2012 Annual Report

The Netherlands Competition Authority

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1 Introduction

The Netherlands Competition Authority (NMa) in 2012 accomplished many things: our actions saved Dutch consumers EUR 251 million. You will find all information about our actions in this annual report. Since we are active in so many industries and fields, we can truly make a meaningful contribution to welfare growth in the Netherlands.

From April 1, 2013, we will continue our work as part of a new market authority: the Netherlands Authority for Consumers and Markets (ACM). This is a consolidation of three authorities in the Netherlands: the NMa, the Netherlands Independent Post and Telecommunication Authority (OPTA) and the Netherlands Consumer Authority. More information about this consolidation can be found in this annual report, too. I invite you to read more about the NMa's work in 2012!

Chris Fonteijn
Chairman of the Board

March 2013, The Hague

2 About the NMa

Consumers benefit from competition

The NMa's mission is making markets work. If a market works well, businesses do their best to raise the quality of their products and services, keep prices low, and offer new products and services. Businesses that outperform their competitors will sell the most products and services. Competition thus results in consumers having more options and getting value for their money. As independent authority, the NMa oversees competition.

A free-market system is not always feasible in some industries. Some firms are ´natural monopolists.´ In these kinds of markets, for instance, there is room for just one railway operator or one grid operator. Building multiple railways or grids next to one another would not be efficient. That is why the NMa imposes certain rules on these firms to have them operate as if they did face competitors. For example, we set the maximum tariffs that grid operators are allowed to charge their customers. We check whether their services meet certain quality standards. And we make sure that the terms and conditions under which their customers can use their networks are reasonable.

Not just tracking down violations

The NMa is a mission-driven organization. That means we carefully find out what the actual problems are in a market in order to come to the best solutions. Tracking down violations and abuses is obviously of vital importance, but we are not solely concerned with imposing fines. We want businesses to know the rules, and we want them to comply with those rules.

The NMa must be able to explain what goes wrong in a market, and, at the same time, demonstrate that we keep an eye on other interests as well. These include interests that are not always economic interests, but public interests such as health care quality or sustainable energy. In this way, we build public support for our actions.

2.1 The NMa at work

Since July 2005, the NMa has been an autonomous administrative authority under Dutch law, headed by a Board. On March 25, 2011, the Dutch government decided to consolidate the NMa, the Netherlands Independent Postal and Telecommunications Authority (OPTA), and the Netherlands Consumer Authority (CA) into the Netherlands Authority for Consumers and Markets (ACM). More information on the creation of ACM can be found in chapter 8.

Change to the Board of the NMa

On January 1, 2013, Ms. Anita Vegter was installed as Member of the Board of the NMa. She succeeded Ms. Dineke Mulock Houwer. Ms. Vegter is also to become a Member of the Board of ACM.

Key figures of the NMa

The below table lists key figures on the most important activities of the NMa.

Preliminary Key Figures NMa 2012		2010	2011	2012	Comments 2012
Competition					
Statement of Objections and Fines					
	Number of formal investigations under competition law	19 (+1)	18	14	
	Number of formal investigations resulting in a Statement of Objections (establishing a reasonable suspicion that the Competition Act was violated)	11	10	6	
	Number of investigations completed by means of an alternative instrument	3 (+1)	2	8	
	Number of investigations in which the formal investigation was suspended due to insufficient evidence	5	6	0	
	Number of cases in which a fine and/or an order for periodic penalty payments was imposed	12	6	6	
	Total amount of fines in competition cases (x € million)	137.1	39.7	32.1	
	Number of fines on de facto executives	8	2	6	
Complaints, informal opinions and notices of default					
	Complaints settled in relation to violations of the Competition Act	17	18	34	
	Informal opinions	1	1	1	
	Notices of default	2	9	4	Submitted notices of default in those years for Competition and Energy
	Periodic penalty payments under notice of default	0	0	1	
Concentrations					
	Proceeds of notifications and licences (x € million)	1.3	1.4	1.6	
	Notifications of mergers, acquisitions and joint ventures (concentrations)	83	98	91	
	Concentration notifications that did not need to have been notified	1	-	-	
	Withdrawn notifications	4	6	2	
	Exemption from the waiting period	0	3	3	
	Decisions on notifications of concentrations	83	87	99	
	License required for concentration	7	5	5	
	License applications	4	5	6	
	License applications withdrawn	1	2	1	
	Decisions on license applications	3	4	6	
Transport					
Railway Act	Number of investigations by Office of Transport Regulation	2	7	7	
	Number of formal investigations resulting in a Statement of Objections	-	-	0	
	Number of investigations completed by means of an alternative instrument	-	3	7	
	Number of cases in which no violation was established	-	4	7	
	Number of completed complaints related to the Railway Act	-	-	1	
	Number of advisory opinions to Ministry of Infrastructure	5	6	2	
Aviation Act	Number of requests for tariff assessment resulting in a decision	-	2	0	
	Approval decision on cost allocation system	2	-	-	
Pilotage Act	Decisions Pilotage Act	1	4	6	
Passenger Transport Act	Completed cases involving local transport companies	-	-	-	
	Number of cases resulting in a court ruling	-	-	-	
	Number of advisory opinions to Ministry of Transport	1	-	-	
Energy					
	Proceeds of contribution scheme energy (x € million)	3.1	4.1	2.8	
	Method decisions	4	7	-	
	Implementation decisions	116	78	217	
	Enforcement decisions	3	2	3	
	Advisory opinions to the Minister of Economic Affairs	9	12	18	
	Dispute resolution	26	20	17	
	Number of energy cases in which a fine and/or an order subject to periodic penalty payments was imposed	1	3	3	2012: of which, 2 on de facto executives
	Total amount of fines in energy cases (x € million)	0.2	10.4	4.4	
Administrative appeals					
	Completed administrative appeals in competition cases	12	24	16	
	Completed administrative appeals in energy cases	118	142	105	
	Completed administrative appeals in transport cases	1	1	4	
Judicial appeals					
	Judicial appeals completed by the District Court of Rotterdam against decisions in relation to competition	12	11	10	
	Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to competition	36	13	12	includes the final four construction industry cases
	Judicial appeals completed by the District Court of Rotterdam against decisions in relation to energy	55	73	56	
	Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to energy	-	-	2	
	Judicial appeals completed by the District Court of Rotterdam against decisions in relation to transport	6	1	2	
	Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to transport	1	3	3	
Outcome					
	3-year rolling average (x € million; in 2011 prices)	387	259	251	
Budget and personnel					
	Total budget granted (x € million)	45.9	45.5	45.5	
	Number of staff on December 31st	433	395	372	
	Ratio men/women	52%/48%	52%/48%	53%/47%	
	Average age of staff	38	39	41	

Lead times

For the sake of transparency, the NMa has included information on its internal targets regarding several core processes in its annual reports for several years now. In 2012, the NMa achieved its internal lead-time targets for concentration cases and disputes. For antitrust investigations that did not lead to an enforcement product, the NMa achieved its internal lead-time target. With regard to sanction procedures, the NMa often failed to meet its internal targets. One of the reasons is that cases leading to substantial fines often require detailed investigations, not just into the behavior that resulted in the identified violation, and but also into the financial positions of the parties involved. Furthermore, targets with regard to objections (antitrust, energy and transport) have not always been achieved, often due to conflicts with other procedures inside or outside the NMa. In most cases, the NMa maintains direct contact with the parties involved in investigations, and the NMa informs them when a decision is expected, and subsequently meets these promised deadlines.

Improvements

The NMa continues to pay close attention to the lead times of its core processes by, among other things, making clear internal rules. Wherever possible, the NMa sets up project-based teams, and supporting IT services are used more in processes such as file management. When planning cases, the NMa aims to have a mix of large, medium-sized, and smaller cases, which also helps realize a more efficient utilization of staff and resources. Furthermore, an effective and efficient allocation of capacity is pursued in both the first phase and the objection phase. Finally, lead times are a permanent item on the agenda of the regular meetings between the Board and directors.

More detailed information can be found in the below table on lead times.

Lead times in 2012

Product	Norm (days)	Norm (percentage)	2009 Realization	2010 Realization	2011 Realization	2012 Realization
Antitrust investigation with enforcement product	336	90%	38%	64%	100%	55%
Investigation without enforcement product (1)	175	90%	71%	78%	80%	94%
Notification of concentration	28	100%	100%	100%	100%	100%
Request for exemption of waiting period (Section 40)	15	100%	100%		100%	100%
Concentration License	91	100%	100%	100%	100%	100%
Complaint under Section 71 Railway Act	61	100%				
Dispute settlement (Electricity Act, Gas Act)	120	75%	63%	73%	60%	82%
Sanction under Competition Act (Sections 6 and 24)	252	75%	88%	38%	22%	0% (2)
Sanction under Electricity Act and Gas Act	91	75%	100%	100%	33%	33%
Sanction for non-cooperation/non-notification	91	100%	100%	100%		100%
Objection Competition (without objection from advisory committee)	210	90%	93%	60%	17%	78%
Objection Competition (with objection from advisory committee)	252	75%	56%	38%	33%	43% (2)
Objection in connection with Electricity Act or Gas Act	140	75%	43%	37%	43%	42%
Sanction under any of the transport-related acts	91	75%				
Objection under any of the transport-related acts	140	75%	100%	100%	100%	0%
Request under Public Access to Government Information Act	56	75%	43%	82%	75%	70%

Empty cells indicate that this type of product has not been completed yet or that the instrument has not been used.
Norm times in brackets are old, internally used norms that have been changed. The number of days is in calendar days.

(1) These are investigations that will be suspended. These include complaints that have been withdrawn or rejected (the latter usually happens within 56 days).
(2) This drop is primarily caused by a concurrence of circumstances (known to the parties involved) related to other procedures, within and/or outside of the NMa, and involvement of non-Dutch parties (making translations necessary). This dependency resulted in lead times exceeding the norm, which is based on independent procedures in Dutch.

Outcome

Every year, the NMa produces an estimate of what the NMa's work has yielded consumers in terms of consumer welfare gains or losses. By regularly publishing this 'outcome,' the NMa wishes to determine the quantifiable benefits of its actions. The benefits for 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. This is more than five times the NMa's budget (in 2012: EUR 44.4 million). Since 2002, the NMa's outcome has fluctuated between roughly EUR 250 million and EUR 600 million.

The NMa's outcome is calculated using a method that determines in a consistent manner the direct effects of the NMa's actions in connection with its tasks of competition oversight and regulation of the energy and transport markets. The calculation method can also take into account future effects that NMa decisions have, insofar such effects can be quantified. Each year, the NMa publishes a working paper explaining the calculation.

Evaluation by the Netherlands Bureau of Economic Policy Analysis

Like in 2011, the Netherlands Bureau of Economic Policy Analysis (CPB) evaluated the NMa's calculations at the NMa's request. In its short plausibility test, the CPB gives a rough assessment of the degree to which the NMa exercised care in calculating the outcome, and of whether the level of the outcome is plausible. The CPB's test results are:

- The outcome calculation process has been carefully executed, using rudimentary rules of thumb that are sufficiently supported by the economic literature;
- The outcome calculation gives an indication of the magnitude of the relatively easily quantifiable short-term direct effects on direct buyers;
- The outcome calculation process does not take into account various effects. A careful interpretation of the outcome is thus warranted.

Complaints about the NMa

In 2012, the NMa's complaints officer received five complaints about the NMa's actions.

Two complaints were withdrawn after the complainants in question had been called and their complaints had been resolved satisfactorily. One of these complaints concerned the communication method in a case that was being handled by the Office of Energy Regulation at the time. The other complaint concerned a late response to the complainant's correspondence.

With regard to one complaint, the complainant's request was met by sending him a written account of the facts and events regarding certain missing documents. Another complaint, which concerned the course of events in the complaint procedure, was dismissed. In that case, the NMa was of the opinion that the procedure used for the handling of the complaint was appropriate, and that the treatment of the complainant was careful and proportional. One complaint is still under consideration.

2.2 The NMa as an employer

A professional HR policy is important to the NMa. To that end, talent management is a key element. HR helps management select the most talented employees and increase employee commitment to the organization. In addition, HR helps the organization create career development opportunities thereby enabling employees to maximize their contribution to the realization of the NMa's ambitions. The Board of the NMa considers it of critical importance that the NMa follows a single HR policy in all departments in order to promote the desired culture as much as possible. In 2012, HR primarily focused on preparing a strategic HR policy for the new authority, the Netherlands Authority for Consumers and Markets, and on preparing and carrying out the employee placement process as part of the upcoming merger.

Inflow

Inflow in 2012 was modest and even slightly lower than in 2011. The reasons are the same as they were last year. First, the hiring freeze imposed by the Ministry of Economic Affairs is still in effect. New job openings at the Ministry or at any of its affiliated agencies (including the NMa) must be filled by internal candidates as much as possible. Second, the NMa in 2012 took again into account the planned staff reductions as part of the government cutback program of the first Rutte administration.

Half of the job openings in 2012 were temporary positions. These were filled based on secondments (internal or among Ministry agencies) or through a temp agency. Permanent positions in 2012 were often filled temporarily by secondments or, in rare cases, by external hiring. These temporary solutions were chosen because of the impending merger or because of a lack of qualified candidates. Of all job openings (temporary and permanent), 87 percent was filled within the NMa's target of three months.

For organizations like the NMa, it is important to attract and retain the right people. Even in times of cutbacks, it is essential to continue to invest in recruitment communication, employee training and development. Because of its cautious hiring policy, the NMa in 2012 invested in creating various internship positions to have students get to know the NMa's work. The NMa in 2012 did not organize any in-house masterclasses for graduate students nor did it take part in career events.

In terms of staff numbers, the NMa met the 2012 targets set in the previous Dutch administration's (under former Prime Minister Balkenende) program towards a more efficient central government through natural turnover, by not extending temporary contracts, and by not converting temporary appointments into permanent appointments. As a result, outflow in 2012 compared with 2011 decreased by almost 40 percent. While 43 employees left the organization in 2011, only 26 did so in 2012. On December 31, 2011, the NMa had a staff of 375.5 FTE, and on December 31, 2012, it had a staff of 353.7 FTE, which corresponded with 89.8 percent of budgeted FTEs (based on contract work hours).

Employee and management development

In 2012, too, the NMa invested in retaining talented employees, as reflected by the focus on employee mobility, as well as the development programs run by the NMa Academy for young professionals, professionals and advanced professionals. The NMa Academy in 2012 implemented its Professionals Program (PP), a department-specific learning path where advanced education takes place, and its Advanced Professionals Program (APP), a program for experts, which was developed in cooperation with the NMa´s merging partners and Nyenrode Business University. Besides organizing these programs and addressing other employee

development questions, the NMa Academy primarily focused on setting up and developing programs for the new ACM Academy. The selection of NMa Academy programs provides a basis for the ACM Academy´s programs.

Absenteeism

The absentee rate was 4.0% in 2012, which comes close to the NMa's target of 3.8%. The absentee rate decreased compared with 2011, when the rate was 4.3%. In 2012, the NMa took further steps in improving support for absent workers, and in promoting active sick-leave monitoring by managers. Examples include regular meetings between managers and the company doctor or the employee welfare officer, and support from HR advisors. Prevention of absenteeism and supporting long-term absent workers continue to be critical issues in 2013 with the aim to reduce the absentee rate and absentee frequency as much as possible. In anticipation of the consolidation, a new ACM absenteeism protocol was developed in 2012.

Employee participation

The works council (OR) in 2012 was closely involved in the consolidation of the three regulators, for example, drafting the provisional and final organization decisions, and giving advice on the employee placement process. Furthermore, attention was given to the implementation of the new job classification system for employees of the Dutch government, and to the recruitment of a new member of the Board (On January 1, 2013, Ms. Vegter succeeded Ms. Mulock Houwer as Member of the Board of the NMa). As part of the consolidation process, the OR kept in close touch with the works council of OPTA, and the staff representative council of the CA. In 2012, this joint council met with the Steering Group on a monthly basis discussing the consolidation's progress. In addition, six meetings were held between the Board of the NMa and the OR. One member of the OR sits on the Ministerial OR of the Ministry of Economic Affairs on behalf of the NMa.

The below table lists a number of HR indicators and their results in 2012.

Critical success factor	Monitoring instrument	NMa target level	Realized in 2012 (FTE)	Realized in 2011 (FTE)
Utilization-related figures	Employee utilization rate	95 %	89.8 %	96.9 %
	Inflow	-	1.3 %	1.6 %
	Outflow	-	6.1 %	10.3 %
	Percentage of women in pay scale 14 or higher	32 %	38.7 % (37.5 % in management positions)	31.5 % (36.8 % in management positions)
	Male/female ratio	50 % - 50 %	55.1 / 44.9 % (53.2 / 46.8 % in number of people)	54.0 / 46.4 % (52.0 / 48.0 % in number of people)
Recruitment-communication results	Duration of vacancies	85 % within three months	87.0 %	95.2 %
	Participation in job fairs	6 per year	0	3
	In-house company days at the NMa	1	0	1
	Number of applicants	-	269	146
	Number of positions filled	-	24	21
Training and development	Percentage of income spent on education	3 %	3.0 %	2.9 %
Exit interviews	Percentage of exit interviews held	75 %	84.6 %	72.1 %
Absenteeism	Absentee rate	No more than 3.8 %	4.0 %	4.3 %

2.3 Cooperation

National

The NMa works together with many regulators and inspectorates in the Netherlands. Such cooperation usually relates to specific cases and topics. It has also resulted in the NMa increasingly receiving from its fellow regulators useful information with regard to specific cases, all within legal boundaries. The NMa, the Dutch Independent Post and Telecommunications Authority (OPTA), the Dutch Healthcare Authority (NZa), the Consumer Authority (CA), the Netherlands Authority for the Financial Markets (AFM), and the Dutch central bank (DNB) sit on the Consultation Forum of Regulatory Bodies (MTb).

The Consultation Forum of Regulatory Bodies

Since 2008, the NMa has actively participated in the Consultation Forum of Regulatory Bodies (MTb). The forum acts as a platform for multilateral cooperation between six major regulators in the Netherlands: the NMa, OPTA, NZa, CA, AFM, and DNB. In November 2012, the Netherlands Gaming Authority joined the MTb. In their day-to-day work, these regulators face similar questions. In the forum, regulators share knowledge and best practices, and agree on joint approaches to certain topics. This specific form of cooperation can ultimately lead to a reduced regulatory burden, as sharing knowledge and joint approaches benefit oversight efficiency. Collaboration in specific cases is specified in bilateral cooperation protocols set up between individual regulators.

Criteria for good oversight

As part of the revision of so-called Framework-defining Vision on Oversight, the MTb has, among other activities, further worked out the criteria for good oversight. This falls within the joint opinion that the MTb took in 2011. The MTb participants plan to release these revised criteria in spring 2013.

Working agenda

In 2012, steps were taken towards drafting a joint working agenda. The topics have been fleshed out by the MTb members and the results have been discussed by the boards of all members. The following items were formulated:

- Additional input for the Ministry of the Interior to the Framework-defining Vision on Oversight.
- Criteria for good oversight: joint exploration of elements for an objective benchmark and clear and consistent criteria for good oversight.
- Input for the Dutch Scientific Council for Government Policy (WRR) to the study into ´Oversight, balance and responsibility.´
- Systemic oversight: analysis of the pros and cons of systemic oversight, and its applicability in market oversight.
- An analysis of the tension between public disclosure of the reasons behind rulings, and the interests of regulated parties.

In 2012, OPTA and the CBP held the MTb's rotating chairmanship. Two plenary sessions for staff members were held on innovations in oversight, and on the future of oversight. Mr. Gerard de Vries, PH.D., member of the WRR, gave a lecture on the WRR study ´Public interests in free-market societies.´ In late-November, Mr. André

Knottnerus, Ph.D., chairman of the WRR, sat down with the MTb discussing topics that might be included in the future WRR study into the future of oversight.

In 2013, the MTb will deal with the following topics:

- An analysis of the tension between public disclosure of the reasons behind rulings, and the interests of regulated parties (continued from 2012).
- Responding to the results of the WRR study into the future of oversight.
- A further analysis of the way in which external oversight can take place through internal oversight: the complementary role of internal oversight for the external regulator.

The Netherlands Authority for Consumers and Markets

In 2012, the consolidation and reorganization of the NMa, OPTA and the CA into the Netherlands Authority for Consumers and Markets (ACM) was a major topic from an international perspective too. Members of the Board and NMa employees were invited to speak at events around the world about the impending merger.

Within the International Competition Network (ICN), Mr. Chris Fonteijn talked about the broader role of advocacy and about the potential synergies that ACM produces in, for example, merger review in the regulated industries. The NMa's work on consumer welfare, which was carried out in an ICN context, was published in 2012, and this topic has been incorporated into the ACM's strategy. Mr. Bill Kovacic, the former Chairman of the US Federal Trade Commission, provided the merging partners with help in developing the ACM's strategy, and held seminars at ACM about the role of authorities similar to ACM in other countries.

Furthermore, Chris Fonteijn spoke at ECN meetings in Brussels, the European Competition Association (ECA) in Tallinn and at the Heads of Agency workshop in Fordham about the structure of competition authorities. Other Members of the Board of the NMa, directors and experts spoke on procedural autonomy in cross-border investigations, information exchange, antitrust procedures for the courts, and forensic investigation. These are all topics the NMa has considerable experience of.

In addition, the NMa shared knowledge and experiences with delegations from other EU countries such as the Office of Fair Trading, and with those from outside the EU such as China and Indonesia. Within the Organization for Economic Cooperation and Development (OECD), the NMa contributed to training programs in Poland and Russia. Also, the NMa drew up a paper on hospital mergers for an OECD roundtable discussion, and it took part in the development of benchmarking and evaluation processes for competition authorities within the OECD.

International

The European and international dimensions of the NMa's activities have been firmly embedded in its day-to-day work. Participating in and sharing knowledge within international networks are aspects that are of great importance to the NMa in order for it to be able to work effectively. The NMa closely cooperates with fellow regulators abroad, for example, within the International Competition Network (ICN), and with other members of the European Competition Network (ECN), and with the European Commission. Cooperation exists on many levels: from giving advice on regulation to operational cooperation in specific cases. Tip-offs and strategies are exchanged with fellow authorities. Opinions, decisions and court rulings greatly influence the way the NMa performs its duties. Knowledge and experience are shared within the organization through online reports and internal presentations and trainings.

NMa highly rated

The Global Competition Review (GCR) has awarded the NMa 4 stars (out of five) in its annual rating of competition authorities in 38 countries worldwide. It puts the NMa in the same league as competition authorities from, for example, the UK and Australia. The NMa owes its position to its enforcement results and its good track record in appeal cases (in 2011), among other reasons.

International competition topics

In the European Competition Network (ECN), the NMa closely cooperates with European competition authorities and the European Commission. For example, the NMa in late-December helped draft a Resolution on the importance of competition and consumer welfare in reforming the Common Agricultural Policy. In addition, the NMa and other Member States contributed to various ECN sector studies such as on competition in the food sector.

Furthermore, following the evaluation of EU Regulation 1/2003 on the implementation of the prohibition of cartels and the prohibition of abusing dominant positions, two reports were drafted on investigative powers and on decision-making powers in the Member States to promote convergence.

- Investigative powers report
- Decision-making powers

The NMa also contributed to a Resolution in which the European competition authorities published a joint opinion on the material protection of leniency files in civil damages actions. The NMa actively contributed to the revision of the model leniency program of ECN. This program is the basis for the national leniency programs of all European competition authorities and the European Commission, the aim of which is to have cartel participants come forward and confess their cartel with their national competition authority or the European Commission in return for fine reductions.

International energy & transport topics

Together with regulators in neighboring countries, as well as at a European level, the NMa in 2012 worked towards the realization of the European internal energy market. Such collaborations take place within the Council of European Energy Regulators (CEER) and the Agency for Cooperation of Energy Regulators (ACER). Established in 2011, ACER is the independent European energy regulator. 2012 was its first full year for ACER.

One of ACER's main tasks is to draw up Framework Guidelines, which need to be fleshed out into European market rules (so-called network codes). These greatly help realize the internal market by 2014.

Geert Moelker, Manager of Electricity Markets and Regulation with the NMa, was elected vice-chairman of the Electricity working group at ACER, and of the same working group at CEER, the Council of European Energy Regulators, a collaboration of European energy regulators from all 27 European Member States. In this way, the NMa continues to play a leading role in the European market integration process. Moreover, the NMa has chaired the Gas Regional Initiative North-West, a collaboration of participants from 10 countries working towards regional market integration.

With regard to natural gas, bilateral collaborations with neighbor countries has led to an innovative pilot project for auctioning bundled transport capacity between gas networks of transmission system operator Gasunie Transport Services (GTS) and Gasunie Deutschland.

With regard to electricity, international collaborations have led to the introduction of implicit auctioning of intra-day transport capacity over the NorNed cable, which connects the Netherlands with Norway. Intra-day trade was also introduced over the BritNed cable, which connects the Netherlands with Great Britain. Increased cooperation among network operators has resulted in an additional 150MW of transport capacity as of December on the cross-border connection with Belgium, with a second increase by the same amount planned for January 2013. The increase in capacity on the Belgian border has been a very welcome move, because Belgium relies on power production in other countries during the winter months in order to be able to meet peak demand.

With the abovementioned expansion of capacity and trading options, market participants are able to increase their purchase and selling options. In addition, intra-day trade is crucial in coordinating trade with the production of energy from renewable sources such as solar and wind power.

Transport

In 2011, sixteen independent European rail regulators, including the NMa, founded IRG-Rail: the Independent Regulators Group. In 2012, the NMa's Office of Transport Regulation proactively participated in IRG-Rail working groups. Chaired by the German Bundesnetzagentur, and with the British ORR as vice-chairman, six position papers have been adopted. The main objectives of IRG-Rail are to harmonize regulation and to exchange knowledge among the European rail regulators.

3 Competition

The NMa enforces compliance with the Dutch Competition Act and with Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). General competition oversight is based on three pillars: the prohibition of cartels, the prohibition of abuse of a dominant position, and merger review. In addition, the NMa enforces compliance with the Dutch Act on Government and Free Markets since July 1, 2012.

The NMa takes enforcement actions when companies engage in cartel activities. This may be the case if they make price-fixing agreements or share markets. Such arrangements may lead to higher prices or less choice for consumers. The NMa tracks down cartels by carrying out investigations. Alternatively, it may come across cartels following a tip-off, or when a company confesses its participation in a cartel.

Companies that enjoy very strong positions in their markets (a dominant position) are not allowed to abuse such positions, for example, by excluding competitors from the market, treating similar buyers differently, or by setting high (or too high) tariffs. If abuse of a dominant position has been established, the NMa can take actions.

When two or more companies decide to continue as a single company, it is called a merger. Another situation is when one company acquires another company. Mergers and acquisitions (collectively called concentrations) may result in certain companies becoming so powerful on the market that other companies are left with fewer opportunities, and consumers with less choice. That is why the NMa assesses whether concentrations do not violate the Dutch Competition Act.

When companies do not comply with the Dutch Competition Act, it is considered a violation, which potentially carries sanctions. In most cases, the violators are imposed fines, the level of which can be determined by the NMa within the boundaries set by the Dutch Competition Act and the Policy Rules of the Minister of Economic Affairs. One of the factors that affect the level of fines is the seriousness of the violation in question. Fines can be no larger than 10 percent of a company's turnover. Instead of imposing a sanction, the NMa can also issue a commitment decision, which means the company in question avoids a sanction in return for a commitment from it, promising to adjust its behavior so that it complies with the Dutch Competition Act.

3.1 Agriculture, industry and construction

Agricultural sector

The agricultural industry includes farming, horticulture, cattle breeding, and fishing. This industry is characterized by a special dynamic. One of the agricultural industry's characteristics is that it can experience large price fluctuations. In 2009, the NMa carried out a study into margins in the production chain, from farmer to retailer. Another hot topic is the agricultural industry´s bargaining power. Both of these topics are widely discussed in other EU Member States as well.

In connection with the reform of the Common Agricultural Policy, a broader discussion is currently taking place about the applicability of competition rules in the agricultural sector. The Food Working Group of the European Competition Network (ECN) contributed to this discussion by adopting a resolution in which national competition authorities believe it is undesirable to drastically relax antitrust rules for the agricultural sector, because such a move would harm innovation and the competitiveness in the agricultural sectors across Europe, which face strong competition from producers outside of Europe.

Within the ECN, a report was drafted which gave an overview of all activities undertaken by European competition authorities in the agricultural sectors since 2004.

In addition, sustainability is getting more and more attention in the agricultural sector, among other sectors. As a result, questions arise about collaborations within production chains, and what room the Dutch Competition Act and European regulations offer for such collaborations. To give businesses more certainty about such questions, the NMa sat down with different parties and is currently working on setting up a knowledge bank on the website of ACM.

Industrial sector

Industry includes all industrial companies, ranging from glass manufacturers to food processing companies. In several submarkets of the industrial sector, only a few suppliers are active. In addition, companies often manufacture homogeneous products. These characteristics make it a very cartel-prone market.

Construction and construction-related sectors

In 2008, the NMa issued the final sanction decision in the 'come clean' operation in response to the construction industry fraud. In 2012, the Dutch Trade and Industry Appeals Tribunal (CBb) ruled in the final 'come clean' cases. Over 1,400 companies in the construction industry were fined for price-fixing agreements and market-sharing agreements. Awareness and attention for compliance with competition rules have increased since. However, despite this increase in awareness, the NMa still took enforcement actions a couple of times in recent years, for example, in the painting, demolition and road construction markets. The NMa will therefore continue to keep a close watch on the construction industry.

Activities in 2012

NMa conditionally cleared merger between Dutch manufacturers of frozen food snacks

In October 2012, it was announced that convenience food manufacturers Buitenfood (with its flagship brand Van Dobben) and Ad van Geloven (with its flagship brand Mora), decided not to go through with their planned merger.

Buitenfood and Ad van Geloven are the two biggest convenience food manufacturers in the Netherlands. The product range of both manufacturers include popular, traditional Dutch frozen food snacks, such as *kroketten* (cylindrical-shaped, deep-fried battered snacks containing ragout) and *bitterballen* (similar to kroketten, but then smaller and spherical-shaped). An investigation carried out by the NMa had revealed that the new undertaking would become too big in the supermarket segment for *bitterballen* and *kroketten*.

The NMa would have allowed the merger if Buitenfood transferred to a competitor for a period of six years the license for selling the brand Van Dobben for kroketten and bitterballen to supermarkets, a condition that was in line with a proposal both manufacturers had submitted themselves.

NMa refused license for acquisition of Dutch baking company

The NMa refused to issue a license for the acquisition of Dutch baking company A.A. ter Beek (with its flagship brand Bolletje) by rival baking company Continental Bakeries. By blocking the acquisition, the NMa prevented that the consumer price of rusk could have gone up.

The acquisition could have resulted in the creation of a very large producer with a market share of 70-80 percent that would have produced private-label rusk as well as the leading Dutch rusk brand Bolletje. Too little competition would have remained after the acquisition. In order to take away this concern, Continental Bakeries and A.A. ter Beek proposed to sell a rusk product line to a new competitor. The NMa did not accept this proposal because it remained uncertain whether a new competitor would actually become active on this market, and stay active.

NMa fined two cartels in agricultural sector

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 escaped a fine because it informed the NMa of the cartel's existence before any investigation had started. Another firm was involved in the cartel as cartel facilitator, organizing cartel meetings, and was fined EUR 5,000. This fine marked the second time the NMa fined a cartel facilitator.

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).

These undertakings made arrangements on the maximum area of land to sow silverskin onions. In order to prevent new undertakings from entering the market, the cartelists bought up assets of companies that had ceased operations. In addition, for several years, they kept each other informed about the silverskin onion prices that they would charge their customers in the canned food industry.

NMa fined Rotterdam-based demolition firms for illegal activities

Two Rotterdam-based demolition firms were fined for engaging in bid-rigging activities in four tender processes for demolition contracts in Rotterdam between 2005 and 2009. The two firms, Hofstede and Struijk Sloop en Grondwerken, were fined EUR 56,000 and EUR 42,000 respectively. In the past, the NMa already fined two construction companies, which were based in the southern part of the Netherlands, for similar activities.

A number of cases against five demolition firms are currently pending. The NMa expects to complete these cases in the second quarter of 2013. The NMa has sat down with the Dutch Association for Demolition Contractors (Veras) discussing measures to prevent anticompetitive behavior in tender processes, for example, by setting up a compliance program.

Construction industry: completion of all construction fraud cases

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 in companies in the construction industry. Over 1,400 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 'come clean' cases came before the courts, and 37 of which went all the way to the CBb. In the end, 82 percent of all cases were ruled in the NMa's favor.

Sustainability

As in 2011, sustainability was an important theme for the NMa in 2012. Various parties asked the NMa questions about whether specific sustainability initiatives passed antitrust muster. These questions were asked in part because of a letter from the Dutch State Secretary of Economic Affairs who called on undertakings to do so. In various discussions, the NMa was able to give many parties more certainty about their initiatives.

Because of the need for transparency about what is and what is not allowed, the NMa reviewed its previous decisions about sustainability initiatives, and explored what position it (and in the future, ACM) should adopt thereon. In addition, preparations were underway for a sustainability knowledge bank on the ACM's website. This knowledge bank and several guidelines for assessing sustainability initiatives will be published in early-2013.

Oversight of food sectors pays off according to report of European Competition Network

A report of the European Competition Network on enforcement activities in the food sector revealed that enforcement of competition rules in Europe has benefited farmers, suppliers, and consumers.

The study was prompted by questions from EU lawmakers, who wished to know more about enforcement actions by competition authorities in the food sector. In recent years, the agricultural sector was a priority for competition authorities across Europe.

The 27 Member States intensified their enforcement efforts since the 2007 food price crisis. Between 2004 and 2011, European competition authorities handled over 180 cartel cases and nearly 1,300 merger cases in food industries.

In said period, the Netherlands imposed fines on flour producers, among other undertakings. In addition, it imposed fines for cartel activities involving bell peppers, silverskin onions and onion sets. Furthermore, it looked into various acquisitions, including those involving national supermarket chains such as Super de Boer and Albert Heijn, and, more recently, Jumbo and C1000. Also, market studies were carried out into prices in the food production chain, the tomato industry, and the structure of the fishing industry.

3.2 Financial and business services

The financial and business service industry has been an NMa focus industry for years. With major players such as banks, insurance companies, investment companies and pension funds, this industry merits the NMa's attention because of its great economic importance and its market structure, characterized by relatively few players. If financial markets function well, businesses have access to, for example, loans against reasonable conditions. In addition, the economic crisis and changing legislation have made these markets more dynamic.

Furthermore, the complexity of some financial products makes it necessary to monitor the industry carefully. One of the ways the NMa does so is through a special team, the Financial Sector Monitor (MFS). MFS is a team within the NMa that carries out studies into competition in various financial markets. Its objective is to make market problems transparent, and to formulate measures that promote competition.

Service providers such as cleaning services and security firms, temping agencies, debt collection services, and consultancies can significantly help improve productivity of their customers. This market is extremely diverse and comprises widely divergent activities.

Several markets in this sector are characterized by a relatively limited number of big players that have a major impact on the dynamics of these markets. Another common feature often seen in these markets is a similar selection of services (for example in cleaning), which results in players predominantly competing on price. Such circumstances increase the risk of anticompetitive behavior. That is why the NMa focuses on this industry. Another reason is the sluggish productivity growth observed in the Dutch business service industry compared with other industries as well as from an international perspective. This could be an indication of suboptimal competitive conditions in this sector. More competition stimulates the sector to raise productivity. It is important that this sector remains dynamic and diverse. This can be realized through education, among other ways, for example of business service customers about how to recognize anticompetitive conduct in tender processes.

Activities in 2012

Shopping around for financial products pays off

Shopping around pays off, even for financial products, such as health insurances, car insurances or mortgages. Price differences are much larger than most people think. The NMa identified 15 of the most popular financial products consumers take out, and it calculated how much consumers could save by shopping around. The NMa's calculations reveal that a retired couple could save almost EUR 650 per year, and that a young couple with two children could save up to EUR 1,000 per year. The NMa published on Dutch consumer information website Consuwijzer.nl a savings overview of financial products that instantly shows consumers how much they could save per year if they shopped around before choosing a provider.

The NMa calculated the potential savings for eight household types. Each household type takes out a different mix of financial products. Total savings could be substantial, potentially thousands of euros, since financial products are often taken out for longer periods of time. Savings could be significant for individual financial products as well. On mortgages, for example, consumers could save between EUR 300 and 400 per year, depending on the type of mortgage. In some cases, consumers could even save up to EUR 800 per year. The

NMa found out that, for some products (multi-trip travel insurances, personal-property insurances, and building insurances), the price of the highest provider can be twice as high or even triple as high as the price of the lowest provider.

NMa: all real estate agents should be treated equally on Funda

All real estate agents should be treated equally on Funda, the biggest real estate portal of the Netherlands. This is one of the recommendations the NMa had made in a market study on competition in the Dutch real estate market. Funda is largely owned by the Dutch Association of Real Estate Agents (NVM).

Real estate agents that are NVM members are given preferential treatment on Funda. One example thereof is that listings of NVM real estate agents are always displayed higher in Funda search results than listings of non-NVM real estate agents. Having a high position in the search results on Funda is considered important by many a home seller. As a result, non-NVM real estate agents miss out on potential clients. Furthermore, non-NVM real estate agents pay a higher tariff to have their listings with detailed information displayed on Funda.

The NMa has additionally found that real estate portals exert little competitive pressure on real estate agents because of the ownership relationship between NVM and Funda. After all, real estate agents have little interest in developments of real estate portals that eat away at their revenues. For example, Funda does not accept listings of individual home sellers, while many other portals do. In addition, the NMa expects that real estate portals will assume some of the specific duties that real estate agents normally perform, such as viewing homes online. This increases the options for consumers when selling or buying homes.

Consumers could save on real estate agent costs by comparing agents, and by bargaining over services and tariffs. Many consumers find it hard to compare agents because little public information is available on the quality and prices of individual agents.

Following the market study, the NMa sat down with NVM to discuss possibilities of improving competition in the real estate agent market, and of making the entire selection of listings on Funda more transparent for consumers.

Quality of price comparison sites must be improved

Price comparison sites can be extremely useful tools for consumers when choosing financial products, and they can help promote competition among financial service providers, provided their quality is high. However, following a survey, the NMa finds the quality of most price comparison sites for savings products and travel insurances substandard. These sites have no added value to consumers if they are incomplete, incorrect and/or not transparent. The NMa recommends consumers to consult multiple price comparison sites. In addition, it is advisable to check the website of the prospective provider (of that savings account or travel insurance) whether their information matches the information on the price comparison site.

The survey revealed that on at least 6 in 10 price comparison sites, a substantial share of the information about savings interest rates or insurance premiums is inaccurate. In addition, it turned out that 3 in 10 sites for savings products and 3 in 4 sites for travel insurances displayed too few products to make a proper comparison. Furthermore, about half of the price comparison sites are not transparent about who their owners are or what their business model is. The NMa believes that it would be best if these price comparison sites improved their

businesses by displaying more products, by checking whether the information they present is accurate, and by updating the prices of all products on a daily basis. Another option to improve the quality of price comparison sites is the adoption of a code of conduct. Such a code of conduct could also be used for other price comparison sites in other industries.

The NMa evaluated the quality of 21 price comparison sites for savings products and 17 sites for annual multi-trip travel insurances based on various criteria, such as accuracy, completeness, and transparency. Only two travel insurance comparison sites achieved top marks on all criteria, while none of the savings products comparison sites did.

NMa cleared acquisition of Friesland Bank by Rabobank

Following an emergency decision issued by the NMa, Rabobank, one of the largest banks in the Netherlands, was allowed to acquire the activities of rival bank Friesland Bank. The emergency decision guaranteed the continued operation of Friesland Bank's business activities, thereby taking away concerns among customers, consumers, and the financial markets. The NMa analyzed the market situation and the acquisition's potential effects on competition. The NMa came to the conclusion that no additional conditions were required.

Furthermore, the NMa is concerned about the market structure of the Dutch banking industry. In 2013, the NMa launched a study into possible improvements to the market structure such as taking away unnecessary barriers to entry for new banks to become active in the Dutch market.

Sellers are not statutorily required to notify of mergers

In May 2010, the NMa imposed a fine on the State of the Netherlands of EUR 782,000 for failing to notify of a concentration on time. Under the Dutch Competition Act, it is prohibited to carry out concentrations of a certain size without notifying the NMa of the intention thereto first and waiting for at least four weeks. The concentration in question concerned the transfer of the State´s shares in Fortis Corporate Insurance to British insurance company Amlin in July 2009. The State in June 2010 filed an objection against this decision, claiming that sellers are not statutorily required to notify the NMa of a merger. On October 20, 2010, the Advisory committee on Administrative Appeals under the Competition Act (BAC) published its opinion stating that the actual text of the Dutch Competition Act does not literally say that sellers are statutorily required to notify of concentrations. In another case, the Dutch Trade and Industry Appeals Tribunal (CBb) on February 24, 2012 ruled that sellers indeed are not statutorily required to notify of mergers. The NMa on March 26, 2012 subsequently allowed the State´s objections, and retracted the imposed fine.

Art dealers' commitment increases competition at art auctions

Art dealers will inform the auctioneer when an individual art dealer is unable to buy a piece of art on his own and is therefore bidding together with other dealers. Five art dealers officially informed the NMa of their commitment to this new code of conduct. The NMa had launched an investigation into possible cartel activities in art auctions, particularly painting auctions. In addition, art dealers promised not to coordinate individual bids. And they also said they would no longer resell pieces of art among each other in cases where they placed joint bids or were part of a bidding combination for the pieces of art in question.

The commitment is expected to make collaborations between art dealers more transparent, and it prevents strategic collaborations, for example, to obtain paintings at the lowest possible price. Sellers of paintings thus benefit from this commitment since it will result in better prices. It additionally makes clear what is and what is not allowed, which offers guidance to all dealers on how to act at auctions.

The NMa investigation revealed that, in some instances, art dealers had collectively placed bids on paintings. This potentially reduced the number of bidders at auctions. When paintings were sold, they would sometimes be resold among the joint bidders. The code of conduct put forward by the art dealers acts as an incentive for them to act independently at auctions, and to compete with one another if an art dealer wishes to obtain a piece of art by himself. However, joint bidding at auctions remains possible, despite this proposed commitment. Joint bidding can sometimes increase the number of bidders at auctions, and can thus be beneficial to competition.

The commitments have already been declared binding. The NMa will check whether dealers comply with it.

NMa fined an art dealer for non-cooperation in an investigation

The NMa imposed a fine of EUR 15,000 on an art dealer for non-cooperation in an investigation. In this case, the firm in question violated the statutory obligation to cooperate in NMa dawn raids by hiding and destroying potential evidence.

The NMa considered the art dealer´s actions a very serious form of non-cooperation. The NMa has already imposed fines for non-cooperation many times before. The level of such fines is based on the firm´s turnover in the year that precedes the fining decision.

NMa emphasized the importance of public tendering in cases of co-insurance

Co-insurance refers to the joint assumption of risk between various insurers. Co-insurance is often used in relatively high-risk cases such as insuring buildings or ships. Commissioned by the NMa, the Tilburg Law & Economics Center (TILEC) conducted a game-theoretic analysis of the co-insurance market. Its findings revealed under what circumstances co-insurance led to lower premiums for clients than in cases where only a single insurer assumed the risk. The analysis additionally revealed that the more insurers placed bids, the lower the client's premium became. However, TILEC also pointed out that the details of the tendering rules can significantly affect the final level of premiums.

The NMa recommends buyers of such insurances to put these out to public tender rather than to non-public tender in order to maximize the number of bids from insurers.

3.3 Commerce, services and transport

Various developments took place recently in the commerce, services and transport sectors. For example, liberalization of the public transport market has resulted in new entrants. However, this does not mean that this market functions perfectly at the moment. Granting authorities increasingly put out bigger and more multi-modal tenders. Transport undertakings subsequently indicate they can only place strong bids if they work together. In that context, the central role of and the dependence on Dutch Railways NS trigger much debate. Other transport undertakings claim NS has a more favorable starting position. Similar discussions involving the position of Amsterdam airport Schiphol and the Port of Rotterdam Authority are taking place in their respective markets. When dealing with these questions, this division works closely together with the Office of Transport Regulation.

The economic crisis has hit the freight transport market harder than it hit the passenger transport market. As a result, market participants are inclined to raise prices through capacity restrictions. With such moves however, the market passes on the pain of the crisis to other sectors and to consumers. It reduces the incentive to be efficient and innovative. Such behavior may harm the international competitive position of the Netherlands, being an open economy.

The crisis is very much palpable in the commerce and services industries. In addition, these have to deal with profound changes in the markets and with economies of scale, since the Internet is becoming a bigger sales and distribution channel. This is reflected in an increase in the number of bankruptcies and concentrations, particularly among small and medium-sized businesses. Governments have to cut spending drastically as a result of the crisis, and are looking for new ways to finance their expenditures. This is an incentive for governments to engage in commercial activities at the risk of pushing out private firms.

Transport

In the transport industry, the NMa completed various investigations, including one into cartel activities in the inland-shipping industry, which resulted in increased awareness among market participants about non-anticompetitive ways to make the industry ready for the future. The NMa made an intervention after transshipment company ECT called on its competitors and the Port of Rotterdam Authority to suspend or postpone the expansion of the Port of Rotterdam (*Maasvlakte 2* Project). In the end, these parties said in the media they would not answer that call. Another intervention by the NMa led to a commitment made by an association for car salvage companies that its members would place individual bids in tenders put out by emergency service call centers.

Furthermore, the NMa was actively involved in antitrust questions regarding the Dutch rail infrastructure network. For example, it attached strict conditions to the transfer of journey information services from Dutch infrastructure manager ProRail to Dutch Railways NS, which was made at the request of the Dutch House of Representatives and the Minister of Infrastructure and the Environment. In addition, the NMa regularly offered the Ministry of Infrastructure and the Environment advice on antitrust questions in the transport sector.

Commerce and services

In 2012, the NMa took a number of influential concentration decisions to protect competition. These decisions have had a significant impact on the composition of shopping streets across the Netherlands, particularly on supermarkets and sporting goods stores. An investigation in the travel industry in early-2012 led to an

amendment of the General Agency Conditions of the Dutch Association of Travel Agents and Tour Operators (ANVR), enabling ANVR's members to compete on price more effectively, because the amendment allowed them to pass on commissions to consumers through discounts on trips. And finally, the Royal Dutch Notarial Society (KNB) in 2012 amended its rules of conduct, in response to a survey by the NMa that sought to take away any anticompetitive elements from these rules of conduct.

Activities in 2012

NMa fines three taxi firms and six executives for cartel activities

Dutch taxi firm RMC together with rival firms IJsselsteden and BIOS engaged with each of them separately in bid-rigging arrangements involving taxi services in the greater Rotterdam area, which, according to the NMa, fall under the cartel prohibition. These firms rigged bids for contracts for transporting students, seniors, disabled individuals, and the sick. RMC was involved in both arrangements, and was imposed two fines: EUR 4,564,000 and EUR 3,741,000. The business units of rival firm BIOS that were involved were collectively fined EUR 643,000. The NMa imposed a much smaller fine of EUR 1,000 on IJsselsteden, because it went bankrupt in November 2010. 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.

RMC and IJsselsteden agreed on defining ´home markets,´ which each of them would respect. For various situations, they made arrangements on which of them was allowed to contact what clients, and when they would sit down and discuss whether or not to submit bids. Moreover, RMC and IJsselsteden agreed to decline any offers from competitors to be their subcontractors. This latter arrangement lasted from December 18, 2007 until August 27, 2010.

RMC, BIOS and a joint subsidiary agreed not to place competing bids in tender processes in the greater Rotterdam area where one of these three firms was already active. They additionally agreed to hold joint meetings in order to, among other things, share contracts amongst themselves prior to the relevant tender processes. This shorter arrangement lasted from April 17, 2009 until March 1, 2011.

The fines were imposed in separate NMa fining decisions, dated 20 November 2012. Virtually all parties have filed objections against these decisions. After objection proceedings, parties still have the option of filing appeals against these decisions.

Transfer of journey information service from infrastructure manager ProRail to Dutch Railways NS conditionally approved

The NMa has, under strict conditions, approved the transfer of journey information services from Dutch infrastructure manager ProRail to Dutch Railways NS. NS has guaranteed that its competitors will have access to journey information under the same conditions as will have NS. It has thus been ensured that all riders in the Netherlands will be offered the same quality of journey information, irrespective of which public transport company they choose. In addition, NS cannot pass on too high costs to its customers. After all, regional operators are dependent on their biggest competitor NS for this service. In addition, it will be ensured that NS cannot access business-sensitive information of its competitors. These steps will thus make sure that competition on the transport market will not be restricted as a result of this transfer.

This transfer was prompted by a commitment made by the Minister of Infrastructure and the Environment in 2011 to the Dutch House of Representatives to bring all information services for train riders under one roof. As a result, NS becomes responsible for all monitors and service announcements at train stations in the Netherlands.

NMa: no signs that Amsterdam airport Schiphol abused its dominant position

The NMa found no signs that Amsterdam airport Schiphol abused its dominant position as an airport by influencing national planning and zoning decisions and processes. A complaint claiming such abuse, filed with the NMa by land developer Chipshol, was turned down after a detailed investigation. This decision was appealed.

Chipshol claimed that Amsterdam airport Schiphol systematically succeeded in preventing Chipshol from developing its land. One piece of land in particular is the Groenenberg area, which Chipshol is the owner of. Schiphol allegedly influenced local and national governments improperly.

The NMa determined that Schiphol had indeed taken steps to prevent Chipshol from developing the Groenenberg area. In addition, Schiphol did try to keep the land reserved for a proposed additional runway intact and undeveloped. Having conducted a detailed investigation, the NMa, however, did not find any concrete signs that Schiphol's actions were solely meant to frustrate Chipshol as a competitor on the aviation-related real estate market.

More freedom for notaries to compete with one another

The Royal Dutch Notarial Society (KNB) dropped the prohibition on directly recruiting potential clients, the requirement to 'advertise objectively,' as well as the prohibition on charging rates below cost price. In addition, the KNB adjusted and clarified a number of rules of conduct, including the ban on commissions, which had been worked out in greater detail in the new Policy Rule on Commissions. According to the NMa, competition between notaries is expected to get a boost, while, at the same time, the notaries' core values are done justice: independence and impartiality.

The NMa had approached KNB before about potentially anticompetitive effects of some of its rules of conduct. KNB members, all notaries in the Netherlands, must comply with these rules. Since 2004, the NMa has looked into the self-regulation efforts of various professional groups. In 2006, the trade associations for architects, BNA and BNSP, adjusted their self-regulation policies. In June 2007, the NMa published its final report on the self-regulation efforts of accountants. In 2011, the Netherlands Order of Accountants and Administration Consultants (NOvAA) adjusted its code of conduct.

Supermarket acquisitions

NMa conditionally cleared acquisition of Dutch supermarket chain C1000 by rival chain Jumbo

The NMa conditionally cleared the acquisition of more than 400 locations of Dutch supermarket chain C1000 by rival chain Jumbo. Supermarket chain Jumbo decided to adjust its original acquisition plans after the NMa had found that the planned acquisition could restrict competition in 18 local or regional markets. Selling locations in these markets ensured that enough options for consumers would remain after the acquisition. The NMa did

not see any antitrust concerns at a national level, as Jumbo's post-acquisition market share would still be relatively modest, and because it would continue to face competition from strong competitors.

Acquisition of locations of supermarket chain Jumbo by two rivals cleared
The NMa cleared the acquisition of 82 locations of Jumbo by rival supermarket chains Ahold and Coop. In a previous decision, the NMa had ordered Jumbo to sell 18 locations in order to have its acquisition of supermarket chain C1ooo cleared. These 18 locations are part of the abovementioned acquisitions.

Coop was allowed to acquire the 54 Jumbo locations on the condition that it sold its location in the northern rural town of Schoonebeek to a competitor first. This condition guaranteed that consumers in Schoonebeek would have enough options after the acquisition. With regard to Ahold's acquisition of the 82 Jumbo locations, the NMa did not find any antitrust concerns at a local level. In the post-acquisition situation, local market shares were not expected to exceed 50%. In addition, enough competitors are active in these markets. At a national level, the NMa did not expect either of these acquisitions to cause any antitrust concerns. National market shares of Ahold and Coop would only marginally increase, and strong competitors remained active.

NMa: positive about developments in inland-shipping industry
The NMa in 2012 received indications pointing to continued attempts by a small group of inland-shipping firms to make price-fixing agreements or price recommendations as a way of dealing with the economic crisis. The NMa warned the inland-shipping industry such efforts are illegal under the Dutch Competition Act.

An NMa investigation revealed that various inland-shipping firms were under the impression that European rules (EU Regulation 169/2009) allowed them to set up a cartel. The NMa reiterated that price-fixing agreements or temporary withdrawal of capacity, even in collaborations that represent less than 500,000 tons of loading capacity, are not allowed. In its investigation, the NMa did not establish a violation, because the plans of the inland-shipping firms had failed. That is why the NMa had closed its investigation into said agreements.

At the same time, the industry launched other initiatives that help shipping firms emerge from the crisis in better shape. One such initiative involved making the engines of ships more sustainable. Another example was a business training for inland shippers, which was developed in cooperation with the Dutch Banking Association (NVB). At the request of the Inland Shipping Transition Committee, which is a collaboration of the most important trade associations in the inland-shipping industry, the NMa evaluated these initiatives. The NMa was positive about these initiatives because not only were they innovative, they also raised quality without being anticompetitive.

Acquisition of retail service provider Intres by rival Euretco conditionally cleared
The NMa conditionally cleared the acquisition of retail service provider Intres by rival Euretco. Both parties offer supporting services to independent retailers. In addition, they each commercially exploit a sports store franchise. The NMa voiced antitrust concerns over the possible market for sports store franchise services, and over local markets for sporting goods. In response to these concerns, both parties decided to sell the SPORT 2000 franchise. The NMa investigation revealed there would be no antitrust problems on other markets in which Euretco and Intres were active. The NMa thus cleared the acquisition.

NMa called on regional transport undertakings to be more transparent

The NMa closed its anti-cartel investigation into the allocation of costs related to the student smart card in regional transport among regional transport undertakings. The investigation had not produced any evidence indicating the transport undertakings involved had made any anti-competitive arrangements. However, the NMa did ask VSS (the association in which regional transport undertakings in the Netherlands that transport students are organized) to publish all information regarding revenue and cost projections and realizations related to the student smart card. In addition, the NMa found that VSS members received information on student smart card revenues and costs, whereas non-members were not automatically given the same information. They were thus put at an informational disadvantage. Furthermore, VSS membership criteria were not clear, leaving prospective members in the dark about exactly what criteria they had to meet in order to qualify for VSS membership.

3.4 Network industries and media

In so-called network industries such as energy, telecommunication, postal services and water, market participants often enjoy dominant positions. The NMa makes sure that such positions are not abused. Network industries are characterized by sector-specific regulation, which necessitates consultations with other regulators.

In the telecommunication, postal and media industries, the NMa deals with two other regulators: the Netherlands Independent Post and Telecommunications Authority (OPTA), and the Dutch Media Authority. Since 2000, the NMa and OPTA have worked together according to a Cooperation Protocol. Behavior that is in violation of both the Dutch Telecommunications Act and the Dutch Competition Act is investigated by OPTA first. In addition, the network industries and media division keeps in contact with the Radiocommunications Agency Netherlands. In 2012, most of the attention was focused on the fixed and mobile telephony markets, both from a concentration point of view as well as from an investigative and research perspective.

With regard to energy, this division obviously works closely together with the Office of Energy Regulation. The latter is primarily concerned with regulation of the industry, while the division comes into action when a violation of the Dutch Competition Act is detected.

Activities in 2012

NMa accepted measures put forward by Amsterdam universities

The NMa ended its investigation into VU University Amsterdam (VU) and the University of Amsterdam (UvA). Both universities stated they would not coordinate tuition fees for a second college degree with one another nor with other Dutch universities, unless joint programs are concerned. In addition, they committed themselves to inform the NMa in the years ahead about how they would determine tuition levels. The NMa decided to accept this commitment as it would take away potential antitrust concerns that had been identified in the investigation.

Since the 2010-2011 academic year, students must pay the so-called institutional tuition fee if they wish to pursue a second college degree after already having completed a first degree. The statutory tuition fee does not apply to this category of students. Universities enjoy more freedom to determine the level of the institutional tuition fee themselves. At most universities, institutional tuition fees are often considerably higher than the statutory tuition fee.

NMa clears acquisition of Dutch soccer broadcasting rights by Fox

The NMa cleared the acquisition of Eredivisie Media en Marketing (EMM) by Fox International Channels (Fox). With this move, Fox gains a majority stake of 51 percent in EMM, which commercially exploits the broadcasting rights of the top soccer league in the Netherlands on behalf of the top soccer clubs. The clubs in the top league will receive EUR 80 million per year through 2025.

The NMa conducted an investigation into the acquisition's impact on the commercial exploitation of the broadcastings rights of the match summaries and the live matches. 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. According to the NMa, competition between television stations will increase as consumers will have a wider selection of stations. After those six years, the soccer clubs must put out the broadcasting rights to tender. All television stations will then be able to compete for the rights to the match summaries again. The acquisition will not have any effects on the commercial exploitation of the broadcasting rights of the live matches through the Eredivisie Live stations. EMM made a commitment to the NMa that it will offer these stations to television providers on cable, over satellite or the air under the same conditions (non-discrimination).

NMa: KPN's acquisition of Reggeborgh's service providers cleared

In October 2012, the NMa gave Dutch telecom company KPN the green light to acquire four service providers (SPs) of Reggeborgh: Concepts ICT, XMS, Edutel and KickXL. These four SPs, as well as KPN, offer television, internet and fixed telephony services to consumers through Reggefiber's optical fiber network. Reggefiber is a joint venture of KPN and Reggeborgh.

In the assessment of this acquisition, the NMa worked closely together with the Netherlands Independent Telecommunications and Post Authority's (OPTA). The NMa cleared the acquisition because enough competition is expected to remain in the market. KPN not only competes with service providers through Reggefiber's fiber-optic network, but also with cable companies and various other providers through the copper network. Furthermore, consumers can switch providers regardless of whether they offer their services through fiber-optic, copper or cable. KPN's competitors will be able to access KPN's copper network, as well as to Reggefiber's fiber-optic network. This means that they are able to offer consumers their own services, and it means that, besides the cable companies, multiple providers compete with KPN, such as Tele2, Vodafone and T-Mobile. All providers offer a comparable selection of television stations.

Dutch telecom company KPN adjusts its business phone contracts

In September 2012, Dutch telecom company KPN made a commitment to the NMa that it would adjust its business contracts by making it easier to cancel them. Competitors of KPN would thus be more able to compete with KPN. The NMa believed that competition on the business fixed-telephony market would get a boost because of these adjustments.

In recent years, KPN introduced new contract terms for its business customers for fixed-telephony with regard to its so-called 'Zakelijk BelBasis' contracts. Numerous business customers with multiple phone contracts thus faced different termination dates. It became much harder for these customers to accept offers from competitors. KPN solved this issue by giving its customers the option of terminating all of their contracts on a single end date for all connections. All of KPN's business customers have been informed of these changes in writing.

KPN called off take-over of CAIW

In April 2012, Dutch telecom company KPN and CIF, owner of Dutch cable company CAIW, withdrew their license application for the acquisition of CAIW by KPN. KPN and CIF came to this decision after the NMa had indicated that it, even after an additional investigation, continued to have concerns about the strong position KPN would secure in CAIW's catchment area. The NMa's concerns primarily related to reduced consumer choices for television services, internet access and landline telephony services.

3.5 Health care

The health care industry consists of many different providers, including subsidized health care providers, hospitals, rehabilitation centers, general practitioners, physiotherapists, medical specialists, pharmacies, and medical-equipment manufacturers. In addition, health insurers play a critical role in the industry. They are given a leading role to realize health care that is affordable and of high quality.

In this industry, the NMa uses many different instruments. For example, it offers the industry a lot of guidance by releasing guidelines or brochures, market scans, presentations, and discussions (formal and informal ones). When possible violations have been detected, the NMa sometimes seeks to enter into a dialog with the industry, for example through warning conversations or commitment decisions. In cases of serious violations, the NMa intervenes by imposing sanctions.

Furthermore, with its merger control activities, the NMa prevents competition on several health care markets from becoming impeded as a result of a merger, for example, because of the possibility of harmful dominant positions being created.

Activities in 2012

Hospital mergers in 2012

Mergers that did not require licenses

In 2012, the NMa reviewed various hospital mergers. One of these concerned the merger between Foundation Scheper-Bethesda hospital, part of the Leveste Middenveld care group and Foundation Christian Hospital Refaja in the northern Dutch provinces Groningen and Drenthe. In the neighboring province of Friesland, the Nij Smellinghe Hospital merged with Zorggroep Pasana. In Amsterdam, two hospitals, Sint Lucas Andreas and Onze Lieve Vrouwe Gasthuis, announced they wished to merge, as well as the Vlietland Hospital and the Sint Franciscus Gasthuis in the greater Rotterdam area.

The NMa decided that all of these mergers did not require licenses, since these would not negatively affect competition. Enough other hospitals remain active in these areas, which patients can go to if they are dissatisfied with the offerings of the merged hospitals. These mergers would not lead to any dominant positions

Mergers that did require licenses

In 2012, the NMa decided that licenses were required in several hospital mergers such as the merger between the TweeSteden hospital and the St. Elisabeth Hospital in the southern city of Tilburg, and the merger between the Orbis medical and care concern Medisch met Zorgconcern en Atrium Medisch Centrum Parkstad in the southern province of Limburg. In early-2012, the NMa decided a license was also required for the merger between Stichting Interconfessioneel Spaarne Ziekenhuis and Stichting Kennemer Gasthuis in the western cities of Hoofddorp and Haarlem. In all three mergers, competitive pressure that each of them exerted on the other would be eliminated, thereby potentially impeding competition significantly, and thus possibly affecting affordability, diversity and quality of hospital care.

In 2012, the NMa carried out a more detailed investigation in the license phase into these mergers´ potential effects. In the end, all three mergers were given the green light. It is the health insurers' job to bargain for the best price-quality ratio possible on behalf of their clients. The key motivation behind these clearances was that, since 2012, health insurers have had more options and incentives to bargain hard when buying health care services, and they themselves were optimistic about their ability to do so. If the hospitals involved let expenses spin out of control, or if their quality levels leave much to be desired, they risk that health insurers will buy fewer services from them or that they will stimulate their customers to go to other hospitals. There have already been numerous examples of selective buying behavior by insurers based on quality criteria. As an additional safeguard for hospital care prices, the NMa agreed to a price ceiling at these hospitals.

Mental health care

An initial investigation into the planned acquisition of mental care provider Emergis by rival provider Parnassia Bavo carried out by the NMa revealed that competition may be restricted as a result thereof. The NMa thus ruled that both providers had to apply for a license first before going through with the acquisition. Emergis is the biggest provider of mental health care services in the southwestern Dutch province of Zeeland. The NMa found that Parnassia Bavo is currently one of Emergis' major competitors through its PsyQ location in the city of Goes. One of the acquisition's results would be PsyQ's no longer being an independent alternative for patients seeking outpatient mental health care for adults and seniors. In addition, Parnassia Bavo enjoys a strong position in the adjacent province of South Holland. With the acquisition, Parnassia Bavo would no longer be a major competitor to Emergis. This could affect affordability and quality of mental health care in Zeeland. In response to the NMa's conclusion, both parties decided not to go through with the merger, and therefore declined to apply for a license.

Sector study on medical equipment

In February 2012, the NMa released the conclusions of a sector study on medical equipment. The study gave more insight into the structure and functioning of the intramural markets for medical equipment such as artificial hips, x-ray machines, stoma devices, and surgical masks. Such insights resulted in the recommendations for health care providers to professionalize by joining forces, and by opting for public tender processes.

Guidance in the primary care market

In the primary care market, the NMa provided guidance in several ways to explain the boundaries between collaborations that are permitted and anticompetitive arrangements. The role that health insurers have as buyers is a critical one in that context. The NMa and the Dutch Healthcare Authority (NZa), for example, discussed with paramedic associations about the problems they encounter when contracting health insurers, and about the desire to deal with them collectively. The NMa and NZa believe that the way health care contracts are signed selectively nowadays dovetails with the influential role that insurers have and should assume in order to keep health care in the Netherlands affordable, accessible and of high quality in the future. In that regard, the NMa and NZa find it important for the functioning of the system that health insurers continue to distinguish themselves from one another when buying health care services. That is why the NMa also provided the health insurers with guidance about the limits and opportunities when buying collectively. In addition, the NMa intervened, together with the NZa sometimes, in the primary care market when new entrants faced barriers to entry.

NMa decided to retract fines on seven home care institutions

Home care providers in Dutch regions Kennemerland and 't Gooi

Following two rulings by the District Court of Rotterdam, the NMa decided not to impose fines on home care providers Stichting Viva! Zorggroep and Stichting Zorgbalans, Stichting Thuiszorg Gooi en Vechtstreek, Stichting Vivium Zorggroep and Stichting Hilverzorg. The Court argued that the NMa insufficiently demonstrated that these home care institutions were actually able to compete with one another between 2005-2007. The Court was thus not convinced that any alleged agreements (to respect each other's catchment areas) were actually capable of restricting competition. The Court did give the NMa the opportunity to launch a more detailed investigation. However, the NMa did not believe such an investigation would be useful, particularly considering the period that would have been investigated, which was 2006-2007.

Stichting Vierstroom and Stichting Careyn Zuwe Aveant

In a third case, the NMa also decided not to impose fines, having reconsidered the case. The two undertakings in question, Vierstroom and Careyn, filed objections with the NMa, which raised doubts about the NMa's previous interpretation of the agreement both home care providers had signed. As a result thereof, the NMa was no longer able to say with certainty whether these home care providers actually made arrangements aimed at eliminating mutual competition.

Awareness about competition increases in home care industry

The NMa has observed that more and more home care providers have become aware of competition and of the rules that come with it. The NMa therefore no longer considers the home care industry a focus industry.

Other activities and results

New steps in GP care

The Dutch National Association of General Practitioners (LHV) and the regional Circles of LHV made a commitment to the NMa to no longer negotiate with health insurers on behalf of their members on, among other things, tariffs of treatments. In addition, they will no longer give GPs advice on whether or not to sign contracts offered by health insurers. As a result of their commitment, GPs and health insurers alike will be able to meet the individual needs of patients better, such as extended opening hours and introducing new forms of health care.

The NMa welcomed LHV's constructive attitude. Furthermore, LHV will also establish a compliance program, which explains what staff members should do if they encounter situations where they suspect a violation of the Dutch Competition Act.

Market-wide approach

The LHV commitment dovetails with the NMa's market-wide approach to GP care. The NMa has looked for effective solutions to various problems. In early-2012, the NMa imposed a fine on LHV and on two of its staff members for issuing recommendations to restrict the freedom of new GPs to establish their practices wherever they want. LHV filed objections against these fines. In addition, the NMa took steps, following consumer indications that they had a hard time trying to switch GPs (or were not able to do so at all). The NMa informed the GPs in question that the freedom of choice always comes first, and that they cannot compromise that freedom by making arrangements amongst themselves. The GPs involved indicated that they shared this vision, and that they would take action if so needed.

Finally, the NMa held several informal discussions with GPs (individually and collectively), helping them with questions about the Dutch Competition Act. For example, the NMa and a regional GP organization discussed about the possibilities for collaborations between GPs.

3.6 Sustainability

Like in 2011, sustainability was a key priority for the NMa in 2012.

The NMa received questions from various stakeholders about whether certain sustainability initiatives were allowed under competition law. These questions had been submitted following a call for sending such questions to the NMa by the State Secretary of Economic Affairs. In personal discussions with some of these questioners, the NMa was able to give more clarity.

Because of the need for transparency about what is and what is not allowed under competition law, the NMa examined its previous rulings on sustainability initiatives, and determined what position the NMa, and in the future ACM, should adopt on such issues. In addition, a Knowledge Bank on Sustainability is being developed on ACM´s website, with which businesses are able to determine themselves whether or not a collaborative arrangement is allowed. It is scheduled to be launched in early-2013.

3.7 Government and free markets

The Dutch Act on Government and Free Markets came into effect July 1, 2012. This act, which is an amendment of the Dutch Competition Act, offers a code of conduct that governments should comply with in order to prevent unfair competition with private undertakings when they themselves or through their (government) organizations engage in economic activities. A transitional period of two years for most provisions in this code of conduct applies to economic activities that had started before July 1, 2012. Governments can use a transitional period to bring their current operations in line with this new code of conduct.

Government and Free Markets Team

The NMa got off to a flying start in its new task concerning the enforcement of the Dutch Act on Government and Free Markets. A special team was created to enforce compliance by governments with the code of conduct. This team educates governments and businesses about the new rules, and can take enforcement actions in case of violation thereof.

Baseline measurement

The NMa in 2012 performed a baseline measurement aimed at gauging the level of awareness of the Dutch Act on Government and Free Markets among governments and businesses. In addition, the NMa wanted to get a better picture of the severity and scope of the problems businesses and governments experience. The survey for the baseline measurement was completed in 2012. Its results will be published by the NMa.

3.8 The NMa and the courts in 2012 - Competition

In 2012, the courts and the Dutch Trade and Industry Appeals Tribunal (CBb) ruled in the NMa's favor in 54 percent of the rulings. This percentage is lower than in 2011, when it was in 83 percent of the rulings. The last appeal cases against the NMa´s fining decisions as part of the ´come clean´ program in the construction industry were completed this year. In addition, the courts and the CBb also addressed a number of fundamental issues such as the scope of the right to remain silent, and the enforcement of antitrust rules in the health care sector.

Last of the construction fraud cases

All cases in the construction industry fraud were completed in 2012 by the Dutch Trade and Industry Appeals Tribunal (CBb), the highest court in antitrust matters in the Netherlands. The District Court of Rotterdam issued the first rulings in 2008. In total, 57 so-called 'come clean' cases were brought to court, of which 37 were taken all the way to the CBb. In 82 percent of all cases, the court ruled in the NMa's favor. In several cases, the fines were lowered because the NMa had exceeded the reasonable time limits, mostly as a result of protracted legal proceedings. Such cases were not counted as losses by the NMa.

In order to be able to handle the enormous amount of these ´come clean´ cases (more than 1,400 construction firms), the NMa created a special fast-track procedure and special fining system. This strategy made it possible to process many cases in a relatively short amount of time. The vast majority of the ´come clean´ cases have been completed in the administrative phase. A relatively limited number of construction companies filed objections and appeals. The NMa has seen that the abovementioned strategy has helped realize the widely-desired mentality shift in the construction industry. Wherever the NMa still comes across conduct that results in anticompetitive arrangements, it takes firm action against it, especially in case of recidivism.

The CBb approved the NMa´s approach. The NMa has the freedom to make its own choices, and to interpret the sanction procedure and fining policy differently. The court evaluates whether the NMa´s choices are reasonable and proportional, and whether the construction companies had been informed in advance properly.

A small number of construction firms did not opt for the fast-track procedure, because they believed they had not committed any violation. The regular procedure was adopted in these cases. In the regular procedure, the evidence for the violation can be examined. In several of these cases, the court reversed the fines because of insufficient evidence. The 2012 rulings, particularly the CBb rulings of 5 April 2012 (LJN: BW1393) and of 13 December 2012 (AWB 11/241 and AWB 11/260), reveal that the court attaches great value to pieces of evidence that were drawn up at the time of the violation. Pieces of evidence that were drawn up afterwards since must be supported by other compelling pieces of evidence. In most cases in the regular procedure, the fines have been upheld. See also the CBb rulings of 12 July 2012, (LJN: BX6386) of 13 December 2012 (AWB 11/241) and the 2011 CBb rulings.

Finally, the CBb rulings of 28 August 2012 (LJN: BX7256 and BX7257) showed that the court also critically assessed whether the NMa´s investigation report clearly explained what the violation was, and what it had been based upon. Firms had to be able to base their defense on clearly stated allegations. In its fining decisions,

the NMa could not go beyond the scope of the statements of objections. In these two rulings, the NMa did exceed that scope, according to the CBb.

Sanctions/Abuse

Applicability of the right to remain silent to former employees

The CBb ruled on the fundamental question of the scope of the applicability of the right to remain silent to undertakings. Under Section 53 of the Dutch Competition Act, "the undertaking (..) shall not be obliged to make a statement" if there is reason to suspect a violation. In 2011, the District Court of Rotterdam followed the NMa in its argument that the right to remain silent did not apply to former employees of the undertaking in question, because, in short, they would no longer be able to speak on behalf of the undertaking. The CBb however ruled differently. According to the CBb, there is no justification to restrict the right to remain silent to merely those that are employed with the undertaking at the time of the interrogation. Section 53 does not mandate such a restriction. The CBb thus stated that former employees of an undertaking that the NMa suspects to have been involved in a violation may exercise the right to remain silent as laid down in Section 53 of the Dutch Competition Act.

Sanction cases

In April 2012, the District Court of Rotterdam overturned two NMa fining rulings in the home care industry. These fines were imposed on home care providers in western regions of the Netherlands for market-sharing arrangements. The court argued that it had been insufficiently established that, in these home care markets, competition between these providers was actually possible to the extent that this could have been impeded by the arrangements. The court said that the NMa would have had to investigate this aspect in greater detail, which would have included the contracting policy of the regional health care office, the status of guarantee budgets, the waiting list problem, and the prospect of increased competition. The NMa must make a plausible case that competition is a real option to the undertakings involved, not just in theory but also in practice. The NMa accepted these rulings, and decided not to carry out a more in-depth investigation into these cases for the next five to six years.

De facto executives

In the Wegener case, the District Court of Rotterdam confirmed the NMa´s option of imposing fines on de facto executives for the first time ever. The court underscored the criteria that the NMa had used. The court then explained the so-called decision criterion. The executive had to have had knowledge of the illegal activities (acceptance criterion) and, considering his actual position within the undertaking, had to have been authorized and reasonably bound to act against such activities (decision criterion). It is not necessary that the executive had to have been aware that the activities in question constituted a violation. The court ruled that these criteria were met with regard to three of the five executives fined by the NMa, which were members of the management team of the undertaking. However, their fines were lowered, because the scope and duration of the violation was more limited than the NMa had assumed, according to the court. In general, members of the supervisory board can only be considered de facto executives under exceptional circumstances. The court argued that such individuals have a different role in the undertaking, which is supervision instead of giving instructions with regard to violations. In the Wegener case, the court found it insufficiently proven that the two members of the supervisory board the NMa had fined had taken on an atypical role.

Abuses of dominant positions

The CBb ruled in the appeal filed by regional radio station Fresh FM, which is required to pay Dutch copyright collecting agency Buma for broadcastings music. According to Fresh FM, Buma abused its dominant position by discriminating against different stations through its tariffs. The NMa carried out an investigation into the question of whether such tariff differentiation could result in exclusion or unfair treatment. When it was looking into the latter, the NMa ran into measuring problems, and, as a second best solution, used an international benchmark. Based on this investigation, the NMa turned down Fresh FM´s complaint. The CBb found the NMa´s investigation sufficient. As Fresh FM did not submit any indications as to why there had been an abuse or as to why the NMa's explanation had been incorrect, the NMa did not have to do a follow-up investigation, and it was allowed to turn down the complaint.

Concentration review

Sellers have no obligation to notify of concentrations

The CBb ruled on the Pacton case. This ruling ended the discussion over whom the NMa can hold accountable for any failure (erroneously or not) to notify of concentrations. The NMa argued that, under the explanatory memorandum, sellers of shares, too, were bound to the obligation to notify of concentrations, but the CBb ruled otherwise. This means that only buyers (and the target undertaking) are required to notify the NMa of the planned concentration before its completion. The NMa was therefore not authorized to impose a fine on the selling party in the Pacton case for failure to notify of the concentration. Although the provisions in Dutch law state otherwise if taken literally, the CBb´s interpretation thereof are in line with European notification rules.

Thresholds for insurers

A discussion similar to the one in the Pacton case took place in the Amlin case, which was about the interpretation of the statutory provisions regarding the notification thresholds for concentrations of insurers. In an interim injunction, the court ruled in favor of the NMa. The parties involved must have received in total EUR 113.45 million worldwide in gross premiums, of which EUR 4.54 million from Dutch residents. The threshold of EUR 4.54 million (as referred to in Section 31 paragraph 2 of the Dutch Competition Act) thus replaced the threshold of EUR 30 million as referred to in Section 29 paragraph 1 of the Dutch Competition Act. However, after the so-called administrative loop had been invoked, the NMa was instructed to explain the level of the fine in greater detail. A new decision has been issued since. The final ruling will be handed down in 2013.

Final rulings after administrative loop

In 2010 and 2011, the court invoked an administrative loop in the KPN / Reggefiber case and in the Van Drie / Alpuro case. In each of these cases, third parties challenged the clearances of these mergers. In both cases, the NMa was given the opportunity to better explain certain parts of the arguments on which it based its clearances. In 2012, the court ruled in both cases that the NMa had successfully repaired the identified gaps in the reasoning of its previous merger decisions. In the Van Drie / Alpuro case, the NMa had conducted a more detailed market study before it repaired the gap in that decision. Since it had established gaps in the reasoning of both decisions, the court overturned the original decisions, but upheld their legal effects because of the more detailed explanations. This means that the clearances that had been given to the concentrations in

question were upheld in full. The appeals filed by those third parties against the clearances of these concentrations had thus failed.

Interpretation of a remedy

In the Wegener case, the court had to look into the interpretation of the remedy the NMa and Wegener agreed on in 2000 when the newspaper merger between Wegener and VNU was approved. The discussion focused on the question over the exact interpretation of the condition of 'safeguarding the mutual independence of the regional newspapers PZC (Wegener) and BN/De Stem (former VNU) in [the Dutch region of] Zeeuws-Vlaanderen.' The NMa claimed that Wegener had taken this condition less seriously over time, and that it had therefore violated it. The court partially follows Wegener's line of reasoning, arguing that the remedy offers some room to interpret the condition such that it is about safeguarding the *editorial* independence. Such an interpretation, which is different from the NMa's interpretation, does not oppose collaborations between editorial boards or coordination of the commercial strategies of both newspapers. However, from the moment there was only a single editor-in-chief left at the regional editions of PZC and BN/De Stem, Wegener did violate the remedy, which was also the court's conclusion. As such, the scope of the remedy imposed on Wegener has been narrowed. The remedy's phrasing, as well as the remedy's development process left little room for a wider scope. Another consequence was that the duration of the violation was reduced considerably. This was one of the reasons for the decision of the court to lower the fine imposed on Wegener.

Lifting the remedy

In 2009, Wegener, while awaiting the sanction proceedings over the abovementioned remedy's interpretation, filed a separate request to have said remedy lifted. It argued that, given market conditions at the time and its financial position, it would no longer be profitable to run two independent editorial boards in the region of Zeeuws-Vlaanderen. After a lengthy economic discussion about what benchmark should be used (and how it should be applied), Wegener failed to make a plausible case about (a) the existence of market conditions that have significantly altered the competitive interests, which the NMa took into account when it reviewed the merger and the remedies, and (b) the existence of market conditions that have increased the burden on Wegener to such a degree that it is no longer proportional to the competitive interests that need to be protected. The court ruled that, after an evaluation of the arguments brought forward by Wegener, in which it had asked for advice from economic experts and research agencies, the NMa was within its rights to turn down the request to lift the remedy. Wegener is thus required to comply with the court's interpretation of the remedy, as formulated in the sanction proceedings.

Investigative powers

The judge in interlocutory proceedings at the District Court of The Hague had to look into the question about the extent to which the NMa was allowed to ask a third party for information under Section 5:20 of the Dutch General Administrative Law Act (as referred to in Section 5:16 of that Act), whereas that third party was not a suspect in an ongoing investigation of the NMa but did carry out activities for undertakings that were part of said investigation. This third party had offered services to the undertakings under suspicion with regard to the execution of their compliance programs. As part of these services, this third party came across information that could be relevant to the NMa´s investigation into the undertakings under suspicion. This third party commenced interlocutory proceedings challenging the NMa´s demands for handing over a list of names of the

clients it did business with in the industry in question. The judge ruled that the NMa is not allowed to directly contact third parties about such demands for information (aimed at having a list of names of undertakings handed over) if it has not yet been established whether, and if so which of these undertakings are suspected of having violated the prohibition of cartels. The judge ruled that Section 5:20 of the Dutch General Administrative Law Act does not grant the NMa the power to ask third parties for random pieces of information on the basis of which it will then decide whether or not enforcement powers will be exercised. The NMa argued that its actions could not be considered asking for random pieces of information, but that they formed a conscious and minimally intrusive step in its investigation, which the undertakings involved had already been informed of the fact that they were objects of an investigation. The NMa filed an appeal with the Court of Appeal of The Hague.

4 Industry-specific regulation

Free-market competition is not always feasible in some industries, such as with railway infrastructure or energy grids. In those kinds of markets, for instance, there is room for just one railway operator or one grid operator. Building multiple railways or grids next to one another would not be very efficient. Such providers are therefore called ‘natural monopolists.’

That is why the NMa imposes certain rules on these businesses to have them operate as if they did face competitors. For example, the NMa sets the maximum tariffs that grid operators are allowed to charge their customers, checks whether their services meet certain quality standards, and makes sure that the terms and conditions under which their customers (both businesses and individuals) can use their networks are reasonable. That way, the NMa ensures that energy and transport markets contribute the most to our welfare by having them work as true competitive markets as much as possible.

4.1 Energy

The NMa regulates and oversees the energy markets to ensure that they work as effectively as possible. To this end, it seeks to create, and help create, favorable conditions under which these markets are able to function most effectively, and which serve, and are able to serve, consumer interests well.

In practice, this means that the NMa aims for the creation of an integrated European market, where energy consumers are always guaranteed affordable, reliable and clean energy. It is essential that energy consumers are given complete freedom of choice, wherever they have not been given such freedom yet, and that they have access to accurate information in order to make well-informed choices.

In an integrated European market, energy prices should be determined by supply and demand. More efficient energy exchanges must be created on which more and more traders are active. To that end, it is critical that the energy market is supported by reliable grids with enough capacity that is used efficiently.

Business operations of these operators must be efficient. There has to be room for investments and innovation. If these criteria are met, grid operators are able to support major developments in the market, and help realize renewable energy production.

Reliable energy companies and useful information for energy consumers

It is important that consumers are able to switch energy suppliers without any hassles. They should be able to be confident that they get their final bills on time and that energy suppliers' administrative processes are in order. The NMa is therefore focused on the preparations for the industry-wide transition to the new market model. For a well-functioning market, it is additionally important that consumers are able to compare offers. On consumer information desk ConsuWijzer, consumers are able to find clear information on energy so they can make a well-informed choice.

Integration of wholesale markets

For the energy market to work well, it largely depends on the wholesale market. The more benefits energy suppliers are able to gain from competition on the wholesale market, the more they can pass on to their customers. So for the wholesale markets to work well, it is critical, among other things, that the Dutch market is coupled to those in neighboring countries. Consumers are thus given more options, including affordable or clean energy. Market coupling leads to lower tariffs for consumers, and consumers are able to choose from a more diverse selection of products and services. In addition, it increases security of supply. That is why the NMa puts a significant amount of effort in strengthening the Northwestern European energy market, for example, by stimulating new methods of capacity allocation on interconnectors such as auctions, and by studying whether cross-border capacity can be utilized better.

Investment climate regarding energy networks

When it comes to energy networks, their operators are monopolists. After all, it would not be efficient for example to operate multiple grids next to one another. However, monopolists in the energy markets must operate efficiently. Only then can energy remain affordable to consumers. That is why the NMa creates efficiency incentives, and caps the tariffs network operators are allowed to charge their customers. In that context, it is vital they are left with enough room to make investments in affordable, reliable and renewable energy. For example, investments must be made in cross-border transmission capacity, distributed generation, and smart meters. Financial health is therefore critical to the network operators' ability to invest. In its regulation of energy networks, the NMa seeks to strike the right balance between meeting the interests of both energy consumers and of energy producers.

Activities in 2012

NMa imposes fines on Liander and Nuon CCC for inadequate protection of customer data

The NMa imposed a fine of EUR 3.32 million on Dutch regional network operator Liander, and a fine of EUR 208,000 on Nuon CCC, a subsidiary of energy supplier Nuon, for having inadequately protected customer data. That situation created the possibility for Nuon Sales to use that information for its own marketing purposes.

The Dutch Independent Grid Administration Act requires network operators to be 'unbundled' from the undertakings that produce and supply energy. This mandatory unbundling prevents network operators from giving preferential treatment to a supplier belonging to the same holding. This is a necessary condition for fair competition between energy suppliers, which is of critical importance in a liberalized energy market. Violation of the confidentiality requirement therefore constitutes a serious offense.

Both Liander and Nuon Sales have stored their customer data with Nuon CCC. However, an error in the access rights system made it possible for Nuon Sales staff to access data of Liander customers. Nuon Sales thus had access to data of former Liander customers who, over the years, had switched to suppliers other than Nuon. Liander was imposed a fine because it was statutorily required to safeguard its data's confidentiality, and carries full responsibility for properly separating its data, even when it has stored its data with a different undertaking for carrying out certain tasks. Nuon CCC, as co-violator, is also fined for failure of safeguarding the data's confidentiality.

All parties filed objections against the sanction decisions, and requested to file a direct appeal with the District Court of Rotterdam. The NMa granted this request, and is currently awaiting a date for the hearing.

NMa fines former executives of energy supplier Greenchoice

In December 2011, the NMa imposed a fine of EUR 7.2 million on Dutch energy supplier Greenchoice for sending its final bills too late, or even failing to send any final bills at all, to customers that had cancelled their contracts and who were entitled to overpayment refunds. In connection therewith, the NMa in 2012 imposed personal fines on two former Greenchoice executives for being in charge of said violation. The level of each of these fines matches the maximum amount the NMa is allowed to set, which is EUR 450,000 per individual.

In addition, the NMa had Greenchoice's supply license amended. Its license now contains specific requirements regarding administrative quality levels. These requirements ought to ensure that consumers have and continue to have confidence in Greenchoice. It will have to permanently improve its administrative processes to minimize the risk of repeat violations. The NMa will keep a close watch on Greenchoice. The NMa believes it is important that consumers are able to switch energy suppliers without any problems. They must be able to rely on the fact that switches can be processed smoothly, and that they will receive their final bills in a timely manner. Energy suppliers' operations should always be reliable, and the NMa sees to it that they are.

In the objection phase, all objections filed by Greenchoice were dismissed. The fine imposed on Greenchoice was therefore upheld. The fines on the two former executives were reduced by 10 percent in the objection phase, because of their contribution to Greenchoice´s repair efforts. It concerned the compensation of customers that were entitled to overpayment refunds.

NMa: Consumers can save up to EUR 500 on their energy bills

Consumers pay on average EUR 488 per year too much for their energy, while their total bills are on average EUR 2,000 per year. So far, 36 percent of all consumers have switched suppliers at least once, and an additional 33 percent say they are considering a switch. Consumers estimate that switching might save them only EUR 72, whereas, in reality, those savings could be high as EUR 488. These figures are some of the conclusions of the bi-annual trend report on Competition and Consumer Confidence in the Energy Market for the first half of 2012.

The NMa helped set up a ConsuWijzer publicity campaign, which contained a step-by-step guide explaining to consumers how to switch energy suppliers. It starts with understanding how to read energy bills. This is necessary for calculating the tariff that is offered on, for example, an energy supplier's website or a price comparison website. It is important to note that the so-called dual fuel contracts (natural gas and electricity) often yield the highest savings.

NMa gave green light to model energy contract

In 2012, the NMa approved the model contract for energy. It allows consumers to easily compare contracts of various energy suppliers, and find the best deal. The model contract is a clear and easy-to-read contract, which all suppliers must offer next to any other contracts. The only thing that is different is the price, while all other contract conditions remain the same.

As requested by the NMa, the trade association of the Dutch energy industry, Energie Nederland, developed the model contract. It had put forward a draft version first, which was subsequently approved by the NMa after a consultation round. The model contract was adopted by all suppliers on July 1. All other types of contracts continue to be offered next to the model contract.

The Dutch association of homeowners Vereniging Eigen Huis (VEH) filed an objection against the NMa´s decision. VEH argued that the NMa should also have adopted model contracts for fixed-price and fixed-term contracts. The NMa disallowed VEH´s objections. VEH filed an appeal against this decision.

Highest court in antitrust matters rules in NMa's favor in ruling on gas transmission tariffs

In November 2012, the Dutch Trade and Industry Appeals Tribunal (CBb), the nation's highest court in antitrust matters, issued a final ruling on the method decisions for Dutch gas transmission operator Gas Transport Services (GTS) for the regulatory period of 2006 through 2013. In these method decisions, the NMa had set the tariffs for GTS. Key questions in the ruling were the value of GTS´ network, as well as the level of the tariffs. The CBb ruled in the NMa's favor on all counts. It followed the NMa's opinion regarding the assessment of the value of GTS' network in 2005 at EUR 4.8 billion. The current tariffs were upheld.

This ruling offered the industry stability and clarity. All parties know what to expect. Customers and shippers know what tariff they are charged. GTS knows what tariffs they are allowed to charge and what can be compensated. Finally, it also gave investors clarity about the most important parameters of regulation.

Energy market integration

The Dutch energy market is developing favorably. A marked increase in liquidity can be observed with all products that are traded on gas trading platform TTF. In the electricity market, liquidity is largely at a stable level can be observed with regard to most products. These are some of conclusions of the 2011 liquidity study the NMa release in July 2012.

If participants in a market are able to make transactions fast and at low costs, such a market is called liquid. Liquid trading platforms are vital to having well-functioning energy markets. Consumers will benefit from such markets, too. The NMa oversees the energy trading platforms.

Natural gas

Trading volume on gas exchange APX ENDEX doubled in 2012 and broker-assisted trade has grown exponentially. The NMa aims to have liquidity on the gas wholesale market develop further, for example, by integration with neighboring markets.

Study

In 2012, the Dutch, Belgian and British energy regulators carried out a joint study into the utilization of gas transmission connections between these countries. It particularly focused on the BBL pipeline between Great Britain and the Netherlands, and the IUK pipeline between Great Britain and Belgium. The purpose of this study was to find out whether gas pipelines between Great Britain and the continent could be utilized more efficiently in order to create a more integrated European wholesale market for natural gas.

According to a preliminary analysis by the three regulators, utilization of the connections can be improved from an economic point of view. In addition, gas often does not flow as expected based on price differences. Under normal circumstances, gas should flow to the country where wholesale price are highest. Otherwise, countries would be exporting natural gas when they should be importing it or vice versa.

There may be various reasons for why pipelines are underutilized at times when, from an economic point of view, they should not be. One of those reasons can be gas transmission rules on the connections themselves, or because of gas transmission rules in individual countries. These rules may be right for the national markets, but taken together they might distort gas trade between markets. The study by the three regulators examined these rules and their effect on markets.

Auctions
In anticipation of the pan-European introduction of auctions for cross-border capacity, Dutch transmission system operator GTS launched a pilot project on the interconnectors with Germany. Auctioning will lead to fairer access to scarce transmission capacity, since all market participants are able to take part under equal conditions.

In addition, GTS and its German affiliate Gasunie Deutschland together with fourteen other European gas regulators launched an initiative to create a single European platform where interconnector transmission capacity is auctioned. In late-2012, this initiative was given the name Prisma. The NMa together with the regulators in other Member States taking part in the project was closely involved in the launch. The platform is expected to be operational by April 2013. The NMa has approved these developments, and granted the pilot project the necessary exemptions in 2012.

Electricity
In the electricity wholesale market, European market integration has been high on the agenda for some years now. In that context, market coupling with neighboring countries is of great importance. Electricity prices in the Netherlands, Belgium, France and Germany were relatively close to one another during 2012. The next step in the market coupling process is the transition to a system that should make more interconnector capacity available. As a result, prices will converge even further.

NMa argued for increased flexibility in energy legislation
In 2012, the NMa evaluated the Dutch Gas Act and the Dutch Electricity Act. In the evaluation report, the NMa argued for, among other things, making legislation more flexible. Incorporating such flexibility will offer the necessary tools to find the right balance between the often conflicting interests the NMa must weigh in dilemmas that are inherent in market regulation. An illustration of such a dilemma is thinking of, on the one hand, the principle of consumers should not be paying too much, and being mindful of the importance of maintaining the quality of the supply of energy and the thereto-related investments, on the other hand.

Furthermore, increased flexibility in legislation leads to the NMa´s being able to anticipate rapidly-changing market circumstances better and faster such as the transition towards sustainable energy and the integration of European energy markets.

The Dutch Electricity Act and the Dutch Gas Act mandate that the NMa must evaluate the effectiveness and the impact of these acts. More detailed rules on the substance of the evaluation report have been drawn up, which includes a number of overall objectives and several evaluation themes that must be given attention. The Ministry will take the findings of the evaluation into account when said acts are up for revision.

NMa guarantees energy supply for customers of Orro Energy and Trianel Energie
In late-2012, the NMa revoked the licenses of Orro Energy and Trianel Energie for the provision of electricity and natural gas to consumers and small and medium-sized businesses (SMBs). Both companies were no longer able to pay for their purchased energy, and were thus unable to serve their customers. Revoking a license sets in motion a special mechanism which ensures that consumers and SMBs continue to receive electricity and gas, thereby safeguarding security of supply for customers.

That mechanism ensures that the transmission system operators TenneT and GTS guarantee supply of energy to small-scale users for ten working days. That period is needed to transfer affected customers to other suppliers. During the ten-day period, customers are not able to switch energy providers themselves. Once they have been transferred to another energy provider, they will be informed thereof. If consumers are unhappy with their assigned provider or with his tariffs or conditions, they can switch to another provider. The normal notice period of 30 days applies in those situations. Under supervision of the NMa, small-scale users of Trianel Energie were transferred to various other suppliers, while a large share of the small-scale users of Orro were transferred to a single competitor.

4.2 Transport

The Netherlands seeks to have its transport markets help increase its welfare as much as possible by having them work as real markets as much as possible. However, transport markets often have monopolists. With monopolists, there is a risk that they primarily serve their own interests, and that they are given too few incentives to serve their customers' interests. That is why the NMa regulates the transport market (and parts thereof). For example, it is virtually impossible to turn the Dutch aviation and rail industries into completely free markets. These industries are faced with organizations that enjoy a monopoly or dominant position when it comes to infrastructure management: network infrastructure managers ProRail and Keyrail in the rail industry, and Schiphol airport in the aviation industry.

Dutch ports have a monopolist when it comes to maritime transport: the pilots. In addition, there are regional monopolists in public transport in the three major cities of Amsterdam, Rotterdam and The Hague: the municipal public transport companies.

Activities in 2012

NMa: train fare revenue distribution by rail company NS is undesirable

In 2012, the NMa completed a study into the train fare revenue distribution by Dutch Railways NS. One of its recommendations to the Ministry of Infrastructure and the Environment was that NS should not carry out the distribution of train fare revenues among NS and its competitors, but that distribution should rather be done by an independent party.

NS distributes train fare revenues among itself and rail companies Veolia, Arriva, Syntus and Connexxion. NS does so by order of the Ministry of Infrastructure and the Environment. The system that NS uses to randomly measure ridership is called 'Measuring in the train.' It involves determining the number of riders per fare type. The 'Measuring in the train' system was not explained in full detail by NS, and was thus not transparent. In addition, the NMa found that assigning NS this task of revenue distribution created a risk of a conflict of interests. Various rail companies submitted indications to the NMa, claiming that NS used a faulty distribution method. The NMa's investigation into the system and the revenue distribution by NS did not result in a suspicion of a violation of the Dutch Railway Act or the Dutch Competition Act.

NMa: airlines and railway undertakings unable to stand their ground against Schiphol airport and infrastructure manager ProRail

The NMa examined to what extent customers of Amsterdam airport Schiphol (airlines) and Dutch railway infrastructure network manager ProRail (railway undertakings) were able to use their buyer power vis-à-vis their respective infrastructure managers. The NMa found that airlines had no buyer power vis-à-vis Amsterdam airport Schiphol, and neither did rail transport undertakings vis-à-vis ProRail and Keyrail. In direct negotiations on, for example, tariffs, airlines and railway undertakings are not able to stand their ground. Schiphol, ProRail and Keyrail are statutorily required to consult their users when adjusting their tariffs. In practice, objections raised by users often (or even always) fall on deaf ears, while buyer power was a key starting point when the choice was made for a light regulatory regime for the aviation and rail industries. In practice however, when

negotiations appear to be unsuccessful, users often turn to the ministry or lawmakers in order to exert pressure, with mixed results.

The findings of this study are used as a starting point for further discussion with relevant parties about strengthening rail and aviation regulation.

Court rejected Amsterdam airport Schiphol's appeal in complaint case against its 2009 tariffs

The Dutch Trade and Industry Appeals Tribunal (CBb), the highest court in antitrust matters in the Netherlands, followed the District Court of Rotterdam in its ruling of November 25, 2010, in which it said that three cost items should not have been included in Schiphol's 2009 airport tariffs. Dutch airline KLM in 2008 filed a complaint with the NMa about these cost items. These items related to the sound barrier Schiphol had have built near one of its runways, to a share of the costs of the so-called Schiphol College, and to the costs of an accounting audit Schiphol had have carried out. At the time, the NMa ruled that these costs items could not have been included in the tariffs. The CBb agreed with the NMa's opinion. This ruling has given more clarity about certain key terms in the Dutch Aviation Act.

NMa set policy rule on international passenger rail transport

In 2012, the NMa published a policy rule which explains how the NMa will assess the conditions under which a passenger transport undertaking may open an international rail connection. The conditions, which have been drawn up by the Ministry of Infrastructure and the Environment, are meant to protect an incumbent concession holder against too serious an impingement by the new entrant on the awarded concession. The policy rule is the result of the Liberalization Directive (2007/58/EC) that is aimed at opening up the market for international passenger rail transport. In order to prevent new international transport from harming national concession holders, the NMa will assess the new entrant's main objective, as well as any potential harm to the economic equilibrium of the concession holder.

NMa: rail capacity allocation for international freight transport must be improved

In the Netherlands, 85% of rail freight is cross-border traffic. Freight must be able to be shipped easily and swiftly from the port of Rotterdam to its hinterland. This is even more important now that the port of Rotterdam will be expanded (the Second Maasvlakte expansion project), putting additional pressure on roads, inland waterways, and rail connections.

In its preliminary survey of international rail-capacity allocation, the NMa looked into bottlenecks and looked for solutions for international rail freight transport. The NMa launched this study following indications it had received that the allocation of international rail freight capacity left much to be desired. The bottlenecks that were identified concerned flexibility and timely international coordination, not just about who is allowed to use what time slots, but also when and where maintenance works can be carried out, and what alternative routes are available.

In part based on the findings of this survey, ProRail started implementing several improvements. The NMa will launch an initiative in cooperation with the German rail regulator, the Bundesnetzagentur, to improve cooperation on the border connections between the Netherlands and Germany between the parties in question.

NMa limits pilotage tariff increase for 2013

The pilotage tariffs in 2013 will increase by 2.67 percent. The NMa set lower pilotage tariffs than the Dutch Pilots' Corporation (NLc) had proposed. The NLc's proposal was based on an increase of 2.94 percent. Each year, the NMa assesses whether the costs have been calculated correctly, and whether the pilots' working methods are efficient. The NMa is authorized to deviate from the tariff proposal should it not meet the requirements set out in the Dutch Pilotage Act. It is thus ensured that ships that are guided into the harbors do not pay too much.

In addition, the NMa in 2012 made several arrangements with NLc in a number of protracted objection cases. These arrangements reduced the administrative burden on all parties involved, and created transparency.

4.3 The NMa and the courts in 2012 – Industry-specific regulation

Energy

With regard to appeals in energy cases, 80% of them were ruled in the NMa´s favor (2011: 76%). A relatively large number of appeals were handled (22), covering a wide range of topics. Some rulings stood out: several of them were about tariff regulation, various code amendment procedures, and one sanction case.

Tariff regulation

Judging from the 2012 rulings, the NMa's tariff regulation and the choices the NMa had made have been upheld almost completely. This was the case in 2011 as well.

The method decisions for both the gas transmission system operator GTS (Mb GTS 2006-2013) and the electricity transmission system operator TenneT were completely upheld (Mb TenneT 2011-2013). These rulings contained clear considerations about various fundamental and, for the industry sometimes, drastic choices the NMa had made with regard to key regulatory questions. Among other topics, these concerned the valuation method of GTS' gas transmission system and of TenneT's electricity transmission system (GAW), the method used to determine the permitted level of profits (WACC), the way of shifting towards efficient costs, and the method of benchmarking with grid operators abroad. The NMa has the freedom to choose the method it will use insofar the relevant law (electricity of gas) allows for the chosen solution (the court does not assess whether an alternative solution would be more appropriate or less appropriate). However, the NMa must be able to justify its choices properly (reasons and study reports), and it must comply with the general principles of sound administration (principle of confidence, principle of equality, etc.).

The NMa has that same freedom when exercising its power of subsequent calculation (Section 41c, paragraph 2, Dutch Electricity Act), a conclusion that follows from the case about the 2009 Westland tariff decision. The NMa can decide on its own if and in what way a tariff correction is implemented. In its ruling on the Sapa and Roto Smeets cases, the CBb has framed the staggered structure of the tariff regulation, as well as the objection and appeal opportunities. Any arguments that market participants raise against tariff decisions must be put forward in the thereto appropriate tariff procedure. Once a tariff decision has legal force, which means objections and appeals are no longer possible, it cannot be amended through dispute proceedings.

Furthermore, the appeals against the method decision for the regional gas network operators (methodebesluit NG4R) have been disallowed, after the network operators, having consulted with the NMa, retracted their remaining argument against the basis of the regulation of the gas connection service. As a result, the previous provisional ruling from 2011 has become the final ruling, and the preliminary questions announced by the CBb about that basis are no longer at stake.

In 2012, more certainty was given about the obligations when installing so-called 'large' or 'customized connections.' With large electricity connections, buyers have the opportunity to put the installation out to tender, which means that specialized firms may also install such connections, not just the network operator. The Global Switch II case revealed that, if asked to do so, the network operator must install the electricity connection at cost price plus a reasonable return even if there is a competitive market (potential or real) for such installations. If a buyer commences dispute proceedings, the NMa must evaluate such tariffs ex post, which is different from what the NMa initially thought. For large gas connections (>40m3), the situation is

different. Gas network operators have no obligations to connect large connections. The Dutch legislature believes there is a competitive market for such installations, which includes the network operator (however, the separation in the gas network ("connection") has been regulated).

Code amendments

The statutory provisions on the technical requirements and on the setting of tariffs have been fleshed out in various codes, sometimes proposed by the network operators, and sometimes by the NMa. A procedural framework has been set up in Section 27 (and subsequent sections) of the Dutch Electricity Act and Section 12a (and subsequent sections) of the Dutch Gas Act, which was further specified in 2012. When assessing the proposals of the joint network operators, and when adopting the final texts, the NMa does have some freedom with regard to the scope of its rulings, and it is allowed to give instructions, although the substantive primacy of the regulations lies with the joint network operators as drafters of the proposal. In the Netcode case, the CBb thought the NMa had correctly established that the draft version in question lacked textual explanations about certain activities, and that the joint network operators had to provide these. The CBb determined that, in such a case, the NMa had to draw up a so-called 'plan of treatment', ensuring that the progress of the instructions remained transparent to third parties as well.

In the case that led to the provisional ruling Tariff Code Gas (gas connection service), the NMa of its own accord put forward a proposal for a code amendment to include the gas connection service in the tariff code. In that case, the primacy of the regulatory choices, the interests that should be taken into account and the valuation thereof lie with the NMa. All but one ground of appeal failed in this case.

One disadvantage of the code amendment procedure in the Dutch Electricity Act and Dutch Gas Act is that the codes can be disputed in ongoing appeal proceedings, even though a new amendment proposal has already been submitted. That means that the CBb must still rule on the previous regulations. A recent case on the allocation system of scarce transmission capacity on the gas network was an example thereof. It consisted of nine amendment decisions. All of them were upheld by the court. The ruling also showed that rephrasing certain segments in the code without any substantive changes (meaning the nature of these changes is not a legal one) cannot lead to new proceedings. In other words, if market participants missed the first opportunity, they cannot get a second shot in a second round.

For answering the question of interested parties, the DSM was important. The code amendment in this case on quality conversion (adjusting the composition of natural gas) was based on the principle of socialization. Irrespective of their actual use, all parties pay for the service in proportion to their gas consumption. This can have substantial financial consequences for individual businesses. Such businesses, unlike representative organizations, cannot easily stand up against code amendment decisions. They need to be different from other energy consumers in a way that is legally relevant (size is not a relevant criterion). The ruling makes clear that, when using the socialization mechanism (which, in energy regulation, is often used), market participants in most cases are not different from others. DSM's appeal did not succeed because of the lack of interest within the meaning of Section 1:3 of the Dutch General Administrative Law Act.

Door-to-door selling sanction

The Energie:direct case was about the problem of door-to-door selling in energy cases, a topic that was widely covered in Dutch media. The Netherlands Consumer Authority took enforcement action, too. In customer-recruitment calls, many consumers were not informed they had actually signed a contract with another energy supplier. Such practices constitute a violation of the obligation to provide information. The Office of Energy Regulation imposed additional requirements with regard to that obligation in the 2010 NMa Guidelines on the Provision of Information, which specify the minimum requirements in cases of door-to-door selling. The courts underscored the obligation to provide information incurred by the door-to-door seller and the energy supplier. The court´s interpretation is in line with the guidelines. Taking all of the evidence into consideration, the court found it sufficiently proven that Energie:direct in 2009-2010 violated this obligation more often than just incidentally. It found the fine of EUR 1.1 million appropriate.

Transport

The number of rulings in transport cases this year was limited (3), like in previous years. However, these cases had fundamental questions and rulings, which were important to the entire NMa. In the Connexxion case, the CBb too did not establish a violation by ProRail in the procedure for the annual (2007) allocation of railway infrastructure capacity. The CBb extensively tested against the prohibition of discrimination and particularly against the element of objective justification. The NMa must be attentive to the existence of an objective justification, and is required to demonstrate the absence thereof if this exception is invoked. Any objective justification is examined by the CBb in two steps: principally (related to the standard) and factually.

Besides this sanction procedure, the NMa in 2008 established three more violations by infrastructure network operators ProRail with regard to various elements of the capacity allocation procedure for 2007. In 2010, the court upheld these violations, but lowered the fines. In the ProRail case (on the allocation of maintenance capacity), the NMa appealed one of those substantial fine reductions. The CBb, however, upheld the fine that had been lowered by the District Court. When assessing the proportionality of fines, the CBb particularly looks into the imputability, the circumstances under which the violation was committed, and the impact on the parties involved. Even after the NMa had taken into account mitigating factors and lowered the fine because of reduced seriousness and limited harmful effects, the CBb thought the fine was still too high. In the end, three of the four violations were upheld.

Various cost items that Amsterdam airport Schiphol claimed it was allowed to include in its aviation tariffs should be borne by Schiphol itself. That was the conclusion of the 2009 Tariffs Schiphol case. Some of the disputed items were the construction of a sound barrier and the recruitment of baggage-handling staff. These cannot be considered aviation-related activities, so their costs cannot be included in the aviation tariffs.

5 Consumers & the NMa

'Making markets work.' That is the NMa's mission. In markets that function well, businesses go to great lengths to improve the quality of their products and services, to offer new ones, and to keep prices competitive. Businesses that outperform their competitors are rewarded with higher sales and turnover. Thanks to competition, consumers are offered more choice, and get good value for their money. And through its oversight activities as an independent authority, the NMa makes sure it stays that way.

It is not always possible to have markets work well. Certain businesses enjoy natural monopolies. In those kinds of markets, for instance, there is room for just one railway operator, or one grid operator. Constructing multiple railways or grids next to one another would not be very efficient. That is why the NMa imposes certain rules on these businesses to have them operate as if they did face competitors. For example, we set the maximum tariffs that grid operators are allowed to charge their customers. We check whether their services meet certain quality standards. And we make sure that the terms and conditions under which their customers can use their networks are reasonable.

ConsuWijzer

ConsuWijzer informs consumers about their rights and obligations, offering free advice. Consumers can submit questions, file a complaint, look up information, and download sample letters. ConsuWijzer aims to empower consumers, enabling them to fight for their rights, and helping them overcome any obstacles (perceived or real) they encounter.

ConsuWijzer is the consumer information desk of three regulatory bodies: the Netherlands Consumer Authority (CA), the Netherlands Competition Authority (NMa), and the Netherlands Independent Post and Telecommunications Authority (OPTA). Joint operation makes it easier for consumers to find the information they need, as they do not have to figure out first which authority they need to contact. ConsuWijzer either finds the answer to submitted questions, or it forwards them as an indication to the right authority.

What is ConsuWijzer all about?

Visitors of the website ConsuWijzer.nl can find information, but also practical tools such as check lists and sample letters. In addition, ConsuWijzer gives practical advice to consumers by telephone or email as well. The website also features sample scripts and arguments for conversations with salespeople (to rehearse at home), as well as easy-to-understand legal information. However, ConsuWijzer does not actually solve any problems for individual consumers, but rather provides them with clear suggestions and information, helping consumers find the solutions to their problems. Finally, ConsuWijzer registers complaints and questions.

Cooperation

To the authorities' work, it is critical that consumers submit questions and complaints. These provide them with valuable insight about what is going on in the markets. The desk thus doubles as a detection system. The participating authorities collect and analyze all the indications, and then decide what markets are facing the

most urgent problems. With the information gathered through ConsuWijzer, they can answer the following questions:

- What subjects are consumers currently asking the most questions about?
- What industries are facing the most problems?
- What businesses are not respecting the law?
- What should the authorities do something about?

Based on the indications received, each of the different authorities can decide whether it wants to launch a joint investigation or an investigation of its own, and, if necessary, take measures to solve any issues. The authorities coordinate and harmonize their services and actions. Likewise, the three authorities provide ConsuWijzer with information regarding their respective areas of expertise.

ConsuWijzer in 2012

The website ConsuWijzer.nl in 2012 had 2.2 million unique visitors, more than 6,000 visitors per day. ConsuWijzer received 80,000 questions and reports from consumers. The authorities behind ConsuWijzer launched various investigations following these questions and reports.

The pages with the most visits concerned subscriptions (how to cancel them, and automatic renewals), telemarketing, and warranties. The top 5 most visited 'product categories' in 2012 were:

1. Warranties and non-conformity
2. Deceptive and aggressive sales methods (particularly Do-Not-Call-Me and spam)
3. Bills and payments
4. Ending and termination of contracts
5. Ordering and delivering, and compliance with contract conditions

ConsuWijzer meets Web Guidelines

ConsuWijzer's website has been developed in accordance with the Web Guidelines Quality Model. Since November 2012, it is allowed to carry the Web Guidelines Label. It means that the desktop and mobile versions of ConsuWijzer's website are accessible for everyone, including those with a sensory impairment such as blind or deaf individuals.

ConsuWijzer was voted website of the year for third consecutive year

ConsuWijzer was voted best government website for the third consecutive year by Dutch consumers. The website of the year awards are the most important online awards competition in the Netherlands. ConsuWijzer had already been voted best government website in 2010 and 2011.

NMa & ConsuWijzer

By providing practical advice, ConsuWijzer gives consumers instruments to take action themselves against firms. Besides consumer empowerment, ConsuWijzer collects indications, which form a critical basis for the authorities' activities.

Switching energy suppliers

More and more consumers switch energy suppliers. Yet, according to an NMa study, a considerable number of consumers have never switched so far, for example, because they believe switching involves 'a lot of hassle.' Another reason is that consumers underestimate the potential savings that switching yields.

To help consumers overcome this switching barrier, ConsuWijzer developed a switching tool on its website, which guides consumers through the switching process in four easy steps. In this way, consumers see how easy it is to switch energy suppliers, and they are informed about the potential savings switching yields. The switching tool also explains in an interactive way how to read your energy bill.

Shopping around pays off

An NMa study revealed that shopping around pays off. There are large price differences between providers of health insurances, car insurances and mortgages. Consumers could save a lot of money if they shopped around before making a purchase. The NMa published on Consuwijzer.nl a savings overview of financial products that showed consumers instantly how much they could save per year. The NMa calculated the potential savings for eight household types as each of these different household types takes out a different mix of financial products. A step-by-step guide helped consumers make a choice for specific financial products.

Dispute settlement

Consumers and businesses do not always agree with the decisions or actions energy network operators take. If consumers have a dispute with their network operator they cannot solve, they can file a complaint with the NMa. The Board of the NMa can handle these disputes, or it can try to mediate.

The NMa seeks to solve disputes between network operators and their customers through mediation, education, and clarification as much as possible. This also applies to businesses. Lengthy procedures can thus be avoided: making a few phone calls to both parties usually suffices. An NMa intervention often helps parties resume communication. Parties are then usually able to reach a mutually acceptable solution. Mediation by the NMa often leads to, for example, invoice corrections if the operator had erroneously used the wrong tariff.

Dispute settlement in 2012

In 2012, 21 disputes were submitted, eleven of which have been resolved through mediation and education. Ten disputes resulted in official decisions. Four of these decisions were taken using the new, shorter procedure, while the other six were taken using the regular procedure. These procedures were introduced in 2011.

6 Finance

NMa (public organization)

The Dutch Ministry of Economic Affairs (EZ) directs funds for staff and resources to the NMa, which are allocated by means of a budget letter (see table 6.1). The Office of Transport Regulation (VK, part of the Office of Energy and Transport Regulation) is financed by the Ministry of Infrastructure and the Environment (IenM) through the budget of EZ. The NMa (and EZ) use cash-based accounting. Cash expenditures are a natural consequence of this, which are specified in detail in table 6.4.

The most important fact is that the NMa did not exceed its budget in terms of liabilities. With respect to liabilities, the NMa underspent by 3.0 percent. With respect to cash expenditures, the NMa overspent by €1.0 million, which is 2.3 percent of the expenditure budget.

In 2012, the level of reported income was €41.3 million. The majority of this income comes from fines imposed in 2012 and in previous years, from interest and corrections to payments and fines.

Pricing principles

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

Overview 2012

Table 6.1 Realization compared with the EZ budget letter (In €)

Description	Liabilities	Expenditures	Income
Budget letter	45,397,000	45,407,000	5,289,000
Realization	44,009,125	44,370,280	41,318,377
Underspending + / Overspending -	1,387,875	1,036,720	-36,029,377
As a percentage	3.06%	2.28%	-681.21%

Liabilities

Table 6.2 Liabilities (In €)

Description	Allocated budget 2012	Realization 2012	Realization 2011
Personnel	30,927,000	30,572,654	31,625,417
Materials	14,470,000	13,436,471	15,174,218
Total	**45,397,000**	**44,009,125**	**46,799,635**

Like in previous years, the NMa did not exceed its budget in terms of liabilities. Realization has decreased by more than €2 million compared with 2011. The main reason for these lower budgets is the central government's cutback program, and a one-off compensation in 2011.

Expenditures

Table 6.3 Expenditures (In €)

Description	Allocated budget 2012	Realization 2012	Realization 2011
Personnel	30,927,000	30,681,641	31,715,459
Materials	14,480,000	13,688,639	16,890,280
Total	**45,407,000**	**44,370,280**	**48,605,739**

Unlike 2011, the NMa did not exceed the budget in terms of expenditures. Realization has been significantly lower than in 2011. This is because of multiple government cutback programs, and because of a smaller reduction of liabilities from previous years, compared with 2011.

Table 6.4 Specification of expenditures (In €)

Ledger account and description	Allocated budget 2012	Realization 2012	Realization 2011
PERSONNEL			
400000 Salary costs		27,684,976	27,538,536
400001 Overtime			27,737
400002 One-off extras / Small gifts for personnel			544,558
410000 Internship and committee payments			82,490
415002 Education and training		841,221	890,056
415003 Recruitment		7,429	15,673
415004 Other personnel costs		5,593	22,991
415006 Other personnel costs (corporate)			600
400019 Welfare		11,134	17,338
410033 Temporary employees		1,120,156	1,876,898
410039 Services between government organizations			53,333
410020 Interim management			211,406
416012 Redundancy schemes			433,842
Subtotal personnel excluding transfers from materials to personnel	*30,927,000*	*29,670,510*	*31,715,459*
400021 (M) Welfare			11,478
410023 Policy support		61,311	18,477
410024 Specific expertise			38,984
410034 Communication advice		119	47,464
450001 Travel and accommodation expenses domestic		186,077	163,295
450002 Travel and accommodation expenses abroad		271,696	280,491
450007 Trade union co-financing program (+commuters)		491,928	653,136
Total transfers from materials to personnel	*0*	*1,011,131*	*1,213,325*
New total personnel	***30,927,000***	***30,681,641***	***32,928,784***
MATERIALS			
Subtotal materials excluding transfers from materials to personnel	*14,480,000*	*13,688,639*	*15,676,955*
Transfers from materials to personnel			1,213,325
New total materials	**14,480,000**	**13,688,639**	**16,890,280**
Total general	**45,407,000**	**44,370,280**	**48,605,739**

In 2011, part of the NMa's administrative processes was carried out in Oracle. This concerned the costs associated with P-direkt, the central government's salary administration system. As a result, some shifts have

taken place in the ledger accounts that have been used, compared with 2011. These shifts have affected the tables. It is therefore difficult to give a proper and clear explanation about the differences that occurred during the year, and about those with previous years. With regard to personnel expenditures, salary costs have again drastically decreased (40%) as a result of lower capacity utilization rates, and lower temporary hiring costs.

Income

Table 6.5 Income (In €)

Description	Allocated budget 2012	Realization 2012	Realization 2011
NMa fines – construction (010)		4,412,814	3,345,419
NMa fines – non-construction (011)		30,469,673	20,020,378
NMa general (012)		2,013,277	160,231
Office of Energy Regulation contribution scheme (020)	2,619,000	2,824,485	4,079,525
NMa fees (050)	2,670,000	1,598,128	1,444,149
Total	**5,289,000**	**41,318,378**	**29,049,701**

The budget letter of the Ministry of Economic Affairs did not include the entire income budget of the NMa (including High Trust), but only included the contribution scheme of the Office of Energy Regulation and the fees in connection with merger notifications. Realized income therefore differs significantly (in a positive way) from the allocated budget. Moreover, income has also been higher than usual when looking at a longer period of time.

Outstanding debts and receivables

Table 6.6 Outstanding debts and receivables NMa as of 31 December (In €)

Category	2012	2011
Flour	70,235,539	83,908,304
Bell peppers and onions	26,596,481	0
Industrial laundries	18,868,209	18,362,000
Taxi transport	8,507,000	0
General practitioners	7,990,128	0
Home care	7,092,095	17,823,700
Double glazing	6,087,230	9,981,009
Foreclosure auctions	6,010,132	6,300,000
NH8	2,231,429	12,856,208
Construction	1,599,340	7,313,596
Energy	818,180	7,202,000
Public green space	170,611	862,659
Fees	225,000	195,000
Other	11,339,328	24,059,481
Added to bankruptcy	1,143,939	520,652
Mobile telecom	0	17,232,630
Newspapers	0	21,224,413
Total	**168,914,640**	**227,841,653**

In the 2011 table, the total amount in the category ´other´ was EUR 34,040,940. This amount included an amount of EUR 9,981,009 in connection with the category ´double glazing.´ In 2012, this category has been given its own row. This is the reason why the amount in the category ´other´ for 2011 has been reduced from EUR 34,040,940 to EUR 24,059,481.

Table 6.6a Specification of fines and interest accrued as of 31 December 2012

Description	2012	2011
Fines	161,122,538	212,823,197
Interest	7,795,699	15,018,456
Total	**168,918,237**	**227,841,653**

The NMa's Competition receivables of 2012 and previous years are composed of fines imposed on undertakings, plus the legal interest accrued and minus the income. Objection and appeal proceedings in several major cases have not yet been concluded, thereby postponing the obligation to pay. Reductions of fines and interest payments as a result of court rulings have already been included. Fines plus the legal interest accrued in 2012 was EUR 36.8 million.

The reduction in the level of interest accrued means that relatively old cases (which generate a lot of interest) have now been completed.

The NMa held a bank guarantee on December 31, 2012. This concerns an expiring guarantee against an expiring repayment plan. This amount changes constantly, and is therefore not included in this overview.

The Office of Transport Regulation did not receive any fines in 2012. Consequently, there have been no transfers to IenM.

Board of the NMa (autonomous administrative authority)

The Board of the NMa is an autonomous administrative authority under Dutch law. The Ministry of Economic Affairs allocates resources to this autonomous administrative authority **'the Board of the NMa'** for personnel costs by means of a budget letter.

Pricing principles

All amounts are included at their nominal value.

Table 6.7 Realization versus budget (In €)

Description	Liabilities	Expenditures	Income
Budget letter	507,000	507,000	0
Realization	505,384	505,384	0
Underexpenditure	1,616	1,616	0
Percentage	0.32%	0.32%	0.00%

Realized expenditures were slightly under budgeted expenditures. The realization has been the result of contractual arrangements made between the Ministry of Economic Affairs and the members (current and former) of the Board of the NMa. Mr. Chris Fonteijn has been the Chairman of the Board since July 1, 2011. In addition, he is still the Chairman of the College of OPTA, which means his salary payments are handled by OPTA. The NMa has compensated OPTA pro rata. The autonomous administrative authority was charged this compensation. OPTA received a compensation of EUR 184,000 in 2012.

As of 2012, the expenditures related to the severance payments for a former board member whose term expired in 2009 were booked under a central budget of the Minister of Economic Affairs. The listed amount is the final claim of 2011. In 2012, no lump sum severance payments were paid to board members that had left the organization.

7 Business operations

Responsibilities and tests

This section has been set up in line with the structure of the Annual Report of the Ministry of Economic Affairs. The Board of the NMa is responsible for the efficiency and effectiveness of the internal processes to ensure that the risks of non-realization of the objectives are optimally controlled. With regard to the non-financial processes, however, the internal processes and the applicable control measures can never fully guarantee that no significant defects will ever occur.

In order to meet this responsibility, a comprehensive system of instruments has been set up, covering planning, control and accountability.

Management statement of the Netherlands Competition Authority

I, Chris Fonteijn, Chairman of the Board of the Netherlands Competition Authority, declare with regard to the year 2012 and based on the information at my disposal, the following:

- The financial administration, the realization figures with respect to the liabilities, expenditures, income, and receivables, and guarantees as of December 31, 2012 are correct and complete in accordance with the Government Accounts Act 2001 and the regulations issuing therefrom;

- All transactions with regard to liabilities, income and expenditures have been carried out in accordance with international regulations, Dutch laws, orders in council, and relevant ministry rules (legal requirements and accounting standards);

- The management information included in this annual report has been the result of an orderly, verifiable and sound process, and is not at odds with the financial information included in this annual report;

- The financial and material management meets the ´Baseline financial and material management´ rules of the Ministry of Finance;

- The allocated budget for the public organization (related to staff and/or material) has not been exceeded.

- There were no indications or allegations of fraud[1] or of failure to comply with regulations, which the Finance Director and the National Audit Office should have been notified of.

Obstacles to the realization of the objectives

Over the past year, the NMa faced a number of obstacles that made it difficult to realize the objectives. These obstacles were overcome as much as possible using the abovementioned instruments covering planning, control and accountability:

[1] The term ´fraud´ is understood to be a deliberate act by one or more individuals at the executive level, from the bodies charged with governance, or by other employees or third parties to obtain unlawful or wrongful benefits. This includes any discrepancies resulting from unlawfully taking away assets from the entity or accruing assets such as placing unauthorized burdens on assets. Bookkeeping fraud consists of deliberate deviations or omissions of amounts or explanations in financial overviews with the purpose of deceiving users.

- In terms of staff numbers, the NMa has met the targets set in the programs of previous Dutch administrations (under former Prime Minister Balkenende and the first Rutte administration) towards a more efficient central government. At the beginning of 2012, the NMa had a staff of 375.5 FTE (including temporary contracts under Section 6.2a and Section 62.c). Outflow in 2012 has been significant, and, on December 31, 2012, the NMa had a staff of 353.7 FTE, which is 10 percent below the number of budgeted FTEs. Very few job openings are posted. The NMa follows the job-opening framework that is used across the Ministry of Economic Affairs and its affiliated agencies. It aims to have job openings filled by employees from the Ministry or one of its affiliated agencies as much as possible. A hiring freeze is in effect for recruitment outside of the Ministry or one of its affiliated agencies. Another reason for the hiring freeze in 2012 was the impending consolidation with OPTA and the CA. The three authorities had agreed on completing the provisional employee-placement process first before deciding whether or not to fill any job openings. This has been another contributing factor to the understaffing situation. Finally, the cutback programs last for several more years, which call for a continuation of the cautious recruitment policy. However, to stay connected with young professionals, and to be prepared for the future, the NMa made a number of internship positions available to students to get to know the NMa's work.

- The consolidation with OPTA and the CA took up much of the resources of the various departments (particularly the Corporate Services Department and the various "building teams"). It has resulted in the Organization Decision and a successful yet intensive employee-placement process. The latter involved a Placement Advisory Committee, which held almost 100 one-on-one meetings with employees. Many other targets have been met as well. NMa (and OPTA and CA) chose to use internal resources only for these activities.

Improving business operations

- In 2012, the NMa, OPTA and CA put a great deal of effort into the development of an IT system aimed at controlling document registration and at streamlining the planning and control cycle. During its development, the desire to be able to work independent of location and time was also included. The system is practically ready to be rolled out within all three organizations.

- The NMa Academy in 2012 was gradually reorganized into the ACM Academy. It has programs geared to all kinds of staff members. In 2012, the NMa Academy implemented its Professionals Program (PP), a department-specific learning path where advanced education takes place, and its Advanced Professionals Program (APP), a program for experts, which was developed in cooperation with the NMa´s merging partners and Nyenrode Business University.

8 Towards ACM

In March 2011, the then Dutch administration decided to have the Netherlands Competition Authority, the Netherlands Independent Post and Telecommunication Authority (OPTA), and the Netherlands Consumer Authority merge into a new regulator: the Netherlands Authority for Consumers and Markets (ACM). This move was part of the central government's plans towards a smaller, more efficient and effective government.

For the most part of 2012, the NMa's activities were primarily focused on the preparations for the upcoming merger. One of 2012's milestones was when the Minister of Economic Affairs approved the so-called Organization Decision on June 6, 2012. This decision detailed the most important aspects of the new organization, such as its organizational structure, its culture, what duties the different departments will have, and how ACM will be funded. Furthermore, preparations were made in 2012 for the integration of the IT and HR systems, as well as that of the corporate services departments.

The merger of the three authorities is realized through two separate bills: an establishment bill and a substantive bill. The former bill concerns the creation of the new authority, while the substantive bill will simplify procedures, and streamline powers.

On February 26, 2013, the Dutch Senate passed the Establishment Act. This Act is the statutory foundation of the new regulator that was created on April 1, 2013.

9 Contact details

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