Coordination in Dutch business; the sequence of collusive practices, 1900-1980

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March 2010

Introduction

Collusive practices attract much attention from the public, the press and the governments, especially when the interests of consumers are at stake. In the perception of the society many forms of collusion are related to unfair market practices. They increase prices, limit product differentiation, impede innovations, restrict market entry and often make excessive earnings of managers possible. With such an image, it is not strange that collusion often is surrounded with an air of secretiveness and has in many cases a very negative – and even criminal – connotation. Evidence shows that throughout the world anti-trust authorities are never short of work in investigating the sharper end of collusive practices. The strategies of businessmen to eliminate, mitigate or manage risks and uncertainties were, however, not always disapproved by the society. The institutions or strategic instruments businessmen developed over time to reduce the negative aspects of competition had their own dynamics too. Both economic and institutional changes nurtured the transformation of these strategic instruments and influenced the perception of these practices. This paper deals with the variety of risk and uncertainty reducing institutions in Dutch business and their occurrence and development during the 20th century.

Collusion among businessmen is as old as the hills. Since the late 19th century a wide variety of collusive practices occurred, ranging from informal understanding, business interest associations, cartels, joint ventures, to full mergers and acquisitions. Institutional economics, industrial organization, sociology and also business history, all pay attention to the various types of collusion and coordination. Role and impact of intermediary bodies, the stability of cartels and success and failure of mergers and acquisitions are among the most important issues. Most academics regard the various institutions of coordination as separate phenomena and there is hardly any interest in the interaction between the different forms of cooperation. In this paper we explore this somewhat neglected issue. Our assumption is that due to economic and institutional factors there is a development in coordinating principles that influenced both occurrence and perception of collusion. We suggest a historical evolution of coordination and – as

Douglas North already put forward - a path dependency.[1] What is the coherence between the activities of business interest associations, the existence of cartels and the occurrence of mergers and acquisitions? Can we distinguish a sequence of collusive practices and how do these different forms of collusion interact?

The first part of this paper deals with three different forms and degrees of collusion – business interest associations, cartels and mergers - and tries to map them in the context of the structure and the performance of Dutch business during the 20th century. How did Dutch businessmen organise themselves in order to eliminate risks and uncertainties of competition or to expand their firms through a process of external growth (mergers and acquisition)? This section makes clear that the existence of the different institutions fits only partly in the existing economic theories and that still many questions can be raised about the how and why of cooperation between businessmen. The second section focuses on the institutional side of the medal and explores the role of markets and governments. Business interest associations, cartels and mergers changed over time in tasks and performances and coloured the supposed sequence in their own way. Formal and informal rules, legislation and traditions turned out to be very important in the dynamics that caused a sequence of collusive practices and a changing business system. To analyse and explain these changes, we make use of the theoretical approach of the business systems and varieties of capitalism literature as elaborated by Whitley, Hall and Soskice and others.[2]

1. Collusive practices and sequence

1.1 Collusion and theory

In the idealized free market, all firms are assumed to act independently in their desire to seek the highest economic return. In many industries, especially in oligopolistic structures which are characterized by interdependence and uncertainty, such independent action is what many firms will attempt to avoid. It is the risk and uncertainty of independent action which acts as a spur to firms to arrange some form of collusion in their industry. Collusion takes place within an industry when rival companies cooperate for their mutual benefit, in most cases defined as the ability to earn supernormal profits by coordinating production.[3] In most definitions collusion has a very negative

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[1] D.C. North, *Institutions, economic change and economic performance* (Cambridge: Cambridge University Press 1990). See also: P.A. Hall and D. Soskice (ed.) *Varieties of Capitalism; the institutional foundations of comparative advantage* (Oxford: Oxford University Press 2001) introduction

[2] Business systems are – in he words of Whitley – configurations of hierarchy-market relations that become institutionalized in different market economies in different ways as the result of variations in dominant institutions. R. Whitley, *European Business Systems and markets in their national contexts* (London: Saga Publications 1992); R. Whitley, *Capitalism; the social restructuring and change of business systems* (Oxford: Oxford University Press 1999); P.A. Hall and D. Soskice, *Varieties of capitalism; the institutional foundation of comparative advantage* (Oxford: Oxford University Press 2001); J. van Dijck and J. Groenewegen (eds.), *Changing business systems in Europe; an institutional approach* (Amsterdam: VUB Press 1994)

[3] See for example: J. Lypczynski and J. Wilson, *Industrial Organisation; an analysis of competitive markets* (Harlow England: Prentice Hall 2001) 50-51; F.M. Scherer and D. Ross, *Industrial markets and economic performance* (Boston: Hughton Mifflin[3] 1990)

connotation.[4] Collusion however is a fact of economic life and it is not always detrimental to consumers. As we will show, collusion can also be seen as a way of easing the pressures of competition by unified actions rather than a strategy aimed only at maximizing joint profits.

It should be stressed that collusion is not a homogeneous form of behavior. Different degrees and forms can be observed. Collusive practices range from informal understanding within the industry regarding trade practices to formal agreements on prices, production quota, qualities and markets (cartels) and integration of firms through mergers and acquisitions. In our definition both co-operative behavior based on explicit or tacit agreement between independent firms and control, where formal or informal decision power exists between firms, which are thus no longer independent, are included.[5] These collusive institutions take many forms, but can also change in consequences, performance and denotation. This will be illustrated in section 2. From this perspective the business interest association is the weakest form, in which the expectation that rivals will not act independently on non-competitive matters is apparent but at the same time strategy and business activity of the individual firm is not really influenced by the association. The strongest form of collusion – mergers and acquisitions - represents a situation where one firm by taking financial control is assured that the associate/rival firm will stick to all agreements and rules of conduct.[6]

Due to space limitations we can only discuss the most important and general conditions and causes of collusion. It should be noted that every business interest association, every cartel agreement and every merger or acquisition has its own specific conditional origins. Any transaction is in a sense unique. Nevertheless, economic theory has produced a rich set of predictions regarding the conditions likely to inhibit collusive behavior (and undermine the success of institutions designed to exploit collusive opportunities). The most obvious and understandable variable conducive to collusion is that it occurs when it is seen to be more profitable than competition. By decreasing competition the firms can determine monopoly solutions and thus increase their profits. However, also other issues as the problems of risk, market position or the need for information can be solved by a collusive strategy. Collusion reduces the complexities of interdependence. Firms no longer need to enter conjectural commitments, or to speculate about the likely reactions of competitors. In short, collusion occurs when, as a strategy, it is seen to be more profitable than to compete. The most simple economic models explain that the moment one individual firm can extract greater benefits, it will follow an independent strategy. This strategy is based on the expectation that other firms will adhere to the contract. In business interest associations and cartels the numbers of firms

[4] A. Sullivan and S.M. Sheffrin, *Economics, principles in action* (Upper Saddle River, NJ: PPH 2003) 171
[5] Compare: H.W. de Jong, 'Market structures in the European Economic Community' in: H.W. de Jong (ed), *The structure of European industry* (Dordrecht: Kluwer 1993) 1-41
[6] F. Machlup suggested already in the early 1950s various scenarios for a '0 to 100 degree of collusion'. See: F. Machlup, *The economics of sellers' competition* (Baltimore: Johns Hopkins University Press 1952). It could be discussed whether mergers and acquisitions belong to the same collusive family as business interest associations and cartels. See for example: M.C. Levenstein and V.Y. Suslow 'What determines cartel success?' in: *Journal of Economic Literature* 44 (2006) 1, 43-95; K. Bagwell and R. Staiger, 'Collusion over the business cycle' in *RAND Journal of Economics* 28 (1997) 1, 82-106

play a decisive role. Already in 1906 McGregor wrote: ‘the parties shall be few enough to come to terms readily’.[7]

Asymmetry of market shares or the size distribution of firms is another variable that can affect collusion. Asymmetry implies a divergence of views between firms of unequal size. For example, in business interest associations it is important that the leading firm participates to create a countervailing power towards labour unions and the government. In an industry where the firms are of equal size, the probability of collusion will enhance. The more cost functions differ from firm to firm, the more trouble firms will have establishing and maintaining a joint strategy.[8] On the other hand, firms can also act as a leader and others – smaller firms - will follow. Eswaran stressed, for example, the role of low cost producers in a cartelized industry that can curtail their own output in periods of slack demand in order to ensure the viability of the relatively inefficient cartel members.[9]

Homogeneity of the product can be another important condition for the success of many forms of collusion and the stability of the agreement. If a product is subject to change, due to frequent technological improvements, or changes in consumer behaviour, mutual understanding in business interest associations and cartel agreements will be more difficult to sustain. Product differentiation – the consumer goods industries is an excellent example – can destabilize or undercut collusion in business interest associations or existing cartel agreements easily.[10] On the other hand, there are examples of agreements among businessmen that successfully coped with this feature. For example, the famous ‘Phoebus-cartel’ which was formed in 1924 and lasted to World War II, to control the manufacture and sale of incandescent lamps, systematically changed bulbs to allow them to produce more light. This, however, also cut the average life span of bulbs by about 20 percent. Sasaki, Strausz and also Wells argued that the reduced durability of light bulbs made collusion easier to sustain. It increased the frequency of interactions between firms and thereby raised the speed at which cartel members could retaliate against deviators and new entrants.[11]

Not only the structure but also the performance of the industry can stimulate or obstruct collusion. Poor profitability caused by increased competition is one of the most significant factors encouraging firms into collusion. In the case of cartels, Friedrich Kleinwächter already took notice of this in 1883: ‘Kartelle sind Kinder der Not’ (Cartels

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[7] D.H. MacGregor *Industrial combination* (London: Bell 1906) 120

[8] F.M. Scherer and D. Ross, *Industrial markets and economic performance*, 205; H. Vasconcelos, ‘Tacit collusion, cost asymmetries, and mergers’ in: *RAND Journal of Economics* 36 (2005) 1, 39-40

[9] M. Eswaran, ‘Cartel unity over the Business Cycle’ in: *Canadian Journal of Economics* 30 (1997) 3; M. Eswaran and B.C. Eaton, ‘The evolution of preferences and competition’ in: *Canadian Journal of Economics* 36 (2003) 4, 832-859. The idea that an efficiënt firm might come to the aid of an inefficient rival in a period of depression might strike one as curious. It might appear that a more rational response would be to take aggressive actions to bankrupt the rival. But if the expected profits of entry are positive; the exit of one firm will merely accommodate the arrival of another. Besides, the bankrupt firm can have durable fixed assets, which its creditors can sell off at prices, that are lower that their replacement values.

[10] H.W. de Jong, *Dynamische markttheorie* (Leiden: Stenfert Kroese 1981); F. van Waarden, ‘Regulering en belangenorganisatie van ondernemers’ in: F.L. van Holthoon (ed.), *De Nederlandse samenleving sinds 1815; wording en samenhang* (Assen/Maastricht: Van Gorcum 1985)

[11] W. Wells, *Antitrust & the formation of the postwar world* (New York: Columbia University Press 2002) 353-356; D. Sasaki and R. Strausz, ‘Collusion and durability’ (Berlin: discussion paper 246 Governance and the efficiency of economic systems, 2008)

are children of distress) and Palmer found that firms in declining industries are more likely to collude than firms in expanding industries.[12] On the other hand, cheating could destabilize cartels, while also infrequency of orders and especially large infrequent orders can easily put an end to existing price-agreements. When there is a diminutive difference between cost and benefit undercutting will more likely occur and cartels will be dissolved. Scherer and Ross demonstrated this and quoted cases from the electrical equipment industry and antibiotics. A high ratio of fixed costs (for example large overhead or sudden excess capacity) is an important source of stability.[13] Successful collusion requires not only strong incentives to collude, but also the means to enforce the desired outcome.[14] A high ratio of fixed costs is according to several economists also an important feature with respect to mergers and acquisitions. Cartels and mergers are often cooperative attempts to solve market problems that do not have a non-cooperative solution. Bittlingmayer showed that the occurrence of the 1898-1902 merger wave in the US was based on the desire to remedy the problems posed by fixed costs in combination with state-regulation, and not mainly by gaining monopoly power.[15]

Taking performance as a starting point, many studies on competition and collusion make use of macro-economic data to explain the occurrence of the different forms of collusion. Business interest associations and cartel agreements are often seen as strategic tools during periods of economic depression, while mergers and acquisitions are frequently used during a phase of economic upswing.[16] Following these thoughts several economists used the concept of the business cycle to illuminate the causes and consequences of the various forms of collusion. The results are often very arbitrary and inconsistent. For example, Levenstein and Suslow summarized more than 50 studies and 19 cartels, but only 6 of these agreements were formed during downturns.[17] The Dutch

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[12] F. Kleinwächter, *Die Kartelle; eine Frage der Organisation der Volkswirtschaft* (Innsbruck 1883), quoted in: H.G. Schröter, 'Cartelization and decartelization in Europe, 1870-1995; Rise and decline of an economic institution' in: *The Journal of European Economic History* 25 (1996) 1; J. Palmer, 'Some economic conditions conducive to collusion' in: *Journal of Economic Issue* 6 (1972) 29-38

[13] F.M. Scherer and D. Ross, *Industrial market structure and economic performance* (Boston: Houghton Mifflin[3] 1990) 285-294, 307; M.C. Levenstein and V.Y. Suslow 'What determines cartel success?' in: *Journal of Economic Literature* 44 (2006) 1, 43-95

[14] In this way, for example, cartels encounter a problem not faced by a monopolist. After reducing output, each cartel member's marginal cost would be less than its expected revenue from producing more. This creates an incentive for each member of the cartel to cheat by cutting price or improving the quality of the product.

[15] G. Bittlingmayer, 'Did antitrust policy cause the great merger wave?' in: *Journal of Law & Economics* 28 (1985) 1, 77-118

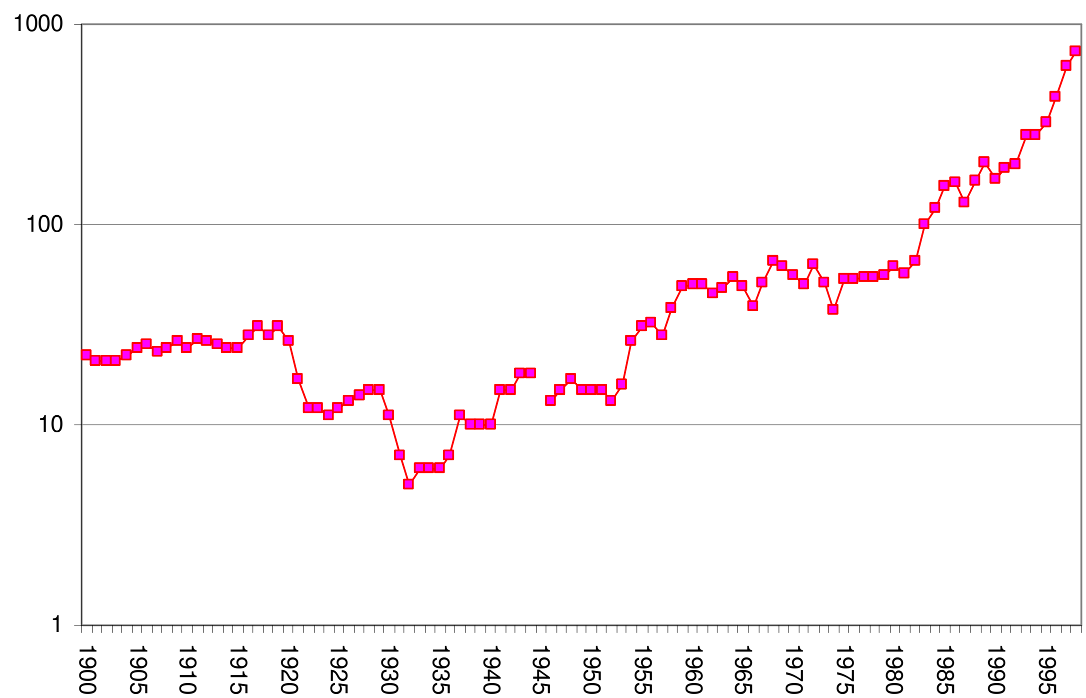
[16] F.M. Scherer and D. Ross, *Industrial market structure and economic performance* 153-159; H.W. de Jong, 'De concentratiebeweging in de Europese economie' in: *ESB*, 02-03-1988, 224-229; Richard Brealey and Stewart Myers, *Principles of Corporate Finance* (New York: McGraw Hill[4] 1991) 923; D.L. Golbe and L.J. White, 'Catch a wave; the time series behaviour of mergers' in: *The Review of Economics and Statistics* 75 (1993) 3, 493-499; H. Schenk 'Fusies: omvang, reikwijdte en trends – een internationale vergelijking' in: J. Bartel, R. van Frederikslust en H. Schenk (ed.) *Fusies & Acquisities; fundamentele aspecten van fusies en acquisities* (Elsevier Business Intelligence 2002) 37-61

[17] M.C. Levenstein and V.Y. Suslow 'What determines cartel success?' in: *Journal of Economic Literature* 44 (2006) 1, 43-95; Another example is the relation between innovation and concentration; the traditional view of innovation (Schumpeter) holds that firms in a concentrated market should innovate to a greater extent. Recent research has shown that there is a positive association between market competition and the degree of innovation. See for example: A. Sharpe and I. Currie, *Competitive intensity as driver of*

economist H.W. de Jong developed a model based on the business cycle to explain the relation between market structures, processes and performance. The shift in corporate strategies to vertical integration and diversification, was in his opinion, the characteristic answer of an industry entering the phases of maturity and decline.[18]

The development of the Amsterdam stock market during the 20th century gives a good and trustworthy indication of the performance of Dutch industry. Following this figure and the extensive literature on collusion we would expect the appearance of many business interest associations and cartels during the interwar period, and again in the late 1960s and early 1970s, when the performance of business decelerated. In line with these assumptions mergers and acquisitions could be supposed to be important phenomena shaping market structures during the 1950s, 1980s and 1990s.

Graph 1: Stock market Amsterdam, 1900-2000 (1983 = 100) (logarithmic scale)[19]



To test these assumptions we gathered data from various sources. Unfortunately the data available are scattered and it is impossible to provide a complete set of collusive practices in the Netherlands during the whole century. The data are not only incomplete; they should also be studied very carefully because of its inconsistent nature. Definitions often changed and knowing that collusive practices are a slippery (and sometimes illegal)

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innovation and productivity growth (Ottawa: CSLS 2008); J.B. Baker, 'Beyond Schumpeter vs Arrow; how antitrust fosters innovation'; working paper American Antitrust Institute no 07-04 (2007)

[18] H.W. de Jong, *Dynamische markttheorie* (Leiden: Stenfert Kroese 1981)

[19] CBS, *Tweehonderd jaar statistiek in tijdreeksen, 1800-1999* (Voorburg/Heerlen: CBS 2001)

subject, it is not strange that not all activities were registered. Nevertheless, the data available show some interesting patterns.

1.2 Business interest associations

The emergence of the business interest groups in the Netherlands is often seen as a reaction to two different developments. On the one hand it is explained by the appearance of trade unions, which stimulated collusion among businessmen. Entrepreneurs thought it necessary to organize themselves as a kind of countervailing power. Especially within the theory on corporatism this is seen as one of the most important incentives for the emergence of business interest associations. Structure and performance of business interest associations are in this vision induced and determined by other organizations, like the state or trade unions.[20] On the other hand, economic determinants should also be taken into account to explain the increase of joint action among businessmen. From the 1880s onwards many business interest associations were founded. The Dutch sociologist Frans van Waarden studied these kinds of alliances between businessmen. He explained the increase of business interest associations at that moment as a direct consequence of the agrarian crises of these years. The fierce competition within many trades and industries stirred the foundation of these organizations. The members of the different associations tried to abash low quality products and falsifications and raise the standards of the specific craft. This would allow price subsistence and discourage newcomers to enter the market.[21]

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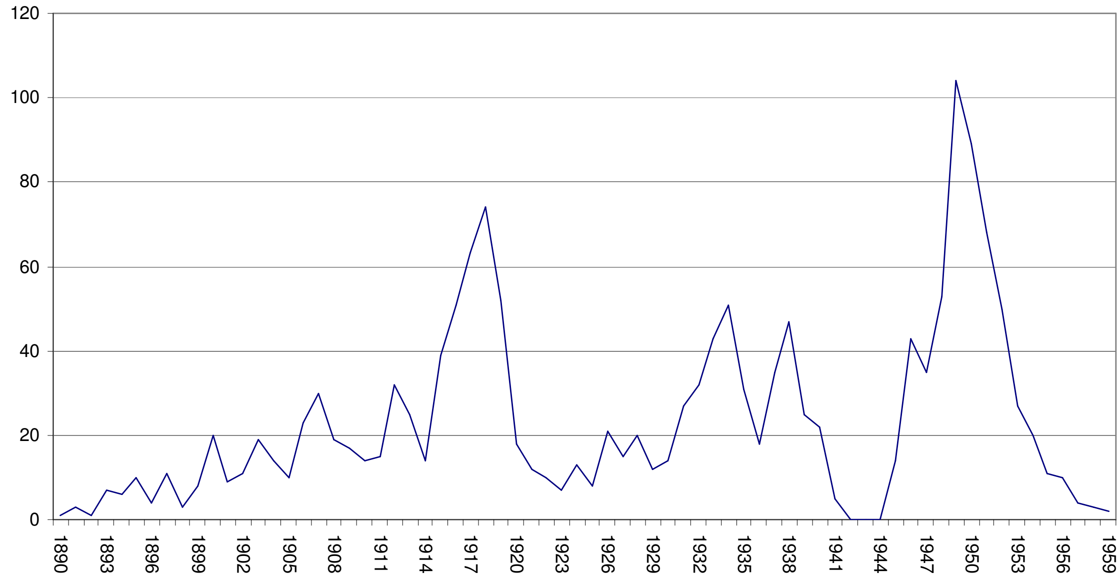
[20] See for example: F. van Waarden, *Organisatiemacht van belangenverenigingen; de ondernemersorganisaties in de bouwnijverheid als voorbeeld* (Amsterdam 1989) 35 ff

[21] F. van Waarden, 'Regulering en belangenorganisatie van ondernemers' in: F.L. van Holthoon (ed.), *De Nederlandse samenleving sinds 1815; wording en samenhang* (Assen/Maastricht: Van Gorcum 1985) 232-233

Graph 2: Dutch business interest associations, year of foundation, 1890-1959[22]



The emergence of business interest associations reflects the economic development of the first decades of the 20th century. Most associations were founded during World War I and its direct aftermath and during the economic crisis of the 1930s. One could argue that the business interest associations were particularly popular during years of economic depression. The strong amplitudes in the founding rates of the associations point this out. They were founded to eliminate risks and to protect existing business interests and to control the circumstances of increasing competition. Especially firms that relied on trade were attentive to these developments of the business cycle and were the first to organize themselves through business interest associations.

Membership of a business interest association is mostly motivated and maintained as a means to solve a certain class of problems. It is a supplement to, or an alternative to, other means of business action to reduce risk and uncertainty. But it can also be a very useful addition to existing institutions and facilitate the use of other collusive practices.[23] In fact the associations were often very dim and unspecific about their intentions. Mostly they stated to represent common interests of the industry – whatever that might be – and especially the stakes of the specific branch. Only a few associations were more open about their aims. The objectives of these organizations differed and ranged from joint actions on a scientific research program, the organization of an exhibition of all the

[22] *Verslagen en mededelingen van de Afdeling Handel van het Departement van Landbouw, Nijverheid en Handel; Overzicht van de in Nederland bestaande patroonsverenigingen* (Den Haag 1936): National Archives The Hague, inv. 2.06.001, number 3986; F. van Waarden, 'Emergence and development of business interest associations; an example from the Nethetlands' in: *Organization Studies* 13 (1992) 4, 521-562

[23] See for example: R.J. Bennet, 'Business associations and their potential to contribute to economic development; reexploring an interface between the state and the market' in: *Environment and Planning* (1998) 30, 1367-1387

products of the industry, to prevention of abuses or forgeries of specific qualities. Sometimes associations' main goal was to organize the branch against the employees that were already involved in trade unions and to negotiate on behalf of the industry on terms of employment. Especially many associations that were founded after 1920 took these intentions prominently in their statutes. Only a few associations stated to represent economic interest of an industry through cartel agreements. It should however be considered that even business interest associations with rather clear statutes could be very ambiguous in their activities. As mentioned above the line between competitive and non-competitive actions could be blurred and the associations often were the ideal meeting place for businessmen to settle arrangements other than avowed in the statutes.

The data for the post-war period are much more scattered. During World War II the German occupier abolished business interest associations, but during the first half of the 1950s most of them were re-established and took up the activities they had in the decades before the war. The exact number of organizations in this period is rather unclear. Many associations disappeared when the time of distress made place for prosperity and co-operation between independent associations increased during the 1950s and 1960s.[24] One could argue that the growing complexity and interdependence of the business environment was a reason for this development in which the collective perspective prevailed. After the 1970s many firms were member of a business interest association, apparently realizing that collective action was necessary to meet the challenges ahead. The Social Economic Council counted 894 alliances of employers in 1980, but Van Waarden and De Vroom reviewed these figures and made an estimation of 1660 business interest associations.[25] Compared to the pre-war records – in 1936 the Ministry of Agriculture, Trade and Industry counted 748 organizations – these figures indicate a significant increase.[26] Research in the 1980s made clear that almost every firm with 30 employees or more was a member of a business interest association. Moreover, many firms combined memberships of different associations at the same time and joined local, regional and national organizations. It is interesting to notice that the number of associations increased during a period of economic upswing. Partly this was due to the introduction of new commodities and services that were unknown or not so widely used in the decades before the war. Specialization, differentiation, but also internal conflicts and new regulation caused further growth of the number of business interest associations.[27] The purpose of the associations gradually shifted to more non-competitive issues. Several new issues came about and turned out to be subjects that were ideal to handle within an interest association. The complex social security legislation, changes in pension funds, the use of representative advisory boards in firms, new tax legislation and

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[24] R. Wallast Groenewoud, *Kroniek van een Eeuweling; VNW 1899-1999 CVNW* (Amsterdam: CVNW 1999) 15; P.W.M. Nobelen, *Ondernemers georganiseerd; een studie over het Verbond van Ondernemingen in de periode 1973-1984* (Den Haag/Moordrecht 1987) 80-81

[25] *SER-almanak voor Sociaal-Economisch Nederland* (The Hague: SER 1980); B. de Vroom en B.F. van Waarden, 'Ondernemersorganisaties als machtsmiddel (I)', in: *ESB* 01-08-1984, 667

[26] *Verslagen en mededelingen van de Afdeling Handel van het Departement van Landbouw, Nijverheid en Handel; Overzicht van de in Nederland bestaande patroonsverenigingen* (The Hague 1936): National Archives, inv. 2.06.001, number 3986

[27] F. van Waarden, 'Regulering en belangenorganisatie van ondernemers' in: F.L. Holthoon (ed.), *De Nederlandse samenleving sinds 1815; wording en samenhang* (Assen/Maastricht: Van Gorcum 1985) 238, 259-260

environmental issues were only a few of the new objects the industry had to cope with and in which the interest associations could play an important role.

1.3 Cartels

Business interest associations were – as we already mentioned – often a platform for businessmen to make agreements on prices, quota and qualities. Especially during the interwar years the associations were very important in shaping market conditions and protecting their members against fierce competition by arranging or facilitating cartels. Cartels can be defined as a voluntary, written or oral agreement among financially and personally independent, private, entrepreneurial sellers or buyers fixing or influencing the values of their parameters of action, or allocating territories, products or quotas, for a future period of time.[28]

Unfortunately, it is impossible to present a consistent set of data of all cartel agreements before 1960. The Dutch government did not register cartel agreements during the first half of the century and businessmen were by nature very secretive on these kinds of agreements.[29] Nevertheless we know several cartels were active during the first decades of the century (see next section). The 1930s were probably the high days of the cartels. The depression of the 1930s with its instability of prices, currencies and tariffs, engendered the acceptance of cartelisation as the most effective way to ensure production and to avoid mass redundancy. During the interwar period cartels played an ever-growing role in domestic and international trade and by 1939 had become a major factor in the world economy. Nussbaum even estimates that international cartels controlled approximately 40 percent of world trade during the 1930s. The contraction of foreign markets encouraged businessmen from different countries, and especially exporters, to join together to avoid destructive competition for shrinking opportunities.[30] The already mentioned 'Kinder der Not' argument seemed to be very persuasive. This changed after World War II when under influence of the United States and with the establishment of the EEC the use of cartels was questioned.

From 1962 onwards we do have some consistent evidence from the cartel register on the numbers, forms and objectives. It should however be noticed that not all associations of independent firms registered their agreements. Especially those firms that wanted to exploit the market were not very eager to sign up the cartel register. H.W. de Jong even presumes that only half of the existing agreements were in the cartel register.[31]

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[28] There are many definitions. See for example: J. Fear 'Cartels' in: G. Jones and J. Zeitlin (eds), *The Oxford handbook of business history* (Oxford: Oxford University Press 2008) 271

[29] The temporary nature of cartel agreements also complicates the study of this economic phenomenon and especially of success and failure of the agreements. Cartels endure for a period, break down and re-form again. Duration to measure cartel success is therefore difficult. When a cartel breaks down and is established again in a slightly different variety should we speak of a failure or a success? See: G. Stigler, 'A theory of oligopoly' in: *Journal of political Economy* 72 (1964) 44-61; M.C. Levenstein and V.Y. Suslow 'What determines cartel success?'

[30] H. Nussbaum, 'Market organization; international cartels and multinational enterprises' in: A. Teichova, M. Lévy-Leboyer en H. Nusbaum *Multinational enterprise in international perspective* (Cambridge: Cambridge University Press 1986) 131-144; See also: W. Wells, *Antitrust & the formation of the postwar world* (New York: Columbia University Press 2002)

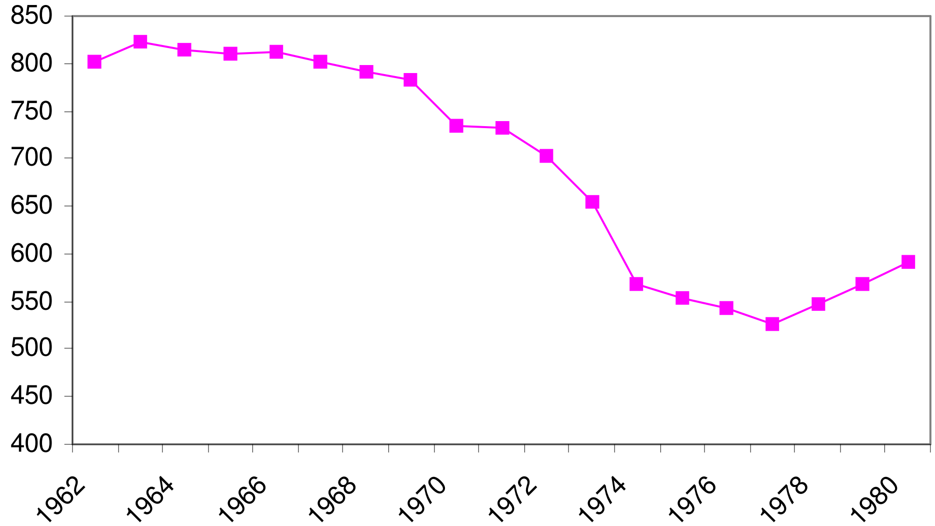
[31] H.W. de Jong 'Nederland: het kartelparadijs' in: *ESB*

Although the data do have serious limitations, the facts and figures deducted from the cartel register give some impression of scale and scope of this phenomenon. Graph 3 illustrates the number of cartel agreements in the Netherlands during the 1960s and 1970s. The number of cartels was still very high and remained on relatively high level till the late 1960s. This is remarkable and stands out against theories that predict that cartel agreements are the predominant form of collusion during periods of economic depression. This was not the case during the first decades after World War II. In these years the demand for the products of most industries and trades increased. Competition was not particularly fierce and the output could easily be sold. Supply never quite caught up with demand and internal expansion was an attractive strategy that was made possible by sheer company turnover. Profound inquiries into market structures or competitor strategy were thought to be unnecessary. From the perspective of the firm, the need to collude was simply not that essential in such a sellers market. To keep out or to keep under control potential entrants and new products that could threaten the stability of existing firms was no big issue.[32]

Despite the fact that the government did not make cartels illegal, the number of cartels gradually declined from the late 1960s onwards. During the economic crises of the 1970s this decline developed even more rapidly.[33] The presumption of Lamoreaux, Levenstein and Suslow and others that cyclical downturns undermined cartels seems to be verified in graph 3.[34] After 1980, we do not have consistent data, but the changing regulation of these years made it for businessmen probably more attractive to collude in a tacit way. Reports of anti-trust authorities still mentioned the existence of cartels, while research in the field of Organization Studies provided evidence that antitrust laws might have a perverse effect as they make cartel stability easier.[35]

[32] K.E. Sluyterman, *Dutch Enterprise in the Twentieth Century. Business strategies in a small open economy*.(London/New York, 2005) 159
[33] F. Kleinwächter, *Die Kartelle*
[34] N. Lamoreaux, *The great merger movement in American business, 1895-1904* (Cambridge: Cambridge University Press 1985); M.C. Levenstein and V.Y. Suslow 'What determines cartel success?' in: *Journal of Economic Literature* 44 (2006) 1, 43-95
[35] See for example: J. Harrington, 'Cartel pricing dynamics in the presence of an antitrust authority' in: *RAND Journal of economics* 35 (2004) 4, 651-673

Graph 3: Cartel agreements in the Netherlands, 1962-1980[36]



Cartels are structured by different parameters. The Dutch Ministry of Economic Affairs used their its classification that identified several categories: price, quota, allocation, standardization and specialization cartels (condition), financial agreement and rebate and exclusive trade. Many cartels fell into several categories. Price fixing, allocation and condition cartels mostly appeared during the 1960s and 1970s. In 1962 41 percent of all cartels and gentlemen's agreements were related to price-fixing (bare minimum prices, calculation schemes, rebates, bonuses, provisions, etceteras). Twenty years later price fixing still dominated the scene, though in relative numbers the significance of this type deteriorated to 33 percent.

For the last decades of the 20th century there are no data available about cartels in the Netherlands. In these years cartels got a strong negative connotation, and the classical objections against collusion became more imperative.[37] The reform process of the European competition policy resulted in an anti-trust enforcement that achieved more focus and sharper relief. The number of cases the Commission had to deal with greatly increased during the 1990s. In 2000 the Commission took 345 final decisions for article 81 and 82 cases.[38] This showed that cartels notwithstanding the severe regulation still exist and for some businessmen apparently are still attractive instruments to avoid competition or to exploit markets.

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[36] 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* 23-1-1974, 17-7-1975, 20-10-1976, 16-12-1977, 14-9-1978, 8-1980, 10-10-1980 en 17-9-1981

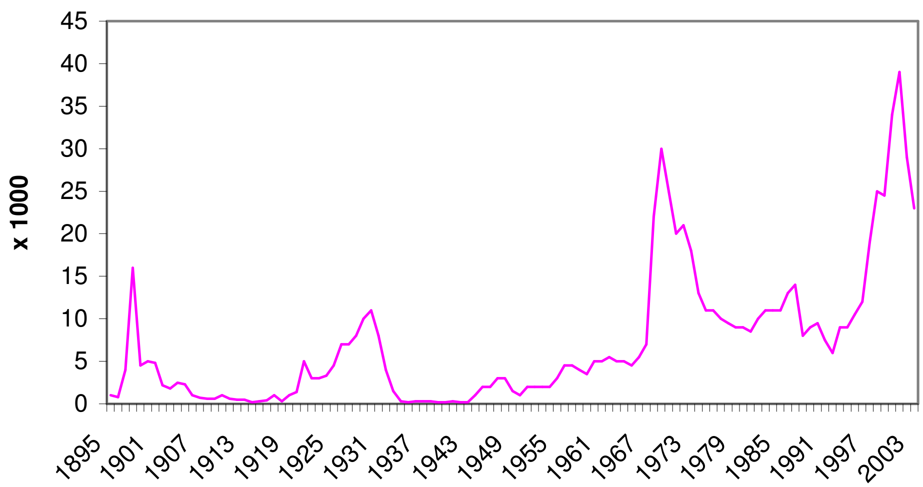
[37] D.G. Goyder, *EC Competition law* (Oxford: Clarendon Press[3] 1998) 561-604; Paul Craig and Grainne de Burca, *Regulating cartels in Europe* (Oxford: OUP 2003) 140-142

[38] J-F. Pons and T. Sautter, 'Esuring a sound competition environment: rules, practice and challenges of European competition policy' in: J. Eekhoff (ed) *Competition policy in Europe* (Berlin/Heidelberg/New York: Springer 2004) 29-62

1.4 Mergers and acquisitions

Mergers and acquisition are the final stage in the sequence of collusive practices. It is the ultimate form of collusion. When two firms merge, they cease to have separate identities and act thereafter as a single unit. Many motives have been advanced for the prevalence of merger activity and they differ according to its horizontal, vertical or conglomerate nature.[39] Whereas business interest associations and cartels are the predominant forms of collusion during periods of economic downswing, mergers and acquisition become dominant during periods of economic prosperity. Graph 4 illustrates this for the United States. Similar graphs could be drawn for the United Kingdom. Bishop and Kay noted in 1993 that Britain faced three merger waves, during the 1920s, the 1960s and 1980s.[40] Germany and several other European countries also knew periods of considerable merger activity during these years, although the characteristic labels differed. Most scientists agree that there were five periods of extensive trading among firms during the 20th century and that these periods were all during a phase of economic upswing.[41]

Graph 4: Merger waves in the US, 1895-2000[42]



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[39] B. Bouwens, *Focus op format; strategie, schaalvergroting en concentratie in de Nederlandse papier- en kartonindustrie, 1945-1993* (Utrecht: diss 2003) chapter 1; A. Jacquemin and M.E. Slade, 'Cartels, collusion and horizontal merger' in: S. Peck and P. Temple, *Mergers and acquisitions; critical perspectives on business and management* (London: Routledge 2002) 89 ff

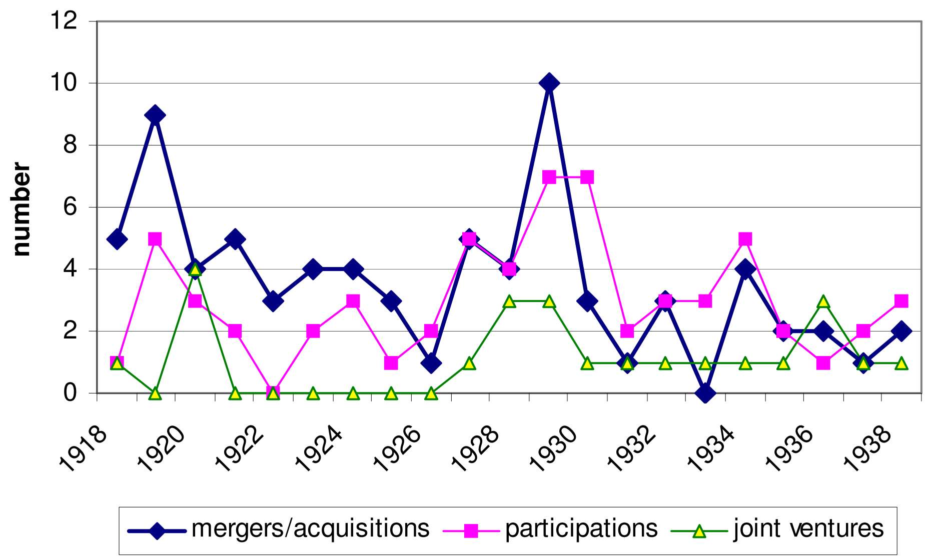
[40] M. Bishop and J. Kay, *European Mergers and Merger Policy* (Oxford: Oxford University Pres 1993)

[41] It should be noted that most studies use sets of data of firms with a stock market quotation and ignore for example private limited companies. F.M. Scherer and D. Ross, *Industrial market structure and economic performance* (Boston: Houghton Mifflin[3] 1990) 153-159; H.W. de Jong, 'De concentratiebeweging in de Europese economie' in: *ESB*, 02-03-1988, 224-229; R. Tilly, 'Mergers, external growth and finance in the development of large scale enterprise in Germany 1880-1913' in: *The Journal of Economic History* 42 (1982) 3, 629-658

[42] R.L. Nelson, *Merger movements in American history 1895-1956* (Princeton: Princeton University Press 1959); US Federal Trade Commission, Bureau of Economics, *Statistical Report on mergers and acquisitions* (Washington FTC 1981); *M & A*: See also: K. Gugler, D.C. Mueller and B. Burcin Yurtoglu, 'The determinants of merger waves' (manuscript, University of Vienna); D.L. Golbe and L.J. White, 'Catch a wave', 494

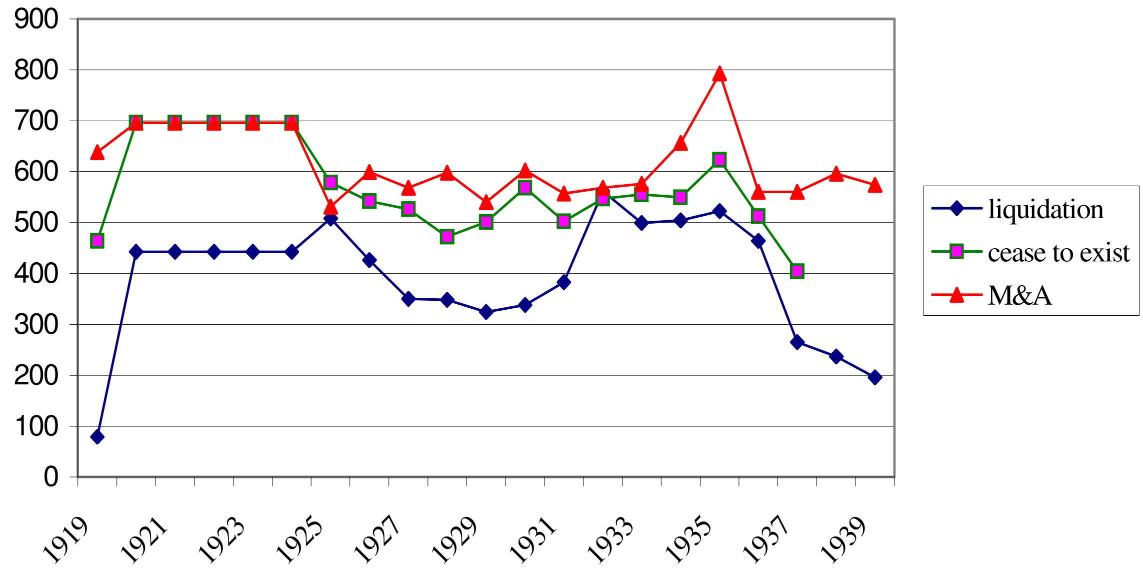
For the Netherlands we don't have standardized source material for the 20th century. We can reconstruct the number of mergers and acquisitions during the interwar years for both firms with a stock market quotation (graph 5) and small and medium sized companies – mainly family firms (graph 6). The difference between both graphs is striking. Big businesses that were listed on the Amsterdam stock market went along with the international developments, whereas (very) small and medium sized companies seem to have a dissimilar concentration pattern. The non-existence of a *hausse* in the number of amalgamations during the 1920s and a *baisse* in the following decade suggests a non-specific strategic intention in the use of mergers and acquisitions for small and medium sized companies.

Graph 5: Concentration in Dutch big business (corporations with stock market quotation), 1918-1938[43]



[43] *Van Oss'effectenboeken 1930-1939*

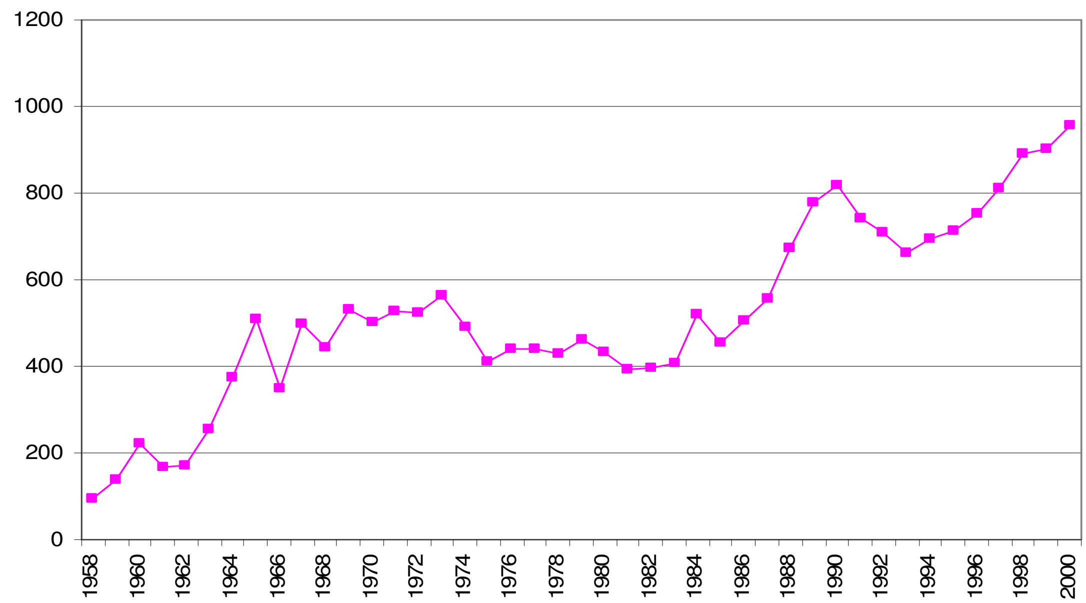
Graph 6: Mutations in the structure of Dutch business, 1919-1939[44]



The number of mergers and acquisitions in the Netherlands increased during the 1960s (see graph 7). In the same period the number of cartels gradually dropped. In these years firms apparently looked for other tools to safeguard and strengthen their economic position and in contrast to earlier periods and the assumptions of the literature initiated a concentration process in a period that the sellers market had come to an end and competition increased. Mergers and acquisitions were the ultimate instrument to stop the threats of overcapacity on markets and internationalization. In many cases – for example strawboard, textiles and shipbuilding - this concentration substituted cartels and gentlemen's agreements. Sometimes the government played a crucial role in this process. In several restructuring programs the Ministry of Economic Affairs tried to revitalize and reinforce weak and vulnerable industries and trades like shipbuilding, shoes and board. Mergers and acquisitions were seen as the most plausible way for improving efficiency, optimizing added value and stimulating effective corporate management.[45]

[44] Rijksverzekeringsbank, Ongevallenstatistiek, 1924-1942: The category 'cease to exist' contains firms that closed down out of different reasons, for example because the owner retired or died and the activities were not continued by a successor.
[45] J.L. van Zanden, *Een klein land* 217-218; CPB, *De Nederlandse economie in 1985* Den Haag: Staatsuitgeverij 1981)169-318

Graph 7: Mergers and acquisitions, Dutch industry, 1958-2000[46]



This section of the paper made clear that economic assumptions cannot entirely explain the occurrence of the different forms and degrees of collusion. Many questions can be raised. How to explicate the existence of cartels during the first decades after World War II or the rise of business interest associations in this period? Why are there still so many mergers and acquisitions during the 1970s when economic theory predict a decrease of activity? Non-economic, institutional factors might elucidate the risk and uncertainty avoiding strategies Dutch businessmen formulated. Legislation, traditions and informal rules could stimulate or be deterrent to collusive practices. The influence of these institutions is the topic of the next section.

2. Markets and legislation

2.1 Cracks in the liberal system (1900-1930)

Around the turn of the 20th century Dutch business can be seen as a prototype of the liberal market system. The government was a true proponent of liberalism and free trade ideology. Notwithstanding the growing and fierce economic competition from abroad, trade tariffs were very low or absent in the Netherlands. The Dutch policy of abstention in economics was favoured by most companies. Especially businessmen who relied on trade or had to import raw materials supported this policy. Some parts of the industry however, like the production of fertilizers or bricks, were clearly hampered by the imports of cheap products from abroad and in some cases the dumping practices of producers in neighbouring countries. Every now and then delegations of industrial

[46] *Statistisch Zakboek 1958-1970;* J.B.A. Hoyinck en A.J.C. Geeve, *Gelet op artikel 2; cijfers over fusies 1970-1996* (Den Haag: SER 1997)

branches that felt themselves harmed by unfair competition from abroad, organised in business interest organisations and sought for political backing by petitioning the Dutch parliament. In most cases however the administration flatly refused to listen and repeated the old *laissez faire* argument. Tariffs in the eyes of most politicians would simply be counterproductive for the Dutch economy that was dependent on imports and trade.[47] The Netherlands stuck to the classical free trade paradigm relatively long when compared to for example the United States and the United Kingdom. When Anglo-Saxon countries in the twenties introduced trade protection and tariff barriers, Dutch industry had to do without these protective instruments.[48]

To guard themselves against competition Dutch businessmen therefore sought different ways of cooperation. Of course family ties and social networks were old and proven means of protection against outside threats. Though these informal networks never disappeared, they were gradually supplemented by more formal arrangements. One of the first and most widespread forms was the business interest organisation. On a local, regional and national scope businessmen interacted and as is shown in graph 2 from the 1890s onwards they founded these associations. In order to compensate for shortcomings on the market, but also to pre-empt state intervention, businessmen willingly banded together. They intended to help each other, protect their professional status and the quality of their products. These associations did not necessarily intend to impede upon competition amongst its members, but they tried to raise the standards of their crafts, reduce inefficiencies and encouraged better relations with customers and government. The Dutch sociologist Frans van Waarden described this type of collusion as self-regulation.[49]

The boundaries between this kind of self-regulation, trade-facilitating cooperation and collusion are not clear. The associations often provided their members with information on sales, production capacity, employment, and creditworthiness of customers, quality of products and innovatory activity. They could also encourage activities to reduce inefficiencies and indeed, many organisations were a meeting place to conclude agreements on prices and production quota. A number of the successful cartels that functioned on the Dutch market in the first decade of the 20th century had their roots in these associations. Some examples of cartels that originated in business interest organisations are the salt-producers, that organised themselves into the Salt-convention (Zout-conventie), a strong market-regulating body; the glass-producers who united to protect themselves against foreign competition and the Dutch paper and board industry that organised itself to lobby for tariffs and protection and also saw their organisation as a platform to regulate production and prices. In some cases, like the glass-industry that joined the European cartel on bottles in 1907, these national cartels even were part of wider international agreements.[50]

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[47] J.J. Woltjer, *Recent Verleden; de geschiedenis van Nederland in de twintigste eeuw* (Amsterdam: Balans 1992) 18-19

[48] Ch. P. Kindleberger, *The world in depression, 1929-1939* (Berkeley/Los Angeles/London 1986) 61-65

[49] F. van Waarden, `Regulering en belangenorganisatie van ondernemers', in: F. van Holthoorn (ed.), *De Nederlandse samenleving sinds 1815; wording en samenhang* (Assen/Maastricht), 231-237.

[50] R. Roordink, `De Koninklijke Nederlandse Zoutindustrie: Zout uit de bodem van Twente. De geschiedenis van de KNZ, 1918-1940', in: *Overijsselse Historische Bijdragen* vol. 108 (1993), 96-128; F.V. van der Most, J.W. Schot en B. Gales, `Zout', in: J.W. Schot e.a. (red.) *Techniek in Nederland in de twintigste eeuw. Deel II Delfstoffen, Energie, Chemie* (Zutphen, 2000), 90-101; Sluyterman, 80-81; J.

There is a lot of speculation and uncertainty on the existence of cartels in the Netherlands before World War I. In 1903 the Dutch socialist F.M. Wibaut published a book on trusts and cartels. According to Wibaut collusive practices in the Netherlands differed slightly from the situation abroad. But whereas in other countries cartels were a widespread phenomenon and an acknowledged practice, there was a strong secrecy on this topic in the Netherlands. Wibaut however traced fifteen national cartels in essential product like salt, bottles, glue and beet sugar and he claimed the participation of Dutch companies in at least seven international agreements. There were international agreements between for example insurance and shipping companies and in the wholesale trading of petroleum and coal.[51]

Cartels though were definitely no hot issue in the Netherlands at that time. The existence was ignored and the common public as well as politicians thought them unproductive and vulnerable. Because the Dutch market was so open to competition from abroad, the common opinion was that these agreements would not survive very long. This proved to be only half of the story. In fact cartels were a well known and in some cases very successful instrument in Dutch industry already at the turn of the century. As Wibaut rightly stated, several branches were completely dominated by cartel agreements and some of the more important Dutch industries participated in international cartels well before World War I. Because there was no agreement on the effect of cartels, it was easy for the government to refrain from measures.[52] In line with its traditional *laissez faire* policy it did not interfere with cartels or any other sort of agreement between producers or merchants. This liberal outlook changed with the outbreak of World War I.

Though the Netherlands ardently stuck to its neutrality between the belligerent neighbours, this could not prevent severe economic damage to the country. The economy was seriously troubled by the fact that the transport of goods was blocked by the war and the cut-off from Dutch East Indies. Dutch government was forced to leave its traditional economic aloofness. It had to interfere to guard the supply of food and other goods, while at the same time staying out of the war. This goal was reached by a twofold policy. On the one hand the government initiated a wide array of laws to regulate the economy and especially the trade in food and exports. At the same time the government by law got the right to claim the property of stocks if this was necessary for the public welfare and to establish maximum prices for food, fuel, half fabrics and raw materials. When after two years these measures proved to be no longer adequate to guarantee the supply of food, a distribution system was created. This implied a massive bureaucratisation. For a wide variety of products an institute (Rijksbureau) was formed that regulated production, stocks, raw materials, imports, exports and distribution. In these institutes civil servants closely worked together with representatives of the industry.[53]

Thus World War I not only stirred governmental interference with the economy, but also definitely contributed to the cooperation between the government and the industry and among businessmen. As graph 2 shows the period of the First World War is

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Dankers & J. van der Linden, *Samensmeltend Glas (*Amsterdam 2001), passim; B. Bouwens, *Op papier gesteld*, 57-60.

[51] F.M. Wibaut, *Trusts en kartellen* (Middelburg, 1903), passim.

[52] National Archives inv. 2.06.001, nr. 5885, State Committee to the Ministry of Internal Affairs, spring 1921.

[53] National Archives, inv. 2.06.079, Introduction to the inventory on the archives of Crisisinstitutes during World War I, 1914-1926.

characterised by a massive organisational wave in Dutch business. This first wave coincided with the bureaucratisation and the threats caused by the war. As the administrative apparatus was still in its infancy, the government had to rely to a large extent on the support from companies to effectuate its policy. In fact the business interest organisations and other cooperative bodies in the industry served as an important platform for governmental action. These business institutes paved the way for interference during the war. At the same time the governmental policy compelled the industry to look for further cooperation and seek agreements. The formation of a huge number of new organisations would in later years also prove to be the typical reaction to increased government interference. The companies were stimulated to meet and discuss the governmental measures either to oppose them or to execute them. In this way companies learned to know each other and discovered how they could work together more efficiently.[54] This kind of consultation that was stimulated by the government, in fact cleared the way for all sorts of cooperation and different forms of collusion.

After the war Dutch government quickly returned to its strong belief in free trade and the liberal market system was restored. Self-regulation was well thought off and interfering with business' strategies was a taboo. In this sense, the Dutch business system was very comparable with the liberal way British business was organized before the Great War. But in contrast to the government, Dutch business did not return to pre-war conditions: the cooperation and organisation build during the war was only partly abandoned. This was reinforced by the strong impulse to vertical and horizontal integration given by the war. With support of the banking sector a concentration process in Dutch industry was set off in the after war years. In many branches horizontal mergers took place to create companies that could effectively compete with foreign business. New companies like Vereenigde Chemische Fabrieken or Centrale Suiker Maatschappij typically united several former competitors. CSM is a distinctive example of cooperation enforced by war circumstances and deliberately continued and intensified after the war which resulted in a merger to avoid infighting. In other branches like the cotton and chemical industry and the production of margarine vertical integration was a way to avoid the dependency on the supply of raw materials which had hampered Dutch industry during the war. The founding of Hoogovens, that immediately took a major share in the only Dutch steel producer Demka and the German steelwork Phoenix, is another example of this process of horizontal and vertical integration.[55] In the second half of the 1920s this merger process was again intensified, at least regarding firms listed on the Amsterdam Stock Exchange, as is demonstrated in graph 5. In this respect the Netherlands seem to fit well into the pattern of merger waves in the US (see graph 4)

Dutch government was not very disturbed by this process of integration and the collusive practices of businessmen. The adagio 'business as usual' and the liberal market system prevailed. Nevertheless the first cracks in this liberal system which in fact originated from end of the nineteenth century, could not be ignored. Businessmen tried to avoid competition by cooperation through social networks, in business interest associations and by concluding cartel agreements and mergers. Though the effect of these

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[54] Keetie E. Sluyterman, *Dutch Enterprise,* 78-79.
[55] Sluyterman, *Dutch Enterprise*, 81-84; Sluyterman, *Driekwart eeuw CSM,* 41; Dankers en Verheul, *Hoogovens 1945-1993,* 37-38.

collusive practices were at that time seen as rather limited, it is clear that their impact was definitely underestimated. This changed fundamentally in the decades to come.

2.2 Forced into a coordinated system (1930-1950)

All over the world the Great Depression drove firms and industries together in search for defence against mounting competition. Companies huddled together behind the tariff walls and import restrictions by which governments tried to protect national industries. In these years national cartel agreements became widely spread and were often even legally endorsed. The Dutch business system also gradually but definitely began to alter as a result of the depression of the 1930s. Protection through tariffs and quota systems were little by little introduced. These were motivated by the necessity to prevent the erosion of the balance of payments and the destruction of employment. The fact that the Dutch government did not realign prices with international price levels through currency depreciation made the use of these instruments even more compulsory.[56] Companies united and organised themselves to lobby for protection or to plea for other measures favouring national industry. The economic malaise immediately caused an upswing in the number of business interest associations. As graph 2 clearly shows businessmen reacted promptly and collectively sought shelter to protect themselves against fierce competition.[57]

The effects of tariffs and quota would indeed be lost if murderous foreign competition were simply replaced by murderous domestic competition. For that reason the government encouraged Dutch industry to cooperate and even stimulated the use of cartels. The argument that cartels maintained profits, production facilities and employment became vigorous. Cartels were thought to stop the wave of collapses that characterized these years and went hand in hand with the other trade distorting policies. Through cartels Dutch business hoped to stabilize both production and profits. [58] Though the examples of Dutch companies participating in cartels are abundant, virtually every branch seemed to be affected by some kind of agreement; it is hard to find exact data on the total numbers of cartels. The invisible handshake appeared to be paramount.

Cartels were indeed seen as a effective way to regulate production and mitigate competition. The government in 1934 even proposed a bill to regulate cartels and to endorse co-operation in order to cease unfair and unhealthy competition. The bill that became law (Business Agreements Act) in the autumn of 1935 regulated the endorsement of cartel-agreements.[59] The government now obtained the power – if necessary - to coerce membership upon uncooperative firms and thus incorporate free riders. So, the agreement could be prohibited or enforced for a specific branch of industry. The law can be seen as a strong indication of a changing business system and the growing role of

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[56] J.L. van Zanden, *Een klein land in de 20e eeuw; economische geschiedenis van Nederland 1914-1995* (Utrecht: Het Spectrum 1997) 151-156; see for a contemporary comment: G.M. Nederhorst 'De Nederlandse contingenteringspolitiek' in: *De Socialistische Gids* (1937); National Archives, inv. 2.06.001, 8496.

[57] Sluyterman, *Dutch enterprise*, 111-113.

[58] W.A. Brusse and R. Griffiths 'Paradise lost or Paradise regained? Cartel policy and cartel legislation in the Netherlands' in: S. Martin (ed.) *Competition policies in Europe* (Amsterdam: Elsevier 1998) 15-17

[59] Officially the law was called Wet op het Algemeen verbindend en onverbindend verklaren van ondernemersovereenkomsten.

cooperation and coordination in Dutch business. It had a lot of similarities with legislation in other European countries. One of the major differences was however that the industry itself had to take the initiative to reach an agreement. Thus self-regulation still was an important quality. Business interest organizations played a key role in this process.[60] In that respect some of the liberal characteristics were still preserved. But these would soon become far reminiscences.

Dutch economy was hardly recovered from the deep depression when the looming war made a deep impact on the Dutch economy and the way business was organized. To effectuate distribution in case of war the government, like in WWI, created offices for each branch in the summer of 1939. These were to be the administrative connection between import, production and trade. Offices for textiles, fuels, metals etc. would in fact vertically organize the complete business.[61] Governmental interference was again accompanied by an organisational wave. As graph 2 shows the number of newly founded associations for the second time this decade rose steeply. Although the Netherlands stayed neutral for nearly another year, the economy from that moment was completely regulated. It was typical for the Dutch business system that representatives of companies headed these governmental offices. In fact the Dutch government delegated the organization and regulation of the economy to the businessmen themselves. This was inevitable because like during the First World War, the government lacked the staff and the experience. The government had to rely on the business itself and confined itself to supervising. Dutch business was supposed to work in the general interest, but it was clear that under these circumstances any kind of agreement on production, pricing and distribution was allowed.

When the Netherlands were occupied by the Nazi troops, cooperation between businessmen was intensified and to a large extent even enforced. Under German pressure all trade associations and business interest associations were dissolved and replaced by one organization that copied the corporatist German organization of business. All companies and businessmen from one trade were forced to join their specific group in this corporatist organization. To promote the efficiency of the Dutch economy the Germans also brought the rather liberal Dutch regulations on cartels more in line with their corporatist ideology. The Cartel Decree that was imposed in 1941 by the occupying authority continued to favour cooperation and collusion as a way of allocating goods and organizing the national market. But the difference with the 1935 Act was that cartels could now be initiated and enforced by the government.[62] In fact this Decree, that copied the German situation, stayed largely inert in that respect that the government did not initiate cartels. It seems probable that cartels lost a great deal of their impact or even disappeared. As a result of the German measures economic competition became in fact non-existent because markets were completely controlled. Apart from the regulated production and distribution, the scarcity of most elementary goods created an extensive

[60] Report Business Agreement Shoe-industry, 1939: National Archives, inv. 2.06.001, 8530
[61] L. de Jong, *Het Koninkrijk der Nederlanden in de Tweede Wereldoorlog, deel I, Voorspel* ('s Gravenhage, 1969) 644-648.
[62] Asbeck Brusse &Griffiths, 16-17.

illegal market.[63] It is self-evident that in this situation of fierce regulation on the one hand and illegal trade on the other, cartels could hardly function and were in fact superfluous.

After the war Dutch economic policy focused on reconstruction and economic growth. Wartime planning and economic regulation were continued. Dutch government and business had to cope with the reconstruction of the national economy. In this situation imports and exports were heavily restricted and the government decided on wages and prices. By regulating imports and exports the Dutch market was to a large extend cut off from international competition.[64] In this economically restrictive climate mergers and acquisitions were vitally absent. The scarce data suggest that the Netherlands in this respect followed the international trend (see graph 4). In this situation cartels could flourish. The government was convinced that cartels could stimulate the economy and contribute to price-stability and consumers benefit. At the same time the Netherlands had to deal with international developments that questioned the use of cartels. [65] Coordination and cooperation were more prominent than ever, but the Dutch had to find a way that matched with the international requirements and at the same time fitted into their tradition of collusive practices.

2.3 Clung to the coordinated system (1950-1980)

The amazing growth of the Dutch economy during the 1950s, which has been described as 'the Dutch miracle' was to a large extent based on cooperation and coordination. Economic growth was reached by an active industrialization policy on the one hand and powerful cooperation between employers, employees and government on the other. In fact one could say industrialisation was to a certain extent reached *through* cooperation. Representatives from Dutch business were explicitly invited to discuss the planning and organisation of industrialisation policy with civil servants of the Ministry of Economic affairs.[66] In addition public-private organizations brought together representatives of business and labour in many industries. They discussed problems and subjects of interest to specific parts of the economy. Apart from the application of new legislative rules they engaged in lobbying, enhancement and control of product quality or working conditions and in the stimulation of trade and export. This wide organization was headed by the Social Economic Council in which representatives of labour unions and the main employers' associations together with members appointed by the government, discussed issues of general economic interest like investment climate, social justice and productivity.[67]

Businessmen were not always devoted to this public-private organization in which they had to work closely together with representatives of their employees. Besides, many industry-related issues could not be discussed in the new institutions and in many

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[63] H.A. M. Klemann, *Nederland 1938-1948; Economie en samenleving in jaren van oorlog en bezetting* (Amsterdam: Boom, 2002)
[64] Van Zanden & Griffiths, 184-190.
[65] Mok, *Kartelrecht* ; De Roos, *De economische machtspositie* 42-43;Asbeek Brusse & Griffiths 17-18; P. VerLoren van Themaat, 'Het kartelbeleid sinds de bevrijding' in: *SEW* 1952, 129-153
[66] H. de Liagre Böhl, J. Nekkers en L. Slot, *Nederland industrialiseert ! Politieke en ideologiese strijd rondom het naoorlogse industrialisatiebeleid* (Nijmegen, 1983) 221-222.
[67] SER, *Met raad en daad; visies op de toekomst van de overlegeconomie op nationaal en sectoraal niveau* (Den Haag: SER 2000)

industries such a public-private association did not come to the fore. For these reasons the self-regulating business interest associations that had been dismantled during the war, were revitalized. The re-establishment of business interest associations started immediately after the war. As graph 2 shows this process accelerated from 1947 onward to reach its peak in 1950 and only gradually faded during the fifties. By the mid 1950s most of the pre-war organizations had been revived. This third organisational wave occurred in a period of economic recovery that required cooperation and coordination. Again the foundation of business associations were a clear sign of a coordinated market system.

Many business interest associations existed alongside the public-private institutions. During the late 1960s and early 1970s, when the economy made a downward spiral in a very unfriendly economic climate, these associations became an even more active partner for the government. Lobbying, collecting data and negotiating with trade unions, consumers and other parties of the industry was of growing importance. But this was just one side of the medal. The associations of employers still proved to be an ideal scaffold to make arrangements on prices, production and sales.[68] One could argue that in the Netherlands and other Western countries, from the late fifties and early sixties onwards the claims for higher wages, but also rising competition and growing interference by the government with cartels and other forms of collusion, were an important incentive to form associations of business men. These business associations in this period mainly tried to maintain prices by curtailing production.[69]

In the post war decades cartels again played a vital role in the Dutch coordinated business system. Especially after economic policy was gradually liberalised from 1950 onwards, they were seen as instruments stabilising prices and wages. In fact hundreds of daily products ranging from zippers and soles to cigars, beer, margarine, soap and salt were affected by agreements on prices, production or other cartel-like agreements.[70] Above all cartels were considered to contribute to an efficient coordination of production. The general climate of mutual agreement and understanding stimulated this kind of arrangements between businessmen. Though cartel-arrangements by nature often were secret, they were definitely not seen as illegal. This only changed gradually in the fifties as a result of external pressure.

As in other European countries, decartelization became an issue in the Netherlands. The United States constantly stressed the negative aspects of restrictive competition and the abuse of cartels. In 1949 the Americans even started an anti-cartel campaign and liberalization of the European economies became one of the major conditions for financial support in the Marshall Plan.[71] The American anti-cartel crusade – as Asbeek-Brusse and Griffiths called it – had little success in the Netherlands and cartels did not disappear. Cartels and gentlemen's agreements continued to be popular with business as well as governments and were generally accepted.[72] On the other hand,

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[68] *SER-almanak voor Sociaal-Economisch Nederland* (Den Haag: SER 1980); B. de Vroom en B.F. van Waarden, 'Ondernemersorganisaties als machtsmiddel (I)', in: *ESB* 01-08-1984, 667

[69] B. Bouwens, *Focus op formaat,* 210-213

[70] National Archives, 2.06.063, Economische Raad, inv.99, Nota overzicht kartelregistratie, Bijlage B [jan. 1949]

[71] A.S. Milward, *The reconstruction of Western Europe 1945*-1951 London: Methuen & Co 1984) 56-61; W. Wells, Antitrust & the formation of the postwar world (New York 2002) . 157-187.

[72] Asbeek Brusse & Griffiths, 15-39; Sluyterman, *Dutch enterprise,* 157-159

the pressure of the Americans could not be ignored and placed the discussion on restrictive trade and competition policies on the political agenda.[73] The Dutch government became increasingly concerned to create a law that made a greater degree of regulation, supervision and control on cartels possible. Already in 1950 it proposed some adjustments to the existing law which would make it possible to fight abuses of monopolists. [74]

The founding of the EEC again put cartel policy on the agenda. The EEC proposed to ban cartels, but the Dutch government in this respect did not align with European policy. The Social Economic Council in discussing the concepts of the EEC treaty explicitly stated that a ban on cartels would 'disown the technical, social and economic advantages that cooperation between companies in any shape can bring'.[75] With the Economic Competition Act that became effective in 1958 the Dutch government could act against cartelization, but at the same time a regulation of competition could be declared generally binding. This act, which if fact endorsed cartels as long as they were not contrary to the public benefit, was a product of the economic and political reality of these days.

In the Netherlands of the 1950s and 1960s coordination clearly prevailed over the liberal market economy. Cartels and gentlemen's agreements were part of the economic coordination. As an institution in which large parts of the business community participated, cartels were supposed to have a positive impact on the stability of prices and income. And even in industrialization and regional policies collusive practices could be supportive.[76] The Dutch considered the law of 1958 as an essentially flexible instrument and a tool to stabilize prices and inhibit inflation. In the European perspective this was rather exceptional but it fitted in the general and traditional Dutch belief in the benefits of business interest associations and self-regulation. Self-regulation and coordination were preferred to the invisible hand of market forces. Nevertheless the importance of cartels waned and as graph 3 shows during the 1970's the number of formal agreements sharply decreased. This was mainly due to external dynamics. The economic slowdown and the more complex international business environment made cartel agreements more vulnerable. Besides, the European legislation on competition caused uncertainty about the legal possibilities. The use of alternative strategic tools, especially mergers and acquisitions, became more prominent.

Mergers and acquisitions had always been an instrument for external expansion. Many Dutch firms, also smaller ones and family firms, used horizontal concentration as a way to benefit from economies of scale while at the same time eliminating competitors. Nevertheless concentration activity in the Netherlands, though it roughly followed international trends, in the first half of the twentieth century was rather low, as we saw in the first section. A couple of striking cross border mergers however gave birth to the chief Dutch multinationals in the first decades if this century. This rather inert picture

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[73] H.G. Schröter, *Americanization of the European economy; a compact survey of the American economic influence in Europe since the 1880s* (Dordrecht: Springer 2005) 67-71
[74] Minutes Estates General, II 1953-1954, Memorie van Toelichting, 3295, nummer 3; zie ook: Mok, *Kartelrecht* , 27
[75] SER, Verslag van de werkzaamheden van de Commissie Europese Economische Integratie, publication by the SER 1957, nr. 6, 57 [courtesy Keetie Sluyterman] .
[76] Asbeek Brusse & Griffiths, 22-23; H.M.J. Quaedvlieg, *Ondernemende autoriteiten* (Deventer: Kluwer 2001) 44-52

changed radically in the 1960s. As graph 7 shows the number of mergers and acquisitions more than quadrupled between 1958 and 1965. Merger activity remained on a relatively high level also during the economic downturn of the 1970s. When mergers and acquisitions became a more important strategic instrument they characteristically were regulated and a committee was set up. In 1970 the Social Economic Council (SER), representing government as well as business and labour interest associations, drafted rules of conduct in case of mergers. Companies were required to follow a set of rules when they intended to merge or to acquire another company.[77] Thus mergers and acquisitions were framed into the coordinated system.

After 1965 corporate strategies shifted to vertical integration and diversification instead of horizontal concentration. Also in the Netherlands the rise of the conglomerate turned out to be the most eye-catching appearance of this period. Firms diversified and entered unrelated markets. One should however not exaggerate the impact of conglomerate concentration. Empirical research from the early 1970s showed that only about 15 percent of the mergers and acquisitions that took place during the second half of the 1960s brought together unrelated firms.[78] Apparently horizontal concentration and the elimination of competition remained strong drivers for the concentration process. Especially in the manufacturing industry like textiles, paper and board, machinery and shipbuilding, mergers and acquisitions were frequently used to confront mounting competition. Striking cross-border mergers between the Dutch firms Enka, Fokker and Hoogovens and their German partners Glanzstoff, VFW and Hoesch gave this third merger wave an international outlook. These mergers however failed partly because the diverging national institutions did not fit with the cross border problems these companies run into during the 1970s.[79]

There are various reasons why a merger wave occurred in this period.[80] The literature that connects merger and acquisition activity to economic factors is most influential. As H.W. de Jong argued in his theory on the dynamics of market structures and processes, the merger wave of the 1960s was the characteristic answer of an industry entering the phases of maturity and decline, while at the same time the economic prospects were still favourable.[81] Though this theory might be attractive to explain the phenomenon of mergers and acquisitions in the 1960s, it doesn't reveal anything about the arguments of businessmen to amalgamate. As Schenk argues in his bandwagon theory merger activity can to a large extent be explained by the behaviour of managers copying their competitors thus bringing about a merger wave.[82]

The most commonly used argument for takeovers was and still is synergy, including economies of scale and scope. This synergy motive suggests that mergers and acquisitions occur because of incremental gains that result from combining the resources of both the bidding and the target firms. Concentration can cause assets to be better

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[77] SER-besluit Fusiegedragsregels, 15 mei 1970.
[78] SMO, *Fusies, een terreinverkenning* (The Hague: SMO 1970)
[79] M. van Os, *Grensoverschrijdende fusies in de twintigste eeuw*(Amsterdam 2009) 101-130.
[80] H.W. de Jong, 'Fusiegolven: theorie en praktijk' in: Tijdschrift voor Bedrijfsadministratie 102 (1998) 1218, 446-451, compare to: B. Bouwens, Focus op Formaat; strategie, schaalvergroting en concentratie in de Nederlandse papier- en kartonindustrie, 1945-1993 (Utrecht 2003) 46-59.
[81] H.W. de Jong, *Dynamische markttheorie* (Weteringbrug: Edclusa BV[4] 1996)
[82] H. Schenk, Economie en strategie van de fusieparadox, in: J.C.K.W. Bartel et al, *Fusies en acquisities. Fundamentele aspecten van fusies en acquisities* (Dordrecht, 2002), 62-133.

utilized as a consequence of indivisibilities and as a result increase market power and the possibility to extract surplus at the expense of competitors (and consumers). In this argument mergers and acquisitions can be seen as a logical sequence or substitute of cartels and gentlemen's agreements. Thus cartels and mergers and acquisitions can be seen as communicating vessels reacting to a changing economic situation, but also dependent on the institutional context

Conclusion

This paper distinguished three different forms of collusion: business interest associations, cartels and mergers and acquisitions. Existing theory on economics and industrial organization often consider them as separate phenomena. We tried to make clear that these collusive practices in the Netherlands should not be seen as autonomous and static features, but seem to have a certain sequence and interrelatedness. One of our main conclusions is: don't be fooled by labels. Business interest associations facilitated a collective strategy of firms within a specific branch of industry to cease and terminate competition for a while. Cartel agreements often were a result of business meetings in these associations. The fact that these businessmen knew each other promoted a further process of concentration, especially when the economic circumstances en institutional forces induced the use of new strategic tools. The merger wave that occurred from the mid 1960s onwards illustrated this process. The idea that certain forms and degrees of collusion were predominant in different periods is therefore not accurate. Cartels flourished during the economic *hausse* of the 1950s and business interest associations and mergers and acquisitions did not always follow the course theories on industrial organization predict.

The structure and the performance of the industry as mentioned in the first section of the paper are just one side of the medal. It is clear that pure economic assumptions cannot completely explain the occurrence of the different forms and degrees of collusion. Collusion is not a straight subject and there are still a lot of mysteries and discussions on the dynamics of it. Each form of collusion has its own intrinsic value for businessmen and also – as we have seen –its own image in the perception of the public. Both significance and perception of the different collusive practices could change over time and even have an opposing connotation in different time periods. Cartels could for example safeguard employment and promote world peace in one period, stabilize prices and prevent inflation in another and could be seen as criminal in a third phase. To focus on only the economic edge of collusion is insufficient to explain the existence of business interest associations, cartels and mergers and acquisitions.

The second part of the paper made clear that traditions, formal and informal rules are important in shaping market structures. Concentration alone is not a sufficient indicator of competitive conditions in any particular industry. An analysis of industry traditions and the organisational structures and objectives of firms and government(s) is required to build a meaningful picture of competitive conditions in a market. The Dutch business system at the turn of the century was clearly a liberal system in which the government stuck to its 19^{th} century laissez faire position. Changing industrial relations and an emerging social policy stimulated the formation of business interest associations. Growing competition at the same time drove businessmen into cartel-like forms of collusion. The government ignored the existence of these agreements and refrained from action. These organisations and agreements however were the first signs of a business system that evolved in a more coordinate direction. During the 1930s Dutch government began to interfere intensely with social and economic relations to counter the effects of the crisis. The sudden boost of cartels, which were now stimulated by the government and legally endorsed, was a clear sign of this alteration. This process was intensified by the looming war and the occupation. Dutch business was forced into organisations and had to deal with dense regulations. The business system at the end of the war can certainly be seen as a coordinated system. The Dutch miracle was to a large extent build on cooperation and regulation. Business interest organisations flourished, cartels were seen as pillars of price stability and steady economic growth. Only when the economic growth began to hamper in the second half of the 1960s the importance of cartels faded little by little. They were replaced by mergers and acquisitions as strategic means to cope with declining profits and mounting competition. Dutch government actively supported this process. Only in the 1980s it gradually retreated from direct economic interference and it also altered its position towards cartels. The Dutch business system at the end of the twentieth century indeed seemed to develop into a more liberal direction again, in which competition replaced coordination in the configuration of institutions and market-relations.