

PRAGMATIC PRIVATISATION: THE NETHERLANDS 1982-2002[†]

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ABSTRACT

This paper describes the privatisation and deregulation programs in the Netherlands during the period 1982-2002, that is, under the governments headed by Lubbers (1982-1994) and Kok (1994-2002). The paper explains that the Dutch define privatisation as “making use of private interests and market forces”, which differs from the international convention, but it discusses both forms of “privatisation”. It describes the general frameworks that have guided Dutch policy (essentially: privatise whenever this does not jeopardise the public interests) and shows that actual policy deviated considerably from the official line. By means of a detailed discussion of various network sectors (post and telecommunications, energy and public transport) it is shown that issues of market design and transition management received insufficient attention. Also remarkable is the lack of detailed empirical studies of the effects of the various policies pursued. (JEL Codes L3, L4, L9)

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TABLE OF CONTENTS

1. INTRODUCTION	3
2. PRIVATISATION	7
2.1 Privatisation à la Hollandaise	7
2.2. Real Privatisation	9
3. LIBERALISATION AND PRIVATISATION IN NETWORK INDUSTRIES.....	12
3.1 Regulatory Reform without Design.....	13
3.2 The Policy Framework	16
4. POST AND TELECOMMUNICATIONS	19
4.1. Telecommunications	19
4.2. The postal sector.....	25
5. ENERGY	27
5.1. Electricity	28
5.2. Natural gas.....	34
6. PUBLIC TRANSPORT.....	37
6.1. Train Services.....	37
6.2. Public Bus Transport.....	40
7. CONCLUSION.....	44
REFERENCES	46
APPENDIX: State participations between 1 january 1997 and 1 november 2001	52

1. INTRODUCTION

In its May 2002 survey of the Dutch economy, under the heading “The rule of common sense”, *The Economist* writes:

“In the spirit of their pragmatic traditions, the Dutch have understood and accepted two things that many other Europeans find doctrinally objectionable. One is that it does not matter who delivers public services, so long as the job is well done; the other is that competition, in some form, can help to make that more likely.” (*The Economist*, 2002)

When confronted with the question about how to divide responsibilities between the State and the private sector in reaching public policy goals, the Dutch indeed have always taken, and still take, a pragmatic attitude. The most recent (December 2003) parliamentary discussion on State participations provides a nice illustration: after the representatives of the major political parties had stated their overall party positions, the responsible Minister, Zalm, responded with: “I like the fact that one can have such nice ideological discussions about this topic, however, we have to try to bring these back to practical proportions.” (Kamerstukken, 2003-2004a, p. 10)

The Dutch pragmatic attitude may be explained by the fact that in the Netherlands it has always been necessary to form coalition governments. Pragmatic policy, of course, runs the danger of being ad hoc. While, to some extent, the Dutch have run into this trap, Dutch pragmatism has been disciplined by the view, held by the majority (i.e. the Christian Democrats and the Liberals), that the primary role of the State is to facilitate citizens and firms to go about their own business; that the State should intervene only when there is market failure and that, in these cases, private interests should be mobilised for the public cause as much as possible. Traditionally, the religious groups in society have had their own social organisations and institutions, they wanted to maintain their identity and independence and preferred to keep government interference low. Of course, they also sought political power to get the State to co-finance their own activities. Being aware of this political reality, in the 1930s, the Labour Party, under the influence of Jan Tinbergen, explicitly expressed a preference for planning of economic activities above nationalisation of industries. As a consequence, there is relatively little involvement of the State in the supply side of the economy and there is a preference to reach public policy goals by using instruments such as

subsidisation, contracting, or regulation: the Dutch State is small in terms of the activities it performs, but large in terms of the financial claims it lays on society. The Dutch State acts more as a financier than as a producer.

The Dutch preference for private provision of public services, subject to government regulation and subsidisation, can probably best be illustrated by the important case of education. In the Netherlands, only about 30% of all pupils attends public schools and 70% of the schools are privately owned. Parents are free to decide to which school to send their kids to and schools are paid on the basis of the number of pupils that they have, hence, there is competition between schools. The system resulted from religious groups arguing that they should not be forced to pay both for their own private schools as well as to subsidize the public ones. They insisted on equal treatment of public and private schools, which they achieved in 1920. Article 23 of the Dutch Constitution states:

“Education shall be the constant concern of the Government. All persons shall be free to provide education, without prejudice to the authorities’ right of supervision (...) Private primary schools that satisfy the conditions laid down by Act of Parliament shall be financed from public funds according to the same standards as public authority schools (...)”

The principle expressed here has also been applied in relation to other public services, such as health care, welfare work, housing and the media. The first question to be addressed always is: is there a need for the government to step in, or can (groups in) society take care of the problem itself? Given the political preferences stated above, the answer will frequently be “no”. Secondly, even if there is a public interest, hence, a need for the State to intervene, it will be investigated whether there is room for the private sector. As a result, although the share of government expenditures in GDP is large (government expenditures being 46.4% in 2001), the public sector is not large in terms of employment or output, with several “core public goods” being provided by private parties, usually non-profits. For example, 75% of the hospitals are private not-for-profits, and of the stock of social housing only 1,5% is rented out by government agencies. As a consequence, the Dutch economy has a large non-profit sector (good for about 13 percent of all non-agricultural jobs and 10 percent of GDP), which is financed to a large extent (59 percent) by the state, and which provides service on a competitive basis; see SCP (2001).

The above policy principle has important consequences for terminology. If one defines “privatisation” as “transferring ownership of assets from the State to the private sector”, the Netherlands has seen relatively little of it, simply since very few government assets could be privatised. In fact, while asset sales have taken place, this was not labelled as privatisation since just transferring ownership is believed not to affect the outcome: government firms are assumed to be operating as ordinary profit maximising enterprises. In line with the above principle, in the Netherlands, “privatisation” is defined more broadly as “making more use of private actors and the market mechanism to achieve public goals” (Boorsma, 1984; WRR 2000). Defined in this way, privatisation naturally links up with attempts to introduce more competition in the provision of public services and as such it has been a hot topic of general and political discussion during the last two decades in the 20th century, under the governments of Lubbers (1982-1994) and Kok (1994-2002). In this paper, I will describe and discuss the Dutch experiences during this period.

When, in 1982, the first Lubbers cabinet came into office, as a result of the oil crises and “Dutch disease”, the Dutch welfare state had grown out of hand: more than 70% of income was spent collectively, the government budget deficit was 11% of GDP and unemployment kept increasing. To get the economy back on track, this “no nonsense” coalition of Christian Democrats and Liberals adopted the motto “more market less government” and it outlined five “large operations”, including privatisation and deregulation programs, with the aim to reduce government expenditures, to make the public sector smaller and more flexible, to create more room for private initiative, and thereby foster economic growth. The second Lubbers cabinet (1986-1989) intensified this course; in its 1986 government declaration it boldly stated: “all services that do not necessarily have to be performed by the government are candidates for privatisation.” Around that time, the Finance Minister, Ruding, formulated frameworks for how to decide which services should preferably be performed by the State and, with minor modifications, these guide policy until today. In Section 2, I will discuss these principles, how they were applied, and what the results have been.

In 1989, Lubbers’ Christian Democratic Party formed a coalition government with Labour and privatisation became less prominent, with the interdepartmental committee on privatisation being abolished in 1992. In 1994, after a national debate on the challenges faced by the Dutch economy in a globalising world, it was, however, concluded that large-scale

deregulation of the economy was necessary and the first purple cabinet (a coalition of Labour with two liberal parties), headed by Wim Kok, revived the liberalisation and deregulation programs. Rather than focusing on privatisation, the microeconomic policies of this government stressed regulatory reform; “marktwerking” (making use of market forces) became a key term in policy discussions. What was lacking, however, was a clear view of what benefits competition could achieve and what government actions were needed to achieve more intense competition. At least initially, policy seemed to be based on the naïve ideas that competition would automatically take care of all the public interests at stake and that government policy could be limited to opening up and fully deregulating markets; see Van Damme (2001). While this policy worked reasonably well for the “easy” projects handled under Kok I (1994-1998), when the focus was mainly on increasing competition in the business sector, it became more problematic during Kok II (1998-2002), when the emphasis shifted to making use of market forces within the public sector and to the liberalisation of network industries. Around 1999, when it was clear that the results were not always satisfactory, high advisory councils started to criticise the government for not having formulated a consistent vision about how to proceed and for not having been thoughtful enough in the liberalisation, deregulation and privatisation processes. In response, the government formulated principles to guide policy making on liberalisation and privatisation of network industries, and these will be discussed in Section 3.

In the Sections 4-6 of this paper I will then illustrate these principles by describing the developments and experiences in specific network sectors: post and telecommunications (Section 4), electricity and gas (Section 5), and public transport (Section 6). We will see that, even though policy documents consistently advocated the line “privatise when possible”, practise proved more stubborn and, frequently, restructuring involved both nationalisation as well as privatisation. The 1990s can best be described as a period of “muddling through” with privatisation and deregulation not always being successful and the public becoming increasingly sceptical about their benefits. The experiences have, however, led to the debate about proper institutional arrangements in network industries to be more informed about what the practical constraints are, about what is feasible, and to more realistic expectations. There is now a better view on the risks involved in privatisation and as a result policy now proceeds in a more cautious, pragmatic, way. As a result, the words “privatisation” and “use of market forces”, now no longer seem to have the same negative connotation as they had around the year 2002.

2. PRIVATISATION¹

When, in 1982, the first Lubbers government came into office, it announced large-scale programs of privatisation and deregulation, aimed at pushing back the role of the State. As the involvement of the State in the production of market goods was already limited (in the 1970s, government controlled enterprises were responsible for only 3.6% of GDP, compared to about 10% in France, Germany and the UK; see Short (1984, p. 117), the focus of the privatisation program was on the reorganisation of government. The aim was threefold: to achieve budgetary savings and improve public finances, to reduce the size of the public sector and increase its efficiency, and to strengthen the private sector. It is important to note that selling shares in state owned enterprises (SOE's) was formally not part of the privatisation program, but fell under a different policy line, that on state participations; see Kamerstukken (1985-1986). The motivation was that, since SOE's were already operating in competitive markets, they were disciplined by market forces, so that a change in ownership would not lead to changes in behaviour or efficiency. As such asset sales fall under the international definition of "privatisation", we will also consider them here (Section 2.2). First, however, we discuss those projects that fell under the formal Dutch program.

2.1 Privatisation à la Hollandaise²

The 1983 implementation plan of the Ministry of Finance (Kamerstukken, 1982-1983) adopted a broad definition of privatisation and distinguished between outsourcing of government services, corporatisation (a government unit is put at arm's length, and becomes a separate legal entity, so that it can operate in a more businesslike fashion, less burdened by bureaucratic control) and real privatisation (transfer of asset ownership to private parties). The plan expressed a preference for contracting out and real privatisation, and viewed corporatisation as being second best, since this involved the government giving up control rights, without a corresponding reduction in financial risks. While corporatisation was viewed

1 Some other papers on this topic, all focusing on privatisation efforts of the Lubbers cabinets are Andeweg (1994), Boorsma (1984), De Ru and Van Aalst (1987), Haffner and Berden (1998), Hulsink and Schenk (1998) and Van de Ven (1994). De Ru (1981) gives a very readable overview of the history of privatisation in the Netherlands up to 1982.

2 The term is from Andeweg (1994)

as a first step towards “real privatisation”, it would turn out that most “privatisations” would not make it beyond this step, with all the associated consequences.

The 1983 implementation plan already contained a list of 14 candidates for privatisation and when a first evaluation was made in 1988, 8 projects (of which 5 real privatisations) were finished, while 40 projects (of which 11 real privatisations) were scheduled to be finished before the end of the Lubbers II cabinet period in 1990; see Kamerstukken (1987-1988). In total slightly less than 120,000 employees were involved in these operations, but almost all of them (115,000) in corporatisation projects. Indeed the largest projects involved nothing more than transforming state enterprises (state firms that fall under public law) into state owned enterprises (SOE's), i.e. firms that fall under private law but that are wholly owned by the State. Two of these, PTT in 1989 and Postbank in 1986, were responsible for 85% of the jobs involved. Both incorporation activities were a first step towards real privatisation, which would occur in the 1990s; see below. One other, smaller, state enterprise, the State Port Authority of IJmuiden, followed a similar track, the other two state enterprises were corporatised (the State Printing Office (SDU) in 1988, the State Mint in 1994), but they are still 100% government owned at the moment.

The smaller projects on the 1988 list form a mixed bag, including agencies with certification or standardisation tasks, or occupying monopoly positions. The organisation supplying pilotage services, services that are very important to bring large ships safely into the harbour of Rotterdam, was privatised already in 1983, without accompanying price regulation. The government soon suffered the consequences. The pilots were well aware of their bargaining power, and they quickly seized the opportunity to raise salaries; while before privatisation, the service was making a surplus of some €10 million a year, after privatisation the government had to pay a similar amount on a yearly basis. This privatisation was heavily criticised by the Court of Auditors, see Algemene Rekenkamer (1989). The important distinction between privatisation in a competitive market context and privatisation in a monopoly environment would be made only later, during the Lubbers II cabinet, when it was argued that monopolies could not be privatised. It seems that the possibility of using regulation to discipline private monopolies was considered only around 1995; see below.³

3 On June 22, 2004, the Ministry of Public Works announced that the monopoly would remain until 2019, but that there would be supervision by the competition authority NMa.

Even though the official privatisation program was stopped around 1990, after the Labour Party had entered the government, with the interdepartmental committee on privatisation being abolished in 1992, the process of giving more autonomy to government organisations has continued since then. The government report “Verantwoord Verzelfstandigen” (Kamerstukken 1994-1995a) contains recommendations about when and how government agencies could be “hived off” and what legal form would be most appropriate, but that report is non-economic in nature and does not take into account the warnings issued already at the start of the privatisation program. In many of these cases of “privatisation *à la Hollandaise*”, the second step of “real” privatisation did not follow: the process remained stuck half-way, after having created organisations, quango’s, that frequently neither face market discipline, nor effective administrative control. Not surprisingly, these organisations did not always function efficiently, or in the public interest, although evidence of that would frequently become available only much later. All this may explain why “privatisation” was not always successful, and has gotten a bad name. The netherworld of quangoland is not very transparent, but thanks to the efforts of the Netherlands Court of Audit the situation has much improved over the last couple of years; see the reports on “independent organisations with public tasks”, most recently Kamerstukken (2003-2004b). In June 2004, the *Financieel Dagblad* reported that a government committee had concluded that it would be better to bring all quango’s back within the government; see *Financieel Dagblad* (2004).

2.2. Real Privatisation

Despite what was said in the Introduction, it should be noted that, in international comparison, asset sales in the Netherlands have not been negligible. As far as population is concerned, the Netherlands is about $\frac{1}{5}$ -th of the size of Germany, and $\frac{1}{4}$ -th of the size of France, Italy and the UK, and Dutch GDP is 1.7% of the OECD-total. Over the period 1990-2001, privatisation proceeds in the Netherlands were \$14.5 billion, which is 58% of the proceeds in Germany over the same period, 19% of those in France, 13% of those in Italy, 34% of those of the UK, and 2.2% of those in the OECD. In the years 1994, 1995, and 2001, the Dutch share was above average: 6.7% and 7.3%, and 4% of those in the OECD; see OECD (2002).

It is worthwhile to briefly describe the major privatisations since 1982. Already before 1989, the State sold part of its shares in KLM and Hoogovens (a steel maker now part of

Corus) and divested some smaller companies, but with less than €250 million, proceeds were limited. Revenues were considerably higher in 1989, when the state reduced its stake in DSM (Dutch State Mines) to 31% by selling shares to the public for €1.3 billion. In 1996, the remaining shares were sold for slightly less than €0.8 billion. In 1990 Postbank was sold to ING Bank for €0.6 billion in cash and a stake in ING, a stake that was successively reduced to zero by selling shares on the market in 1993, 1997 and 2002, total revenue being something like €0.75 billion, of which 80% was received in 1993. PTT was privatised in 1994 with the IPO yielding €3 billion. One year later, a second batch of shares were sold with revenue in the same order of magnitude. In 1998, the company was split in a telecommunications company, KPN, and a postal company, TPG, which are both listed on the stock market, and to which we will return in Section 4. For now we note that, in 2001, the State reduced its stake in TPG to 35% (revenue €0.9 billion) and that, in October 2002, the State reduced its share in KPN from 31.3% to 19.3%. By means of a share sale in 1997 that yielded €0.75 billion, the stake in KLM was reduced from 38% to 14%, and in 2004 KLM merged with Air France. Worth mentioning are also, in 1998, the partial sale of the government computer centre, now PinkRocade, yielding €0.4 billion, and the partial sale in NIB Capital Bank in 1999 yielding almost €1 billion.

In the Netherlands, asset sales fall under the “policy with respect to state participations”, a policy line that can be summarized by “privatise when possible and financially sensible”. This line was formulated first in the 1985 report “Selling State Participations” (Kamerstukken, 1985-1986) that was prepared under the responsibility of the Minister of Finance, Ruding, and that was strongly influenced by the bad experience with active industrial policy in the Dutch shipbuilding industry during the 1960s and 1970s.⁴ Accordingly, this 1985 report takes as its starting point that a state participation in a business firm requires special justification and it proposes that the State portfolio be regularly evaluated. For each participation, the following questions should be addressed: Why was the participation taken? Has the aim been achieved? Are the original reasons still valid? Is participation still the best instrument to reach the goals? The report proposes that, if the goals can also be achieved by divesting the participation, such divestiture should be seriously considered and should be implemented when market conditions allow it. Only two specific

4 In the 1960s, the government had stepped in by providing subsidies to assist the shipbuilding sector to rationalise and create a national champion; the resulting company, RSV, however, was not viable and, in 1983, finally collapsed. A parliamentary investigation then revealed that more than one billion dollars had been wasted and concluded that industrial policy should not be conducted in this way.

instances are described where divestiture might not be a good idea: when the firm has a monopoly position, or when the state is (by far) the largest buyer of the firm. In short, the 1985 memo states that state participations should be divested unless there are decisive reasons for not doing so.

When the policy framework was revisited in 1997 (Kamerstukken 1996-1997c), it was concluded that the general principles formulated in 1985 still formed an excellent basis for future policy. In fact, the 1997 memo argues that the two exceptions to privatisation explicitly discussed in 1985 are no longer relevant. It is stated that monopolies, such as KPN, can be privatised: monopoly power can be countered by stimulating entry, or, in the case of insurmountable entry barriers, by regulating the firm. In case the State is the sole buyer, such as with the Royal State Mint, the relation with the firm can be a pure contractual one and privatisation is possible as well. Interestingly, when, in the parliamentary discussion, various MP's asked about the consistency of this policy with that on privatisation more generally (i.e. the topic discussed in the previous subsection), and that with respect to hiving-off (corporatisation) in particular, the answer was that these were two different policy domains, and that different rules might apply. It was the Ministry of Economic Affairs that was responsible for that other policy and, at the time the Ministry of Finance was advocating "unconditional" privatisation, that Ministry seemed to move in the direction "liberalise first, then privatise"; see Section 3.

Policy with respect to state participations was most recently revisited in a memo from 2001 (Kamerstukken 2001-2002a), which was discussed in parliament in December 2003 (Kamerstukken 2003-2004a). That memo proposes to make a clear distinction between the State as shareholder and the State as guardian of the public interest, with the Ministry of Finance responsible for the first role, and a second line Ministry for the second. As the memo is written under the responsibility of the Ministry of Finance, it focuses mainly on the shareholder role of the State and, in this domain, there are few things to which one can object, although one can question the remark of the Minister of Finance that participations should yield the State a return on investment of some 3% above that on government bonds; see Zalm (2003). The memo argues that the policies with respect to state participations, corporatisation and the liberalisation of network industries are consistent with each other and it succinctly summarizes the overall policy line; the cabinet continues its course: state participations are temporary and

“participations are divested if this is possible taking into account the public interests and the business interests of the state”. (Kamerstukken, 2001-2002a, p. 17)

What is new, compared to the earlier memos from 1985 and 1997, is the explicit reference to the public interest. The explanation why the term appears is that, around 1999, two high advisory councils had criticized the government for not having taken the public interest sufficiently into account in its privatisation policies, an issue to which we will return in Section 3. What is not new is the preference for guarding the public interests by means of regulations and contracts, rather than by means of government ownership. This immediately raises a question: why doesn't the government show more faith in public enterprises and in ownership as an instrument to safeguard the public interest? The 2001 memo contains (on the pages 10 and 11) a small section that addresses this issue, but we defer a discussion of it to Section 3. For now we note that the consistency in policy also throws up a puzzle: given that privatisation (possibly subject to regulation) is to be preferred, shouldn't we have seen more privatisations? Why, during the last 25 years, has the Dutch State always participated in some 40 firms, with many of these participations lasting for such a long time? A glance at the 2001 list of State participations (see Appendix 1), shows that, next to companies (such as the publicly traded companies) that are on the divestiture path, the financial institutions and regional development companies (which serve as instruments to facilitate business and to attract investments and whose presence is in line with the general preference of the Dutch State to finance), and a mixed bag of firms associated with various forms of alleged market failure, all companies on the list are in network sectors.⁵ The conclusion that we can draw is that, in network industries, the public interest may have prevented selling state participations. Why that might have been the case is discussed in the next section.

3. LIBERALISATION AND PRIVATISATION IN NETWORK INDUSTRIES

The purple cabinet, consisting of Labour with two liberal parties, chaired by Wim Kok, which was formed after the 1994 elections stated, in its government declaration, that it wanted to modernize Dutch society, among others by engaging in processes of deregulation and liberalization. It stated three priorities for its microeconomic policy: regulatory reform

5 Note that the participations of lower level government are not included in this table. Municipalities and provinces own important assets such as the electricity distribution grids, and possible privatisation of these has been hotly debated; see Section 5.

(among others through the “MDW-program” (Kamerstukken, 1994-2004) that aimed at increasing competition throughout the economy), liberalisation of network industries, and modernization of the competition law, bringing it in line with the EU-prohibition system. The third track was completed in 1998 when the new competition law came into effect and when the competition authority (NMa) started operations. The two other tracks, of course, are related in that they both aim at increasing competition, either from a situation where competition is not very intense, or where it is absent. Both of these tracks would be continued under the second purple cabinet, Kok II (1994-1998), but with a shift in emphasis. While, during Kok I, the focus was on deregulation in the business sector, in Kok II the emphasis was more on the introduction of market mechanisms in the public sector and on liberalisation of network industries. This section describes the policy framework during the two purple cabinet periods, and the policies pursued, the emphasis being on network industries.

3.1 Regulatory Reform without Design

As I have argued in more detail elsewhere (Van Damme, 1996, 2001), the regulatory reform projects pursued under the purple cabinets seem to have been based, at least initially, on a somewhat naïve view of the market process. Policy proposals were based on the twin ideas that competition would automatically take care of the public interests involved and that opening up and deregulating markets would be sufficient to create a competitive market. In short, the view was that more competition was better and that “more competition” was equivalent to “fewer rules”, hence, there was little attention for market design issues and for managing the transition process. While, under Kok I, the resulting policy led to some successful projects, such as the liberalisation of shop opening hours, others, such as the reform of the taxi market, were outright failures, or were too ambitious, so that they never made it to the implementation phase. Of course, in network industries, establishing competition is even more difficult, and market design and transition management become even more important. For the latter, it is essential to have sector specific rules and a powerful independent regulator. Unfortunately, in line with the “less rules means more competition” view and Dutch political tradition, there has been a reluctance to impose such rules and to set up such regulators.

In the Dutch administrative tradition, setting up regulators is seen as expansion of the government, with the independent agency not falling under full political control. It is accepted

to have supervisors, referees, that check whether businesses play according to the rules, however, the traditional view of administration argues that regulation is part of law making, hence, has to pass through parliament; see Kamerstukken (1994-1995b). Supervisors cannot make rules themselves; they cannot be regulators. For example, the law establishing the telecommunications “regulator” OPTA (Kamerstukken, 1996-1997a) clearly states that the Ministry is responsible for rule making, while OPTA has the power to apply the rules in specific cases. It is quite remarkable that it took till March 1999 before the government formulated its general “vision on supervision”, consisting of three main lines: aloofness with respect to sector specific competition rules, caution with respect to sector specific regulators and good coordination between different supervisors; see Kamerstukken (1998-1999a). From an economic point of view, one can question at least the first two principles. Indeed, OPTA has frequently complained that, as a result of the government not having delegated real regulatory powers to OPTA and the general rules being vague, it does not have enough power to optimally serve the public interest and it is not able to do its job properly. (For more on this, see Section 4).

Given all this, it should not come as a surprise that, during the Kok II government, the liberalisation and reform projects came into difficulties. In essence, the low hanging fruit had been picked during the early years, now the more complicated problems had to be tackled. The government slowly learned that it had weak instruments, but more work to do. On top of that, ideological differences between the coalition parties started to show up, first in relation to a proposal for a new law on water supply; see Kamerstukken (1997-1998a, nr. 3). The first government proposal (Kamerstukken, 1997-1998a, nr. 1) simply argued, at a rather general level, that more competition was desirable as it would improve efficiency, but it did not advocate changes in ownership. With the exception of VVD (Liberals), all political parties, however, approved a motion that pointed out that the sector was delivering high quality water at a very reasonable price, that the sector objected strongly to the new plans, and that advised the government to drop the plans for introducing competition. Confronted with such opposition, the Kok II government backed out further. It stated that privatisation would give rise to cumbersome regulation and was undesirable, and it gave up its plans for legal separation between infrastructure and service provision: water would remain in public hands, but with the local public utilities being benchmarked against each other. Since then the situation in the water sector has remained unchanged. In the Summer of 1999, the conflict would come out in the open with two cabinet Ministers taking diametrically opposite

positions on the privatisation issue in two articles that appeared, on July 14, on the same page in the same newspaper, NRC. After the summer, during the general discussions at the opening of the new parliamentary year, Prime Minister Kok, was then forced to explain what the policy line of his cabinet was. As it turned out, he was forced in the defense by the advice of the “Raad van State” (the highest advisory council of the government) on the government’s plans for the year 2000.

In this advice (and later again in its annual report on the year 1999), the “Raad van State” called attention for the fact that the desire to reach the government’s goals by means of market instruments and privatisation had not always yielded the results that were hoped for, it raised the question about what was the proper intellectual framework for thinking about these issues, and it asked to proceed further on the path of introducing competition only after a careful analysis of the pros and cons had been done. Furthermore, the Council pointed to the drawbacks of privatising monopolies in network industries, such as high regulatory burdens associated with protecting consumer interests and it praised the government for its decision not to privatise the water companies; see Kamerstukken (1999-2000a) and Raad van State (2000). Obviously, it is quite remarkable that the call for reflection and careful analysis was made only after the policy had been in place for about 20 years. Remarkably, the “Raad van State” was not alone in making this plea. Half a year later, the “Wetenschappelijke Raad voor het Regeringsbeleid”, WRR, the highest scientific advisory board of the government went even further; it concluded that the decision to privatise had sometimes been made ill considerately and it called the entire policy in question; see WRR (2000). What is perhaps most remarkable is that the WRR-report on how to guard the public interest, while making strong claims, did not refer to the relevant international economic literature, even though that literature was highly relevant.

Motivated by these critical reports, and taking into account dissatisfaction of the public with the results achieved thus far, as well as negative news from the UK (the October 5 train accident outside Paddington station killing 31 people), the Labour Party changed its view on privatisation from the official “yes, subject to conditions”, to “no, unless”. As the other two coalition parties did not change their position, the overall government standpoint on privatisation was maintained at “yes, provided that certain conditions are satisfied”. The ideological conflict within the cabinet, in effect, led to policy making under Kok II coming to

a standstill, increasing the dissatisfaction of the voters, and this paved the way for the populist Pim Fortuyn Party to win, out of nothing, 25% of the votes in the 2002 elections.

3.2 The Policy Framework

As a result of the critical comments of the “Raad van State”, during the general political considerations in 1999, both chambers of parliament asked the government for an integral view on the policy of liberalization and privatisation. The government complied by providing two memos, one on guarding the public interests (Kamerstukken 2000-2001a), the other on liberalisation and privatisation in network industries (Kamerstukken 1999-2000b). In this subsection, I discuss the latter memo and show how it relates to the most recent memo on selling state participations (Kamerstukken 2001-2002ba), that was already mentioned in Section 2.2.

The government memo “Liberalisation and Privatisation in Network Industries”, which is written under the responsibility of the Ministry of Economic Affairs, expresses a preference to guard the public interest by means of contracting and regulation with appropriate monitoring, but formulates policy in somewhat cautious terms. It proposes a pragmatic five-step procedure:

- (i) Identify the public interests (universal service, security of supply, etc.), that have to be protected and for which government intervention may be necessary;
- (ii) Translate these public interests into hard, verifiable constraints that have to be satisfied by the firms in the industry;
- (iii) Set up an appropriate independent supervisory arrangement for checking whether contractual conditions and the public interests are met;
- (iv) Investigate whether competition can help in reaching the public goals, and implement the appropriate market structure;
- (v) Investigate whether privatisation is possible.

It is worthwhile to briefly comment on these steps. First of all, the memo notes that several of these steps will be required (steps 1 and 2) or add value (steps 3 and 4) also in the case of public ownership and public provision. We see that, with respect to guarding the public interest, again little faith is displayed in public ownership as such, an issue to which we return below. In line with the “the fewer rules, the more competition” doctrine, the memo

stresses that restraint should be exercised in the creation of sector-specific competition rules and it expresses a preference for monitoring (ex post) above ex ante supervision. Relatedly, there is a preference to concentrate all regulatory powers with the NMa, the Dutch Competition Authority. With respect to competition, the memo rightly notes that the design has to be tailor-made, and it distinguishes between infrastructure-competition, service competition over one infrastructure, competition for the market, and yardstick competition, where the first mentioned are the most preferred. With respect to the ownership issue, the overall conclusion is that, in a competitive market, provided there is adequate supervision, privatisation can take place, while in markets in which there is not yet sufficient competition, privatisation is an option, but imposes more demands on the supervisory arrangements. In referring to Newbery (1997), the memo states that the first priority is to have an adequate market structure; the privatisation question can be answered only thereafter.

Note that this conclusion is consistent with that of the most recent memo on state participations. One difference between these memos is that the one on networks devotes more attention to the limits involved in contractual and supervisory arrangements, while the one on participations stresses the drawbacks of ownership. Nevertheless, also the memo on networks, in essence, derives the preference for contractual relations and privatisation from the consideration that the alternative instrument of (partial) public ownership has drawbacks: having a firm in the hands of the government offers no automatic guarantee that the public interest will be met and it requires special contractual arrangements as well, especially since direct government influence on state participations will frequently be limited.

The memo on state participations contains (on the pages 10 and 11) a small section that explains that the limited direct influence of the government on state participations mainly is the result of the Dutch legal regime for business firms. Consistent with the general preference to separate policy making from service provision and to induce efficient production, if the government provides market services itself, it will usually choose the organisational form of a limited liability company (NV). Now one should know that for NV's, at least if they are of sufficient size, Dutch corporate law, the so-called "*Structuurregime*", limits the influence of shareholders severely. In essence, the structural regime lays all power with the Supervisory Board of the company, the RVC, a body that refills itself by a system of cooptation and that is supposed to act in the interests of the firm, not those of any stakeholder in particular. Consequently, even if the government wanted to have influence on the

management of a government NV (which is not clear as this might jeopardise the efficiency goal) it will, hence, have limited direct influence. In other words, if additional goals are to be pursued, then these should be imposed on the firm by means of the firm's statutes, or through regulatory or contractual obligations.

More generally, in the choice between full privatisation and public provision by an SOE that has the legal form of an NV, the government has to gauge the strengths of the various instruments that are its disposal. Broadly speaking, the State can influence a state participation through four different channels:

- (i) by means of regulation;
- (ii) by writing specific duties in the firm's corporate charter;
- (iii) by the appointment of members to the Supervisory Board;
- (iv) by exercising its rights as a shareholder.

The first instrument is also available when dealing with private firms; hence, this is no argument for public provision. The second instrument is a weak one: statutory obligations cannot be written in great detail; the goals of the company will be described in general terms and cannot be easily adjusted to changing circumstances. Interestingly, the government has eliminated the possibility of using the third instrument. While in the past the State had the power to appoint certain members in the Supervisory Board, that policy has been discontinued, as it did not prove a very workable solution and since the State did not want to have special privileges for itself; see Kamerstukken 2000-2001b. Finally, if the "*Structuurregime*" applies, an ordinary shareholder has only limited powers to influence the company. Of course, the State might want to reserve for itself a golden share, giving it the right to veto important decisions or fundamental changes in the charter. The Dutch State has done this in the case of TPG (post) and KPN (telecommunications). The European Commission and the European Court of Justice have, however, argued that these golden shares limit capital mobility in Europe, hence, should be withdrawn; for example see ECJ (2003). In response, the State has indicated that it is willing to withdraw its golden share in KPN, but not in TPG. In the latter case, government ownership is said to be necessary to guarantee that TPG will keep out of financial trouble and be always able to offer universal postal services. The strength of this argument remains to be tested, but it would seem wise for the State to take into account the contingency that, in the near future, also this instrument can no longer be used.

It follows that, in the Netherlands, an SOE indeed is not a very attractive instrument to pursue the public interest. Nevertheless, this does not imply that it cannot be the best instrument and in this respect, the 2001 memo, on state participations is not convincing: while it describes the drawbacks involved in the State influencing SOE's, it does not discuss the limits of contractual arrangements with private firms. As a result, the trade-offs involved are not made visible. As we will see in the Sections below, in practise the concern has come up that contractual relationships would not be sufficiently powerful to protect the public interests, and this has led to reluctance to fully privatise SOE's and participations of lower levels of government. In some sectors, such as electricity, privatisation has been blocked, since the government was not sure that the conditions for regulation and monitoring were adequate, i.e. that the government had sufficiently powerful regulatory instruments to allow privatisation to take place.

4. POST AND TELECOMMUNICATIONS

In August 1997, OPTA the Dutch regulator for post and telecommunications, started operations. OPTA states as its mission to stimulate effective competition in the markets for electronic communication and postal services and to protect consumers whenever these do not have sufficient choice. OPTA, however, has only weak instruments to realise its mission: it is not a "regulator", its formal tasks are limited to monitoring whether players keep to the rules of the game and to resolve conflicts between market players. The Ministry is responsible for rule making, which OPTA has to apply in specific cases. As a result of the rules being vague, parties have ample opportunities to appeal to OPTA's decisions on formal procedural grounds, on the argument that OPTA has overstepped its powers or has misinterpreted the rules. While these court cases have delayed competition, we will see in this Section that, thanks to high level of expertise at the office, OPTA has made good contributions to make the markets that it supervises more competitive.

4.1. Telecommunications

Dutch liberalization policy has followed the steps of the EU-Directives, but implementation has been slow. The original European ONP-framework, aiming at fully liberalising telecommunications markets by January 1998 and at making the transition to a

competitive market, was implemented by means of the “Telecommunicatiewet” (Kamerstukken 1996-1997b), which came into effect only at the end of 1998. The new EU Telecommunications package (the set of Directives that the European Parliament and the Council agreed upon on February 14, 2002) should have been implemented by the summer of 2003, but the new law (Kamerstukken 2003-2004c) came into effect only on May 19, 2004. Although law making is slow, competition has developed in most market segments.

As was described in Section 2, the national PTT was incorporated in 1989, and privatised in 1993. In 1998, PTT was split into a telecommunications company, KPN, and the postal company TPG that we will discuss below, which are both listed on the stock exchange. Already in 1989, the separation was made between regulatory functions, which were left behind in the Ministry, and the provision of telephony services. The separation between rule making and market supervision was made in 1997 when OPTA was established, with full market liberalisation taking place shortly thereafter. Privatisation thus took place well before the market was liberalized. By now, the government has sold the majority of its shares in KPN. In October 2003, the State share was reduced from 31.3% to 19.3%, and the State is willing to sell more when the time is right. The State still has a golden share, but it has indicated that it is willing to give this up. In line with the general policy outlined above, now that the telecommunications market is viewed as “sufficiently mature”, the State views KPN as an ordinary investment, i.e. there are no special strategic interests involved. In response to the question why the State did not sell in better times, such as in 1999, the Minister of Finance has always answered that there was never a moment in which he did not have inside information, hence, that stock market regulations have prevented the State from selling earlier.

In fact, there is no evidence that, as of 1993, the State has viewed the company any different from an ordinary investment; in any case, it has not prevented the company from getting into trouble. It allowed KPN to realise its ambitions to become a European player, among others by taking over E-plus in Germany, by taking a share in Hutchinson’s “3” in the UK, and by participating in UMTS auctions in the Netherlands, Germany and Belgium. After the 2000 telecoms crash, however, when KPN needed new money to write off on these investments and to pay the debts, the State participated in KPN’s new share issue and thus played an important role in preventing KPN from going bankrupt, although the State claims

that, in this respect, it did not behave differently from what any other large shareholder would have done.

It is important to note that KPN has been privatised with the fixed network included. Clearly, the fixed network is an important asset on KPN's balance sheet and, as company data (available at www.KPN.com) show, the company receives a steady stream of income from its fixed telephony business, although that revenue has started to decline recently; see below. Since 2000, a discussion has taken place about whether privatising KPN as an integrated company, i.e. including the fixed network, was a wise decision. Two drawbacks have been mentioned: privatising KPN as an integrated company might have jeopardised the public interest of uninterrupted telephony service and it may have delayed competition in some market segments.

The first point was discussed for a first time when KPNQwest, a participation of KPN active in the broadband backbone market, went bankrupt in 2002. Although Internet traffic was uninterrupted, the question arose what would happen with voice telephony if KPN itself would go under. According to OPTA, there could be severe problems in that case, as the bankruptcy administrator would have to take into account the interests of the debt holders only, hence, he could choose to neglect the public interest. The government always took the view that things were not so serious, but on March 12, 2004, it announced that it had decided to arrange for a special fund out of which the administrator could draw in case of severe calamities, so as to guarantee uninterrupted service also in this case. We can infer that the risks involved in privatisation of firms possessing essential assets, in the past, may indeed have been underestimated.

Moving to the second drawback, in some market segments, such as fixed voice telephony, privatising KPN as an integrated company probably indeed may have delayed competition somewhat. The local loop of the network is traditionally considered an essential facility that cannot be economically duplicated by entrants; hence, KPN should give entrants access at non-discriminatory terms. Clearly, the fact that KPN is both service provider and network owner gives it an incentive to raise rivals' costs and this creates difficulties for the regulator, OPTA. Since several key terms in the law and powers of OPTA have been unclear, there have been many legal disputes in this area. Nevertheless, OPTA has taken a tough stance, for example, by imposing price squeeze tests on KPN, that force the company to leave

some margin between its retail and wholesale tariffs and that allow CPS-operators (carrier select) to compete. (See Bouckaert and Verboven (2004) for description and economic analysis of price squeeze tests.) As a result, competition has developed also in this market. At the time of writing, about a third of the users of the fixed network are using CPS-services, and, for a typical consumer, it is still possible to have cost savings of 15% when switching to a CPS-provider. As OPTA (2004) shows, in most market segments, KPN's market share is now smaller than that of incumbents in other EU-countries, with the share in international traffic (45-50%) being low in particular. In international perspective, fixed voice telephony in the Netherlands is cheap, as Table 4.1 shows. It should be noted, however, that since 2001 KPN's prices have increased by 9% and that, over 2002, prices of CPS-providers have increased by 7%.

	Local	National	To US	To a neighbouring country
The Netherlands	0.33	0.49	0.85	0.85
Sweden	0.30	0.30	1.12	0.59
Germany	0.42	1.22	1.23	1.23
Spain	0.28	0.88	1.53	1.53
Italy	0.25	1.22	2.12	2.12
France	0.39	0.96	2.34	2.34
United Kingdom	0.64	1.29	3.37	4.06

Table 4.1: International comparison of cost (Euro) of fixed telephony for a 10-minute call. (Source OPTA (2004)).

The Dutch government has always stressed that full infrastructure competition is to be preferred above service competition over one network. Fortunately, in important market segments, such as broadband Internet access, infrastructure competition is possible since 98%, of Dutch houses is connected to both the telephony and the cable-TV-network. To make such competition possible, KPN has been forced to sell its (considerable) interests in cable early on. At the same time, the municipalities, the traditional owners of other cable networks did not have the expertise, money, or interest, to upgrade their networks. In the 1990s, in a situation with eager buyers, they were interested in selling and the government did not oppose privatisation in this domain. As a result UPC (a daughter company of UGC Europe inc., see www.ugceurope.com) was able to buy many networks and, at present, it is the largest cable

operator in the Netherlands. The big 3 cable operators (UPC, Casema (currently owned by the investment companies Carlyle and Providence from the UK), and Essent, a Dutch multi-utility) together have 85% of all connections. While privatisation of cable has not been without problems (with several firms having been accused of abusing their dominant position in the TV market), the competing infrastructure has proved very beneficial for broadband Internet access. OPTA, in forcing KPN to unbundle its local loop, resulting in the Netherlands having (together with Denmark and Sweden) the largest percentage of unbundled lines being in the hands of entrants, provided an additional boost to competition. As a result there is strong competition between various xDSL-providers and between xDSL and cable with price decreasing rapidly. (Many ISP's halved prices and doubled speed in 2003.) In May 2004, OPTA reported there were 1.1 million xDSL connections (and 1 million broadband cable connections, this resulting in a large penetration in European perspective. At the same time, KPN reported that it had over 0.9 million connections, hence KPN's share in the xDSL-market is around 80%, while it is 42% in the overall broadband market.

As far as mobile telephony is concerned, since the 1998 DCS-1800 auction, the Dutch market has five license holders with full networks, and since then several additional service providers (virtual operators) have become active as well. While the fact that there were already five operators led to relatively low revenue for the government in the 2000 UMTS-auction, there is the important benefit of the Dutch mobile market probably being one of the more competitive in Europe. Table 4.2, taken from OPTA (2004) shows that, in the Netherlands, mobile telephony is cheap indeed. Not surprisingly then, the penetration rate is above 80% of the population, there being more than 13 million active connections.

	2000	2001	2002	2003
Finland	140	159	157	146
The Netherlands	252	291	252	229
Sweden	165	204	213	255
Germany	329	338	309	323
Italy	303	367	356	343
United Kingdom	309	337	319	355
United States	396	343	409	409
Australia	369	285	293	419
France	382	420	395	468

Table 4.2: International comparison of mobile telephony tariffs, annual expenditures (2000-2003) of a residential client in US\$ against purchasing power parity. (Source OPTA (2004)).

This is not to say that there are no problems in the mobile market. Just as in other countries with the CPP-system (calling party pays), there is the issue of high mobile terminating tariffs, i.e. an operator needs to pay a high price to a competitor for terminating a call on the latter's network. This translates into higher retail tariffs, with fixed to mobile calls being particularly expensive. Indeed, and perhaps caused precisely by the intensive competition on the mobile market, terminating tariffs have been especially high in the Netherlands. In 2003, they were 22 Eurocents per minute, only slightly less than those in Portugal, the most expensive European country. OPTA has been worried about this for a long time and, together with NMa, it has threatened to intervene on the basis of the competition law, claiming prices to be excessive. As a result, in 2003 mobile operators agreed to halve their terminating rates in two years. As of April 2004, the terminating rate is 16 €/m, it will be 14 €/m by the end of the year and 12 €/m in December 2005, which is the lowest rate that is currently available in Europe.

All in all, consumers are satisfied with the way the Dutch telecommunications market works. There is active competition and convergence between infrastructures. The outlook is that broadband penetration will increase further and that there will be a shift from fixed voice

telephony to mobile. As the fixed telephony tariffs have been rebalanced already since the end of the 1990s, the fixed subscription rate is relatively high and for almost 20% of the fixed callers it is now more than 75% of the bill. As a result and since subscription fees for mobile are much lower, already 7% of consumers have terminated their fixed line subscription, and it is predicted that another 20% of consumers will do that before long. The result, of course, will be higher subscription fees for the remaining callers on the fixed network, inducing some more of them to leave, which raises concerns for the future. In any case, OPTA (2004) concludes that there is healthy infrastructure competition and that the local loop of the fixed network no longer seems to be an essential facility.

4.2. The postal sector

In January 2004, the Minister of Economic Affairs published his most recent “vision on the postal market” (Kamerstukken 2003-2004e) in which he outlines his plans until 2007. Taking this memo as our starting point, this subsection briefly describes the current state of affairs in the postal market.

Traditionally, the main consideration underlying the legislation of this market is that universal service must be guaranteed: letters and some other items have to be collected and delivered everywhere within the country six days a week at a geographically uniform tariff, with a certain percentage being delivered overnight; in addition, a certain number of outlets (post offices) have to be operated. TPG, the postal arm of the former PTT that was split off from KPN in 1998 and that is listed on the stock market, with the Dutch government holding 34.7% of the shares, carries the universal service obligation. To allow the company to fulfil its obligations, it has been given a monopoly on the transport of *letters* up to 100 grams costing no more than 3 times the base rate ($3 \times \text{€}0.39$), as well as on some other services. European liberalization of the postal sector consists in gradual reduction of the reserved sector: from 100 grams since January 2003 to 50 grams from January 2006, with the intention being to fully liberalise the market as of 2009; see the new Postal Directive 2002/39/EC. In the Netherlands, *direct mail* (non-personalised advertisement letters) does not fall in the reserved segment, so that the monopoly is smaller than in neighbouring countries and narrower than what Directive 2002/39/EC allows. Of all letter mail, only 48% is reserved, which compares to 59% in the UK, 68% in Germany and 82% in France. The “vision” document proposes to stay ahead of the European average, but, in the interest of TPG and its workers, to maintain a

level playing field with Germany and UK, hence, it is proposed to fully liberalise the market in 2007. Note that the government is trading off multiple goals: one would expect a faster pace to be better for (large) consumers.

Even if a relatively large part of the market is already open to competition, and the incumbents from neighbouring countries (Deutsche Post, La Poste, Consignia), as well as several small players, are active on the Dutch market, TPG still has a dominant position on most market segments. Experience in countries, such as Finland and Sweden that are further down the liberalization path, has shown that competition will develop only slowly, if at all. The question is whether, in accomplishing the transition to a more competitive market, entrants should be given the right to make use of TPG's facilities at regulated terms; if so, to which facilities or services and at what price? OPTA has argued that TPG should offer "an access menu" and that, at least temporarily, access to TPG's sorting facilities and distribution network should be mandatory at regulated rates. On the basis of several studies (SEO (2003), De Bijl et al (2003)), the Minister has concluded that, even though the market has some natural monopoly segments, negotiated access should be sufficient. At present, competitors to TPG, such as Sandd, are successfully rolling out their own networks; hence, full infrastructure competition indeed seems to be developing. Since such competition is to be preferred above service competition, the "hands-off" approach of the government may very well be justified.

Another important issue on which OPTA has come to a different conclusion than the Ministry concerns tariff regulation. In the past, the price of a stamp was allowed to rise with the general rise in the wage level, i.e. there was price cap regulation with no adjustment for efficiencies. OPTA has argued that, while this system has given TPG strong incentives to cut cost and to improve efficiency, consumers have benefited insufficiently. While, in international comparison, sending a letter of up to 20 grams is cheap in the Netherlands, heavier mail is relatively expensive; see OPTA (2004, Figure 6). OPTA argues that, after correcting for population density, Dutch tariffs are not low, that TPG is making excess profits on the reserved segment and it has proposed to reduce the price by some 25%; see OPTA (2002). The Minister has refused to reduce the price, he has decided, as a sort of compromise, that the price of a stamp will remain fixed at €0.39 until 2005, and in the "vision document", he proposes to extend this period until 2007. This proposal not only makes OPTA unhappy, TPG has argued that, since the postal volume is decreasing (with some 20% up to 2040) and

there are economies of scale, unit cost are rising, hence, the company should be allowed to increase its prices. TPG appealed the decision and won: the Minister was forced to withdraw its decision. Nevertheless, in June 2004, TPG announced that it will not increase the base prices until 2007. Note that also here OPTA has no regulatory powers.

In its “vision document”, the government argues that the public interest requires that universal service be maintained, and that a fully liberalised market will deliver a level of service that falls short of what is desired: “single item mail” (small volume mail that is put in posting-boxes, a segment which is less than 10% of the market), is not very attractive for competitors, so that a duty to carry such mail should be assigned to TPG. As TPG falls under the Dutch “*structuurregime*”, direct influence of the State on TPG is, however, limited, and to protect its interests, the State has a golden share in TPG that gives a veto right concerning certain key decisions. The government has argued that, at least for the moment, it needs to maintain this golden share in order to ensure universal service and that this instrument is proportional for this purpose, but there is discussion with the EC about the issue. The Dutch government argues that, in a liberalized postal market, without the golden share, TPG might get into financial trouble, jeopardising universal service. It remains to be seen how strong this argument is.

In international comparison, the Dutch postal market is functioning efficiently: TPG, which in effect has operated as a regulated private profit-maximizing firm for the last decade, is an efficient firm, making healthy profits; quality of service is high, prices are reasonable and are declining in real terms; competition is developing in certain market segments and overall satisfaction with how the market operates is good. What explains the success is probably the fact that this market is relatively simple: there are only artificial and strategic barriers to competition, no natural ones; the government has been willing to open the market more than in most other European countries and it has not intervened in TPG’s policy making.

5. ENERGY

DTe, the Dutch “regulator” for energy markets, was established through the *Electricity Law 1998* (Kamerstukken 1997-1998b) that implemented Directive 96/92EC. Noteworthy is that the explanatory memorandum to this law expresses regret at yet another “independent supervisor”; it should therefore not be too surprising that DTe is set up as a chamber of the

NMa, the Dutch competition authority. At first, DTe had responsibilities only for supervising the electricity market, but after the *Gas Law* came into effect in 2001 (Kamerstukken 1998-2000), DTe got formal powers also in that domain. In the Spring of 2004, parliament discussed the implementation law (Kamerstukken 2003-2004d) for the second EU Electricity Directive (2003/54/EC) and the second EU Gas Directive (2003/55/EC). At the moment of writing, the new law has already passed the second chamber of parliament; it will be discussed by the first chamber before the 1st of July and put into effect soon thereafter. As a result of this new law, (among others) the independence of network management will be strengthened, there will be a clear separation between policy making (the responsibility of the Ministry) and supervision (the task of DTe), and there will be regulated access also to gas networks. In this section, we will discuss liberalisation of, and privatisation in the Dutch energy markets.

5.1. Electricity

The electricity sector has been restructured in line with the two EU-Directives, but, as was the case with post, Dutch policy has been ahead of the European average. The government memo “*Stroomlijnen*” that was published in 1996 anticipated the EU electricity market liberalisation Directive 96/92/EC and outlined the essentials of the “*Electricity Law 1998*”. At the time that document was published, municipalities and provinces, directly or indirectly, owned all players in the Dutch electricity sector. There were 4 large-scale producers (responsible for some 80% of supply) and 23 local distribution companies. Large-scale generation was centrally coordinated by SEP, a cooperative joint venture of these producers. In addition to imports, domestic production involved small-scale self-generation by industrial units and distribution companies. In line with Directive 96/92/EC, the Electricity Law proposed gradual liberalisation of demand and stressed the importance of non-discriminatory access to the transport and distribution networks. Below we describe the developments in the various market segments (production, transport, distribution and supply) since the 1998 law was passed.

With respect to generation, the (draft) 1998 law was based on the idea of creating a “national champion”, by merging the four large-scale producers and with the government facilitating the merger by providing subsidies for stranded assets. In the spring of 1998, however, the producers could not agree on how to share the remaining costs, and the merger

plans were abolished. Subsequently, during 1999, foreign energy companies (Electrabel, E.On and Reliant) bought three of these generation companies, while the fourth generator remained in the hands of Essent, a vertically integrated energy company. In the generation segment, the law did not impose any sector specific restrictions on asset sales; if anything, privatisation was encouraged, the only constraints being that buyers had to commit to honour the obligations with respect to stranded assets and not to exert any influence on the national grid company TenneT (see below). Indeed, based on the idea that efficient scale in generation is relatively small and that the wholesale market would be competitive, the production sector has been left unregulated since 1999, hence, only the general competition and environmental laws apply.

Since 2001, after the expiration of a transition period, needed to unwind the cooperative SEP agreement that blocked competition between domestic generators, generators have competed for the liberalised market segment. As domestic competition is gas based, there is room for cheap imports and indeed 15% of total supply is imported. Various market places facilitate competition. In addition to the somewhat informal OTC-market, the APX (see www.apx.nl) has offered a daily spot market since May 1999. At the borders with Belgium and Germany, the import capacity is auctioned, so as to ensure efficient use of this capacity; see www.tso-auction.org. As a result of these organised markets, the Dutch electricity market is reasonably transparent. In retrospect, the possibilities for exerting market power on the wholesale market might have been underestimated at the time the law was drafted, and there might have been insufficient awareness of the potential pitfalls involved. After the California crisis, it has been discussed whether, to guarantee the public interest, some type of licensing of generation would not be desirable. In any case, the wholesale market is monitored closely: the DTe has set up a Market Surveillance Committee, in which several academics are active.

In 2003, after having been active on the generation market for less than 4 years, Reliant has left the country again, with Nuon, a large integrated energy company, buying its assets. With this merger creating a market structure with two large vertically integrated energy companies, and wholesale markets that are not very liquid, the NMa was concerned that this is another step on the road to a tight oligopoly with three or four integrated players. It decided that the concentration can be allowed provided that 900 MW of capacity is divested by means of a VPP-auction (NMa, 2003), a decision that Nuon has appealed. Very recently, a

court decided that Nuon indeed will have to divest 900 MW, but that the requirement imposed by NMa, that the capacity contracts should be long-term (i.e. 5 years), should not be implemented at the moment. The NMa-decision is noteworthy as it stresses that, in delineating the relevant market, the time dimension is important: when the market is tight, players (even those with small market shares) may have substantial market power.

The requirements of non-discrimination and accounting separation imposed by Directive 96/92/EC were implemented by insisting on legal unbundling between production, network services and supply, as well as by certain other procedural safeguards. Consequently, the 1998 Dutch Electricity Law goes much further than what the First Directive demands; in fact, most of the requirements of the second Electricity Directive (2003/54/EC), that should be implemented by July 2004, are already met by that Law. The 1998 Law forces the economic owners of the networks to appoint independent network managers, with the appointment to be approved by the Minister. In what is probably best seen as an attempt to block network investments that could be used to expand imports, hence, increase competition, SEP, the joint venture of the generating companies that owned the transport grid, at first refused to delegate important investment decisions to the national transport grid manager, TenneT. As a result, it took until 2000 before the Minister could approve the appointment of TenneT. When dealing with this issue, the question came up whether government ownership would be necessary to ensure non-discriminatory access to the transmission grid. The original law was based on the idea that, to guarantee independence of the network company, it would be sufficient for the State to temporarily acquire the majority (50% plus 1) of the shares: after the transition period, full privatisation could take place. However, during the summer of 1999, the Christian Democrats changed their position on the privatisation issue to conclude that all essential grids, hence, also the national transport grid, should be owned by the State. Over time, other parties, with the exception of the Liberal Party, also came to adopt this position. In October 2001, the State fully acquired TenneT as well as Saranne BV, the legal owner of the grid, with the State paying slightly over €1 billion. Interestingly, the 2001 government memo on state participations expresses some regret that Parliament forced the cabinet to make this acquisition; one can see a clear reluctance of the Ministry of Finance to take the ownership role, or maybe it just regrets having had to pay €1 billion. With the Christian Democrats being in the government at the moment, it is unlikely that the State will soon sell any of its shares in the national grid, or in the systems operator TenneT.

Since then, there have been further interesting developments with respect to the national grid manager and system operator TenneT. In 2003, TenneT bought a lower voltage grid that also has a transport function. In May 2001, TenneT bought the power exchange APX, the day ahead spot market on which approximately 15% of all energy consumed in the Netherlands is traded. In turn, in 2003, the APX bought APX (UK), a UK spot market for electricity. In June 2004, TenneT bought an auction house on which long-term energy contracts are traded (2.3 TWh in 2003). While it does make sense for TenneT to operate the APX (as, in its capacity of system operator, it also operates a balancing market, which can be used for last minute adjustment), it is less clear or what is the driving force behind the other acquisitions, in particular the foreign expansion. The DTe has published a consultation document on how TenneT should be regulated.

The demand side of the market is liberalized in four steps, and liberalisation proceeds at a faster pace than the Second Electricity Directive (2003/54/EC) requires. Large users, representing about 1/3rd of demand, were given freedom of supplier in 1999 and the middle group, again representing about one-third of demand, in January 2002. Immediately after liberalisation, some 30% of the middle segment switched supplier, and it turned out that the sector was not very well prepared for this. In July 2001, the market for green electricity was opened for all consumers, and the entire market will be open as of July 2004 when supply will be unregulated. As a result of relatively generous subsidies, a large number of small consumers (about 1 in 3 at the moment) are consuming green energy; see www.green-prices.com, where one also sees that there are a large number of suppliers of such energy, that the market is transparent and that there is still considerable price dispersion. For further discussion on the green market, I refer to Van Damme and Zwart (2003), where it is also argued that the subsidies have largely been ineffective. At present, it is predicted that the full liberalisation as of July 1, 2004 will not lead to much switching; hence, one may infer that, just as in the UK (see Waddams Price, 2004), retail competition will probably not be very effective.

DTe regulates distribution rates and, in setting the network charges, DTe is making use of yardstick competition, hence, network charges of different distribution companies are compared to each other and inefficient companies are forced to reduce their charges more than others. While in the first regulation period (2001-2003) there was regulation only on price, in the second period (2004-2006), network quality will be regulated as well. DTe

claims that, as a result of regulation, in the period 2001-2006 network tariffs decrease by 17% on average, leading to cost savings of come €1.9 billion in total; see NMa (2004, p. 62).

Article 93 of the 1998 Electricity Law states that privatisation of distribution companies is possible, subject to Ministerial approval. Since 1999, there has been a heated political discussion on the conditions under which such privatisation could take place, while at the same time a few distribution companies have been sold to German utilities. Each time this happened, the responsible Minister (Jorritsma, Liberals) applauded the developments, but parliament objected, tried to block the sale and, failing to do so, forced the Minister to impose stricter rules on privatisation. As a result, the cabinet has proposed guidelines (Staatscourant 2001) and a draft law on “Privatisation of Energy Distribution Companies” (Kamerstukken, 2001-2002c) that would allow privatisation, provided it was guaranteed that the network manager could and would operate in a way “sufficiently independent” from the rest of the company. Both of these were very complex and did not meet with any enthusiasm. When in 2002, before the privatisation law could be discussed, another distribution company was bought by RWE, parliament was so upset with the fact that it could not block this privatisation that it forced the Minister to withdraw both the guidelines and the draft law. After the 2002 elections, the new Minister indeed withdrew both, while announcing that he would not allow any further privatisations until the market would be fully liberalised. Since that time, the deadline has been shifted further in the future.

At issue in this discussion is first of all the question of what can be privatised: the vertically integrated company or the distribution network, or just the supply business? The current owners of the companies (local municipalities and provinces) are in favour of full privatisation: they argue that government regulation is sufficient to guard the public interests, that they have no real powers to influence the decisions of the distribution companies in any case (this again as a consequence of the *Structuurregime*) and that they have good use for the money that privatisation would bring. At the same time, it has been argued that there are several risks involved in full privatisation and that regulation might not be sufficiently powerful to deal with these. The main concern is that an integrated (private) company would have an incentive to discriminate against competing supply companies, hence, that it would frustrate supply competition. Other concerns are that it could use revenues from the network business to cross subsidise its supply business (again leading to “unfair competition”), and it

might underinvest in the network, with the State not having powerful legal means to intervene in case of mismanagement.

One way of dealing with these concerns is to insist on unbundling of supply and distribution and indeed, to guarantee non-discriminatory access to the grids, the 1998 Law already forces distribution companies to legally unbundle their distribution networks from their supply business. In other words, the 1998 Law already implements an important requirement that, at the EU level, is imposed only by the second Electricity Directive (2003/54/EC). Even though the Law contains some other safeguards that are supposed to guarantee that the network manager operates in a way “sufficiently independent” from the rest of the company, there has been some concern, that network companies have not been able to do this. For example, when one pure supply company, Energy XS, went bankrupt in 2003, each network company switched the consumers of Energy XS to its sister supply company. The 2004 Law implementing the second EU Directive, therefore, imposes even stronger independence requirements, such as that the network company should be the owner of the grid.

Very recently the Minister has argued that even these additional measures might not be going far enough, hence, he has argued that full privatisation of the integrated company poses too great risks and that legal unbundling between distribution and supply is insufficient to deal with the concerns. The current proposal (Ministry of Economic Affairs, 2004), hence, entails full (ownership) unbundling of the distribution company from supply and generation; it is thus proposed to fully separate the competitive parts of the value chain from the monopolistic elements. Such unbundling would have to take effect before 2007, where the non-network part of the company is allowed to be privatised immediately after the unbundling has taken place. The Minister argues that this plan offers the best of all worlds: generation and supply can remain together, hence, allowing companies economies of scale and scope, while separation will effectively deal with the anti-competitive concerns. He also argues that full structural separation does not destroy any value, hence, that current owners should be happy as well. The vast majority of parliament supports these plans, but current owners have not yet been convinced. In part this is because the Minister has not yet made up his mind on the privatisation of the network companies; it is clear that, in the future, they cannot be sold to firms that are also active in supply or generation (i.e. line of business restrictions will remain in place), but it is not clear whether they can be sold at all. We thus see a major change in

policy: while five years ago privatisation of distribution companies was considered to be unproblematic, it is now judged to be impossible.

5.2. Natural gas

In 1997, the government published the white paper “*Gasstromen*” that anticipated EU Directive 98/30/EC and that outlined the essentials of a new Gas Law. With this Gas Law, (Kamerstukken 1998-2000) which was approved by parliament in 2000, for the first time rules for transport and supply of gas were introduced in the Netherlands; up to that time, there were only rules relating to production. The Law formulates uninterrupted supply of natural gas and optimal exploitation of Dutch natural gas resources as the public interests involved. The latter is the main difference with any of the other network sectors discussed in this paper: in a public private partnership with ExxonMobil and Shell, the Dutch State is an important producer of natural gas and Gasunie, the “national monopolist” is the largest player on the European gas market, with a market share of 17% in 2000. Given that natural gas is an important source of revenue for the Dutch State (during the last decade, annual revenue from gas has been 1.2% of GDP on average), it is not too surprising that the Explanatory Memorandum to the Law explicitly refers to industrial policy and states that Gasunie should be well positioned in Europe. To put this in comparison, while in the period 1990-2001, Dutch privatisation proceeds were \$ 14.5 billion, gas revenue was over € 47 billion. According to estimates of the National Audit Office, as a result of liberalisation, State revenue might decrease considerably (with up to €1 billion a year); see Kamerstukken (1999-2000d). It should, therefore, not be too surprising that Dutch liberalisation policy in gas is somewhat different from and less ambitious than, that in electricity. What is perhaps more surprising is that the Netherlands is not dragging its feet more. Indeed, the most recent change in law by means of which the second EU Gas Directive (2003/55/EC) is implemented insists on regulated access to the gas network, hence, it does away with the asymmetry that existed between gas and electricity; see Kamerstukken 2003-2004d.

Gasunie is the central player in the “Dutch gas building”: it coordinates production and sales and is itself responsible for purchasing, storage, transport and sales. It is a public private partnership in which the State participates for 50% and ExxonMobil and Shell each for 25%. It was set up around 1960 to allow for optimal exploitation of the gigantic Slochteren gas field that was then discovered by NAM, a joint venture of Exxon (50%) and

Shell (50%). At that time, NAM was the only party licensed to search for oil and gas in the Netherlands and its license stipulated that it had to sell to the State, for a reasonable price, all gas that was found. The State on its part operated a transport network, among others to transport cokes oven gas from Germany to several Dutch cities. Upon discovering the large volume of natural gas, the parties joined forces. For gas production and the management of the Slochteren field, they set up the Maatschap Groningen, a joint venture of the State (40%) and NAM (60%). For transport and trade, Gasunie was set up. It was given a (regulated) double monopoly position, both on its input market (with respect to NAM and the Maatschap Groningen) as well as on the domestic output market, and it was assigned the task to develop the gas market in the Netherlands. The Minister of Economic Affairs was given powers to intervene: approving tariffs, monitoring supply, and possibly assigning special privileges to certain industrial sectors (think of greenhouses). During the 1960s an extensive network was rolled out quickly and by the end of that decade 99% of the Dutch households was connected to the “public” network.

Dutch natural gas policy has always been based on the assumption that natural gas is scarce as well as on the idea that taxing at the production stage maximizes government revenue. Specifically, policy has consisted in providing incentives to exploit smaller fields first and to maintain the Slochteren field as much as possible: the “small fields policy”. To make exploration and exploitation attractive, Gasunie has been forced to pay *all* producers of Dutch gas a reasonable price, related to the “market value” of gas, the latter being the opportunity cost of the final gas consumer. If a small field producer sells its gas to Gasunie, it receives a price related to the (average) retail price over the previous calendar year. Consequently, Gasunie makes little profit itself; the profits are transferred to the producers, which are then heavily taxed. In essence, producers pay a profit tax to the State, the rate being somewhere between 50% and 99%, with the State getting some 70% of the profit on average, and 70% - 90% on the Slochteren field. Note that it is not obvious that the small fields policy is consistent with maximising government revenue: as Slochteren has much lower production costs than other fields (0.5 € versus 2-3 €; see Correlje and Odell (2000)), that field yields highest revenues. In defence, the government, points to the balancing function of the Slochteren field; in essence, production cost of the small fields are smaller as long as the large field is filled sufficiently.

The first EU Gas Directive 98/30/EC proposes gradual liberalisation of the gas market, with non-discriminatory access to the grids being an important requisite for competition to develop. The Directive is satisfied with accounting unbundling of integrated gas companies and negotiated third party access, with an independent authority resolving conflicts. In line with the Directive, the Gas Law imposes on Gasunie accounting separation between storage, transport and supply activities. Like the Directive, the Gas Law is satisfied with negotiated access to the grids, and it appoints DTe as the agency to deal with conflicts. After the passing of the Law in 2000, the 200 largest consumers (those with an annual demand more than 10^7 m³ of gas, which represent 46% of total demand) were free to choose supplier and upon liberalisation, Gasunie lost 37% of this market. The middle segment (annual consumption more than 10^4 m³ of gas) was liberalised in 2002 and the market will become fully open as of July 1, 2004. The market share of Gasunie has gradually decreased: 100% in 1999, 82% in 2000, 79% in 2001, 77% in 2002, 74% in 2003; see ECN (2004). We note that, while the sales of Gasunie in the Dutch market have gradually decreased from around 44 billion m³ until 1997 to 34 billion m³ in 2003, exports have remained roughly constant around 43 billion m³ per year; see www.gasunie.nl.

In 2001, the Minister of Economic Affairs argued that the existing structure and agreements in the gas sector would increasingly lead to tensions with European policy and he announced his intention to come to a complete restructuring of the “gas building” (Kamerstukken 2001- 2002d, nr 1). Not surprisingly, given the financial interests of the State, the letter stresses that the operation should be budgetary neutral for the State and that there should be no changes in production. Interestingly, the letter also states that privatisation is possible “if the public interest can be taken care of by means of regulation, and if production, transport and trade can be adequately separated”. As with electricity, policy would, however, move in the opposite direction. In the next letter on the topic (Kamerstukken, 2001-2002d, nr. 2), the Minister proposed ownership unbundling, i.e. that Gasunie be split into three independent companies: one for transport and system operation (owned by the State), and two competing trade companies, one owned by ExxonMobil, the other by Shell. In effect, a similar structure as the one that exists for electricity was proposed. Valuation of the different parts of Gasunie proved difficult, however, and, in October 2003, after three years of negotiation, the parties concluded that they could not agree on unbundling the firm (Kamerstukken 2001-2002d, nr. 5). In the draft Law for implementing Directive 2003/55/EC, the Minister writes that it still is his intention to come to a full unbundling. Note, however,

that the Directive is satisfied with legal unbundling, that since 1999 Gasunie is already split in two divisions (“Gastransport Services” (GTS) and “Gasunie Trade and Supply”), hence, that legal unbundling can be easily achieved. If the experience from electricity is anything to go by, going further and nationalising “GTS” could be a costly business for the State.

6. PUBLIC TRANSPORT

On January 1, 2004, the transport chamber of the NMa, the organisation supervising the public transport sector, officially started its operations. In this Section, we describe the relevant laws (two for train transport and one for bus transport) and the current situation in this sector.

6.1. Train Services

In 2003, Dutch parliament adopted two new laws that implement the “second package” of measures to revitalise the railways that were adopted by the European Commission on 23 January 2002. The first of these laws, the “Spoorwegwet” (Kamerstukken 2000-2001b) establishes full unbundling of infrastructure and service provision, with the first being the responsibility of the SOE Prorail. The second law, the “Concessiewet personenvervoer per trein” (Kamerstukken 1999-2000b, 27216) arranges that passenger traffic will be governed by a competitive (exclusive) licensing system, hence, that there will be (limited) competition for the rails. Specifically, until 2015 the concession for the “core network” will be granted to NS, a state owned enterprise, while smaller lines will be contracted out on competitive basis, and the high speed connection between Amsterdam and Brussels (that will start running in 2007) having been tendered to a joint venture of KLM and NS until 2022. We here briefly describe how this structure came about.

When during the 1980s, in both passenger and freight traffic, the position of rail transport deteriorated, the Dutch government set up the Wijffels Committee to come up with recommendations about how to increase the share of rail transport in the total transport market. In its 1992 report, that committee recommended to loosen the relation between NS (the Dutch Railroads) and the State, i.e. to give NS room to transform itself into a “normal” business and to make the State responsible for rail infrastructure. The government accepted the recommendations and a process of reducing the direct government influence on the

company was started. In June 1995, NS and the Dutch State signed the agreement “Over de wissel”, which also aimed at implementing EU Directive 91/440/EC that required accounting separation between infrastructure and train service provision. The agreement stated that, in return for the government no longer providing subsidies for passenger transport, NS was given more freedom to determine the time schedule and the tariffs.

Since 1995, the price of train tickets has roughly increased with the rate of inflation. Subsidies, which amounted to some €200 million in 1992 (of which more than 60% were exploitation subsidies), were reduced considerably, with operational subsidies not being given as of 1998; instead, as of 1996, NS started to pay for using the infrastructure, the tariff being €84 million in 2003. While the subsidies were reduced, the cost recovery ratio increased from 50% in 1992 to 100% at the end of the 1990s, with NS making profits (of around 4% of turnover, yielding a return on investment around 1%) since 1995. From 1995 until 2000 also the passenger transport division made small annual profits, but since 2001 that division is slightly in the red, mainly as a result of international transport being unprofitable, this as a consequence of cheap international flights. For example, in 2003, on total turnover of €2.7 billion, NS made a profit of €81 million with the passenger transport division making a loss of €37 million on a turnover of €1.6 billion (58% of the NS total); see the Annual Report over 2003, available at www.ns.nl. From a pure financial perspective, the 1995 “hiving off” of the NS can thus be classified as a remarkable success. No doubt, the government plan, announced in the 1998 policy document “De derde eeuw spoor” (Third century of rail), of privatising NS, contributed to the company improving its operating efficiency considerably.

On the other side, as far as quality of service is concerned, the record has not been so good. With the company aiming that at least 87% of the trains arrive on time (that is, with a delay of less than 3 minutes), that goal has not been achieved since 1996. In fact, the quality level has been around 83%, with 2001 setting the record low with 79.9%. Clearly, passengers were very dissatisfied with this performance. In 2003, this led consumer organisers to block a tariff increase of 4.15% that NS had planned. The company agreed that it would increase tariffs only after quality had gone up; it would increase price by 2.075% only after quality had been above 84.4% for 12 consecutive months and, counting from that point in time, to increase with a further 2.075% only after quality had been above 86.6% for another 12 consecutive months. Most recently, NS reported that in 2004Q1 85.3% of the trains had a delay of less than 3 minutes, hence, the company is now allowed to increase its prices. Note,

however, that the quality is still below the standard that the company has set for itself. Dissatisfaction with performance has led to the conclusion that privatisation of NS is unthinkable at the moment: the political consensus is that this could only make matters worse.

The 1995 contract made the State responsible for general policy concerning infrastructure investment and track use, but it delegated the associated operational tasks (maintenance, capacity allocation and traffic management) to NS. In effect, NS was made into a “hybrid company”, consisting of a public arm and a market organisation. The public arm consisted of three “task organisations” that were responsible for building and maintaining the infrastructure (Railinfrabeheer NV), entry to the tracks, capacity allocation and safety (Railned BV) and operational traffic management (Verkeersleiding BV). While these task organisations are structured according to private law, the Annual Reports of NS refer to them as being non-profit oriented, and financed by and working on behalf of the government. The market organisation of NS, NS Groep, originally consisted of divisions for passengers, freight, stations, real estate and supporting services, but in 1999, NS Cargo, the freight division, was sold to Deutsche Bahn. (The freight market, which has been fully liberalised since 1995, and in which there is competition on the tracks, will not be considered here.) The private arm of NS has always pointed to the public, infrastructure, branch of the company for being partly responsible for the low quality of service and for consumer satisfaction being low. In 1999, a report of the General Audit Chamber (Kamerstukken 1998-1999c) indeed put part of the blame for the low quality on the government and the three task organisations. It concluded that the Ministry of Transport had not adequately supervised the public task organisations of NS and that there were coordination problems between these three organisations.

While the 1995 agreement stated that the intention was to have competition on the tracks, it is clear that the hybrid structure that was chosen was not conducive for such competition to develop. Indeed, the report of the General Audit chamber also concluded that the task organisations were not always operating independently from the rest of the company; in fact, on several occasions the Board of NS had directly influenced them, without the Ministry intervening. One new player entered by exploiting a line that had been abandoned by NS, however, when it was not allocated more capacity it quickly left the market again. A review of the political discussion (Kamerstukken 1995-1996, 18986, nr. 18, p. 28-31), makes clear that the importance of the true independence of the task organisations for competition to

develop was probably underestimated. For passenger transport, the idea of competition *on* the tracks has meanwhile been given up as well; the choice now is for competition *for* the tracks.

As a result of general dissatisfaction of the public the quality of with train transport services, a second step of “unbundling” has since taken place. In 2000, a process started of lifting the three task organisations out of NS and bundling them into a separate 100% state-owned limited liability company, ProRail, that falls directly under the control of the Transport Ministry. In the meantime, the government has also changed its views on competition: it has concluded that competition on the tracks is not feasible and has settled for competition for the tracks on the basis of a concession system. While it was intended to have a new structure in place by 2000, the transition will be completed only in 2005. The General Audit Office has criticised the Ministry for not having a clear vision of the appropriate structure and for having caused this delay.

It is the system sketched above that is formalised in the new “Spoorwegwet”. This Law formally establishes the SOE ProRail, which will be fully independent as of January 2005, and it implements full separation between infrastructure services, to be provided by ProRail, and transport services, which fall under the responsibility of the state-owned company NS. The “Concessiewet” that deals with traffic services distinguishes between three sub-markets: the high-speed connection Amsterdam-Brussels-Paris, the core rail-network in the Netherlands, and the regional lines. For each of these three, concessions will be, or are, given out, but details differ somewhat. For the high speed-services, a competitive tender has been organised, with the winner being a consortium of NS and KLM. For the core network a contract, with duration till 2015 and performance clauses, has been negotiated with NS. For the regional lines, it is intended to shift authority to the regions themselves so that better integration with other forms of regional transport can be established. These regional authorities can give subsidies if they consider this to be necessary. In this domain, relatively little progress has been made.

6.2. Public Bus Transport

On January 1, 2001, a new law on public bus transport (the “Wet Personenvervoer 2000”, Kamerstukken, 1998-1999b) came into effect. The aim of the law is to increase the quality of public bus transport, to increase the share of that transport in the total mobility

market, and to increase cost coverage to at least 50%. The simple idea underlying the law is that more competition within the public bus market will make bus transport more competitive *vis à vis* alternatives. In this section, we describe the current market structure in this sector.

The regional public bus transport industry started with competition between bus companies, but these merged one after the other. Already in 1937, NS bought up a number of the regional transport companies, and transformed them into VSN. In 1969 the State took over the shares in VSN, which at the time had a monopoly on regional public bus transport. When, in the mid 1990s, the sector was in severe trouble (ticket receipts only covered about 30% of cost, direct labour costs were about 7% higher than in other countries, and indirect labour costs might have been even 40% higher), the government installed the committee Brokx to advise on how to restructure the sector. After two tender experiments had been successfully conducted in 1995, this committee recommended to split the Netherlands in several regions and to tender local monopoly licenses in each of these.

The “Law Passenger Transport 2000” implements the proposals of the Brokx committee. It creates 35 regional public transport authorities, RTA’s, (12 provinces, 7 areas and 16 cities) which are made responsible for public transport in 81 different areas. The law introduces a 2-year learning period, in which the RTA’s can experiment with tendering, and it specifies a target level of 35% of the relevant market having been awarded through competitive tendering by the end of 2002. If this target is not met, the Minister can force the RTA’s to tender at least 35 % of the contract value from 2003 on, and the law’s premise is that by 2006 (2007 for cities) all licenses will be tendered competitively. We note that the licenses have a maximum duration of 6 years and that, until 2010, the winner of a tender is forced to take on board all bus drivers and other direct personnel of the company that was carrying out the transport in that area. Obviously, as labour costs are around 70% of total costs, this requirement can be major handicap for new entrants.

At present, total turnover in the Dutch market for public transport is €3.1 billion; the submarket for local and regional public transport (including tram and metro) has value €1.7 billion, of which €1.2 billion is public bus transport; see Ecorys (2004). This latter market can be separated in bus transport in the major cities (€0.3 billion) and bus transport in other cities and regions (€0.9 billion), with only the latter market being contestable at the moment. In eight of the larger cities (Amsterdam, Rotterdam, Den Haag, Utrecht, Groningen,

Dordrecht, Nijmegen and Maastricht), in the mid 1990s, local bus transport was carried out by a municipal organization. To prevent the conflict of interest resulting from such a city being active on both sides of a tender, these cities have been given time till 2006 to corporatise or privatise their local bus companies and open their markets. In fact, the Law forces the cities to at least corporatise their bus companies. Article 48 of the Law states that a bus company that is under the control of an RTA is not allowed to participate in the tender organised by that RTA, while Article 109 is a fair competition clause stating that, as long as its own local market has not been opened up sufficiently, a municipal bus company cannot participate in any tender. A similar reciprocity clause applies to foreign firms: if these are from countries that have not opened up their markets, they can be banned from the Dutch tenders. The city bus companies, however, found a loophole: they simply formed a joint venture, SVN that was not caught by the latter clause. At this point in time, three of the larger city bus companies, GVB (Amsterdam), RET (Rotterdam) and GVU (Utrecht) are still municipal units, and they have asked for the 2007 deadline to be shifted. The other local bus companies that existed in 1996 have meanwhile been privatised.

Privatisation is thus viewed as a necessary step to allow competition to develop. Of course, the fact that the market is contestable does not imply that competition will come about. There are only few (about 15) parties active on the Dutch market, most of these only on their home markets and the reciprocity clause clearly does not help in increasing the number of bidders. Around 1998, the 100% state-owned VSN (now Connexxion) had about 90% of the market. As owner of VSN and as guardian of the public interest, the State thus had a double position. To make competition possible, in 1999, under the threat of banning the company from the tenders, it forced Connexxion to divest its business in the North, and this was bought by Arriva plc, a UK company. In 2001, in the South, BBA, a company in which Connexxion held 47% of the shares, the rest being held by several municipalities and a province, was privatised and sold to CGEA, the largest private bus company in Europe, a subsidiary of Vivendi. As a result, the share of Connexxion in the regional bus market has shrunk to 52% (74% in the contestable part). In the contestable part of the market, Arriva has 15%, while BBA/Connex has 11%.

It will be clear that in such a concentrated market, conditions for competition to develop are not the most favourable ones one could imagine. To help competition to develop, the Law gives the Minister the powers to refuse to give a license to a winner of a tender that

has too high a market share on the relevant market. In the Explanatory Memorandum to the Law, percentages of 50 % (for the regional market) and 35 % (for the market including cities) are mentioned, but up to now, the relevant markets have not yet been identified and the clause, which would effectively have excluded Connexxion, has not yet been applied. Note that article 9 of the most recent (amended), February 21, 2002 version of the proposal of the European Commission for a Regulation on awarding public service contracts in transport specifies an even lower threshold: a tendering authority can decide not to award a contract to a company which would thereby get more than 25% of the relevant market; see European Commission (2002).

RTA's have been free to organise the tenders as they saw fit. They have been slow, however, and the goal of tendering 35% before 2003 has not been achieved. Nevertheless, thus far the Minister has not forced the RTA's to tender more. One reason for lack of speed is that the RTA's had to learn how to play the game and how to deal with strategic behaviour. For example, in the early tenders there was not a level playing field, as incumbents refused to reveal essential information about their labour force, and the courts had to step in. Until the summer of 2003, some 14 tenders have taken place (good for in total less than 10 % of the market). It should not come as surprise that the number of active bidders has been limited: in 3 tenders, there were 4 competitors; in 6 there were 3 bidders; in 2 there were 2; and in the remaining 3 only the incumbent has bid. The incumbent has won the tender in all but four cases. In its Annual Report over 2002 (2003), Connexxion states that it participated, as incumbent, in five (six) tenders, of which it lost two (none); in 2003, the company also participated once as entrant, but it did lost that tender. The company also states that it views the market as being very competitive and that in 2003 and 2004 approximately 40-50% of its turnover in the public bus market (€680 million) will be involved in tender procedures. As the data show, however, most incumbents have been successful in defending their home markets.

Detailed information about the improvements (in price and quality) achieved as a result of the tenders is not publicly available, although KPMG (2002) presents some details on three tenders, and suggests that cost savings or quality improvements have been obtained. It is probably still too early to do a serious evaluation, but the Minister has committed to do a first evaluation of the tenders that have taken place before the end of 2004.

7. CONCLUSION

In the Netherlands, privatisation is defined differently from the international convention: it is the process of transferring activities from the government to the private sector, including the non-profit sector. As in the Netherlands, there has always been a consensus that the primary role of the government is to create the right conditions to allow individuals and firms to go about their own business and to correct market failures, there is a long and strong tradition of such privatisation. On the other hand, in the Netherlands, selling shares of State participations traditionally was not classified as privatisation since these SOE's have always largely been run as ordinary business firms, hence, pure transfer of ownership was not considered to influence the outcome.

As a result of the necessity to form coalition governments, privatisation policy has always been pragmatic. Remarkably, in the Netherlands, this pragmatism has not led to privatisation policy having a strong empirical basis. Already at the beginning of the 1980s, observers noted that remarkably few hard data were available about the effects of privatisation and increasing competition; see Boorsma (1984). When preparing this paper, I came to the same conclusion: very little information is in the public domain. While in the general discussion in the Netherlands, reference has been made to economic surveys such as Megginson et al. (2001) and Winston (1993) that document the efficiency gains that can be obtained from privatisation and deregulation, public debate in the Netherlands has not been much informed by local data. In this respect, I can only join in the chorus of the earlier writers and hope that there will be more empirical research in the future. As shown in this paper, the practical experiences from the last two decades have shown that both pure contractual arrangements as well as government ownership have drawbacks; hence, pragmatic policy should be well informed about the trade-offs involved.

As illustrated in this paper, during the period covered, and especially in the period 1994-1998, Dutch policy makers showed a very strong belief in market forces, leading to the idea that market liberalisation would be sufficient to establish a competitive market and to take care of the public interests, and a corresponding neglect for issues of market design and the transition from monopoly to market. While the Ministry of Finance defended the standard position that regulation of private business was the preferred alternative, and may have neglected the limits of contracting, the Ministry of Economics seems to have been drifting,

and it was not always able to adequately manage the transition process in various network sectors. In the implementation of EU Directives, there has frequently been lack of vision; policy was not in line with the recommendations that were contained in the economic literature at the time; in fact, economists did not seem to have much influence on microeconomic policy in this domain. Policy moved with the tide of the time and, as we have seen, the compromise solution that was reached frequently conflicted with the official policy stated on paper. In retrospect, not all decisions taken during that period have proved to be wise ones.

The government has learned from its mistakes and it has responded by setting up initiatives such as “the knowledge centre on network industries” that aim at sharing knowledge within the administration. At the same time, the lack of success with some privatisations have shown to Dutch economists that their services might be useful here. Although the number of Dutch economists working in the area of industrial organisation and regulatory economics is still small, thanks to specific government subsidies, such as those to the ENCORE network (www.encore.nl), the number is increasing and we may expect that in the next decades, Dutch microeconomic policy, while remaining pragmatic, will be better informed about economic insights as it has been in the last decade of the 20th century.

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APPENDIX: State participations between 1 january 1997 and 1 november 2001

A first group consists of publicly traded companies in which the state still holds a minority share, either for political reasons (KLM is an example) or since the time has not yet been ripe to sell the remaining shares. These companies are on the divestiture path, and some have been divested in the mean time. This group simply shows illustrates practical difficulties, it does not contradict the general policy line. Secondly, there are financial institutions and regional development companies, which serve as instruments to facilitate business and to attract investments. These companies being on the list is in line with the general preference of the Dutch State to finance that was mentioned in the Introduction. Note that also the Dutch Central Bank (DNB), although an institution with public responsibilities, has been set up as a private limited liability company. Thirdly, there are companies in the energy sector, including those dealing with exploration and transportation of gas, and TenneT, the TSO for the electricity market that is also responsible for the high voltage electricity grid. Fourthly, there are companies in the transport sector, besides the airports, a harbour, and a public private partnership for constructing and exploiting a tunnel, there are the Dutch railroads (NS) and a bus company (Connexxion), to which we return in Section 6. Finally, the fifth category is somewhat of a mixed bag, containing the former state firms that have been transformed into participations (DNM, SDU), some public broadcasting companies, waste disposal companies and Twinning, an incubator for ‘new economy’ companies, that the state set up since the market did not do this.

Participation	Established	Legal form	Share 1997 (%)	Share 2001 (%)
<i>Listed on stock exchange</i>				
TNT Post Groep NV	1997	NV	-	34,90
Koninklijke KPN NV	1989	NV	44,30	34,69
PinkRocade NV	1990	NV	100,00	28,40
Koninklijke Luchtvaart Maatschappij NV	1920	NV	25,00	14,10
Koninklijke Hoogovens NV	1918	NV	11,50	-
Internationale Nederlanden Groep NV	1991	NV	0,90	0,80
Alpinvest Holding NV *	1991	NV	30,30	-
<i>Financial Institutions</i>				
De Nederlandsche Bank NV	1864	NV	100,00	100,00
NV Bank Nederlandse Gemeenten	1914	NV	50,00	50,00
NV Nederlandse Waterschapsbank	1954	NV	17,20	17,20
Financierings-Mij.Ontwikkelingslanden NV	1970	NV	51,00	51,00
CF Kantoor voor Staatsobligaties BV	1973	BV	100,00	100,00
MTS Amsterdam NV	1999	NV	-	5,00
NIB Capital Bank NV	1945	NV	50,20	14,66
<i>Regional Development Companies</i>				
NV Brabantse Ontwikkelingsmaatschappij	1983	NV	64,50	64,50
NV Gelderse Ontwikkelingsmaatschappij	1979	NV	66,60	66,60
NV Industriebank LIOF	1935	NV	94,30	94,30
NV Noordelijke Ontwikkelingsmaatschappij	1974	NV	99,97	99,97
NV Overijsselse Ontwikkelingsmaatschappij	1975	NV	74,30	74,30
<i>Energy</i>				
Energie Beheer Nederland BV	1973	BV	100,00	100,00
NV Nederlandse Gasunie	1963	NV	10,00	10,00
Ultra Centrifuge Nederland NV	1969	NV	98,90	98,90
Nl. Onderneming voor Energie en Milieu	1976	BV	100,00	100,00
BV Nederlandse Pijpleiding Maatschappij	1966	BV	50,00	50,00
Tennet BV	1998	BV	-	100,00
Saranne BV	2001	BV	-	100,00
<i>Transport & Infrastructure</i>				
NV Nederlandse Spoorwegen	1937	NV	100,00	100,00
VSN NV (Connexxion)	1994	NV	-	100,00
NV Luchthaven Schiphol	1958	NV	75,80	75,80
NV Luchthaven Maastricht	1956	NV	34,80	34,80
Groningen Airport Eelde NV	1956	NV	80,00	80,00
NV Luchtvaartterrein Texel	1956	NV	65,30	65,30
Haven van Vlissingen NV	1934	NV	35,50	-
NV Westerscheldetunnel	1998	NV	-	95,40
<i>Other</i>				
Koninklijke Nederlandse Munt NV	1994	NV	100,00	100,00

NV Nederlands Inkoop Centrum	1990	NV	100,00	100,00
Arbo Management Groep BV	1997	BV	48,00	-
NV SDU	1988	NV	100,00	100,00
Thales Nederland BV	1989	BV	1,00	1,00
Eurometaal Holding NV	1993	NV	33,33	13,20
Centrale Organisatie voor Radio-actief Afval	1982	NV	10,00	10,00
Vuil Afvoer Maatschappij NV.	1929	NV	99,97	-
AVR Chemie BV	1984	BV	30,00	30,00
DLV Groep NV	1993	NV	-	82,50
Twinning Holding BV	1998	BV	-	100,00
NOB Holding NV	1999	NV	-	100,00
Nederlandse Omroepzendermaatschappij NV	1935	NV	59,00	59,00
Holland Weer Services BV	1999	BV	-	100,00
Holland Metrology NV	1995	NV	100,00	-