

2011 Annual Report
The Netherlands Competition Authority

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1 Introduction

The NMa in 2011 accomplished many things. Each year, we present an overview of our accomplishments in the previous year in our annual report. For the first time ever, the NMa has released its annual report in an online format (the Dutch version is available on jaarverslag2011.nma.nl - this English version is available in PDF format only).

Since we are involved in so many areas, we are truly able to help improve welfare in the Netherlands. I consider this a very special and serious responsibility, one that the NMa will continue to carry out in 2012 with great enthusiasm. In 2013, we will continue our work within a new regulatory authority: the Netherlands Authority for Consumers and Markets, which is a consolidation of the Netherlands Competition Authority, the Netherlands Independent Postal and Telecommunications Authority and the Netherlands Consumer Authority. I would like to invite you to explore the organization we are currently building.

2011 was an extraordinary year for the NMa. Personally, the changes to the Board come to my mind. I consider my new work environment at the NMa inspiring. NMa people have real drive. They constantly look for effective solutions to market problems. For example, we made things clearer in the mortgage market, and we stepped in in the foreclosure market. Energy is another good example. In that industry, we look at consumer issues too, not just at the big, international competition issues. Consumers want, among other things, increased reliability, for example having accurate and correct price comparison websites.

What interests us most are particularly those antitrust areas that intersect with other key concerns:

- Competition with public interests;
- Quality of health care with competition in that industry;
- Energy affordability with security of supply.

These kinds of intersections are reflected in the design of the NMa's online annual report. In this paper version of the Annual Report, I would like to invite you to read more of the NMa's work in 2011.

Chris Fonteijn
Chairman of the Board of the NMa

March 2012, The Hague, the Netherlands

2 About the NMa

'Making markets work.' That is the NMa's mission. If a market works well, businesses constantly do their best to raise the quality of their products and services, by keeping prices low, and by offering 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. And as independent authority, the NMa oversees competition.

Not just tracking down violations

The NMa works on a mission-oriented basis. That means we find out what the real 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 to comply with those rules.

The NMa needs to be able to explain what goes wrong in the market, and that we keep an eye on other interests at the same time. These are interests that are not always economic ones, but rather those that serve the public interest, for example in health care or with regard to sustainable energy. That way, we build understanding and support for our actions.

The NMa at work

Since July 2005, the NMa is an Autonomous Administrative Authority (ZBO) 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 the ACM can be found in the chapter on the consolidation process (chapter 3).

Changes to the Board of the NMa

On July 1, 2011, Pieter Kalbfleisch stepped down as Chairman of the Board of the NMa, having served for eight years. Mr. Kalbfleisch's term came to an end. Some of the highlights of his tenure are the Dutch construction industry fraud and the addition of the Office of Transport Regulation to the NMa's organization.

On July 1, 2011, Chris Fonteijn was installed as Chairman of the Board of the NMa. He has been Chairman of the College of OPTA since 2005. Mr. Fonteijn is to become the Chairman of the Board of the ACM as of January 1, 2013.

In 2011, Jaap de Keijzer, member of the Board of the NMa since October 1, 2009, requested the Minister of Economic Affairs, Agriculture and Innovation to accept his resignation and relieve him from his duties as of late September. On the Board, Mr. De Keijzer's portfolio included energy and transport regulation. His resignation was prompted by personal reasons.

Key figures of the NMa

The below table (table 1) lists key figures on the most important activities of the NMa.

Preliminary Key Figures NMa 2011		2009	2010	2011	Comments 2011
Competition					
Statement of Objections and Fines					
	Number of formal investigations under competition law	24	19 (+1)	18	
	Number of formal investigations resulting in a Statement of Objections (establishing a reasonable suspicion that the Competition Act was violated)	15	11	10	
	Number of investigations completed by means of an alternative instrument	2	3 (+1)	2	
	Number of investigations in which the formal investigation was suspended due to insufficient evidence	7	5	6	
	Number of cases in which a fine and/or an order for periodic penalty payments was imposed	12	12	6	
	Total amount of fines in competition cases (x € million)	4.5	137.1	39.7	
	Number of fines on de facto executives	-	8	2	
Complaints and informal opinions					
	Complaints settled in relation to violations of the Competition Act	24	17	18	
	Informal opinions	1	1	1	
Concentrations					
	Proceeds of notifications and licences (x € million)	1.2	1.3	1.4	
	Notifications of mergers, acquisitions and joint ventures (concentrations)	90	83	98	
	Concentration notifications that did not need to have been notified	-	1	-	
	Withdrawn notifications	7	4	6	
	Exemption from the waiting period	6	0	3	
	Decisions on notifications of concentrations	82	83	87	
	License required for concentration	1	7	5	
	License applications	4	4	5	
	License applications withdrawn	1	1	2	
	Decisions on license applications	2	3	4	
Transport					
Railway Act					
	Number of investigations by Office of Transport Regulation	4	2	7	
	Number of formal investigations resulting in a Statement of Objections	-	-	-	
	Number of investigations completed by means of an alternative instrument	3	-	3	
	Number of cases in which no violation was established	1	-	4	
	Number of completed sanctions cases	-	-	-	
	Total amount of fines in transport cases (x € million)	-	-	-	
	Number of completed complaints related to the Railway Act	3	-	-	
	Number of advisory opinions to Ministry of Infrastructure	4	5	6	
Aviation Act					
	Number of requests for tariff assessment resulting in a decision	2	-	2	
	Approval decision on cost allocation system	-	2	-	
Pilotage Act					
	Decisions Pilotage Act	3	1	4	
Passenger Transport Act					
	Completed cases involving local transport companies	6	-	-	
	Number of cases resulting in a court ruling	-	-	-	
	Number of advisory opinions to Ministry of Transport	2	1	-	
Energy					
	Proceeds of contribution scheme energy (x € million)	2.9	3.1	4.1	
	Method decisions	-	4	7	
	Implementation decisions	69	116	78	
	Enforcement decisions	11	3	2	
	Advisory opinions to the Minister of Economic Affairs	21	9	12	
	Dispute resolution	30	26	20	
	Number of energy cases in which a fine and/or an order subject to periodic penalty payments was imposed	9	1	3	
	Total amount of fines in energy cases (x € million)	0.8	0.2	10.4	
Administrative appeals					
	Completed administrative appeals in competition cases	18	12	24	
	Completed administrative appeals in energy cases	42	118	142	
	Completed administrative appeals in transport cases	1	1	1	
Judicial appeals					
	Judicial appeals completed by the District Court of Rotterdam against decisions in relation to competition	45	12	11	Includes 2 construction industry cases
	Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to competition	8	36	13	includes 10 construction industry cases
	Judicial appeals completed by the District Court of Rotterdam against decisions in relation to energy	39	55	73	
	Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to energy	-	-	-	
	Judicial appeals completed by the District Court of Rotterdam against decisions in relation to transport	6	6	1	
	Judicial appeals completed by the Trade and Industry Appeals Tribunal against decisions in relation to transport	9	1	3	
Outcome					
	3-year rolling average (x € million; in 2011 prices)	340	366	265	
Budget and personnel					
	Total budget granted (x € million)	49.4	45.9	45.5	does not include compensations
	Number of staff on December 31st	438	433	395	
	Ratio men/women	51%/49%	52%/48%	52%/48%	
	Average age of staff	37	38	39	

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 2011, the NMa performed very well in terms of suspending antitrust investigations before it was too late, or completing them and delivering an enforcement product, such as a statement of objections. The NMa reached its internal lead-time targets in respectively 100% and 80% of all cases. With regard to sanction procedures, the NMa failed to meet its internal targets.

One of the reasons is that cases leading to substantial fines often require detailed investigations into the financial positions of the parties involved. In some cases, further investigation was needed. Furthermore, targets with regard to objections (antitrust and energy) have not always been achieved, often due to conflicts with other procedures inside or outside the NMa. In concentration cases and requests related to the Dutch Act on Public Access to Government Information (Wob), both of which have statutory limits on lead times, the NMa managed to meet the standard lead times.

Improvements

The NMa continues to pay close attention to the lead times of its core processes by, among other things, making clear internal arrangements on handing over and handling cases, which is done on a case-by-case basis as much as possible. When planning cases, the NMa increasingly aims to have a mix of large, medium-sized, and smaller cases in order to avoid having to handle multiple large cases simultaneously in the objection procedure. Furthermore, an effective and efficient allocation of capacity will be 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 (table 2) on lead times.

Lead times

Product	Norm (days)	Norm (percentage)	2006 Realization	2007 Realization	2008 Realization	2009 Realization	2010 Realization	2011 Realization
Cartel and abuse cases (from investigation till sanction) (2)	588	90%	31%	0%	25%	86%	55%	11% (5)
Antitrust investigation with enforcement product*	336	90%	50%	64%	60%	38%	64%	100%
Investigation without enforcement product (1)	175	90%	76%	79%	81%	71%	78%	80%
Notification of concentration	28	100%	100%	100%	100%	100%	100%	100%
Request for exemption of waiting period (Section 40)	15	100%		100%	100%	100%		100%
Concentration License	91	100%	100%	100%	100%	100%	100%	100%
Complaint under Section 71 Railway Act	61	100%	0%	100%	86%			
Dispute settlement (Electricity Act, Gas Act)	120	75%	71%	66%	72%	63%	73%	60%
Sanction under Competition Act (Sections 6 and 24)*	252	75%	16%	40%	71%	88%	38%	22% (3)
Sanction under Electricity Act and Gas Act	91	75%	100%	67%	100%	100%	100%	33%
Sanction for non-cooperation/non-notification	91	100%		100%	100%	100%	100%	
Objection Competition (without objection from advisory committee)	210	90%	67%	49%	64%	93%	60%	17%
Objection Competition (with objection from advisory committee)	252	75%	42%	40%	50%	56%	38%	33% (3)
Objection in connection with Electricity Act or Gas Act	140	75%	53%	25%	50%	43%	37%	43% (4)
Sanction under any of the transport-related acts	91	75%		0%	75%			
Objection under any of the transport-related acts	140	75%			100%	100%	100%	100%
Request under Public Access to Government Information Act	56	75%		49%	58%	43%	82%	75%

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) The category 'cartel and abuse cases' has been added for reasons of international comparison, but does not represent an actual, separate core process of the NMa. Lead time is comprised of lead time of some of the investigations with enforcement products (those with a fine) and the category 'Sanction under Competition Act' (see *).

(3) 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.

(4) Based on its Method decision (valid for three years), and for each network operator, the NMa issues a so-called x-factor decision, as well as three annual tariff decisions. Any objections can only be addressed once the Method decision's validity has been established. Lead times are thus extended. In the future, the NMa will use a different method by handling objections directly, so that parties will receive a final opinion from the NMa more quickly.

(5) This low realization figure is primarily caused by cases that are referred back, and by the level of complexity in cases in which complicated market analyses with regard to evidence may result in difficulties. In addition, because the fines involved in such cases, sanction cases require finding out the financial positions of parties, which is why parties often invoke the hardship clause.

Outcome

Every year, the NMa produces an estimate of what the NMa's work has yielded consumers in terms of welfare gains or losses. By regularly publishing this 'outcome', the NMa wishes to determine the quantifiable benefits of its actions. The benefits for 2011 are estimated at EUR 265 million, which is the 3-year rolling average of the first-year effects of decisions taken in 2009, 2010 and 2011, and which is almost six times the NMa's budget (in 2011: EUR 45.5 million). Since 2002, the NMa's outcome has fluctuated between roughly EUR 250 million and EUR 550 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

At the NMa's request, the Netherlands Bureau of Economic Policy Analysis (CPB) has evaluated the NMa's calculations. 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 appears to have been done carefully;
- The method uses rules of thumb that, on the whole, follow economic literature; and
- The NMa's interpretation of the outcome could have been more careful in some instances.

Complaints about the NMa

In 2011, the NMa's complaints officer received one complaint about the NMa's working method. It concerned the discussion on and finalization of an intention to impose a binding instruction. The NMa sat down with the complainant, and, according to the latter, the complaint was sufficiently addressed. The NMa therefore suspended its handling of the complaint.

The NMa as an employer

In 2011, much attention was given to strategic HR policies, aimed at improved control of employee inflow and outflow, and of career development. A mentor program was introduced, as a result of which mentors have been given a structural place and have been met with increased interest within the organization. In addition, increased direct involvement and substance were given to employee mobility. Employee mobility issues are discussed in the 'mobility meetings', participants of which include the heads of the various NMa departments, as well as representatives from the CA and the OPTA. In these meetings, participants discuss internal mobility, intra-partner mobility, and external mobility.

The Board of the NMa considers it of critical importance that the NMa follows a single HR policy to emphasize the unity within the NMa, and to foster the desired culture. Talent management is a key element in that process. HR helps management select the most talented employees, increase employees' commitment to the organization, and create career development opportunities.

Inflow

Inflow in 2011 was rather modest and was lower than in 2010 (a decrease of approximately 30%). A number of reasons can be given. First, the Ministry of Economic Affairs, Agriculture and Innovation has set new staff cutback targets. In order to achieve this goal, the Ministry has implemented the 'job openings framework.' The basic principle behind this framework is to have new job openings be filled as much as possible by workers from the Ministry or from one of its affiliated agencies. External candidates shall not be considered. Second, the NMa took into account the planned staff reduction as part of the consolidation process towards the new regulatory authority ACM. Half of the job openings that were filled in 2011 concerned temporary positions. A temp agency was contacted to help fill these positions.

In terms of staff numbers, the NMa has met the targets set in the previous Dutch administration's (under former Prime Minister Balkenende) program towards a more efficient central government. The NMa was actively managing turnover, since natural turnover was not enough to meet said targets. Most of the time, this meant that temporary contracts were deliberately not extended, and that temporary appointments were not converted into permanent appointments. As a result, outflow in 2011 was significant: 10.3 per cent in 2011 (compared with 8.1 per cent in 2010). On December 31, 2011, the NMa had a staff of 376 FTE, which was below the number of budgeted FTEs (at 96.9 per cent, based on contract work hours).

For organizations like the NMa, it is important to attract and keep the retain people. Even in times of cutbacks, it is essential to continue to invest in recruitment communication, employee training and development. To stay connected with young professionals, and to be prepared for the future, the NMa in 2011 once again held a master class for graduate students, and took part in several career fairs at universities, which was fewer than in previous years because of the current low-key recruitment strategy. Finally, the NMa made a number of internship positions available to students to get to know the NMa's work.

Employee development

In 2011, too, did the NMa make investments in employee retention, examples of which include the introduction of the mentor program, the focus on employee mobility, and the newly created development programs. These are run by the NMa Academy, geared to all kinds of staff members. In 2011, various programs for the support and corporate departments were offered. Furthermore, the NMa Academy has further developed NMa career development paths, and organized them into three programs: an all-round

program for new NMa staff members, a department-specific learning path where advanced education takes place, and a program for experts, which will be organized in 2012 by the NMa and its merger partners in cooperation with Nyenrode Business University.

Absenteeism

The absentee rate was 4.3% in 2011, which is the same as in 2010 (4.3%), but is still higher than the NMa's desired level of 3.8%. It meant that less capacity was available than planned. In 2011, the NMa took steps in improving support for absent workers, and in promoting active sick leave monitoring by managers. A number of managers have attended sick leave monitoring training. Prevention of absenteeism and supporting long-term absent workers continue to be critical issues in 2012 with the aim to reduce the absentee rate and absentee frequency.

Employee participation

In 2011, five meetings were held between the Board and the Works Council (OR). The term of the previous OR expired in April 2011, after which the new OR was installed. In 2011, the OR was closely involved in the upcoming consolidation of regulatory authorities, the staff cutbacks, the career development programs, the dossier of 'valuation and remuneration' (regarding pay raises and bonuses), and the tendering of catering services. As part of the consolidation process, the OR kept in close touch with the works council at OPTA, and the staff representative council at the CA. Every month, this joint council meets with the Steering Group on the consolidation's progress. One member of the OR sits on the Ministerial OR of the Ministry of Economic Affairs, Agriculture and Innovation on behalf of the NMa.

Table 3: The NMa as an employer

The below table lists a number of HR indicators and their results in 2011.

Critical success factor	Monitoring instrument	NMa's desired level	Realized in 2011
Utilization-related figures	Inflow	95%	96.9%
	Outflow	-	1.6%
	Employee utilization rate	-	10.3%
	Percentage of women in pay scale 14 or higher	32%	31.5% (36.8% in management positions)
	Male/female ratio	50% - 50%	54.0 / 46.4% (52.0 / 48.0% in # of people)
Recruitment-communication results	Duration of vacancies	85% within three months	95.2%
	Participation in job fairs	6 times a year	3
	In-house company days at the NMa	1	1
	Number of applicants	-	146
	Number of positions filled	-	21
Training and development	Percentage of income spent on education	3%	2.9%
Exit interviews	Percentage of exit interviews held	75%	72.1%
Absenteeism	Absentee rate	No more than 3.8%	4.3%

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 done 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) all sit on the Consultation Forum of Regulatory Bodies (MTb). In this forum, regulators share knowledge and best practices, and agree on joint approaches to certain topics.

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

Netherlands Competition Authority (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). 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.

Joint positions

The MTb was asked by the Dutch Ministry of the Interior and Kingdom Relations to formulate a joint statement on the newest 'Framework-determining Vision on Oversight,' in which the government explains the boundaries within which it intends to operate in a regulatory context. The MTb argues that successful market oversight calls for consistent government policies. This means that regulatory policies should give special attention to the independent nature of oversight, the relationship between oversight and policy-making, the expectations of lawmakers and the public, and oversight transparency. The MTb is in favor of direct relationships between parliament and regulators, so that regulators can inform the Dutch House of Representatives.

Working Agenda

In 2011, steps were taken towards drafting a joint working agenda. The following items were formulated:

- Identifying strategic topics for a joint oversight agenda;
- Analyzing the relationship (or the shifts therein) between regulators on the one hand, and lawmakers and the general public on the other, and the need for transparency in oversight;
- Analyzing the benefits and drawbacks, and effectiveness of 'naming', and 'faming and shaming' as oversight instruments;
- Promoting the exchange of expertise and knowledge between regulators, including sharing employees.

In 2011, AFM and DNB held the MTb's rotating chairmanship. Two plenary sessions for staff members were held on independence of oversight and on how to influence behavior effectively. In 2012, the MTb will deal with the following topics:

- Drawing up a list of the powers of each regulator, and the rationale behind the differences between each of them.
- Setting criteria for evaluating the actions of regulators.

International

The European and international dimension of the NMa's activities has 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 for its ability to work effectively. The NMa closely cooperates with other 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. International opinions, decisions and court rulings greatly influence the way the NMa performs its duties. International knowledge and experience are shared within the organization through online reports and internal presentations and trainings.

International competition topics

2011 was a milestone year in international cooperation for the NMa. The ICN jubilee conference, organized by the NMa in The Hague, was an immense success. Thanks to the NMa's efforts in compiling an ICN report on consumer welfare, this topic has now really earned a place in the international spotlight. Finally, as of this year, the NMa is a permanent member of the ICN Steering Group.

Highlights of the 2011 ICN Conference

The NMa welcomed more than 500 delegates from 92 countries, who came to The Hague for three days to discuss international developments regarding competition. Henk Don, the then acting Chairman of the Board of the NMa, opened the 2011 ICN Conference held in the World Forum. In his speech, EU Commissioner Joaquín Almunia emphasized the role that ICN and national authorities play in times of economic crises. Some of the break-out session topics included: promoting competition principles in government, promoting competition principles to business and consumers, and evaluation of competition interventions. Other topics were also discussed throughout the conference. Promotional and educational material from different authorities were presented to explain how they tried to increase public and business awareness of cartel-related violations.

Among the Top 10 in the world

In its annual ranking of competition authorities from 39 countries, the Global Competition Review (GCR) awarded the NMa a rating of 'very good', which earned the NMa a 10th place. As in the previous year, the authorities that topped the list were the European Commission, and the US and UK authorities. The NMa shared its tenth place with authorities from, among others, Australia and Japan. The NMa was awarded this ranking in part because of the high levels of the fines it had imposed, and the NMa's leading position in the area of digital forensic investigation.

Key international topics

Some of the NMa's key international topics are digital forensic investigation, leniency, and impact analysis. The NMa held presentations on these topics at the annual ICN Cartel Workshop. There is even a working group on digital investigation within the European Competition Network (ECN), in which the NMa plays an active role. The topic of 'leads & leniency' was also discussed at a semi-annual meeting with neighboring countries (Belgium, Germany, Denmark, the UK, and France), and the European Commission, which was held at the NMa offices, as the NMa is a leading authority in international investigation.

Development

Evaluation and impact analysis are strategic themes of the Organization for Economic Cooperation and Development (OECD). The NMa was invited to participate in an OECD group on this topic, mainly to share information about the NMa's outcome calculations, and its view on consumer welfare. In addition, the NMa produced papers on ports, impact analysis of mergers and acquisitions, and the explanation of economic principles in legal proceedings.

At the same time, the NMa helps other competition authorities develop expertise. In 2011, a number of NMa employees went to South Africa, while others helped the OECD organize a conference in Asia to give advice on fines in construction industry cases and on leniency. Furthermore, the Chairman of the Board, Chris Fonteijn, gave several speeches, including one at the Heads of Agency Workshop during the Fordham Conference in New York on the organizational structure of competition authorities.

International energy and transport topics

To all energy regulators, 2011 was a key year in the process of creating the internal market, as the Third Energy Package came into force. With the official establishment of the Agency for Cooperation of Energy Regulators (ACER) on March 3, 2011, there is now a European agency where national regulators are able to work together at a European level. 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. Peter Plug, director of the NMa's Office of Energy Regulation, was named chairman of the ACER Electricity Working Group for a two-year period starting March 2011. With this chairmanship, the NMa plays a leading role in the European market integration process. In addition, the NMa has chaired the Gas Regional Initiative North-West for years, a collaboration of stakeholders from 10 countries working together on regional market integration.

With regard to natural gas, European regulators in 2011 laid out a vision for creating the internal gas market. In the Gas Target Model, it is laid down in what way competition in the wholesale gas market can be improved (and, by extension, market integration), and in what way infrastructure investments should be realized.

With regard to electricity, broad agreement was reached in recent years on how the internal market should be brought about. The sustained efforts to establish and improve the coupling of day-ahead electricity markets in Central Western Europe paid off in early 2011.

Transport

Sixteen independent European rail regulators, including the NMa, founded IRG-Rail: the Independent Regulators Group, an initiative to have the European rail regulators join forces. Its goal is to make seamless travel within Europe possible for all rail companies, both new entrants and incumbents. IRG-Rail can help solve technical and administrative problems when crossing borders. Rail companies should be able to run their trains unhindered, not having to deal with technical and administrative problems at every border. For example, the more the Port of Rotterdam grows (once the expansion project Maasvlakte 2 has been completed), the greater the importance of having high-quality, borderless rail connections becomes.

The Memorandum of Understanding is signed by rail regulators from the Netherlands, Austria, Croatia, Denmark, Germany, Estonia, France, Hungary, Latvia, Lithuania, Luxembourg, (the former Yugoslav republic of) Macedonia, Norway, the United Kingdom, Sweden, and Switzerland.

Recommendations from the evaluation of the NMa as an autonomous administrative authority

The NMa has acted on the recommendations from an evaluation into its efficiency and effectiveness. That evaluation was commissioned in 2010 by the former Ministry of Economic Affairs in accordance with the relevant statutory requirements laid down in the Framework Act on Autonomous Administrative Authorities and in the Dutch Competition Act.

According to the evaluation, the NMa is a learning and innovative organization. It ensures that markets work better. The NMa has made important steps towards improving efficiency. In addition, the NMa has been able

to become better and better at reaping the benefits of cooperation with other organizations, including other regulators, both domestic and international ones. General competition oversight and industry-specific regulation have contributed to these results, both working in tandem as well as boosting each other's effects.

The report also includes several points for improvement. The NMa aims to increase transparency and to create more dialog. In that effort, it continues to strike the right balance between public interests and competition interests. The NMa is fully aware of the importance of transparency for businesses and trade organizations. In 2011, too, did the NMa release various guidelines, brochures, vision documents, consultations, and informal opinions. The NMa focuses on those industries that need information the most, such as industries that are undergoing a transition to a market-based system, or those that face public interests, like quality of health care.

High on the agenda are also items such as expanding, managing, and sharing market knowledge among NMa staff, and intensifying cooperation with other agencies (national and international). The NMa also aims to reduce internal lead times. At the request of the NMa, the calculations of its outcome will from now on be checked by the Netherlands Bureau of Economic Policy Analysis (CPB).

In late 2011, the NMa organized a roundtable discussion on sustainability, attended by representatives from the corporate sector. The NMa was able to bring together various initiatives in which businesses work together with an eye to such causes as the environment, animal welfare, or consumer health. The participants explained what obstacles they encountered related to antitrust regulations. The NMa wants to listen to their experiences, and find out how it can best help them take away any obstacles.

3 Competition

The NMa takes actions when companies enter into cartel agreements. This may be the case if they make price-fixing agreements, and share markets. Such agreements 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 (called 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 is established, the NMa could take actions.

When two or more companies decide to continue as a single company, we call it a merger. Another situation would be if 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 comply with 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. One of the factors that affect the level of fines is a company's turnover.

Companies anticipate the NMa's concentration control and anti-cartel enforcement efforts

For every cartel that the NMa fines, there are five cases in which companies adjust or dissolve their cartels as a preemptive move against possible NMa investigations. In addition, for every 100 merger notifications that the NMa processes, 18 concentration plans are either adjusted or cancelled. When it comes to concentration plans or illegal agreements with competitors, companies and their advisors appear to take into account the NMa's anticipated reaction. These are some of the main conclusions of a study into the deterrent effects of concentration control and cartel control, which had been commissioned by the NMa, and was carried out by Dutch research firm SEO Economisch Onderzoek.

3.1 Agriculture, industry, and construction

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.

The agricultural industry includes farming, horticulture, cattle breeding, and fishing. It has a different dynamic than industry has. One of the agricultural industry's characteristics is that it can experience large price fluctuations. One of the most talked about topics is margins – how they are set in the entire chain, from farmer to retailer. Sustainable agriculture is increasingly receiving more and more attention. This often leads to questions about cooperation within the production chain, and about how much leeway the Dutch Competition Act and European regulations can offer.

In the early 2000s, the construction industry faced the 'construction fraud case.' More than 1,400 construction companies were fined for bid-rigging and market-sharing. Since then, the construction industry has become more aware of, and has given more attention to compliance with antitrust regulations. The NMa's oversight activities in this industry are very diverse, and cover a broad range of construction companies, from painters to landscapers. The construction industry continues to be very prone to collusive activities. The NMa will therefore continue to keep a close eye on this industry.

NMa fines ship-generated waste collection cartel

Three ship-generated waste collection companies based in the Dutch ports of Rotterdam, Schiedam, Vlaardingen and Maassluis were imposed fines, totaling more than EUR 2.9 million, for cartel activities between August 2005 and July 2007. The following companies were fined: Odfjell Terminals Maritiem B.V. (former AVR Maritiem B.V.), participated in the cartel since January 1, 2006, EUR 227,000; International Slop Disposal B.V. EUR 1,861,000; Ships Waste Oil Collector B.V. EUR 834,000.

These companies concluded price-fixing agreements, and shared work amongst each other, thereby harming shipping companies, who try to get the best price possible for waste collection by requesting estimates from multiple waste collectors. These shipping companies were under the impression they were getting competitive estimate, yet the cartelists secretly harmonized their prices and decided amongst themselves who would get each job and at what price.

Cartel discovered following tip-off from other government agency

The NMa was able to track down this case thanks to the VROM Intelligence and Investigation Service (VROM-IOD) of the former Ministry of Housing, Spatial Planning, and the Environment. This investigation agency had accidentally discovered this cartel through wiretaps. The Dutch Public Prosecution Service (OM) and VROM-IOD handed recordings of the wiretaps, as well as written documentation over to the NMa.

Sustainability

The NMa welcomed the plans the Dutch shrimp-fishing industry had put forward on how to make shrimp-fishing sustainable. The NMa has approved most of the plans, drawn up by Dutch producer organization Garnaal and the Dutch Fishing Association. It believes that sustainability and competition can definitely go hand in hand, but, at the same time, the NMa questioned the proposals on catch limits aimed at protecting the Brown-shrimp population.

There is no need for such limits, as studies have revealed that the Brown-shrimp population is not in danger at the moment. That meant that the proposed catch limits would go beyond what was necessary. The NMa offered to actively help come up with an alternative solution to protect the Brown-shrimp population against potential future overfishing. Sustainability is definitely not incompatible with competition. Sustainability is an area in which companies are able to differentiate themselves from their competitors. In that sense, making fishing more sustainable is a way to create a high-quality product or service. The shrimp-fishing industry informed the NMa that they did not support a proposal put forward by the NMa. In an informal opinion, the NMa made it clear that it could not make an exception to the prohibition of cartels for the catch limits as outlined in the plans.

In late 2011, the NMa organized a roundtable discussion on sustainability, attended by representatives from the corporate sector. The NMa was able to bring together various initiatives in which businesses work together with an eye to such causes as the environment, animal welfare, or consumer health. The participants explained what obstacles they encountered related to antitrust regulations. The NMa wants to listen to their experiences, and find out how it can best help them take away any obstacles. This initiative came as a result of, among other things, the 2010 evaluation of the NMa as an Autonomous Administrative Authority, and of the advisory report 'Working harder towards sustainable growth' by the Social and Economic Council of the Netherlands (SER) for the Dutch government (published in May 2010). These reports called on the NMa to sit down with industry representatives more often.

In a letter from Dutch Minister for Agriculture and Foreign Trade Henk Bleker, dated November 22, 2011, on obstacles encountered in regulations and competition with regard to making the food chain more sustainable, the NMa indicated that it, in informal meetings, was willing to provide companies with guidelines for assessments of a number of sustainability initiatives, which are invaluable to innovative companies, but the admissibility of which is not always clear. That way, manufacturers are able to know more about what options they have when organizing collaborative arrangements without violating antitrust regulations. In close consultation with the Dutch Ministry of Economic Affairs, Agriculture and Innovation, it needs to be figured out how to determine a good selection of collaborative arrangements that require additional explanation.

Highest Dutch court in antitrust cases upholds fines shrimp cartel

Traders and Dutch, German and Danish producers' organizations representing shrimp fishers must pay fines, totaling more than EUR 4.4 million, for violation of the prohibition of cartels between 1998 and 2000. The lion's share of these fines, more than EUR 3 million, will be borne by two wholesalers involved. This was the outcome of the final ruling laid down by the Dutch Trade and Industry Appeals Tribunal (CBb), the highest court in the Netherlands in matters of antitrust law, in the long-standing legal dispute that lasted more than eight years over the fines that the NMa imposed in early 2003. This is the first case ever in which the NMa has fined non-Dutch parties. The fines, though, were lowered by the CBb.

At the time of the violation, approximately 480 shrimp cutters were active in the Netherlands, Germany and Denmark. The fishermen's organizations concluded agreements on the maximum amount of shrimp that they could bring to land each week per cutter. On top of that, the fishermen and traders gave each other minimum price guarantees. The industry thus tried to camouflage the enormous overcapacity in the market. Consumers have apparently paid too much for their shrimp. Furthermore, the Dutch parties involved were imposed a higher fine for having participated in a second violation (next to the primary violation) that

occurred in the fall of 1999, when they made a joint effort in making it impossible for a new shrimp trader to trade at the Dutch fish auctions.

The producers’ organizations, citing European fishing regulations, argued that the national and European prohibitions of cartels did not apply to them. It was unequivocally ruled that they definitely should have taken into account antitrust regulations. Furthermore, the industry claimed that their agreements would benefit sustainable fishing efforts, as well as the environment. The CBb saw no reasons to have any doubts about the NMa’s assessment that the minimum-price and catch quota agreements were motivated by the intention of the undertakings involved to keep their revenues at a level above normal market conditions. That is no justification for disregarding the prohibition of cartels.

NMa is satisfied with final ruling in bicycle cartel

The Dutch Trade and Industry Appeals Tribunal (CBb) upheld the NMa’s ruling that bicycle manufacturers in June 2000 concluded illegal price-fixing agreements. These manufacturers agreed on passing on the soaring costs for bicycle parts to consumers by including them in the retail prices for the new collection. These agreements therefore restricted price competition. The CBb was of the opinion that this constituted a very serious violation, and thus set fines that were higher than the ones the District Court of Rotterdam had set earlier. However, the fines were lower than the ones the NMa had imposed, because the agreement’s effects were limited, according to the CBb. The fines are as follows:

EUR	NMa Fining Decision of April 21, 2004	NMa Decision on objection of November 24, 2005	District Court of Rotterdam of July 18, 2007	CBb of October 4, 2011
Koninklijke Gazelle: B.V.	12,898,000	11,608,000	6,739,200	10,109,000
Accell Group N.V.	12,809,000	11,528,000	4,610,700	6,917,000
Giant Europe B.V.	3,978,000	3,421,000	1,368,000	2,053,000

International cooperation

As part of its activities within the European Competition Network, the NMa regularly sits down with fellow European competition authorities. In 2011, the NMa assisted the European Commission and several national competition authorities in cartel investigations. In two cases, the NMa carried out a dawn raid at a company located in the Netherlands at the request of the Danish competition authority. In addition, the NMa interviewed a number of individuals at the request of the French authority. Finally, the NMa gave the European Commission assistance in conducting several dawn raids related to a cartel case.

Analyses of industries

For its performance and its prioritization policy, the NMa seeks to increase its knowledge of the structure of and relationships within industries. To that end, it commissioned two studies from research firms in 2011. One study analyzed the fishing chain, and the other looked into the market for medical equipment. Both of these were published on the NMa’s website.

3.2 Financial and business services

Financial services

The banking and insurance industry is of great economic importance. It is characterized by a market structure with relatively few players. In addition, the complexity of some financial products makes it necessary to monitor the industry carefully. Other markets the NMa regulates include pension funds, stock markets, and other financial service providers.

Business services

The business services industry mostly includes companies that offer services to businesses. The companies in this industry fuel their clients' productivity growth to a considerable extent. This industry is extremely varied, and encompasses many different business activities: for example, payroll services, temp workers, but also office cleaning, and office catering services. Other types of business services include debt collection and consultancy. Of the many different business service submarkets, real estate has been declared one of the NMa's top priorities.

NMa fines industrial-laundry cartel EUR 18 million

The NMa imposed fines, totaling EUR 18 million, on four major laundries for engaging in market-sharing activities. These industrial laundries wash, among other items, bed linen and working-clothing for health care providers. Total annual turnover in this market is EUR 250 million. The cartel had a market share of 35 to 50 per cent.

The NMa considered proven that the industrial-laundry cartel had shared the Dutch market at least since January 1, 1998. The laundries involved had each been allocated a region. They were not allowed to compete with one another outside their regions. At a later stage, they were prohibited from actively recruiting customers outside their regions. This step was the more reprehensible, given that many health care providers do not switch laundries easily. Their long-standing market-sharing agreement resulted in health care providers not being offered competitive estimates from these industrial laundries, denying them the benefits of full competition.

Commitment from Dutch textile care industry

The NMa in late 2011 made available for perusal a draft commitment put forward by the Dutch Federation for the Textile Care Industry (FTN), which is the trade association for textile care professionals in the Netherlands. Practically all Dutch industrial laundries and textile rental service providers are FTN members. In its proposed commitment, the FTN promised to adjust its behavior in order to eliminate any anti-competitive concerns. In addition, it repealed its recommendations about passing on specific costs for textile care, and it promised to no longer make any statements directed at its members that may affect their ability to independently decide on their commercial strategies.

Homeowners at foreclosure auctions were victims of cartel for years

Homeowners that had been forced to sell their homes through foreclosure auctions were victims of a cartel for years. The NMa therefore decided to impose fines, totaling EUR 6.3 million, on 14 Dutch real-estate traders. The cartel existed between June 2000 and November 2009, and has affected foreclosure auctions across the Netherlands, involving more than 2,000 homes. The 14 traders that were fined had been involved in auctions involving 265 to (in some cases) more than 1,100 homes per trader.

According to the fining decisions, these traders kept property prices at foreclosure auctions artificially low in order to make a profit at other, secret auctions (so-called afterauctions). As a result thereof, the official auctions produced lower prices. Traders kept outsiders away, or tried to get them involved in the cartel, even relying on intimidation in some cases. They repeatedly reported of an implicit system using symbols and signals in order to manipulate auctions. Homes were then re-auctioned among the cartelists at an afterauction. The cartel 'profit' (the difference between the price at the official auction and the price at the afterauction) would then be split among its members.

Elevated risk for antitrust issues

Foreclosure auctions face an elevated risk for antitrust issues, the NMa's investigation and a consultation on foreclosure auctions revealed. Potential bidders are given little information about listed homes, and buyers run enormous risks. It is thus difficult to make an estimate of the final costs associated with bidding on homes at foreclosure auctions. As a result, few private individuals were actually present at the auctions under investigation. It became clear that the traders in question regularly met each other at these auctions, making it easier to make arrangements.

Better prices are possible

The NMa believes that foreclosure auctions could produce better prices by making available as much information as possible on related costs, the property's current state, and its occupancy. One of the ways to achieve this is to organize home viewings more often. Furthermore, auctions should be set up in such a way that private individuals would better understand the system. In addition, publicity for the listings at foreclosure auctions could be stepped up as well, for example, posting listings on websites individuals go to when looking for homes for sale.

The traders in question have the opportunity to file objections and appeals against these fining decisions. In October 2011, the NMa sent 42 other traders decisions stating a presumption of violation of antitrust laws. The investigations into these traders is still ongoing.

The NMa reopened the investigation after it had received relevant information from the Dutch Tax Administration. The cooperation between the Tax Administration and the NMa is a perfect example of the government's integrated approach to abuses in the real estate industry. This industry is also one of the cornerstones of the NMa's 2010-2011 Agenda.

Study offered insight into antitrust risks of property financing

A study commissioned by the NMa and carried out by SEO Economic Research revealed that the risk of cartels in the property finance market has increased due to the limited number of players in that market, which in recent years has even decreased. These results prompted the NMa to continue to closely follow the developments in this market. It will particularly focus on refinancing products and syndicated loans, since the SEO study indicated an elevated risk to competition for these two submarkets.

The study further revealed that property finance customers are not that far behind loan providers when it comes to finance knowledge. In addition, it found that there is increased competition from foreign providers during economic upswings. The study looked into the level of competition and potential antitrust risks in the property finance market for the period of 2005 through 2009. Its findings were based on data gathered from public records and interviews that were conducted in the first half of 2011.

Interrelationship between mortgage margins and level of competition

Mortgage margins in the Netherlands in early 2011 were at pre-financial-crisis levels. The decrease in margins has been accompanied by an increase in competition. This was one conclusion the NMa drew in its study into competition in the Dutch mortgage market. As part of that study, the NMa looked specifically into the possibility of collusion, but did not find any indications of price-fixing agreements by mortgage providers, or of any other violations of the Dutch Competition Act.

The study further revealed that several non-Dutch banks have been able to gain market share over the major Dutch banks. In addition, insurers increasingly appear to be competing with the major banks. Competition on the mortgage market has increased as a result thereof. It shows that these other providers are critical to a well-functioning mortgage market. Consumers equally play a crucial role in stimulating competition. They could save on mortgage costs by comparing multiple providers, and take other providers into consideration as well, besides the major banks.

Another finding was that various mortgage providers inform their customers quite late regarding the expiration date of their fixed-rate period. Consumers thus have less time to seek offers from other providers, and are less well prepared to negotiate on a new mortgage interest rate. The NMa therefore called on all mortgage providers to inform their customers well in advance that their fixed-rate period expires. The Minister of Finance, and the Minister of Economic Affairs, Agriculture and Innovation agreed with the NMa's recommendations. The Minister of Finance announced he would take measures to enhance the position of consumers.

After the study's release, a major foreign competitor, BNP Paribas, announced it would no longer be offering new mortgages from 2012. This development potentially affects competition among mortgage providers. As mentioned in the study, the NMa will continue to keep a close watch on the mortgage market.

NMa launched a market study into real estate brokers

The NMa launched a study into competition among Dutch real estate brokers. With this market study, the NMa sought to gain insight into how this particular market functioned, and what bottlenecks the market encountered. The NMa invited interested parties to share with it their information and experiences about this market.

For most consumers, buying a home is the biggest purchase of their lives. It is therefore imperative that this market functions well. Various developments have dramatically altered the playing field in the market for real estate brokers in the last ten years: the lifting of the legal protection of the title 'realtor', the elimination of fixed real-estate commission rates, and the rise of the Internet. In its study, the NMa wanted to analyze what effects these developments have had on competition in the market for real estate brokerage services. The study's objective was to come up with recommendations to improve competition, if needed.

3.3 Commerce, services, and transport

Commerce, Services, and Transport encompasses all forms of transport, be it road or rail transport, or transport over water and through the air. In cases of industry-specific regulation, the Office of Energy and Transport Regulation is the leading regulatory body. Wherever needed, the Office and the Commerce, Services, and Transport team work together.

This team also oversees the commercial activities that are related to these forms of transport. It thus covers the most important elements of the Dutch transport industry, as well as the entire chain stretching from wholesale to consumer, which includes wholesalers and retailers (for example, supermarkets, restaurants, DIY stores, apparel stores, e-commerce, and car repair shops).

Furthermore, this team in the Competition Department also enforces oversight on free professions, commodity and industrial boards, and all types of services to consumers (except for financial services).

Dutch Association of Travel Agents and Tour Operators to amend its General Agency Conditions

The NMa instructed the Dutch Association of Travel Agents and Tour Operators (ANVR) to amend its General Agency Conditions. The conditions were said to potentially restrict competition on price with regard to travel sales. Amending them would eliminate this risk. The NMa therefore decided to close the investigation into possible antitrust violations in the travel industry.

ANVR is the Dutch trade association for the travel industry, representing approximately 1,550 travel agents and 200 tour operators. In its investigation, the NMa found that some travel agents interpreted ANVR's General Agency Conditions as a prohibition to offer any discounts with regard to travel sales. Such an interpretation would lead to a restriction of competition. With the amendment, it is emphasized that the General Agency Conditions do not constitute a prohibition for travel agents to offer any discounts themselves with regard to travel sales. With a combined turnover of more than EUR 10 billion, the travel industry is a key industry of the Dutch economy.

Prompted by indications that tour operators and travel agents had agreed not to offer consumers any discounts with regard to travel sales, and to collectively boycott innovative online services that offer discounts, the NMa in 2011 launched an investigation into the travel industry. As part thereof, the NMa carried out dawn raids in January and February of 2011 at various travel-related undertakings.

Investigation in beauty care products terminated

In June 2008, the NMa launched an investigation into activities of beauty care product manufacturers. It was initially suspected that these manufacturers violated the prohibition of cartels. Based on the evidence gathered in connection therewith, the Board believed that it could not be established that the undertakings involved committed any offenses. The Board therefore decided not to impose any sanctions on these undertakings.

Public-transport companies HTM and Qbuzz are allowed to cooperate

The NMa granted Dutch municipal public-transport company HTM (based in The Hague) and public-transport company Qbuzz permission to cooperate with one another. Through their joint venture HTM Buzz, HTM and Qbuzz are allowed to submit a bid in the tender of the bus concession in The Hague for the period

of 2012-2017. Having conducted an investigation, the NMa found that enough competition would be left in that market after said tender.

The NMa examined, among other things, whether, in the The Hague bus market, HTM and Qbuzz are each other's main competitors, and whether they are the leading contenders. If this were the case, a concentration would lead to a less competitive (joint) bid, which could result in higher bus fares. Since Qbuzz has not been active in The Hague yet, it does not have any advantages over competitors such as Arriva and Connexxion/Veolia. HTM and Qbuzz are therefore not each other's main competitors. In this particular tender, there was enough competition in order to ensure that bids remained competitive.

Situation in Rotterdam

The situation in The Hague was different from the tender for the bus concession in Rotterdam, where Qbuzz sought to cooperate with municipal public-transport company RET (based in Rotterdam). Like RET, Qbuzz already operates several bus services in Rotterdam. Before reaching its final decision, the NMa wanted to investigate the competitive positions of Qbuzz and RET in the Rotterdam tender in greater detail. Since RET and Qbuzz withdrew their concentration notification, the NMa did not launch such an investigation.

3.4 Network industries and media

The NMa oversees the energy, telecommunication, and media industries. These industries often have players that 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 telecommunications, postal and media industries, the NMa deals with two other regulators: the Netherlands Independent Post and Telecommunications Authority (OPTA), and the Dutch Media Authority. The NMa and OPTA work 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 the OPTA first. With regard to energy, this team obviously works closely together with the Office of Energy Regulation. It also oversees IT, culture, education, and sports.

NMa reconfirmed: Dutch mobile operators engaged in cartel activities in 2001

Following a ruling of the Dutch Trade and Industry Appeals Tribunal (CBB), the NMa reconfirmed that the three biggest mobile operators in the Netherlands, KPN, Vodafone and T-Mobile, engaged in cartel activities in 2001. The fines for the illegal cartel activities were set as follows: KPN: EUR 7,933,000, T-Mobile: EUR 4,599,000 and Vodafone: EUR 3,717,000.

The NMa is supported in its ruling by the European Court of Justice (ECJ), which has made it clear that mobile operators are never allowed to exchange information about dealer remuneration levels, not even once. The mobile operators were given the opportunity to prove their assertion that there was no connection between the cartel activities and their behavior afterwards. The mobile operators in question failed to do so. In the new fining decisions, the NMa took into account the fact that the CBB did not feel as strongly about the violation as the NMa did, and that the reasonable time limits with regard to decision-making and judicial review had been exceeded. As the operators decided not to appeal these new fining decisions, the fines have been made final.

NMa launched new investigation into mobile operators

In December 2011, the NMa carried out dawn raids at a number of mobile network carriers in the Netherlands. The NMa investigated whether cartel agreements had been made. The fact that the NMa has carried out dawn raids does not automatically mean that the carriers in question are guilty of anti-competitive behavior.

NMa upheld order and fine imposed on Wegener

After the acquisition of VNU Dagbladen in 2000, Dutch media company Wegener, which already owned regional newspaper Provinciale Zeeuwse Courant (PZC), became owner of regional newspaper BN/De Stem as well. The activities of PZC and BN/De Stem have an overlap in the region of Zeeuws-Vlaanderen, in the southwestern part of the Netherlands, where PZC publishes its 'Zeeuws-Vlaanderen' edition and BN/De Stem its 'Zeeland' edition. The acquisition resulted in a dominant position in Zeeuws-Vlaanderen as both of these papers no longer had to compete with one another. The NMa attached an instruction to the acquisition, ordering Wegener to ensure that consumers were not harmed by the acquisition. Wegener was forced to maintain the independent positions of both regional newspapers, and to continue the distribution of both newspapers in Zeeuws-Vlaanderen.

The NMa found out that Wegener has failed to comply with the instruction since January 1, 2002. In 2010, it therefore imposed fines on Wegener and on five of its executives. In addition, the NMa imposed an order subject to periodic penalty payments on Wegener, ordering the company to comply with the instruction within a year.

In 2011, the NMa turned down the objections raised by the media company and the fined individuals against their fines. This meant that Wegener must comply with the instruction or face periodic penalty payments of EUR 1 million per quarter up to a maximum of EUR 20 million. The NMa was of the opinion that the aforementioned commitment was clear: Wegener had always known what was expected from them. That was why the NMa argued there could be no mistake about the requirement to guarantee PZC and BN/De Stem's independence in the southwestern region of the Netherlands. It was thus not allowed to merge the regional editorial boards of these competing newspapers, nor to pursue a joint commercial strategy. The NMa therefore saw no reason to reduce the fines.

In a separate move, Wegener filed a request to relieve it from said commitment, which it made in 2000 to the NMa to get the acquisition of VNU Dagbladen cleared. The NMa changes or reconsiders commitments that are attached to a decision in special circumstances only. Wegener failed to convince the NMa that market conditions in Zeeuws-Vlaanderen had changed so much since 2000 that the commitments would no longer be necessary. Furthermore, Wegener failed to substantiate its claim that publishing both papers in Zeeuws-Vlaanderen would be unreasonable. It was Wegener's own proposed commitment that ensured that readers continued to have freedom of choice with two regional papers. In addition potential price increases and reader selection reductions had thus been prevented.

Wegener has filed appeals against both of these NMa decisions with the District Court of Rotterdam. Awaiting the court's verdict, Wegener announced a set of measures involving the regional editions of PZC and BN/De Stem in Zeeuws-Vlaanderen.

The five most important measures Wegener will take are:

- PZC and BN/De Stem will each have two dedicated reporters in Zeeuws-Vlaanderen, who will not exchange any news amongst the four of them. In addition, a joint core editorial board will be created catering to both papers. The regional edition of BN/De Stem in Zeeuws-Vlaanderen will get its own editor-in-chief.
- The personal union between the boards of PZC and BN/De Stem will be dissolved. There will be two directors, who, within the boundaries set by Wegener's corporate strategy, will each manage day-to-day activities at PZC and BN/De Stem. Each will give the joint corporate services department separate orders.
- The personal union between the supervisory boards of PZC and BN/De Stem will be dissolved. They will also no longer hold joint meetings.
- Two new, external and independent supervisors will be recruited for PZC and BN/De Stem by the Chamber of Commerce.
- Wegener will keep the NMa informed of its activities.

Dawn raids at Amsterdam-based universities

The NMa confirmed it had carried out dawn raids at the University of Amsterdam and VU University Amsterdam. The NMa investigated whether both of these universities harmonized the non-regulated tuition

fees for students pursuing a second degree (bachelor or master, in all programs, apart from medicine), thereby potentially restricting competition for attracting new students. Following the adoption of the Management Enhancement Act in April 2010, universities are allowed to set the non-regulated tuition fees themselves.

Concurrently with this investigation, civil proceedings were started by the Collective Action Universities Foundation against all Dutch universities. This is an example of civil enforcement of the Dutch Competition act. The District Court of Amsterdam on December 14, 2011, rejected the Foundation's demand to issue a temporary injunction requiring the universities to suspend the non-regulated tuition fees. In the proceedings on the merit, the court will tackle the question of whether students were harmed as a result of the adoption of the aforementioned act and of the current non-regulated tuition fees. These were claimed to be excessive, and therefore violated the prohibition of abusing a dominant position as laid down in Section 24 of the Dutch Competition Act. These civil proceedings do not address the question of whether the universities harmonized their fees.

Acquisition of SBS Netherlands by Sanoma and Talpa conditionally approved

Media companies Sanoma and Talpa were conditionally allowed to acquire the Dutch activities of rival company SBS Netherlands. Talpa was required to sell its minority interest in broadcaster RTL Netherlands within three years, and, until then, transfer its shares in RTL Netherlands to an independent trust foundation, whose board would report to the NMa. This way, the NMa prevented Talpa from exerting substantial influence over both SBS and RTL's strategies (two of the Netherlands' biggest broadcasters), and thus from potentially gaining a competitive advantage.

With the acquisition, Talpa will have an interest in SBS. Since 2007, Talpa has also had a minority interest in RTL, as well as a cooperation agreement with the RTL Group. By transferring its interest in RTL to a third party, and eventually selling that interest, Talpa's sphere of influence remains limited to SBS. Talpa, as a producer of TV content, would otherwise be able to exclude its competitors from access to SBS and RTL. In addition, this may decrease competition between RTL and SBS. And ultimately, freedom of choice of viewers could be reduced. Talpa's interest in RTL has already been transferred.

The investigation into the acquisition's effects further revealed that there were no antitrust concerns with regard to the other markets Sanoma and SBS operate in. For example, Sanoma, whose minority participation 'Bindinc B.V.' already publishes the TV listings magazines of three other Dutch TV stations, would acquire the TV listings magazines of SBS Netherlands, including Veronica Magazine, one of the largest magazines in the Netherlands. However, the contents and target audiences of these magazines differ from each other to such a degree that the acquisition would not have any effect on the competition between TV listings magazines. In addition, the acquisition would not generate any antitrust concerns on the distribution market for single-copy magazine sales, such as TV listings magazines.

Acquisition of mobile-phone retail chain BelCompany by Vodafone conditionally approved

The NMa approved the acquisition of Dutch mobile-phone retail chain BelCompany by telecom provider Vodafone under the condition that, from January 1, 2012, Vodafone would no longer sell any mobile-phone plans of its competitors KPN and T-Mobile in the BelCompany stores or in its own stores. At the same time, Vodafone cannot sell its plans through stores owned by KPN or T-Mobile. The NMa attached these conditions to the acquisition in order to prevent Vodafone, KPN and T-Mobile from getting the opportunity to harmonize their commercial strategies through their stores. If that were to happen, competition would be

reduced, and consumers would be harmed. The NMa's investigation revealed that, if the NMa's conditions are met, consumers continue to have enough choice, even after the acquisition.

NMa cleared acquisition of postal service company Selekt Mail by rival company Sandd

The NMa cleared the acquisition of postal service company Selekt Mail, subsidiary of Deutsche Post, by rival company Sandd. According to the NMa, it was unlikely that this acquisition would significantly impede competition. The NMa came to the above conclusion because it was inevitable that Selekt Mail would eventually withdraw from the Dutch market.

Selekt Mail had already long been planning to leave the Dutch market, irrespective of the acquisition by Sandd. According to the NMa, there was no realistic scenario in which, without this acquisition, more than two national players on the Dutch postal service market would remain active. That was why there was no direct connection between the acquisition and any potential negative effects on competition. The NMa could not rule out that mail delivery prices might increase as only two national postal service companies remain active on the market.

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 achieve health care that is affordable and of high quality.

The NMa put much effort in educating the industry in recent years. Since several years now, the NMa has increasingly combined educational efforts with its regulatory enforcement. 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.

Illegal recommendations restricting free establishment of general practitioners

The Dutch National Association of General Practitioners (LHV) called on its members to restrict the freedom of free establishment for general practitioners. The NMa therefore decided to impose a fine of EUR 7,719,000 on LHV. In addition, two LHV officials were imposed personal fines of EUR 50,000 and EUR 25,000 respectively, because the NMa held them responsible for making LHV's recommendations to its members. Almost every GP in the Netherlands is a member of LHV.

The NMa launched the investigation into LHV after it had received indications from alarmed GPs. General Practitioners should be free to decide for themselves where they want to establish their practices. LHV's policy not only hurt new GPs, but hurt patients and insurers as well, because they were left with fewer choices. The NMa in 2001 already made clear to LHV that it was illegal to restrict establishment options of general practitioners. And to eliminate any confusion regarding this issue, the NMa also imposed an order subject to periodic penalty payments on LHV, requiring it to inform all of its members and regional divisions that its establishment recommendations have been revoked.

Home care industry is becoming more aware of competition

The NMa is seeing a positive trend as more and more home care providers become aware of competition and of the antitrust rules that come with it. These providers are doing more and more to prevent future mistakes. This was the conclusion the NMa drew following, among other things, talks it had held with supervisory boards of home care providers. The home care industry was named one of the NMa's focus industries in its 2010-2011 Agenda. Because of the industry's steps in the right direction, it was decided not to include home care as one of the NMa's focus industries any longer.

Commitments

Four home care providers based in the south of the Netherlands that had been the subject of ongoing NMa investigations made commitments to the NMa that they would adjust their behavior so that competition would no longer be jeopardized. Thanks to these commitments, the potential antitrust concerns were taken away swiftly and effectively, enabling the NMa to complete its investigation efficiently.

Fines

The NMa imposed fines on two home care providers, Stichting Careyn Zuwe Aveant and Stichting Vierstroom, of EUR 1,343,000 and EUR 3,000,000 for market-sharing activities. These home care providers had made a far-reaching non-aggression pact as part of the dissolution of a cooperative arrangement (Caraat). The dissolution process had thus resulted in a market-sharing agreement, which constitutes a

severe violation of the Dutch Competition Act. The non-aggression pact the providers had made had the objective of eliminating mutual competition. Furthermore, as a result of the pact, the threat of a new entrant, Careyn, in the subsidized health-care market in the region of Midden-Holland had subsided. Competitive pressure on Vierstroom, which already enjoyed a very strong position in its catchment area, was thus reduced even further. Healthy competition is of vital importance, because it keeps home care providers on their toes to deliver their services at the best price possible.

Insurers to make the next move in hospital care specialization

The NMa believes health insurers can play an influential role in the process of realizing specialization and concentration in the health care industry, as envisaged by the Dutch Ministry of Health, Welfare and Sport, by selectively contracting health care providers. If hospitals needed to specialize in order to meet quality standards, insurers would have responsibility in determining what hospital will offer what care in the future. This was the message that 150 hospital and insurance executives heard at a conference in 2011, jointly organized by the NMa, the Dutch Healthcare Authority (NZa), and the Dutch Association of Hospitals (NVZ).

After all, the Dutch health insurance system does offer insurers an influential role in that area, but it also mandates them to buy enough high-quality care. Insurers are allowed to seek advice from health care providers, as long as they make their own objective choices about what care is bought where. If collaborative arrangements must be made, providers must demonstrate that such collaboration offers quality and efficiency benefits, and that it is critical to the realization of the aforementioned goals. In addition, enough alternatives that are within reasonable traveling distance should remain available to patients. The benefits of collaboration must therefore outweigh the disadvantages of, for example, reduced freedom of choice for patients.

With regard to joint purchasing by health insurers, the NMa drew up an information brochure explaining the rules regarding this topic. Under certain circumstances, health insurers are allowed to collaborate when selecting health care providers. The goal of the collaboration must be to safeguard the minimum quality of hospital care. This is one way competition and health care quality can go hand in hand.

For example, health insurers are allowed to jointly select a hospital for high-complex treatments that are uncommon. This is allowed only if collaboration is necessary to guarantee that this health care provider handles enough demand in order to meet the minimum threshold for that particular treatment. Furthermore, health insurers, in close cooperation with associations for medical specialists are allowed to jointly help in setting national minimum quality standards. Each insurer should be free to set its own (higher) quality standard when purchasing health care.

Alternative enforcement

In some situations, the NMa is able to bring about a shift in conduct with relatively few resources. One such example was the warning it gave to the Royal Dutch Society for Physical Therapy (KNGF) in late 2011 for acting collectively vis-à-vis health insurers. The warning was prompted by KNGF's calling on its members not to sign any contracts. The NMa sat down with KNGF, and made it clear that such recommendations carried antitrust risks.

NMa blocked merger of health care providers in central Netherlands

The NMa blocked the planned merger between health care providers Zorggroep Noordwest-Veluwe and Het Baken, both of which are based in Veluwe, a region in central Netherlands. The NMa argued that this merger would have eliminated each other's main competitor. It would have reduced health care options for patients, and would have taken away mutual competition between these providers. Nursing care patients often choose local providers. Patients in this region mainly rely on local providers Zorggroep Noordwest-Veluwe and Het Baken. By turning down their license application, the NMa prevented that the merger would have resulted in these health care providers being stimulated too little to differentiate themselves from each other, for example, by innovating and improving their health care services.

NMa cleared merger between health insurers Achmea and De Friesland

Having conducted a detailed investigation in the licensing phase, the NMa approved the merger between Dutch health insurers Achmea and De Friesland.

The NMa's investigation revealed that Achmea/De Friesland would have a strong buying position in the northern Dutch province of Friesland. However, Achmea/De Friesland customers and patients should not fear a reduction in the quality of their health care plans or of their benefits. Risking losing customers to competitors, the new company would think twice before reducing the quality of their health care plans or benefits.

The opinions of various stakeholders in the health care field were included in the investigation, including those of health insurers, health care providers, and collectives. In its opinion, the Dutch Healthcare Authority (NZA) concluded that the merger would not affect accessibility, affordability, or quality of health care in the province of Friesland.

Mental health care providers withdraw merger applications

Mental health care provider GGZ Delfland and social-services center group Perspektief withdrew their merger license application. Two mental health care institutions in the southern Dutch province of Brabant, Stichting Geestelijke Gezondheidszorg Oost Brabant (GGZ Oost Brabant) and Stichting Reinier van Arkel did so too.

In March 2010, the NMa carried out a more in-depth investigation into the effects of a potential merger between GGZ Delfland and Perspektief. That investigation focused in particular on the problems that the merger could create with regard to supportive housing in the area of the city of Delft. The merger between the parties could impede competition, thereby limiting their clients' options.

Since December 2009, the NMa had also conducted a more extensive investigation into the effects a potential merger between (GGZ Oost Brabant) and Stichting Reinier van Arkel. The investigation revealed that a merger would result in competition concerns, and that patients would have less choice.

Both withdrawals were prompted by the NMa's negative assessments of the institutions' merger plans. In both cases, the institutions involved submitted proposals (remedies) to the NMa. However, these proposals could not convince the NMa that the antitrust concerns would sufficiently be taken away.

NMa cleared hospital merger in northern Dutch province

The merger of hospital De Tjongerschans in Heerenveen and Medical Center Leeuwarden (Health Care Group Noorderbreedte) was cleared. Having conducted a thorough investigation into the concentration's effects, the NMa granted these parties a merger license. The NMa concluded that enough other hospitals

would continue to exist to which patients could go in case of dissatisfaction with the products and services of the two merger hospitals.

The merger parties offer inpatient and outpatient care in the northern Dutch province of Friesland. Among other things it did in its investigation into the concentration's effects, the NMa identified patient flows, and it interviewed rival hospitals, general practitioners, and the region's largest health insurer, which believed that the merger would not have any adverse effects on competition.

NMa conditionally cleared acquisition of home care provider TZG by TSN

The NMa attached conditions to the acquisition of Dutch home care provider Stichting Thuiszorg Groningen (TZG) by rival Thuiszorg Service Nederland Holding B.V. (TSN). TSN could acquire TZG's activities only after it had hived off some of its domestic-services activities in five municipalities in the northern area of Groningen, and transferred these to competitors. This decision prevented TZG and TSN's positions in the Groningen area from strengthening further.

Already in the notification phase did TSN propose to solve the identified competition concerns. TSN proposed to transfer some of its domestic-services activities in the municipalities in question to different competitors: to Zorgkompas in the towns of Hoogezand-Sappemeer, Leek, and Haren, to Zorggroep Groningen in the town of Veendam, and to Zonnehuisgroep te Noord in the town of Menterwolde. The NMa considered these care providers suitable buyers. These providers are well-established businesses, and robust enough to run the yet-to-be transferred business activities competitively against TSN. The municipalities involved indicated that they agreed with the found solution.

NMa decision led to health care providers ending their merger talks

The NMa wanted to investigate the merger of two physical-rehabilitation centers in more detail. According to the NMa, the concentration between Stichting Sophia Stichting (Sophia) and Stichting Revalidatiecentrum De Hoogstraat (De Hoogstraat) could impede competition on the markets for non-clinical specialist medical-rehabilitation care for adults and children in the Dutch city of Gouda and its surrounding areas. The merger with De Hoogstraat would further strengthen Sophia's already strong position on these potential markets. If these two health care providers merged, clients would lose a viable alternative. The NMa's decision to further investigate led to the centers' decision to end the merger talks.

3.6 The NMa and the courts – competition

In 2011, the courts and the Dutch Trade and Industry Appeals Tribunal (CBb) ruled in the NMa's favor in 83 per cent of the rulings (for comparison: in 2020, it was in 90 per cent of the rulings).

With regard to general antitrust law, the highest court on antitrust matters handed the NMa several fundamental rulings. The number of construction-related cases was the same as in the previous year. With regard to the procedure the NMa had offered construction companies, the so-called 'fast-lane procedure,' which had been specially created for the construction industry fraud cases, the CBb fully agreed with the concept of construction companies being offered two options (the fast-lane procedure or the regular procedure). However, in some cases, the CBb did lower the fines because the statutory time limits had been exceeded. One of the more recent CBb rulings addressed a number of fundamental issues.

Separation of duties

In one of the cases in what is called the construction industry fraud, the Dutch Trade and Industry Appeals Tribunal (CBb) for the first time ever ruled on the separation of duties within the NMa, which states that investigation and decision-making should be carried out separately (under Section 54a of the Dutch Competition Act). The CBb believed that lawmakers intended to have investigation and oversight on the one hand and the preparatory work for the fining decisions on the other be entrusted to different departments in order to promote a decision-making process that is objective and unbiased. Against this backdrop, the CBb argued that the officers involved in sanctioning should verify whether the facts and circumstances found in the report support the conclusion that a violation was committed, and justify a sanction. As these activities require such objectivity and impartiality, it is ruled out that the same individuals that prepare the sanctions carry out the investigations into the facts and circumstances as well. Therefore, they are not allowed to, on their own accord, gather any new or additional information that helps in the assessment of whether or not a violation has been committed, which was the case in this particular instance. As a result thereof, the CBb ruled that not only the evidence collected this way had been blemished, but the entire assessment of the evidence. Therefore, the NMa's fining decision could not be judicially maintained.

ECHR

The District Court of Rotterdam ruled that the principle of protection against self-incrimination provided for by Article 6 of the European Convention on Human Rights is not violated when former employees of a company are not awarded the company's right to remain silent. Only employees that are still actively employed with a company are entitled to such rights, because only those individuals, either speaking for or representing the company, are able to make a (potentially self-incriminating) statement. The CBb will hear the appeal in 2012.

In one of the regular construction fraud cases, the CBb ruled on the principle of *ne bis in idem*. A construction company was sanctioned twice, and the CBb argued this double penalty did not violate said principle, even though the company was fined twice (in two different cases/decisions) by the NMa for participation in the same violation. These decisions concerned different yet consecutive periods in which the company participated in the violation, which was reflected in the level of the fines.

In another (fast-lane procedure) construction fraud case, the company that was fined took its case to the European Court of Human Rights in Strasbourg after it had appealed to the CBb. The question is whether the

passing on of fines from parent company to its subsidiaries (and the other way round) passes ECHR muster. Such rules come from the AKZO case of the European Court of Justice in Luxembourg, which the CBb agrees with, and regularly applies.

Restrictions by object and effect

After its final decision in the mobile-operator case (in which recently a final ruling on appeal was issued), the CBb also ruled in the shrimp case and the bicycle case. In both cases, the CBb, referring to the preliminary T-Mobile ruling, established a restriction by object. And in both cases, the established violations were upheld. In the bicycle case, the CBb set fines that were even higher than the Court had set, though lower than the original fines imposed by the NMa.

Concentration control

In the Pacton case, the court had to rule on the fundamental question of whether the selling party of a company is required to comply with the obligation to notify, thereby challenging years of established practice. The court argued that, following the text of and the explanatory memorandum to Section 34 of the Dutch Competition Act, similarly to European law, an exception applies to the selling party. It was therefore in violation of the law (the principle of legality from Article 6 ECHR) to impose a fine for non-notification to the NMa before bringing about the transaction. The NMa appealed this ruling, arguing that the Dutch Competition Act does not have an obligation to notify, but rather a prohibition of completing a non-notified concentration, thereby implicitly also addressing the selling party.

The more material aspects of concentration control, as well as the way the courts evaluate the NMa's assessments were addressed in the AMC/VZA, Reggefiber/OGA/GNA and Van Drie/Alpuro cases. The Reggefiber/OGA/GNA case is connected to the pending KPN/Reggefiber case. In the latter, the court for the first time ever used a legal instrument called the administrative loop, which allowed the NMa to further explain one particular item in its ruling. In the KPN/Reggefiber case, the NMa imposed remedies. The antitrust issues that would follow the GNA concentration had already been removed by the remedies from KPN/Reggefiber. The court agreed with the NMa's argument that it could only impose remedies if it identified an antitrust concern. It was thus impossible (or unnecessary) to impose the exact same remedies in the GNA decision.

The AMC/VZA case concerned a vertical concentration, in which a debate erupted with Amsterdam-based competitor hospitals over the way the NMa reviewed such a concentration. The NMa used the European Commission's Guidelines on the assessment of non-horizontal mergers as the legal framework. The NMa examined whether it was plausible that patients would be harmed by hospital AMC's exclusionary conduct if competitor hospitals were given fewer patients through AMC's ambulance service VZA. The court approved the NMa's approach.

The last case involved the Van Drie/Alpuro case, in which the NMa cleared the acquisition of veal producer Alpuro by its rival Van Drie. In its ruling, the NMa defined two markets: a Dutch buying market, and a European selling market. The court did not immediately follow the NMa's definition of a European selling market, and, in an interlocutory ruling, it suggested the NMa use the administrative loop to further explain this part of the decision. The court did approve the starting point of the NMa's reasoning, which argued that the creation or strengthening of buyer power in itself was not a problem, and that only its effects on the selling market should be explored. Whether the court will have been convinced of the additional explanation of the NMa's claim that the selling market is European will become clear later this year.

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, we set the maximum tariffs that grid operators are allowed to charge their customers. We check whether their services meet certain quality criteria. And we make 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 (or help create) favorable conditions under which these markets are able to function most effectively, and which serve (or are able to serve) consumer interests well.

Secure, affordable, and sustainable

In practice, this means that the NMa aims for the creation of an integrated European market, where energy consumers are always guaranteed affordable, secure and sustainable 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 must be determined by supply and demand. More efficient energy exchanges must be created on which more and more traders are active. In order to realize this, it is critical that the energy market is supported by secure grids with enough capacity that is used efficiently.

Investments and innovation

Business operations of these grid operators must be efficient. There has to be room for investments and innovation. If these criteria are met, grid operators are able to contribute to major developments in the market, and to realizing sustainable energy.

Accessible and useful information for energy consumers

Much attention is given to how customers are treated by businesses, because it is the foundation on which consumer and political confidence in the energy market is built. Another condition for a well-functioning market is that consumers have access to clear information, enabling them to make well-informed decisions. In this market, the NMa closely works together with the Netherlands Consumer Authority (CA), which enforces, among other things, fair and trustworthy customer recruitment practices.

Fear of switching is gradually subsiding

One in four consumers is considering switching energy suppliers, but, at the same time, expects to save significantly less than is actually the case. The fear of red tape when switching is gradually subsiding. The share of consumers that switches is stabilizing, and the energy market is still seeing some huge price differences. These were some of the conclusions of a semi-annual NMa report on the consumer energy market, which reviewed the first half of 2011.

NMa orders energy companies to improve consumer energy bills

The quality of energy bills issued by energy companies can be further improved. For example, suppliers will be required to ask for and check meter data. In addition, suppliers must take the initiative in contacting consumers when meter data does not seem to be completely in order. The NMa will enforce this procedure if energy companies fail to comply with the modified provisions in the Information Code.

At the request of the NMa, suppliers have changed their procedures when consumers switch suppliers, or move. Customers now only need to contact a single point of contact for questions about meter data: their new supplier. Previously, consumers often had questions about meter data they did not recognize, as they did not match with the meter data they submitted. Having recognizable meter data is vital to proper processing and invoicing.

'Energy consumers can safely use price comparison websites when switching energy providers'

In a study into price comparison websites, carried out by the NMa, such websites received satisfactory to good marks. Price comparison sites are useful tools for consumers that want to switch energy providers or energy contracts. They are independent, and offer consumers great deals. Consumers can use them to make informed decisions about their energy providers, based on accurate and clear information that is easy to compare as well.

The NMa evaluated the quality of the price comparison websites using five criteria: provision of information, accuracy, independence, choice, and sustainability. If a website scored positively on all five criteria, it could be considered reliable and transparent. All of the evaluated websites, as well as the complete report (in Dutch) can be found on www.consuwijzer.nl.

Not satisfied with customer-recruitment websites

Other websites and customer-recruitment ones scored significantly lower marks than the 'real' price-comparison websites. One of the reasons is that those other websites have connections with only a limited number of providers. In the case of customer-recruitment websites, choices are more limited, and potential cost savings are fewer. The Netherlands Consumer Authority will keep a close watch on websites that falsely present themselves as independent, and will take enforcement actions, if necessary, in order to prevent misleading advertising. A list of bona fide price-comparison websites can be found on www.consuwijzer.nl.

NMa fines energy suppliers Greenchoice and energie:direct

Final bills

For years, Dutch energy supplier Greenchoice sent its final bills late to customers that had cancelled their contracts, or even failed to send any final bills at all. In most of these cases, customers were entitled to overpayment refunds. The NMa has therefore imposed a fine of EUR 7.2 million on Greenchoice. All affected customers have finally received their final bills, as well as their refunds. In close consultation with the NMa, Greenchoice has taken measures to prevent this from happening again.

It turned out that, between March 2005 and March 2011, Greenchoice failed to send final bills on time in more than 20 per cent of the cases. More than half of the final bills within this group were not even sent at all. In most cases, these customers were entitled to overpayment refunds. It was discovered that, in its administrative system, Greenchoice did draw up these final bills, but it failed to send them to customers. Affected customers were thus unaware they were actually entitled to overpayment refunds. Customers that did ask for their final bills were eventually given them. For the period under investigation, approximately EUR 8.6 million was not returned to customers. The current members of the board will take responsibility, and step down. Moreover, Greenchoice will take steps to reorganize itself in such a way that the likelihood of future offenses is minimized, for example, by setting up a compliance program.

The NMa highly values that consumers receive final bills that are correct and on time. The ability to switch energy suppliers quickly and easily relies on having error-free administrative processes. Hassle-free switching leads to stimulation of competition among suppliers, which in turn stimulates competition in the energy industry.

Door-to-door selling

The NMa imposed fines on Dutch energy providers Greenchoice and energie:direct for customer-recruitment methods they used in early 2010, involving door-to-door selling. Greenchoice is fined more than EUR 2 million, while energie:direct is fined more than EUR 1 million. The level of the fines reflects the measures that both companies have already taken in order to prevent future violations.

Many consumers these two energy providers had approached were not aware that they were actually agreeing to switching energy providers. On the basis of the door-to-door salesperson's story, consumers were under the impression that they were agreeing to receiving a discount on their energy bills from their current providers or to receiving an information package. Door-to-door selling in itself is a good way to recruit new customers. However, when companies use this method, it is important that everybody plays by the rules. Consumers must be able to trust the offers energy companies give them.

In January 2010, Dutch consumer-watchdog show 'Kassa' reported extensively on the door-to-door sales methods of energy companies. Around that same time, the NMa and the Netherlands Consumer Authority (CA) opened an online complaints office regarding door-to-door selling, triggered by the various indications they had been receiving about potential abuses with regard to door-to-door sales practices by energy companies. As a result of these indications, both the NMa and the CA launched investigations.

Integration of wholesale markets

For the energy market to work well, it largely depends on the wholesale market. After all, 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 vital, among other things, that the Dutch market is coupled to those in neighboring countries. As a result, consumers have increased choice of affordable or sustainable energy. In addition, it increases security of supply. The NMa therefore puts much effort in the creation of a Northwestern European energy market, for example, by stimulating international energy exchanges, and by examining whether or not unused energy can be made available to the market.

Market coupling in Central Western and Northern European regions realized

Great Britain

The NMa and British energy regulator Ofgem have approved the auction rules of the BritNed cable connecting Great Britain and the Netherlands. With the approval of the auction rules, BritNed can now put the cable into operation. BritNed makes the cable's capacity available to the market through various types of auctions. For example, capacity can be booked for one year, one month, the next day or even for on the day of transport itself.

Belgium

Intra-day trade in electricity can now take place on the cross-border connections between the Netherlands and Belgium on the APX-Endex energy exchange. The NMa has approved the necessary rules regarding this market integration.

Norway

The NMa has also made possible intra-day trade in electricity between Norway and the Netherlands. With the NMa's decision, Dutch transmission system operator TenneT and its Norwegian counterpart, StatNett, will be able to allow power exchanges APX and NordPool Spot to further integrate the intraday markets. Market participants are thus able to increase their options for buying and selling electricity. Intra-day market integration benefits the electricity market, because buyers face fewer risks if they buy both the power and the transmission capacity at the same time.

With the so-called NorNed cable, market coupling for all Dutch cross-border connections has been realized. The capacity of the NorNed cable has been added to the coupled electricity markets in the Central Western and Northern European regions. The NorNed cable is a 580-kilometer long submarine power cable between the Norwegian city of Fedaa and the Dutch seaport of Eemshaven.

Market coupling will lead to increased competition, more stable prices for electricity in the Netherlands, and to substantial social benefits to the Dutch economy. This market coupling expansion is expected to yield the Netherlands EUR 4.5 million per year. It should be noted that this figure does not yet include the benefits of improved competition between European energy companies in an integrated European electricity market.

Wholesale markets in natural gas

NMa increases competition on gas market

The NMa has ensured that Dutch natural-gas supplier GasTerra will take measures leading to increased competition on the wholesale market for natural gas. The most important measure is offering energy companies a new flexibility service for the storage of natural gas. This service is necessary in order to be able to meet fluctuations in demand for natural gas in summer and winter. Energy suppliers will have more choice when buying natural gas.

More flexibility

End users' demand for natural gas fluctuates throughout the day, season, and year. In order to deal with these fluctuations, energy suppliers should therefore take this into account when buying natural gas. To meet fluctuating demand per season, energy companies are in need of gas storage products. At the moment, GasTerra is the company that, by far, has the most options regarding such flexibility, which means that energy companies are largely dependent on GasTerra. The gas storage service that GasTerra will offer will increase flexibility on the Dutch market. Another one of GasTerra's measures is to offer natural gas in different ways, such as offering natural gas for one day or for one hour. As a result thereof, energy companies are given more choice when buying natural gas.

NMa ratifies new balancing regime for gas industry

All market participants share responsibility for making sure the gas network remains balanced, and thus for secure and efficient gas transport. Revised conditions aim at improving gas tradability. The NMa has approved the changes that the joint network operators have made to the conditions they use for the new balancing regime and the new market model in the gas industry.

A market-based balancing regime

Parties that cause imbalances must foot the bill for the gas that is needed to offset these imbalances, while the parties that help offset them will be rewarded. This will lead to a more efficient balancing system. Until recently, buyers had been unable to buy their natural gas on a trading platform. Since April 1, 2011, it became easier for them to choose where they buy their gas. With access to the trading platform improved, they are able to resell the gas that they do not need themselves. For transporting natural gas securely and efficiently, the transport network must be balanced. 'Balanced' means that network pressure remains constant, and that, on balance, the amount of gas that is withdrawn from the network does not exceed the amount that is injected.

AFM and the NMa: no inexplicable prices on gas trading platform TTF

The Netherlands Authority for the Financial Markets (AFM) and the NMa have found no indications that behavior of hedge funds and speculators on the Title Transfer Facility (TTF) in the past has led to higher prices or to inexplicable price fluctuations. One of the main reasons behind this conclusion is that, according to the AFM and the NMa, speculators and hedge funds are active on the TTF only to a very small degree, because trading on this virtual gas hub is still predominantly 'physical'. These were the results of a quick scan carried out by the AFM and the NMa at the request of the Ministry of Economic Affairs, Agriculture and Innovation, which expressed its concerns regarding this topic in 2010.

Investment climate regarding energy networks

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, secure and sustainable energy. For example, investments must be made in cross-border transmission capacity, cogeneration, 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 perfect balance between meeting the interests of both energy consumers and of energy producers.

Tariffs for transmission and system services of Dutch transmission system operator to remain stable in 2012

The tariffs for transmission services of Dutch transmission system operator TenneT continue to be stable in 2012, according to the tariff decisions issued by the NMa. TenneT's revenues will increase by approximately 8 per cent, mostly as a result of the expected transmission increase. The transmission tariffs include a surcharge for three large-scale investments. They also include an inflation adjustment of 2.6 per cent.

Furthermore, TenneT's revenues for system services will increase by 2.1 per cent. All of this is the result of the previously issued method decision for the fifth regulatory period and the revised method decision for the fourth regulatory period. Moreover, a new so-called x-factor decision was issued for the fourth regulatory period. TenneT's x-factor, or efficiency-stimulating tariff cut, has been set at 1.3. It reflects the revised method decision's material impact, explaining how TenneT will move from its initial revenue levels to its final revenue levels. This x-factor decision will not only affect the fourth regulatory period (2008-2010), but also the fifth period (2011-2013). TenneT is therefore allowed to adjust any future tariffs to include an additional EUR 135 million as a result of the revised method decision and x-factor decision.

Average increase of tariffs for regional network operators: 8.9 per cent

The tariffs of the regional network operators of natural gas and electricity will, on average, increase by 8.9 per cent as of January 2012. This increase results from the tariff decisions for the period of 2011-2013, which the NMa published in late 2011. Transport of gas and electricity by regional network operators is a specific line item on energy bills. Tariffs may differ among operators. The average household energy bill will increase by approximately EUR 23 on an annual basis.

The NMa in 2012 will look more closely into costs and earnings trends of the regional network operators. This investigation aims to determine whether projected cost trends are in line with actual cost trends. In future years, the NMa could re-adjust the regional network operators' earnings should the outcome of this investigation require such re-adjustments.

Dutch gas transmission system operator is to return EUR 400 million to its customers

Dutch transmission system operator for natural gas GTS is to return EUR 400 million in excess revenues to its network users by means of a discount on future gas transport tariffs. This follows from the new tariff method decisions for the periods of 2006-2009 and 2010-2013, issued by the NMa. The difference between the tariffs that should have been used between 2006 and 2011, and those that were actually used in that period has resulted in this adjustment of future tariffs. These new tariffs method decisions were issued following two rulings by the Dutch Trade and Industry Appeals Tribunal (CBB).

The NMa has taken into account what investments GTS already had planned, and how it planned to finance them. The new regulatory framework offers GTS enough leeway to make the necessary investments in infrastructure to realize its ambition to become the gas roundabout in Europe, while, at the same time, ensuring that customers (traders, energy companies, and, indirectly, consumers) are not being overcharged.

NMa has set method decision on flexibility services of GTS

The NMa has additionally ruled that, for the period of 2012 through 2014, GTS must continue to offer flexibility services. The Dutch Gas Act says that GTS must offer them as a regulated service. With its method decision, the NMa has laid down how the tariff is determined that GTS is allowed to charge users for these services. Flexibility services enable gas suppliers to offset seasonal or random fluctuations in gas demand.

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. Reality is different though. 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.

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 an independent authority has been created to regulate parts of the transport market.

'Set out specific requirements when tendering the main railway network concession'

Following the release of its Market Scan on Passenger Transport, the NMa called on the Minister of Infrastructure and the Environment to sharply negotiate with parties in the upcoming negotiations for the main railway network concession. In the Market Scan on Passenger Transport, the NMa examined the rail market from an economic point of view.

Dutch Railways NS is the current holder of the main railway network concession, which will expire January 1, 2015. The Ministry of Infrastructure and the Environment is currently making preparations for the new concession. The NMa does not have any preference between awarding contracts directly and awarding them after holding a public tender, as long as the selected procedure is carried out carefully. That means that the rail companies' performance levels should be specified more precisely in the new concession. Furthermore, an independent body should monitor such performance levels. Transparency of the rail companies' performance levels can be increased if such figures are disclosed more often and in greater detail.

In addition, the NMa believes it is important that the positions of regional transport companies vis-à-vis NS improve. NS and other rail companies are dependent on each other. When looking at various aspects, regional transport companies are dependent on NS as their sole supplier. That is why the NMa wants to investigate whether or not certain products and services should be regulated, products and services that regional transport companies are now more or less forced to buy from NS. Examples include passenger information, tickets, and ticket machines.

European rail regulators to cooperate more closely

Sixteen independent European rail regulators, including the NMa, have founded IRG-Rail: the Independent Regulators Group, an initiative to have the European rail regulators join forces. Its goal is to make seamless travel within Europe possible for all rail companies, both new entrants, as well as incumbents. As an additional objective, IRG-Rail is to give these independent European rail regulators a single identity.

IRG-Rail can help solve technical and administrative problems when crossing borders. Rail companies should be able to run their trains unhindered, not having to deal with technical and administrative problems at every border. For example, the more the Port of Rotterdam grows (once the expansion project Maasvlakte 2 has been completed), the greater the importance of having high-quality, borderless rail connections becomes.

The Memorandum of Understanding is signed by rail regulators from the Netherlands, Austria, Croatia, Denmark, Germany, Estonia, France, Hungary, Latvia, Lithuania, Luxembourg, (the former Yugoslav republic of) Macedonia, Norway, the United Kingdom, Sweden, and Switzerland.

OCCR collaborations do not violate Dutch Railway Act

The NMa has found no violation of the Dutch Railway Act by network infrastructure manager ProRail in connection with the Operational Control Centre Railway (OCCR). All railway undertakings must be treated equally. The NMa has found no indications of any 'discriminatory actions' taking place within the OCCR.

The collaboration between ProRail and railway undertakings in the OCCR is aimed at dealing with disruptions and emergency situations on the rail network swiftly and efficiently, which benefits riders and shippers. The creation of the OCCR was prompted by a major computer failure in April 2005 at a traffic control post in the city of Utrecht, a key rail hub, bringing rail traffic in the Netherlands to a complete standstill for an entire day. However, the collaboration in the OCCR might give the impression that the introduced separation of management and operations would be reversed.

The NMa investigation addressed the question of to what extent the current set-up and organization of the OCCR jeopardizes the separation of infrastructure management and traffic operations, and, consequently, the equal treatment of railway undertakings. After all, the separation of infrastructure management and traffic operations is one of the most important cornerstones of the organizational model that was adopted in the Netherlands as a result of the Dutch Railway Act.

In June 2010, the NMa announced it did not have any objections against the OCCR, but it did set four conditions to OCCR collaborations in order to prevent the level playing field for railway undertakings from being distorted. These conditions were central in the investigation into the OCCR. First, ProRail must guarantee the railway undertakings that it will allocate rail capacity in an independent and non-discriminatory manner. Second, ProRail must ensure that railway undertakings cannot gain access to confidential information. Third, ProRail must charge the railway undertakings the costs of the OCCR, by means of an infrastructure charge. The NMa expects the new infrastructure charge not to be higher than the current one, since the OCCR's purpose is improving performance, thus resulting in cost savings. The fourth and final condition is that ProRail must include all information regarding the OCCR in the network statement, which is the railway undertakings' prospectus.

Intervention by NMa leads to better network statements

The NMa has made constructive arrangements with network infrastructure managers ProRail and Keyrail about improvements to the network statement. Network statements contain the necessary information for rail companies to gain access to the rail network, and to use it. ProRail is the manager of almost the entire railway network in the Netherlands, apart from the so-called Betuwe route, which is managed by Keyrail. As a result of these arrangements, the network statements will include, among other things, updated information on the availability and user conditions of the fueling stations. In addition, ProRail and Keyrail will provide more insight into the tariffs and conditions regarding the supply of gas oil and train current. With

regard to the information on the supply of train current, ProRail will make arrangements with Vivens, the energy purchasing cooperation for rail companies on the mixed network (both passenger transport and freight transport takes place on the mixed network). Keyrail will make similar arrangements with purchasing cooperation CIEBR.

NMa clarifies supply of train current

Energy supplier Essent/RWE makes train current available to all rail companies under the same conditions it imposed on Dutch Railways NS. Essent/RWE has confirmed this policy, following a question from the NMa. Train current is electricity for electric locomotives. The NMa's question to Essent/RWE was prompted by the fact that Vivens, the organization responsible for joint purchasing of train current for all rail companies, does not fulfill that role yet in practice, which was revealed by an NMa investigation into compliance with an opinion involving Vivens.

NMa sets 2012 pilotage tariffs: decrease of 1.55 per cent

Pilotage tariffs in the Netherlands will decrease by 1.55 per cent. The NMa has set lower pilotage tariffs than the Dutch Pilots' Corporation (NLc) had proposed. The NMa is authorized to deviate from the tariff proposal should it not meet the requirements set out in the Dutch Pilotage Act. The NMa is of the opinion that the NLc has failed to give a proper justification for the number of so-called availability hours for 2012. The costs of the excess projected availability hours have therefore been erroneously included in the NLc's tariff proposal.

The NMa took into account the cuts in overhead costs that had been erroneously included in the 2010 pilotage tariffs, for which the 2012 tariffs have thus been compensated. Objections and appeals can be filed against the NMa's tariff decision.

New pilotage tariff decision for 2010

The new pilotage tariff decision was issued following a December 2010 ruling by the Dutch Trade and Industry Appeals Tribunal (CBB) on the 2010 pilotage tariffs. With that ruling, the CBB reversed the original tariff decision. The newly set pilotage tariffs for 2010 are slightly higher than in the original decision. The revised tariff decrease is 1.9 per cent compared with 2009 tariffs, whereas the NMa had earlier set a tariff decrease of 2.7 per cent.

In its new tariff decision, the NMa sticks to its previous opinion that, in 2010, fewer pilotage hours were needed than in previous years to meet demand. A decline in demand cannot be simply passed on to customers. Registered pilots enjoy a monopoly position, which means they do not face any competitors that keep them in check. It is the NMa's duty to keep pilots on their toes, and to come to transparent and balanced prices.

After a follow-up investigation, the NMa was unable to conclude that the overhead costs would not meet efficiency, productivity or quality requirements. The NMa therefore decided not to include overhead cost cuts, which had been included in the previous 2010 tariff decision.

Tariffs at Schiphol East unreasonably high

General aviation association Vereniging Vliegclub Schiphol had requested the NMa to review the November 1, 2011 tariffs and conditions of Amsterdam airport Schiphol. The association had asked the NMa, among other things, to assess whether or not the passenger charges and landing fees that Schiphol charges for the

use of its Schiphol East facilities were unreasonably high. The NMa concluded that this was indeed the case, because, among other reasons, the level of quality of the Schiphol East facilities to handle flights and passengers is different from the Schiphol Centre facilities (the main terminal). That discrepancy was insufficiently reflected in the tariffs.

4.3 The NMa and the courts – industry-specific regulation

Energy

With regard to appeals in energy cases, the NMa stood the test of judicial review many times in 2011. Of all rulings, the NMa had a favorable result 76% of the time (compared with 64% in 2010). When looking at all of the rulings by the Dutch Trade and Industry Appeals Tribunal (CBB), it becomes clear that, for all types of energy decisions, the CBB allows the NMa freedom of choice in organizing and fleshing out its energy regulation. As energy regulator, the NMa is allowed to make its own choices as how it can best serve its regulatory objectives, provided that the NMa operates within the boundaries of energy regulations, and that it respects the principles of sound administration.

Tariff regulation

The method decision on regional gas network operators 2011-2013 (NG4R), as well as the method decision on regional transmission system operators 2011-2013 (NE5R) were mostly favorably reviewed by the CBB. In addition, it handed down an important ruling on the regulation of Dutch transmission system operator TenneT. No less than four rulings, all ruled in favor of the NMa, touched on the long-standing debate on cost differences between regional operators, the so-called objectifiable regional differences (ORV).

The CBB turned to complete resolutions of disputes more often, for example, by invoking the so-called ‘administrative loop,’ which clarifies the regulatory framework (or parts thereof) quickly. In the NG4R case, the CBB decided to ask preliminary questions about the basis of a specific part of the regulatory framework (does a gas connection service constitute a supporting service within the meaning of the Gas Directive?). The CBB rejected all other grounds, which related to the network valuation method and depreciations, the method of settling ORV costs from previous years, and the qualification of connection density as ORV. In the NE5R method decision, only the item of cogeneration was not upheld. By invoking the ‘administrative loop,’ the NMa was given the chance to reassess that particular item.

The ORV issue was not just discussed in both of the method decisions, but also in the tariff decisions regarding Intergas and RENDO. The grounds aimed at the post-calculation of the ORVs in the exceptional year of 2007 were dismissed, and so was the appeal of retroactive calculation for previous periods, before the ORV in question was passed. Apart from that, the NMa dismissed the additional claim regarding the ORV aqueducts with the necessary care (the so-called obligation to ascertain reliability). With all the aforementioned rulings, the ORV debate has been largely settled.

Another important ruling was the 2007 Tariff Decision regarding TenneT (the Dutch transmission system operator). Together with the NMa, the CBB has ruled that system operators are connected to one another, and should therefore be considered buyers within the meaning of the relevant energy laws. TenneT is subsequently not allowed to leave out the lion’s share of its revenues of the regulatory framework based on the Dutch Electricity Act. The CBB did, however, rule that the reduced tariff for buyers that consume a limited amount of power (mostly because of cogeneration) is a distinction that is not allowed.

Dispute settlement

When it comes to dispute settlements, the CBB thoroughly evaluates the NMa’s dispute settlement rulings, including its settlement procedure. One case concerned the disconnection of a buyer. The CBB agreed with the NMa’s assessment method it uses in dispute settlements. The system operator did not violate the Dutch Gas Act or the Dutch Electricity Act when it carried out its duties, and exercised its powers.

In the ruling in the so-called Lek Rozen case, it turned out that the CBb does not use any civil-law criteria. This case concerned the question of whether or not the appellant was due any system services tariffs, as he did have his own connection, and consumed his own generated power, yet he claimed his installation could not consume any power from the grid. The CBb dismissed the appeal to the civil-law concepts of reasonableness and equity, and ruled that, for the question of whether or not the tariff is due, only the conditions in the relevant section in the Dutch Electricity Act matter. The system operator (and subsequently the NMa in the assessment of the dispute) is not required to look behind the physical point of the connection, and at how the connected party has set up his installation.

The extent of the obligation to investigate on the part of the system operator (and of the NMa) was touched on in the so-called Knoppert case as well. In this case, the CBb followed the NMa's conclusion that buyers are only entitled to one connection per property considered as such under the Dutch Valuation of Immovable Property Act (WOZ). The system operator and the NMa are allowed to use the WOZ assessments, issued by municipalities, to determine this. They are not required to investigate themselves on the site to what extent the various business units are physically connected to each other.

Sanctions

The District Court of Rotterdam ruled in two sanction cases about the quality control system (KBS). The Court tests cases strictly against Dutch law, and rules that there can only be a violation if the statutory standard is sufficiently clear. In the so-called Westland case, the NMa had imposed a fine for violation of Article 15, paragraph 2, of the Ministerial Regulation on Quality because of deficiencies in the KBS, which meant Westland did not have a sound risk analysis. The Court, however, ruled that Westland could not have anticipated this interpretation of the statutory standard. Therefore, no violation was established. No matter how logical the requirements the NMa had set may seem from a quality perspective, the NMa is not allowed to make its own detailed interpretation of an otherwise open standard, and, at the same time, impose a fine. The Court therefore reversed the decision for violation of the principle of legality. In the so-called Delta case, the KBS appeared to be lacking: after the internal reorganization following the Independent Grid Administration Act (WON), Delta failed to adjust its KBS to the new organizational structure. The Court concurred with the NMa that Delta has committed a violation, but it reduced the fine. Another important note is the fact that the Court endorses the idea that the NMa does enjoy freedom of choice in its enforcement. In accordance with its Enforcement Document, the NMa can decide by itself if it prefers a fine over any other enforcement instrument, as long as it fully explains its choice.

Transport

The sole substantive transport-related ruling concerned the District Court's ruling in the so-called WACC-pilots case. In its decision, the NMa, for the first time ever, set the pilots' WACC (cost of capital) for a period of five years. Having consulted an expert, the Court particularly criticized the extent to which a part of the used data was still up-to-date, as well as the explanation behind two of the four parameters in the decision. The NMa will reissue the WACC decision taking said ruling into account.

5 Consumers & the NMa

Consumers benefit from competition

'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 so-called natural monopolies. 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. 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 criteria. And we make sure that the terms and conditions under which their customers (both businesses and individuals) can use their networks are reasonable.

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. It will only do so if the consumer involved and their network operator fail to resolve the dispute themselves. The NMa checks whether the network operator's actions violate any of the laws the NMa has been charged to enforce. Disputes may concern various situations such as having received incomplete information or information that was given too late, or about tariffs, such as connection tariffs. Other examples are problems surrounding moving a connection, or about criteria that network operators may set with regard to biogas.

Mediation

The NMa seeks to solve disputes between network operators and their customers through mediation, education, and clarification as much as possible. This equally 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.

Revised procedure

The NMa in 2011 revised its dispute settlement procedures for consumers and businesses. These have now been consolidated into the 'Procedure on the settlement of energy-related disputes,' which was developed following consultations with network operators, and attorneys that often represent applicants. The new procedure was subsequently presented to the industry at a conference on November 18, 2011. It came into effect on November 24, 2011.

Dispute settlement in 2011

Ten disputes were submitted in 2011 (fewer than in previous years), seven of which have been resolved through mediation and education. Three disputes resulted in official decisions. One of these decisions was taken using a new, shorter procedure, which has been included in the new Procedure on the settlement of energy-related disputes.

ConsuWijzer

The information portal for practical advice from the government about your rights as a consumer

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 make consumers more vocal, enabling them to fight for their rights, and helping them overcome any obstacles (perceived or real) they encounter.

ConsuWijzer is jointly operated by 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. On January 1, 2013, the CA, the NMa, and OPTA will be consolidated into a single organization: the Netherlands Authority for Consumers and Markets (ACM). ConsuWijzer will then be part of the ACM. More information on the ACM can be found in the chapter on the consolidation (chapter 3).

5-year anniversary of ConsuWijzer

In 2011, ConsuWijzer celebrated its 5-year anniversary. Over the past five years, ConsuWijzer has steadily become a household name to many consumers. The number of website visitors per year has surged from half a million in year one to 2.2 million in 2011. Visitors are very satisfied with the information they find. In fact, that satisfaction has earned ConsuWijzer the award for best government website for two years in a row now, in 2010 and 2011. It receives about 40,000 emails each year. With more and more information and advice put up on the website, the number of phone calls has seen a gradual decrease.

What is ConsuWijzer all about?

Visitors of the website ConsuWijzer.nl can find 'tips and tricks,' but also success stories, check lists, and sample letters. In addition, ConsuWijzer gives 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 portal 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 their 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 2011

The website ConsuWijzer.nl in 2011 had 2,262,000 unique visitors or 6,197 visitors per day. ConsuWijzer handled 47,762 phone calls, 35,908 emails, and 1,491 letters. In total, 28,914 forms were sent, and 491,000 sample letters were downloaded. The pages with the most visits concerned subscriptions (on how to cancel them, and on automatic renewals), sample letters, telemarketing, the Do Not Call registry, warranty, and filing complaints. The most visited 'product categories' were:

1. Internet, telecommunications, cable, and postal services;
2. Electronics and domestic appliances;
3. Travel and leisure activities;
4. Energy;
5. Home and garden;
6. Transport.

The website processed 193,864 search queries. Results were found in two out of three queries. The main homepage obviously attracted the most visits, followed by the page on how to cancel subscriptions. Of all the highlighted topics, the information on how to cancel subscriptions had the most visits: 256,860. The most downloaded sample letter also concerned this topic. Of all the consumer-related topics, the pages on distance selling, and quality marks on ConsuWijzer were visited the most.

Consumers in an international context

The NMa put consumer welfare centre stage at international conference

In what ways can tracking down cartels and preventing abuses of dominant positions lead to increased consumer welfare? That was the key question at the jubilee conference of the International Competition Network (ICN) organized by the NMa in 2011. The role of consumer welfare in competition oversight is a topic many competition authorities are currently looking at. At the conference, it was explored how the different authorities are dealing with this issue. This topic is increasingly seen moving to the top of the agendas of competition authorities worldwide.

Conclusions of 'Competition & Consumer Welfare' project at ICN conference

Based on a questionnaire sent out to 60 authorities, the NMa drew up a discussion document about this topic, presenting it at the 2011 ICN conference. The project's goal was to collect the different opinions on the role of consumer welfare promotion from an antitrust point of view. Discussions focused on issues such as the importance of including references to consumer welfare in the authorities' mission statements and in legislation, economic definitions of consumer welfare, quantification and calculation of effects, and the consumers' perspective on consumer welfare.

One in three competition authorities name consumer welfare as their primary goal. One in two competition authorities see consumer welfare as one of its many goals. The others see it as a possible side-effect of their regulatory activities. Consumer welfare is therefore a serious issue that affects the authorities' actions. Competition authorities around the world more often and more explicitly refer to consumer welfare in their mission statements or goals, and is sometimes even included in legislation. Naming 'consumer welfare' the primary goal of oversight helps influence legislation and regulations. Consumer welfare has been named one of the key objectives in the consolidation of the NMa, OPTA, and CA.

6 Consolidation of regulatory bodies

2011 and 2012 were all about the creation of the new Netherlands Authority for Consumers and Markets (ACM). This new regulator will be launched on January 1, 2013, merging the Netherlands Competition Authority (NMa), the Netherlands Consumer Authority (CA), and the Netherlands Independent Post and Telecommunications Authority (OPTA). The ACM aims to be an effective regulator, a champion of markets that work in the interest of consumers.

- Some of its main principles are:
- To be more than the sum of its parts;
- To work in a problem-oriented and flexible manner;
- To engage in dialog with others;
- To oversee more effectively at lower costs.

Decision-making regarding internal issues with respect to the organization of the ACM rests with a steering group, which consists of Mr. Chris Fonteijn (Chairman of the Board of the NMa, Chairman of the College of OPTA, and the Chairman designate of the ACM), Mr. Henk Don (Member of the Board of the NMa), Ms. Bernadette van Buchem (Director of the CA), and Mr. Mark de Jong (acting Chairman of the College of OPTA). In December 2011, the steering group sent a draft version of the first part of the so-called preliminary organization decision (VOB) for the ACM to the Dutch Ministry of Economic Affairs, Agriculture and Innovation. This first part contains, among other things, the proposed organizational structure. Furthermore, several legal amendments are necessary in order to have the new regulator operate effectively.

More than the sum of its parts

The ACM is an independent authority, creating opportunities and options for businesses and consumers alike. If the ACM acts effectively and consistently, consumer options and confidence increase, more opportunities for entrepreneurs and innovation are created, and products and services are offered at competitive price-quality ratios.

The three cornerstones of the ACM's activities are:

1. General competition oversight;
2. Regulation of the energy, telecommunications, transport, and postal service industries;
3. Protection of consumer rights in the non-financial industries, and providing information to consumers about their rights and obligations.

The ACM should become more than the sum of its three constituent organizations. Combining their activities delivers added value in terms of substance, process, and economics. The new organization makes better use of the existing knowledge and expertise available across the three merging authorities. It is able to address market and consumer problems in a flexible and integrated manner.

Problem-oriented and flexible

A problem-oriented approach will be at the heart of the ACM's activities. Its starting point is analyzing the problem, and formulating clear answers. The range of legal instruments at its disposal is just one of its tools, more often complemented by insights from areas such as sociology and psychology. Problems identified by the ACM are dealt with in a way that contributes the most to achieving an effective solution and to the prevention of future problems. The ACM's oversight and regulatory actions are based on a relationship of

trust with market participants. This means that the ACM primarily focuses on markets where the risks of harmful behavior by market participants are the greatest.

A problem-oriented approach calls for using ACM's instruments and resources, and mobilizing its staff creatively and flexibly. Staff members are deployed where they can contribute the most to the realization of ACM-wide priorities. That is why the ACM works with multidisciplinary teams, the members of which come from different departments who complement each other's knowledge and skills. This method of working requires everyone to get to know each other, and to know what they do. The ACM therefore promotes an organizational culture that is professional and open. That way, the ACM can truly become more than the sum of its parts.

Engaged in an ongoing dialog

The ACM wishes to be fully engaged with the rest of society in order to be able to respond to public debates and developments effectively. Some of its strategies include consumer focus groups, roundtable discussions with representatives from the corporate sector, and heavy use of social media. By releasing high-quality publications, and actively joining the public debate on free markets and oversight, the ACM gains knowledge, picks up signals, and shares its insights and information with lawmakers and the public.

By looking inside from the outside, the ACM is able to make choices and to set priorities with regard to dealing with and solving market and consumer problems. The ACM's approach can be described as 'ambidexterity.' Being engaged in that ongoing dialog with the rest of society is critical to the ACM's ability to learn what methods work well in order to solve certain problems. The use of its instruments such as fines or orders subject to periodic penalty payments can never be ruled out, but it is never a goal unto itself.

More effective oversight at lower costs

The current Dutch administration's decision to consolidate the NMa, OPTA, and the CA into a single authority is part of the central government's program 'Compact Central Government.' One of its proposals is to group the different regulatory authorities for the non-financial industries. Increased effectiveness of the new regulatory authority is the top priority, although costs savings are obviously an important reason as well. The upcoming consolidation will offer the ACM more options as to how market and consumer problems can be dealt with. The ACM has the opportunity to come up with solutions in an efficient way thanks to its built-in bird's eye view.

The costs savings that are realized are used to meet the cutback targets every government organization has been given. The consolidation means in practice that similar positions can be made redundant, and work processes can be further improved. Other benefits include lower housing costs, and consolidation of the different salary administration systems.

The consolidation could potentially generate savings of up to EUR 3.3 million. The government-imposed cutback target for the ACM for the period of 2012-2015 is EUR 7.4 million. The three constituent organizations of the ACM will be able to save a total of EUR 1.4 million in 2012 (NMa: EUR 1.1 million, OPTA: EUR 144,000 and CA: EUR 134,000). This leaves the ACM a savings target of EUR 6 million for 2013 - 2015. With potential savings resulting from the consolidation of approximately EUR 3.3 million, it still needs to save EUR 2.7 million. The exact composition of this final figure of EUR 2.7 million is yet to be fleshed out, although it will be realized in part through reforms of current legislation.

Organizational structure

The ACM will be a 'small autonomous administrative authority' (ZBO) under Dutch law. Technically speaking, a ZBO is not a legal person. Its staff is officially employed with the Ministry, but its management lies with the Board of the ACM. The Ministry of Economic Affairs, Agriculture and Innovation only sets the ACM's budget and staffing levels. The ACM will have five mainline departments, which together represent the core of the ACM's oversight and regulatory activities. In addition, it will have a Corporate Services department, an Office of the Chief Economist, and a department responsible for corporate affairs and communication.

Please note that the names of the departments have not been finalized yet. The below names are therefore provisional ones.

Consumer Department

The Consumer Department promotes fair business practices between businesses and consumers. All consumer-related subjects, such as spam, spyware, door-to-door selling, and online shopping, are dealt with by a single department. Through its oversight and enforcement activities, the Consumer Department is thus able to act forcefully and convincingly, making sure that businesses comply with consumer protection regulations. In addition, it also focuses on consumer education, enabling consumers to stand up for their rights (consumer empowerment). Finally, the department ensures that the consumer markets for telecommunications and energy function well by, among other things, monitoring them, giving advice, and controlling the license process.

Competition Department

The Competition Department enforces general competition oversight on all industries of the Dutch economy. This department tracks down cartels, and reviews mergers and acquisitions. It does not investigate abuses of dominant positions in the regulated industries for energy, telecommunications, transport, and postal service. Those investigations are carried out by the industry-specific departments, and, by doing so, the ACM fully utilizes the market expertise that is already available in those departments. This helps realize an integrated approach to regulated industries. In its investigations, the Competition Department will obviously work closely together with other ACM departments, as well as with partners outside the ACM.

Energy Department

The Energy Department is charged with regulatory duties and antitrust investigations regarding abuse of dominant positions in the energy industry (natural gas, electricity, and heat). Another key area is promoting proper functioning of the wholesale markets for natural gas and electricity. Finally, regulation of water companies is another task of this department.

Telecommunications, Transport and Postal Service Department

The Telecommunications, Transport, and Postal Service Department is charged with regulatory duties and antitrust investigations regarding abuse of dominant positions in those industries, including regulation and consumer issues.

Sanctions and Legal Affairs Department

The Sanctions and Legal Affairs Department is an essential part of the ACM's activities. This department takes care of sanction decisions, certain objections, and appeals. In addition, this department is charged with

coordination and advice with respect to legal matters. Putting these duties together in a single department ensures a high-quality and consistent processing of cases.

Legal amendments

The consolidation is realized through two separate bills: the so-called ACM establishment bill, and a substantive bill, which combines various amendments. The ACM establishment bill contains the actual establishment of the new authority, as well as the relationship between the Ministers involved (Economic Affairs, Agriculture and Innovation, and Infrastructure and the Environment) on the one hand, and the ACM on the other. In addition, the Non-departmental Public Bodies Framework Act applies to the ACM. These acts combined guarantee the ACM's necessary independence in individual decisions. In 2011, the Dutch administration approved the ACM establishment bill, which was subsequently submitted to the Dutch Council of State. The substantive bill contains measures to improve and simplify procedures, tasks, and powers. This bill is expected to be sent to the Dutch Parliament in 2012 with its projected commencement on January 1, 2014.

7 Finance

This section contains the abridged version of the 2011 financial report of the NMa's civil service organization, and of the Autonomous Administrative Authority NMa (ZBO).

NMa (civil service organization)

The Dutch Ministry of Economic Affairs, Agriculture and Innovation (EL&I) directs funds for staff and resources to the NMa, which are allocated by means of a budget letter (see table 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 EL&I. The NMa (and EL&I) use cash-based accounting. Cash expenditures are a natural consequence of this, which are specified in detail in table 7.

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 1.4 per cent. With respect to cash expenditures, the NMa overspent by €1.1 million, which is 2.26 per cent of the expenditure budget, and is lower than in 2010 when the NMa overspent by 6.65 per cent. As in previous years, this had already been reported to EL&I at a very early stage.

In 2011, the level of reported income was €29 million. The majority of this income comes from fines imposed in 2011 and earlier. In 2011, income from fines and interest totaled €23.3 million.

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 2011

Table 4 Realization with respect to the EL&I budget letter (in €)

Description	Liabilities	Expenditures	Income
Budget letter	47,472,173	47,533,173	25,550,000
Realization	46,799,635	48,605,739	29,049,701
Underspending + / Overspending -	672,538	-1,072,566	-3,499,701
As a percentage	1.42%	-2.26%	-13.70%

Liabilities

Table 5 Liabilities (in €)

Description	Allocated budget 2011	Realization 2011	Realization 2010
Personnel	30,676,000	31,625,417	30,577,158
Materials	16,796,173	15,174,218	15,079,040
Total	47,472,173	46,799,635	45,656,198

Like in previous years, the NMa did not exceed its budget in terms of liabilities. Realization has increased by more than €1 million compared with 2010. This was the result of damages the NMa had to pay with respect

to a case from 2003. If these damages had been left out, the NMa's budget and realization would have been €2 million lower, as a result of the central government's cutback program.

Expenditures

Table 6: expenditures (in €1)

Description	Allocated budget 2011	Realization 2011	Realization 2010
Personnel	30,676,000	31,715,459	31,986,178
Materials	16,857,173	16,890,280	17,145,013
Total	47,533,173	48,605,739	49,131,191

The budget (excluding the abovementioned damages) has been lowered from €46,069,000 in 2010 to €44,533,173 in 2011, which is a reduction of €1,535,827. By definition, such a reduction, combined with outstanding liabilities (January 1, 2011) of €6,680,184, poses a bottleneck.

Table 7: expenditures (in €)

Ledger account and description	Allocated budget 2011	Realization 2011	Realization 2010
PERSONNEL			
400000 Salary costs		27,538,536	27,400,724
400001 Overtime		27,737	37,167
400002 One-off extras / Small gifts for personnel		544,558	403,768
400019 Welfare		17,338	1,540
410000 Internship and committee payments		82,490	49,036
410020 Interim management		211,406	274,042
410021 Advice on organization and staffing		0	103,225
410033 Temporary employees		1,876,898	2,620,085
410039 Services between government agencies		53,333	69,837
415002 Education and training		890,056	837,491
415003 Recruitment		15,673	40,490
415004 Other personnel costs		22,991	40,285
415006 Other personnel costs corporate		600	800
416012 Redundancy schemes		433,842	107,689
Total personnel	30,676,000	31,715,459	31,986,178
Total material	16,857,173	16,890,280	17,145,013
General total	47,533,173	48,605,739	49,131,191

With regard to personnel, temporary hiring expenditures have decreased considerably for the second year in a row. The NMa has thus achieved the government-set target of 10 per cent with regard to this item. Personnel expenditures have slightly decreased by 0.8 per cent.

Material expenditures in 2011 have decreased by 1.5 per cent, primarily because of a rent-free period in 2011 for the Muzen Tower. In addition, fixed rent costs have structurally decreased, too, because the NMa rents fewer floors now. The material part of the item of Services between government agencies has witnessed an increase. This item is used more now as a result of the instruction to hire fewer temporary staff. Furthermore, registration in the administration system has improved so it is now clearer when services are provided between other government agencies or third parties.

Income

Table 8 Income (in €)

Description	Allocated budget 2011 **)	Realization 2011	Realization 2010
NMa fines construction industry (010)	2,000,000	3,345,419	10,048,879
NMa fines – non-construction industry (011) *)	17,800,000	20,020,378	14,030,198
NMa general (012)	0	160,231	300,679
Office of Energy Regulation contribution scheme (020)	4,100,000	4,079,525	3,125,549
NMa fees (050)	1,650,000	1,444,149	1,262,216
Total	25,550,000	29,049,701	28,767,520

*) Total High Trust. NMa is a part thereof.

***) Level mentioned in Fall Report 2011 based on NMa projections.

The total income amount (€29,049,701) includes an amount of €20,020,378 for Total High Trust. Total High Trust is for the NMa, the CA, OPTA and the Radiocommunications Agency Netherlands (AT). Income had initially been higher, but, because of the CBB ruling in the mobile operator case, more than €15,000,000 from a fine that was already paid in 2005 had to be returned. Furthermore, in a different sanction case, an undue repayment of approximately €6,000,000 was made. This error was already corrected in 2012. It has been officially laid down in an agreement that the undue amount is to be returned.

Outstanding debts and receivables

Table 9a Outstanding debts and receivables NMa as of December 31, 2011 (in €)

Category	2011	2010
Construction	7,313,596	9,669,187
Energy	7,202,000	160,000
Bicycles	0	17,011,830
Mobile telecommunications	17,232,630	32,797,974
NH8	12,856,208	12,421,118
Public green	862,659	833,452
Home care	17,823,700	15,186,217
Shrimps	0	3,101,250
Newspapers	21,224,413	20,505,285
Flour	83,908,304	81,633,000
Foreclosure auctions	6,300,000	
Industrial laundries	18,362,000	
Other	34,040,490	25,999,900
Added to bankruptcy	520,652	227,296
Fees	195,000	270,000
Total	227,841,653	219,816,509

Table 9b Specification of fines and interest accrued as of December 31, 2011 (in €)

Description	2011	2010
Fines	212,823,197	199,408,877
Interest	15,018,456	20,407,631
Total	227,841,653	219,816,509

The NMa's Competition receivables of 2011 (€50.1 million) and previous years are composed of fines imposed on undertakings, plus the legal interest accrued and minus the income. Objection and appeal procedures 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 (for 2011 €12.6 million). Fines plus the legal interest accrued in 2011 was €48.3 million.

The NMa held bank guarantees worth €2,651,094 on December 31, 2010. The Office of Transport Regulation did not receive any fines in 2011. Consequently, there have been no transfers to IenM.

ZBO Board of the Netherlands Competition Authority

The Ministry of Economic Affairs, Agriculture and Innovation allocates resources to the ZBO for personnel costs by means of a budget letter.

Pricing principles

All amounts are included at their nominal value.

Total 2011

Table 10 Realization versus budget (in €)

Description	Liabilities	Expenditures	Income
Budget letter	988,000	988,000	0
Realization	970,000	970,000	0
Overexpenditure	18,000	18,000	0
Percentage	1.82%	1.82%	0%

The allocated budgets have not been exceeded. The realization has been the result of contractual arrangements made between the Ministry of Economic Affairs, Agriculture and Innovation and the members (past and present) of the Board of the NMa.

Act on Disclosure of Top Income Earners in Publicly Funded Sectors (Wopt)

The WOPT Act, which came into effect on March 1, 2006, mandates the disclosure of incomes in government organizations and in other industries that are financed by public funds that are higher than the salaries of Ministers.

Until July 1, 2011, Mr. Kalbfleisch was remunerated on the basis of a non-civil service appointment as chairman of the Board. In total, this amounted to €482,721.41 under the definition of the Wopt. This figure includes a severance package that was contractually agreed upon in 2003 with the then Minister of Economic Affairs.

Mr. Chris Fonteijn has been the Chairman of the Board since July 1, 2011. He is also 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 ZBO was charged this compensation.

8 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, Agriculture and Innovation. 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. For the non-financial processes, however, the internal processes and the applicable control measures can never fully guarantee that no significant defects will occur.

In order to meet this responsibility, a comprehensive system of instruments has been set up, covering planning, control and accountability (plans of action, monthly reports, quarterly reports, semi-annual reports, annual reports and meetings), HR policy (performance reviews, evaluations, personal development plans, job descriptions, career development, education and training, workplace integrity policy, and individual plans of action), process descriptions (and evaluations thereof), and security (including information security).

Last but not least, decision-making takes place in Board meetings in a predetermined and structured manner. This means that, among other things, staff members who submit agenda items for Board meetings must cover the following items: 'possible consequences/risks (personnel, financial, social, political, administrative, etc.)', 'relationship with or dependence on other documents/processes', 'coordinated with...' and 'other opinions within the NMa.'

Legitimacy of the budget implementation

Based on the above, we declare that the internal processes have efficiently and effectively led to the realization of objectives, to the creation of policy information, and to a good level of financial and material management.

The internal audits, the inspections by the Audit Department, and oversight by the Financial Economic Affairs department of the Ministry of Economic Affairs, Agriculture and Innovation, when it finalized the Financial Accounts in March 2011, have revealed that there have been no unlawful acts of any significance with respect to liabilities, expenditure, income and the trial balance. After finalizing the Financial Accounts, it became clear that an unlawful act occurred in 2011, which was an undue repayment of significant proportions (approximately €6 million). This meant that the income in 2011 was actually higher. The undue repayment has been classified as receivables in this revised Financial Accounts. It has been officially laid down in an agreement that this amount is to be returned. In addition, a bank guarantee for 75% of the amount was issued. Finally, additional measures were taken to better monitor the repayment process, which lasted six years in this case. Additional reviews of previous repayments revealed that this error was an isolated incident. Despite said incident, the internal procedures sufficiently guarantee the legitimacy of the liabilities, expenditure, income and trial balance. In addition, there were no indications or allegations of fraud in 2011 that should have been internally notified of under the 'Regulation on the Implementation of EZ Integrity policy'.

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. Wherever possible, these were overcome using the abovementioned instruments:

- The absentee rate was 4.3% in 2011, which is the same as in 2010 (4.3%), but is still higher than the NMa's desired level of 3.8%. It meant that less capacity was available than planned. In 2011, the NMa took steps in improving support for absent workers, and in promoting active sick leave monitoring by managers. A number of managers have attended sick leave monitoring training. Prevention of absenteeism and supporting long-term absent workers continue to be critical issues in 2012 with the aim to reduce the absentee rate and absentee frequency.
- In terms of staff numbers, the NMa has met the targets set in the previous Dutch administration's (under former Prime Minister Balkenende) program towards a more efficient central government. At the beginning of 2011, the NMa had a staff of almost 400 FTE (including temporary contracts under Section 6.2a and Section 62.c). Outflow in 2011 has been significant, and, on December 31, 2011, the NMa had a staff of 376 FTE, which is well below the number of budgeted FTEs.
- The Ministry of Economic Affairs, Agriculture and Innovation has set new staff cutback targets. In order to achieve this goal, the Ministry has implemented the 'job openings framework.' The basic principle behind this framework is to have new job openings be filled as much as possible by workers from the Ministry or from one of its affiliated agencies. External candidates shall not be considered. However, to stay connected with young professionals, and to be prepared for the future, the NMa in 2011 once again held a master class for graduate students, and took part in several career fairs at universities. In addition, the NMa made a number of internship positions available to students to get to know the NMa's work.
- Various departments within the NMa (particularly the Legal Department, Strategy and Communications, and Corporate Services) had to put a considerable amount of time in preparatory activities for the upcoming merger with the Netherlands Independent Post and Telecommunications Authority (OPTA) and the Netherlands Consumer Authority (CA). These activities included participating in the working group on Corporate Services, and in the working group on Financing. In addition, the differences in benefits and perquisites (in the broadest sense of the term) between the NMa and OPTA were identified and analyzed.

Improving corporate services

- The creation of the Corporate Services Department has led to improved process control, and to professionalization, as reflected in the publication of a products and services catalog, enhancement of project management, the introduction of timesheets, and the enforcement of uniformity of approach.
- In 2011, the NMa was responsible for hosting the international ICN conference. All departments contributed to the success of this event. ICN (International Competition Network) is an organization representing competition authorities around the globe. Authorities have the opportunity to interact officially and informally with one another. Practical questions related to antitrust issues are discussed at ICN events. ICN seeks to promote global cooperation among competition authorities. In addition, ICN wishes to achieve increased uniformity in legislation, regulations, and policies.
- In 2011, the recommendations of the project *Paper Tiger* were implemented. These concerned an amendment to the Guidelines on cases in the Competition Department, the Protocol on case transfers between the Competition Department and the Legal Department, and the model letters with regard to the confidentiality test. In that context, an e-learning module has been set up to raise awareness of the

required working process in the Competition Department on the creation of case dossiers, and the execution of the confidentiality test, using an interactive and on-demand approach.

- On June 8, 2011, the new NMa website was launched. A frequently heard complaint about the previous website was that information was difficult to find on it, which is why the search engine was named the top priority of the new website. By entering queries directly into the search field or by clicking on the documents and publications button (on the Dutch version), visitors can access a vast collection of documents. All kinds of meta data will be tagged to all of the information that is uploaded to the website, enabling visitors to search for documents by industry, document type, date, name, or a combination thereof. Government websites should be accessible and easy to understand for both specialist users as well as the general public. During the creation process of the new website, that principle was reflected in the decision to have displayed at the first level general information that was easy to understand. The further down into the website visitors go, the more advanced the information becomes.
- In 2011, much attention was given to strategic HR policies, aimed at improved control of employee inflow and outflow, and of career development. A mentor program was introduced, as a result of which mentors have been given a structural place and have been met with increased interest within the organization. In addition, increased direct involvement and substance were given to mobility. Mobility issues are discussed in the so-called mobility meetings, participants of which include the heads of the various NMa departments, as well as representatives from the CA and the OPTA. In these meetings, participants discuss internal mobility, intra-partner mobility, and external mobility.
- The NMa Academy has programs geared to all kinds of staff members. In 2011, various programs for the support and corporate departments were held. Furthermore, the NMa Academy has further developed NMa career paths, and organized them into three programs: the Young Professionals Program (YPP), an all-round program for new NMa staff members; the Professionals Program (PP), a department-specific learning path where advanced education takes place; and an Advanced Professionals Program (APP), a program for experts, which will be organized in 2012 by the NMa and its merger partners in cooperation with Nyenrode Business University.
- The goal of a single office building for all NMa employees was achieved in 2011. At this point, all NMa departments are housed in the Zurich Tower, thereby realizing a more efficient operation, as well as facilitating clearer and more effective communication. In addition, the CA has also moved into the Zurich Tower. And, with the OPTA already located in the Zurich Tower, the soon-to-be-created Netherlands Authority for Consumers and Markets (ACM), set to be launched on January 1, 2013, will automatically be housed in a single office building from day one.