The invisible handshake: cartelisation in the Netherlands, 1930-1980

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Cartels were among the most important phenomena shaping market structures in the 20th century. Nowadays, cartels are seen as illegal practices and the word 'cartel' tends to get a criminal connotation. Cartels are surrounded with an air of secretiveness and for that reason the handshake that symbolically concluded the arrangement was invisible by nature. Since the 1990's the EU has formulated a rather strict anti-cartel policy and actively fights cartels. Early this year three of the most important Dutch breweries were confronted with the implications of this policy. Heineken, Grolsch and Bavaria were fined for their illegal arrangements by which they had split up the Dutch market and kept prices on a high level. Dutch newspapers in their headlines reported that the Dutch EU-commissioner on competition Neelie Smit-Kroes - to the great annoyance of the brewers - fined them with millions of euros. With a total sum of 273 million euros it was the highest fine for collusion ever that Dutch companies received. By this action the EU made it plain that these kinds of collusive arrangements were no longer tolerated. The EU had made a long way to reach this point. The reforms of 2004, in which greater policy coherence and more consistent enforcement could be seen as the most important results, were the product of extensive discussions.[1]

Since its inception in 1962 the activities of the EC in the field of competition policy only gradually became more stringent. This took a long time because during the interwar period cartels were generally accepted and found useful in supporting and strengthening the national economies, and after World War II cartels were tolerated or even stimulated for a long time. In this period the EC-member states had to cope with the idea of a supra-national competition policy, while at the same time they had to formulate their own domestic legislation in this field (with the exception of Germany

[1] See for example: L. McGowan, 'Europeanization unleashed and rebounding: assessing the modernization of EU cartel policy' in: *Journal of European Public Policy* 12 (2005) 6, 986-1004

that had already a competition act in 1957). Differences in formal and informal rules and routines – business systems – did not facilitate an easy assimilation of national models at once. This process will be illustrated in the case of the Netherlands.

Like many other countries, the Netherlands introduced legislation in favour of cartels in the 1930s. This legislation was rooted in the Dutch tradition of free enterprise and self-regulation. After World War II Dutch government and business had to cope with the reconstruction of the national economy. To that end the business system of the liberal market that dominated until the 1930's was replaced by a coordinated market economy. In this situation imports and exports were heavily restricted and the government decided on wages and prices. At the same time the Netherlands had to handle several international developments – i.c. the American influence and the establishment of the EEC - that questioned the use of cartels. Co-operation was not abolished, but the Dutch had to find a way that matched with the international requirements and at the same time fit into the tradition of collusive practices. This paper deals with the continuity and changes in the perception of cartelisation in the Netherlands and the instruments that were developed.

Cartels in a small open economy

The Dutch government traditionally was a strong proponent of free trade and the functioning of the market. 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 way British business was organized before World War I. As a result cartels and other forms of collusion were seen as a natural and completely legal way of organising business. In the small and open Dutch economy, which was dominated by undersized and heterogeneous family firms, cartel-agreements were supposed not to have much effect. The absence of trade distorting policies such as taxes, subsidies, regulations or laws, put Dutch businessmen in direct competition with foreign competitors, who had an easy access to the Dutch market. Import duties were rather low and their end was to fill up the state treasury and not to protect domestic business. The general opinion was that as a result of this openness, cartels, trusts, syndicates and other forms of collusion between businessmen would have little use. The free market produced a natural price and especially price and allocation

cartels would– according to the politicians – not be easy to enforce.[2] This was a very strong and enduring principle that was widely accepted in the Netherlands in the 1920's and 1930's.

In fact the importance of cartels was definitely underestimated in those days. As a result of the general indifference regarding cartels, they flourished in the Dutch economy in the twenties and thirties. Dutch multinationals were actively engaged in international cartels in these years. Phillips participated in the famous Phoebus cartel for light bulbs, Royal Dutch/Shell with the Achnacarry-cartel made arrangements with its most important competitors on the prices for oil in the international trade and AKU had an agreement with IG Farben on the sales of industrial silk. These international cartels often were successful because they were supported by national cartels that regulated the home-market. Because in that way the national market was protected against fierce international competition, national governments in most cases supported participation in cartels.[3] It was estimated that in the Netherlands in 1930 a third of the hundred biggest companies in one way or another participated in a national or international cartel.[4]

These cartels were not seen as a threat to the functioning of the economy. In fact they were accepted as part of the traditional *laissez faire* policy and their existence, if it was known at all, was neglected. As a result of the general indifference and negligence cartels were largely invisible. At the same time partners in cartels tended to be confidential because of the character of their arrangements. The traditional *laissez faire* policy that favoured the existence of cartels gradually altered during the Great Depression. The Dutch government - in sharp contrast with its former policy - actively engaged in economic regulation of the market. In for example the production of vegetable oil and fats it even pressed companies to form a national cartel to protect the home market. The first example in this branch was the *Margarineconventie* formed in 1933 to support the production of butter.[5]

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[2] K.E. Sluyterman, *Dutch enterprise in the twentieth century; business strategies in a small open economy* (London/New York: Routledge 2005) 52-56. See for example: 'Note Minister of Finance jhr. mr. D.J. de Geer), 21-03-1922': National Archives, inv. 2.06.001, 5885;

[3] D. Arnoldus,'Nederlandse kartelvorming in de oliën en vettenindustrie in de jaren dertig', in: *NEHA Jaarboek 60* (1997), 226-257

[4] K.E. Sluyterman/H.J.M. Winkelman, 'Dutch family firm confronted with Chandler's dynamics of industrial capitalism, 1890-1940', *Business History* 35 (1999), 152-183, 154-155.

[5] D. Arnoldus, 'Nederlandse kartelvorming' 229-230.

In general cartels in these years attracted the attention of the government and public as a means to limit the disastrous effects of the economic depression. The argument that cartels maintained profits, production facilities and employment and therefore helped to stop the wave of collapses that characterized these years became vigorous and went hand in hand with other trade distorting policies. 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 law *fixant les conditions dans lesquelles des accords professionals peuvent être rende obligatoires en période de crise* in France.[6] Dutch entrepreneurs also pressed the government to take steps in this direction.

Cartels under regulation: Business Agreements Act of 1935

In 1934 the government proposed a bill to regulate cartels and to endorse co-operation to cease unfair and unhealthy competition that put consumers at a disadvantage. A broad majority in Parliament supported the bill that became law in the autumn of 1935, the Business Agreements Act .[7] The liberals voted in favour of the bill even though it was explicitly stated that it was not a specific temporary regulation because of the crisis. With this law the government got the power to regulate the endorsement of cartel-agreements and – if necessary - to coerce membership upon uncooperative firms and thus incorporate free riders. So, an agreement could be prohibited or enforced for a specific branch of industry. The law 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. Business interest organisations played a key role in this process.[8]

The Business Agreements Act of 1935 seemed a sensible and practical tool to reduce competition in a period of economic depression and deadly competition. When it came to decision-making however it proved difficult to make an agreement that would be fair to all parties and at the same time be economically rational. The law

[6] Report 'Verbindendverklaren van ondernemersovereenkomsten in verschillende landen' 4-10-1935: National Archives, inv. 2.06.001, 8704

[7] Officially the law was called *Wet op de Algemeen verbindend en onverbindend verklaren van ondernemersovereenkomsten.*

[8] J. Bruggeman and A. Camijn, *Ondernemers verbonden; 100 jaar centrale ondernemingsorganisaties in Nederland* (Wormer: Inmerc 1999) 167; Report Business Agreement Shoe-industry, 1939: National Archives, inv. 2.06.001, 8530

gave the government the possibility to intervene and enforce cooperation when this was to the public benefit. The government however did not interfere with the existing cartels, but supported them as in the case of the *Margarineconventie,* or did suggestions to optimise them. The law also created the possibility to unbind agreements, but this power was never used by the government. The daily practice of the Business Agreement Act law seems to underline the somewhat dual position of this new instrument of intervention. The government expected voluntariness and had only marginal legal appliances to end a situation of unfair competition and force outsiders. The applicant companies on the other hand, expected fierce measures to regulate competition. The time-consuming bureaucratic process illustrates also a certain lack of adroitness of the government. In short, the Act was not an overwhelming success. It did not really stimulate the cooperation between companies to reach cartel-agreements and their number was so small that it is hard to maintain that the longevity of agreements and the profitability was improved by government interference. An important reason for the meagre achievement of the Act is the fact that branches of industries were unaccustomed with state intervention and they certainly mistrusted the new Act. They instead preferred to rely on their traditional ways of cooperation and colluding. Dutch companies continued to make their own cartel-agreements that were in most cases invisible for public and politicians. A second reason is the paralysed status of the Act. The limited possibilities to enforce the agreements and to have influence on these matters of business that really mattered as prices, quotas and the reduction of production units, deteriorated the good intentions of the state. In 1939, when the prolongation of the Act was discussed, only seven agreements had a declaration of 'generally binding'.[9]

Cartels in a controlled market

In fact the looming war at that moment had a much greater impact on the Dutch economy and the way business was organised. To effectuate the distribution during the Sudetencrisis governmental offices (Rijksbureau's) were created for each branch that were to be the administrative connection between import, production and trade. Offices for textiles, fuels, metals etc. would in fact vertically organise the complete business. From each branch of industry leading businessmen were asked to become

[9] Commission to Minister of Economic Affairs, 31-10-1939: National Archives, inv. 2.06.001, 3762

member of the Governmental offices. These offices were already instituted in 1936 , but became effective when the war started in august 1939. Within five days twelve Governmental Offices were activated, all with their own staff, office, telephone connections, director and council.[10]

Although the Netherlands stayed neutral for another half year, the economy from that moment was completely regulated. It was typical for the Dutch business system that representatives of companies headed these offices. The secretary of the branch organisation for paper and board for example, became director of the office for paper and board production.[11] In fact the Dutch government to a large extent delegated the organisation and regulation of the economy to the businessmen themselves. This was inevitable because the government lacked the staff and the experience. It had to rely on the business 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.

After the Netherlands was occupied, cooperation between businessmen was intensified and to a large extent even enforced. In the summer of 1940 the Germans compelled a group of businessmen led by the Rotterdam banker H.L. Woltersom to create a committee that functioned as a liaison between Dutch industry and the occupying authorities. In the fall of the same the Germans dismantled all business associations. From that moment the Woltersom-organisation, in which some Dutch national-socialists participated, became – next to the Rijksbureau's – the only legal organisation of the Dutch industry. Dutch business was organised according to the German fascist authoritarian system.[12]

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 instead of the Business Agreement Act, continued to favour cooperation and collusion as a way of allocating goods and organising the national market. The Decree differed with the existing law in that the government, like in Germany, could now initiate, impose and

[10] L. de Jong, *Het Koninkrijk der Nederlanden in de Tweede Wereldoorlog, deel I, Voorspel* ('s Gravenhage, 1969) 644-648.
[11] B. Bouwens, *Focus op formaat; strategie, schaalvergroting en concentratie in de Nederlandse papier- en kartonindustrie, 1945-1993* (Utrecht 2003) 110-111
[12] H. Klemann, *Nederland 1938-1948. Economie en samenleving in jaren van oorlog en bezetting* (Amsterdam: Boom 2002), 231-302.

prohibit a cartel. Apart from that cartels now had to be registered and a confidential register was created. An independent commission had to advise on sanctions against outsiders.[13]

In fact this Decree, that copied the German situation, stayed largely inert in that respect that the government as far as is known, did not initiate cartels. It seems probable that cartels lost a great deal of their impact or even disappeared. During the war economic competition became in fact non-existent because markets were completely controlled by the occupier. Apart from the regulated production and distribution, the scarcity of most elementary goods created an extensive illegal market. It is self-evident that in this situation of fierce regulation on one hand and illegal trade on the other, cartels could hardly function and were in fact superfluous.

After the war Dutch economic policy focussed on post-war reconstruction and economic growth. The coordinated market system still predominated to cope with the disastrous economic situation. In fact wartime planning and economic regulation was continued. The cooperation within branches that had been dictated by the war was now embraced to promote national reconstruction and to maximise production. At the same time an intricate system of consultation and mutual agreement was created. Employers and employees discussed economic policy and, together with the government, decided on wages and prices.[14]

By regulating imports and exports the Dutch market was to a large extend cut off from international competition. In this situation cartels could flourish. Dutch entrepreneurs were protesting vigorously against the coordination and control by the state, but they rightly saw that this opened good opportunities for their traditional inclination towards mutual agreements and collusion. The Dutch breweries for example continued their pre-war cooperation in the Central Beer Office. After the war an agreement on prices and discounts was reached. To promote the consumption of beer they also launched a joint campaign under the slogan '*Het bier is weer best!*' In 1949 five breweries settled an agreement to maintain the market situation and they agreed to respect each other's clients. These agreements were not secret nor were they contested. The government and the public in fact considered cartels to be beneficial to

[13] W. Asbeek Brusse and R. Griffiths, 'Paradise lost or paradise regained?; cartel policy and cartel legislation in the Netherlands' in: S. Martin (ed.) *Competition policy in Europe* (Amsterdam: Elsevier 1998) 16-17.
[14] Ibidem, 17-18.

the economic recovery and they were not seen as a threat to the functioning of the market. Only in 1956 the agreements were dissolved under the pressure of the ministry of Economic Affairs.[15] By then the economic and international political situation had changed drastically.

The Act of 1958

The political and economic circumstances of the post war period challenged the Dutch 'business system' and especially the traditional inclination towards collusion. As in other European countries, decartelisation in the 1950's became an important issue in the Netherlands. The United States, where anti-trust legislation dates back to the Sherman Act of 1890, advocated this policy and constantly stressed the negative aspects of restrictive competition and the abuse of cartels. In 1949 the Americans even started an anti-cartel campaign and liberalisation of the European economies became one of the major conditions for financial support in the Marshall Plan.[16] The American anti-cartel crusade – as Asbeek-Brusse and Griffiths called it – was not a big success and cartels did not disappear. Cartels and gentlemen's agreements continued to be popular with companies and governments and even were accepted by the public.[17] On the other hand, the pressure of the Americans could not be ignored and placed the discussion on restrictive trade and competition policies on the political agenda.[18]

In the Netherlands the government became increasingly concerned to create legislation that made a greater degree of regulation, supervision and control on cartels possible. A first step was taken in 1951 with the Suspension of Business Regulation Act. This law created the possibility to prohibit a cartel when this stood out against the general interest. This decisive criterion for judging a regulation of competition or dominant position was however not defined by the law and left to be interpreted by

[15] K.E. Sluyterman, *Dutch enterprise* 157-158.
[16] J.L. van Zanden, *Een klein land in de 20e eeuw; economische geschiedenis van Nederland, 1914-1995* (Utrecht: Het Spectrum 1997) 178-179; A.S. Milward, *The reconstruction of Western Europe 1945*-1951 (London:, 1984) 56-61
[17] W. Asbeek Brusse and R. Griffiths, 'Paradise lost or paradise regained?'15-39; K.E. Sluyterman, *Dutch enterprise*, 157-159
[18] 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

the relevant authorities. This was also the case with the Economic Competition Act, which came into force in 1958.

The aim of this act was the safeguarding of a system of economic competition that was conducive to or at least not contrary to the general welfare or the public interest.[19] The new law extended its exposure to include the service sector, i.c. trade, transport, banking and insurance. In contrast to earlier legislation the Economic Competition Act dealt with restrictive practices in terms of two concepts: a 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 relationship in trade or industry which 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 general interest two types of action could be taken. First, the agreement might be declared to be wholly or partly non-binding. This means that the parties to the agreement could no longer enforce it under Civil Law and that any subsequent action in compliance with the agreement was even an offence under Criminal Law. Secondly, a general declaration could be made that restrictions of a certain kind or scope were non-binding. This not only implied the ineffectiveness of the specified kind but also prohibited subsequent agreements of such a kind. However, both declarations were only valid for five years, though the general declaration could be extended by statute. This limit illustrates the essentially short-term attitude of the Dutch legislation. The neutrality of the 1958 Act and the continuity with the 1935 Act was also illustrated by the fact that it stated that a regulation of competition could be declared generally binding. Thus, 'if the number, or joint turnover, of the concerned firms in a regulation of competition in a sector was considerably larger than the number or joint turnover of the other firms, and if the interest of this sector was in agreement with the general interest the Ministry of Economic Affairs might declare the agreement generally binding on the owners of all such firms'.[20] In general the Dutch restrictive practice policy had since 1945 become only gradually more rigorous. The two main differences between the 1958 Act and the earlier Cartel Degree of 1941 reflect this: the extension of the policy to new sectors of the economy and the new possibility of

[19] P.J. Uitermark, *Econonomische mededinging en algemeen belang* (Groningen: Wolters-Noordhoff 1990) 314-326
[20] Ibid.; M.R. Mok, *Kartelrecht* (Zwolle: Tjeenk Willink 1998) 13-15

prohibiting certain types of restrictive agreements. Nevertheless, the Dutch legislation was much milder than that of, for example, Great Britain or Germany.[21] As one Dutch commentator stated in 1960: 'Complaints about undue severity or too stringent an application of the Act are seldom heard'.[22]

The activity under the Economic Competition Act was not very impressive. Until 1980 only two agreements were suspended. The label 'general interest' was vague and offered no tangible path for prosecution. However, this is just part of the explanation why the Ministry of Economic Affairs failed to reduce the number of agreements with legal instruments. As Griffiths and others concluded, the law itself was responsible for this development. Initially the Economic Competition Act was not directed against collusion, but only meant to regulate collusive practices and protect public interest.. Moreover, the authorities reacted only on complaints.[23] This was the case in the early 1960s when the Dutch Consumers' Association started a campaign against collective resale price maintenance. The minister of economic Affair J.W. de Pous prepared an act to extinct this kind of collusion. In 1964 specific regulations under the 1958 law outlawed collective vertical price agreements. 56 national agreements were registered in 1964. One third of these agreements – for example bicycles, books, fertilizers, medicines and stoves - got authorization to continue with their practices, which was motivated by the hope that collusion would strengthen these arduous branches of industry or stimulate general cultural welfare. The majority of the requests were rejected, but in most cases firms altered their agreements slightly and, as a consequence, no longer had to ask permission.[24] This was no big problem for the Ministry of Economic Affairs. When the general interest was affected by restrictive practices, most problems were solved by discussions between parties and the ministry. Publication of data – which was one of the ultimate instruments of the

[21] In Germany and France the criterion for judging a restrictive practice, for example, was not the public interest but that of 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 and French legislation was based on prohibition, where the Dutch Economic Competition Act was focused on abuse.

[22] H.W. Wertheimer, 'The anti-trust law of the Netherlands' in: *FBI Review* (august 1960) 45; quoted in: M. Forsyth, 'Cartel policy and the common market' in : *Political and Economic Planning* 28 (1962) 464, 227

[23] W. Asbeek Brusse and R. Griffiths, 'Paradise lost or paradise regained?' 22-23

[24] R. Kruithof, *De verticale prijsbinding van merkartikelen; een vergelijkende studie van het recht van de zes lidstaten van e Europese Economische Gemeenschap* (Brussel 1973) 203-204; M. 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

Economic Competition Act – was effectively avoided and profound investigations in the how's and why's of collusion did not occur.

The Economic Competition Act was a construction of the economic reality of these days. In the Netherlands of the 1950s and 1960s coordination still prevailed above the liberal market economy. Cartels and gentlemen's agreements were part of the economic policy. As an institution in which large parts of the business community participated, cartels had a positive impact on the stability of prices and income. And even towards industrialization and regional policies collusive practices could be supportive.[25] In the 1980s this attitude towards cartels ultimately resulted in a public discussion on the restrictive competition policy in the cartel paradise of Europe called the Netherlands. It was in this period that discussions on a new and more restrictive legislation were launched.[26]

Evidence

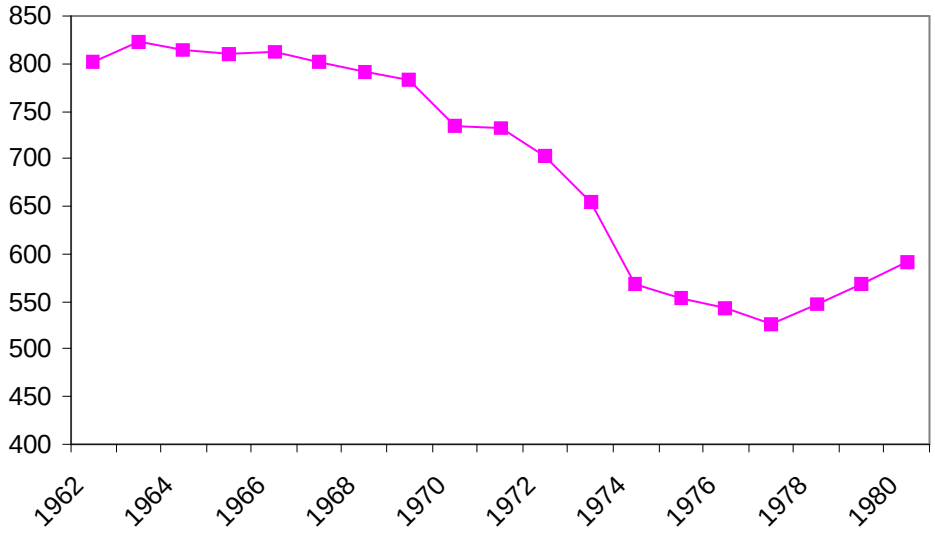
The Economic Competition Act was based on registration. Regulations on competition had to be notified within a month of being made to the Ministry of Economic Affairs. The register, however, was not public. Publicity was regarded rather as one means of taking action against a regulation on competition which was found to be 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 did not have to be registered. In 1961 the Ministry of Economic Affairs announced that only agreements with a turnover of one million guilders and in which 60 percent of the total revenues of a trade or industry were involved had to be registered.[27] 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

[25] W. Asbeek Brusse and R. Griffiths, 'Paradise lost or paradise regained?' 22-23; H.M.J. Quaedvlieg, *Ondernemende autoriteiten* (Deventer: Kluwer 2001) 44-52
[26] H.W. de Jong, 'Nederland, het kartelparadijs van Europa' in: *ESB*, 14-3-1990
[27] HSG, 1961-1962, B 6689; see also: P.J. Uitermark, *Economische mededinging en algemeen belang* 333

the existing agreements were known at the Ministry.[28] The data do have serious limitations. The register was/is secret and therefore, it is impossible to identify the participants in each agreement, to make out the stability of the arrangements and to draw conclusions on the question of what the cartels brought about. Nevertheless the facts and figures deducted from the cartel register give some impression of scale and scope of this phenomenon.

Graph 1 illustrates the number of cartel agreements in the Netherlands during the 1960s and 1970s. Despite the fact that the government did not make cartels illegal, the number of cartels gradually declined from the early 1960s onwards. During the economic crises of the 1970s this decline developed even more rapidly. Obviously, the old paradigm of Friedrich Kleinwächter 'Kartelle sind Kinder der Not' did not work out.[29] The presumption of Naomi Lamoreaux and others that cyclical downturns undermined cartels seems to be verified in graph 1.[30]

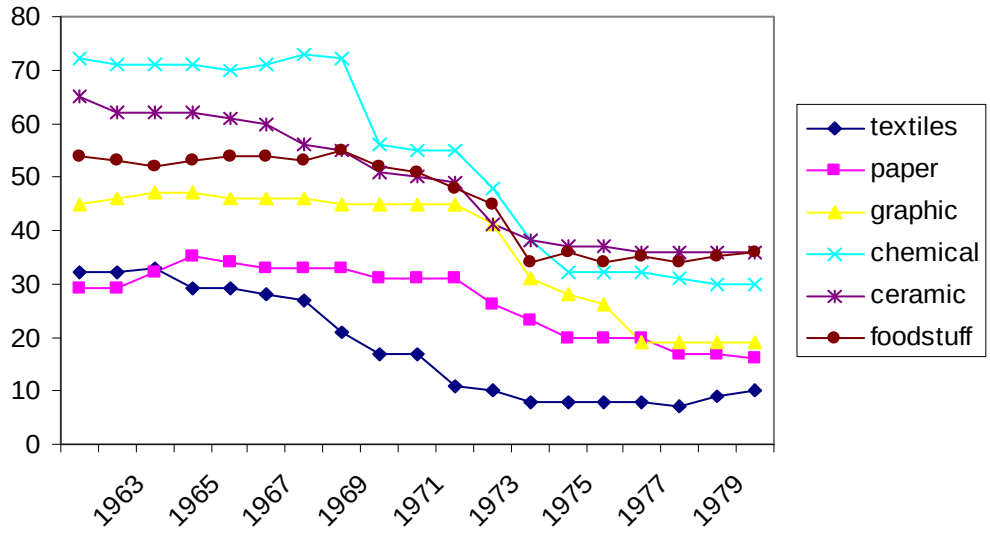
Graph 1: Cartel agreements in the Netherlands, 1962-1980[31]



[28] De Jong 'Nederland: het kartelparadijs.'
[29] 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; Mok, 21
[30] 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
[31] 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

Cartels occurred in all branches of industry and trade. The chemical industry, graphic industry and the metal industry were among the most coordinated industries. This is not strange. These industrial sectors were significant in the Dutch economy and all relatively strongly capital-based.[32] These firms that enjoyed similar high fixed costs found it more attractive to collude and 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 relatively easy come together.[33] Graph 2 shows however that other industries like foodstuffs and textiles too were familiar with cartels and gentlemen's agreements. Although the textile industries showed a slow economic decline in the 1960s the number of cartels was reduced by almost 75 percent. Again, the assumptions of Kleinwächter and others seem not to fit to this specific case.[34] Although the pace of decline varied between industries, the similar development is nevertheless striking.

Graph 2: Cartel agreements in the Netherlands, selected industries, 1962-1980[35]



The cartels and gentlemen's agreements in the Netherlands reflected many different forms and objectives. It should be stressed that cartels are not a homogeneous form of

[32] See for example: H.J. de Jong, *De Nederlandse industrie 1913-1965; een vergelijkende analyse op basis van de productiestatistieken* (Amsterdam: NEHA 1999) 9-14
[33] Levenstein/ Suslow, 43-95; F.M. Scherer and D. Ross, *Industrial market structure and economic performance* (Boston: Houghton Mifflin[3] 1990) 285-294, 307
[34] One of the most important studies in this field was Palmers test of the hypothesis that firms in declining industries were more likely to collude than firms in expanding industries. He found that in the US (1966-1970) this hypothesis was consistent. See: J. Palmer, 'Some economic conditions conducive to collusion' in: *Journal of Economic Issue* 6 (1972) 29-38
[35] See note graph 1.

organisation, nor do they have similar ambitions. Observers that tried to classify the types of cartels often disagreed. The Dutch Ministry of Economic Affairs used its own classification that identified several categories: price, quota, allocation, standardisation and specialisation cartels (condition), financial agreement and rebate and exclusive trade. Many categories fell into several types. 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. It is interesting to notice that collusion as a strategy became less attractive in this period, but that the classification of all agreements and their significance persisted over time.

Table 1 shows a categorization of different organisation forms of cartels and gentlemen's agreements in the Netherlands in 1962 and 1980. It illustrates the multi-objectivity of the cartel phenomenon..

Table 1: share of different forms of cartels and gentlemen's agreements, selected industries, in percentages, 1962 and 1980[36]

1962	quota	allocation	Price-fixing	Rebate and exclusive trade	Condition
Total	3.3	12.5	41.3	7.7	15
Textiles	7.9	11.1	50.8	6.3	11.9
Chemical industry	2.5	25.6	31.9	3.8	21.9
Paper and board	3.3	18.2	42.4	3.0	16.7
Foodstuff	5.8	18.4	29.1	8.7	16.5
Graphic industries	7.2	4.3	40.6	8.7	17.4
1980					
Total	2.4	13.2	33.5	4.9	17.7
Textiles	8.3	12.5	20.8	8.3	25
Chemical industry	2.6	19.5	32.5	7.8	24.7
Paper and board	5.8	10.5	47.4	5.2	13.2
Foodstuff	10.8	18.5	27.7	4.6	12.3
Graphic	3.7	7.4	48.2	11.1	14.8

[36] Source: see note graph 1; this table shows only the most significant types.

industries					

It becomes clear from this table that price-fixing as an instrument became less significant. From the early 1960s on competition policy in practice lost prominence to price policy. The government lost interest into the application of the Economic Competition Act as an instrument to stabilize price and income.[37] On the other hand, evidence shows that firms enter cartel agreements to protect themselves rather than because of a desire to exploit markets. In many studies price-fixing seems only to be of secondary importance.[38]

The general development conceals however considerable differences between industries and trades. Not all industries made use of the different types of cartel arrangements in the same amount or intensity (see table 1). As a matter of fact, each trade or industry experienced its own features and dynamics. In the early 1960s the price-fixing cartels dominated the textile industry. Compared to other industries, these firms were frontrunners in arranging agreements on prices. Over 50 percent of all agreements were price-fixing cartels. During the 1960s and 1970s the number of cartels decreased dramatically. Related to the unfavourable position and slow decline of this industry, one could be astonished. The loss of the colonial market, the rising competition of low-wage countries, the worldwide overcapacity in the cotton industry, the increasing labour costs and the downward spiral of turnover and profit did not invigorate collusion through cartels or gentlemen's agreements.[39] In 1970 no more than 35 percent of all agreements in this industry were related to minimum or fixed prices. Ten years afterwards the ratio stopped at 20.8. From all industries, the textile industry knew the smallest number of price-fixing cartels. Restructuring processes of the industry, mergers and acquisitions, diversification and specialisation strategies were alternative instruments.[40] It could even be stated that cartelization was no longer essential as a strategy. The number of firms got smaller and the common interests became less with the diversification of the industry. Collusion was not longer profitable for all members and competition prevailed.

[37] Uitermark, 312-385
[38] See for example: J. Lypczynski and J. Wilson, *Industrial organisation; an analysis of competitive markets* (Harlow, England: Prentice Hall 2001) 59-61; S.J. Evenett, M.C. Levenstein and V.Y. Suslow 'International Cartel enforcement; lessons from the 1990s' in: *World Economy* 2001-2002
[39] A.L. van Schelven, *Onderneming en familisme; opkomst, bloei en neergang van de textielonderneming Van Heek & Co te Enschede* (Leiden: Martinus Nijhoff 1984) 170-181;
[40] E.J. Fischer, J.L.J.M. van Gerwen en H.J.M. Winkelman, *Bestemming Semarang; geschiedenis van de textielfabrikanten in Oldenzaal, 1817-1970* (Olenzaal/Amsterdam: Neha 1991) 274-279

Structure and performance of the industry also carried some weight in the classification of cartels and gentlemen's agreements. It was not only a matter of institutions or business systems. Structure of the market and industry specific conditions, external macro-economic conditions and internal cartel organisation were among the variables that determined success or failure of a cartel agreement.[41] For example the Dutch paper and board industry knew numerous cartels. During the first years after the war the Dutch government bound paper and board producers to a restrictive policy, which stated that the scare raw materials that had to be imported would be subjected to a quota system. During the 1950s and 1960s, with sufficient raw materials to expand, and production costs relatively low, existing agreements within the industry did however not disappear and remained an essential part of the business. A statement of affairs in 1954 made clear that about 40 percent of total paper output was affected by cartels and gentlemen's agreements. Most agreements were very unstable because of the asymmetry of market shares, product differentiation and diverging interests. On the other hand, the number of participants in this industry was very limited, the producers were allied in a well organised association and competition was in this period mainly domestic. So, the producers could easily find each other and collude.[42]

Explanation

Undue to the sketchy and inconsistent Economic Regulation Act of 1958 the number of cartels and gentlemen's agreement decreased during the 1960s and 1970s. It is hard to explain this phenomenon without a more profound study of the cartel register. Unfortunately, this register is still secret and not available for scientific research. Nevertheless, some hypotheses can be formulated. These assumptions all deal with changing macro-economic and political circumstances. Under these shifting conditions the particular arrangements of market relations that had become institutionalized and were successful in the 1950s and 1960s came under pressure by

[41] This aspect of the discussion on restrictive competition has recently got much attention. Especially the questions on how and why cartels are successful can count on the curiosity and awareness of economists, social scientists, consultants, businessmen and politicians. For discussion, see: Levenstein/Suslow 'What determines cartel success?' ; H.W. de Jong, *Dynamische markttheorie* (Leiden: Stenfert Kroese 1981) 151-153; F.M. Scherer and D. Ross, *Industrial market structure and economic performance* (Boston: Houghton Mifflin[3] 1990) 285-294, 307

[42] B. Bouwens, *Focus op formaat* 164-169

creating and using new strategic tools and the process of internationalisation of markets and legal frameworks.[43]

During the 1950s and 1960s 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.[44]

The Act of 1958 was based on registration of domestic cartels. The Dutch economy however depended heavily on international trade. After 1950 exports increased and even attained higher market shares than in the pre war period. Between 1950 and 1980, the value of export expanded from almost 5400 to nearly 147.000 million guilders. As Keetie Sluyterman stated, 'the cosy business culture at home went hand in hand with a continued ambition to be active in international markets'.[45] In this climate domestic agreements might not be of much importance. On the other hand, international cartels still were around. They were a worldwide phenomenon, especially in resource-based industries with high barriers to entry, homogeneous products and inelastic price developments.[46] After 1945 worldwide cartels got less support from governments and the general observation is that they declined rapidly in number.[47] The national and international collusive practices came further under pressure with the Treaty of Rome in 1957. In establishing a common market, the members of the European Economic Community instituted a system of cartel control and introduced a cartel register. On the whole it turned out to be a slow and complex procedure to reach uniform regulations in all EC-member-states. In this period there

[43] Compare R. Whitley, 'Societies, firms and markets; the social structuring of business systems' in: R. Whitley (ed), *European Business systems; firms, markets in their national contexts* (Londen: Sage 1992) 5-45; R. Olie, *European transnational mergers* (Maastricht 1996) 59
[44] K.E. Sluyterman, *Dutch enterprise,* 159
[45] K.E. Sluyterman, *Dutch enterprise,* 181-182; J.L. van Zanden, 184; CBS, *Tweehonderd jaar statistiek in tijdreeksen, 1800-1999* (Voorburg/Heerlen: CBS 2001) 49-50
[46] 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
[47] See for example: J.A. Rahl, 'Cartels and their regulation' in: O. Schachter and R. Hellawell, *Competition in international business* (New York: Columbia University Press 1981) 240-250

were considerable differences between the members of the common market. Belgium and the Netherlands had, for example, a legislation based on abuse, whereas German and French laws were established on prohibition. After the first EEC regulation on restrictive trade came into force in 1962, several settlements were announced. The European laws had however only restricted power related to the erecting of trade barriers between member-states. Only a few agreements really were prohibited. One of the most intriguing and long lasting cases was the elimination of the cartel of German, Dutch and French producers of canine, who colluded since 1913 (!) and settled an agreement in which they respected mutual home markets.[48]

The European perspective did not really influence cartelization in the Netherlands during the first post war decades. The EEC documents left room for the specific legal frameworks in the different countries. At the end of the 1960s and the early 1970s cartels in the Netherlands lost their appeal. In these years firms looked for other tools to safeguard and strengthen their economic position. 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 internationalisation. H.W. de Jong counted 323 mergers and acquisitions in 1969 in manufacturing and wholesaling. The Social Economic Council that registered mergers and acquisitions from firms with more than 100 employees even calculated 562 transactions in 1973.[49] In many case this concentration substituted cartels and gentlemen's agreements. Sometimes the government played a crucial role in this process. In several restructuring programmes 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, optimising added value and stimulating effective corporate management.[50]

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[48] EGKS, EEG, EG voor Atoomenergie, *Eerste verslag over het mededingingsbeleid* (Brussel/Luxemburg 1972); Beschikking van de Commissie, 16-07-1969 (69/240/EEC) in: *Publicatieblad van de Europese Gemeenschappen* 5-8-1969; Commissie van de Europese Gemeenschappen, *Dertig jaar gemeenschapsrecht* (Brussel: EGKS- EEG-Euratom 1981); For more information on f.e. article 85 and 86 see also: H.W. de Jong, *Ondernemersconcentratie* (Leiden: Stenfert Kroese 1971) 26-37; P. VerLoren van Themaat and T.R. Ottenvanger, *Concentraties en joint ventures in het mededingingsrecht* (Zwolle: Tjeenk-Willink 1992) 26-38

[49] H.W. de Jong, *Ondernemersconcentratie*, 144; J.B.A. Hoyink and A.J.C. Geeve, *Gelet op artikel 2; cijfers over fuses, 1970-1996* (Den Haag: SER 1997) 24-25

[50] J.L. van Zanden, *Een klein land* 217-218; CPB, *De Nederlandse economie in 1985* Den Haag: Staatsuitgeverij 1981)169-318

The development of the Dutch strawboard industry that was centred in the northern part of the Netherlands may illustrate this change in perception toward cartels by government and business. This industry that counted 19 firms had considerable difficulties since the early 1960s.[51] From the 1920s onwards cartel agreements within the Association of strawboard producers had prevented the firms from engaging in active competition, but also inhibited both technological and organisational innovation. Since the late 1960s the industry had been aware of the need for a pan-industry restructuring. Especially closing down unprofitable and obsolete production units and raising the productivity of existing equipment became overnight priorities for the industry. Needless to say, this was a very delicate matter. After the first bankruptcies, the government stepped in, in an attempt to preserve employment in this economically weak district. Several business consultants visited the firms and argued that concentrating production and management could only save the conservative and backward strawboard industry. Several causes hampered the attempts at concentration. The still existing cartel agreements were like a damaged umbrella, protecting less and less. Only in the end, when the unrelenting decline of the industry forced firms to merge, the cartels were set aside.[52]

Conclusion

The Dutch attitude towards restrictive practices was remarkably consistent during a large part of the 20th century. In the liberal market system that prevailed until the second half of the 1930s cartels were not seen as a threat to the functioning of the market, but accepted as part of the traditional *laissez faire* principle. In fact cartels were largely neglected and their importance was definitely underestimated. Although the liberal market system was gradually replaced by a more coordinated system, this did not affect the policy towards cartels. The Business Agreements Act that became operative in the autumn of 1935 left much room for collusion. It did not prohibit cartels, but on the contrary made it possible to enforce them on outsiders. Dutch government saw cartels as a way of organising the market, but the initiative was left

[51] New harvesting methods reduced both the production of straw and its usefulness as a raw material. New competitors on the market of packaging materials, producing substitutes had an equally adverse effect on the existing industry.
[52] B. Bouwens, *Focus op formaat* 239-264

with the entrepreneurs. This changed with the Cartel Decree of 1941 which brought the Dutch policy in line with the German situation and gave the government the possibility to take the initiative. This power was however void in a situation of war in which the market was completely regulated. Cartels could hardly function in a market that was regulated by distribution and price setting by the government.

This did not mean the attitude towards cartels changed fundamentally. As pointed out earlier, both the Act and the Cartel Decree of 1941 regulated the endorsement of cartel-agreements and authorised agreements rather than repressed them. When after the war the coordinated market system was continued to cope with the economic reconstruction, cartels again played a vital role. To a large extent they were seen as instruments of the economic policy of price and wage-fixing. 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 during the 1950s and 1960s as a result of external pressure.

With the Economic Competition Act that became effective in 1958 the government could act against cartelisation, but at the same time a regulation of competition could be declared generally binding. Unlike the German view that restrictive legislation is a fixed central pillar of economic policy, the Dutch considered the law of 1958 as an essentially flexible instrument and a tool to stabilize prices and inhibit inflation. It is characteristic that making the cartel publicly known was considered one of the most effective means against cartels. Cartels had to be registered, but the register was kept secret. In that respect the force of the cartel still was in the invisibility of the handshake.

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 collusive practices. Self-regulation and coordination were preferred to the invisible hand of market forces. During the 1970’s the number of cartels and gentlemen’s agreements declined. This was mainly due to external dynamics and the use of alternative strategic tools. It did not really affect or infect the business system of the Netherlands.