

THE NETHERLANDS			
COMPETITION FRAMEWORK			
Competition Law	The Dutch Competition Act (“DCA”) entered into force on January 1, 1998 and is modeled closely on European Union competition law.		
Competition Authority	The Dutch Competition Authority (“NMa”) was established on January 1, 1998. Website: http://www.nma.nl/en/default.aspx		
STATUS OF THE COMPETITION AUTHORITY			
Accountability			
Does the Competition Authority have obligations before the executive?	Yes	X	Obligations to report to the executive on on-going investigations upon request.
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.
		√	The Competition Authority has to report on an annual basis to the executive. <i>See</i> DCA, Chapter 5, section 5(g).
Does the Competition Authority have obligations before the legislature?	Yes	√	Obligation to publish an annual report on its activities. <i>See</i> DCA Chapter 5.
		X	Obligation to stand before Parliament and to respond to congressmen on an annual basis. <i>See</i> DCA Chapter 2, section 5(h)(1).
		X	Its activities are monitored by an independent auditor or by oversight committees.
Does the Competition Authority have obligations before the judiciary?	Yes	√	Decisions of the Competition Authority are subject to judicial review.
Independence			
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes	<i>See</i> DCA Chapter 2, sections 2-4.	
Does the executive have powers to decide on specific cases based on public interest?	Yes	<i>See</i> DCA Chapter 2, section 5(b)(1).	
Does the executive retain decision-making powers over the Competition Authority?	Yes	<i>See</i> DCA Chapter 2, section 4(a).	
Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency?	Yes		
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes	Fiscal year budget for 2012: Approximately EUR 45 million (17.5 million for competition). <i>See</i> DCA Chapter 2, section 5(i)(1), “Every year, before April 1st, the Board shall submit the draft budget for the following year to Our Minister.”	
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	No		
GOVERNANCE OF THE COMPETITION AUTHORITY			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Collegiate body	A board governs the NMA. The Board of the NMA has a chairman and two members. The Board of the NMA is a so-called Autonomous Administrative Authority (“AAA”). This means that the Board carries out government tasks, yet it does so independently from lawmakers or the political process. The Board of the NMA is responsible for the execution of the statutory duties the NMa is charged with. Each member of the Board has their own portfolio of responsibilities, and act as the primary point of contact for these topics.	
Does a minister appoint the heads?	Yes	The Board of the NMA has a chairman and two members, all of whom are appointed by the Minister of Economic Affairs, Agriculture and Innovation. <i>See</i> DCA Chapter 2, section 3(2), “Appointments, suspensions and dismissals shall be based on recommendations put forward by Our Minister by royal decree.”	
Do representatives of more than one government branch appoint the heads?	No		
Is there a fixed period during which removal is prohibited?	No	<i>See</i> DCA Chapter 2, section 3(4), “A member of the Board may be dismissed at his own request. He may also be suspended or dismissed on the ground of unsuitability or incompetence with regard to the position he holds or on another serious personal ground.”	
Is the tenure of the heads renewable?	Yes	<i>See</i> DCA Chapter 2, section 3(3), “The Chairperson shall be appointed for a term of no more than six years, while the other members shall be appointed for terms of no more than four years. The members may be reappointed once, for a term of no more than four years.”	
Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)?	Yes	<i>See</i> DCA Chapter 2, section 3(2) that states that appointments shall be based on expertise in the field of the responsibilities with which the Board is charged.	
ARCHITECTURE			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister?	Stand-alone agency	<i>See</i> NMA Independent Administrative Body Act. The NMa has independent status from the Ministry of Economic Affairs.	

POLICY-MAKING AGENTS -DIVERSIFICATION-		
How many agencies are responsible for competition enforcement?	One agency.	
Do sector regulators have competition policy enforcement mandate?	Not applicable	
Have the Competition Authority and other agencies signed protocols or memoranda of understanding?	Yes	The NMA has drawn up protocols and covenants governing the collaborations between the NMA and a number of organizations: (1) Dutch Tax Administration; (2) Independent Post and Telecommunications Authority OPTA; (3) Dutch Central Bank DNB; (4) State Supervision of Mines (“SodM”); (5) Public Prosecution Service (“OM”); and Dutch Healthcare Authority (“NZa”) regarding concentration cases. Protocols <i>available at</i> http://www.nma.nl/en/our_work/our_relationships_with_others_and_society/cooperation_arrangements/default.aspx
	Telecommunications regulator	Yes The Independent Post and Telecommunications Authority (“OPTA”)
	Energy regulator	No
	Transport regulator	No
POLICY DUTIES		
Does the Competition Authority have exclusive mandate on competition or multiple mandates?	Multiple mandates	X Concurrent consumer protection mandate.
		X Concurrent IP mandate.
		Other mandates: There are specific forms of domestic interagency cooperation, including the following: (a) A protocol between the NMA and OPTA, amended in 2004, provides for information exchange where this is allowed by statute and for a degree of ‘soft’ coordination of enforcement action (to determine who takes the lead in which type of cases). (b) A cooperation protocol between the NMA and the Health Authority (amended in October 2006) is similar to that between OPTA and the NMA. Information exchange is one of the areas covered. (c) A less structured form of interagency cooperation is currently in place between the NMA and the public prosecutor. In 2002, a covenant was entered into for the exchange of information and coordination of investigative measures concerning alleged infringements of competition and criminal law in the construction sector. This covenant was renewed in 2003. (d) There is also cooperation between the NMA and the Dutch Inland Revenue in the form of an information exchange
The NMA enforces compliance with the Dutch Competition Act and with a number of specific laws for the energy and transport industries. The NMA has a Board, four departments and two supporting departments. Within the NMA, two departments enforce the DCA: the Competition Department (“DM”) and the Legal Department (“JD”). The Office of Energy and Transport Regulation (“DREV”) regulates the energy industry and the transport markets. In order for the NMA to operate effectively, it has another supporting department: the Corporate Services Department (“DBV”).		
PORTFOLIO INSTRUMENTS		
Law Enforcement		
Does the Competition Authority have powers to investigate cartels?	Yes	See DCA, Chapter 3, “Anti-Competitive Agreements.”
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	See DCA, Chapter 4, “Dominant Positions,” section 24(1). Undertakings are prohibited from abusing a dominant position.
Does the Competition Authority have powers to accept leniency applications?	Yes	Companies and as of October 1, 2007 individuals, may contact the NMA’s Leniency Office to obtain immunity or a reduction in their fine for a cartel offence. The Leniency Guidelines of October 2009 set out the leniency policy to be applied by the NMA. The Leniency Guidelines provide for complete immunity from fines for the first company to present information to the NMA about a cartel prior to the start of an investigation. However, this only applies if certain criteria are fulfilled.
Does the Competition Authority have powers to seek criminal punishment?	No	Under the Dutch Competition Act, there are no criminal sanctions.
Advocacy		
Can the Competition Authority issue opinions on draft legislation?	Yes	The opinions are not binding.
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No	
Rulemaking		

Can the Competition Authority issue guidelines or other type of secondary legislation?	Yes	√	Guidelines on the calculation of fines.
		X	Guidelines on merger control.
		X	Guidelines on the economic analysis of abuse of dominance cases.
Research & Reporting			
Can the Competition Authority carry out market studies?	Yes	<i>See “Documents and Publications” available at http://www.nma.nl/en/documents_and_publications/default.aspx</i>	
Can the Competition Authority report to the legislature on the results of market studies?	Yes	<i>See DCA Chapter 2, section 5C, “Whether at the request of any of Our other Ministers, Our Minister may instruct the Board to issue a report on the effects for competition of intended or current regulations or of an intended or current decree.”</i>	
DECISION-MAKING FUNCTIONS			
Aggregated Functions			
Does the Competition Authority make the decision to investigate and to prosecute cases?	Yes		
Does the Competition Authority make guilty findings?	Yes		
Does the Competition Authority impose punishments?	Yes		
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	No		
Can the Competition Authority’s decisions be appealed to a court?	Yes		
Disaggregated Functions—Prosecutorial Model			
Are there different authorities that make the decision to investigate and to prosecute cases?	No		
Are disputes presented for decision to a separate entity/tribunal?	No		