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**Product Market Competition
and Economic Performance
in the Netherlands**

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Michael Wise**

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ABSTRACT/RESUME

PRODUCT MARKET COMPETITION AND ECONOMIC PERFORMANCE IN THE NETHERLANDS

This paper assesses what role product market competition and reforms may have played in the performance of the Dutch economy over the past decade, and discusses what further product market reforms might contribute to enhancing growth. In general, competitive pressures appear to be relatively strong in the Netherlands, particularly in the traded goods sector. Competition in product markets has been strengthened through the creation of a competition authority (NMa) and the Competition, Deregulation and Legislative Quality project (MDW). A planned reduction in the administrative burden will also help to strengthen competition, by reducing barriers to business start-ups and the expansion of small businesses, as well as lowering business costs. However, competitive pressures and productivity growth are weaker in the Dutch services sector. Planning restrictions are inhibiting competition and productivity growth in the retail sector and there is considerable scope to eliminate practices that restrict competition in professional services, even though both are relatively liberalised in the Netherlands. Reforms in electricity, gas and telecoms are recent and market power on the part of incumbent firms remains a concern. Competitive pressures in these industries could be increased by enhancing the powers of the regulators and eliminating barriers to entry.

JEL classification: K21, K23, L11, L16, L40, L43, O51

Keywords: Netherlands, market structure, competition, productivity and growth, antitrust law, regulatory policies, network industries

LA CONCURRENCE SUR LES MARCHES DE PRODUITS ET LES PERFORMANCES ECONOMIQUES

Ce document évalue le rôle que la concurrence sur les marchés de produits et les réformes ont pu jouer dans les performances de l'économie néerlandaise cette dernière décennie et débat sur l'action qui pourrait être menée pour améliorer la croissance. D'une façon générale, les pressions concurrentielles paraissent relativement fortes aux Pays-Bas en particulier dans les secteurs des biens échangés. La concurrence sur les marchés de produits a été renforcée grâce à la mise en place d'une autorité de la concurrence (la NMa) et au projet « Concurrence, déréglementation et qualité de la réglementation » (MDW). L'allègement prévu des charges administratives contribuera également à renforcer la concurrence en réduisant les obstacles à la création d'entreprises et à l'expansion des petites entreprises, tout en diminuant les coûts des activités industrielles ou commerciales. Toutefois, la concurrence et la productivité du travail sont plus faibles dans le secteur des services. Les règles d'urbanisme entravent la concurrence et la croissance de la productivité dans le commerce de détail et de vastes possibilités s'offrent d'éliminer les pratiques qui restreignent la concurrence dans les services professionnels, même si ces activités sont relativement libéralisées aux Pays-Bas. Les réformes dans les secteurs de l'électricité, du gaz et des télécommunications sont récentes et le pouvoir de marché des opérateurs historiques demeure problématique. La concurrence dans ces secteurs pourrait être intensifiée, en augmentant les prérogatives des autorités de régulation et en éliminant les barrières à l'entrée.

Classification JEL: K21, K23, L11, L16, L40, L43, O51

Mots clés: Pays Bas, structure de marché, concurrence, productivité et croissance, droit de la concurrence, politiques de réglementation, industries de réseaux

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PRODUCT MARKET COMPETITION AND ECONOMIC PERFORMANCE IN THE NETHERLANDS

By
Maria Maher and Michael Wise¹

Introduction

1. There is a well-identified empirical connection between the intensity of competition in product markets and better productivity performance (OECD, 2002a). Indeed, over the past decade the Netherlands has undertaken a number of structural reforms in product markets, primarily aimed at increasing its productivity growth. These reforms, even those implemented only recently, have been assessed as resulting in a more competitive environment for businesses, stimulating economic efficiency and technological progress.² The service sector, where competitive pressures are weaker, has experienced relatively poor labour productivity growth over the 1990s. Planning restrictions are inhibiting competition in the retail sector and there is considerable scope to eliminate practices that restrict competition in professional services, even though both are relatively liberalised in the Netherlands. Reforms in some network industries (*e.g.* electricity, gas and telecoms) are also recent and market power on the part of incumbent firms remains a concern. Reforms that would increase competitive pressures in these sectors include enhancing the powers of regulators in network industries and eliminating barriers to entry. In general, further service sector reforms should be matched with effective enforcement of the new competition law.

2. This paper assesses the role product market competition, and those policies that impact upon competition, may have played in the performance of the Dutch economy over the past decade and what further measures might contribute to enhancing growth. While recognising that considerable progress has been made, the analysis primarily seeks to identify areas where policies continue to impair performance. The main links between stronger competition and macroeconomic performance are reviewed in the first section of this paper, while the second section lays out the competition legislation framework and introduction of the Competition Act in 1998. In the third section, competitive conditions, regulation and recent reforms are analysed for a wide range of non-manufacturing sectors. This includes service industries that are competitive, such as retail distribution and professional services, and network industries containing non-competitive segments, such as telecommunications, electricity and gas. A concluding section draws on the analysis to provide a set of policy recommendations.

Product market competition and economic performance

3. Over the 1990s the Netherlands had relatively good economic performance at the aggregate level. The levels of GDP per capita and GDP per hour worked in the Netherlands are above average, with the latter being very high and exceeding that of the United States. Average GDP growth between 1990 and 2001 was also above both the OECD and EU averages. This strong aggregate growth performance can be explained primarily by the growth in employment, which was well above that of other countries (Table 1). However, the Netherlands position is slowly being eroded due to low productivity growth rates. The poor productivity growth performance can in part be explained by the labour market developments over the decade as less productive workers were employed.

Table 1. Output, employment and productivity
1990 to 2001

	Netherlands	Australia	Belgium	Denmark	France	Germany ¹	United Kingdom	United States	OECD	EU-15
Average GDP growth of which:	2.9	3.3	2.1	2.2	2.0	1.5	2.3	2.9	2.6	2.2
Labour productivity per employee	0.7	1.9	1.6	1.9	1.1	1.7	1.8	1.6	1.8	1.6
Employment	2.1	1.4	0.6	0.3	0.8	-0.2	0.4	1.3	0.8	0.6
Labour productivity growth per employee in selected industries										
Total manufacturing	2.5	2.4	2.7	2.6	3.3	2.4	2.6	3.3	n.a	n.a
Electricity, gas and water supply	3.3	5.9	4.6	2.7	3.0	5.4	10.1	1.2	n.a	n.a
Construction	-0.8	0.6	0.3	-0.8	0.1	0.0	2.5	0.0	n.a	n.a
Wholesale and retail trade; restaurants and hotels	0.5	1.9	1.2	2.1	0.8	-0.5	1.7	3.3	n.a	n.a
Transport and storage and communication	2.9	4.4	1.2	3.9	2.6	7.6	3.9	2.7	n.a	n.a
<i>Memorandum items:</i>										
GDP per capita ²	83.1	75.5	78.5	83.1	75.0	74.9	74.9	100.0	71.6	72.6
GDP per hour worked ²	114.6	78.7	113.9	95.2	113.2	98.8	84.7	100.0	83.3	95.3

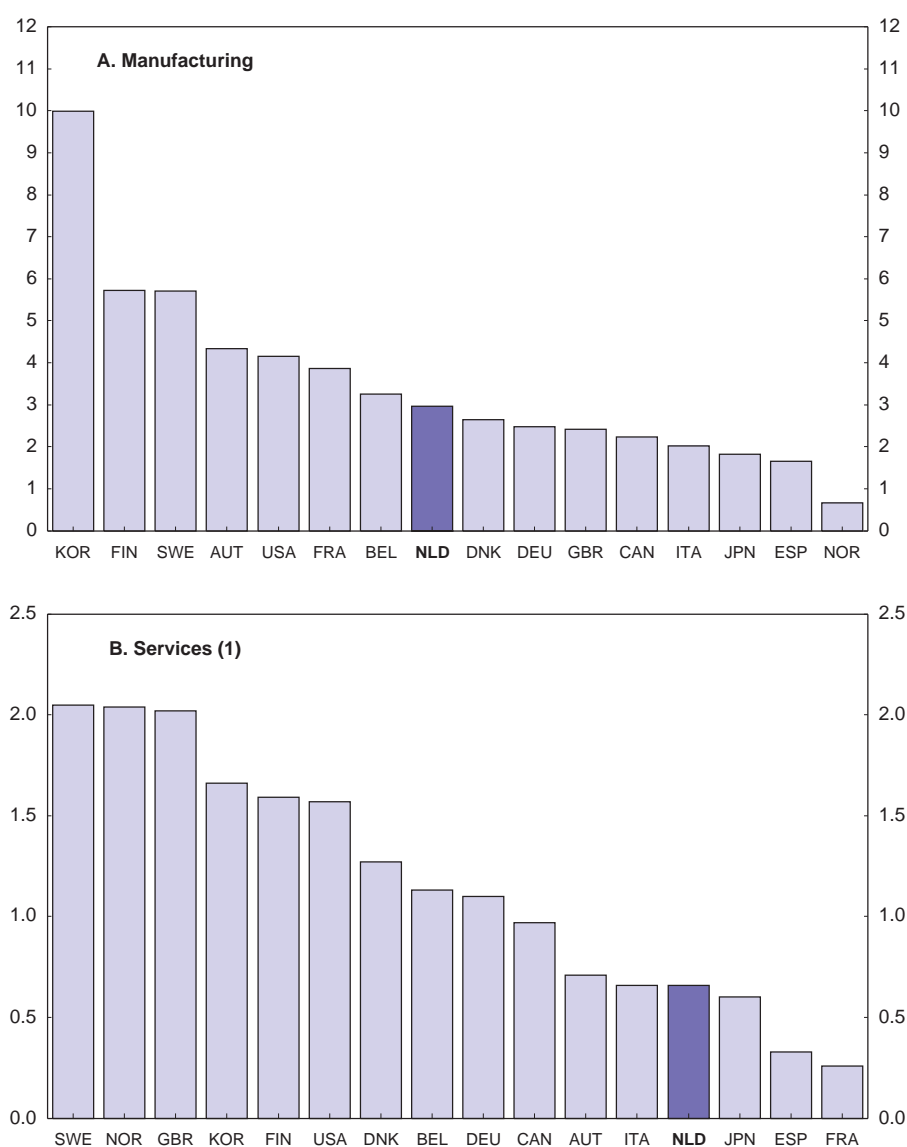
1. Average growth 1992-2001.

2. 2001 levels, PPP based 2001, USA = 100.

Source: OECD.

4. While productivity growth in the Dutch manufacturing sector has been comparable to that of other OECD countries, growth rates in services were lower than in most other OECD countries (Figure 1). Only France, Spain and Japan had lower productivity growth in services during the 1990s. A sectoral breakdown shows in almost all service sectors the Netherlands had relatively weaker productivity growth as compared with other OECD countries (Table 1). Performance was particularly poor in construction, where the Netherlands had negative productivity growth, and in wholesale and retail trade, where productivity growth was one of the lowest in the OECD. Productivity growth was also relatively weak in transport, storage and communication and in electricity, gas and water supply.

Figure 1. **Labour productivity growth per employee in manufacturing and services**
Average annual, per cent, 1990-2000



1. The services sector covers ISIC classes 50-99.
Source: OECD STAN database.

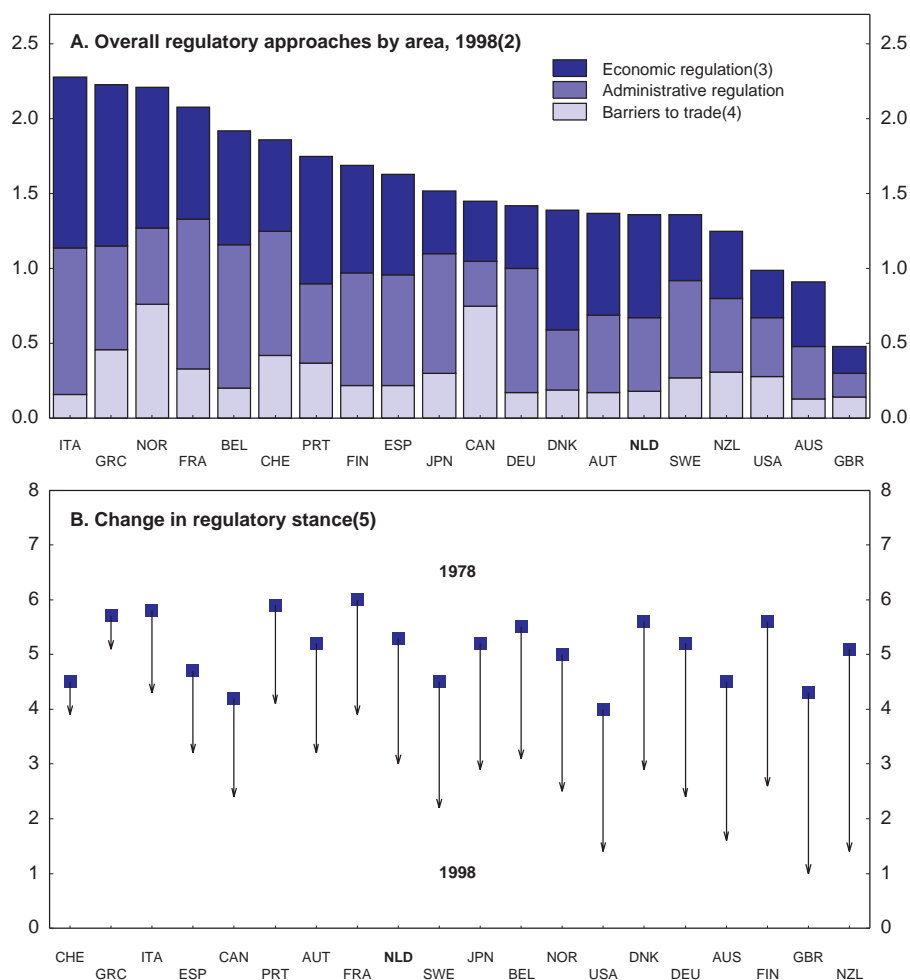
Indicators of the intensity of product market competition

5. Although it is difficult to classify markets according to the strength of market forces, the degree of product market competition may be gauged from jointly considering a number of imperfect proxy measures. The measures of product market competition presented below primarily look at the manufacturing sector but some non-manufacturing sectors are also considered. Manufacturing industries are grouped into four categories. A distinction is made between low R&D and high R&D industries; and between fragmented industries, which are those industries that are less concentrated and characterised by a large number of firms, and segmented industries, which are more concentrated industries characterised by a smaller number of relatively large firms.

6. Overly stringent product market regulations can have an impact on the strength of competition in domestic markets either by exerting direct control on economic activities or by maintaining high barriers to trade, foreign direct investment and entry into domestic markets. Various barriers to entrepreneurial activity (*e.g.* restrictions on market access or administrative burdens and red-tape on firms) can also inhibit competition and discourage entry by both domestic and foreign firms. In international comparison the Netherlands' institutional and regulatory arrangements in general appear to be favourable to competition. Focusing on regulations that restrict competition and market mechanisms (*e.g.* economic and administrative regulations and barriers to trade and FDI), OECD indicators of regulation suggest that in 1998 the economy-wide regulatory stance of the Netherlands was comparatively friendly to competition (Figure 2A).³ Despite this relatively favourable economy-wide regulatory stance, the Netherlands had an average regulatory stance in important service sectors (*i.e.* the utilities and transport sectors) (Figure 2B).

7. In general, mark-ups, a frequently used gauge of market power, and thus competitive pressures, appear to be relatively low in the Netherlands. In fragmented manufacturing sectors,⁴ estimated mark-ups are below average indicating that competitive pressures in these sectors seem to be quite intense (Figure 3). Somewhat higher than average mark-ups in segmented manufacturing industries⁵ could indicate that there are problems with competitive pressure in segmented industries. The strength of competitive pressures depends to a large extent on how exposed industries are to international competition. Import penetration rates indicate that Dutch firms face relatively stronger competitive pressure from foreign firms than their counterparts in other OECD countries (Table 2). Only Belgium has a higher import penetration rate in total manufacturing. A sectoral breakdown shows that competitive pressures are strong in all industries, including the segmented sectors, and reflect the fact that the Netherlands is an extremely open economy.

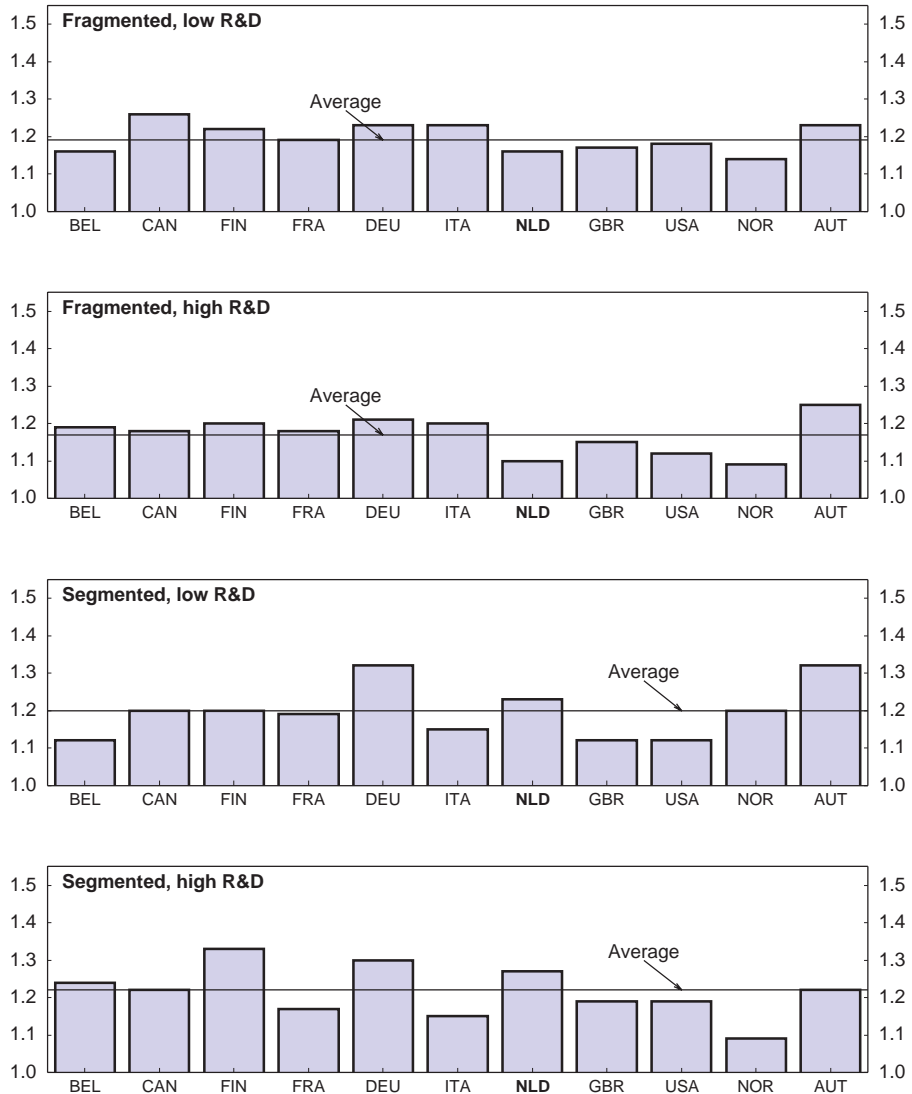
8. Barriers to entry through restrictions on foreign direct investment may also act as an impediment to competition. The Netherlands, along with the United Kingdom and Ireland, has some of the lowest restrictions to FDI amongst OECD countries (Figure 4). Partly reflecting the low restrictions, inflows of FDI into the Netherlands are comparatively high, with only Belgium-Luxembourg, Ireland and Sweden having higher inflows (Figure 5). The Netherlands also has the second highest outflows of FDI amongst OECD countries. The relatively high mark-ups in segmented sectors in conjunction with the high import penetration rates and FDI inflows, signifying strong competitive pressures from foreign firms, would seem to suggest that Dutch firms in these sectors may be more efficient than their competitors in world markets.⁶

Figure 2. Indicators of product market regulation¹

1. The regulatory stance is measured by a synthetic indicator ranging between 0 (least restrictive) and 6 (most restrictive).
2. Indicator of economy-wide product market regulations.
3. Includes barriers to competition and state control.
4. Includes trade and FDI restrictions.
5. Reports changes in the regulatory stance in seven non-manufacturing industries (gas, electricity, post, telecommunications, passenger air transport, railways and road freight) between 1978 and 1998.

Source: Nicoletti *et al.* (2001); Nicoletti and Scarpetta (2003).

Figure 3. Average mark-ups in manufacturing by market structure
1981 to latest available year¹



1. For the Netherlands data is from 1987 to 2002.
 2. The average mark-up is an unweighted average of the available mark-ups. ISIC, Rev3 classification.
 Source: OECD STAN database.

Table 2. Import penetration by manufacturing industry
Latest available year

	Netherlands		Canada		France		Germany		Italy		United Kingdom		United States		Austria		Belgium		Denmark		Sweden		Norway		
	2001	2000	2000	2001	2002	2001	2001	2001	2001	2001	2000	2000	2001	2001	2001	2001	2002	2002	2002	2002	1999	1999	2002	2002	
Total manufacturing	80.2	52.6	36.5	40.8	30.5	44.8	23.1	64.8	103.9	68.2	44.3	48.2													
Fragmented, low R&D																									
Textiles	92.8	62.4	52.3	89.6	22.2	54.0	27.2	81.6	125.4	126.3	91.3	74.9													
Wearing apparel	153.6	38.8	57.0	78.7	22.5	65.2	53.3	96.7	119.9	159.7	112.2	90.3													
Leather products and footwear	163.5	77.9	86.7	89.0	44.0	86.2	79.5	115.6	n.a.	126.7	99.7	95.5													
Wood products	51.8	15.6	22.6	19.4	16.5	32.0	12.7	24.3	68.6	50.9	13.1	25.9													
Paper and pulp	73.2	n.a.	38.3	43.4	26.3	35.2	10.4	45.0	87.3	64.3	24.8	51.7													
Printing and publishing	12.0	n.a.	8.8	7.2	7.1	8.0	2.5	25.9	22.3	14.5	9.2	13.5													
Non-metallic products	29.1	36.8	19.1	19.6	8.5	17.9	13.5	26.4	41.4	31.6	31.6	25.1													
Fabricated metal products	27.8	32.8	14.0	15.3	7.4	16.6	8.9	39.3	42.1	31.8	20.9	37.9													
Fragmented, high R&D																									
Medical precision and optical																									
Instruments	69.8	n.a.	46.4	64.8	60.8	63.5	22.7	96.1	169.2	107.8	47.8	57.6													
Machinery and																									
Equipment	162.5 ²	84.1 ¹	54.3 ⁴	36.6 ⁴	37.6 ⁴	57.0	26.4	77.2	152.1	66.6	52.4	70.4													
Furniture manufacturing	n.a.	56.8 ¹	41.8 ⁴	44.0 ⁴	20.2 ⁴	38.8	38.5	54.4	n.a.	51.2	n.a.	51.9													
Segmented, low R&D																									
Refined petroleum, coke	56.6	10.8	18.0	27.3	16.4	21.4	17.9	36.5	44.4 ³	35.2	44.7	n.a.													
Basic metals	101.3	44.6	45.6	45.2	44.4	46.9	22.0	57.1	86.3 ³	81.8	48.8	65.7 ³													
Shipbuilding and repairs	n.a.	58.6	27.6	49.8	33.8	21.0	6.8	n.a.	29.2 ³	47.6	13.9	42.1 ³													
Rubber and plastic ¹	75.6	42.6	30.5	29.1	22.3	26.6	12.1	65.9	102.7 ³	56.4	52.8	61.9 ³													
Food, beverages and tobacco ¹	37.1	17.5	18.4	19.5	19.7	20.5	6.3	27.1	50.3 ³	40.0	21.9	14.3 ³													
Segmented, high R&D																									
Chemicals	72.5 ³	57.3	51.1	57.7	48.6	53.3	20.4	91.0	129.1	83.4	69.6	n.a.													
Pharmaceuticals	78.7 ³	52.5	44.7	83.6	49.1	63.1	18.7	108.8	144.8	67.7	51.7	64.3 ³													
Office and computing machines	n.a.	108.3	99.3	108.6	93.0	105.7	68.2	123.2	47.4	149.2	102.7	121.4 ³													
Electrical machinery	262.5 ³	82.2	46.2	32.4	27.0	53.6	46.6	91.7	97.3	61.0	90.2	64.0 ³													
Radio, TV and communication equipment	121.6 ³	74.3	73.6 ³	107.0	60.5	90.8	41.8	78.6	109.9	132.0	50.3	72.5 ³													
Motor vehicles	106.7 ³	76.4	36.6	35.0	61.8	59.0	36.5	117.9	149.2	107.8	43.0	95.0 ³													
Aircraft	n.a.	82.8	47.0	155.7	74.2	87.4	30.2	n.a.	77.5 ³	..	83.2	108.4 ³													
Railroad equipment	n.a.	37.6	41.7	42.2	41.2	43.6	20.3	55.0	94.2 ³	133.5	37.7	85.4 ³													
Other transport equipment	68.2 ³	67.5	44.0	108.1	55.1	72.2	25.4	145.4	79.8 ³	83.9	57.7	54.5 ³													

Note: Imports as a percentage of domestic demand (estimated as production minus exports plus imports). Values greater than 100 can occur when exports exceeded production because of the inclusion of re-exports, i.e. products that are imported and then re-exported without any further transformation.

1. Mix of fragmented and segmented sectors.

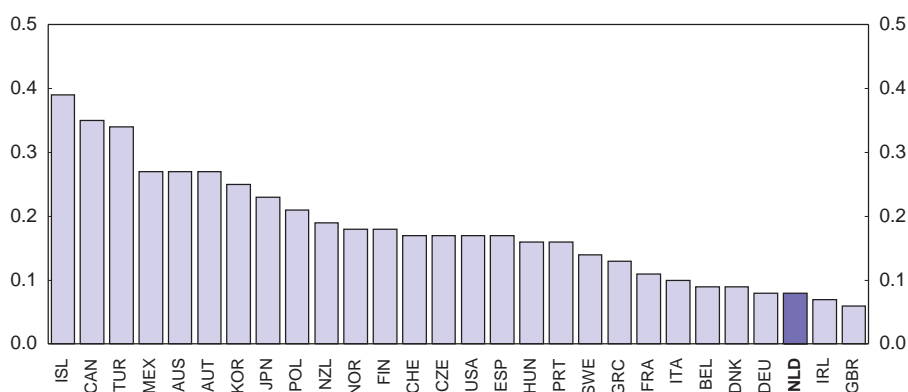
2. 1999.

3. 2000.

4. 2002.

Source: OECD STAN Database.

Figure 4. FDI restrictions in OECD countries¹
2000



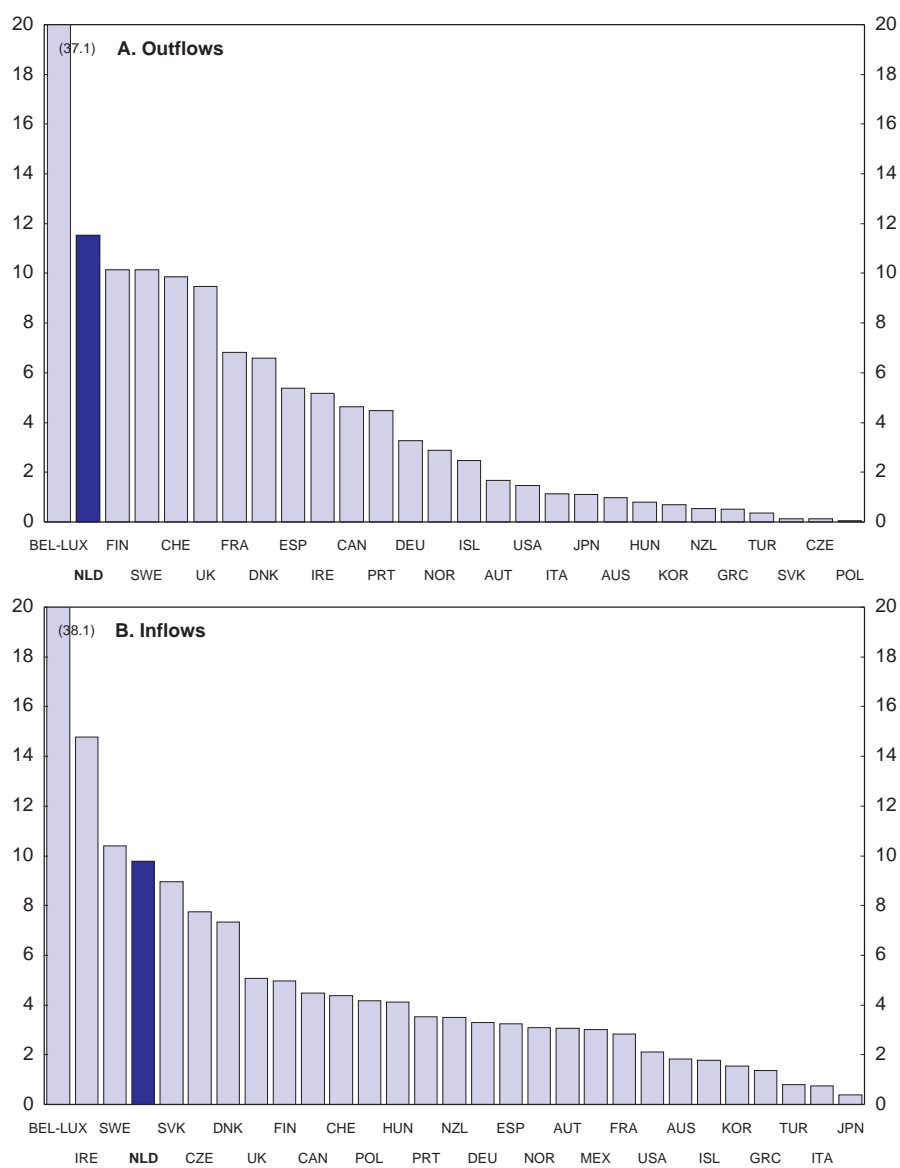
1. Includes limits on foreign ownership, restrictions on foreign personnel and operations freedom, and screening requirements. The indicator ranges from 0 (least restrictive) to 1 (most restrictive).

Source: OECD.

9. In contrast to manufacturing, there are numerous restrictions to entry and competition in some of the non-traded sectors in the Netherlands. During the latter part of the 1990s, the Netherlands implemented a number of important reforms in product markets aimed at increasing competition (these reforms are discussed in the sections below). Coinciding with these reforms, productivity growth over the 1996 to 2001 period has improved in a number of non-manufacturing sectors (*e.g.* electricity and gas, construction, wholesale and retail trade and transport and communications) (Figure 6). However, while there was an improvement in productivity growth in services in the second half of the 1990s, Dutch labour productivity in these sectors still grew slower than productivity in most other OECD countries. Productivity growth in the Dutch business services sector has also been poor, contributing to the weak performance of aggregate labour productivity growth (Kox, 2002).

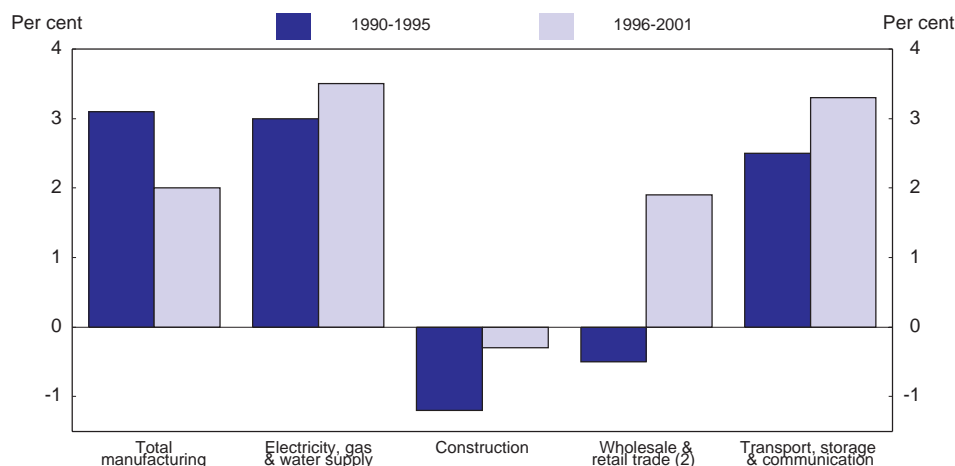
10. The poor productivity performance of the Dutch service sector is partly explained by the insufficient use of ICT and (until recently) disappointing little investment in ICT. However, ICT-using services have contributed very little to aggregate productivity growth in the Netherlands (Figure 7). Wolfi (2003), in a recent study measuring and comparing productivity growth performance in service sectors, finds that poor productivity performance originates precisely in those service industries where reforms or competition are thought to have been weaker. This suggests that there is considerable scope for the Netherlands to improving productivity growth by improving competition in product markets, particularly in service industries where restraints to competition are comparatively high.

Figure 5. **Foreign direct investment outflows and inflows**
% of GDP, average 1997-2001



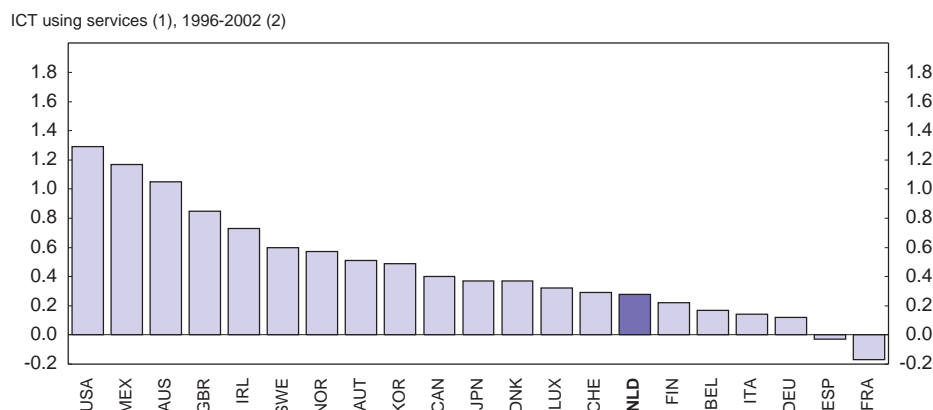
Source: OECD, International Direct Investment Statistics.

Figure 6. Labour productivity growth in selected industries¹



1. Average annual growth in labour productivity per worker.
 2. Hotels and restaurants are included in wholesale and retail trade.
- Source: OECD STAN database.

Figure 7. ICT and productivity growth



1. Contribution to aggregate labour productivity growth.
 2. 1996-2000 for Ireland, Norway and Switzerland. 1996-2001 for France, Germany, Japan, Mexico, Netherlands, United Kingdom and the United States.
- Source: OECD.

Potential macroeconomic effects from regulatory reform

11. The macroeconomic benefits in the Netherlands of regulatory reforms that would increase product market competition are significant. The propagation and channels through which regulatory reform affects the economy depend on a number of factors and assessing the impact of regulatory reform is a complex task (Box 1). Nevertheless, an attempt is made to quantify the potential effects of further reforms. Following the approach taken by Nicoletti *et al.* (2001) and Nicoletti and Scarpetta (2003), synthetic indicators of regulatory stance are included in regressions of aggregate performance variables. This method is appealing because it does not require any assumptions about the character of reforms or ad-hoc assumptions regarding the impact of reforms on price-cost margins and productivity. Assuming the Netherlands were to align its economy-wide regulation to that of the least

restrictive EU country,⁷ it is estimated that the long-run employment rate would increase by 1.5 percentage points and that over ten years multi-factor productivity (MFP) growth would be 0.11% higher per year (Table 3). Aligning state ownership and industry specific regulations to that of the best performing EU country would further increase annual MFP growth by 0.74 and 0.3% respectively. This implies an increase in annual MFP growth of over 1%, equivalent to an 11.5 percentage point increase in the level of MFP after 10 years. While the magnitude of such gains must necessarily be rather uncertain, there is clearly significant potential for improving performance, though it is also evident that comprehensive reforms in both product and labour market would be required to achieve such results.

Table 3. **Potential effects of further regulatory reforms in the Netherlands¹**

	Long-run employment rate (percentage point increase in level)	Multifactor productivity growth over 10 years (% increase in annual rate)
Effect of easing economy-wide regulation	1.47	0.11
Effect of easing industry-specific regulation	--	0.3
Effect of reducing state ownership	--	0.74

1. Alignment of regulation on least restrictive EU country in 1998. Effects estimated from the results of panel regressions relating the employment rate and multifactor productivity to regulation and other variables.
Source: Nicoletti *et al.* (2001) and Nicoletti and Scarpetta (2003).

Box 1. **Economy-wide effects of regulatory reforms**

Regulatory reforms that increase product market competition within a sector improve that sector's economic performance through a number of channels: -- these static gains are further enhanced by dynamic effects.

- Sectoral reforms change relative prices, improving overall resource allocation and consumer welfare
- Reforms that increase competition reduce price-cost margins thus lowering price and expanding output in the sectors concerned. This in turn, may diminish the scope for rent-sharing, thereby putting downward pressure on wages in those industries.
- Reforms force firms to reduce slack in the use of input factors (*i.e.* reducing X-inefficiency), enhancing labour and/or capital productivity.
- In addition to these static effects, a more competitive environment stimulates efforts to innovate and adopt new technologies, which raises productivity growth.

Quantifying the possible magnitude of regulatory reform on sectoral performance is bound to be subject to considerable uncertainty, which is only multiplied in the assessment of economy-wide effects. For example, reduced rent sharing (stemming from lower mark-ups) might have favourable spill-over effects on wage formation more generally. Furthermore, propagation of sectoral effects into the wider economy also depends on the labour market. The initial effects of a sectoral reform may be a reduction in employment in the sector concerned, which has to be employed elsewhere in the economy -- highlighting the importance of a flexible labour market in maximizing the economy-wide effects of reforms.

Competition legislation and enforcement

12. The Netherlands long had a reputation as a “cartel paradise”. Industry co-operation was encouraged within a corporatist structure and the law to control and prevent restraints on competition was tolerant and ineffective. It thus marked a major change in policy direction when a completely new law was enacted in 1998, and a new enforcement authority, the NMa, was set up. Competition law in the Netherlands now follows the EU approach of prohibiting restrictive agreements (subject to criteria for exemption) and abuse of dominance. Changing the law did not by itself change market behaviour, of course, and habits of non-competitive accommodation persist.

13. The NMa made it a priority at first to complete the process of transition from the previous regime, which meant deciding over 1000 applications for exemption from the new prohibitions. In this process, the NMa tended to rely on formal classifications, perhaps more than on careful market

analysis, in order to finish the task quickly. Nevertheless, because its attention was concentrated on deciding these applications, as late as 2001 the NMa still only had six investigations of potential violations of the law. In 2000, widespread price fixing was uncovered in the construction industry (Box 2) and a Parliamentary inquiry criticised the NMa for its inaction. The NMa responded to Parliament's demands with a special cartel task force, whose first major case results were announced at the end of 2003.⁸

Box 2. Cartels in construction

Collusion in the construction industry shows how a tradition of co-operation can restrict competition in non-traded goods and services, even in a small open economy. Transport is a high proportion of the cost for standardised, low-tech, and perishable products such as asphalt and concrete, so markets are necessarily local, limiting the number of suppliers who need to collude. The industry is vertically integrated and independents can be punished by cutting off their supply. Competition is mostly in terms of price -- indeed, government procurement rules may even require that price be the only significant competitive consideration.

In the Netherlands, rules against bargaining over bids simplified collusion greatly, and public procurement officials appeared to tolerate and support the industry's arrangements and helped to discourage entry from outside, even from elsewhere in the Netherlands. Co-operation actively excluded competition from abroad, sometimes through reciprocal market division and threats of boycott. Firms would sometimes team up, not because they were too small to handle a project alone, but in order to clear their cartel pooling accounts with each other. The industry's historic habits of co-operation persisted despite the new competition law, and even after the NMa denied applications for exemption in some cases and after it publicly launched its anti-cartel enforcement program aimed at the construction industry. Although the overall economic impact of this collusion has not been determined, it was estimated that construction cartel bids were increasing prices by about 8 to 9%.

Source: Tweede Kamer der Staten-Generaal (2002).

14. The NMa's experience in these cartel investigations, with tactics of concealment or destruction of evidence, revealed weaknesses that need to be addressed in its powers to get information and compel compliance. Legislation is in progress to increase the NMa's investigation powers (and adapt them to the new EU enforcement system), two of which are expected to become effective in 2004.⁹ Other legislation in process also needs attention. The NMa is an agency of the Ministry of Economic Affairs, and the Minister has the power to issue instructions. No such instruction has ever been given, but nonetheless the NMa should be made formally independent to increase its credibility. While the government approved legislation to change the NMa to an autonomous administrative organisation ("ZBO") in 2000, it is still awaiting final action in Parliament.¹⁰

15. Sanctions available against violations of the law appear generally adequate, with some exceptions. The NMa still lacks the power to go after members of an association for violations by the association; however, the new EU regulation includes a pass-through rule for associations, and the Netherlands will pick this up. The NMa does not yet hold individual executives accountable. Substantial fines are now being assessed against firms both for illegal restrictive agreements (such as the mobile phone cartel resulting in fines totalling € 88 million and veterinary products with fines of € 10.5 million) and for abuse of dominance such as denial of access to the electric power grid (a case that resulted in a fine of € 6 million). The NMa's leniency program has finally produced some publicly-announced results in several of the latest construction cartel cases.¹¹ The NMa has the power to limit monopolists' exploitative prices, which it has done in cases involving cable TV and airport charges. But it does not have the power, in infringement cases, to order structural changes such as divestiture to separate competitive operations from monopoly functions.

Scope and objectives of competition law in the Netherlands

16. In interpreting the law and setting priorities, the NMa takes a “consumer welfare” approach. It considers the likely impact on the economy of the conduct being addressed, and of correcting it, and the importance to consumers, as well as the “seriousness” of the violation. The principal targets, other than energy and construction, have been in services such as health care, financial services, professions and tendering. The emphasis on consumer effects and benefits discomfits some small business interests, who would prefer that enforcement focus on the structure of the economy and the relative positions of larger and smaller market participants. Claims about the alleged power of large buyers are often complaints about commercial disadvantage rather than anti-competitive effects, and the Dutch government is sceptical that these issues require new legislation. Nonetheless, in recognition of this concern, the NMa in 2004 plans to look into charges that buyer power distorts competition.

17. Despite its “consumer welfare” conception of competition law and enforcement, the NMa does not have any direct responsibilities concerning consumer protection and marketing practices such as misrepresentation. Institutions for consumer protection in the Netherlands are comparatively informal, and may be comparatively ineffective as a result. The present system presumes that consumers and businesses will work out disputes about contracts and quality directly with the aid of Disputes Committees, which are organised by industry. But some sectors do not have dispute resolution committees, and some are slow. In telecoms, the Disputes Committee takes more than six months to decide complaints. The government is examining the possibilities to improve individual dispute resolution and before summer 2004 will present new plans for consumer protection. These plans envisage setting up a “collective interest” consumer protection public enforcement agency, which will focus on unfair commercial practices, both with regard to cross-border and national inquiries. Also a one-stop shop will be introduced for individual consumer complaints.

18. The competition law applies in regulated sectors. The Netherlands has experimented with an institutional model for co-ordinating general competition principles and sector regulation, by establishing sectoral regulators as parts of the general competition authority. This began with electric power, where the sector regulator, DTe, was created formally as a chamber within NMa and a transport chamber also within NMa is now functional.¹² A separate sectoral health care regulator is now being set up and it is planned to transform this regulator into a “healthcare chamber” within NMa in 2008. Plans to transform the telecoms regulator, OPTA, into a similar chamber have been put on hold for the time being.¹³ The model of sectoral-regulator-within-competition-authority approach avoids problems associated with regulatory capture and ensures that competition principles are applied consistently across sectors; however, competition law does not appear to be well suited to deal with some of the particular competition problems that arise in network industries (see below).

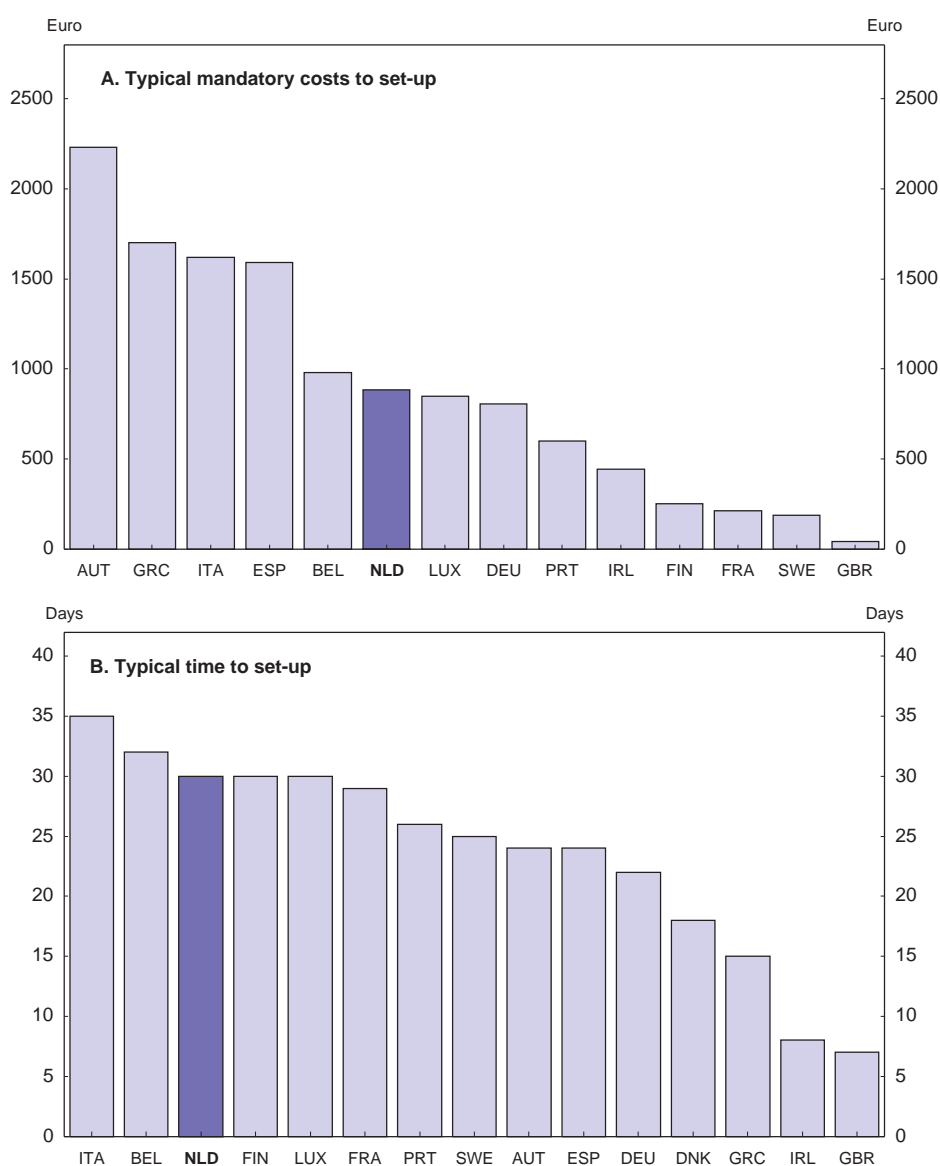
Regulatory policies

19. During the 1990s the Dutch government has brought in a number of structural reforms aimed at increasing competition in product markets and moving away from the Dutch “corporatist” model. These reforms include the introduction of the competition law discussed above and regulations for public tendering. But reforms in many important areas have only recently been implemented. In 1994, the government initiated the Competition, Deregulation and Legislative Quality (MDW) programme, focusing on competition, deregulation and the “quality” of laws in a number of sectors such as retail (*e.g.* shop opening hours), taxis and accountants. Notary services were dealt with in a separate but similar project. More recently, the government has launched an interdepartmental commission for the structure and regulation of markets. All competition related issues will be addressed by this Commission, which should limit the effectiveness of lobbying the department responsible for

legislation or regulation of a particular sector, and possibly make more transparent the tradeoffs between competition and other objectives.

20. Administrative burdens on firms and red tape, which can discourage entry by both domestic and foreign firms, have also been eased.¹⁴ Since these reforms, there has been an increase in start-ups and no signs of an increase in bankruptcy rates.¹⁵ However, in spite of recent reforms the administrative burden on Dutch start-ups is comparatively high, both in terms of cost and time (Figure 8). Only Belgian and Italian firms faced longer waiting times and the mandatory costs involved to set-up a Dutch company are also relatively high and considerably greater than that of benchmark countries like the United Kingdom. Recognising that administrative burdens in the Netherlands are comparatively high, the government has recently committed itself to substantially reducing this burden (Box 3).

Figure 8. Administrative burden on business start-ups¹
2002



1. Typical time and costs involved in setting up a private limited company.

Source: EC (2002).

Box 3. Reducing administrative burdens on firms

The government has firmly committed itself to reducing the administrative burden on firms by 25% of the current level between 2004 and 2007. The current burden has been estimated at € 12.46 billion in 2002 (EIM 2003), with small firms being disproportionately affected. However, a recent stock-taking exercise carried out by each central government ministry indicated that the total burden is as high as € 17 billion, with € 8 billion caused by European legislation and € 9 billion by Dutch legislation. This difference between the two estimates can be explained in part by adjustments in the definition and by economic growth, entailing larger obligations. Nonetheless, the government intends to stick to its objective. As almost half of the administrative burden is caused by European legislation, the Dutch government will be seeking a reduction of this half to contribute to reaching its 25% target. While this will be a challenge, many initiatives have been planned to achieve this objective. These initiatives will be coordinated by the Ministry of Finance in cooperation with the Ministry of Economic Affairs and include:

- Each ministry has been asked to draw up an inventory outlining all opportunities to reduce the administrative burden. In addition, ceilings on administrative costs caused by each ministry will be imposed and gradually tightened, so that additional burdens resulting from new regulations will need to be compensated by reductions elsewhere within the same ministry.

- The individual efforts by the ministries will be complemented by a cluster approach, emphasizing coordination between ministries. The idea is that there is ample scope for reducing administrative burdens by streamlining administrative forms and procedures, minimizing wasteful duplications of efforts to meet information requirements, bundling of different licence applications, and eliminating conflicting regulations. With respect to the latter, the government had designed a temporary special website where firms could post their complaints about conflicting regulations and suggest solutions. At the end of 2003, over 800 conflicts had been mentioned.

- In order to prevent new regulation from unnecessarily raising the administrative burden, the Advisory Board on the Screening of Administrative Costs (ACTAL) was created in 1999 to assess all proposed government legislation and regulation for its impact on administrative costs and, where possible, to propose less burdensome alternatives.

- ICT is expected to make a major contribution to reducing administrative costs through several applications. First, the government is currently working on the introduction of a national one-stop-shop for businesses, a single point of entry on the internet where businesses can access information, forms and services provided by various public agencies. Second, the government is building a transaction gateway to facilitate the transmission of information between the government and businesses, with the idea that large savings on data collection and transmission can be generated by greater sharing of data within and between government agencies. Third, an electronic register for basic business identity information of all companies and organisations in the Netherlands is under construction.

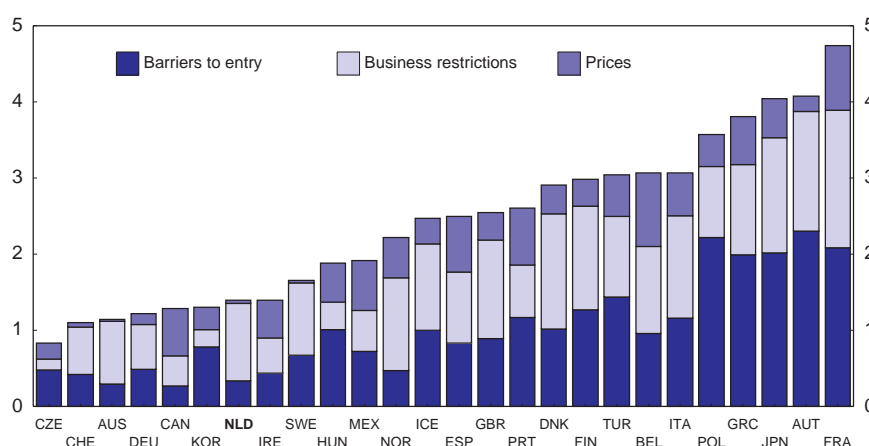
- Finally, the Ministry of Economic Affairs has proposed a minimal (one-to-one) implementation of EU legislation when transposed into national law, in order to implement European directives in a timely manner. As to decreasing the administrative burden this has the positive side effect of implementing EU legislation without unnecessary national procedures. In addition, the Netherlands intends to make the reduction of the administrative burden caused by European legislation one of its priorities during the upcoming EU presidency later this year.

21. The remainder of this section examines developments and outstanding problems in retail distribution, professional services, telecommunications, electricity and gas. Zoning and planning restrictions are most likely responsible for the continued gap in performance in retail distribution relative to other OECD countries. In professional services, numerous restrictions to competition remain, mostly due to the anti-competitive effects of regulations by professional bodies. There is vigorous competition in the telecommunications sector between telecom operators and cable companies, nevertheless, market power on the part of the incumbent is still a concern and competition has yet to take hold in the energy sector. Local government ownership of distribution networks may be a barrier to entry and further structural unbundling would also be warranted. While recent reforms in network sectors provide a formal framework of competition, they do not always implement the structural changes and regulatory provisions that are needed for actual competitive pressures to arise.

Retail distribution

22. The distribution sector, which includes the wholesale and retail sectors, is often subject to a host of regulatory restrictions in OECD countries. Boylaud and Nicoletti (2001) constructed an indicator of the restrictiveness of regulation in retail distribution in 1998. Their indicator suggests that the Netherlands had one of the least restrictive regulatory environments in 1998 (Figure 9). Contributing to the relatively favourable regulatory environment was the liberalisation of shop opening hours in 1996 which allowed stores to open between 6 am and 10 pm on weekdays and Saturdays. While shops are generally closed on Sundays, municipalities can allow shops to open on one Sunday a month.¹⁶ An evaluation of the Shop Hours Act in 1998 found that extended opening hours were positively valued by the majority of consumers, due to the increased flexibility.¹⁷ In addition, employment in the retail sector increased by 7 000 jobs in 1997 and there were no major bankruptcy developments among small shops.

Figure 9. Summary indicators of regulation in retail distribution
1998¹



1. The scale of indicators is 0-6 from least to most restrictive.

Source: Boylaud and Nicoletti (2001).

23. In spite of reforms undertaken during the 1990s, labour productivity, both growth rates and levels, have been particularly poor in the distribution sector in the Netherlands, although they did pick up in the latter part of the decade. Labour productivity growth rates in this sector were one of the lowest in the OECD (Table 1). One of the factors contributing to the poor labour productivity growth performance in the wholesale and retail trade sector in the Netherlands is that the use of ICT has been less than in other countries (OECD, 2002b). The sector in the Netherlands is characterised by below average outlet density with an average number of employees per enterprise that is above the EU average (Table 4). It might be expected that the low outlet density and higher than average number of employees per outlet is conducive to high productivity levels due to economies of scale. However, productivity levels or value added per person employed is 20% lower than the EU average, with only Portugal and Spain having lower productivity.¹⁸ A possible explanation for this is that compared with other countries, the Netherlands still has a fairly high proportion of retailing by smaller stores with a lower level of productivity.

Table 4. **Key structural features of the retail distribution sector**
2000

	Outlet density ¹	Employees per enterprise	Value added per employed person ²	Value added per unit of labour costs ²
Austria	43	7.7	108	98
Belgium	80	3.5	109	95
Denmark	47	8.1	103	99
Finland	46	5.0	132	110
France	64	4.2	133	104
Germany	35	9.0	113	116
Ireland	36	9.3	95	
Italy	130	2.2	81	72
Netherlands	54	8.5	80	117
Portugal	150	2.5	44	81
Spain	133	2.8	73	97
Sweden	65	4.3	130	88
United Kingdom	36	14.2	99	123
European Union	71	6.3	100	100
Norway	68	6.0	112	98
Switzerland	56	6.8	201	

1. Number of enterprises per 10 000 inhabitants.

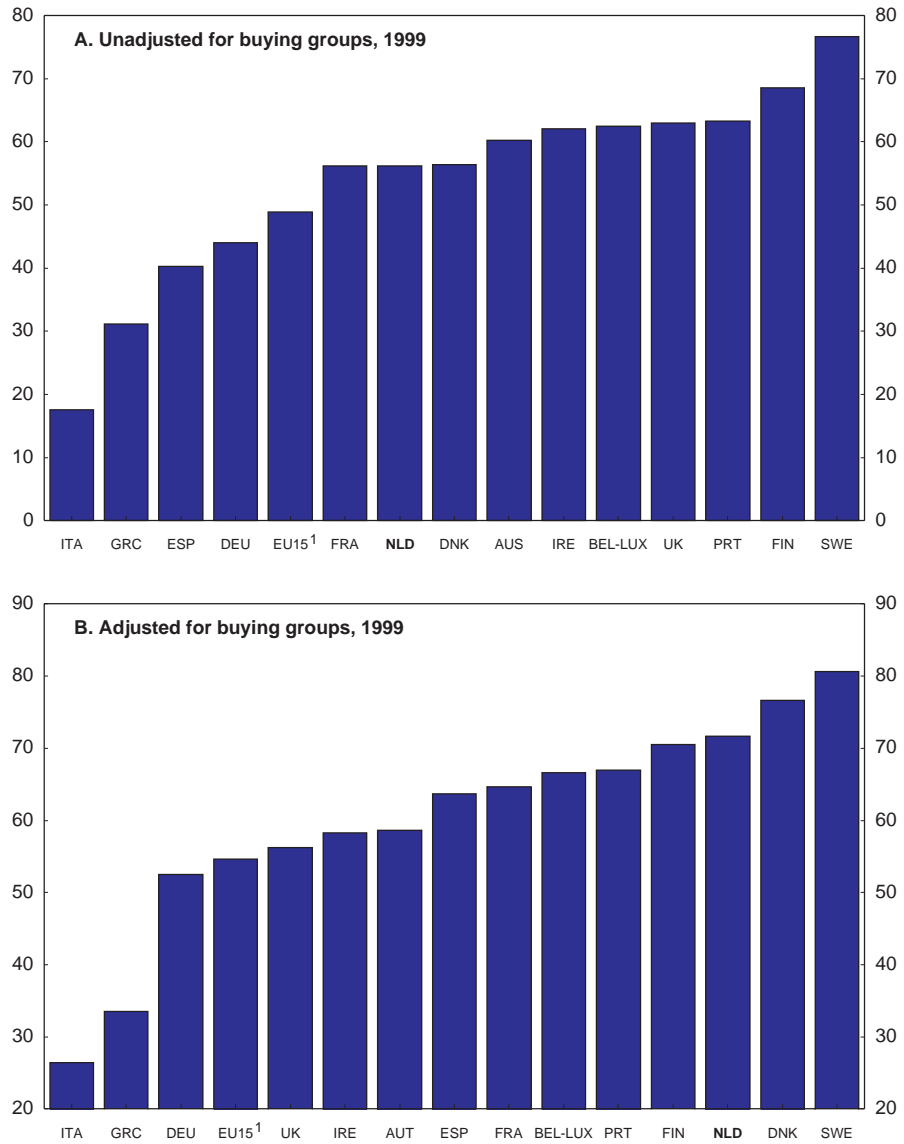
2. EU = 100.

Source: Eurostat, New Cronos.

24. The retail distribution sector benefits from economies of scale and scope and in many countries, including the Netherlands, this is manifest in the ongoing process of structural change involving larger retail outlets, consolidation into retail chains and greater concentration and vertical integration. However, concentration in the food retail distribution sector in the Netherlands is still around the EU average (Figure 10A).¹⁹ Concerns have also been expressed about the buying power of retailers and its effects on economic welfare (Dobson *et al.*, 2001).²⁰ In many countries, including the Netherlands, buyer groups are prominent and the concentration ratios, while reflecting consolidation in the retail markets, do not give a full picture of the concentration facing suppliers in retail procurement markets. When such buyer groups are taken into account, concentration in the Netherlands is considerable higher, over 70%, with only Denmark and Sweden having higher five-firm concentration rates that are adjusted for buyer groups (Figure 10B).

25. There are concerns that concentration, consolidation and buyer power may lead to a lessening of competition (Dobson *et al.*, 2003). However, the link between concentration and competitive pressure is complex in retail distribution, and the NMa has appeared to be unwilling to discourage consolidation activity in retailing, recognising the possible efficiency benefits.²¹ The scope for anti-competitive behaviour is also limited by the threat of entry and by increasingly mobile consumers. Estimated mark-ups in wholesale and retail distribution in the Netherlands are slightly below the average for the OECD countries for which data are available (Figure 11).

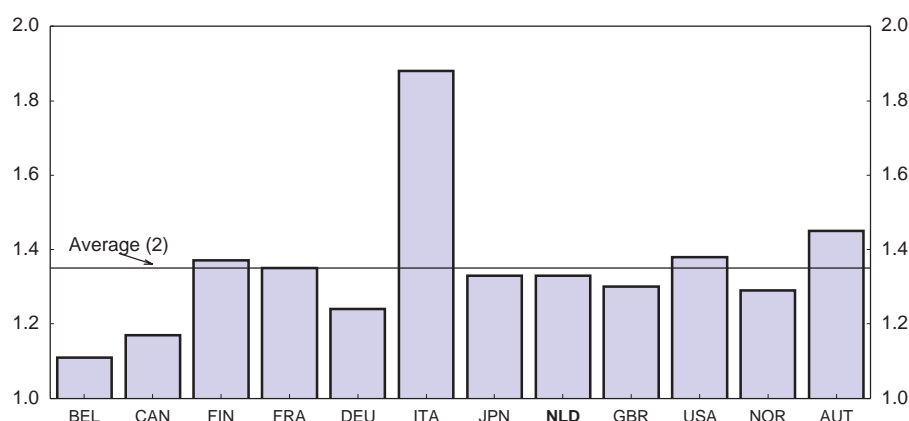
Figure 10. Five-firm market concentration in food retailing in EU countries



1. Weighted average.

Source: Estimates based on data from Corporate Intelligence on Retailing's European Retail Handbook. Reported in Dobson *et al.* (2001).

Figure 11. **Mark-ups in wholesale and retail distribution in selected OECD countries**
1981 to latest available year¹



1. For the Netherlands data are from 1987 to 2002.

2. The average mark-up is an unweighted average of the available mark-ups. ISIC, Rev3 classification.

Source: OECD STAN database.

26. Larger retail outlets, providing one-stop shop services, offer greater convenience and lower prices arising from improved efficiency and resulting cost savings that are passed on to consumers. It is often claimed, however, that there is a cost for consumers as large stores will lead to a decline in traditional retailing offering specialisation or location convenience. Evidence seems to suggest that these fears are exaggerated and that small shops can survive because consumers are willing to pay a premium for their services (Dobson and Waterson, 1999). Nevertheless, the retail sector in many countries, including the Netherlands, is characterised by planning and zoning restrictions that limit market entry, often with the objective of protecting shopping in town centres. The Dutch central government has detailed rules for the establishment of large shopping centres or mega stores on the edge of towns through the PDV/GDV policy (*i.e.* policy on peripheral and large-scale retail outlets). The establishment of retail outlets on city fringes, or of very large shopping centres, is closely curtailed by these restrictions. In the mid-1990s, growing demand for “superstores” led to the opening of large stores but only at locations with good connections to public transport and in the “urban junctions” (MDW, 2001). Such planning restrictions, however, also serve to distort competition. They offer considerable incumbency advantages to established retailers by restricting new entry, thus creating or maintaining rents. The planning restrictions also have adverse effects by restricting efficient operation, thus limiting innovation and competition in retail format strategies to the detriment of productivity improvements and cost savings that could then be passed on to consumers.

27. The PDV/GDV policies were recently examined in the context of the MDW project. As a result, decision making power concerning the location of large-scale stores will be decentralised to lower tiers of government. It is thought that local authorities can provide more customised services and are more responsive to the needs of their communities. In future, central government will only lay down the outlines of policy, and municipal and provincial authorities will determine the details themselves. However, the devolution of regulatory powers to regional levels may be problematic for competition in the sector. Experience from other countries (*e.g.* Italy and the United Kingdom) suggests that entry by large formats may become more difficult as local authorities may be more inclined to protect town centres and thus less likely to grant planning permission. However, Dutch authorities perceive this risk to be small as lower levels of government are more susceptible to local and regional consumer pressure. Competition between local and regional governments to offer an attractive and dynamic shopping climate is another counteractive force, and planning procedures offer

sufficient checks and balances. However, the government should keep monitoring this process to ensure that local governments are not unduly responsive to incumbent interests.

Professional services

28. Professional services are usually subject to pervasive regulation, including not only exclusive exercise of certain functions and entry and access requirements, but sometimes even recommended or fixed prices and restrictions on advertising and business structure or residency requirements. Intervention is often explained by the need to correct market failures, which are mostly due to information and transactions costs. Such regulation can be in the interests of both consumers and the profession if it improves service quality and prevents market failure.²² There is little empirical evidence to suggest that the pervasive set of restrictions found in professional services improves consumer welfare (Nguyen-Hong, 2000; OFT, 2001; Paterson *et al.*, 2003). In practice these restrictions have been correlated with higher prices and less innovation, without improving quality.²³ These results support the view that restrictive regulatory frameworks and self-regulation by professional bodies, rather than supporting the needs and interests of consumers, are often used by the professions to obtain economic rents.

29. Labour productivity growth in the Dutch business services sector, which includes professional services, has been relatively weak in the 1990s (Kox, 2002; van der Wiel, 2001).²⁴ Over the past decade, through the MDW programme, a number of professional services (for example notaries, pharmacists and real estate agents) were examined and, as a consequence, a number of reforms were introduced. Recommended prices were removed for lawyers in the late 1990s and the low level of regulation of legal services in the Netherlands has resulted in a sector that is characterised by a low number of firms and relatively high employment and turnover per firm, indicative of a higher degree of concentration in the market. This process however has not been associated with high market power (Paterson *et al.*, 2003). The abolition of entry restrictions for real estate agents has led to an increase in new entrants, lower prices for real estate transactions and more flexible provision of services. In notary services, entry barriers have been relaxed, there are no longer a fixed number of establishments, and tariffs are now completely free.

30. A recent study for the European Commission examined the differences in a host of regulations governing a range of professional services (Paterson *et al.*, 2003). In comparison with other EU countries, the Netherlands is assessed as having a low or moderate degree of regulation in the accountancy, legal, architectural, engineering and pharmaceutical professions. The only other countries with such a profile are Ireland and the United Kingdom (Table 5).²⁵ In spite of such a low regulatory index, a moderate level of restrictions still exists in the accountancy, legal and pharmaceutical sectors.²⁶ The Netherlands maintains a number of restrictive rules in these professions and barriers to entry also arise from mandatory membership in professional orders (Table 6). In addition, other professional services not covered by the Paterson *et al.* study are still subject to pervasive regulation, including the exclusive exercise of certain functions, entry and access requirements, and restrictions on prices, advertising and permitted business structures.²⁷ Considerable scope still exists therefore to ease restrictions on price competition, advertising and on permitted business structures where professional rules and government regulation prevent multi-disciplinary practices.²⁸

Table 5. Regulation indices in professional services¹

	Accountants	Legal	Architects	Engineers	Pharmacists
Austria	6.2	7.3	5.1	5.0	7.3
Belgium	6.3	4.6	3.9	1.2	5.4
Denmark	2.8	3.0	0.0	0.0	5.9
Finland	3.5	0.3	1.4	1.3	7.0
France	5.8	6.6	3.1	0.0	7.3
Germany	6.1	6.5	4.5	7.4	5.7
Greece	5.1	9.5	n.a.	n.a.	8.9
Ireland	3.0	4.5	0.0	0.0	2.7
Italy	5.1	6.4	6.2	6.4	8.4
Luxembourg	5.0	6.6	5.3	5.3	7.9
Netherlands	4.5	3.9	0.0	1.5	3.0
Portugal	n.a.	5.7	2.8	n.a.	8.0
Spain	3.4	6.5	4.0	3.2	7.5
Sweden	3.3	2.4	0.0	0.0	12.0
United Kingdom	3.0	4.0	0.0	0.0	4.1

1. The higher the degree of regulation (intensity), the higher the respective figure (within a range from 0 to 12). All the regulation indices with a value of 5 or higher are shown in dark grey boxes, indices between 2.5 and 4.9 are in light grey boxes, and, those below 2.5 have a white background.

Source: Paterson *et al.* (2003).

Table 6. Regulation of entry and conduct of professional services in the Netherlands

	Self regulation or governmental regulation	Educational and training requirements	Restrictions on fee setting	Restrictions on advertisement	Compulsory membership	Residency requirements
Accountants	Both	Yes	No	No	Yes	No
Lawyers	Both	Yes	No	Yes	Yes	No
Notaries	Both	Yes	No	No	Yes	Yes
Architects	Both	Yes	Yes	Yes	No	No
Financial professionals	Both	Yes	No	Yes	No	No
Real estate agents	Self-regulation	No	No	No	No	No
Process servers ¹	Both	Yes	Yes	No	No	Yes

1. Gerechtstdeurwaarders.

Source: Ministry of Economic Affairs.

31. Competition in the professional services sector in the Netherlands remains rather weak due to self-regulation by professional bodies. Self-regulation by professional bodies or associations, with all the problems of regulatory capture, is still the norm and raises concerns regarding independence and the effectiveness of such regulatory bodies.²⁹ While business practices in this sector have been “cosy”, this is gradually changing. The exemption from the Competition Act that these rules previously received has now lapsed. At the moment these markets are still in transition and in light of the competition concerns the NMa has defined this as a priority area for 2004.³⁰ The NMa will examine whether or not professional regulations (*beroepsverordeningen*) are a restraint to competition, and will also examine government regulations and legislations in this context.³¹ It is intended that an inventory will be made of the problems in professional services with the aim of “re-regulating” the regulations of professional bodies and the government.

Network industries

32. Network sectors in the Netherlands (*i.e.* electricity, gas, water, transport and communications) account for 8.6% of value-added and 6.2% of employment, and for a large share of intermediate inputs. Performance in these sectors is therefore important and can impact overall economic performance. There is now a solid body of cross-country evidence that liberalisation policies

in network industries have led to higher productivity, better quality and, often, lower prices.³² There is a lack of empirical evidence as regards the impact of reforms in the Netherlands as most of the product market reforms in telecommunications and the energy sector are fairly recent. In any event, capturing these benefits is not straightforward and close attention needs to be paid to the design of reforms (Gonenc *et al.*, 2001). While embodying the sectoral regulators with the NMa avoids regulatory capture of sector-specific regulators and allows competition concepts to be applied consistently across sectors, competition law tools are often not well suited to deal with some of the competition problems in these sectors. Stronger structural remedies (*e.g.* divestitures) may be required to effectively promote competition (Newbery, 2002a). However, the NMa, and regulators, currently do not have the power to implement structural remedies on companies that have abused, or may abuse, their dominant positions. This erodes the ability of sector-specific regulators to promote competition.

33. Government policy in these sectors may often conflict with the aim of promoting competition. Privatisation plays an important role in eliminating possible conflicts of interest between regulators and the firms they are regulating. The distribution networks in electricity and gas should also be privatised since local government ownership can act as a barrier to entry and makes the regulators task more difficult. The Dutch government also retains golden shares, which it should relinquish, in the incumbent telecoms and postal operators. Although the government has minority stakes in these companies, the golden shares grant the government special rights *e.g.* a veto over the companies' decisions.³³ Golden shares, by hindering the market for corporate control, strongly reduce the positive effects of privatisation and are a strong disincentive to investment. For these reasons, the European Commission is suing the Dutch government over their golden shares. The role of the regulators also needs to be strengthened, perhaps by granting regulators stronger structural remedy powers.³⁴ Strong and independent regulation of network industries does not imply that sectoral regulators are "making policy" but it does ensure that the promotion of competition is a primary objective.

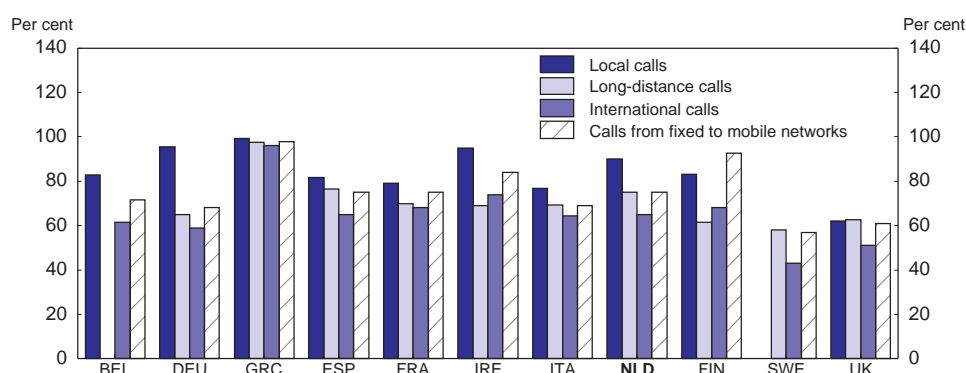
Post and Telecommunications

34. In the telecommunications sector, an independent Post and Telecom Authority, OPTA, is charged with promoting competition and the interests of consumers, and with regulating the telecommunications and postal sectors. OPTA's responsibilities include dispute settlement, approving interconnection and retail tariffs, and supervising the postal concession. Its powers are limited however since it cannot take action on its own initiative and has to wait for an official complaint from market participants. OPTA should, like many other independent regulatory bodies, have the power to initiate actions on its own. OPTA's responsibilities overlap with those of the Competition Authority. This situation has not resulted in major frictions and the Telecommunication Act stipulates that OPTA must consult with the Competition Authority when it wants to use the general competition law.³⁵ Plans for integrating OPTA within the NMa are on hold for the moment, with no plans for proceeding with the reorganisation.

35. The regulatory regime in the Netherlands has been characterised by structural measures that aim at improving competitive conditions, many of which were implemented in advance of EU legislation. These include carrier pre-selection, number portability for fixed networks and which has recently become available for mobile customers, and local loop unbundling (LLU). In line with EU Directives, telecoms operators are no longer required to obtain a license to operate and only have to register. While the Netherlands regulatory regime in telecommunications is pro-competitive, the incumbent telecoms operator, KPN, nevertheless maintains a dominant position in all fixed voice telecommunications markets (Figure 12). Competition is beginning to take off and new entrants in the Netherlands had the second highest share of access lines in the EU, after the United Kingdom (OECD, 2003). OPTA has taken significant action to ensure competitive access to KPN's local loop -- LLU

prices are regulated and subject to cost orientation and monthly tariffs and connection charges are well below the EU average (Table 7).

Figure 12. **Estimates of incumbent operators' market share**
Retail revenue, December 2002¹



1. In Belgium local-calls does not exist as a separate category from long-distance calls. The figures for the Netherlands refer to March 2002, before the introduction of CPS for local calls on 1 August 2002. The figure for Finland local calls is the combined market share of Sonera, Elisa, and Finnet. Finland's figure for long-distance and international market include Sonera only and not Finnet.

Source: EC (2003a).

Table 7. **Prices for unbundled local loop**
(€), 2003

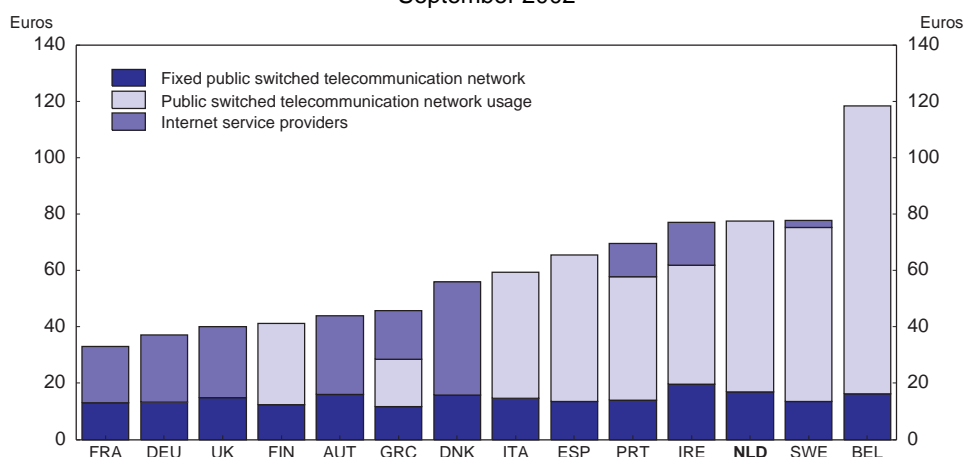
	Full unbundling		Shared access	
	monthly rental	connection	monthly rental	connection
Belgium	11.9	54.9	2.3	54.9
Denmark	8.3	44.8	4.1	104.4
Germany	11.8	56.6	4.8	74.9
Greece	10.6	36.1	5.3	47.0
Spain	12.3	20.0	3.5	27.0
France	10.5	78.7	2.9	78.7
Ireland	16.8	121.5	9.0	123.4
Italy	8.3	32.0	2.8	44.5
Luxembourg	15.8	185.6	7.5	196.2
Netherlands	9.9	33.9	2.3	44.1
Austria	10.9	54.5	5.5	109.0
Portugal	12.0	84.1	3.0	88.2
Finland	14.1	218.0	6.7	105.0
Sweden	11.4	167.6	5.4	119.7
United Kingdom	14.8	128.3	6.4	170.5
EU average	11.5	68.2	4.2	80.6

Source: EC (2003a).

36. The cost of internet access for consumers in the Netherlands was comparatively high in 2002 when dial-up was still the principal medium of internet access (Figure 13). Since then vigorous competition has developed between cable companies and telecoms operators in the provision of internet access (flat fee) and this has led to the third highest take-up of broadband in the EU, behind Denmark and Belgium. Dutch households also have the highest internet use in the EU (MEZ, 2002). Heavy users of internet access have switched in large numbers to DSL providers where good DLS-offers are available at € 25 per month. Dial-up users *i.e.* generally the light users, will normally have monthly expenses below this amount. The high internet use and broadband penetration are in large part

due to the measures for local loop unbundling that have been put in place and access fees that have been lowered, resulting in a large number of companies using unbundled access for providing broadband internet access. The monopoly power on the part of broadband internet service providers that was identified in the last OECD *Economic Survey of the Netherlands* has thus declined significantly in the past year. KPN, however, is currently lobbying the government for financial assistance in the roll-out of broadband infrastructure -- taking fibre optics "to the home". While the government does not intend to offer financial support, government control of the incumbent along with a substantial shareholding (see below) may act as a barrier to entry and discourage other providers from investing in fibre optics "to the home". This pressure should be resisted and the government should let the market determine the outcome -- leaving private parties the responsibility for investing in broadband infrastructure and making the associated technological choices.

Figure 13. Cost of internet access¹
September 2002

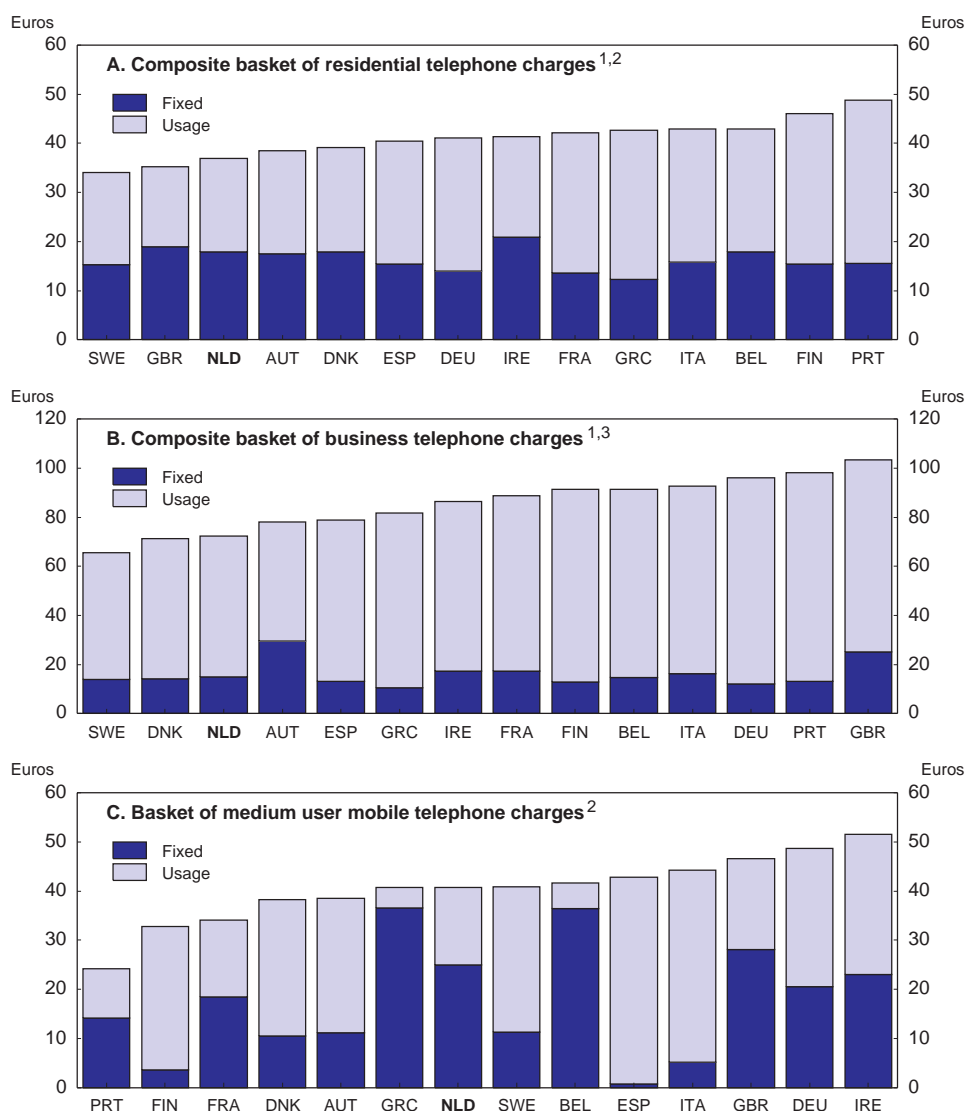


1. For 40 hours at day-time discounted Public switched telecommunication network rates, including VAT.

Source: OECD, *Communications Outlook 2003*.

37. Increased competition, in combination with pro-competitive regulatory measures, has resulted in important benefits for consumers and significant price reductions (MEZ, 2003b). By August 2002, residential and business telephone charges were amongst the lowest in the EU, although mobile charges remained on the high side (Figure 14). Mobile termination rates are not published and are determined by commercial negotiation. While there is lots of competition in the mobile market, there are problems (as in other countries) with termination charges, since mobile operators have a monopoly on calls terminated on their networks. In response to these problems, at the end of 2002, OPTA published guidelines as to the maximum reasonable charges mobile network operators would be allowed to set and obliged all mobile operators to lower their terminating tariffs to cost-oriented levels. When these decisions were annulled in court, the NMa took up the case but abandoned their investigation after the mobile companies lowered their termination charges in December 2003. Within two years these levels will decrease to half the original amount and will be in accordance with the European average.

Figure 14. Average monthly telephone charges
August 2002



1. Composite basket includes international calls and calls to mobile networks.

2. Including tax.

3. Excluding VAT.

Source: OECD, *Communications Outlook 2003*.

38. There is a debate about whether to completely liberalise postal services. While the EU Postal Directive aims for 2009 to open up European postal markets, the Netherlands intends to liberalise in 2007. The business segment of this market is competitive, but there are outstanding concerns regarding rural areas where postal services are provided in conjunction with financial services. OPTA has advocated abolishing the postal company's (TPG) monopoly arguing that there are no prevailing economic or social reasons for maintaining the current postal monopoly (OPTA, 2001). The Ministry however has delayed further liberalisation until Germany and the UK do so in 2007. The position of the Ministry is that this will ensure a level playing field in (at least parts of) the postal market. Otherwise, foreign companies would be able to enter the Dutch market whilst the opposite would not be possible. More importantly, the government still owns 34.8% of TPG and the EC has just sued the

Netherlands over the control it maintains in TPG and KPN through its golden shares. The government should eliminate these golden shares, and sell its remaining holding in these companies.

Energy sector

39. Reform of the electricity and gas sectors was launched with the Electricity Act 1998 and the Gas Act 2000. The responsibility for implementing these Acts has been assigned to the Office of Energy Regulation (DTe). Unlike most EU countries, the competition authority deals with dispute settlement in the sector (Table 8). Although DTe is organisationally subordinate to the director general of the NMa, it acts independently and has its own enumerated powers which were considerably extended in 2001. DTe's regulatory powers include, among other things, the issuing of licences for the supply of electricity and gas to captive consumers; setting service quality standards; setting tariffs and conditions for network access; and determining supply tariffs for captive consumers.

Table 8. **Competencies and resources of energy sector regulators**

	Network access conditions	Dispute settlement	Staff number	Annual budget 2002 (€m)
Austria	R(elec)/R (gas)	R/R	45	9
Belgium	R/R	R/R	68	15
Denmark	R/R	R/R	30	3
Finland	R/R	R/R	15	1
France	R/R	R/n.a.	80	9
Germany	N/N	C/C	n.a.	n.a.
Greece	M/n.a.	R/n.a.	43	4
Ireland	R/R	R/R	31	6
Italy	R/R	R/R	86	18
Luxembourg	M and R	R/R	2	n.a.
Netherlands	R/H	C/C	55	6
Portugal	R/n.a.	R/n.a.	52	7
Spain	M/M	R/R	153	19
Sweden	R/R	R/R	33	3
United Kingdom	R/R	R/R	330	58

Notes: R = regulator responsible, M = ministry responsible, C = competition authority, N = not regulated, H = hybrid, n.a. = no regulator.

Source: EC (2003b).

40. In order to facilitate the establishment of competition in these sectors, unbundling is crucial since vertically-integrated incumbents can impede the functioning of the market through cross-subsidisation and discrimination in network access (EC, 2003b). Insufficient unbundling may form a barrier to competition and numerous studies argue that legal and management unbundling is not enough and that further separation is warranted.³⁶ While initially the Electricity Act did not require full structural separation of generation and transmission, the transmission system has now been vertically separated from both upstream and downstream activities. The owner and system operator, TenneT, is fully state owned and offers regulated access to the transmission network.³⁷ Regional distribution networks are legally and organisationally unbundled from the supply business of distributors (Table 9).³⁸

41. Cross country comparisons of three-firm concentration ratios (CR₃) show that the Dutch electricity generation market is less concentrated than that of other European countries, with the three largest generation companies having a market share of 59% in 2000 (Table 9).³⁹ Only the United Kingdom, Austria and Finland have a lower concentration ratio. In the downstream market, data for 2000 suggests that there are 33 licensed electricity retail companies in the Netherlands, half of which have no ownership ties with the distribution companies and half of which are vertically integrated with distribution (EC, 2003b). In addition, the regionally-based vertically-integrated distribution and retail

companies are traditionally owned by local councils and provincial governments. The top three suppliers had a market share of 48% in 2000. There is also some vertical integration between the upstream and downstream markets and two of the largest upstream generation firms are also the country's largest retailers and own distribution networks.

42. In gas, there is management unbundling of the transmission network and the distribution system is legally unbundled from the supply business (Table 10). The state owns 50% of the gas transmission network, and Shell and ExxonMobil each own 25%. Negotiations for reform are under way between Shell, ExxonMobil, EBN (the state-owned energy company) and the government. Strict segregation of trading and transport activities is necessary in connection with further liberalisation of the gas market. The Dutch downstream gas company Gasunie has been unbundled and Gasunie was reorganised into a transport and a trading arm on 1 January 2002. Since this date, Gasunie Trade and Supply is involved solely in the supply of gas and the network operation is conducted by Gasunie Transport Services. The incumbent's supply and trading activities however are not legally separated from its transport and network activities providing scope for discrimination against new entrants or competitors. With the new Gas Act, the incumbent's supply and trading activities will be legally separated from transport system operation activities. In 2000 and 2001, the DTe issued terms and tariffs for access to gas networks and storage and is striving to improve the cost-reflectiveness of these tariffs and conditions. However, an ongoing concern is that the incumbent supplier benefits from its dominant position and access to critical reserves and facilities.

43. Electricity prices, with the exception of large industrial users, are above the EU average whereas gas prices are below the EU average (Table 11). Reforms are still too recent and incomplete to have had a noticeable impact on prices, but there seems to be considerable scope for prices to fall, particularly in the electricity sector. The electricity market was regulated with regard to price formation until 2000 by an agreement (the 'Protocol') between the four major generators and the distribution companies, stipulating from 1997 till the end of 2000 mandatory sales of electricity at fixed prices (CPB, 2003). As of October 2002, the Dutch retail electricity and gas markets were opened, respectively, to 63% and 60% of consumers. Household electricity and gas markets have not been opened up to competition and plans to fully liberalise the markets at the end of 2003 have been delayed.⁴⁰ A proposal has recently been sent to Parliament to open up the markets to small users as of the 1st of July 2004. Household retail tariffs are currently regulated but this will cease to be the case once the market is opened to competition. Where competition has been introduced this has led to a comparatively high proportion of large users switching suppliers, indicating that there are benefits to be captured from competition. Already 20 to 30% of large electricity users and 30 to 50% of large gas users have switched suppliers (Table 9 and Table 10).

Table 9. Electricity market indicators and implementation of the EU Directive 2002¹

	Declared Market Opening %	Transmission %	Unbundling Distribution ²	Large users switching Suppliers ³	Concentration (CR3)		Potential competition from imports ⁶	Network access charge ⁷	
					Generation	Retail sales		HHI ⁵	Medium voltage
Austria	100	L	A	20-30	45	67	2 028	20	65
Belgium	52	L	L	2-5	96	53	6 118	15	n.a.
Denmark	100	L	L	50 ⁴	78	38	4 018	15	25
Finland	100	O	M	n.a.	45	33	2 472	15	35
France	34	M	A	10-20	92	90	9 606	15	50
Germany	100	L	A	20-30	64	50	1 756	25	55
Greece	34	L	A	0	97	100	10 000	15	n.a.
Ireland	56	L	M	10-20	97	90	9 418	10	40
Italy	70	L	L	>50	69	72	5 560	10	n.a.
Luxembourg	57	M	A	10-20	n.a.	100	8 158	20	n.a.
Netherlands	63	O	L	20-30	59	48	1 814	10	35
Portugal	45	L	A	5-10	82	99	4 008	15	n.a.
Spain	100	O	L	10-20	83	94	2 466	15	45
Sweden	100	O	L	n.a.	90	47	2 538	10	40
United Kingdom	100	O	L	>50	36	42	1 044	n.a.	40

1. The information to 2002, except for concentration measures, 2000.

2. Unbundling concerning operators. A = Accounting, L = Legal, M = Management and O = Ownership.

3. 1998-2001.

4. 2001 only.

5. HHI in electricity generation. A market is generally considered competitive with a HHI<1000; moderately concentrated with 1000 < HHI <1800; and highly concentrated with a HHI > 1800.

6. % of domestic generating capacity.

7. Estimated average charge. €/MWh.

Source: EC (2003b), AEEG (2002).

Table 10. Gas market indicators and implementation of the EU Directive 2002¹

	Declared Market Opening %	Unbundling		Large users switching suppliers	Concentration % of available gas (CR1)	HHI ³	Gas release programme	Network access charges	
		Transmission ²	Distribution ²					Large users	(€/mwh) ⁴
Austria	100	L	L	<2%	80	7 598	NO	n.a.	
Belgium	59	L	L	n.a.	n.a.	10 000	NO	1.0 - 2.0	
Denmark	35	L	L	2-5%	90	2 841	NO	2.5	
France	20	A	A	20-30%	90	5 932	NO	2.0 - 5.0	
Germany	100	A	A	<2%	54	2 405	Planned	2.0 - 7.5	
Ireland	82	M	M	20-30%	n.a.	5 883	NO	1.5 - 2.5	
Italy	100	L	L	10-20%	75	4 916	YES	2.0 - 4.0	
Luxembourg	72	A	A	5-10%	100	10 000	NO	1.0 - 1.0	
Netherlands	60	M	L	30-50%	80	2 634	NO	0.5 - 1.0	
Spain	100	O	L	20-30%	57	9 761	YES	2.0 - 2.5	
Sweden	47	A	A	<2%	100	10 000	NO	3.5	
United Kingdom	100	O	O	>50%	50	894	YES	1.5 - 3.0	

1. The information to 2002, except for the concentration measures, 2000.

2. Unbundling concerning operators. A = Accounting, L = Legal, M = Management and O = Ownership.

3. A market is generally considered competitive with a HHI < 1000; moderately concentrated with 1000 < HHI < 1800; and highly concentrated with a HHI > 1800.

4. Estimated range, rounded to the nearest € 0.5/mwh.

Source: EC (2003b), AEEG (2002).

Table 11. **Electricity and gas retail prices**
Second half of 2002, before taxes

	Electricity (euros/MWh)			Gas (euros/GJ)		
	Households	Industry		Households	Industry	
		Large industrial users ¹	Small commercial enterprises ²		Large industrial users ³	Small commercial enterprises ⁴
Austria	93.1	59.8 ⁵	96.5	11.6	4.8	8.1
Belgium	111.1	58.1	129.9	13.8	4.3	7.4
Denmark	84.4	43.3	66.6	8.1	4.3	8.1
Finland	70.2	36.5	56.6	nd	4.4	nd
France	92.3	48.7	86.1	13.5	3.7	7.5
Germany	124.9	51.7	128.6	13.6	5.1	7.5
Greece	58.0	50.0	87.0	nd	nd	nd
Ireland	88.3	64.8	127.4	14.4	4.6	7.1
Italy	141.8	73.5	100.6	10.6	4.6	9.3
Luxembourg	115.1	38.3	121.7	11.6	5.4	6.5
Netherlands	98.2	48.5⁶	106.4⁷	9.9	2.8⁸	6.1⁷
Portugal	122.3	55.6	99.9	15.0	4.4	9.6
Spain	85.9	46.6	98.6	12.8	4.0	7.8
Sweden	68.8	25.8	35.7	11.6	3.5	7.1
United Kingdom	97.4	47.0	86.1	9.6	4.1	6.0
European Union ⁹	96.8	49.9	95.2	12.0	4.3	7.5

1. Eurostat category Ig (Annual consumption: 24000 MWh).

2. Eurostat category Ib (Annual consumption: 50 MWh).

3. Eurostat category I4-1 (Annual consumption: 418600 GJ).

4. Eurostat category I1 (Annual consumption: 418.6 GJ).

5. 1999h1.

6. 1999h2.

7. 2001h2.

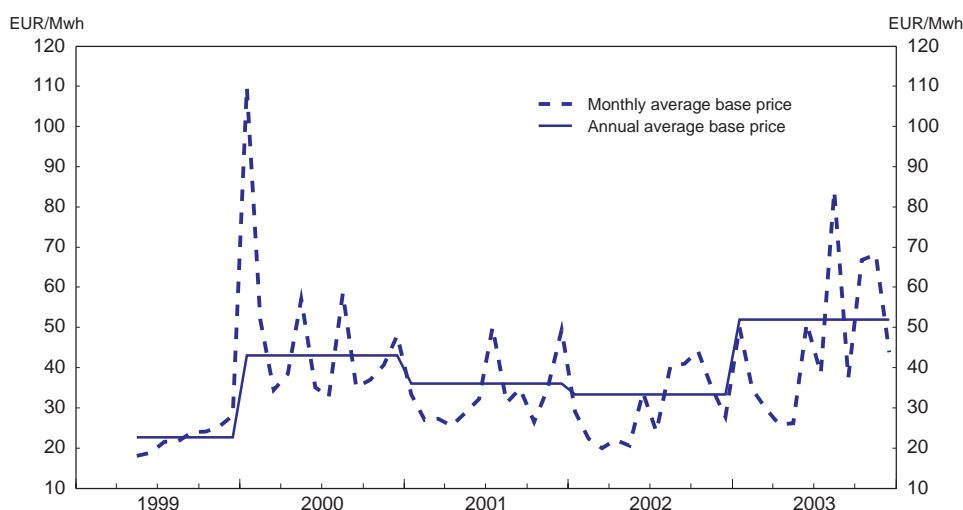
8. 2000h1.

9. Unweighted average.

Source: Eurostat.

44. Effective competition in the Dutch electricity markets still has to be established. Congestion on interconnection capacity at the borders is a problem and relaxing these constraints (*e.g.* through investment in cross-border transmission capacity by the government owned network operator in co-ordination with neighbouring networks) would increase competition from foreign suppliers. Although an electricity exchange market, the Amsterdam Power Exchange (APX), was established in 1999, it has had a slow start, so its potential positive effects have not been felt yet.⁴¹ There are also concerns regarding the scope for price manipulation and declining liquidity on the APX. A report by the DTe's Market Surveillance Committee found that the APX spot market lacks liquidity *i.e.* the number of buyers and sellers is still low, allowing trading parties to influence prices *via* their transactions in the exchange (Newbery *et al.*, 2003). The development of spot prices on the APX shows high volatility, with the highest monthly price in January 2000. However since then there has been a tendency towards lower monthly spot prices as well as lower annual averages (Figure 15).⁴² There was some increase in the latter part of 2003 but there is no indication that this was due to market manipulation, and instead reflects a reduction in excess capacity and should provide a signal for new investment.

Figure 15. Spot market prices on the Amsterdam Power Exchange



Source: Amsterdam Power Exchange.

45. The level of market power among existing generating companies in the Dutch market, combined with a lack of liquidity in wholesale markets, can impede new entry. Further vertical integration and consolidation in the Dutch electricity market may lead to further declines in market liquidity, resulting in increasing barriers to entry. The report by Newbery *et al.* (2003) to the Market Surveillance Committee recommended that such changes be taken into account by the competition authorities when defining markets and making decisions about mergers and regulation. The structure of the electricity sector plays a crucial role in the development of the wholesale electricity exchange market -- a vertically integrated industry has less need for a wholesale market than one where generation and supply are entirely separated. The benefits of introducing competition in the retail market will not be fully realized in this case.⁴³

46. Local government ownership of electricity and gas distribution network companies can also inhibit the development of competition, particularly if the distribution companies also engage in retail activities. While many local governments want to privatise, the Minister of Economic Affairs is responsible for privatisation policy. The plans of the former government to privatise the networks have been postponed and are currently under review.⁴⁴ The government's position is that privatisation is intermingled with the decision making process regarding the networks and that competition and security of supply considerations are both important. The failure in the California electricity market is often used as an

argument against distribution network privatisation and raises the fear that private companies are not inclined to invest in network capacity (Speck and Mulder, 2003). However, the failures in the California market were in large part due to regulatory failure (Box 4) and not related to privatisation; and security of supply considerations can be addressed with proper regulation of private distribution companies.⁴⁵ The Energy Council, one of the advisors to the government, recently advised against privatisation of the electricity and gas distribution networks, and against the separation of the distribution networks from the other activities of the companies that own the networks.⁴⁶ While the advice of the Energy Council may be in the interest of energy companies, it is not in the long term interest of consumers or of promoting competition in the sector. Ownership unbundling of distribution networks from retail activities and the privatisation of the retail businesses should be undertaken to remove barriers to entry and encourage competition. The government has recently announced plans to separate ownership of the distribution networks from retail activities which may then be privatised. Privatisation of the networks can be considered after network quality has been safeguarded through adequate regulatory measures.

Box 4. Regulatory failure: an example from the California electricity market

California restructured its electricity market in 1998, allowing all consumers to choose their supplier. Electricity generation was deregulated with transmission and distribution remaining regulated functions. In order to encourage competition in generation, the vertically integrated utilities were encouraged to sell their generation capacity, selling about half of their original generating capacity. The utilities were also required to sell their generated electricity to the state's wholesale power exchange, and to purchase electricity at spot market prices. Operational control over the transmission system was turned over to an independent system operator to ensure that utilities did not favour their own generation facilities over competing generators in providing transmission access.

While there are a host of problems that contributed to the California electricity crisis, the regulatory framework put in place at the time of restructuring contributed significantly to the crisis (Borenstein, 2002). The restructuring plan, while deregulating wholesale rates, froze retail rates for a transition period of four years or until utilities recovered their stranded costs. Furthermore, utilities were forced to buy nearly all their power through the spot market and were initially not allowed to enter into long-term contracts with generators. Long-term contracts, however, are a standard feature of electricity markets, allowing buyers to hedge against price increases and sellers to hedge against price decreases. Under these circumstances, incentives for investment in generating capacity were greatly diminished, resulting in a lack of adequate generating capacity, and few energy retail providers found it profitable to enter the market (OECD, 2001).

The combination of frozen retail rates, the absence of long-term contracts and a lack of generating capacity spelled disaster for the utilities in the face of rapidly rising wholesale prices in the summer of 2000. There was a clear need to let prices increase in order to reduce energy demand and encourage new entry and investment. Instead of allowing prices to adjust to let markets clear, regulators at the time chose to introduce rationing instead, which acted to exacerbate the problems. The presence of market power can also aggravate these problems, and in this case sellers were able to exercise significant market power (Joskow and Kahn, 2001).

California's Market Surveillance Committee has since recommended immediate imposition of real-time pricing for all large industrial and commercial consumers and for residential customers as soon as possible. The restriction on long-term arrangements with generators was also abolished in December 2000. The introduction of real-time pricing, long-term contracts, and plans to reduce transmission bottlenecks have provided incentives for the introduction of new capacity. The introduction of market mechanisms, and regulatory oversight to curb market power on the part of generators, should produce an electricity market that operates in a smoother and more cost-effective manner.

Summary and recommendations

47. In general, competitive pressures appear to be relatively strong in the Netherlands. Sectors that are exposed to international competition (*i.e.* the traded goods sector) are doing well but productivity growth has been low in sectors protected or sheltered from competition (*e.g.* non-manufacturing sectors). In fragmented manufacturing industries, mark-ups are lower than average suggesting that firms have little market power in these sectors. Above average mark-ups in segmented manufacturing sectors may be a cause for concern. However, when combined with the relative openness of the Dutch economy, with few

restrictions to trade and FDI, the higher than average mark-ups in these sectors could be interpreted as suggesting that firms are more efficient than their counterparts in other OECD countries. Product market competition in important service sectors has increased in the past decade thanks to privatisation, market opening, and deregulation followed by appropriate re-regulation and institution building. However, this process is still ongoing and despite liberalisation, important restrictions to product market competition still exist in some areas.

48. The new competition law marked an important shift away from the Dutch “corporatist” model under which industry co-operation amongst firms was encouraged. However, co-operation is so embedded in the culture that it makes enforcement of the Competition Act difficult. Reducing administrative burdens and red-tape, a priority of the government, should lift major impediments to firm entry, stimulating innovative activity and growth. In spite of regulatory reforms that have led to comparatively liberal retail distribution and professional services sectors, barriers to entry remain important impediments to competition. Further reforms are particularly warranted in these sectors given their poor performance compared with other OECD countries. While incumbents retain dominant positions in network industries, and further restructuring is warranted, competition is slowly emerging as regulatory reforms have opened up these sectors to competition. The liberalisation of telecommunications has been a success and the market is very dynamic with strong competitive pressures from cable operators, although effective competition has yet to emerge in certain segments of the market (*e.g.* mobile communications). Implementation of many reforms in the energy sectors is hampered by local government ownership. Ownership separation of network and supply activities along with privatisation of retail should be undertaken to reduce barriers to entry. Privatisation of the networks can be considered after competition and network quality have been safeguarded through proper regulatory measures. Furthermore, the government should relinquish its golden shares in the telecoms and postal sectors. Box 5 provides a summary of recommendations that follows from the findings presented in this chapter.

Box 5. Recommendations for increasing product market competition

Competition legislation and enforcement

The previous law to control and prevent restraints on competition was tolerant and ineffective, and industry co-operation was encouraged within a corporatist structure. The introduction of a completely new competition law in 1998 and a new enforcement authority, the NMa, signalled a major change in policy direction. In order to underpin this change in direction further reforms would be welcome. In particular:

- The NMa is currently an agency of the Ministry of Economic Affairs. While the government approved legislation to change the NMa to an autonomous administrative organisation (ZBO) in 2000, it is still awaiting final action in Parliament. The NMa should be made formally independent with no further delay.
- Aspects of the sanctions system should be strengthened. The NMa lacks the power to go after members of an association for violations by the association. Where restraints are imposed via an association, the NMa should have the power to assess fines on their members themselves. Providing for criminal penalties and individual sanctions would improve enforcement in areas such as professional services.
- The NMa should be given the power to implement structural remedies on companies that have abused, or may abuse, their dominant positions.

Regulatory policies

Competitive industries

Regulatory reforms in distribution and professional services are particularly warranted given the poor performance of these sectors. While there are no general exemptions to the Competition Act, other legislation or regulation often creates barrier to competition. In particular:

- Further deregulation of retail distribution is required to ensure effective competition. While regulatory reforms have led to the liberalisation of shop opening hours, planning restrictions, which are being devolved to lower levels of government, are important barriers to entry and impede productivity improvements. Local governments should examine the appropriateness of planning restrictions and their impact on competition.
- Regulatory reforms in professional services need to go further if competition objectives are to be attained. The role of professional associations should be reduced and limited to evaluation of professionals' capacities.
- The determination by law of recommended price schedules and unjustified restrictions to advertising should be abolished. Legislation should also permit a wide range of organisational solutions and ease the rules on the incompatibility between professions.

Network industries

While great strides have been made in liberalising network industries, reforms in the telecommunications, electricity and gas sectors are very recent and important obstacles to competition remain. Priorities in this area include:

- Continue with privatisation by selling the remaining government holdings in telecommunications and post and eliminate golden shares. Privatisation of distribution networks in electricity and gas by local governments could be considered after having separated the networks from commercial activities and having safeguarded competition and quality of the networks through adequate regulatory measures.
- In telecommunications, the government should resist pressure to intervene in the roll-out of broadband infrastructure -- taking fibre optics "to the home" -- and should let the market determine the outcome.
- In the energy sector, restructuring of dominant firms and a reduction in their market shares is desirable from a competition point of view. More competition can be achieved through vertical separation as this ensures non-discriminatory access to essential facilities and the current use of legal or operational separation is insufficient. Ownership separation of distribution and supply activities is recommended.
- Strengthen the enforcement powers of the sectoral regulators to enable them to more effectively address the problems associated with market power on the part of dominant firms.

NOTES

1. This paper was originally prepared for the OECD Economic Survey of the Netherlands 2004, which was published under the authority of the OECD's Economic and Development Review Committee. Maria Maher is a senior economist in the Economics Department and Michael Wise is a lawyer in the Competition Division in the Directorate for Financial and Enterprise Affairs. The authors would like to thank Mike Feiner, Andrew Dean, Andreas Woergoetter, Giuseppe Nicoletti, David Carey, Hubert Strauss and Kristel Buysse for valuable comments. Special thanks to Carolina Guerra for statistical assistance and Susan Gascard for her technical assistance.
2. Berenschot (2002).
3. A limitation for current cross-country comparisons is that the data in Figure 2 refer to 1998. The OECD Secretariat is now in the process of updating these indicators.
4. Fragmented industries are characterised by small firms and low entry barriers associated with low sunk costs; as market size grows, so does the number of firms.
5. Segmented market structures are characterised by large firms and significant entry barriers associated with high sunk costs; as market size grows, the number of firms tends to remain unchanged.
6. Segmented sectors in the Netherlands (*e.g.* chemicals, petroleum, iron and steel, electronics) are sectors in which Dutch companies are often large multinational enterprises and compete internationally.
7. The simulations take 1998 as the base year, and estimate the impact on employment and multi-factor productivity if the Netherlands were to align their regulatory stance to that of the least restrictive EU country in 1998.
8. Fines were announced in the first big cases against 22 companies for price fixing, market division, and bid rigging in large infrastructure projects, road maintenance, and other areas, totalling € 100 479 900.
9. For example, NMa would be able to enter private homes to obtain evidence (executives were found to have deliberately kept documents in their houses, knowing that NMa did not have power to enter). Further, substantial fines could be imposed on enterprises and on individual executives for not complying with NMa investigations. The power to seal an office continuously, not just during non-business hours, and to temporarily take documents away if necessary to make copies is expected to become effective in 2005.
10. The legislation would also change the structure of NMa, replacing the single Director General with a 3-person Board of Directors. That would provide some assurance against arbitrariness that may be considered prudent for a more formally independent body.
11. To emphasise certainty and create a clear advantage to being the first one to come forward, the first informant is assured of immunity, if it is not the leader of the cartel and the NMa has not yet started an investigation. If the NMa has already started investigating, this first informant is still assured at least a 50 per cent reduction in fine. But for later informants or for the leader, lenient treatment is not guaranteed, and if granted it could amount to no more than a 50 per cent reduction.
12. Its principal concern so far has been keeping public operators to the terms of their franchises and preventing unfair competition with private providers. Piloting will be part of the office's responsibilities as of January 2005.
13. DTe was already connected to the Ministry of Economic Affairs, but telecom was not.

14. Prior to 2001 a business license was obligatory under the Establishment Law of 1996 for every activity except the “free occupations” (lawyers, accountants, architects and advisors). For various activities in the retail trade and services, prospective entrepreneurs also had to meet the standards defined in the General Entrepreneurs Skills qualifications. A course of study lasting 6 months to a year was often required to obtain the relevant diploma (AOV). After recent reforms that lowered the obstacles to setting up a business, many activities described as ‘basic businesses’ (mainly in retail trade, catering and craft) need simply to register and no longer require an AOV.
15. In 2000, there were 65 000 start-ups as compared to 55 000 in 1999 and the rate of bankruptcy remained unchanged at 2 per cent. There is no evidence, therefore, that the reduction in qualifications has resulted in inefficient entry (EC, 2002).
16. In practice, shops in the centre of large cities such as Amsterdam, Rotterdam and The Hague are open every Sunday.
17. Research showed that 63 per cent of adult consumers visit shops in the evening hours and that sales increased by 4.9 per cent due to evening hours and 2.2 per cent due to opening on Sundays.
18. However, value added per unit of labour costs is one of the highest in the EU, possibly reflecting comparatively low unit labour costs arising from a more flexible labour market.
19. In food retailing, the combined market share of the five largest retailers is 56 per cent, slightly higher than the EU average of around 50 per cent. However, unlike most other EU countries, the market structure of the sector in the Netherlands is dominated by a single firm, Ahold, with a market share of around 30 per cent. Sweden is the only other EU country to have a market structure characterised by a dominant firm. The market structure of most other countries can be characterised as duopoly, oligopoly or unconcentrated (Dobson *et al.*, 2003).
20. Apart from the ability to extract discounts from suppliers, buyer power may manifest itself in the contractual obligations (vertical restraints) which retailers may be able to place on suppliers. Examples include: listing charges (where buyers require payment of a fee before goods are purchased from the listed suppliers); slotting allowances (where fees are charged for store shelf-space allocation); unjustified high contribution to retailer promotional expenses; and insistence on exclusive supply. See Competition Commission (2000) for a detailed list of examples.
21. On the one hand, greater concentration in the retail market may benefit consumers through lower retail prices arising from increased buying power on the part of retailers. On the other hand, if superior trading terms by leading retailers reinforces competitive advantages over smaller rivals, further consolidation might lead to market power in the retail market.
22. However, restrictions on competitive practices such as price competition and advertising or nationality requirements do not explicitly address the issue of quality and can have a negative impact on competition. For example, recommended prices may facilitate the co-ordination of prices amongst service providers and can mislead consumer about reasonable price levels.
23. OFT (2001) provides an overall review of the empirical evidence. Nguyen-Hong (2000) examined the effects of regulations on price-cost margins in engineering services and found that regulations led to an increase in prices on the order of 10 to 15 per cent in countries with the most restrictive practices. And Paterson *et al.* (2003) found a negative correlation between productivity and the degree of regulation, and no evidence that less restrictive regulation led to a lower quality of services. The most dynamic professions, in terms of growth and market consolidation, were found in countries where professions were less regulated. The authors also found that countries with a high degree of regulation tend to have relatively higher turnover from fees, indicating higher mark-ups.

24. This may be due in large part to the poor use of ICT in Dutch business services relative to better performing countries.
25. The index for the degree of regulation includes both entry and conduct regulations that may be determined by government or by professional bodies. Entry regulations include qualification requirements, membership in a professional body, and rules on reserved areas of practice. Conduct regulations include regulations on prices or fees, advertising, location and diversification restrictions and restriction on forms of business practice.
26. The architectural profession in the Netherlands has restrictions on fee setting and advertising that were not picked up in the Paterson *et al.* study and therefore underestimates the level of restrictions found in this profession.
27. Some of the most glaring examples include a national monopoly of interpreters and translators, which is financed by the government and with fixed rates for services, and harbour officials, which belong to a single partnership which has a national concession until 2015.
28. The Dutch government recognises that although the Netherlands scores comparatively well in terms of the indicators constructed, there still exist a number of restraints to competition and problems for consumers (MEZ, 2003a).
29. The Dutch professional services sector is characterised by active trade associations and very strong ties with political bodies, in which the interests of incumbents are often represented in national legislation.
30. NMa press release, 23 January, 2004.
31. Since the CIF decision of the European Court of Justice, Competition Authorities are also able to examine government regulations or legislation that permits conduct in violation of article 81 of the EC Treaty.
32. See OECD (2001) *Economic Studies: Special Issue on Regulatory Reform*, No. 32 which thoroughly reviews the literature and adds more evidence on the relationship between regulation and performance in these sectors. The OECD Reviews of Regulatory Reform also constitute a rich source of information on the effects of industry-specific reforms on performance.
33. The Netherlands now holds minority stakes of 19.4 per cent in KPN and 34.8 per cent in TPG.
34. There is a strong need in these sectors for sector-specific regulation and remedies with oversight by an independent sectoral regulator. The NMa can apply structural remedies only in merger cases.
35. The Competition Authority is not subject to exceptions so that it has jurisdiction in the telecommunications sector in addition to OPTA. The NMa and OPTA have concluded a protocol governing the interpretation and implementation of overlapping responsibilities.
36. For example, see Newbery (2002a; 2002b) and Brunekreeft (2002).
37. Prior to liberalisation, the electricity sector in the Netherlands was vertically integrated and the four largest generation firms owned the transmission network. With the liberalisation of the energy market, the Parliament demanded that the national high-voltage grid (TenneT) be brought under government control. Negotiations since 1998 between the Ministry of Economic Affairs and the electricity producers resulted in the so-called OEPS Act of 21 December 2000. Among other things, the act stipulated the dissolution of SEP, the former co-operation organisation of Dutch electricity producers; and set out rules for the assignment of rights and obligations after the termination of SEP and compensation of related costs. The act also obliged the State to buy TenneT from SEP. After protracted negotiations, the government bought TenneT at the end of November 2001.

38. Oversight of the distribution networks is undertaken by independent regional distribution grid operators.
39. However, following a recent takeover, there are now five major generation companies (as opposed to six) with a corresponding increase in CR₃ to 67 per cent.
40. The market for green electricity has already been fully liberalised.
41. APX is a full subsidiary of TenneT and was formed to enable day-ahead spot trading to take place.
42. The reduction in average price has been accompanied by a steady increase in the amount traded over the APX, especially since the 'Protocol' ended at the end of 2000, corresponding to around 15 per cent of net Dutch electricity consumption in 2002 (Speck and Mulder, 2003).
43. Vertical integration between generation and supply makes entry into downstream markets difficult for new entrants who don't own generation plants. The Swedish electricity producer, Vattenfall, recently declared that it would exit the Dutch electricity market and that it would not renew existing contracts. The firm argued that there are too few suppliers in the market (Vattenfall does not own any electricity generation plants) and that wholesale prices were too volatile, thus making operations too risky. A proposed law implementing the new EU Electricity Directive will create possibilities to oblige generators to offer part of their electricity over the spot market if liquidity is deemed to be inadequate. This should make entry into downstream market for entrants without generation facilities easier.
44. The policy rules on privatisation and the concept legislation, which were introduced in January 2001 and May 2002, have been withdrawn. Privatisation has also been made dependent on the full liberalisation of gas and electricity, which is now due to take place on 1st July 2004. Because of the recent decision to postpone the full liberalisation by six months, the prohibition to privatise is also extended by six months until January 2005.
45. A regulator could require private companies to comply with capacity increases in order to ensure security of supply. For example, capacity expansions deemed necessary by the regulator could be made part of the license requirement.
46. The position of the Energy Council is that this would only result in further fragmentation and weakens the position of the Dutch energy sector (Energieraad, 2003).

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