Bram Bouwens and Joost Dankers

The Invisible Handshake: Cartelization in the Netherlands, 1930–2000

Cartels were critical to the shaping of twentieth-century market structures. Although laws against cartels began to be passed in the 1950s, the attitude toward these collusive organizations remained constant over most of the century. Enforcement did not begin until well into the 1990s. Dutch policy within the European framework underwent a series of adjustments, and changes in the Dutch business system indicate a shift toward a more liberal market economy, which was accompanied by an increasingly negative view of cartels.

Cartels exerted a strong impact on market structures during a good part of the twentieth century. Today, cartels and other sorts of collusion are surrounded by an aura of secretiveness that suggests criminal activity. Even the word *cartel* has a strong negative connotation, and their practices are now considered illegal in most of the Western world. In the United States, cartels have been actively resisted since the end of the nineteenth century, beginning with passage of the Sherman Antitrust Act in 1890. In Europe, however, the situation was more diffuse, as the policy toward cartels and other forms of collusion differed between countries. For a long time, cartels were not forbidden, and, in some countries, companies were even encouraged to cooperate in making arrangements for prices and production.[1] In fact, the anticartel legislation in various European countries dates from the 1950s, but four decades elapsed before the laws were enforced. National governments considered cartels to be both useful instruments that supported the coordination of the markets and vital ingredients of economic reconstruction

BRAM BOUWENS is associate professor of business history at Utrecht University. JOOST DANKERS is associate professor of history at Utrecht University.

[1]Harm G. Schröter, "Cartelization and Decartelization in Europe, 1870–1995: Rise and Decline of an Economic Institution," *Journal of European Economic History* 25, no. 1 (1996); Jeffrey Fear, "Cartels," in *The Oxford Handbook of Business History*, ed. Geoffrey Jones and Jonathan Zeitlin (Oxford, 2008) 268–92.

Business History Review 84 (Winter 2010): 751–771. © 2010 by The President and Fellows of Harvard College.

https://doi.org/10.1017/S0007680500002014 Published online by Cambridge University Press

and growth. Only in the 1990s did the European Union (EU) and its member states formulate a clear policy against cartels and enact legislation against them.

In this article, we explain how the Dutch adjusted their policy toward cartels within the European framework, and we look particularly at how the policy related to the changing business system.[2] Cartels have been around for a long time, and, especially after World War I, coordination among businessmen became routine. During the first decades of the twentieth century, the Dutch government paid little attention to the issue, choosing to adopt an attitude of tolerance. In the mid-1930s, the Netherlands—and many other countries, including France, Germany, and Great Britain—introduced legislation that favored associations of independent firms. Such laws were rooted in the Dutch tradition of free enterprise and self-regulation, and their effect was to strengthen the country's coordinated way of doing business.

After World War II, both the government and businesses had to cope with the reconstruction of the national economy. Imports and exports were restricted, and the government regulated wages and prices. In this situation, cartels occupied an important position and were, to a certain extent, endorsed by government policy. At the same time, the Netherlands had to deal with international developments—such as increasing American influence and the establishment of the European Economic Community (EEC)—that raised questions about reliance on cartels. Although the Dutch did not abandon cooperation, they had to find a way to accede to international requirements while continuing to maintain their tradition of collusive practices. Their solution was to adopt the changes taking place in the European economy, but only after a certain delay. In the 1950s, they clung to their system of coordination and self-regulation, leaving room for cartels. The continuing reliance by the Dutch on cartels in the midst of a shifting market economy can be explained by their inclination toward cooperation and collusion, which appears to contrast with the openness of this small economy.

We examine both the continuity of cartels and the changes in how they were perceived in the Netherlands; and we describe the instruments that the Dutch developed in response to the changing attitudes toward such arrangements. A cartel has many characteristics, making it difficult to offer a definition that takes into account the plurality of entrepreneurs and the variety of agreements. Here, we define a cartel as

[2] Richard Whitley, "Societies, Firms and Markets: The Social Structuring of Business Systems," in *European Business Systems: Firms, Markets in Their National Contexts*, ed. Richard Whitley (London, 1992); Peter A. Hall and David Soskice, ed. *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford, 2001).

https://doi.org/10.1017/S0007680500002014 Published online by Cambridge University Press

an agreement, either written or oral, among private, entrepreneurial sellers or buyers who are both financially and personally independent and who cooperate in fixing or influencing the prices or allocating territories, products, or quotas for a defined period.[3]

Cartels in a Small, Open Economy

During the first half of the twentieth century, the Dutch business landscape comprised a patchwork of firms of varying sizes and engaged in a multiplicity of activities. Small and medium-sized family firms predominated in the Netherlands at the same time as successful multinationals, such as Royal Dutch Shell, Unilever, and Philips, were based there. After World War II, the Dutch government launched a policy to transform the country from an agricultural into an industrial economy, and it concentrated on stimulating large processing industries in energy, chemicals, food, and metals. During the 1960s and 1970s, following several decades of autonomous expansion, a wave of mergers prompted successful Dutch companies to diversify and expand globally. The traditionally strong service sector, including banks and insurance companies, became most heavily engaged in this process. During the 1990s and the first decade of the twenty-first century, an even wider range of Dutch companies became integrated with foreign multinationals. At the same time, a majority of Dutch companies today consist of small and medium enterprises (SMEs) and family firms.[4]

The Dutch government traditionally was a strong proponent of free trade and market function. Self-regulation was valued, and it was considered taboo for the government to interfere with businesses' strategies. Consequently, cartels and other forms of collusion were viewed as natural and legal ways of organizing business. The country's lack of trade-distorting policies, such as taxes, subsidies, regulations, or laws, put Dutch businessmen in direct competition with their foreign counterparts, which had easy access to the Dutch market. As a result of this openness, national cartels, trusts, syndicates, and other forms of collusion were considered to be of little use. Since the prices on the free market were the result of demand and supply, prices and allocations established by cartels would not—according to the politicians—be easy to enforce.[5]

[3] See, for example, Hans Brems, *Product Equilibrium under Monopolistic Competition* (Boston, 1951); Fear, "Cartels."

[4] Jacques van Gerwen and Ferry de Goey, *Ondernemers in Nederland: Variaties in ondernemen* (Amsterdam, 2009), 214–21.

[5] See for example, "Note Minister of Finance jhr. mr. D.J. de Geer, 21-03-1922," no. 5885, inv. 2.06.001, National Archives, The Hague; Keetie E. Sluyterman, *Dutch Enterprise in the Twentieth Century: Business Strategies in a Small Open Economy* (London, 2005) 52–56.

https://doi.org/10.1017/S0007680500002014 Published online by Cambridge University Press

This enduring principle was widely accepted in the Netherlands until the 1930s. In fact, however, cartels and other forms of collusion allowed Dutch businessmen to protect their local markets and to strengthen their position vis-à-vis international cartels. Neither politicians nor businessmen viewed cartels as a threat to the functioning of the Dutch economy. They accepted the system as part of the country's traditional laissez-faire policy, and the existence, of cartels when it was acknowledged at all, was overlooked, particularly as cartel partners chose to remain inconspicuous. An atmosphere of secretiveness surrounded their dealings, and the handshakes that concluded their arrangements took place out of sight.

The hands-off policy toward cartels gradually changed during the Great Depression, when the Dutch government shifted gears and began to oversee the market more closely. For example, it even pressed companies that produced vegetable oils and fats to form a national cartel, in order to protect the home market from foreign competition. The first such cartel was the Margarineconventie, which was formed in 1933 to support production of butter.[6] At the same time, the attitude of Dutch business toward cartels had gradually changed. Industrial cartels had been the exception until the First World War, when wartime collaboration was encouraged, a policy that continued after 1918. During the 1930s, economic collaboration in response to the economic crisis became widespread. By 1930, almost one-third of the leading one hundred Dutch companies were involved in some kind of arrangement, or cartel, as they attempted to protect their home market. They joined international cartels in order to prevent foreign competitors from invading their home turf.[7]

In other European countries, cartels were also used as instruments for limiting the disastrous effects of the economic depression.[8] The argument that cartels maintained profits, production facilities, and employment, thereby slowing the wave of business collapses that was occurring during these years, became vigorous and went hand in hand with trade-distorting policies, such as the imposition of tariffs and quotas. Like other economic regulations and trade arrangements, cartels were

[6] Doreen Arnoldus, "Nederlandse kartelvorming in de oliën en vettenindustrie in de jaren dertig," NEHA Jaarboek 60 (1997): 226–57, 229–30.

[7] Keetie E. Sluyterman and Helene J. M. Winkelman, "The Dutch Family Firm Confronted with Chandler's Dynamics of Industrial Capitalism, 1890–1940," *Business History* 35, no. 4 (1993): 152–83, 154–55.

[8] Dutch politicians began to make serious study of the cartel laws in other countries. Among others, they paid attention to the Enabling Act in Great Britain, the *Gesetz über Errichtung von Zwangskartellen* in Germany, and the *loi fixant les conditions dans lesquelles des accords professionals peuvent être rendu obligatoires en périodes de crise* in France.

https://doi.org/10.1017/S0007680500002014 Published online by Cambridge University Press

supposed to stabilize both production and profits, and Dutch entrepreneurs pressed the government to adopt them.[9]

In 1934, the Dutch government proposed a bill to regulate and encourage cartels in order to limit the detrimental impact on profitability and employment of fierce competition in the national market. A broad majority in Parliament supported the bill, which became law (known as the Business Agreements Act) in December 1935.[10] The liberals voted for the bill, even though it did not contain a guarantee that it represented only a temporary response to the current crisis. With this law, the government gained the power to regulate cartel agreements and—if necessary—to force membership upon uncooperative firms and thus incorporate free riders. An agreement could be either prohibited or enforced for a particular branch of industry.[11] While the law had a number of similarities with legislation in other European countries, a major difference was that, in Holland, an industry had to initiate an agreement itself.[12] Business-interest organizations played a key role in initiating agreements.[13]

The Business Agreement Act seemed to be a sensible and practical tool for reducing competition during a period of economic depression and intense competition. However, it proved difficult to reach agreements that would be both fair to all parties and economically rational. The number of cartels that formed as a result was so small that it is not clear whether their longevity, the effectiveness of their agreements, or their profitability was improved by government interference. An important reason for the Act's meager achievement was that industry branches were unaccustomed to this kind of state intervention, and they mistrusted the new law. Instead, they preferred to rely on their traditional methods of cooperation and collusion. Dutch companies continued to conclude their own cartel agreements, which were largely invisible to both the public and politicians.

Another reason for the Act's poor outcome was its paralyzed status. The state's good intentions were undermined by its limited powers to enforce agreements and influence aspects of business that really mattered, such as prices, quotas, and allowable numbers of production units. In 1939, when lawmakers discussed terminating the Act, they

[9] Jan Bruggeman and Aart Camijn, *Ondernemers verbonden: 100 jaar centrale ondernemersorganisaties in Nederland* (Wormer, 1999), 166–76.

[10] Officially the law was called *Wet op het Algemeen verbindend en onverbindend verklaren van Ondernemersovereenkomsten*.

[11] Documentation on Business Agreement Act 1930–1935, no. 8530, inv. 2.06.001, National Archives.

[12] Documentation on business agreements and cartels in different European countries, 1934–1935, no. 8704, inv. 2.06.001, National Archives.

[13] Bruggeman and Camijn, *Ondernemers verbonden*, 167.

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could point to only seven agreements that could be called "generally binding."[14] The actual practice of businesses under the Act suggests the dual position of this law. As an instrument of intervention, it did not fit comfortably with the principles of self-regulation that were still dominant in the 1930s.

Cartels in a Controlled Market

In fact, the looming war had a much greater impact on the Dutch economy and on how business was organized. To bring about the distribution of raw materials and consumer goods in the event of the outbreak of war, the government, in the summer of 1939, created offices for each branch of industry for the purpose of administering connections between import, production, and trade. Offices for textiles, fuels, metals, and other sectors would organize Dutch business in a vertical way.[15] Although the Netherlands stayed neutral for nearly another year, the economy from that moment on was completely regulated. In an arrangement that was typical for the Dutch business system, representatives of companies headed the governmental offices. Inevitably, the Dutch government, which lacked the staff and experience to take charge itself, largely delegated the organization and regulation of the economy to the businessmen themselves, confining itself to supervision. Dutch businesses were supposed to work for the general interest, but, under these circumstances, any kind of agreement on production, pricing, and distribution was permissible and easily concluded.

After the Netherlands was occupied, cooperation among businesspeople intensified and was often enforced. To promote the efficiency of the Dutch economy, the Germans brought the liberal Dutch regulations on cartels more into line with their own corporatist ideology. The cartel decree that the Germans imposed in 1941 continued to favor the Dutch policy of promoting cooperation and collusion as a way of allocating goods and organizing the national market. But the decree differed sharply from the existing law, in that the government, like Nazi Germany's, could initiate and impose cartels. It no longer had to wait for the industry to do so but could enforce any form of cooperation. Cartels had to be signed up in a confidential register, and any that were not registered were threatened with sanctions.[16] In practice, the decree

[14] Commission of the Ministry of Economic Affairs, 31-10-1939, no. 3752, inv. 2.06.001, National Archives.

[15] Loe de Jong, *Het Koninkrijk der Nederlanden in de Tweede Wereldoorlog, deel I, Voorspel* (The Hague, 1969), 644–48.

[16] Wendy Asbeek Brusse and Richard Griffiths, "Paradise Lost or Paradise Regained? Cartel Policy and Cartel Legislation in the Netherlands," in *Competition Policies in Europe*, ed. Stephen Martin (Amsterdam, 1998), 16–17.

https://doi.org/10.1017/S0007680500002014 Published online by Cambridge University Press

was redundant, because the German-controlled government directly regulated the economy. It seems likely that cartels lost much of their impact, or even that they disappeared. During the war, economic competition became nonexistent, because markets were completely controlled. Operating outside official channels of production and distribution, an extensive illegal market sold basic goods that had become scarce during wartime. In this situation of fierce regulation, on one hand, and illegal trade, on the other, cartels were barely able to function and became, in fact, superfluous.

After the war, Dutch economic policy focused on reconstruction and economic growth. Wartime planning and economic regulation were continued. The coordinated market system, in which the government played a crucial role, was maintained to enable the country to cope with the disastrous economic situation. The cooperation within branches that had been dictated by the occupation was embraced in order to promote national reconstruction and maximize production; at the same time, an intricate system of consultation and mutual agreement was created. Both employers and employees discussed economic policy and cooperated with the government in deciding on wages and prices.[17]

The decision to regulate imports and exports largely cut the Dutch market off from international competition, creating a situation in which cartels could flourish. In 1949, the Dutch minister of economic affairs published data on the number of cartels drawn from the registers of such arrangements that had become compulsory during the wartime occupation. At the end of 1948, the ministry counted 349 regulations in the industrial sector and 141 in trade. These numbers made it clear that while Dutch entrepreneurs vigorously protested against state coordination and control, they also recognized that the state policy opened opportunities for them to engage in the same kinds of mutual agreements and collusion they had engaged in before the war. The Dutch breweries, for example, resumed their prewar cooperation with the central beer office; they reached an agreement on prices and discounts and launched a joint campaign to promote the consumption of beer. In 1949, five breweries agreed to maintain the market situation and to respect each other's clients. These agreements were not secret, nor were they contested. The government and the general public considered cartels to be beneficial to the economic recovery, rather than a threat to the functioning of the market. Not until 1956 were the agreements dissolved due to pressure from the Ministry of Economic Affairs.[18] By then, the economic and international political situation had changed drastically.

[17] Ibid., 17–18.
[18] Sluyterman, *Dutch Enterprise*, 157.

https://doi.org/10.1017/S0007680500002014 Published online by Cambridge University Press

The Act of 1958

The political and economic circumstances of the postwar period challenged business systems and weakened traditional views toward collusion. Decartelization became an important issue in the Netherlands, just as it had in other European countries. For its part, the United States stressed the negative aspects of restricted competition and harped on the abuses perpetrated by cartels. In 1949, the Americans even started an anticartel campaign, making liberalization of the European economies a condition for their receiving financial support under the Marshall Plan.[19] The American crusade was not a success, and cartels did not disappear. They continued to be popular with both businesses and governments and were generally accepted by the public.[20] However, since the American pressure could not be ignored, the Europeans incorporated discussions of restrictive trade and competition policies in their political agendas.[21]

The Dutch government also became increasingly motivated to create a law that would facilitate greater degrees of regulation, supervision, and control of cartels. A first step was taken in 1951 with the Suspension of Business Regulation Act. Once passed, this law made it possible to prohibit a cartel from operating when it opposed "the general interest." However, since the law did not define the general interest, its interpretation was left up to the relevant authorities.

The ambiguity persisted in the Economic Competition Act, which was passed in 1958. Its aim was to safeguard a system of economic competition that was conducive, or at least not contrary to, the general welfare or public interest.[22] The new law was extended to the service sector, including trade, transport, banking, and insurance. In contrast to earlier legislation, the Act dealt with restrictive practices based on two definitions: regulation of competition was defined as "any agreement, or decision to regulate economic competition between owners of enterprises"; and "a dominant position," which was a relation in trade or industry that entailed a "predominant influence of one or more owners of enterprises on a market for commodities or services in the Netherlands." If a regulation of competition was found to be contrary to the

[19] Alan S. Milward, *The Reconstruction of Western Europe 1945–1951* (London, 1984), 56–61; Wyatt Wells, *Antitrust and the Formation of the Postwar World* (New York, 2002), 157–87.

[20] Brusse and Griffiths, "Paradise Lost," 15–39; Sluyterman, *Dutch Enterprise*, 157–59.

[21] Harm G. Schröter, *Americanization of the European Economy: A Compact Survey of the American Economic Influence in Europe since the 1880s* (Dordrecht, 2005), 67–71.

[22] Peter J. Uitermark, *Econonomische mededinging en algemeen belang* (Groningen, 1990), 314–26.

https://doi.org/10.1017/S0007680500002014 Published online by Cambridge University Press

general interest, two types of action could be taken. First, the agreement could be declared wholly or partly nonbinding. This meant that the parties to the agreement could no longer enforce it under civil law, and any subsequent action taken in compliance with the agreement constituted a criminal offense. Second, a general declaration could stipulate that restrictions of a certain kind or scope were nonbinding, which had the effect not only of nullifying such restrictions, but also of prohibiting subsequent agreements of a similar kind. However, both declarations were only valid for five years, though the general declaration could be extended by statute. The restriction illustrates the short-term attitude governing the Dutch legislation.

The ambivalent spirit of the 1958 Act was also apparent in the statement that any regulation of competition could be declared generally binding. This step could be taken when the number of firms affected by a regulation or their combined turnover was larger than the number of outsiders in a sector. The Ministry of Economic Affairs might declare the agreement generally binding on the owners of all firms in a sector if that sector's interest was in agreement with the general interest.[23]

The Dutch policy toward cartels after 1945 thus had become only gradually more rigorous. The two main differences between the 1958 Act and the earlier cartel decree of 1941 were, first, the extension of the policy to new sectors of the economy, and, second, the possibility of prohibiting certain types of restrictive agreements. Nevertheless, the Dutch legislation was milder than laws that were passed, for example, in France or Germany.[24] As one Dutch commentator stated in 1960: "Complaints about undue severity or too stringent an application of the Act are seldom heard."[25]

Government activity under the Economic Competition Act was not impressive. Until 1980, only two agreements were suspended. The label "general interest" was vague and offered no clear path for prosecution. However, this lack of clarity only partly explains its weakness. The Ministry failed to reduce the number of agreements by means of legal instruments. As the historian Richard T. Griffiths and others concluded, the neutrality of the law itself led to inertness. The Economic

[23] M. R. Mok, *Kartelrecht* (Zwolle, 1998), 13–15.

[24] In Germany the criterion for judging a restrictive practice, for example, was not the public interest but restricting competition. In the Netherlands no distinction was drawn between cartel-type agreements and "dominant position" whereas the German law made a distinction between horizontal and vertical agreements, dominant positions, and other restrictions. The German legislation was based on prohibition, whereas the Dutch Economic Competition Act was focused on abuse.

[25] H. W. Wertheimer, "The Anti-Trust Law of the Netherlands," *FBI Review* (August 1960): 45, quoted in Murray Forsyth, "Cartel Policy and the Common Market," *Political and Economic Planning* 28 (1962): 464, 227.

https://doi.org/10.1017/S0007680500002014 Published online by Cambridge University Press

Competition Act was not directed, in principle, against collusion, and the authorities took action only when they received complaints.[26]

The Ministry did take action, for example, in the early 1960s, when the Dutch Consumers' Association initiated a campaign against collective resale price maintenance. In response, the Ministry created an act designed to extinguish this kind of collusion. In 1964, regulations based on the 1958 law outlawed collective vertical price agreements. However, one-third of the fifty-six national agreements on resale prices that were registered in 1964, for example, on bicycles, books, fertilizers, medicines, and stoves, received authorization to continue their practices. The motivation for allowing these exceptions was the government's hope that collusion would strengthen these industrial sectors, which were seen as vital to Dutch society or stimulative of the general welfare. The majority of such requests were rejected, but, in most cases, the firms slightly altered their agreements and consequently no longer had to ask permission.[27] When the general interest was affected by restrictive practices, the problems were usually solved through discussions between the parties and the Ministry. Publication of data—one of the ultimate instruments of the Economic Competition Act—was avoided, and no serious investigations into the nature of the collusion occurred.

The Economic Competition Act was a product of its time. In the Netherlands of the 1950s and 1960s, coordination, including cartels and gentlemen's agreements, prevailed over the liberal market economy. As an institution in which large parts of the business community participated, cartels were thought to have a stabilizing impact on prices and income. Even when crafting industrial and regional policies, business leaders and the government took a positive view of collusive practices.[28] Cartels were allowed, and even endorsed, as long as they did no harm to the general welfare. Though registered, they nevertheless remained largely invisible to the general public.

Changing Figures and Forms

The Economic Competition Act was based on registration. The Ministry of Economic Affairs had to be notified within a month of any

[26] Brusse and Griffiths, "Paradise Lost," 22–23.

[27] Robert Kruithof, *De verticale prijsbinding van merkartikelen: Een vergelijkende studie van het recht van de zes lidstaten van e Europese Economische Gemeenschap* (Brussels, 1973), 203–4; Marlou Schrover, "De Fiva als een bijzondere variant van collectieve verticale prijsbinding, 1928–1975," in *NEHA-Jaarboek voor economische, bedrijfs- en techniekgeschiedenis* 59 (1996): 292–329.

[28] Brusse and Griffiths, "Paradise Lost," 22–23; Harald M. J. Quaedvlieg, *Ondernemende autoriteiten* (Deventer, 2001), 44–52.

https://doi.org/10.1017/S0007680500002014 Published online by Cambridge University Press

new restrictions on competition. The register, however, was not public. Generating publicity was one means of protesting restrictions on competition that were viewed as contrary to the general interest. Failure to register was punishable, but there were many exceptions. Agreements confined to markets outside the Netherlands and individual price-maintenance agreements, for example, did not have to be registered. In 1961, the Ministry announced that only agreements between companies with a combined turnover of one million guilders and 60 percent of the total revenues of a trade or industry should be registered.[29] From 1962 onward, there is consistent evidence from the cartel register on the numbers, forms, and objectives of such alliances. It should, however, be noted that not all associations of independent firms registered their agreements. Firms that wanted to exploit the market were not eager to sign up with the cartel register. The economist Henk W. de Jong even posits that only half of the existing agreements were known to the ministry.[30] The data have serious limitations. Because the register does not permit detailed research, it is impossible to identify the participants in each agreement, to ascertain the stability of the arrangements, or to draw conclusions about the benefits derived by the cartels. Nevertheless, the facts and figures that have been deduced from the cartel register suggest the scale and scope of cartelization.

Figure 1 illustrates the number of cartel agreements in the Netherlands during the 1960s and 1970s. Although the government did not prosecute cartels, their numbers gradually began to decline, beginning in the early 1960s. During the economic crises of the 1970s, the decline accelerated even further. Obviously, the old paradigm proposed by the nineteenth-century scientist Friedrich Kleinwächter, "Cartels are children of distress," did not work out.[31] Economic historian Naomi Lamoreaux's assertion that cyclical downturns undermined cartels seems to have been borne out for the Netherlands during this period.[32] (See Figure 1.)

Cartels existed in all branches of industry and trade. The chemical, printing, and metal industries were the best coordinated. Representing

[29] Minutes of the Houses of Parliament, 1961–1962, B 6689; see also Uitermark, 333.

[30] Henk W. de Jong, "Nederland: Kartelparadijs van Europa," *Economisch Statistische Berichten*, 14 Mar. 1990.

[31] Friedrich Kleinwächter, *Die Kartelle: Eine Frage der Organisation der Volkswirtschaft* (Innsbruck, 1883), quoted in Schröter, "Cartelization and Decartelization in Europe," 1; Mok, *Kartelrecht*, 21.

[32] Several explanations on the relation between cartel formation and business cycles coexist. See, for example, Naomi Lamoreaux, *The Great Merger Movement in American Business, 1895–1904* (Cambridge, U.K., 1985); Margaret C. Levenstein and Valerie Y. Suslow, "What Determines Cartel Success?" *Journal of Economic Literature* 44, no. 1 (2006): 43–95; Peter Z. Grossman, ed., *How Cartels Endure and How They Fail: Studies of Industrial Collusion* (Cheltenham, 2004).

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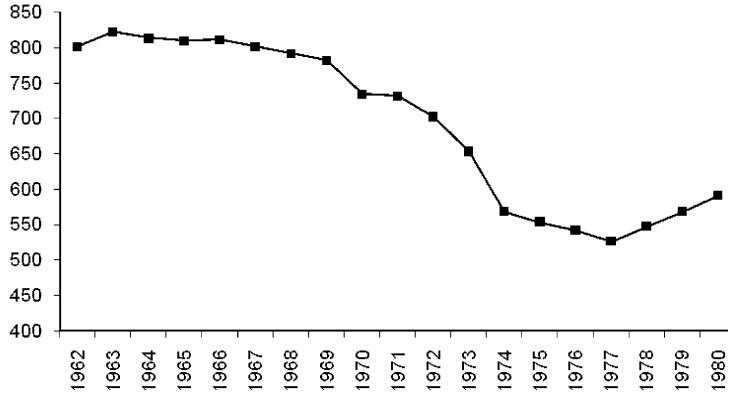


Figure 1. Cartel agreements in the Netherlands, 1962–1980. (Sources: HSG: 1962–1963, B 7157; 1963–1964, B 7623; 1964–1965, B 8038; 1965–1966, B 8558; 1966–1967, B 9082; 1967–1968, B 9563; 1968–1969, B 10117; 1969–1970, B 10642; 1970–1971, B 11322; 1971–1972, B 11883; 1972–1973, B 12413; *Staatscourant:* 23 Jan. 1974, 17 July 1975, 20 Oct. 1976, 16 Dec. 1977, 14 Sept. 1978, Aug. 1980, 10 Oct. 1980, and 17 Sept. 1981.)

some of the strongest sectors in the Dutch economy, they were strongly capital based.[33] Firms in these sectors had to cope with similar high, fixed costs. They found it more convenient to collude as, by so doing, they could eliminate the risks of competition. Moreover, the homogeneity of the products and the limited numbers of competitors made collusion practicable. Theoretically, firms in these branches of industry could come together relatively easily.[34]

Figure 2 shows that cartels were also found commonly in other industries, such as foodstuffs and textiles. The number of cartels in the textile industry experienced a slow, inexorable decline in the 1960s; by the end of the decade, this number was reduced by almost two-thirds. Again, the assumptions of Kleinwächter and others seem not to fit the textile case.[35] Although the pace of decline varied from one industry to the next, the similarities in their development were nevertheless striking.

The cartels and gentlemen's agreements in the Netherlands took many forms and had a number of objectives. Cartels are not a homoge-

[33] See, for example, Herman J. de Jong, *De Nederlandse industrie, 1913–1965: Een vergelijkende analyse op basis van de productiestatistieken* (Amsterdam, 1999), 9–14.

[34] Levenstein and Suslow, "What Determines Cartel Success?" 43–95; Frederic M. Scherer and David Ross, *Industrial Market Structure and Economic Performance* (Boston, 1990), 285–94, 307.

[35] One of the most important studies in this field was Palmer's test of the hypothesis that firms in declining industries were more likely to collude than firms in expanding industries. He found that in the U.S. (1966–1970) this hypothesis was consistent. See John Palmer, "Some Economic Conditions Conducive to Collusion," *Journal of Economic Issue* 6 (1972): 29–38.

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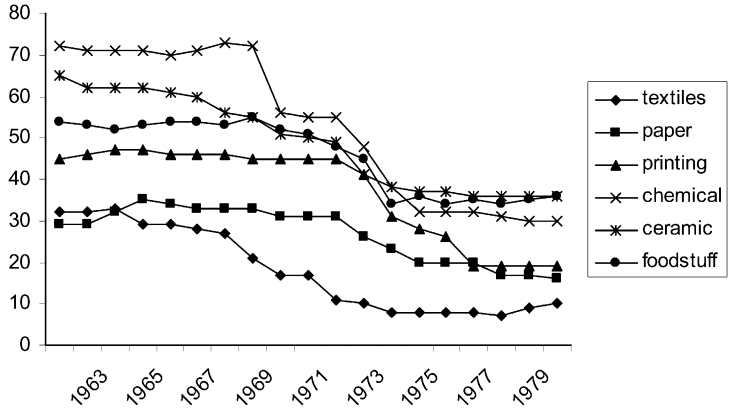


Figure 2. Cartel agreements in the Netherlands, selected industries, 1962–1980. (Sources: see Figure 1.)

neous form of organization, nor do they have similar ambitions. Observers who attempted to classify the different types often disagreed when describing them. The Dutch Ministry of Economic Affairs used its own classification to identify several categories of cartels. Some operated on the basis of price, quota, allocation, standardization, and specialization (condition); others, according to financial agreements and rebates; and still others were based on exclusive trade. Many agreements fell into several categories. Table 1 shows the different organizational forms of cartels in the Netherlands in 1962 and 1980 and illustrates the multiple objectives of the cartel phenomenon. Price-fixing, allocation, and condition cartels mostly appeared during the 1960s and 1970s. In 1962, 41 percent of all cartels were engaged in price fixing (minimum prices, calculation schemes, rebates, bonuses, and provisions). Twenty years later, price fixing was still dominant, though, by that time, the relative numbers of this type had declined to 33 percent. While collusion as a strategy became less attractive in the 1960s and 1970s, the classifications of all agreements and their significance nevertheless persisted over time.

The general development conceals considerable differences between industries and trades. Not all industries made use of the various types of cartel arrangements in the same degree or intensity. Each trade or industry developed its own features and experienced its own dynamics. In the early 1960s, the price-fixing cartels dominated the textile industry. Firms in this sector were frontrunners in arranging price agreements. Over 50 percent of all agreements were price-fixing cartels. During the 1960s and 1970s, the number of textile cartels sharply decreased, a surprising outcome in view of the industry's unfavorable position and slow

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Table 1
Share of Cartel Forms and Gentlemen's Agreements in Selected Industries, 1962 and 1980[a]

	Quota	*Allocation*	*Price-fixing*	*Rebate and Exclusive Trade*	*Condition*
1962					
Total	3	13	41	8	15
Textiles	8	11	51	6	12
Chemical industry	3	26	32	4	22
Paper and board	3	18	42	3	17
Foodstuff	6	18	29	9	17
Graphic industries	7	4	41	9	17
1980					
Total	2	13	34	5	18
Textiles	8	13	21	8	25
Chemical industry	2	20	33	8	25
Paper and board	6	11	47	5	13
Foodstuff	11	19	28	5	12
Graphic industries	4	7	48	11	15

Source: See note to Figure 1. This table shows the leading types.
[a]In percent. Numbers have been rounded.

decline. The loss of the colonial market, rising competition from low-wage countries, global overcapacity in the cotton industry, increasing labor costs, and a downward spiral of turnover and profit did not encourage collusion.[36] In 1970, no more than 35 percent of all agreements in this industry concerned minimum or fixed prices. Ten years later, the ratio dropped to 20 percent. Of all the industries, textiles had the smallest number of price-fixing cartels. Its restructuring approaches, which entailed mergers and acquisitions, diversification, and specialization, had become alternative instruments.[37] It seemed that cartelization was no longer an essential strategy. There were fewer firms, and, as the industry diversified, they did not share as many common interests. Collusion was no longer profitable for all members, so competition prevailed.

Industry structure and performance also carried weight in the classification of cartels. This classification was not only a matter of institutions or business systems. Structure of the market and industry-specific

[36]Arnoud L. van Schelven, *Onderneming en familisme; opkomst, bloei en neergang van de textielonderneming Van Heek & Co te Enschede* (Leiden, 1984), 170–81.

[37]Eric J. Fischer, Jacques L. J. M. van Gerwen, and Helene J. M. Winkelman, *Bestemming Semarang: Geschiedenis van de textielfabrikanten in Oldenzaal, 1817–1970* (Olenzaal, 1991), 274–79.

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conditions, external macroeconomic conditions, and internal organization were among the variables that determined success or failure of a cartel agreement. This aspect of restrictive competition has recently attracted the attention of scholars and others. Economists, social scientist, consultants, businessmen, and politicians have been especially interested in the reasons for the success of cartels.[38] The answer to the question of what determines their success can be illustrated by the case of the Dutch paper-and-board industry, which produced many cartels. Soon after World War II, the Dutch government bound paper-and-board producers to a restrictive policy, stipulating that these scarce imported raw materials would be subject to a quota system. During the 1950s and 1960s, when there were sufficient raw materials and relatively low production costs, the earlier agreements within the industry remained essential to the business. A statement of the sector's affairs in 1954 revealed that about 40 percent of the total paper output was affected by cartels. Most agreements were unstable, owing to the asymmetry of market shares held by the companies, product differentiation, and diverging interests. On the other hand, the number of participants in this industry was limited, the producers were allied in a well-organized association, and competition during this period was mainly domestic. These factors made it easy for producers to find each other and to collude.[39]

The Decline of Cartels Explained

Though the Economic Regulation Act of 1958 was sketchy and inconsistent, the number of cartels decreased during the 1960s and 1970s. It is hard to explain this phenomenon except through more thorough study of the cartel register. Nevertheless, some hypotheses regarding the changing macroeconomic and political circumstances can be formulated. Under the shifting conditions that were emerging, the arrangements of market relations that had become institutionalized and had succeeded in the 1950s and 1960s came under pressure. The creation and use of new strategic tools and the internationalization of markets and legal frameworks caused cartels to become outdated and eventually outlawed.[40]

During the 1950s and 1960s, demand for the products of most industries and trades increased. Competition was not particularly intense,

[38] For discussion, see Levenstein and Suslow, "What Determines Cartel Success?"; Henk W. de Jong, *Dynamische marktttheorie* (Leiden, 1981), 151–53; Scherer and Ross, *Industrial Market Structure and Economic Performance*, 285–94, 307.

[39] Bram Bouwens, *Focus op formaat: Strategie, schaalvergroting en concentratie in de Nederlandse papier- en kartonindustrie, 1945–1993* (Utrecht, 2003), 164–69.

[40] Compare Whitley, "Societies, Firms and Markets," 5–45; Rene Olie, *European Transnational Mergers* (Maastricht, 1996), 59.

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and the output could easily be sold. Supply never quite caught up with demand, and internal expansion was an attractive strategy facilitated by company turnover. Nor was it considered necessary to inquire seriously into market structures or competitor strategies. From the perspective of the firm, the need to collude was not essential in such a sellers' market. To bar or control potential entrants and new products that could undermine the stability of existing firms was not critical.[41] For that reason, cartels could easily be formed and maintained.

In seeking to understand why cartel agreements decreased, we discovered that the Act of 1958 was based on the registration of domestic cartels. The Dutch economy, however, depended heavily on international trade. After 1950, exports increased and even attained higher market shares than existed in the prewar period. Between 1950 and 1980, the value of exports expanded from almost 5.4 billion guilders to nearly 147 billion guilders. According to business historian Keetie Sluyterman, "The cozy business culture at home went hand in hand with a continued ambition to be active in international markets."[42] In this climate, domestic agreements might have been very important. On the other hand, international cartels still had a part to play, and they were prevalent in resource-based industries with high barriers of entry, homogeneous products, and inelastic price developments, such as the chemical sector.[43] After 1945, worldwide cartels received less support from governments, and they were generally observed to decline rapidly in number.[44] Both national and international collusive practices came under further pressure when the Treaty of Rome was signed in 1957. In establishing a common market, the members of the European Economic Community (EEC) instituted a system of cartel control and introduced a register. On the whole, it turned out to be a slow and complex procedure for applying a common law to the different European countries. In this period, there were considerable differences among the members of the emerging common market in their approaches to cartels. Great Britain, Belgium, and the Netherlands had, for example, passed legislation designed to prosecute cartels only for abuse, whereas German, French, and Italian laws prohibited all cartels. After the first

[41] Sluyterman, *Dutch Enterprise*, 159.

[42] Ibid., 181–82; Jan Luiten van Zanden, *The Economic History of the Netherlands, 1914–1995: A Small Open Economy in the "Long" Twentieth Century* (London, 1997), 184; CBS, *Tweehonderd jaar statistiek in tijdreeksen, 1800–1999* (Voorburg, 2001), 49–50.

[43] Helga Nussbaum, "Market Organization: International Cartels and Multinational Enterprises," in *Multinational Enterprise in International Perspective*, ed. Alice Teichova, Maurice Lévy-Leboyer, and Helga Nusbaum (Cambridge, U.K., 1986), 131–44.

[44] See for example James A. Rahl, "Cartels and Their Regulation," in *Competition in International Business*, ed. Oscar Schachter and Robert Hellawell (New York, 1981), 240–50.

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EEC regulation on restrictive trade was passed in 1962, several settlements were announced. However, the European laws had only limited power to erect trade barriers between member states, and only a few agreements were really prohibited. One of the most intriguing and long-lasting cases dealt with the elimination of the cartel of German, Dutch, and French producers of quinine, which had colluded since 1913. They eventually settled their differences and agreed to respect each other's home markets.[45]

The European integration did not influence cartelization in the Netherlands during the first postwar decades. The EEC documents left room for the different countries to maintain their own legal frameworks. By the early 1970s, cartels lost their appeal in the Netherlands. Firms began looking for other tools to safeguard and strengthen their economic positions. The sellers' market had come to an end, and competition was increasing. Mergers and acquisitions became the preferred instrument for stopping overcapacity and internationalization. Henk W. de Jong counted sixty-five mergers and acquisitions in manufacturing and wholesaling in 1965. Four years later, 323 transactions were completed in these industries. The Social Economic Council that registered the mergers and acquisitions of firms with more than one hundred employees calculated 562 transactions in 1973.[46] In many cases, this concentration substituted for cartels. It should be noted, however, that a more concentrated industry is no less likely to collude, and one could argue that it is even easier to organize a cartel with fewer independent partners. Sometimes, the government played a crucial role. Through several restructuring programs, the Ministry of Economic Affairs tried to revitalize and reinforce weak and vulnerable industries and trades, such as shipbuilding, shoemaking, and paper-and-board manufacture. Mergers and acquisitions were considered the most plausible way to improve efficiency, optimize added value, and stimulate effective corporate management.[47]

[45] Europese Gemeenschap voor Kolen en Staal (European Coal and Steel Community), Europese Economische Gemeenschap (European Economic Community), Europese Gemeenschap voor Atoomenergie (European Atomic Energy Community), *Eerste verslag over het mededingingsbeleid* (Brussels, 1972); Beschikking van de Commissie, 16 July 1969 (69/240/EEC), *Publicatieblad van de Europese Gemeenschappen*, 5 Aug. 1969; Commissie van de Europese Gemeenschappen, *Dertig jaar gemeenschapsrecht* (Brussels, 1981). For more information on articles 85 and 86, see also Henk W. de Jong, *Ondernemersconcentratie* (Leiden, 1971), 26–37; Pieter VerLoren van Themaat and Tom R. Ottenvanger, *Concentraties en joint ventures in het mededingingsrecht* (Zwolle, 1992), 26–38.

[46] De Jong, *Ondernemersconcentratie*, 144; J. B. A. Hoyink and A. J. C. Geeve, *Gelet op artikel 2: Cijfers over fuses, 1970–1996* (The Hague, 1997), 24–25.

[47] Van Zanden, *The Economic History of the Netherlands*, 217–18; Centraal Plan Bureau, *De Nederlandse economie in 1985* (The Hague, 1981), 169–318.

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The development of the Dutch strawboard industry, which was centered in the northern part of the Netherlands, illustrates the change in how government and business perceived cartels. This industry, which counted nineteen firms, encountered many difficulties, beginning in the early 1960s.[48] Starting in the 1920s, cartel agreements within the association of strawboard producers not only had prevented the firms from actively competing; they also inhibited technological and organizational innovation. After the 1960s, the industry became aware of the need for industrywide restructuring and began to close unprofitable and obsolete units and to raise the productivity of existing equipment. Once bankruptcies began to occur, the government intervened in order to preserve employment in this economically weak sector. The business consultants who visited the firms argued that concentrating production and management was the only means to save the conservative and backward strawboard industry. The industry's attempts to achieve concentration were hampered by the fact that the extant cartel agreements more and more resembled a damaged umbrella that offered less and less protection. Not until the 1980s, when the industry's relentless decline forced firms to merge, were the cartels set aside.[49]

The End of Collaboration

In the 1980s, the attitude toward cartels changed fundamentally, resulting in public discussion of the restrictive policy. Free trade and free markets gained momentum in those years. In Europe, the new direction was supported by the attempts of the EEC to build a single internal market and to remove trade barriers within the community. While the EEC held the view that cartels reduced competition and hampered the unification of the community, it had no strong antitrust powers. Although most European countries outlawed price-fixing and abuse, cartels were not prohibited.[50] Massive state subsidies to national industries, privatization of state-owned industries, liberalization of international financial markets, and increasing numbers of mergers and acquisitions stimulated revision of existing policy toward competition. Cartels were no longer considered a matter of choice, as they had been during the first half of the twentieth century. Instead, they had a strong negative connotation, and the classical objections against collusion became imperative. By the end of the 1980s, there was a clearer sense on

[48] New harvesting methods reduced both the production of straw and its usefulness as a raw material. New competitors on the market of packaging materials, by producing substitutes had an equally adverse effect on the existing industry.

[49] Bouwens, *Focus op formaat*, 239–64.

[50] Fear, "Cartels," 279; De Jong, "Nederland: Kartelparadijs van Europa."

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all sides that activities like price-fixing and market sharing were unacceptable. Competition was seen as vital for promoting economic growth and as forcing companies to become more efficient and innovative. The free market would be properly run only when competition became the dominant mechanism.[51] Reform of European policy toward competition, based on many years of legal framing, produced sufficient evidence, forms, and procedures to enable more focused antitrust enforcement. The commission dealt with a greatly increasing number of cases during the 1990s.[52] These changes occurred in the context of global development. In 1998, the Organisation for Economic Co-operation and Development (OECD) adopted a strong position on the regulation of "hard-core" cartels, and the United States intensified its enforcement against international cartels. Many European states also began to criminalize cartel behavior.[53]

During the final decades of the twentieth century, the policies of European countries' business systems toward competition converged. Perceptions, attitudes, and legislation grew more in line with liberal market archetypes that stressed antitrust policy. The Netherlands did not lag far behind. After forty years, a new law replaced the regulations that had been passed in 1958. Although the Dutch had to catch up with other European countries, their new act conveyed much the same message as the legislation passed in other EU countries.[54]

A new authority—Nederlandse Mededingingsautoriteit (NMa)—staffed by more than three hundred employees was formed to test mergers and acquisitions, counter cartel activity, and strive for fair competition. NMa successfully acted against parties that participated in cartels or abused positions of dominance, and it also assessed mergers and acquisitions. Establishment of the NMa signaled the end of the Netherlands' role as a "cartel paradise." Several cartel arrangements were revealed, such as in the construction industry, that resulted in long legal battles. The European construction industry had a track record of collusion, and, already in 1992, the European Commission imposed fines on the sector, citing widespread cartel practices. Among its infringements were meetings held prior to tendering contract offers, market sharing, and price fixing. A television program on the Dutch industry revealed the continued existence of secret financial accounts, which led

[51] David Harvey, *A Brief History of Neoliberalism* (Oxford, 2005); Sluyterman, *Dutch Enterprise*, 184–85.

[52] Jean-Francois Pons and Timothée Sautter, "Ensuring a Sound Competition Environment: Rules, Practice and Challenges of European Competition Policy," in *Competition Policy in Europe*, ed. Johann Eekhoff (Berlin, 2004), 29–62.

[53] Dan G. Goyder, *EC Competition Law* (Oxford, 1998), 561–604; Paul Craig and Grainne de Burca, *Regulating Cartels in Europe* (Oxford, 2003), 140–42.

[54] Minutes of Parliament, 1998–1999.

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to parliamentary hearings and revealed the whole sector's participation in illegal practices. This was a difficult case for the NMa, as it had to figure out how to fine hundreds of companies while avoiding large-scale bankruptcies in the industry. Its solution was to develop an accelerated procedure for imposing sanctions that allowed the firms an opportunity to avoid being dragged through a legal labyrinth.[55]

As more attention was focused on cartels, and as growing enforcement resulted in records that made colluding companies more vulnerable, engaging in collusive activity became a perilous way to reduce risks and contain market uncertainties. The risks to colluding firms rose with growing cooperation among international authorities. The NMa continues to work closely with the European Commission and other authorities in dealing with anticompetitive practices. The Dutch public came to view Commissioner Neelie Kroes as the symbol of the EU anticartel crusade after she accused several Dutch companies of collusion and fined them heavily. In 2007, for example, three of the most important breweries felt the effects of the more stringent policy. Heineken, Grolsch, and Bavaria were fined 273 million euros for illegally arranging to divide up the Dutch market and keep prices high. Kroes also encouraged national authorities to cooperate. It became clear that deregulation of markets had never been so overseen and coordinated. As Kroes pointed out in April 2008, "We have to be better networked than the cartelists."[56]

Conclusion

The Dutch attitude toward cartels and other forms of collusion remained consistent during much of the twentieth century. Cartels were not considered threats to the functioning of the market, but were accepted as part of a coordinated way of doing business and viewed positively as a form of self-regulation. In fact, the government neglected cartels and underestimated their impact. The Business Agreements Act that began to operate at the end of 1935 left a good deal of room for collusion and reinforced the restrictions on competition that had been common practice among businessmen for several decades. The Act did not prohibit cartels but, instead, allowed the laws to be enforced on outsiders. The Dutch government saw cartels as a way of organizing the market, leaving the initiative to the entrepreneurs. The situation changed with passage of the Cartel Decree of 1941, which brought Dutch policy

[55] Peter A. G. van Bergeijk, "On the Allegedly Invisible Dutch Construction Sector Cartel," *Journal of Competition Law and Economics* 4 no. 1 (2008): 115–28. See also the Web site of the NMa: www.nmanet.nl, accessed 25 Sept. 2008.

[56] Speech of Neelie Kroes, 14 Apr. 2008; see also http://ec.europa.eu/comm/competition.

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into line with German practice and enabled the government to take charge. In fact, under conditions of war, in which the market was completely regulated, the power to supervise cartels did not exist, as they could hardly function when the government regulated the market.

This did not mean that the attitude toward cartels changed fundamentally. Both the Act and the Cartel Decree of 1941 regulated and authorized cartel agreements, rather than repressing collusive arrangements. After the war, cartels resumed their vital role. To a large extent, they were seen as instruments of the economic policy of price- and wage-fixing. The climate of mutual agreement and understanding stimulated these arrangements between businessmen. Though cartels were often secret by nature, they were not considered illegal. This attitude changed only gradually in the 1950s as a result of external pressure.

When the Economic Competition Act became effective in 1958, it enabled the government to act against cartelization; at the same time, a regulation could be declared binding. Unlike the German view that restrictions on competition policy constitute a fixed central pillar of economic policy, the Dutch considered the 1958 law to be a flexible instrument for stabilizing prices and inhibiting inflation. From the European perspective, this was an exceptional view, but it fit the traditional Dutch belief in the benefits of cooperation and in associations of business interests. Self-regulation and coordination were preferable to the invisible hand of market forces. The political and regulatory framework was still friendly to cartels. Nevertheless, the number of cartels and gentlemen's agreements declined during the 1970s, mainly due to external dynamics and the use of alternative strategic tools, such as mergers and acquisitions. Not until the 1980s did the coordinated market system in the Netherlands gradually shift to a system in which the liberal market dominated, and cartels lost their appeal as instruments of economic policy. With the unification of the European market in the 1990s and the growing tendency to enforce uniform European rules, cartels became illegal. Ironically, it was the Dutch European commissioner Neelie Kroes who became the icon of the EU anticartel crusade by initiating severe prosecution of cartels and other illegal agreements across Europe. At the same time, the cases she investigated made it clear that, regardless of changes in the European market system, the invisible handshake continued to play an important role in Dutch business.

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