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

-- 2015 --

**29-30 November 2016**

*This report is submitted by the Netherlands to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 29-30 November 2016.*

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## EXECUTIVE SUMMARY

1. The Netherlands Authority for Consumers and Markets (ACM) is a multifunctional authority with responsibility for competition enforcement, consumer protection and sector-specific regulation in energy, telecommunications, post and transport. Consumers are central to ACM's oversight philosophy, with its emphasis on effects rather than form. ACM makes use of its powers to address market problems that harm consumer welfare. 2015 was a successful year for ACM. After just two years of operation, we had an external evaluation which supported the effectiveness of ACM's oversight strategy, which puts the consumer first. ACM also scored well on efficiency. The cost reduction goals of the merger that created ACM have been reached and the gains from ACM's oversight vastly surpass the costs. The positive results of the external evaluation and recent court cases support the legitimacy of ACM's approach to market problems. Each year, ACM estimates the outcome of its interventions on consumer welfare. The outcome for 2015 is estimated to be approximately EUR 1.3 billion.

### Enforcement highlights

2. When dealing with hard core cartels, such as the Vinegar cartel case<sup>1</sup> and the Cold Storage cartel cases<sup>2</sup>, ACM has issued fines. In 2015 the total of cartel fines imposed came to EUR 15,2 million. Where necessary, individuals were pursued for their de facto leadership roles in cartel activities. Where we found that mergers would likely lead to competition-restriction competition, they were prohibited or remedies were accepted to prevent such restriction. In 2015, ACM prohibited a merger between two hospitals for the first time.

### Innovation

3. ACM is innovative in terms of employing new instruments in oversight and detection. In 2015, the courts ruled that ACM correctly used the instrument of commitments in the 2014 case involving Dutch copyright collecting society Buma/Stemra.<sup>3</sup> According to the courts, this instrument was more efficient than fines for solving the identified competition problems. In other cases, the courts confirmed that ACM may, in certain situations, make use of mystery shoppers and wiretap data, that have been made available by the Dutch Public Prosecution Service (OM).<sup>4</sup>

### Effects

4. In 2015, we directed extra attention to assessing the effects of our work. ACM had a study carried out into three major supermarket mergers between 2009 and 2012, for which ACM or its predecessor had granted a licence.<sup>5</sup> In addition, we collaborated with the European Commission and

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<sup>1</sup> See <https://www.acm.nl/en/publications/publication/14615/ACM-fines-natural-vinegar-manufacturers-for-cartel-agreements/>.

<sup>2</sup> See <https://www.acm.nl/en/publications/publication/15609/ACM-imposed-fines-of-EUR-125-million-on-cold-storage-firms/>.

<sup>3</sup> See <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2015:6080> (in Dutch).

<sup>4</sup> See <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:CBB:2015:191> (in Dutch) and <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:CBB:2015:193> (in Dutch).

<sup>5</sup> See <https://www.acm.nl/en/publications/publication/15084/Study-into-effects-of-three-supermarket-mergers-between-2009-2012/>.

Austria to assess the effects of certain telecommunications mergers.<sup>6</sup> These types of ex post analyses can sharpen our remedy choice in future mergers.

### **Trends and developments**

5. Regulators must be able to anticipate new market developments. Digitization is one example of a social trend that is changing the dynamics of the playing field, affecting businesses and regulators. ACM is alert to such trends, and therefore also placed ‘Online consumers’ on its 2014-2015 Agenda. In addition, the rise of online stores sometimes creates tensions with more traditional (brick-and-mortar) retailers. This results in restrictions in contracts between suppliers and buyers. That is why ACM provided insight into its strategy and prioritization in its oversight of these ‘vertical agreements.’<sup>7</sup>

### **External evaluation of ACM**

6. At the request of the Dutch Minister of Economic Affairs, consultancy firm Kwink in 2015 reviewed ACM’s performance. Kwink was positive in its evaluation of the efficiency of ACM’s actions. The savings that the merger of ACM’s predecessors aimed to realize have been achieved. The outcome of ACM’s oversight activities exceeds their costs. Kwink was also positive about ACM’s effectiveness. With its enforcement actions, ACM has ended a substantial number of violations. Kwink advised ACM to invest in the deterrent effect of its interventions and to continue its work on improving lead-times in its investigations. In 2016, ACM has continued to work on the implementation of Kwink’s recommendations.<sup>8</sup>

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<sup>6</sup> See <https://www.acm.nl/en/publications/publication/15090/Effect-study-of-two-telecom-mergers-in-Austria-and-the-Netherlands/>.

<sup>7</sup> See <https://www.acm.nl/en/publications/publication/14226/ACMs-strategy-and-enforcement-priorities-with-regard-to-vertical-agreements/>.

<sup>8</sup> See <http://www.kwinkgroep.nl/publicatie/eindrapport-evaluatie-autoriteit-consument-en-markt-acm/> (in Dutch).

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

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

#### 1.1.1 New tasks concerning health care regulation

7. In 2015 the Dutch government announced that a number of specific market oversight tasks in the healthcare sector will be transferred from the Dutch Healthcare Authority to ACM. The new tasks concern the healthcare specific merger test and an instrument which allows for the possibility of regulating undertakings with significant market power. Depending on the parliamentary process, ACM expects to start performing these new tasks in 2017. In the meantime, ACM has created a temporary healthcare taskforce, where ACM's current tasks in healthcare can be coordinated with the preparations for the new tasks.<sup>9</sup>

### 1.2 Other relevant measures, including new guidelines

#### 1.2.1 Fining maximum has been raised

8. On December 22, 2015, the Dutch parliament approved a proposal to increase the maximum fines ACM can impose.<sup>10</sup> This new legislation entered into force on the 1st of July 2016 and applies to violations taking place after this date. Until the 1st of July 2016, the fines for companies could reach EUR450.000, or 10% of the annual turnover. The highest amount of either option counted as the maximum fine.

9. Under the new legislation the duration of a violation is relevant when deciding the maximum cartel fine. In this aspect, the legislation differs from the legislation in other EU member states, where the maximum fine is still 10% of annual turnover. The maximum cartel fine in the Netherlands has been increased to EUR900.000 or, if that is a higher amount, 10% of annual turnover, taken from the year before the year of the decision. That figure is then multiplied by the number of years the violation has lasted, with a maximum of 4 years. Furthermore, the maximum fine has been doubled for repeat offenders. However, ACM has the discretion not to apply this rule if in a concrete situation it would be unreasonable to do so.<sup>11</sup>

10. Parliament and government wished to increase the fining maximum in order to prevent cartelists from profiting from illicit gains through cartel activity. The new fining maximum affects the level of ACM's fines, but not how the fine is determined. ACM's fines are determined on the basis of turnover.

#### 1.2.2 ACM publication procedure

11. On July 17, 2015, ACM published a new procedure to explain how ACM publishes decisions, and to provide information about the rights of the parties involved. ACM publishes all of its sanction decisions. The procedure also explains how ACM publishes press releases on its website.<sup>12</sup>

<sup>9</sup> See <https://www.acm.nl/nl/onderwerpen/zorg/toezicht-op-de-zorg/toezicht-op-de-zorg/> (in Dutch) and <https://www.acm.nl/en/about-acm/mission-vision-strategy/our-agendas/2016-2017-acm-agenda/healthy-collaborations-in-health-care/>.

<sup>10</sup> See <https://www.acm.nl/nl/publicaties/publicatie/15996/Wijziging-Boetebeleidsregel-ACM-2014-per-01-07-2016/> (in Dutch)

<sup>11</sup> Article 2.9:2 of the 2014 ACM Fining Guidelines.

<sup>12</sup> See <https://www.acm.nl/en/publications/publication/14592/ACM-Publication-Procedure/>.

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

#### **1.3.1 New rules concerning private enforcement**

New rules to facilitate civil enforcement of competition law are expected in 2016. These rules, implementing the European directive on this topic, will only cover follow-on actions in cases where a European norm has been breached. The new rules will not cover follow-on actions relating to cases involving breach of a national competition rule only. The legislative amendments concern, among other things, the extent to which injured parties are given access to ACM's case files without undermining the leniency program.<sup>13</sup> The new rules will not involve new powers or obligations for ACM, with the exception of the possibility that civil judges may request assistance from the authority in specific cases.

## **2. Enforcement of competition laws and policies**

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

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

##### **2.1.1.1 ACM activities**

12. In 2015 ACM started eight investigations. Six investigations were closed in 2015. ACM issued 5 cartel decisions in 2015 and imposed EUR15,2 million in fines. The fines were issued in cartel-cases concerning natural-vinegar, a construction case and cartel cases in the cold storage sector. ACM issued informal opinions in three cases concerning collaboration in cancer treatment and industry wide sustainability arrangements between supermarkets.

##### **2.1.1.2 Court appeals**

13. In 2015 the Rotterdam District Court (the Court) and the Dutch Trade and Industry Appeals Tribunal (CBB) issued 58 rulings about the different laws that ACM enforces.

14. A number of cases focused on the **powers and instruments** of ACM.

- The Court upheld ACM's rejection of a complaint by cash logistics provider Brink's. Three major Dutch banks set up a joint processing operation for cash counting and money transport. This affected complainant Brink's, as it lost a major customer. The joint operation at production level did not restrict competition between the banks. Nor was there any evidence of abuse of dominance.<sup>14</sup>
- The Court upheld ACM's use of commitment decisions in the Buma/Stemra case, agreeing with ACM that a commitment decision would be more effective in solving the issue in that case, than a fine.<sup>15</sup>

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<sup>13</sup> See <http://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX:32014L0104> and <https://zoek.officielebekendmakingen.nl/dossier/34490> (the latter is in Dutch).

<sup>14</sup> See <https://www.acm.nl/nl/publicaties/publicatie/14665/Uitspraak-rechtbank-in-beroep-Brinks/> (in Dutch).

<sup>15</sup> See <https://www.acm.nl/nl/publicaties/publicatie/15157/Uitspraak-rechtbank-Rotterdam-in-zaak-Buma-Stemra/> (in Dutch).

- The CBb issued two rulings confirming that ACM can make use of mystery shoppers, and wiretapping data provided by the public prosecutor, in its investigations.<sup>16</sup>

15. The **scope of the concept ‘restriction of competition’** was dealt with by the Court in a number of cases.

- In a case concerning ‘cover pricing’, the Court confirmed ACM’s view that businesses cannot align their applications for public tenders, even when there are other applicants for that same tender.<sup>17</sup>
- In a case concerning the Dutch General Practitioners’ association (LHV), the Court decided that ACM’s fine was unjustified. Although the association had put recommendations on its website concerning the establishment of new clinics, this did not constitute a competition restriction.<sup>18</sup>

**16. ACM is authorised to publish its decisions, and obliged to publish fines.** Openness is the starting point, although confidential data is protected. In fining decisions, parties can request a preliminary injunction against publication. ACM has noticed a trend of increasing requests for injunction to prevent such publications. The Court has reaffirmed ACM’s obligation to publish its decisions in multiple judgments.<sup>19</sup>

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

#### 2.1.2.1 Fines on natural-vinegar manufacturers for cartel agreements

17. In August 2015, ACM imposed fines on two manufacturers of natural-vinegar (also known as white or distilled vinegar), Kühne and Burg, for having made cartel arrangements. Kühne and Burg made arrangements about the offers they gave to multiple clients. They also exchanged price and production information. Burg was fined EUR 1.8 million. Kühne escaped a fine of EUR 4.6 million because it had notified ACM of these arrangements, and it closely cooperated with the investigation. In addition, the fines were lowered by 10 percent because both Kühne and Burg had acknowledged the violation and had settled with ACM. The violation lasted from 2001 through 2012. In this case, ACM also imposed fines on individuals who were involved in the cartel arrangements. ACM imposed fines on two employees of Burg of EUR 16,000 and EUR 54,000 respectively. In the case of Kühne, three individuals were found to have exercised de facto leadership over the cartel arrangements. These three individuals escaped fines varying between EUR 22,500 and EUR 135,000.<sup>20</sup>

#### 2.1.2.2 Fines for cold storage companies

18. In the Cold Storage cartel cases, ACM imposed fines of almost EUR12,5 million in three cases on four companies active in freezing and refrigerated storage. Four executives received personal fines, the

<sup>16</sup> See <https://www.acm.nl/nl/publicaties/publicatie/14474/Uitspraak-CBb-verstrekken-tapegegevens-OM-aan-ACM-was-rechtmatig/> (in Dutch).

<sup>17</sup> See <https://www.acm.nl/en/publications/publication/6409/NMa-imposes-fines-on-three-executives-of-southern-Dutch-construction-companies/>.

<sup>18</sup> See <https://www.acm.nl/nl/publicaties/publicatie/15460/Uitspraak-rechtbank-vestigingsadviezen-Landelijke-Huisartsen-Vereniging/> (in Dutch).

<sup>19</sup> See <https://www.acm.nl/nl/publicaties/publicatie/14502/Werkwijze-openbaarmaking-ACM/> (in Dutch).

<sup>20</sup> See <https://www.acm.nl/en/publications/publication/14615/ACM-fines-natural-vinegar-manufacturers-for-cartel-agreements/>.

highest of which was EUR144.000. Between 2006 and 2009, the companies involved had been holding merger talks, and during that time, they made arrangements about prices, exchanged competition-sensitive information, and shared customers. As a result, competition in the cold-storage market was seriously impeded.<sup>21</sup> Freezing and refrigerated storage play an important role in the Netherlands' port and transport industry, a sector which remains on ACM's radar for 2016.<sup>22</sup>

### 2.1.2.3 Informal opinions

19. Market parties can request informal opinions from ACM on the application of competition rules in specific cases. In 2015, ACM issued three informal opinions on draft agreements which potentially threatened to breach competition law. 'The chicken of tomorrow' concerned an agreement between supermarkets, producers and processors to replace regular chicken with 'the chicken of tomorrow' in Dutch supermarkets. ACM analysed this agreement and concluded that implementation of the agreement would reduce competition on the consumer market for chicken meat. On balance, the benefits for the consumer did not outweigh the costs. This analysis led the involved parties to cancel the implementation and introduce alternative approaches.<sup>23</sup>

20. In addition to this case, ACM also issued informal opinions on two cooperation agreements concerning cancer treatment. In March 2015, ACM argued that the collective purchase by health insurance companies of proton therapy for the treatment of cancer from a single (proposed) proton centre in the Netherlands could hamper the development of other competing centres. However, there are possibilities for collective purchasing abroad.<sup>24</sup>

21. In May 2015, six hospitals inquired whether they were allowed to collaborate in order to increase the quality of their breast cancer care. They wanted to collectively negotiate with health care insurance companies about uniform purchasing conditions. ACM observed that the hospitals were located far from each other and that they did not compete with each other. We concluded that collective bargaining by these hospitals on breast cancer care would not lead to a noticeable decrease in competition.<sup>25</sup>

## 2.2 *Mergers and acquisitions*

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

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

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<sup>21</sup> See <https://www.acm.nl/en/publications/publication/15609/ACM-imposed-fines-of-EUR-125-million-on-cold-storage-firms/>.

<sup>22</sup> See <https://www.acm.nl/en/about-acm/mission-vision-strategy/our-agendas/2016-2017-acm-agenda-ports-and-transport-/>.

<sup>23</sup> See <https://www.acm.nl/en/publications/publication/13789/ACMs-analysis-of-the-sustainability-arrangements-concerning-the-Chicken-of-Tomorrow/>.

<sup>24</sup> See <https://www.acm.nl/en/publications/publication/13933/ACM-sees-opportunities-for-proton-therapy-centers-for-cancer-treatment/>.

<sup>25</sup> See <https://www.acm.nl/en/publications/publication/14276/Six-Dutch-hospitals-are-allowed-to-collaborate-to-improve-care-for-breast-cancer-patients/>.

<b>Actions</b>	<b>Number</b>
Decisions on notifications	88
Withdrawn notifications	2
Exemptions from the waiting period (derogation requests)	4
Approved with remedies	1
Licence applications	5
Licence applications withdrawn	0
Decisions on licence applications	3
<b>Total</b>	<b>103</b>

23. In 2015, 5 merger cases were reviewed in the licence phase, of which 2 related to notifications received in 2014. Of the 5 cases; 1 merger was granted a licence, 1 was approved with remedies and 1 was refused. 2 merger analyses rolled on into 2016.<sup>26</sup>

### 2.2.2 Summary of significant cases.

#### 2.2.2.1 Merger between two Dutch games of chance cleared

24. The licensed case related to a merger between two Dutch games of chance (lottery) organisations, Stichting Exploitatie Nederlandse Staatsloterij (SENS) and Stichting Nationale Sporttotalisator (SNS).<sup>27</sup> ACM has established that the level of competition between lotteries of SENS and SNS is very low. Each has their own loyal customer base. Consumers rarely switch between games of chance. Furthermore, the Netherlands has strict regulations regarding games of chance, which are a contributing factor to the limited competitive options for these games of chance. The merger will thus have a limited effect on the market for games of chance. The resulting organisation would face sufficient competition, not least from online games of chance. An appeal has been filed against ACM's decision.

#### 2.2.2.2 ACM prohibits proposed merger between two Dutch hospital groups

25. In July 2015, ACM blocked a merger between hospitals for the very first time. ACM prohibited the proposed merger of two hospital groups in the southwestern part of the Netherlands: Albert Schweitzer Hospital and Rivas Zorggroep.<sup>28</sup> With this prohibition, ACM prevented potential negative effects on patients and the insured such as higher prices, reduced quality, or less innovation. These two hospital groups are strong competitors of each other. This follows from ACM's investigation into patient flows, a survey among General Practitioners, and information from health insurers, and other sources. ACM also explored the possibilities for patients and health insurers to discipline the merged hospital. ACM found that these options were insufficient. Patients have limited options 'to vote with their feet' and to switch hospitals. ACM's investigation also revealed that, after the merger, health insurers would have insufficient alternatives to negotiate good prices and quality with the merged hospital. Albert Schweitzer and Rivas

<sup>26</sup> See Paragraph 4.2 on Concentration Control and Paragraph 9.2 on Concentrations in: <https://jaarverslag.acm.nl/sites/default/files/2015%20ACM%20Annual%20Report.pdf>.

<sup>27</sup> See <https://www.acm.nl/en/publications/publication/15043/ACM-clears-merger-between-two-Dutch-games-of-chance/>.

<sup>28</sup> See <https://www.acm.nl/en/publications/publication/14503/ACM-prohibits-proposed-merger-between-two-Dutch-hospital-groups/>.

have filed an appeal against ACM's decision. In 2016, the District Court of Rotterdam upheld ACM's decision. Parties may appeal this judgment to the CBb.

#### 2.2.2.3 Acquisition of Mecom by rival De Persgroep cleared

26. One merger case was resolved with remedies in 2015. This was the acquisition of British publishing company Mecom by Belgian rival De Persgroep. Under the remedies accepted, De Persgroep agreed to continue the current delivery arrangements with the distribution business of Telegraaf Media Groep. Newspaper publishers that do not have their own distribution network, such as NRC Media, thus also benefit. This way, distribution of all newspapers against fair conditions has been guaranteed. These arrangements will be in place for at least the next ten years.<sup>29</sup>

### 3. The role of competition authorities in the formulation and implementation of other policies

27. ACM keeps track of the latest trends and developments for consumers and businesses. ACM looks at competition and consumer protection law and policy, and also specifically at the energy, telecommunication, transport and postal services industries.

#### 3.1 Implementation tests

28. Ministries send ACM proposals for draft legislation/regulations, which could be of influence on tasks that ACM has to, with the request that ACM conduct an enforcement and implementation test. In the enforcement and implementation test, ACM assesses the following:

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

29. ACM publishes the enforcement and implementation test after the relevant regulation has been published by the responsible Minister. Examples in 2015 included the ACM opinion issued on the enforceability and implementation of amending the Health Care Market Regulation Act (Wmg) and on the adjustments to the Telecommunications act regarding information exchange and net neutrality. Other opinions concerned adjustments to a decision on the postal sector and a general administrative regulation under the electricity and gas Act.

#### 3.2 Meetings with the Dutch Parliament

30. ACM participates at an appropriate level, where necessary, in discussions concerning the formulation and implementation of policies. For example, ACM meets with members of the Dutch parliament in order to explain its work or talk about specific markets where ACM has a lot of expertise. These meetings are reported to the Minister of Economic Affairs in advance. Examples include:

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<sup>29</sup> See <https://www.acm.nl/en/publications/publication/13834/ACM-clears-acquisition-of-British-publishing-company-Mecom-by-Belgian-rival-De-Persgroep/>.

- in April 2015, ACM was invited to a round table at parliament to discuss its analysis of the competition case called ‘the Chicken of Tomorrow’.<sup>30</sup>
- In June 2015, ACM provided a written contribution for a parliamentary round table on mergers in healthcare.<sup>31</sup>

### 3.3 *Open letter to the Minister*

31. ACM annually publishes an open letter (‘Insight’) to the Minister of Economic Affairs in which it contributes to public debate at national and European level on developments in the sectors in which ACM is active. In Insight 2015 ACM explained its role as competition authority vis-à-vis private cooperation arrangements with regard to sustainability.<sup>32</sup> ACM focused on the increasingly significant influence of innovative forms of digital services on business models of companies. Finally, several challenging issues concerning the health care system and the energy sector were discussed.

### 3.4 *ACM’s financial monitor on SME finance*

32. In 2015, ACM published a study on competition in the Dutch market for SME loans.<sup>33</sup> ACM concluded that there is insufficient competition among banks in this market. A calculation that revealed increasing margins supported this conclusion. The study made several recommendations to improve competition. An example is the proposal to introduce a ‘light version’ banking licence. This eases market entry for new players without compromising financial stability.

### 3.5 *International cooperation*

33. Among other platforms, ACM participates in European and international collaborations of competition authorities ([ECN](#) and [ICN](#)), of telecom regulators ([BEREC](#)), or electricity and gas regulators ([ACER](#) and [CEER](#)), consumer authorities ([CPC](#) and [ICPEN](#)), and rail regulators ([IRG-Rail](#)).

## 4. **Resources of competition authorities**

### 4.1 *Resources overall*

#### 4.1.1 *Annual budget*

34. Overall ACM budget is approximately EUR 62 million (69,1 million USD). Our competition-related budget is EUR14,6 million (16,3 million USD).<sup>34</sup>

#### 4.1.2 *Number of employees*

35. 546 people work at ACM (including temporary staff). This figure includes staff who deal with aspects other than competition, such as those who deal with the regulation of Energy, Telecom, Post and

<sup>30</sup> See <https://www.acm.nl/en/publications/publication/13789/ACMs-analysis-of-the-sustainability-arrangements-concerning-the-Chicken-of-Tomorrow/>.

<sup>31</sup> See <https://www.acm.nl/nl/publicaties/publicatie/14445/Position-paper-ACM-Rondetafelgesprek-Tweede-Kamer-fusietoets-voor-zorginstellingen/> (in Dutch).

<sup>32</sup> See <https://www.acm.nl/en/publications/publication/14680/InSight-2015/>.

<sup>33</sup> See <https://www.acm.nl/en/publications/publication/14681/Competition-in-Dutch-SME-loan-market/>.

<sup>34</sup> Calculated with the exchange rate of 1-1-2015; EUR/USD = 1,209.

Transport as well as those who work on Consumer Protection and the support staff who cover all of these areas from within the legal, communication and strategy departments and the Office of the Chief Economist.

36. 176 people are involved in competition enforcement. Of these, 116 work in the Competition Department, 37 in the Legal Department, 9 in the Office of the Chief Economist, 11 in the Strategy and Communication Department and 3 Board-members. The table below offers a more refined overview of the (educational) background of these employees.

Department	Legal	Economic	L&E	Other	Total
Competition Department	46	22	3	30	101
Office of the Chief Economist		8	0		8
Legal Department	29	1	1	1	32
Members of the Board	2	1			3
Strategy & Communication	3	3		2	8
<b>Total</b>	<b>80</b>	<b>35</b>	<b>4</b>	<b>33</b>	<b>152</b>

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

#### 4.2 *Human resources*<sup>35</sup>

37. It is difficult to specify how many staff deal specifically with competition, because at ACM we use mixed teams in appropriate cases. In addition, we have experts in the regulated sectors who work on merger and dominance cases in those sectors. Therefore the numbers presented below have to be considered as rough approximations.<sup>36</sup>

<b>Enforcement against anticompetitive practices:</b>	
Anti-cartel:	83fte
Abuse of dominance:	20fte.
<b>Merger review:</b>	
Mergers:	27fte.

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

### 5.1 *Enforcement priorities with regard to vertical agreements*

38. In April 2015, ACM published a document, providing insight into its strategy and enforcement priorities with regard to vertical agreements between suppliers and buyers.<sup>37</sup> In its enforcement actions, ACM particularly focuses on those agreements that negatively affect consumers. There are also types of vertical agreements that ACM will not investigate in detail because these have already been exempted by legislation and regulations. This is the case, for example, if the market shares of the parties involved are small. With regard to agreements that are not considered exceptions, ACM makes an initial assessment of their effects on consumers. In that assessment, ACM weighs the positive effects of the agreements against their negative ones. ACM chooses to investigate those agreements where the negative effects exceed the positive ones. A more in-depth follow-up investigation could lead to ACM taking enforcement action, which, for example, could mean prohibiting the agreement or imposing fines on the businesses involved.

<sup>35</sup> These figures represent FTE, as some people work half time on projects.

<sup>36</sup> Period covered by the information below: 1 January 2015 to 31 December 2015.

<sup>37</sup> See <https://www.acm.nl/en/publications/publication/14226/ACMs-strategy-and-enforcement-priorities-with-regard-to-vertical-agreements/>.

## 5.2 *Contributions to public debate on mergers in the health care sector*

39. In June 2015, ACM provided a written contribution for a parliamentary round table on mergers in healthcare.<sup>38</sup> In addition, in July 2015, an article about ACM's merger control in the hospital sector was published in Dutch antitrust magazine *Markt & Mededinging*.<sup>39</sup> ACM argues that experience from both ACM and the Dutch Healthcare Authority demonstrates that in many cases health care providers can merge without causing competition problems. The current merger test ensures availability, affordability and quality of healthcare through measurement of the intensity of residual competition after the merger. When competition problems do arise, ACM intervenes.

## 5.3 *Effect study of supermarket mergers*

40. ACM had a study carried out into three major supermarket mergers between 2009 and 2012, which involved hundreds of supermarket stores of three Dutch supermarket chains: Jumbo, C1000 and Super de Boer.<sup>40</sup> It turned out that the supermarket mergers had no effect on the prices that consumers paid for their products. It was also revealed that, after the mergers, product variety in virtually all supermarkets had increased. In several towns, the increase in product variety as a result of the merger was slightly less. The study provides useful information for ACM which it can use in future assessments of the effects of supermarket mergers on consumers.

## 5.4 *Effect study of two telecom mergers in Austria and the Netherlands*

41. ACM, the European Commission and the Austrian telecom regulator RTR carried out a joint study into the effects of two telecom mergers in both countries.<sup>41</sup> The study looked into the tariff trends in each country where these mergers had taken place, and compared them with countries where no telecom mergers had occurred. In the Netherlands, after the merger between T-Mobile and Orange, prices of plans dropped less rapidly than those in countries where no mergers had occurred. Fewer participants in the market might be an indication of less competitive pressure. However, the identified price effects could also have been the result of the merger between KPN and Telfort in 2005. This limited the possibility for ACM to draw definitive conclusions about the effect of the T-Mobile/Orange merger on prices.

## 5.5 *Competitive neutrality sector studies*

42. In March 2015, ACM published 3 sector studies about the functioning of the Dutch Act on Government and Free Markets', which regulates the economic participation of municipal governments on markets.<sup>42</sup> The three sectors which were the focus of these studies were commercial-waste collection, commercial exploitation of sports facilities, and parking garages. Government organizations are active in all three of these sectors, and are possibly in competition with commercial rivals. ACM established that, in these sectors, the law is observed by municipalities, but that it only helped realize equal competitive

<sup>38</sup> See <https://www.acm.nl/nl/publicaties/publicatie/14445/Position-paper-ACM-Rondetafelgesprek-Tweede-Kamer-fusietoets-voor-zorginstellingen/> (in Dutch).

<sup>39</sup> See <https://www.acm.nl/nl/publicaties/publicatie/14497/Artikel-over-Concentratietoezicht-ACM-ziekenhuissector/> (in Dutch).

<sup>40</sup> See <https://www.acm.nl/en/publications/publication/15083/Supermarkets-have-not-become-more-expensive-following-mergers/>.

<sup>41</sup> See <https://www.acm.nl/en/publications/publication/15090/Effect-study-of-two-telecom-mergers-in-Austria-and-the-Netherlands/>.

<sup>42</sup> See <https://www.acm.nl/en/publications/publication/14140/Limited-effect-of-Dutch-Act-on-Government-and-Free-Markets-on-sports-facilities-parking-garages-and-waste-collection/>.

positions among government organizations and commercial businesses to a limited degree. ACM concluded that, with regard to sports facilities and parking garages, so-called 'public-interest decisions' are often used. Such decisions render the Dutch Act on Government and Free Markets inapplicable. For example, municipal councils can decide that their local sports centers are important to the public interest. Consequently, not all costs will have to be included in the final price for which the service is offered on the market. Commercial participants active on these markets often view this as unfair competition, due to which the 'public interest' exception is facing a lot of criticism.

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