



# Dimensions of strategic behaviour in competition policy: Dutch experience

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# Two levels of interaction between legislator and market parties

- **Level 1: Ultimate effect of legislation:**
  - On outcome
  - The reaction of legislator might be to change the law
- **Level 2: interactions between:**
  - Enforcement agency
  - Legislator
  - Judiciary
  - Firms
  - Consumers

**These interactions have effects on the outcome and effectiveness of legislation.**

# The interactions

1. **Introduction of the Competition Act.**
2. **The reactions after the settlement of Act.**
3. **Problems and reactions of economic agents to type I and type II errors.**
4. **Impact of judiciary on behaviour.**
5. **Private litigation.**

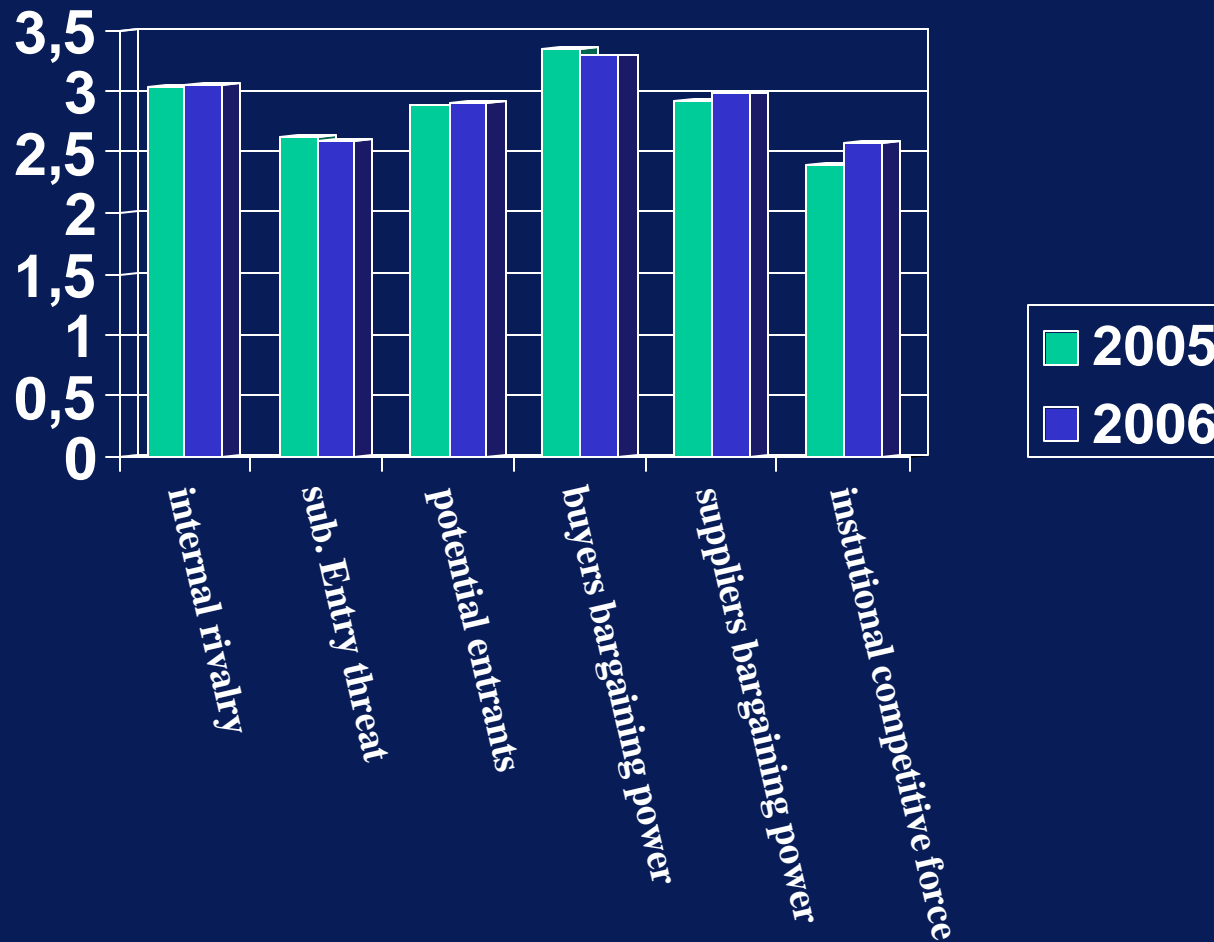
# Introduction of Competition Act

- **A lot of unnecessary exemptions (47%).**
- **Only 9% granted.**
- **So high adjustment costs.**
- **Lesson for changes:**
  - Adjustment costs;
  - CPB: two years of adjustment.
- **Extra argument to look into interactions of second order.**

## The reactions after the settlement of Act

- **Compliance of companies to competition law**
- **Is the role of anticipation**
- **Scorecard was made to look into perceived competitive forces**

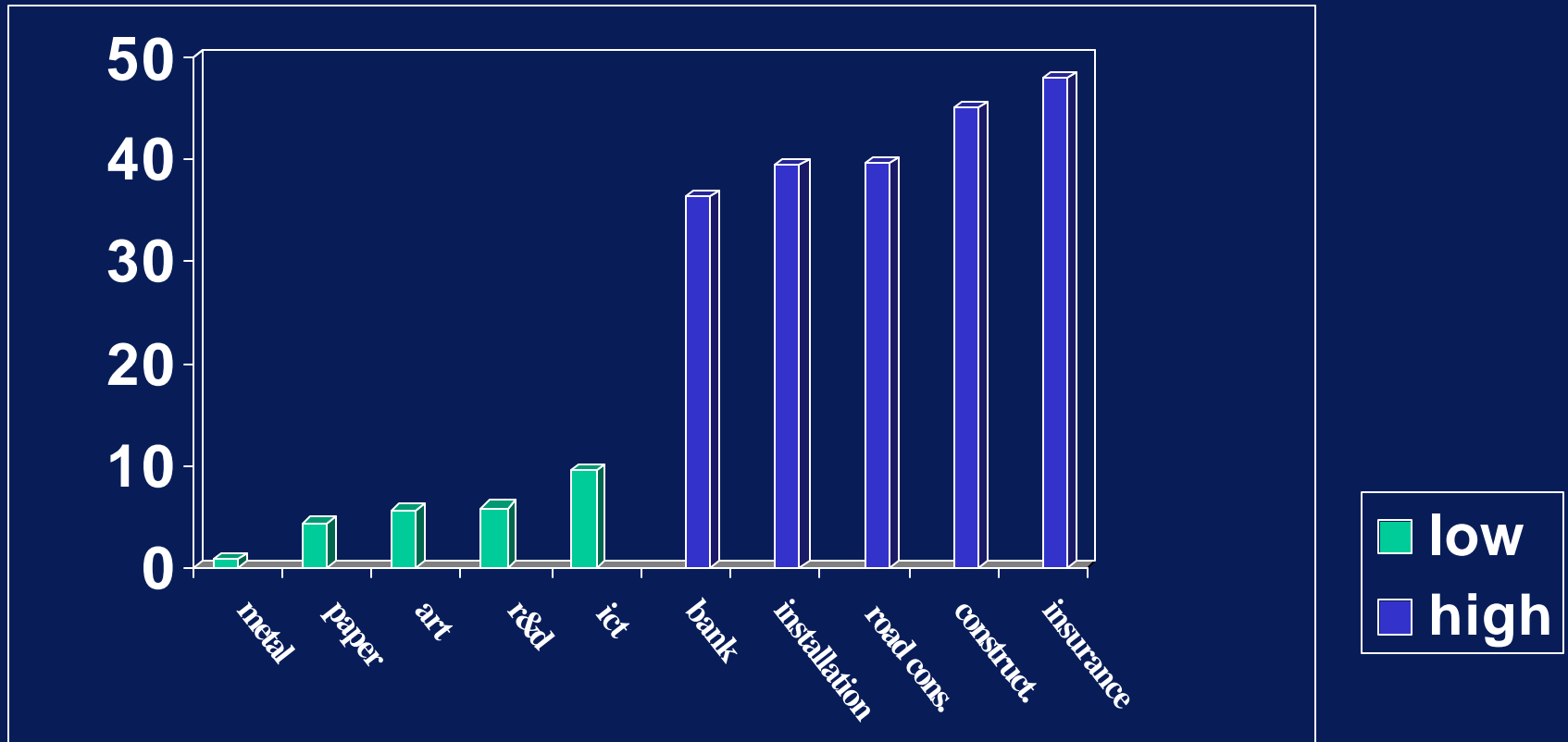
# Perceived competitive forces of Porter



## Statement on institutional context

Statement	% (totally agree 2005)	% (totally agree 2006)
Decisions by the NMa strongly influence the way we do business	23,7	31,4
The NMa is very active in our market	17,2	22,6

# “the NMa is very active in our market” 2005





# Problems and reactions of economic agents to type I and type II errors

- **Complains:** can be an instrument with the goal to harm competitors.
- **We found no systematic complains in certain sectors.**
- **2003 total of 219 complains. Investigated 69. Only 3 cases led to some action.**
- **Maybe an action to hurt competitors. Effect was rather limited.**

# Two cases

- **Remedies case**
  - De Limburger and Limburgs Dagblad came in one hand.
  - Remedy: Structural separated.
  - Actual: Not the case.
  - Fined in first place. Later market changed and fines were withdrawn.
- **NL.tree: KPN**
  - Competition on internet market in schools.
  - Internet for free by KPN.
  - Predatory pricing? First decision yes; second decision no: relevant market. So was allowed after all.
  - In the meantime only a few schools had switched to KPN.
  - So lawsuit gave advantage for a year to NL.tree.

## What do we learn?

- **Monitoring of remedies necessary.**
- **Still defenses and market situation might change initial decision.**
- **An action in court is an effective tool to keep competitors from the market for a while.**
- **Effectiveness depends on strength of competitor.**

# Private litigation: law suits

- We gave one example of reason for law suits of company-company.
- Nowadays also development of private (group) law suits.
- Lot of discussion: is it good development?
- I have doubts.
- **Competition authority is the first body to deliver complaints:**
  - More of interest of all consumers;
  - More means to do investigation;
  - More possibility to cover a sector instead of just one company.
- **Private law suits until now limited; should be stimulated.**

## Conclusions

- It is important to look into interrelationships of competitors; authorities; judiciary etc.
- Law changes might imply a lot of costs which might be avoided by monitoring the interrelations.
- Unlawful lobby; strategic complaints difficult to prove.
- Law suits more in US than in the Netherland.
- Should be stimulated, but the primary Argus of competition remains the NMa; keeper of public interest.
- We should avoid the “triple damage remedy”.
- Involvement in merger cases is necessary; still always be aware of the fact that remedies should be monitored.