Detection of Cartels. In: F. Wijckmans and F. Wijckmans (eds.) *Horizontal Agreements and Cartels in EU Competition Law*, Oxford University Press.
- Tuinstra, A. (2014) Behavioral economics: the implications for competition policy. *ISCR Competition & Regulation Times*.
- Huizingh, E. and Mulder, A. (2014) “Effectiveness regulation”. *Small Business Economics*.
- Fonteijn, C. (2014) “Design issues when setting up a multipurpose authority: Some insights from the Netherlands”, *Concurrences*, 4: 55-58.
- Petit, L.T.D, Kemp, R.G.M. and van Sinderen, J. (2015), Cartels and productivity growth: An empirical investigation of the impact of cartels on productivity in the Netherlands, *Journal of Competition Law & Economics*, 11 (2): 501-525.
- Fonteijn, C. and Ottow, A. (2014) “Independence of competition authorities: independence in heart, mind and law”. In: Arts, D., Devroe, W., Foqué, R., Marchand, K. and Verougstraete, I. (eds.) *Mundi et Europae civis – Liber Amicorum*. Jacques Steenbergen (Larcier) 405.
- Oers, M. van and Schueler, M. (2014) “Landsgrenzen en de beboeting van inbreuken op artikel 101 en 102VWEU door nationale mededingingsautoriteiten”. *Mundi et Europae civis, Liber Amicorum Jacques Steenbergen*.
- Sanchez P.A., “Mens en mededingingsrecht” in *Mundi et Europae civis, Liber Amicorum Jacques Steenbergen*.
- Mulder, M. (2014). “The impact of concentration and regulation on competition in the Dutch mortgage market”. *Journal of Competition Law & Economics*, 10(4), 795-817.
- Kemp R. and Van Sinderen J. (2014) “De noodzaak en wijze van effectmeting binnen ACM” *Economische Statistische Berichten Dossier Consumentenwelvaart* (99) (18 april 2014) 63.
- Mulder, M. (2015) “Competition in the Dutch electricity wholesale market: An empirical analysis over 2006-2011”, *The Energy Journal*, 36(2).
- Schipperus, O. and Mulder, M. (2015) “The effectiveness of policies to transform a gas-exporting country into a gas-transit country: the case of the Netherlands”, *Energy Policy*, 84: 117-127.
- Don H. and O’Keeffe S. (2015) “Competition in Times of Crisis: We cannot afford to forget it”, *Italian Antitrust Review* (1) 25-34.
- Fonteijn, C. and van Sinderen, J. (2015) “Economic Analysis as a Tool to Improve Decision-Making”, *Competition Law International*, 11(1): 77-86.

- Fonteijn, C. and O’Keeffe, S. “Information Exchange between Authorities: Enhancing Enforcement” (May 16, 2014). 21st St. Gallen International Competition Law Forum ICF. Available at SSRN: <http://ssrn.com/abstract=2575176>