

Netherlands Competition Authority

## DECISION

Decision of the Board of the Netherlands Competition Authority, within the meaning of Section 41 of the Competition Act.

Number 6246

Case: European Directories – Truvo Nederland

External translation

Only the Dutch text is authentic

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## I PROCEEDINGS

1. On 18 January 2008, the Board of the Netherlands Competition Authority (*NMa*) (hereinafter referred to as 'the Board') received notice of a proposed concentration, within the meaning of Section 34 of the Competition Act (*Mw*) (hereinafter also referred to as 'MW'). This stated that European Directories 2008 Acquisition (3) BV, a subsidiary of European Directories SA (hereinafter also referred to as 'European Directories') intends to acquire a controlling interest, within the meaning of Section 27(b) of the MW, in Truvo Nederland BV and ClearSense BV, both subsidiaries of Truvo S.a.r.l. (hereinafter also referred to as 'Truvo'). The above companies are jointly referred to below as 'the parties'.
2. On 11 March 2008, the Board adopted a decision that a license is required for this concentration.<sup>1</sup> This decision (also referred to below as 'the decision of 11 March 2008') was announced in Government Gazette 52 of 13 March 2008. On 31 March 2008, the Board received a license application from the parties, within the meaning of Section 42 of the MW, concerning the above concentration. The license application was announced in Government Gazette 65 of 3 April 2008.
3. After receiving the license application, the NMa conducted further investigations. As part of these investigations, the NMa put questions to the parties to supplement the license application. The Board subsequently requested additional information from the parties on several occasions. As a result, the 13-week term referred to in Section 44(1) of the MW was postponed for a total of 63 days pursuant to Section 4:15 of the General Administrative Law Act (*Awb*). Furthermore, (more detailed) information was requested from various market parties as part of the investigation, and the NMa commissioned an investigation by the Tilburg Law and Economics Centre (hereinafter referred to as 'Tilec') and Stratus marktonderzoek BV (hereinafter referred to as 'Stratus').
4. On 22 July 2008, the NMa sent the parties Points of Consideration (hereinafter referred to as 'PoC'), containing the provisional findings of the NMa Competition Department. These provisional findings were based on the outcomes of the investigations conducted until that time. In response to the PoC, the parties were given an opportunity to present their views orally.<sup>2</sup> The parties also submitted their views in response to the PoC in writing.
5. During the proceedings, third parties were also given an opportunity to present their views, in addition to the parties. As early as the notification phase, ilocal Holding B.V. (hereinafter referred to as 'ilocal'), a provider of online directories, presented views in which it expressed its reservations about the proposed concentration.<sup>3</sup> In the licensing phase, ilocal upheld its reservations about the proposed concentration.<sup>4</sup> MKB-Nederland, an organization of industry agencies and regional and local entrepreneurs, also submitted

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<sup>1</sup> See the NMa decision of 11 March 2008, in Case 6246/*European Directories – Truvo Nederland*.

<sup>2</sup> During the 'current position' meeting on 24 July 2008 and at a hearing on 28 July 2008.

<sup>3</sup> See ilocal's written views of 5 February 2008. See also ilocal's replies of 22 February 2008 to written questions from the NMa dated 8 February 2008 and the documents submitted by ilocal on 4 March 2008.

<sup>4</sup> See the report of the NMa/ilocal meeting of 18 April 2008. See also ilocal's replies of 12 June 2008 to the NMa's written questions of 9 May 2008.

views in which it expressed reservations about the proposed concentration.<sup>5</sup> Finally, Google also presented views in response to the PoC.<sup>6</sup>

## II THE PARTIES

6. European Directories 2008 Acquisition (3) BV is a subsidiary of European Directories. European Directories is a company under Luxembourg law. European Directories is a group of publishers of directories with activities in various Central and North European countries. It offers local search and advertising services via print directories, the Internet, CD-ROMs, number information services and mobile telephony. European Directories is active<sup>7</sup> in the Netherlands via its subsidiary De Telefoongids BV (hereinafter referred to as 'Telefoongids'<sup>8</sup>). This company publishes a telephone directory and business directory, combined in a single reference work, under the brand name 'De Telefoongids'. It also provides related services via the Internet, CD-ROMs, text messaging and mobile Internet, as well as number information services via 1888 lines.

7. Truvo Nederland BV is a subsidiary of Truvo. Truvo is a company under Luxembourg law. Truvo is a group of publishers of directories with activities in seven countries, including the Netherlands, Ireland and Romania. Like European Directories, it provides local search and advertising services via print directories, the Internet, CD-ROMS, number information services and mobile telephony. Truvo Nederland BV, which operates in the Netherlands under the brand name 'Gouden Gids', supplies an online telephone directory, print and online business directories and similar mobile and telephony-based products in the Dutch market. Truvo Nederland BV is referred to below as 'Gouden Gids'.<sup>9</sup>

8. ClearSense BV (hereinafter referred to as 'ClearSense') is a Truvo subsidiary. ClearSense is a private limited liability company under Dutch law. ClearSense is active in the field of search engine marketing.

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<sup>5</sup> See views of MKB-Nederland of 19 May 2008. See also MKB-Nederland's replies of 16 June 2008 to the NMa's written questions of 26 May 2008.

<sup>6</sup> The NMa sent Google parts of a (non-confidential) version of the PoC's, including points for consideration (relating to Google's position), concerning which the NMa expected Google to be able to make a meaningful contribution. Google then presented views on 1 August 2008. During the proceedings, Google also responded on several occasions to written questions from the NMa. See Google's replies of 30 January 2008, 14 May 2008 and 1 August 2008 to the NMa's written questions of 24 January 2008, 22 April 2008 and 29 July 2008 respectively. A meeting was held with Google prior to the license application. See the report of the NMa/Google meeting dated 31 March 2008.

<sup>7</sup> In 1994, KPN, the original publisher of the telephone directory, contracted an agreement with TeleMedia to produce KPN's telephone directory, including a section with column advertisements (the 'red pages'). In 2000, KPN acquired TeleMedia and formed KPN TeleMedia. In 2003, KPN TeleMedia was converted into De Telefoongids Media B.V., which was acquired in 2004 by Yellow Brick Road. In 2005, Yellow Brick Road was sold to Macquarie Capital Alliance Group and renamed European Directories, the present owner of Telefoongids.

<sup>8</sup> Both De Telefoongids BV and the directories it publishes in print and online are referred to below as 'Telefoongids'.

<sup>9</sup> Both Truvo Nederland BV and the print and online directories that it publishes are referred to below as 'Gouden Gids'.

### III THE PROPOSED CONCENTRATION

9. The transaction for which the license application was submitted provides that European Directories will acquire sole control over Truvo Nederland BV and ClearSense BV. The intention to achieve the above concentration is recorded, among others, in a Memorandum of Understanding of 1 December 2007<sup>10</sup>, submitted by the parties with the notification.

10. On 8 August 2008, the parties supplemented the license application.<sup>11</sup> In short, this supplement states that, following the concentration, no later than 2009, the parties will publish only one regional print reference work in each of the 28 Telefoongids distribution regions<sup>12</sup> and will combine their different websites in a single integrated online reference work. The parties have undertaken to design this integration in such a way that the benefits for advertisers of the integrated (print and online) directories will generally be realized. In particular, no measures will be taken in this regard that generally negate the benefits of the integrated (print and online) directories. Where applicable, the altered license application is taken into account in the following assessment.

### IV APPLICABILITY OF SUPERVISION OF CONCENTRATION

11. As already determined in the decision of 11 March 2008, the envisaged result of the proposed concentration is that European Directories will gain sole control of Gouden Gids and ClearSense. The transaction for which the license application was submitted is therefore a concentration within the meaning of Section 27(b) of the MW.

12. The companies concerned are European Directories or one of its group companies, as well as Gouden Gids and ClearSense. The turnover details made available by the parties show that the notified concentration falls within the scope of the supervision of concentration regulated in Section 5 of the MW.

### V ACTIVITIES OF THE PARTIES CONCERNED

#### *Telefoongids and Gouden Gids*

13. The activities of the parties overlap in the field of production and distribution of print and online directories relating to contact details of companies and institutions, as well as in the field of sales of advertising space in these directories. The parties also offer a number of related services, including text messaging services, mobile Internet and number information services.<sup>13</sup>

14. Further to the decision of 11 March 2008, this decision does not discuss the abovementioned services separately. The parties have stated that they generate little or no turnover with the provision of these services.<sup>14</sup> Furthermore, the NMa has not received sufficient indications that, in itself, the concentration of

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<sup>10</sup> Notification of the parties, Annex 3.1

<sup>11</sup> See letter from the parties dated 8 August 2008.

<sup>12</sup> In some regions, the Gouden Gids circulation area must be harmonized with that of Telefoongids.

<sup>13</sup> Telefoongids offers number information via the 1888 number. It also offers various possibilities for consulting the directory, such as via mobile telephones, PDA or hand-held computers/pocket PCs. This involves the website at [mobiel.detelefoongids.nl](http://mobiel.detelefoongids.nl). Telefoongids also provides text message information via the number 1313, Nokia Search and the use of a small online version of Telefoongids for pocket PCs. Gouden Gids offers two mobile services: text messaging via the number 5511 and Truvo Mobile, which acts as a search portal for online mobile services.

<sup>14</sup> Telefoongids states it generates EUR [BUSINESS SECRET] from its cell phone division. Gouden Gids states it generated in 2007 and 2008 [BUSINESS SECRET] from Truvo Mobile. Truvo generated EUR [BUSINESS SECRET] from its SMS 5511 service between September

these services of the parties would lead to competition problems. Moreover, the services primarily constitute a supplement to the other search and advertising possibilities offered by Telefoongids and Gouden Gids.<sup>15</sup>

15. The parties' directories include a company directory containing a list of all companies and institutions, categorized on the basis of products and services supplied. All companies in the relevant region are included in this list free of charge, on the basis of the sectors in which they operate. This part of the directory is better known as the 'yellow pages' (in the Gouden Gids) or the 'red pages' (in the Telefoongids). Both parties also offer this information online, Telefoongids via [www.detelefoongids.nl](http://www.detelefoongids.nl) and Gouden Gids via [www.nationaletelefoongids.nl](http://www.nationaletelefoongids.nl) and [www.goudengids.nl](http://www.goudengids.nl). Telefoongids also issues local directories in more than 140 municipalities, with column advertising, under the name 'Lokaal Totaal'.

16. Telefoongids also publishes alphabetical lists of (all) subscribers (companies, persons and institutions) to the landline telecom network in its print and online directories ("white pages"). Gouden Gids publishes such an alphabetical list online only. The print Gouden Gids directory contains a company directory and an alphabetical list of all companies in the region concerned, but no detailed telephone directory (including the details of private individuals).<sup>16</sup> Inclusion in these alphabetical lists is also free of charge.

17. In addition to free listings, the parties offer companies the option of advertising in their directories. The parties offer different advertising possibilities, ranging from the inclusion of extra information in addition to the advertiser's basic details to the placement of color advertisements.

18. The print directories are distributed throughout the Netherlands on a large scale. Telefoongids is circulated in 45 regional editions (45 regions for the telephone directory and 28 regions for the company directory), totaling more than eight million copies. Gouden Gids appears in 26 regional editions of more than 7.5 million copies. The parties' online directories are available free of charge.

### *ClearSense*

19. ClearSense is active in the field of search engine marketing (hereinafter referred to as 'SEM'). In short, SEM is aimed at positioning corporate websites in search engine results in a way that directs more Internet traffic to the websites of the companies concerned. ClearSense's services include search engine advertising

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2003 (date of launch) and October 2006 (parties claim more recent figures are not available). The total size of the mobile advertising market in the Netherlands in 2007 is an estimated EUR 16 million and is estimated to increase to EUR 35 million in 2009. See Presentation Dutch Association of Advertisers (BVA), Mobile Advertising Summit, November 1, 2007.

<sup>15</sup> Telefoongids, for instance, provides the mobile services to advertisers only as part of a package with other advertising possibilities.

<sup>16</sup> Gouden Gids introduced an alphabetical list of persons in the print directory in 2003, but discontinued this service in 2006.

(hereinafter referred to as 'SEA')<sup>17</sup> and search engine optimization (hereinafter referred to as 'SEO')<sup>18</sup> for both small business and corporate clients.<sup>19</sup>

20. In the case of SEA, ClearSense acts partly as a reseller of online advertising products. These activities could be placed in a vertical relationship to the online activities of Telefoongids and Gouden Gids. In the case of SEO, which does not involve the procurement of online advertising space, ClearSense's activities are not in a direct horizontal or vertical relationship to those of Telefoongids and Gouden Gids, but are related to these to some extent. This is also shown by the multimedia approach chosen by both parties, which includes SEM services.<sup>20</sup> It should be noted here that European Directories also offers SEM services via its subsidiary De Heus Multi Response Media B.V, but parties claim that this is a secondary activity of this subsidiary.

21. Further to the decision of 11 March 2008, this decision does not discuss the acquisition of ClearSense's activities by European Directories, due to their limited scale.<sup>21</sup>

## VI OPINIONS OF THE PARTIES

22. The parties believe that the proposed concentration will not appreciably impede competition and furthermore, will generate substantial benefits for both advertisers and users. In this regard, the parties present, in summary, the following main arguments:

- A. Online alternatives such as Google and Marktplaats exert high competitive pressure on the print and online directories of Telefoongids and Gouden Gids. The proposed concentration will not alter this. Online, Telefoongids and Gouden Gids are just two of many players; they are not the main innovators and have no specific competitive advantage.
- B. There is little or no (price) competition between the print directories of Telefoongids and Gouden Gids. These Telefoongids and Gouden Gids products are independent or even complementary, so that the concentration will not lead to an appreciable impediment of competition.
- C. The concentration of Telefoongids and Gouden Gids will create benefits for advertisers and users, as well as synergy benefits for the parties.

23. The parties provided a large amount of information in support of the above statements during the first phase of the investigation. This included (1) the results of two surveys conducted by TNS NIPO among about 1,000 advertisers (hereinafter referred to as 'TNS NIPO advertisers survey') and 2,000 users (hereinafter

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<sup>17</sup> SEA involves paid placement of advertisements at a website, with advertisers charged only if a user clicks on an advertisement in order to visit the advertiser's website. Advertisers make offers on the basis of catchwords that they expect their 'targets' to use. If the catchword is consistent with the search order, the advertiser's advertisement will be displayed on the results page. These advertisements are known as 'sponsored links' or 'sponsored ads'.

<sup>18</sup> SEO is the process aimed at increasing the visibility of a website within the non-paying results (i.e. the effective results of a search, presented in the form of a list of links to websites in which the search words entered by the user appear) of one or more search engines: in other words, an attempt is made to place the relevant website at the top of the list of search results of a search engine via SEO.

<sup>19</sup> In 2005, the scale of the Dutch market for SEM services was estimated at EUR 79.4 million for 2006 and at EUR 98.7 million for 2007. See the report by Forrester, entitled *Europe's Search Engine Marketing Forecast 2004 to 2010*, dated 11 March 2005, pg. 4.

<sup>20</sup> The parties regard ClearSense's SEM services as an extra service for advertisers and emphasize that they form part of the overall strategy of a company operating in the fields of commercial search and advertising possibilities. See the replies of the parties to additional questions from the NMa of 25 January 2008.

<sup>21</sup> In 2006, ClearSense's turnover amounted to EUR 700,000.

referred to as 'the TNS NIPO consumer survey'),<sup>22</sup> (ii) various economic and econometric surveys conducted by RBB Economics (hereinafter referred to as 'the RBB survey') and Prof. van Cayseele (hereinafter referred to as 'Van Cayseele survey'),<sup>23</sup> (iii) a survey of cost synergies conducted by Bain & Company<sup>24</sup> as a result of the proposed concentration, (iv) various general market surveys<sup>25</sup> and (v) various strategic and other internal documents of the parties themselves.

24. The parties also provided the NMa with a large amount of additional information during the licensing phase of the investigation as further support for their arguments, at the request of NMa or otherwise. This included (i) various documents accompanying the license application,<sup>26</sup> (ii) various white papers<sup>27</sup> and other papers<sup>28</sup>, (iii) two (further) efficiency papers<sup>29</sup>, (iv) a written response to the PoC<sup>30</sup> (including a memorandum from RBB Economics concerning the SSNIP test<sup>31</sup>), (v) a second opinion from ESMT European School of Management and Technology (hereinafter referred to as 'the ESMT second opinion')<sup>32</sup> and finally, (vi) an additional written response to the PoC.<sup>33</sup>

25. The opinions of the parties are presented below, partly on the basis of the views and accompanying surveys and documents that they submitted. In view of the large number of documents, the essence of the parties' arguments is presented below. Where relevant (for the assessment), the arguments and/or documents submitted by the parties are discussed in more detail thereafter.

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<sup>22</sup> TNS NIPO, 'European Directories SA and Truvo Nederland BV, NMa Case Reference 6246, Final results of the advertisers survey' of 7 January 2008 and TNS NIPO, 'European Directories SA and Truvo Nederland BV, NMa Case Reference 6246, Final results of the consumer survey' of 7 January 2008.

<sup>23</sup> RBB Economics, Project Silver of 7 December 2007 and Van Cayseele and De Smet, 'An Econometric Model of Competition in Classified Directory Advertising' of 8 February 2008. These surveys were adjusted and supplemented on several occasions, partly in response to questions from the NMa.

<sup>24</sup> Bain & Company Silver Phase II of 21 September 2007.

<sup>25</sup> Market surveys by researchers including The Kelsey Group, Simba Information, Zenith, ZenithOptimedia, Forrester, Jupiterresearch and Crédit Suisse.

<sup>26</sup> See also the Appendices to the license application, including two reactions to the decision of 11 March 2008 with different Annexes, including a more detailed explanation from TNS NIPO of the survey commissioned by the parties, a more detailed analysis from RBB Economics entitled 'Silver: Overlap and switch behavior by item type', a review of stock market data for listed publishers of directories and a survey by TNS NIPO into companies which discontinued advertising in the parties' (print) directories.

<sup>27</sup> 'Project Silver – White Paper Online Competition' dated 1 July 2008, with Annexes, Project Silver – White Paper: Print directories are subject to increased online competition, White Paper: No significant price competition between Telefoongids and Gouden Gids and White Paper: Free listing and distribution, all dated 2 July 2008.

<sup>28</sup> Including a briefing paper entitled 'The results from the NMa's market investigation support a clearance decision', dated 7 July 2008, and a memorandum entitled 'The proposed merger will not result in anti-competitive bundling', dated 15 July 2008.

<sup>29</sup> 'Efficiency defense: weighing the benefits to advertisers against the likelihood of post-merger price increases and quality decreases', RBB Economics, dated 11 June 2008 and 2 July 2008 (update).

<sup>30</sup> Written response of 25 July 2008, including a memorandum from RBB Economics entitled 'Implications of the NMa survey for the definition of the relevant market and the competitive Assessment', dated 25 July 2008 and a response from Freshfield entitled 'Preliminary remarks with regard to the Statement of Objections', dated 22 July 2008.

<sup>31</sup> See previous footnote.

<sup>32</sup> Friederiszich, Röller and Wiethaus, 'European Directories/Truvo Nederland: Reassessment of Competitive Effects', 28 July 2008, attached to the accompanying views of the parties of 29 July 2008.

<sup>33</sup> Dated 5 August 2008, the memorandum 'Google is part of the relevant market' of 4 August 2008 and a PowerPoint document entitled 'Google is a Strong and Direct Competitor', dated 4 August 2008.

## A Online competitive pressure

26. With regard to the definition of the relevant market, the parties stated that this is not an end in itself, but rather a tool for assessing the presence or absence of competition. Market definition is said to be an interim step that can be replaced through direct measurement of competition if sufficient information is available for this. The parties state here that a standard approach to market definition and market shares is equally unsuitable for a description of the dynamics of competition in the market in which both parties are active, since this does not take account of the specific features of a two sided market.

27. The parties state that there are no separate markets for print or online directories and that, if the NMA were nevertheless to assume separate print and online markets, the relevant online product market would have to be defined as the market for all online commercial search/advertising.<sup>34</sup> The parties are referring to all online media that offer space for advertisements aimed at potential clients who are looking for a product, service or company. The parties point out that different players copy parts of each other's products and that therefore the relevant online product supply is converging.<sup>35</sup> The parties stress in that respect that account must be taken in the definition of any (online) market of the fact that the Internet is distinguished by a high level of dynamism and a rapid pace of change, so that the definition of an online market could quickly become obsolete.<sup>36</sup>

28. The media that the parties include in the 'all online commercial search/advertising' market have in common that they are websites enabling users to search for local companies via the Internet. In that connection, the parties regard 'global search engines' (Google in particular), 'comparison sites' (including Kelkoo), 'vertical (sector-oriented) sites (including dinnersite) and 'specific Dutch platforms' (including ilocal, YelloYello, Nederland in Bedrijf, ilse and Marktplaats) as their most important online competitors. According to the parties, some of these websites form a superior alternative for users and advertisers to their own (online) directories, because they offer more scope for the addition of supplementary and contemporary data (e.g. with a view to promotional campaigns).<sup>37</sup>

29. The parties state that the Netherlands is a leader in the 'online revolution', with the highest Internet penetration in Europe. According to the parties, 85 per cent of the Dutch population made use of the Internet in 2007, the majority (74 per cent) using a broadband connection.<sup>38</sup> Furthermore, the parties note that the pressure of online competition is high: use is shifting from print to online and as a result, access barriers are lowering continually. In this respect, the parties referred to the TNS NIPO surveys of advertisers and consumers and to the surveys that the NMA commissioned from Stratus. These show that users regard all sorts of online providers of advertising space as alternatives for the directories of the parties.<sup>39</sup> The parties state that because of the duality of the market alone<sup>40</sup>, advertisers also regard the various online advertising possibilities as substitutes for directories.<sup>41</sup>

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<sup>34</sup> See also 'White Paper: Online Competition', dated 1 July 2008.

<sup>35</sup> See also 'White Paper: Online Competition', dated 1 July 2008.

<sup>36</sup> Notification of the parties, Annex headed 'Online Competition', pgs. 6-9.

<sup>37</sup> Notification of the parties, Annex headed 'Online Competition', pgs. 6-9.

<sup>38</sup> See, among others, the parties' initial reaction to the PoC.

<sup>39</sup> See the TNS-NIPO consumer survey, pgs. 30-33, and the Stratus survey, under 'Users', Table 6.

<sup>40</sup> See paragraphs 105-108 for a discussion of the duality concept.

<sup>41</sup> See, among others, the Annex to the supplementary response of the parties to the PoC of 4 August 2008, entitled 'Google is part of the relevant market'.

30. The parties have noted that the use of print directories is diminishing and the use of online alternatives is increasing. They also point out that the turnover growth of print directories is shrinking, while online advertising turnover is growing. The number of new customers for (print) directories is also said to be diminishing. The parties claim that a relationship exists between these opposing trends, in the sense that a shift is taking place from print to online. The parties also point out that they are losing more turnover in 'Internet-sensitive' columns<sup>42</sup> in their print directories than in other columns.<sup>43</sup>

31. The parties have noted that Google, including Google Maps<sup>44</sup>, is a particularly strong and direct competitor of the parties in the 'local search and advertising' field. According to the parties, users and advertisers see Google and/or Google Maps as a good alternative for their directories.

32. With regard to advertisers, the parties note in this respect that Google specifically targets small and medium-sized businesses in advertising campaigns, that the Stratus survey of online advertisers shows that more advertisers than not regard general search engines on the Internet as an alternative for the parties' online directories, that Google has grown so strongly in terms of online advertising turnover that in 2008, it will hold a market share of about 30 per cent (assuming a Dutch market for advertising online and in print directories)<sup>45</sup> and will be bigger than both parties combined, and finally, that advertisers aim for better accessibility/visibility via Google through investments in their own websites.

33. With regard to users, the parties claim that Google searches provide similar, if not better results than searches via their (online) directories, that it follows from the Stratus user survey that Google is users' preferred choice for searches for companies, shops or organizations and that the TNS NIPO consumer survey shows that 90 per cent of Internet users sometimes use Google to find information on companies and/or institutions. Finally, the parties note that market analysts and investors allegedly regard Google as a competitor of the parties' directories,<sup>46</sup> and that the same applies for the parties' own management and staff.<sup>47</sup>

## **B Little or no (price) competition**

34. The parties allege that the concentration will have no adverse effects on competition, partly because there is little or no (price) competition between the print directories of the Telefoongids and the Gouden Gids.

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<sup>42</sup> An Internet-sensitive column is a column (e.g. Restaurants or Mortgages) in the parties' print or online directories for which relatively high use of the Internet is made in order to search for name and address details of the companies or institutions in that column. In that regard, the parties have used the 'Internet use' index, showing the share of Internet use in comparison with total use for a particular column (of print and online directories).

<sup>43</sup> See the White Paper 'Print directories are subject to increased online competition', dated 2 July.

<sup>44</sup> The parties claim that there is little or no distinction between the general search functions of Google and Google Maps, as Google Maps is a source often quoted in Google's organizational and advertising list.

<sup>45</sup> The parties base this estimate of the online market in 2008 on data from the IAB (Europe, AdEx 2008, June 2008) and on their own figures for an estimate of the print market in 2008.

<sup>46</sup> This is allegedly shown partly by a comparison of the (falling) stock market prices in the past year of various foreign companies that operate directories and by the (stable) market price of Google; see Slide 37 of the PowerPoint document 'Google is a Strong and Direct Competitor'.

<sup>47</sup> This is said to be shown by the various internal documents that the parties submitted to the NMa. See, among other things, the Annex(es) to the supplementary response of the parties to the PoC of 4 August 2008: 'Google is part of the relevant market', and the PowerPoint document 'Google is a Strong and Direct Competitor'.

35. As early as the notification phase, the parties based their views on Van Cayseele's study, which is said to show that the print directories of Telefoongids and Gouden Gids should be regarded as independent or even complementary products, rather than substitutes. The parties also refer to a number of conclusions of the RBB survey. A large proportion of the advertisers allegedly advertise in both the Telefoongids and the Gouden Gids ('overlap advertisers').<sup>48</sup> Furthermore, the discount policy of Telefoongids and Gouden Gids is said not to discriminate between overlap advertisers and advertisers that advertise in one directory only ('non-overlap advertisers'). The parties state that non-overlap advertisers are not given higher discounts than overlap advertisers.<sup>49</sup> Furthermore, the parties' discount policy is said to be aimed at generating extra turnover from their existing advertising clients.<sup>50</sup> There is also said to be relatively little (actual) switching behavior between advertisers in the parties' print directories, despite the fact that Telefoongids increased its prices between 2004 and 2006 more than Gouden Gids did.<sup>51</sup> The parties also refer to the TNS NIPO surveys, which are said to show that it is improbable that advertisers will switch to the other print directory in response to price changes.<sup>52</sup> The parties claim that advertisers attach more importance to use and to quality factors than to price.

### C Advantages for advertisers and users

36. The parties state that combining their directories will create advantages with regard to the integration of their print and online directories.

37. According to the parties, both non-overlap advertisers and overlap advertisers will benefit from the takeover. The non-overlap advertisers will have the advantage of greater penetration and use, and the 'price per eyeball' for this group will fall, even if a higher nominal price is charged.<sup>53</sup> With regard to the overlap advertisers, the parties note that they will benefit from the fact that they will only need to advertise in one directory in the future, with penetration and use (at least) remaining unchanged. For this group too, the integration of the directories will result in a lower 'price per eyeball'. In other words, the acquisition will lead to a better price-quality ratio for both groups of advertisers. Finally, the parties refer in this regard to the TNS NIPO surveys, which show that almost 80 per cent of the advertisers surveyed would prefer one print directory in the Netherlands to two.<sup>54</sup>

38. More specifically with regard to the non-overlap advertisers, the parties comment that they take a positive view of an increase in use. According to the parties, it follows from the TNS NIPO surveys that the reasons for not advertising in both directories at present are related to the return on investment and (limited) advertising budgets.<sup>55</sup> To the extent that this group of advertisers does not appreciate an increase in use as a

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<sup>48</sup> The RBB survey shows that 45 per cent of the overall advertising revenue of Telefoongids and Gouden Gids derives from advertisers that advertise in both print directories.

<sup>49</sup> RBB survey, pgs. 23 and 24.

<sup>50</sup> RBB survey, pgs. 24 and 25.

<sup>51</sup> NMa calculation based on switch data from the RBB survey, pgs. 28 and 29.

<sup>52</sup> In response to the question: 'What would your reaction be if one of the print directories were to increase its prices?', 57 per cent of respondents said that they would discontinue advertising in the print directory if prices increased by 5 per cent-10 per cent. 13 per cent of the respondents said that they would switch partially or entirely to the other print directory in the event of such a price increase.

<sup>53</sup> The 'price per eyeball' is the price that an advertiser pays for a certain advertisement, divided by the total number of times that the advertisement is viewed, or the price per viewing of the advertisement.

<sup>54</sup> See the Competitive Assessment submitted with the license application.

<sup>55</sup> The parties refer here to the results of the TNS NIPO surveys that they commissioned.

result of the concentration, the parties assert that they have the option of placing smaller (and, therefore, cheaper) advertisements in the integrated directory.

39. More specifically with regard to the overlap advertisers, the parties point out that this group will pay less than at present, both in nominal terms and in price per eyeball. The parties state that the price of an advertisement in the new, combined directory will be lower than the current aggregate advertising expenditure of these overlap advertisers in the two directories. The parties assert that this is confirmed by the Bain & Company report, said to show that the parties will suffer substantial loss of turnover ('revenue leakage'<sup>56</sup>). The parties regard this revenue leakage as a benefit for the advertisers.

40. According to the parties, the integration of the Telefoongids and Gouden Gids directories would also be beneficial for the users. They will gain a single, extensive source of information with more comprehensive and better content, while at the same time unnecessary and environmentally unfriendly duplications will be avoided. In that regard, the parties note that the TNS NIPO surveys reveal that 84 per cent of users take a positive or neutral view of the integration of the parties' directories.<sup>57</sup>

**Parties: 'No significant restriction of competition'**

41. In view of the above arguments, the parties conclude that the concentration will have no adverse effects or will not lead to lower quality of the integrated directory, nor will it lead to higher prices.

42. The parties refer in this respect to the survey of RBB Economics and the second opinion of ESMT. A critical loss analysis<sup>58</sup> was conducted in the RBB Economics survey, in order to show that after the planned concentration, the parties would not be able to impose a general price increase profitably.<sup>59</sup> ESMT's second opinion supports this finding of RBB Economics.

43. ESMT's second opinion shows that after the acquisition, the parties would be able to impose price increases profitably only if these were directed at certain groups of advertisers. This would require price discrimination to be possible. The ESMT second opinion also states that even if price discrimination were possible, the parties would be restricted in this possibility by the strong (online) competitive pressure from alternatives in the market. According to the parties, it also follows from the RBB survey that, on the basis of the Stratus survey of advertisers, no specific groups of advertisers can be identified. The parties consequently state that they cannot identify any groups that they could specifically target with any price increases.<sup>60</sup>

44. Finally, the parties argued that, due to the fact that directories can be classified as two-sided products, any deterioration in the quality or a significant price increase would lead to a reduction in use, which in turn would lead to fewer advertisers, thus making the directory even less attractive to users, etc.

45. In short, the parties state that, in the absence of a significant restriction of competition, there is no reason for the NMa to reject the license application. As part of the assessment of the license application, the

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<sup>56</sup> Revenue leakage is the loss of advertising income by the parties due to the fact that the overlap advertisers will spend less on advertisements in the integrated directory.

<sup>57</sup> TNS NIPO consumer survey, pg. 47.

<sup>58</sup> For notes to both surveys, see paragraphs 81-85.

<sup>59</sup> RBB Economics, 'European Directories/Truvo: Implications of the NMa survey for the definition of the relevant market and the competitive assessment', dated 25 July 2008

<sup>60</sup> See previous footnote.

arguments presented by the parties for that purpose and the accompanying documents submitted were investigated in conjunction with the other data in the file, including the views submitted by third parties.

## VII THIRD PARTY VIEWS

### A Views of ilocal

46. The core of ilocal's argument is that the proposed concentration of Telefoongids and Gouden Gids would strengthen a dominant position for Telefoongids in the market for print and online (company) directories. As a result, prices would rise, there would be less choice and less innovation and access would be hampered, to the detriment of advertisers and users.

47. More in particular, ilocal noted that prices for advertising via the parties would rise as the result of an acquisition (through a re-scoping strategy<sup>61</sup> or otherwise) and that it would be impossible for advertisers to switch to a competing publisher of print directories, including regional ones, if prices increase. ilocal also noted that after the acquisition, the parties would have so much market power (partly due to the existence of network or portfolio effects) that innovative (online) competitors such as ilocal would be placed at a disadvantage and the barriers to entry to the market for online directories would be raised even further. With regard to the existence of barriers to entry, ilocal stated that access to the market for online directories involves high investments of time and money, related partly to the procurement or development of databases, product development and high marketing costs to acquire name recognition and traffic to the website.<sup>62</sup>

48. With regard to the potential competition from other online search options such as Google, ilocal stated that this is limited. In this regard, ilocal commented that general online search engines such as Google operate in a general search<sup>63</sup> market. According to ilocal, this market should be distinguished from the directory search<sup>64</sup> market in which companies such as Telefoongids, Gouden Gids and ilocal operate. ilocal states that the pressure of competition from other online search options, particularly Google, is limited because of the distinction between directory search and general search, and also because of the lack of a Google sales force,<sup>65</sup> the fact that, in principle, only companies with their own websites can be traced via Google,<sup>66</sup> and finally, because the emergence of Google has not affected the turnover of the parties.

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<sup>61</sup> This refers to the reduction of the regional allocation of the print directories.

<sup>62</sup> See the public version of ilocal's replies to NMa's questions of 8 February 2008, paragraphs 20-26.

<sup>63</sup> In a 'general search' via search engines, the entire Internet is searched on the basis of the search terms entered; in principle, all the websites found are automatically generated by a computer program (a 'spider' or 'web crawler'), and all websites found are presented without prior selection.

<sup>64</sup> With a directory search website, it is not the entire Internet that is searched, but a database compiled and managed by an editor, and the search results are determined by the classifications and cross-references in the database (the 'taxonomy').

<sup>65</sup> According to ilocal, the development, management and expansion of a database geared to finding local company details requires a thorough knowledge of local business information for which a local sales force is essential. See the public version of ilocal's views of 5 February 2008, paragraphs 13 and 14, as well as the public version of ilocal's replies to the NMa's questions of 8 February 2008, paragraphs 50 to 55.

<sup>66</sup> Ilocal estimates that at least 50 per cent of small businesses in the Netherlands do not have a website. Ilocal refers in that regard to the TNS NIPO survey entitled 'ICT in the SME segment' of 28 February 2006, at <http://www.mkbenict.nl/info.asp?D=onderzoeken>. Of all the companies surveyed (from '1 person' to '100 and more persons'), 55 per cent did not have a website.

49. Finally, ilocal noted that the acquisition will obstruct or delay the shift of advertisers from print to online advertising. According to ilocal, the parties generate 80 per cent of their turnover from their print directories and, certainly after the acquisition, would have little or no incentive to co-operate in a switch of advertisers from print advertising possibilities to online advertising possibilities.

## **B Views of MKB-Nederland**

50. The core of the argument of MKB-Nederland (hereinafter also referred to as 'MKB') is that the acquisition of Gouden Gids by Telefoongids would strengthen a dominant position in the market for print and online (company) directories, resulting in higher prices for small and medium-sized enterprises (SMEs).

51. More specifically, MKB states that advertising in print directories is an important and sometimes necessary form of advertising for SMEs, and will remain so for the time being (the coming three to five years). According to MKB, the acquisition will give rise to a quasi-monopolist in the market for print directories. Partly because of the limited negotiating power of SMEs, the acquisition will lead to price increases. MKB pointed out that it received in 2005 hundreds of complaints (editorial comment: the actual number is somewhere around 100) about excessive price increases for listings in the Telefoongids, as a result of a *rescoping* operation of Telefoongids in the Limburg region.<sup>67</sup> In view of this, MKB requested the NMa to in any event ensure that its members would not be exposed to price increases again as a result of re-scoping after the acquisition.

52. MKB highlighted the fact that the acquisition will eliminate the competitive pressure between the parties. MKB does not accept the parties' claim that there is little or no competition between them. SMEs are said to feel the competition between the parties keenly.<sup>68</sup> Furthermore, MKB noted that the pressure of competition from online advertising possibilities is not sufficient to discipline the parties after the acquisition. It comments that (other) online advertising possibilities, e.g. via general search engines such as Google, represent an alternative for SMEs to only a limited extent. In this regard, MKB points out that a relatively large share of SMEs (an estimated 50 per cent) do not have websites and furthermore, a relatively large share of their clients, including the elderly, make less use of online search possibilities. Furthermore, it claims that advertising in general online search engines is often too expensive for SMEs. The fact that Google does not represent a major threat to the parties, or that advertising via Google actually complements advertising in print (directories), says MKB, is shown partly by the fact that it is possible to search via Google at the Telefoongids website.

## **C Views of Google**

53. Google notes that in principle, advertisers consider all advertising media when choosing to advertise in a particular medium. The return on an advertisement in a particular advertising medium is what matters for an advertiser, not the medium itself. In that sense, all advertising media compete for the same budget of the advertiser. If the return on a certain advertisement changes, the advertiser will reallocate its budget.

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<sup>67</sup> MKB notified the NMa of this.

<sup>68</sup> In this regard, MKB refers to the news report of March 2005 'Gouden Gids to launch biggest SMEs campaign ever' on [www.dutchcowboys.nl/marketing/2482](http://www.dutchcowboys.nl/marketing/2482). In this article, the Gouden Gids marketing director is quoted as saying: '*The battle will be between De Telefoongids and Gouden Gids. We make no attempt to hide that. In the various campaign expressions, we make it clear to advertisers that we are the best almost on a 1-to-1 basis*'. MKB also refers to the Gouden Gids campaign (under the heading 'Gouden Gids discovered Finding', see [www.truvo.nl/nieuws/gouden-gids-reclamecampagne-2008](http://www.truvo.nl/nieuws/gouden-gids-reclamecampagne-2008)), which is likewise said to show that Telefoongids and Gouden Gids are not 'independent or even complementary products'.

Google refers, among other things, to the fact that, relatively speaking, online advertising has exceeded advertising in conventional print media in the Netherlands in recent years. For this reason, print and online advertising media must be regarded as mutual substitutes, Google claims.

54. With regard to the proposed acquisition, Google commented that the Dutch online advertising market is a dynamic market with a large number of players. Furthermore, the online advertising market is distinguished by low access barriers and fast access or expansion. For this reason, Google notes that the NMa should be cautious about intervening in fast-changing markets such as the online advertising market.

55. The views of ilocal, MKB and Google are addressed in more detail in this decision where applicable.

## **VIII ASSESSMENT**

### **A Summary and guide**

56. In this case, the NMa has focused on the question of the extent to which the parties could conduct themselves to the detriment of advertisers as a result of the merger of Telefoongids and Gouden Gids, by charging higher prices or by diminishing the quality of the directories. The extent to which users of the print directories could face similar adverse effects from the concentration was also investigated.

57. The NMa considered the effect of the proposed concentration on the Dutch market in this case, basing the assessment on the assumption that the parties will integrate both their print and online directories, in accordance with the amended license application.

58. It follows from the NMa's analysis of effects that the mutual competitive pressure that the parties exert on each other is limited. The number of advertisers switching from one directory to the other is low, as shown both by the Stratus survey of advertisers and actual historical behavior. The discipline imposed by advertisers that would consider switching to other media or discontinuing advertising if the parties were to increase their prices is substantial. Furthermore, it can reasonably be assumed that the discipline imposed by online alternatives, in particular, will increase, in view of the substantial decline in the use of print directories.

59. As a result of the possibility of price discrimination, it cannot be ruled out that a group of advertisers could suffer adverse consequences of this concentration. In view of the small size of this group of advertisers, the considerable discipline imposed by alternative media and stoppers and the disciplinary effect of the reduction in the use of (print) directories, the Board considers it reasonable to assume that the potential adverse effects of the proposed concentration are limited. It can be noted here that a considerable number of advertisers are expected to benefit from the integration of the directories. There is no evidence that users of the directories will face any adverse effects from this concentration.

60. A description of the investigations that the NMa conducted in the licensing phase, in line with the considerations from the notification phase, is first presented below (Section B). Section C contains the assessment framework, after which the directories of the parties, their mutual substitutability and the developments in the parties' directories in recent years are discussed in Section D. Section E provides a description of specific market conditions (duality and price discrimination) that must be taken into consideration in the assessment of this concentration. This is followed by the assessment of the proposed concentration on the basis of an analysis of the effects (Sections F and G) and finally, the conclusion in Section H.

## B Investigations in response to the license application

### Decision of 11 March 2008

61. Following the investigations in the notification phase, the Board adopted a decision on 11 March 2008 to the effect that a license is required in order to realize this concentration. The Board reached this conclusion on the basis of the following findings.

62. According to the Board, a separate market for advertising space in print directories can be assumed for the time being, including both the print directories of the parties and the various local (municipal) directories. The Board noted here that in any licensing phase, further investigations would have to be conducted into the competitive pressure exerted by online advertising possibilities on the print directories.

63. For the time being, the Board also assumed a separate market for advertising space in online directories, being the narrowest possible relevant online product market in which the parties operate. The Board found in this regard that although there were leads for a broad(er) market for online advertising possibilities, it could not be assumed in advance that the online directories formed part of the same relevant product market as the general online search engines and/or other online advertising possibilities.

64. According to the Board, there was not sufficient reason to assume that as a result of limited price competition, the proposed concentration could have no adverse effects on competition. In that regard, the Board found that the relevant surveys commissioned and submitted by the parties were not convincing and that there were indications<sup>69</sup> that Telefoongids and Gouden Gids did indeed compete, on the basis of price or otherwise.

65. The Board ultimately took the view that the alleged benefits for consumers and advertisers could play a role in the assessment of this concentration, but that the parties had not provided sufficiently convincing evidence that there were actual benefits for consumers and advertisers or consequently, that such benefits outweighed the potential adverse effects of the proposed concentration on competition, as described above. The Board found that further investigations would have to be conducted into these potential benefits in a licensing phase.

### NMa investigation

66. In line with the above findings, the NMa conducted further investigations into the proposed concentration in the licensing phase. The NMa conducted its own survey, as well as studying documents submitted by the parties, at the request of the NMa or otherwise, and views submitted by third parties. The NMa investigations included various surveys conducted by Stratus, a second opinion provided by Tilec, a data analysis based on client and sales figures of the parties and a qualitative survey of market parties. The NMa also conducted an analysis of the (requested) internal (strategic) documents and client files of the parties.

67. A number of these investigations are discussed in more detail below, with some reservations noted, which must be taken into consideration in this assessment.

### *Survey of market parties*

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<sup>69</sup> The decision of 11 March 2008 refers, among other things, to statements by the parties themselves, internal (strategic) documents and market surveys.

68. The NMa requested information from various market parties. For example, the NMa conducted interviews with companies and industry associations that advertise or have advertised in the parties' directories. It also put written questions to advertisers, industry associations and providers of advertising space in print media (publishers of national and regional newspapers or municipal directories) or online media (vertical websites, general search sites, comparison sites, etc.). With regard to (the outcomes of) these qualitative surveys of market parties, it is noted that the responses from advertisers and industry associations, in particular, quite often presented a diffuse picture. To the extent that a more consistent picture was obtained in certain areas, this was taken into account in this assessment, where relevant.

### *Surveys of advertisers and users*

69. The NMa commissioned Stratus to conduct surveys (hereinafter jointly referred to as 'Stratus surveys') of companies that advertise in at least one of the parties' print directories (hereinafter referred to as 'Stratus survey of advertisers'), of advertisers that advertise online only<sup>70</sup> (hereinafter referred to as 'Stratus survey of online advertisers'), of switchers between the Telefoongids and the Gouden Gids (hereinafter referred to as 'Stratus survey of switchers'), of companies with (only) a free listing in directories (hereinafter referred to as 'Stratus survey of free listers') and of users of directories (hereinafter referred to as 'Stratus survey of users').<sup>71</sup>

70. It should be noted with regard to these surveys that some of the questions concerned hypothetical situations. The surveys of advertisers and online advertisers, for instance, included questions on what advertisers would do in the event of price increases for an advertisement in the directory (print or online) in which they advertise at present, or in all directories (print or online). With such questions, a difference can arise between a respondent's intended behavior (stated preferences) and the behavior that is actually shown (revealed preferences) if the respondent finds itself in that situation in practice.<sup>72</sup>

71. In that regard, it should also be noted that it can reasonably be assumed that advertisements in the parties' directorates are generally distinguished by a limited degree of involvement on the part of the advertisers. This means that the attention that those advertisers devote to the procurement of such an advertisement is generally low.<sup>73</sup> This can affect the responses to the survey questions, as respondents may be genuinely less aware of the underlying decision-making process for the procurement of an advertisement, and may consequently act differently in practice than is stated in the response to a survey.<sup>74</sup>

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<sup>70</sup> This concerns advertisers who have placed an advertisement in the online directory of Gouden Gids or have placed an extra advertisement in addition to the package in the online Telefoongids directory. This group also includes advertisers of Ilocal.

<sup>71</sup> (i) Stratus Market Survey, 'Survey of Normal Advertisers' of 30 June 2008, (ii) Stratus Market Survey, 'Survey of Online Advertisers' of 27 June 2008, (iii) Stratus Market Survey, 'Survey of Switchers' of 30 June 2008, (iv) Stratus Market Survey, 'Survey of Free Listings' of 27 June 2008 and (v) (i) Stratus Market Survey, 'Survey of Users' of 27 June 2008.

<sup>72</sup> See e.g. R. Blundell, 'How revealing is revealed preference?', *European Economic Journal* (2005) and L. Jordan, D. Street, 'Stated-Preference methods', Henscher and Button (2000), pgs. 132-143.

<sup>73</sup> The procurement of an advertisement in a directory is not part of an advertiser's main activities. The procurement of an advertisement in a directory occurs on an incidental basis (once a year). Furthermore, for most advertisers this concerns a limited amount. The NMa investigations based on the parties' client and sales data show that in 2007, half of the Telefoongids advertisers spend less than EUR [BUSINESS SECRET] and those of Gouden Gids less than EUR [BUSINESS SECRET]. Average spending per advertiser in the Telefoongids in 2007 was about EUR [BUSINESS SECRET] and in the Gouden Gids about EUR [BUSINESS SECRET].

<sup>74</sup> There are indications in support of this notion coming from the TNS-NIPO survey 'Validation survey Telefoongids monitor' of June 13<sup>th</sup>, 2006, which reveal that there has been confusion concerning the title, and from the TNS-NIPO survey 'Advertisers survey Gouden

*Analysis based on client and sales figures of the parties*

72. On the basis of the client and sales data supplied by the parties, the NMa performed a data analysis (hereinafter referred to as 'NMa data analysis'). The NMa received detailed data from the parties covering several years, relating to the types of advertisement (items), the columns, the directory and the related prices. The NMa defined matters including the general movements in turnover, the number of clients and the prices on the basis of these data.

73. Separate analyses of the print and online directories proved to be impossible. The NMa data analysis revealed that no division by the type of advertisement and medium (print and online) is possible. De Telefoongids supplies its print and online directories as a package. Gouden Gids does not bundle its products (any longer), but its method of recording sales prevents a workable analysis of sales data by type of advertisement and medium. Although the parties state that the scale of this recording problem is small,<sup>75</sup> the Board does not regard the division by type of advertisement at Gouden Gids as sufficiently usable.

*Second opinion by Tilec of the Van Cayseele study*

74. The NMa commissioned a second opinion<sup>76</sup> from Tilec on Van Cayseele's econometric study, which the parties presented during the notification phase. The Board had already noted reservations about the reliability of the Van Cayseele study in the decision of 11 March 2008.<sup>77</sup> The second opinion of Tilec and the accompanying comments are discussed in more detail below in the discussion of the parties' surveys (see paragraphs 77 to 80).

Surveys of the parties

75. During the notification and licensing phases, at the request of the NMa or otherwise, the parties submitted various surveys and documents (see also the 'Views of the parties' described above, paragraph 22 et seq.). During its investigations, the NMa considered all these documents and where relevant, included them in the assessment below. A number of reservations are noted with regard to the parties' surveys.

*Surveys of TNS NIPO and RBB Economics*

76. The parties commissioned surveys by TNS NIPO and RBB Economics. The Board already noted reservations with several of these surveys in the decision of 11 March 2008.<sup>78</sup> Further to this, it should be noted that the reservations noted above regarding the Stratus studies and the NMa data analysis also apply to (parts of) the parties' surveys.

*Van Cayseele survey (and second opinion by Tilec)*

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Gids' of December 18<sup>th</sup>, 2006, in which it was concluded that many Gouden Gids advertisers did not know in which directory they were actually advertising.

<sup>75</sup> See Howrey's memorandum entitled 'Truvo Nederland Revenue Breakdown Analysis', 4 July 2008.

<sup>76</sup> Fillistrucchi, L., T. Klein, E. van Damme and E. Argentesi (2008), 'Second opinion on 'An Econometric Model of Competition in Classified Directory Advertising' by Prof. Van Cayseele and Dries de Smet', 19 June 2008, Tilec, Tilburg (hereinafter referred to as 'the Tilec second opinion').

<sup>77</sup> Reference is made to the endogeneity problem and the choice concerning the definition of the 'use' variable. See the decision of 11 March 2008, paragraphs 28 and 29.

<sup>78</sup> See the decision of 11 March 2008, paragraph 28 et seq. and paragraph 88 et seq.

77. The analyses performed by Van Cayseele and the second opinion by Tilec were influenced by the problems concerning the allocation of turnover by advertisement type (see paragraph 73). Both studies specifically consider the advertisement types ‘in column’ and ‘graphically’.<sup>79</sup> No statement can be made in advance regarding how the results were affected by these allocation problems. In the event of abstraction from the aforementioned problem with the underlying data, assuming that this problem, as the parties state,<sup>80</sup> is limited in scope, the Tilec second opinion produces the following result.

78. Tilec’s replies to the sub-questions posed still raise reservations regarding the reliability of the Van Cayseele survey. The following concerns the technical research notes to this.

*With regard to the dataset, Tilec concludes that the dataset does not include the customary variables (instrumental variables, demographic variables), that use has not been measured homogeneously and that the price standard is partially ‘biased’. Despite these limitations in the data, the analyses can be performed, but this has consequences for the method of estimation. According to Tilec, the regional fixed-effect panel estimate<sup>81</sup> used by Van Cayseele is insufficient to solve the endogeneity problem. As explained below, Tilec proposes to add annual dummies.*

*With regard to the economic support for the model, Tilec concludes that the model is valid and is based on economic literature. However, with regard to the feedback between the two sides of the market, the analysis makes certain assumptions that are not tested. The Van Cayseele survey implicitly assumes, for instance, by omitting the number of Telefoongids advertisements, that the use of Gouden Gids is explained only by the number of advertisements in Gouden Gids, and not by the number of advertisements in Telefoongids, and vice versa. This is an assumption that should be tested. The Tilec study shows that an increase in the number of advertisements in the Telefoongids leads to reduced use of Gouden Gids. Van Cayseele imposes several restrictions of this type in his estimates and does not test their validity.*

*With regard to the econometric methods, Tilec takes the view that the estimation method is suitable for the specific analysis, but should be corrected for a time trend (using annual dummies). If these annual dummies are included, the results for the crosswise price elasticity presented by Van Cayseele appear not to be robust. Tilec finds no evidence that the two directories are complementary, but some evidence that they are substitutes.*

*On the basis of the analyses conducted, Tilec reaches the conclusion that there are indeed indications that the market for directories is a dual one. In contrast to Van Cayseele’s survey, which found indications of complementarity or independent products, Tilec finds no evidence of complementarity, but some evidence of substitution. In Tilec’s view, Van Cayseele’s analysis provides no answer to the question of whether the benefits of wider use/penetration outweigh the potential consequences of the restriction of competition.*

79. In summary, Tilec concludes that the survey performed by Van Cayseele has a number of theoretical and methodological weaknesses and that if corrections are made for these, it cannot be concluded that Telefoongids and Gouden Gids are independent/complementary, but rather that Telefoongids and Gouden

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<sup>79</sup> An advertisement ‘in column’ is an advertisement placed in a column with the listing of the relevant company. A graphical advertisement is a (larger) advertisement that is more striking, due to its position on the page, layout, color and surface area.

<sup>80</sup> See Howrey’s memorandum, ‘Truvo Nederland Revenue Breakdown Analysis, 4 July 2008.

<sup>81</sup> A fixed-effect panel estimate assumes a cross-section and time series. Regional data (data per circulation area for a directory) were used for the cross-section. Data covering several years are available for these regions. Through this combination, the number of data points increases, allowing more accurate estimates to be made.

Gids are substitutes for each other. Tilec also notes that Van Cayseele gives no consistent economic explanation of why Telefoongids and Gouden Gids should be complementary or independent of each other.

80. In view of the problems in the underlying data, which are reflected in the Van Cayseele and Tilec surveys, the Board regards the (individual) evidentiary power of both studies as limited.

*SSNIP test of RBB Economics and ESMT second opinion*

81. In response to the PoC, the parties submitted an additional study by RBB Economics<sup>82</sup> and the second opinion of ESMT. Partly on the basis of these documents, the parties argue that the number of advertisers that discontinue advertising or switch to alternative advertising media is so large that the parties have no possibility or incentive to increase the price after the acquisition.

82. More specifically, it can be noted with regard to the RBB Economics study that a critical loss analysis was conducted.<sup>83</sup> Such an analysis investigates whether the critical loss is less than the actual loss. The critical loss is defined as the maximum percentage of turnover that can be lost as a result of the price increase before the operation becomes loss-making. Generally speaking, the critical loss is determined on the basis of the margin<sup>84</sup> that the parties achieve. The actual loss is the expected actual loss of turnover resulting from this price increase. RBB Economics concludes that, with an assumed margin of at least [45-100] per cent a price increase would not be profitable for the parties because the loss of advertisers (actual loss) would exceed the critical loss. Only with a margin of 20 per cent or less would a price increase be profitable. ESMT's second opinion endorses this finding.

83. The NMa is cautious about the application of a critical loss analysis in this case. The parties themselves also refer on several occasions to the great complexity of a critical loss analysis.<sup>85</sup> In this case, such an analysis is surrounded by uncertainties. Firstly, the margins that the parties achieve are not sufficiently clear, while this input is necessary to determine the critical loss. The parties stated on several occasions, in response to questions from the NMa, that the margin cannot be determined (accurately).<sup>86</sup> Furthermore, the actual loss is also unclear in this case. RBB Economics determined the actual loss on the basis of the Stratus surveys. However, the results of this study indicate an apparent inconsistency with the assumptions made by the researchers in relation to the margin.<sup>87</sup>

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<sup>82</sup> RBB Economics, 'European Directories/Truvo: Implications of the NMa survey for the definition of the relevant market and the competitive assessment' of 25 July 2008.

<sup>83</sup> RBB Economics, 'European Directories/Truvo: Implications of the NMa survey for the definition of the relevant market and the competitive assessment' of 25 July 2008.

<sup>84</sup> The economic margin refers to the relative difference between the price and the marginal costs of a product.

<sup>85</sup> See, among other things, the report on the meeting between the NMa and the parties on 22 February 2008, the report on the meeting between the NMa and the parties on 24 April 2008 and the briefing paper entitled 'Results from the NMa's market investigation support a clearance decision' of 7 July 2008, pg. 6.

<sup>86</sup> The parties stated on several occasions in response to the NMa's questions that they could make no distinction between fixed and variable costs.

<sup>87</sup> The RBB Economics study assumes that the parties have a high margin of at least [45-100] per cent. A high margin can be an indication that clients are not price sensitive, i.e. have low elasticity. However, this low price sensitivity does not appear to be consistent with the high number of advertisers that say they would discontinue advertising in the event of a price increase of 5-10 per cent. On the basis of the Stratus survey of advertisers, showing that 52 per cent\* of these advertisers would discontinue advertising in the event of a 5-10 per cent price increase (see paragraph 129), this is consistent with a price elasticity of 10 (5 per cent price increase) or 5 (10 per cent

84. It can also be noted with regard to the additional second opinion of ESMT that this study was based primarily on the Stratus surveys. The reservations that the NMa made with regard to the Stratus surveys must be taken into account in the interpretation of the ESMT second opinion.

85. The Board takes the view that the results on the basis of the RBB Economic critical loss analysis and the conclusions drawn from this, and the ESMT second opinion, produce indications for the assessment in this case, but are not definitive in themselves.

86. The surveys conducted by the NMa and the parties, with the reservations outlined above, were included in this assessment, in conjunction with the other information in the file.

### **C Assessment framework**

87. The relevant assessment framework for this concentration is the question of whether, as a result of the proposed concentration, actual competition in the Dutch market, or a part thereof, will be significantly restricted, particularly as a result of the creation or strengthening of a dominant position. The key question here is whether the pressure of competition between two (or more) companies after the proposed concentration will be eliminated to the extent that these companies can consequently increase their prices or diminish the quality profitably.

88. In this regard, the NMa investigated the degree of competitive pressure that would be eliminated as a result of the concentration in this case, namely the competitive pressure that the parties exert upon each other. The NMa also conducted further investigations into the discipline that would remain after the proposed concentration, as felt by those parties from alternative media and stoppers.

89. In the assessment of the proposed concentration, the NMa made no use in this case of the standard market definition framework, but based its assessment on an analysis of effects.<sup>88</sup> The investigations conducted by the NMa, and in particular the Stratus survey of advertisers, show that a large proportion of companies would stop advertising in directories if prices increased for all directories.<sup>89</sup> The large number of companies that state that they would discontinue advertising in the directories and would not switch to another medium, in particular, means that it is not meaningful in this case to use market definition as a tool in the overall competition law assessment. Furthermore, the definition of a relevant market is hampered by the strongly differentiated product range to which advertisers consider switching following a price increase. The NMa's investigations show that no specific alternative advertising medium can be identified that, in itself, exerts sufficient competitive pressure on the parties' directories, while these alternative media jointly (in combination with the 'stoppers') do indeed have a disciplining effect.

90. Further to the decision of 11 March 2008, the proposed concentration will be assessed at the national level in this case. Both parties are active on a national level with the issue of both print and online directories,

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price increase). Use of the 'Lerner index' shows that this is consistent with margins of 10 per cent and 19 per cent respectively. The difference with the margin of [45-100] per cent assumed by the parties could possibly be explained by the difference between the stated and revealed preferences or by the possibility that the underlying economic theories are not sufficient for a critical analysis in this case.

\* Surveys based on samples may differ from reality. This difference is called the margin of error. The size of this margin depends on the sample size and on the found percentage in the survey. A more detailed explanation of this point can be found on page 10 of the Stratus survey among advertisers.

<sup>88</sup> As stated in the decision of 11 March 2008, the Board regards 'market definition' not as an end in itself, but as an important tool in the assessment of competitive relationships and, therefore, of a concentration.

<sup>89</sup> Discontinuing advertising implies that advertisers will content themselves with a free listing in the directory.

and encounter each other in every regional circulation area where there are similar mutual competitive relations.

#### D Directories of the parties: bundling, substitutability and development

##### Print and online directories of the parties: a single package

91. As reported in paragraph 13, the activities of the parties overlap in the field of production and distribution of print and online directories. At present, the focus of the parties' activities still lies on the issue of print directories. About [70-90] per cent of the turnover of both Telefoongids and Gouden Gids is generated by sales of advertising space in the print directories. This makes the supply of advertising space in print directories an essential part of the parties' overall product range.<sup>90</sup>

92. Telefoongids offers advertising space in its print and online directories as a 'pure' package, which means that advertising space in the print directory and the online directory are sold as a single unit.<sup>91</sup> Telefoongids has stated that it will continue this bundling strategy (combined with sales of advertising space in the print and online directories) after the proposed concentration.<sup>92</sup>

93. In contrast to Telefoongids, at Gouden Gids advertisers can choose to buy advertising space in the print directory only, without also buying online advertising space, and vice versa.<sup>93</sup> In practice, however, the advertising space in the Gouden Gids directory is almost always purchased in combination with the advertising space in the online Gouden Gids directory. In 2007, for instance, about [BUSINESS SECRET] of all Gouden Gids clients advertised in both the print and the online Gouden Gids directory.<sup>94</sup>

94. In view of the above actual market circumstances, the assessment of the proposed concentration in this decision assumes the (combined) supply of advertising space in print and online directories. Where relevant, print or online directories are considered separately.

##### Degree of substitutability of parties' directories

95. Taking as a starting point, the physical product features and functionality of the directories, Telefoongids and Gouden Gids currently offer virtually identical products. The parties' products serve the same purpose: to find name and address details of companies for users, and for advertisers, to be accessible to consumers. On this basis, it can be assumed that the parties make efforts to win the same users and advertisers.

96. Nevertheless, it is important to recognize that the directories of Telefoongids and Gouden Gids appear to be differentiated products to some extent, or are at least perceived to be so by advertisers.

97. It follows from the Stratus survey of advertisers that advertisers have different perceptions of the Telefoongids and Gouden Gids directories. A small majority of advertisers do not regard the directories as alternatives for each other (to any significant extent) for the placement of a certain listing (53 per cent). Only

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<sup>90</sup> The fact that the focus of the parties' activities still lies on print directories is shown, for instance, by Truvo's MTP document 2007-2009 (May 2006), on page 21, which indicates that [BUSINESS SECRET].

<sup>91</sup> Telefoongids does offer advertisers the possibility of buying additional online advertisements.

<sup>92</sup> See e.g. RBB Economics, 'Efficiency defense: weighing the benefits to advertisers against the likelihood of post-merger price increases and quality decreases', 11 June 2008.

<sup>93</sup> It is noted here that Gouden Gids previously also offered its products as a single package, but stopped doing so in 2004.

<sup>94</sup> Source: NMa data analysis.

about 8 per cent see the Telefoongids directory and the Gouden Gids directory as full substitutes for each other, while 8 per cent see the directories largely as alternatives and about 22 per cent see them as alternatives to some extent.<sup>95</sup>

98. The fact that the parties' directories do not appear to be alternatives to more than half of the advertisers is consistent with the different focus of the Telefoongids and Gouden Gids directories. Studies by the parties show that Gouden Gids is used more to search for new suppliers (unknown search) while the Telefoongids is used more to search for information on a company or institution of which the name is already known (known search).<sup>96</sup>

99. In view of the foregoing, the Board recognizes that there is a degree of heterogeneity between the parties' directories, which thus may not form substitutes for (certain) advertisers. For an advertiser with a (strong) preference for one of the two directories, the product differentiation between Telefoongids and Gouden Gids is apparently so strong that it (virtually) does not see these directories as alternatives for each other.

### Development of the parties' directories

100. The average daily use of the Telefoongids and Gouden Gids directories shows that use is diminishing, for both Telefoongids and Gouden Gids individually and for both together.<sup>97</sup> The reduction in the overall use of directories results from the sharp reduction in the use of print directories. In the 2003-2007 period, the use of the Gouden Gids print directory decreased with more than [40] per cent, while use of the Telefoongids print directory fell by about [>30] per cent. The use of online directories increased in the same period. This shift from print to online directories does not fully account for the strong decrease in the use of print directories. The total use of the parties' print and online directories combined diminished by about [>10] per cent in the 2003-2007 period.

101. The overall trend for both the parties' print and online directories shows a slight diminution in the number of companies that advertises in the parties' directories. Despite the reduced use and the lower number of advertisers, the parties were reasonably able to consolidate their (combined) turnover. Total turnover of Telefoongids (print and online combined, 2007 price level) is developing steadily, and has been increasing since 2003. Telefoongids has managed to increase spending per advertiser. Total turnover of Gouden Gids (print and online combined, 2007 price level) has been declining since 2000<sup>98</sup>. The increase in Telefoongids' turnover compensates the decrease in Gouden Gids' turnover, when looking at the combined turnover of print and online, for the period of 2004-2006.

102. By contrast, purely looking at Telefoongids' online sales, they are increasing. Such a clear upward trend cannot be determined reliably enough for Gouden Gids (see paragraph 73). The number of advertisers that buy an additional online advertisement next to the package with Telefoongids increases dramatically. Online advertisements sales next to the package make up an increasingly substantial share of total sales. In

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<sup>95</sup> The other 9 per cent state that they do not know.

<sup>96</sup> See e.g. the Gouden Gids presentation 'Winning in the Market!' (February 2005) and the Telefoongids presentation 'For Site Visit' (November 2007).

<sup>97</sup> The parties attempt to measure use of their directories through continual surveys, in which respondents are asked whether they used the relevant directory the day before, regardless of the purpose of doing so. See the RBB Economics document 'Project Silver – Request for information 25 January 2008', dated 6 February 2008, pg. 4.

<sup>98</sup> In its analysis, the NMa corrected the turnover totals (nominal) for inflation, based on 2007 price levels.

2007, Telefoongids generated [BUSINESS SECRET] of its revenues from online sales in excess of the package. Advertisers also spent an average of more than EUR [BUSINESS SECRET] each in excess of the package in 2007. This spending lies far above the level of average spending per advertiser for print and online directories combined (less than EUR [BUSINESS SECRET]).

103. It follows from the foregoing that total use of the print directories of Telefoongids and Gouden Gids has fallen sharply in recent years. The number of advertisers in the directories has also diminished slightly. Nevertheless, the parties have been able to consolidate their (joint) turnover reasonably well. Advertising sales for online directories have been growing in recent years.

## **E Specific market conditions**

104. The field in which the parties operate has specific features that should be taken into consideration in the assessment of this case. The dual character of directories is discussed first. Attention then focuses on the possibility of applying a value-based pricing policy. In this case, such a pricing policy is expressed in the form of price discrimination.

### Duality

105. With regard to the parties' directories, two sorts of client can be distinguished: users of the directories (persons and/or companies searching for [information on] companies in a particular location or region) and companies wishing to advertise.

106. The success of a directory depends partly on its success in attracting both users and advertisers. The willingness of advertisers to pay for advertisements in a directory depends partly on the number of users that the directory attracts. At the same time, the use of a directory depends on the directory's information value (a reasonably full list of the names and addresses of Dutch companies and institutions). In this way, the provision of such directories is distinguished by two-sidedness.

107. The dual character of directories is also noted in other studies. A report by Europe Economics, commissioned by the European Commission, points out that markets in the media sector, such as the parties' directories, often serve different types of clients, such as advertisers and readers.<sup>99</sup> The Competition Commission (one of the British competition authorities) concludes in a decision<sup>100</sup> relating to print directories that the market for classified directory advertising services in the UK has a dual character, in which advertisers and users influence each other.

108. Provision of directories is therefore marked by two-sidedness. It can be assumed that this two-sidedness can have a certain impact. Although a reduction by a small number of users will not lead to a similar reduction in the price of an advertisement, the Board does consider it reasonable to assume that advertisers value use and that a sharp increase or decrease in use will (in any event, ultimately) lead to a response from advertisers.

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<sup>99</sup> See the European Commission report 'Market Definition in the Media Sector: Economic Issues' of November 2002, paragraph 2.4.1 et seq.

<sup>100</sup> See the Competition Commission report of 21 December 2006, 'Classified Directory Advertising Services market investigation' (hereinafter referred to as 'the CC report'). The Competition Commission's investigation took place in relation to regulation of Yell, the dominant provider of advertising space in print directories in the UK. The Competition Commission is authorized under national law to impose a price cap (maximum price) on Yell.

109. In line with previous NMa decisions<sup>101</sup> concerning free newspapers and the above decision<sup>102</sup> of the Competition Commission, this decision primarily considers the potential consequences of the proposed concentration for advertisers.<sup>103</sup> Partly in view of the duality described above, developments on the user side will be included in the assessment of the consequences for advertisers.

### Price discrimination

110. Price discrimination occurs frequently in the media sector and is a form of value-based pricing policy. Such pricing is largely based on the value that a buyer assigned to a product, or the buyer's 'willingness to pay'. A value-based pricing policy seems more likely in the media sector than a pricing policy based on marginal costs, as this sector is generally distinguished by high fixed costs and low marginal costs.<sup>104</sup> Price discrimination also plays a role in the case of the parties' directories.

111. The price discrimination applied by the parties takes place in different ways. Firstly, groups of advertisers are distinguished on the basis of verifiable features such as location and sector/activity. Telefoongids has different rates, depending on the geographical location of the advertiser (inside or outside the distribution area of the directory – an advertisement outside the advertiser's distribution area is cheaper), and on the classification type of which customers are somewhat willing to travel (such as for florists and bakeries)<sup>105</sup>. Gouden Gids has a similar pricing structure. Gouden Gids has three pricing levels per classification type: the standard price level, a local price level (a more locally-oriented classification), and a business-to-business price level. Eligibility for the two latter price levels depends on meeting certain specific criteria, such as the layout of the advertisement, the number of regions in which the advertisement would appear, and the location of the advertiser.<sup>106</sup>

112. In addition to the above form of price discrimination, based on pre-determined criteria, the parties also apply a form of price discrimination by allowing individual advertisers to state their own preferences.<sup>107</sup> Charging client-specific prices is possible through separate procedures that both Telefoongids and Gouden Gids have developed for that purpose. Gouden Gids uses its so-called *overrule*-rules. These rules have been developed to deviate from the standard rules and discounts, on a case-by-case basis. The higher the offered discount, the higher in the organization one needs to go for authorization.<sup>108</sup> Telefoongids representatives

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<sup>101</sup> See the decision of 24 October 2007, in case 6114/Mecom-Wegener, paragraphs 1-14 and the first phase decision of 18 October 1999, in case 1528/Wegener Arcade-VNU Dagbladen, paragraph 12, which states that, since users do not pay for free newspapers (there is no decision to buy) and providers of these newspapers generate their income in this regard entirely from advertising, the market for users is not considered separately.

<sup>102</sup> See the CC report, paragraph 5.9, 'Because users do not pay directly for the use of CDAS (classified directory advertising services), CDAS providers' profitability will be determined by advertisers revenues (although these, in turn, may be affected by use); therefore we examined the market at the advertiser level.'

<sup>103</sup> In the licensing phase, the NMa did consider separately whether adverse effects could arise for users as a result of the proposed merger. See paragraph 163.

<sup>104</sup> See the European Commission report 'Market Definition in the Media Sector: Economic Issues' of November 2002, margin numbers 2.1.8 to 2.1.14.

<sup>105</sup> See, among others, the RBB Economics document, 'Silver: explanation of pricing and discounts', January 16<sup>th</sup>, 2008.

<sup>106</sup> Notification of the parties, Annex 3.4/15, paragraph 4.

<sup>107</sup> An internal document of Gouden Gids mentions the following with regard to Telefoongids' policies: '[BUSINESS SECRET]'. See the Gouden Gids document: 'Telefoongids Analysis, Nov/Dec 2006'.

<sup>108</sup> See presentation by Simon Kucher & Partners, sheet 22 (notification of parties, annex 3-4/17) and the answer to question 4 of the additional questions by the NMa, dated August 7<sup>th</sup>, 2008.

can offer additional discounts to individual advertisers, provided they support their request with arguments on a so-called discount sheet, and have this signed by a superior.<sup>109</sup>

113. The parties also attempt to determine the willingness of advertisers to pay by upscaling advertisers by selling them higher-cost and/or more advertisements each year. The parties use 'booster programs' for this purpose. Despite potential differences, these Telefoongids and Gouden Gids programs amount to the fact, in short, that advertisers that increase their advertising spending in a particular year by a particular threshold value in comparison with the year before qualify for a larger advertisement for the same price or for an advertisement in a different column or region for a lower price.<sup>110</sup>

114. The pricing policy of both Telefoongids and Gouden Gids is thus distinguished by awarding **[BUSINESS SECRET]** discounts. Telefoongids offers its directories at **[BUSINESS SECRET]** listed prices, and subsequently offers **[BUSINESS SECRET]** discounts, according to Telefoongids' own client database. The average discount that Telefoongids offered its customers in 2007 on the listed prices is approximately **[BUSINESS SECRET]** per cent.<sup>111</sup>

115. Although the foregoing makes it reasonable to assume that in principle, the parties can apply a 'client-specific' pricing policy (i.e. perfect price discrimination),<sup>112</sup> it should be noted that it is unlikely that the parties can also apply such price discrimination in full. After all, this would mean that the parties must invest time in each individual client in order to determine each client's willingness to pay, which is not efficient and does not seem possible.<sup>113</sup> In practice, the parties have organized their sales forces in terms of different types of clients,<sup>114</sup> which are contacted in different ways (face-to-face approach, by telephone or by direct mail).<sup>115</sup> As a result, it is not likely that every client will qualify for a client-specific approach, which means that there are insufficient indications that the parties can apply a perfect form of price discrimination.

116. In view of the foregoing, the Board considers it reasonable to assume that the parties can discriminate among advertisers on the basis of price to a certain extent. The parties have done this in the past and in all probability, will continue to do so after the proposed concentration. Nevertheless, the Board does not

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<sup>109</sup> Depending on the total discount amount, the superior to be contacted can be a team manager, regional manager or sales director. See the answers of parties to the additional questions by the NMa, dated August 7<sup>th</sup>, 2008.

<sup>110</sup> See RBB Economics, 'Silver: explanation of pricing and discounts', 16 January 2008.

<sup>111</sup> Further to paragraph 73 concerning the possibilities of an analysis based on client and sales data: During the investigations, it became clear that Gouden Gids does not record list prices (gross prices) per client and that an approach via historical list prices is not reliable. As a result, no discount rate can be calculated for Gouden Gids.

<sup>112</sup> It has been mentioned in the ESMT second opinion too that price discrimination is conceivable in this case: '..'. This way of targeting price-sensitive advertisers appears feasible in practice as: i) advertisers need to incur some effort to benefit and ii) price-sensitive advertisers identify themselves through the counter-offer. Likewise non-price-sensitive advertisers reveal their preferences in not presenting a counter-offer. This hypothesis is consistent to the evidence on targeted rebates that is provided by the NMa ..'.

<sup>113</sup> See also the ESMT second opinion, page 11.

<sup>114</sup> See, for example, the answer to question 19 of the additional questions by the NMa, dated February 20<sup>th</sup>, 2008, which reveal that Gouden Gids has structured its sales team along **[BUSINESS SECRET]** different sales channels lines, like National Accounts Customers (**[BUSINESS SECRET]**) and Premise (**[BUSINESS SECRET]**). For Telefoongids, see the answer to additional question by the NMa, dated April 4<sup>th</sup> 2008 which show that Telefoongids has structured its sales team along **[BUSINESS SECRET]** different sales channels lines, such as National Accounts (**[BUSINESS SECRET]**), and Direct Accounts (**[BUSINESS SECRET]**). Source: answers of parties to NMa questions, dated April 4<sup>th</sup>, 2008.

<sup>115</sup> For Gouden Gids, see the reply to Question 19 of the additional NMa questions of 20 February 2008. For Telefoongids, see the replies of the parties to questions of 7 August 2008.

consider it likely, given the cost inefficiencies, that the parties can or will apply such price discrimination perfectly for individual advertisers.

## F Consequences of concentration

117. The mutual discipline of Telefoongids and Gouden Gids is first discussed below, followed by the discipline the parties face from advertisers who discontinue advertising and from alternative advertising media. Closer attention will be devoted here to (the expected developments concerning) the competitive pressure exerted by alternative online advertising possibilities, such as search engines and sector-related sites, and alternative print media, such as daily newspapers and free newspapers.

### Mutual discipline of Telefoongids and Gouden Gids

118. In view of the similar features of the parties' directories, it can be assumed that the parties make efforts to win the same users and advertisers for their own directories (see paragraph 95). This concerns both existing and new users and advertisers.<sup>116</sup>

119. The parties compete with each other for users of their directories.<sup>117</sup> Use is an important aspect for advertisers.<sup>118</sup> The more users that a directory attracts, the greater the directory's appeal for advertisers. The parties try to win the loyalty of the largest possible group of users, partly through advertising campaigns.

120. With regard to advertisers, it can be deduced from several of the parties' strategic documents and customer files that Telefoongids and Gouden Gids compete with each other for advertisers.<sup>119</sup> For example, a recent Telefoongids strategic document states: 'GG will be a **[BUSINESS SECRET]** competitor in the coming years, and we will need to respond fast (..)';<sup>120</sup> and a recent Gouden Gids strategic document states e.g.: 'market opportunity – requirement is to defend vs TG approach'.<sup>121</sup> A Telefoongids client file reads: 'Taken over from GG last year. GG also made a very attractive offer this year **[BUSINESS SECRET]**. Yet were able to hold'.<sup>122</sup>

121. The Stratus survey of advertisers also shows that the parties compete for advertisers. Some 44 per cent of the advertisers questioned who advertised in one of the two directories stated that they had been

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<sup>116</sup> The RBB survey (Tables 5 and 6) and the NMa data analysis show that in the 2004-2007 period, some **[BUSINESS SECRET]** of the parties' customer base can be classified as new clients. In 2007, this involved about **[BUSINESS SECRET]** new advertisers.

<sup>117</sup> See, for example, the document 'MTP 2008 The Netherlands (September 2007)': 'over the last five years, a shift is seen to single source usage, **[BUSINESS SECRET]**'. Moreover, parties regularly compare the usage of both directories, like in 'Review Gouden Gids 2005/2006', dated January 2007 and 'For Site Visit', dated November 2007.

<sup>118</sup> This is also shown by the outcomes of the qualitative NMa surveys of advertisers and advertisers' sectoral organizations. It follows from this that penetration/use (in combination with the price) is important for most advertisers. Most sectoral organizations also state that the 'penetration' and price of the directories are the most important factors for their members. If advertisers advertise in both directories, the issue is usually greater penetration/use. If sectoral organizations have a contract with both Telefoongids and Gouden Gids, the main reason for this is also penetration.

<sup>119</sup> See also the MKB views, which state, with support from references to documents of the parties themselves, that SMEs keenly feel the competition between the parties (see paragraph 50).

<sup>120</sup> 'For Site Visit' presentation (Telefoongids, November 2007)

<sup>121</sup> See 'MTP 2008, The Netherlands' from Gouden Gids, dated 11 September 2007.

<sup>122</sup> Handwritten note to 'reason for discount' on form 'authorization request for discount on sales order', in dossier **[BUSINESS SECRET]**, annex 4.3/2 customer forms Telefoongids.

contacted by a sales representative of the other directory.<sup>123</sup> The Stratus survey questioned advertisers who had actually switched (partially) to another directory in the past for their motives for this (partial) switch. These 'switchers' stated, among other things, that they switched for reasons of the reputation of the other directory (37 per cent), the fact that they were contacted by a sales representative of the other directory (36 per cent), the price in relation to the use (26 per cent) and the fact that Telefoongids offers a package (22 per cent).<sup>124</sup>

122. Although, in view of the foregoing, the parties compete with each other for users and advertisers, this mutual competitive pressure is reduced by a degree of heterogeneity between the parties' directories (see paragraph 99). The less comparable the perceptions of users and advertisers regarding the two directories and as the product differentiation between Telefoongids and Gouden Gids thus grows, the less that the two directories are seen by advertisers as alternatives for each other. This reduces the mutual discipline of the parties.

123. This picture is confirmed partly by the outcomes of the Stratus survey of advertisers. This shows that the degree of switching between Telefoongids and Gouden Gids is relatively small. With a price increase of 5-10 per cent by one of the two print directories and unchanged use, only about 2 per cent of the advertisers surveyed said they would switch (partially or entirely) to another print directory. The parties are dependent on print directories for [70-90] per cent of their revenues. Precisely on that level, discipline is limited.

124. With regard to the parties' other activities, mutual discipline is (slightly) higher. About 7 per cent of the advertisers surveyed said that they would switch (partly or fully) to an online directory. The Stratus survey of online advertisers showed that the number of advertisers in online directories that would switch (partly or fully) to another online directory in the event of a 5-10 per cent price increase is higher, amounting to about 9 per cent. About 3 per cent of the online advertisers surveyed said that they would switch (partly or fully) to a print directory in such a situation. It should be emphasized here that these switch percentages are considerably lower than the percentage of advertisers who said that they would no longer spend the budget saved on advertising and are also partially lower than the percentage of advertisers who said they would switch (partially or fully) to various other media (see paragraph 129).

125. The low mutual switching considered by advertisers (stated preferences) is reasonably consistent with the actual historical behavior (revealed preferences) of advertisers in directories.<sup>125</sup> The analysis based on client and sales data shows that only 3 per cent of the advertisers switched partially or fully (via a shift in part of the expenditure) to the other directory between 2006 and 2007. This represents about 2 per cent of the parties' total revenue.<sup>126</sup> It can be deduced from this that Telefoongids and Gouden Gids exert a disciplinary effect on each other to only a limited extent. A notable observation is that in the same period, the total number of switchers from Telefoongids to Gouden Gids was higher than the converse situation, despite the

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<sup>123</sup> Stratus survey of advertisers, Table 17.

<sup>124</sup> Stratus survey of switchers, Table 5.

<sup>125</sup> Limited switching behavior is also revealed by qualitative surveys of advertisers and advertisers' sectoral organizations: no advertisers switched (or considered switching) part or all of their budgets from one directory to the other.

<sup>126</sup> RBB Research conducted a similar analysis. The report shows that in the 2004-2005 period, 7.8 percent of advertisers switched (partially to the other print directory and in the 2005-2006 period, 8.6 per cent. A difference with the RBB Economics analysis is that RBB Economics set the limit for partial switching at 5 per cent (i.e. 5 per cent of the budget shifted to the other directory), while the NMa set this at 25 per cent of the net revenue per advertiser. The NMa regarded 5 per cent as too low to be able to refer to a switch in the form of a budget shift, partly in view of the price changes that the parties implemented, which regularly amount to more than 5 per cent (in absolute terms).

fact that Gouden Gids imposed a higher price increase than Telefoongids. RBB Economics found a similar, but reverse switching pattern in the 2005-2006 period.<sup>127</sup> Telefoongids became relatively more expensive compared to Gouden Gids in the period of 2005-2006, but the total switching amount of Gouden Gids to Telefoongids is higher the other way round.<sup>128</sup>

126. On the basis of the foregoing, one can conclude that, to a degree, the parties compete with each other for both users and advertisers. The limited number of advertisers that would consider switching to the other directory if their directory increased prices and the low historical switching figures between the parties indicate that the mutual discipline between Telefoongids and Gouden Gids is limited.

#### Disciplining by stoppers and alternative advertising media

127. Generally speaking, in all advertising markets, companies can choose from a broad spectrum of advertising possibilities in determining their advertising and promotional policies, such as newspapers, magazines, directories, television, direct mail, outdoor advertising, radio and the Internet. Many companies use a mix of these advertising possibilities. Often different media have different functions here, depending on their characteristics. One medium serves to build up or increase name recognition (television), another to convey information (the Internet) or provide possibilities for advertising current information such as special offers (daily newspapers). Directories are distinguished from these media by the direct 'steering' of users (often once only, or in the short term) searching for a specific product or service from companies, often ones that operate locally or regionally.

128. The extent to which media represent substitutes to an advertiser depends partly on the advertiser's objective in mounting an advertising campaign. The view of Google, among others, that all advertising media compete for the same budget of the advertiser (see paragraph 53), does not mean that these advertising media are substitutes for each other.

129. The outcomes of the Stratus surveys of advertisers and online advertisers show that parties are disciplined to a considerable extent by the total (aggregate) effect of advertisers that stop advertising in directories (in the event of a relative price increase). With a price increase of 5-10 per cent for both print directories and unchanged use, about 52 per cent of the advertisers surveyed said they would stop advertising in the directories or reduce their spending on them.<sup>129</sup> Two sub-categories can be distinguished within this group of advertisers. About 25 per cent of all advertisers surveyed stated that they would no longer spend the budget saved on advertising. About 15 per cent of all advertisers surveyed said that they would switch

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<sup>127</sup> See the RBB Economics report 'Project Silver', dated 7 December 2007.

<sup>128</sup> A possible explanation for the switching pattern, which is illogical at first glance, lies in the fact that this involves a calculation based on averages. Although the prices of Telefoongids or Gouden Gids had risen in comparison with the other on average, the prices that the (small group) of actual switchers paid may have varied from this. In other words, the switchers could have been attracted by prices that were lower than the average prices. Furthermore, the parties stated in response to questions that a price increase must be related to an increase in the value of the product, for instance in the case of Telefoongids, that the product package is continually expanded with new services that would also make it possible to attract new advertisers despite a price increase.

<sup>129</sup> The percentage shown consists primarily of advertisers who said they would stop advertising in the print directory (44 per cent), while a smaller percentage (8 per cent) said they would reduce their spending. The other advertisers surveyed said that they would accept the price increases (23 per cent), leave their budgets unchanged and adjust the advertisement to the budget (17 per cent), or said they did not know (8 per cent). With regard to the advertisers who said that they would accept the price increase or adjust the advertisement to the budget, it should be noted that these will not be affected as a result of the proposed concentration.

(partially or entirely) to a different advertising medium.<sup>130</sup> Of the advertisers in online directories, about 48 per cent said they would stop advertising in the online directories or reduce their spending. About 21 per cent stated that they would no longer spend the budget saved on advertising and about 25 per cent said that they would switch to a different advertising medium.<sup>131</sup>

130. It should be noted with regard to the foregoing that the high percentage of advertisers that say they would stop advertising in a directory (stated preference) is not directly reflected in the actual behavior of advertisers. The NMa data analysis shows that Telefoongids lost no more than [10-20] per cent of its clients in 2006 following a price increase of more than 5 per cent.<sup>132</sup> This indicates that the actual (revealed) effect of a price increase can therefore be smaller than the effect on the basis of intended (stated) behavior, as follows from the survey results. The discrepancy between stated and revealed behavior is taken into account below with regard to advertisers that discontinue advertising after a price increase.

131. The high number of advertisers that stop advertising and no longer spend the budget saved on advertising is also shown by the TNS NIPO survey commissioned by the parties of companies that actually stopped advertising in the parties' directories in recent years. This survey shows that about 52 per cent of the surveyed companies that stopped advertising in Telefoongids and/or Gouden Gids did not spend the saved budget on other forms of advertising.<sup>133</sup> This involves actual (revealed) behavior as opposed to intended (stated) behavior, as in the Stratus survey.

132. Other research findings concerning the (degree of) disciplinary effect of alternative media are discussed below, considering potential online alternatives (such as general search engines and industry websites), as well as potential print alternatives (regional daily newspapers and free newspapers).

#### Online media as an alternative for directories

133. In the Stratus survey of advertisers discussed above, advertisers were asked which advertising medium they would switch to in the event of a 5 per cent to 10 per cent increase in advertising charges. With regard to the alternative online media, the survey results show that about 7 per cent of the advertisers would switch (partially or fully) to an online alternative in response to a price increase for both print directories, including general search engines (4 per cent), industry websites (3 per cent) and investment in their own websites (4 per cent).<sup>134</sup>

134. In the Stratus survey of online advertisers, one of the questions was the extent to which advertisers regard advertising via general search engines (such as Google) as an alternative for advertising in the parties' (online) directories. About 37 per cent of the respondents regard advertising via general search engines as a full alternative, or largely as an alternative for advertising in an online directory. The most common reason given for regarding general search engines as an alternative for online directories were 'accessibility via general search engines is just as good' and 'clients/target group search primarily via general search engines'.

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<sup>130</sup> Stratus survey of advertisers, Tables 26 and 27.

<sup>131</sup> Stratus survey of online advertisers, Tables 27 and 28.

<sup>132</sup> This is offset by the fact that in the same period, the parties also attracted new advertisers (see footnote 116), but lost clientele overall.

<sup>133</sup> See TNS NIPO, results of the survey of companies that stopped advertising in Telefoongids and/or Gouden Gids, March 2008, pg. 9, submitted with the license application. This concerns figures only. The survey does not reveal the percentage of the parties' revenue involved here.

<sup>134</sup> As respondents could give more than one reply to the relevant questions, the percentages given do not add up to 7 per cent. The response of advertisers to a price increase for both online directories does produce roughly the same outcomes.

However, a similar percentage (about 33 per cent) do not regard these as an alternative, or barely so. Sector-related websites (such as funda.nl and dinnersite.nl) and comparison sites (such as kieskeurig.nl and independenr.nl) are predominantly not seen as an alternative for advertising in (online) directories.<sup>135</sup>

135. The foregoing indicates that some advertisers do regard other online media as an alternative for online directories, while others do not at present.<sup>136</sup> The assertion of ilocal and MKB that general search engines (such as Google) do not constitute an alternative is therefore only partially supported by the survey.

136. As a result of growing use, the Internet appears to be becoming ever more popular among advertisers.<sup>137</sup> Figures show that online advertising is becoming increasingly important.<sup>138</sup> The same applies for the parties' online directories, with growing revenues from advertising sales for the online directories (see paragraph 102). The TNS NIPO survey of advertisers shows that 76 per cent of the advertisers surveyed in the parties' clientele have their own websites.<sup>139</sup> Even without a website, companies can be found online, for instance by placing advertisements on third party websites or via general search engines such as Google.<sup>140</sup>

137. However, to date, the increase in Internet use has not materially affected the position of the parties in directories. As already mentioned, the parties have been able to consolidate their combined turnover reasonably well in recent years (see paragraph 101 above).

138. The average price of advertisements in the parties' directories (corrected for inflation) has also risen in the past 10 years and does not appear to be under pressure from the emergence of online advertising. The average spending by an advertiser on the bundled package of Telefoongids is increasing. In the period of 2004-2007, Telefoongids raised its net price [BUSINESS SECRET], (between [BUSINESS SECRET] per cent and [BUSINESS SECRET] per cent). One would expect companies in sectors that regard the Internet as important, the 'Internet-sensitive sectors', to experience higher price pressure from the other online advertising possibilities and that prices for this group would fall with the rise of the Internet. Apparently, there has been no reason so far for the parties to adjust their pricing and discount policy to this. Internal documents of the parties show that they do not (yet) differentiate in their pricing and discount policies

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<sup>135</sup> Twenty-two per cent of the online advertisers surveyed regard sector-related websites as full alternatives, or largely so, for the parties' online directories, while 51 per cent do not regard these as alternatives or as adequate alternatives. The percentages for comparative sites vary still more widely. Four per cent regard comparative sites as full alternatives, or largely so, for the parties' online directories, versus 70 per cent that do not regard them as alternatives or as adequate alternatives.

<sup>136</sup> This also follows from the qualitative survey, which shows that most advertisers regard general search engines and other online activities (including their own websites) as a potential alternative for advertising in directories. Daily newspapers and free newspapers are also seen as alternatives, but to a lesser extent, and the other forms of advertising to an even smaller degree.

<sup>137</sup> Use of the Internet has grown rapidly in recent years and is expected to continue to do so. The Netherlands has a high percentage of households with Internet access. In 2007, about 88 per cent of the population had Internet access, the overwhelming majority (90 per cent) via a broadband connection (Source: CBS).

<sup>138</sup> Internet spending in the Netherlands amounted to about EUR 224 million in 2007, representing growth of 9 per cent in comparison with 2006. Growth in 2006 was 36 per cent in comparison with a year earlier (Source: Nielsen).

<sup>139</sup> This percentage is higher than the estimated 55 per cent referred to by MKB. The difference can partly be explained by the fact that the 75 per cent rate is based on a survey of advertisers by the parties, while MKB bases its figure on a random sample of SMEs as a whole, thus including non-advertisers.

<sup>140</sup> Companies with no websites of their own can still be found indirectly online, for instance via a (free) listing in online directories such as those of the parties, GoogleMaps, ilocal or sector-specific sites (e.g. dinnersite.nl).

between categories of advertisers that are or are not sensitive to online advertising.<sup>141</sup> The parties also stated this explicitly in replies to questions from the NMa.<sup>142</sup>

139. As part of this investigation, the NMa contacted various providers of online advertising space. The majority of these players share the view of the parties that (print) directories compete with online alternatives. Asked to name the five main competitors (at present), six companies mentioned Telefoongids and/or Gouden Gids as competitors. A majority of the companies named stated that the online (advertising) market will probably grow in the near future. The NMa has no indications that one or more of these providers of online advertising space plans to enter or expand in the field of print directories (in combination with online directories or otherwise) in the foreseeable future.

140. The foregoing indicates that online alternative advertising possibilities are not, at present, regarded by all advertisers as an alternative for the parties' directories. Furthermore, the growth of the online advertising market does not appear to be at the expense of the parties' directories at present.

#### *Dynamics on the user side of the market*

141. The two-sided character of the directories means that the willingness of advertisers to pay for advertisements in directories depends partly on the number of users that the directory attracts (see also paragraph 108). As noted in paragraph 100, the use of print directories is diminishing considerably and use of online directories is growing. Although advertisers have not responded noticeably to this at present, it is considered reasonable to assume that the substantial fall in the use of (print) directories will ultimately lead to a response from advertisers. In view of the growth in online use, it can be assumed that this medium will increase in importance here in relation to the print directories. The speed with which this shift will take place depends partly on the perceptions of advertisers regarding the use of (print) directories by consumers.<sup>143</sup> In view of its prospective test, the NMa must also take account of such expected developments.<sup>144</sup>

142. A rapidly developing medium such as the Internet offers consumers and companies new and additional search and advertising possibilities. Reference can also be made in this regard to various market surveys, including that of The Kelsey Group and Credit Suisse. These surveys indicate relatively high expected growth figures for online advertising in the coming years.<sup>145</sup> Google, for instance, has grown within a relatively short space of time to become one of the larger global players in the field of searches by general search

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<sup>141</sup> See RBB Economics, 'Silver: explanation of pricing and discounts', 16 January 2008, notification of the parties, Annex 3.3/11 and notification of the parties, Annex 3.4/17.

<sup>142</sup> See the reply to Question 18 in the formal questions of the NMa of 25 January 2008.

<sup>143</sup> The NMa's qualitative survey of advertisers and sectoral associations shows that most companies believe that the importance of print directories will diminish due to online developments. A number of sectoral associations also state that the importance of print directories will diminish as a result of the rise of the Internet. The general opinion among sectoral organizations regarding what the effect of growing Internet use will be is that the use of print directories will fall and that spending on print directories will also diminish. Most sectoral organizations consequently expect their members to increase spending on online directories.

<sup>144</sup> The NMa conducts prospective tests, which means that it assesses *ex ante* what the effects of a proposed merger will be. It usually considers a period of three to five years after the merger, because generally speaking, statements can be made with sufficient certainty for such a period regarding developments in the market (as a result of the merger or otherwise).

<sup>145</sup> Research agencies such as Jupiter Research (August 2006) and ZenithOptiMedia (April 2005) also expect strong growth. Both assume a growth figure of 20 per cent for spending on online advertising in the Netherlands in 2007.

engines in the Netherlands.<sup>146</sup> A player such as ilocal, too, which may still have limited revenues in comparison with the parties, appears to have undergone strong growth in terms of online use.<sup>147</sup>

143. The NMa survey of users shows that they use several media, in particular online media, as an alternative for the directories of the parties. In the Stratus survey of users, respondents were asked which sources they had used in the past three months to search for name and address details of companies and/or institutions. The four most frequently mentioned sources were online media, headed by Google (76 per cent), followed by the online Telefoongids (64 per cent) in second place. Other online sources that were mentioned often were Marktplaats (36 per cent), Gouden Gids online (27 per cent), industry sites (15 per cent), municipal online directories (15 per cent) and comparison sites (15 per cent). The print Telefoongids and Gouden Gids ranked fifth and sixth for the sources most frequently mentioned.<sup>148</sup> The Telefoongids online and Google were the preferred choice of by far the largest group of users. Of the users surveyed, 40 per cent said that they preferred to use Telefoongids online and 39 per cent said they preferred Google. This indicates that users make use of online media to search for names and addresses of companies and institutions to a significant extent and thus show that they have alternatives for the directories of the parties.

144. The strategic documents of the parties show that the parties take account of the growing competition on the user side and in that sense, also appear to experience a degree of competitive pressure from these online alternatives. The Telefoongids's 'Project Silver Update' document (December 2007), for instance, states the following: 'More and more end users prefer online search queries over using offline directories. Advertisers respond to this trend among end users by investing more and more in online advertisements at the expense of offline directories. Online players such as Google focus more on local search queries and therefore become stronger competitors of Gouden Gids and Telefoongids.'

145. Several strategic documents also show that Telefoongids and Gouden Gids perceive various online alternatives as threats to their directories (specifically their print directories). In addition to each other, the parties regularly mention Google, Marktplaats and ilocal as competitors. These players came in second, third and fourth respectively in the Telefoongids' survey 'Results Competitors survey DTG ALL (October 2007)' as being named the biggest competitors to Telefoongids.

146. The NMa has a large number of (quotes from) public market reports and analyst reports that, in part, were submitted by the parties. Indications can be found in these that the competitive pressure from online alternatives is still limited, at least at present.<sup>149</sup> At the same time, these documents show that online

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<sup>146</sup> See e.g. <http://www.checkit.nl/nationalesearchenginemonitor.html>, which shows that the market share of Google in the field of search engine use increased from 32 per cent in (early) 2002 to 93 per cent in (early) 2008.

<sup>147</sup> See e.g. the press release at <http://www.fd.nl/artikel/9554377/bijtertje-tart-gouden-gids>, of 24 July 2008, which refers to a study by Multiscan Visiscope. This study is said to show that ilocal has now surpassed the online variant of Gouden Gids in terms of hits.

<sup>148</sup> The print Telefoongids directory was mentioned by 25 per cent of respondents and the print Gouden Gids directory by 18 per cent. The percentages do not add up to 100 per cent, as more than one answer could be chosen.

<sup>149</sup> The Credit Suisse report of 19 March 2007, pg. 95, for instance, states: '*However, whilst Google is encroaching on some of the areas traditionally fulfilled by the agencies, the emergence of search and new technologies may actually expand the wider advertising market. (...) Moreover, the range of producers and consumers likely to use the channel is broader than those using traditional advertising. Small cottage industries and SMEs would be unable to justify retaining traditional advertising services, most likely advertising only via directories or trade journals. We believe the market for search advertising encompasses these companies as well as major manufacturers. Accessing these small players in aggregate may potentially represent a significant widening of the overall advertising market.*'

alternatives (Google in particular) compete to a certain degree with the parties' directories (or will do so in the future).<sup>150</sup>

147. It follows from the foregoing that the online media, such as (general) search engines, vertical sites and comparative sites form an alternative to the parties' directories, to a certain degree, specifically for users. Although in practice, advertisers have not responded strongly to the decline in the use of print directories, it can be assumed that in due course, the advertisers will follow the users. As a result, the competitive pressure that the parties face from alternative online advertising possibilities will also grow.

148. It seems unlikely that the proposed merger will restrict or delay the switch by advertisers from print directories to online directories, as ilocal states (paragraph 49). The downward trend in the number of users of print directories and the growth in use of online directories (including ilocal) have already begun and are expected to continue. To the extent that the parties are actually in a position to slow this transition from print to online, and this delay could be classed as a appreciable impediment of competition, it is not clear whether this would be a consequence of this merger.

#### Potential print alternatives

149. The Stratus survey of advertisers discussed above shows that about 15 per cent of advertisers would switch (partially or fully) to a different advertising medium from the parties in the event of a price increase of 5 per cent to 10 per cent for both print directories, including free newspapers (3 per cent), magazines (1 per cent) and advertising print work such as leaflets (2 per cent).<sup>151</sup> Of the advertisers in online directories surveyed, some 23 per cent said that they would switch (partially or fully) to a different advertising medium from the parties, including free newspapers (3 per cent), magazines (3 per cent) and advertising print work such as leaflets (3 per cent).<sup>152</sup> The Stratus survey of advertisers shows that no single specific print medium can be identified as exerting a great deal of competitive pressure, but the total number of advertisers considering leaving (15 per cent and 23 per cent respectively) is high. The fact that competitive pressure from the individual print media is limited is also shown by the following.

150. Print media such as regional daily newspapers and free newspapers generally fulfill a different function to directories in corporate advertising mixes. In addition to general advertising possibilities, these media also provide classified lists to some extent for advertising certain products or services (such as residential properties, trips etc.). However, these types of media have a different circulation frequency and a shorter life, which makes them more suitable for advertising bargains or building up name recognition, which is not really possible via directories. The Stratus survey of users shows that about 15 per cent of the users surveyed use free newspapers to search for name and address details of companies and institutions and that about 13 per cent of the users use a print municipal directory for that purpose.

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<sup>150</sup> See e.g. The Kelsey Group, 'Global Yellow Pages 2007', May 2007, pg. 126: '*The main challenge for European Directories may not come in the form of competitive directories but from the growing online threat of Google (...), which are invading the local search marketplace in Europe. As print revenues continue to decline, online revenues are being counted on for revenue growth, making these outside challenges significant ...*'. See e.g. also a quote from City Bank in 2008: '*Usage of print directories is migrating online, where the YP['Yellow Pages'] companies face increased competition from alternative providers of local search, including the ubiquitous Google*', from the parties' 'Presentation to NMa Board members' of 28 July 2008.

<sup>151</sup> Stratus survey of advertisers, Tables 26 and 27.

<sup>152</sup> Stratus survey of online advertisers, Tables 27 and 28.

151. Internal documents of parties contain few to no indications that parties consider national/regional newspapers or local free papers as their competitors. The survey of providers of advertising space in print media (i.e. publishers of national/regional daily newspapers and/or free newspapers) also shows that most of these publishers do not perceive themselves as competitors of the parties' print directories. None of the publishers surveyed mentioned Telefoongids and/or Gouden Gids as one of the main five competitors. Likewise, the NMa has no indications that one or more of these providers of print advertising space intend to penetrate or expand in the field of print directories (in combination with online directories or other wise) in the foreseeable future.

Interim conclusion: discipline by alternative media and stoppers

152. On the basis of the foregoing, it can be determined that the parties are disciplined to a considerable extent by the total (aggregate) effect of advertisers that would stop advertising in print and online directories in the event of a relative price increase. Some of these advertisers would consider applying the budget saved for purposes other than advertising and some would consider switching to different advertising possibilities.

153. Of the advertising media to which advertisers consider migrating, it can be assumed that the competitive pressure exerted by print media such as free newspapers is limited, while that exerted by online advertising media is currently limited but will increase in due course. A shift can be seen from the use of print directories to online media (see paragraph 100) and advertisers can be expected to follow this trend in time. Strategic documents submitted by the parties, which were largely drawn up before the merger plans, show that the parties already take account of this trend.

154. The discipline that the parties encounter therefore comes from advertisers who consider leaving, and not from providers considering penetration of the field of directories if the parties increase their prices. The NMa has already noted in its decision of 11 March 2008<sup>153</sup> that there are high entry barriers.<sup>154</sup> In that regard, the NMa has also reported that Telefoongids and Gouden Gids have a broad portfolio of services, including text messaging, mobile Internet and number information services, which makes it all the more difficult to launch a similar range. No indications emerged in the licensing phase that would lead to a different conclusion. The NMa shares ilocal's view (see paragraph 47) that there are high entry barriers in the field of directories. However, the existence of barriers to entry does not alter this assessment in any way.

Effect of this concentration

*Advertisers*

155. ilocal and MKB point out in their views that Telefoongids and Gouden Gids could increase their prices as a result of this merger, via a re-scoping strategy (i.e. reducing the classification of the field for the print directories). The question of whether the parties can increase their advertising charges as a result of this concentration is discussed in more detail below. With regard to re-scoping, specific reference is made to paragraph 182.

156. As a key research hypothesis, the NMa investigated whether so much competitive pressure would be lost as a result of the proposed concentration that the parties could profitably increase their prices. The mutual discipline of the parties that would be lost as a result of the proposed concentration is relevant for

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<sup>153</sup> See the decision of 11 March 2008, paragraphs 102 and 103.

<sup>154</sup> Reference is made here to the duality of the market that must be captured in order to generate enough use, high marketing investments and the established position of the parties.

advertisers that regard both directories as (partial) substitutes in the event of a relative price increase for one of the directories. After all, the closest alternative to which they can switch or that they can use in negotiations will disappear for them after the proposed merger.

157. In view of the limited mutual competitive pressure between Telefoongids and Gouden Gids and in view of the considerable joint disciplinary effect exerted by advertisers that would switch to other advertising media or would stop advertising entirely in the event of a price increase, it can be assumed that the group of advertisers referred to in the preceding paragraph is small. Although 38 per cent<sup>155</sup> of the advertisers in the Stratus survey of advertisers said that they regard both of the parties' directories as partial or full alternatives, only 3 per cent<sup>156</sup> of these advertisers said they would switch to the other directory in the event of a relative price increase by the print directory of 5 per cent to 10 per cent. As already mentioned in paragraph 125, only a small percentage of advertisers (about 3 per cent) actually switched from Telefoongids to Gouden Gids and vice versa in earlier years, despite relative price differences.

158. In the event of a uniform pricing policy of all advertisers, a small group of advertisers will be protected by the substantially larger group of advertisers, i.e. the advertisers that would consider discontinuing advertising in the directories and would then switch to a different advertising medium or would no longer spend the budget saved on advertising in the event of a price increase. However, this need not apply in the case of price discrimination.

159. To a certain extent, the parties can discriminate between advertisers on the basis of price, and do so in practice (see paragraph 116). In view of the cost efficiencies, however, it is unlikely that the parties can or will apply a perfect form of price discrimination for each individual advertiser.

160. The foregoing shows that, as a result of the proposed merger, a small group of advertisers, i.e. those for which the closest alternative will be lost, could be adversely affected by the proposed concentration. Through diminishing use of the print directories, which has already commenced and is expected to continue in the future, this group can be expected to shrink.

161. The NMa also investigated whether the parties would have an opportunity as a result of the merger to charge prices i) to advertisers for the directory listings that are free at present and ii) to users for the directories that are currently circulated free of charge. As explained below, the NMa's investigations produced no indications that would make it reasonable to regard these hypotheses as likely.

162. The NMa's investigation shows that it is not reasonable to assume that the parties can charge companies and institutions a price for directory listings that are currently free of charge. The Stratus survey of companies with free listings in the directory only (the 'free listers') shows that the willingness to pay for a listing alone (which is currently free) in a combined print directory is very low. More than half of the free listers surveyed considered the chance that they would pay a small fee for such a listing (EUR 10 to EUR 20) as minimal. In the case of online directories, 47 per cent consider the possibility as minimal. A fee for listings that are currently free of charge will therefore result in directory listings that are incomplete. The Stratus survey of users however, shows that 62 per cent of respondents states that a full listing of all companies is

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<sup>155</sup> Stratus survey of advertisers, Table 15.

<sup>156</sup> This concerns a calculation by the NMa based on the results of the Stratus survey of advertisers. The group of advertisers that regards both directories as alternatives and would switch to the other print directory represents 1 per cent of the total group of advertisers.

precisely what they need.<sup>157</sup> Incomplete lists could therefore lead to a decline in use, making the directory less attractive to advertisers.

### *Users*

163. Furthermore, the NMa's investigation shows that it is unlikely that users will be required to pay for the directories after the proposed concentration. Users currently receive the print *Telefoongids* and *Gouden Gids* directories free of charge and can also view the online directories without charge. This also proves to be the usual sales model in other countries, even in countries where only one directory appears in the market.<sup>158</sup> The Stratus survey of users also shows that 68 per cent of the users surveyed regard the chance that they would purchase a directory if it were to cost EUR 5 to EUR 10 as very small (0-1 per cent).<sup>159</sup> Such a substantial diminution in use of the directory would make the product less attractive for the (paying) advertisers, which in turn, could ultimately affect their use.

## **G Combination of both directories**

164. As a result of the proposed merger, both the parties' print and the online directories will be combined no later than 2009 to form a single directory (see paragraph 10). The parties claim that this combined directory will generate substantial cost benefits and will lead to a better product for advertisers and users. In order to achieve these benefits, the parties say that it is necessary to combine the directories.

165. The benefits highlighted by the parties can only be included in the assessment if there are not doubts about the actual combination of the directories. The parties submitted an amended license application for this purpose, which assumes integration to form a single directory, both in print and online<sup>160</sup>, following the transaction at issue here. The intention to combine both directories is also reflected in various strategic documents of the parties underlying the proposed concentration, in the notification and license application and in press releases that the parties have issued since December 2007.<sup>161</sup>

166. Together with the parties, it can be assumed that certain benefits for advertisers are inherent to the combination of the two directories, as explained below. It can be assumed here that any potential disadvantages of the combination of the two directories will be of minor significance.<sup>162</sup>

### Potential benefits for advertisers as a result of combining the two directories

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<sup>157</sup> Stratus survey of users, Table 11.

<sup>158</sup> It is known from the economic literature that it can be rational for a company in a dual market to offer a product or service free of charge on one side of the market, with the aim of attracting the other (paying) side. In practice, this proves to be a customary and accepted model in the field of directory publishing.

<sup>159</sup> Stratus survey of users, 27 June 2008 (Table 11).

<sup>160</sup> Although there may be differences between the combination of print and online directories, the core of the analysis in this regard is the same and the following arguments can therefore relate to either the print or the online directories.

<sup>161</sup> See e.g. [http://over.detelefoongids.nl/upload/61699\\_8962\\_1196850772755-silver\\_persbericht\\_NL\\_verstuurd\\_4-12-07\\_om\\_1230\\_uur.pdf](http://over.detelefoongids.nl/upload/61699_8962_1196850772755-silver_persbericht_NL_verstuurd_4-12-07_om_1230_uur.pdf)

<sup>162</sup> The importance of use is also shown by the qualitative survey of advertisers and advertisers' industry associations. For most advertisers, penetration/use (in combination with the price) is important. Most industry associations also state that the 'penetration' (followed by the price) of the directories is important for their members. If advertisements are published in both directories, advertisers tend to look at a higher penetration/usage. If industry associations have contracts with both *Telefoongids* and *Gouden Gids*, the primary reason for this is also penetration.

167. The higher the use of a directory, the greater the chance that an advertisement will actually be seen and will lead to a contact moment, followed by a possible sale transaction. The use or penetration of an advertising medium therefore plays an important role in advertising markets. The Stratus survey of advertisers, for instance, shows that many advertisers in print directories advertise for reasons related to use. About 65 per cent of these advertisers mention 'clients can find me quickly' as their reason for advertising in a directory. Other factors relating to use, such as name recognition (53 per cent) and the number of responses arising from an advertisement (25 per cent) are mentioned relatively often by the respondents.<sup>163</sup> With regard to advertising in online directories, the three latter percentages are 73 per cent, 58 per cent and 29 per cent.<sup>164</sup>

168. The Stratus survey of users reveals that a small number of users (11 per cent) use both of the parties' directories in the same search action for names and addresses of companies or institutions. About 90 per cent therefore use only one of the two directories during the same search action. If an advertiser wishes to reach all users, therefore, it must advertise in both directories. An analysis of the parties' clientele shows that in 2007, about 20 per cent of the advertisers, jointly representing about 41 per cent of the parties' combined turnover, advertise in both Telefoongids and Gouden Gids.<sup>165</sup>

169. The combination of the directories will therefore lead to higher use of the two directories combined than of each individual directory. The parties estimate that, assuming current use, use for advertisers that currently advertise in Gouden Gids only will increase by about 106 per cent in comparison with the use of the existing Gouden Gids directory. For advertisers that advertise only in Telefoongids, the increase in use will be about 76 per cent in comparison with the current Telefoongids directory.<sup>166</sup>

170. The consequences of combining the two directories to form a single directory are different for the overlap advertisers from those for the non-overlap advertisers. As explained in paragraph 168, overlap advertiser make up about 20 per cent of the parties' clientele.

171. Non-overlap advertisers will benefit from the increased use of the combined directory. In view of the value that advertisers attach to 'use', an increase in use could mean an increase in the value of the directories. Consequently, the appeal of a directory as an advertising medium for an advertiser depends not only on the costs of placing the advertisement (the nominal price), but also on the number of users that will see the advertisement and potentially decide to contact the advertiser in question.

172. The parties have stated that they will charge a higher nominal advertising price for this increased use.<sup>167</sup> However, it is unlikely that the relative price (price per user) of the advertisements will rise. The parties

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<sup>163</sup> Stratus survey of advertisers, Table 13. As more than one answer could be given, the percentages do not add up to 100 per cent.

<sup>164</sup> Stratus survey of online advertisers, Table 17. As more than one answer could be given, the percentages do not add up to 100 per cent.

<sup>165</sup> The Stratus survey of advertisers shows that the main reasons for advertising in both directories lie in the wider penetration (mentioned by 48 per cent of the respondents) and reaching other users (mentioned by 44 per cent of the respondents).

<sup>166</sup> See, among other things, RBB Economics, 11 June 2008, paragraph 3.3. RBB Economics has made a correction here for the overlap in use of the two directories. Moreover, the use via the Telefoongids White Pages is not included, because the functionality of these pages differs from the Yellow Pages in the Gouden Gids directory. If this use is included, use increases still further for Gouden Gids advertisers. The variation in percentages between Telefoongids and Gouden Gids is related to the variation in use. Telefoongids has more users than Gouden Gids, resulting in a higher relative increase in use of Gouden Gids than that of Telefoongids.

<sup>167</sup> See e.g. RBB Economics, 'Efficiency defense: weighing the benefits to advertisers against the likelihood of post-merger price increases and quality decreases', 11 June 2008, pg. 5.

have calculated that the nominal price for Telefoongids advertisers must increase by 76 per cent and that for Gouden Gids advertisers by about 90-95 per cent before there will be an increase in the relative price, given the increase in use estimated by the parties (see paragraph 169).<sup>168</sup> The Stratus survey of advertisers shows that with a 50 per cent increase in use combined with a price increase of 5-10 per cent, the average chance of a sale through an advertisement in a print directory is 64 per cent. This chance falls to an average of 44 per cent if a 50 per cent increase in use is coupled with a 10-25 per cent increase in the price.<sup>169</sup>

173. Overlap advertisers are unlikely to be confronted with higher prices in the combined directory than the total price that they now pay for Telefoongids and Gouden Gids. A fall in price in comparison with the combined price that overlap advertisers currently pay for Telefoongids and Gouden Gids is likely. The group of overlap advertisers will not benefit from the increase in use, as they already achieve maximum use by advertising in both directories. Paragraphs 129 and 133 have shown that a price increase of 5-10 per cent cannot be imposed profitably for a large group of advertisers with unchanged use (which is the case for overlap advertisers). After the integration of the directories, the overlap advertisers will no longer need to advertise in both directories in order to achieve the same use.

174. Strictly speaking, it could be argued that the overlap advertisers may not benefit from lower prices because the parties know their willingness to pay. Overlap advertisers now buy at least two advertisements, in any event one in the Telefoongids directory and one in the Gouden Gids directory. Their willingness to pay thus equals the total current advertising expenditure in both directories. By applying price discrimination, the parties could charge this group of advertisers the same price as they are paying at present.

175. The Board does not consider it likely that the parties can or will apply such price discrimination perfectly for each individual advertiser (see paragraph 116), which means that a lower price is more likely, at least for some of the overlap advertisers. In order to apply such a form of price discrimination successfully, the parties would have to be able to convince overlap advertisers to buy a single advertisement in the combined directory for the same price that they now pay for two advertisements.<sup>170</sup> Furthermore, in time the parties will no longer be able to determine which advertisers should be classed as overlap advertisers. This group will fade away, partly through the annual advertiser turnover.<sup>171</sup> The Bain & Company report<sup>172</sup> shows that the parties also take account of a loss of advertising revenue, as the overlap advertisers are expected to spend less on one or more advertisements in the integrated directory (revenue leakage) than in the present situation.

#### Potential disadvantages for advertisers as a result of combining the two directories

##### *Crowding-out effect*

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<sup>168</sup> These percentages result from the calculation of how high an increase in the nominal price must be after the proposed merger if the relative price (the price divided by use) is to be higher after the proposed merger than before the proposed merger. The parties assume here that i) a certain degree of overlap (10 per cent) exists in the use of the two directories, ii) nominal prices will not change after the proposed concentration and iii) advertisers attach value to the nominal price and use (1-to-1 relationship).

<sup>169</sup> Stratus survey of advertisers, Table 34. The advertisers surveyed were presented with a hypothetical situation in which the parties' print directories were combined to form a single print directory.

<sup>170</sup> This abstracts from the possibility that overlap advertisers may buy more than two advertisements in the directories.

<sup>171</sup> The RBB survey and the NMa data analysis show that about [BUSINESS SECRET] of the total number of advertisers discontinues advertising each year. The parties also attract new advertisers each year, but (in any event from 2010 onwards), these will advertise only in the combined directory.

<sup>172</sup> Bain & Company, 'Project Silver Phase II' of 21 September 2007, pg. 6.

176. Combining the two directories could affect the attention value<sup>173</sup> of advertisements. The attention value is a co-determining factor of the price of the advertisement. In the combined directory, the number of advertisements will rise, since the advertisements that now appear only in the Telefoongids or Gouden Gids directory are expected to be included in the combined directory. Combining the two directories will therefore lead to an increase in the number of advertisements (per column), so that each advertisement becomes less visible. This is known as the ‘crowding-out effect’.<sup>174</sup> The crowding-out effect may have adverse effects on the return on an advertisement, which could cancel out the positive impact on the returns as a result of increased use of the directories.

177. The Stratus survey of advertisers shows that advertisers attach only limited importance to the crowding-out effect.<sup>175</sup> 70 per cent and 77 per cent of advertisers respectively said that they would not take action if the number of advertisements in the directory rose by 50-75 per cent or if 5-10 per cent of the other advertisers increased the size of their advertisements. The TNS NIPO survey of advertisers<sup>176</sup> also shows that advertisers barely regard the crowding-out effect as a disadvantage. The parties have also noted that in ‘mature’ columns with many paid advertisements, more advertisers place a new advertisement again the following year than in less mature columns.<sup>177</sup>

178. Although it is not possible to determine exactly how much a reduction in the attention value of an advertisement as a result of the crowding-out effect will reduce the return on the advertisement, in view of the foregoing it can be assumed that advertisers barely regard this potential disadvantage as a problem. To the extent that there will be a disadvantage, the Board therefore considers it probable that any crowding-out effect will not be of a nature that will eliminate the benefits outlined.

#### *Deterioration of quality of combined directory*

179. The NMa also investigated whether the parties would be able to reduce the quality of the directory as a result of the proposed merger and the consequent combination of the two directories to the extent that this eliminated the benefits of the combination of the directories described above.

180. The dual nature of the directories makes it likely that the parties will have no incentive to (substantially) reduce the quality of the directory. After all, a reduction in the quality of the directory could instigate a (further) downward trend in the use of the directory (see paragraph 100). The potential consequence of this would be that the directory became a less attractive advertising medium, so that on average, advertisers would be less likely to advertise in the directory (or to advertise only for lower amounts).

181. In view of the discipline described in paragraphs 152 et seq., it is also unlikely that the parties will have an opportunity to reduce the quality of the combined directory. This is confirmed by the ESMT second

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<sup>173</sup> The attention value reflects the visibility of the advertisement. Generally speaking, the larger the advertisement, the higher the attention value. The total number of advertisements in a column affects the attention value. An advertisement is more noticeable in a column with relatively few advertisements than in a column with many advertisements.

<sup>174</sup> See the article by M. Rysman, ‘Competition Between Networks: A study of the Market for Yellow Pages’ of February 2003, which refers to the ‘congestion effect’: the effect that a given advertisement has less chance of being seen in a directory with more advertisements.

<sup>175</sup> Advertisers and advertisers’ sectoral associations made no (explicit) comments on this either in response to the NMa’s quality investigations.

<sup>176</sup> TNS NIPO survey of advertisers, pg. 48 (Figure 33).

<sup>177</sup> See RBB Economics, ‘Efficiency defense: weighing the benefits to advertisers against the likelihood of post-merger price increases and quality decreases’, 11 June 2008, pg. 9.

opinion.<sup>178</sup> A reduction in the quality of the directory would reduce the price-quality ratio, which in fact represents a price increase that would be limited by the discipline of alternative other media and 'stopping with advertising'. By providing a different (better/worse) quality for different advertisers, the parties could pursue a form of price discrimination. However, this is unlikely because the combined directory forms a single integrated product with one quality level for all advertisers and users.

182. In amending the license application (see also paragraph 10), the parties also undertook to design the integration in such a way that the benefits for advertisers in the integrated (print and online) directories would generally be achieved. In particular, the parties will take no measures in this respect that generally eliminate the benefits of the integrated (print and online) directories.<sup>179</sup> In view of this, the parties cannot eliminate the benefits of the integration by e.g. reducing their circulation areas or by applying re-scoping.<sup>180</sup> This addresses the concerns of ilocal and MKB that the parties would be able to increase their prices via a re-scoping strategy (see paragraphs 47 and 51).

#### Conclusion concerning the combination of the two (national) directories

183. In view of the foregoing, the Board considers it likely that in this case, there will be benefits for advertisers through the combination of the parties' directories. Non-overlap advertisers will probably benefit from an increase in use, while overlap advertisers will (probably) incur fewer costs for the same use.

#### **H Conclusion**

184. In this case, the NMa focused on the question of whether the parties could conduct themselves to the detriment of advertisers as a result of the merger of Telefoongids and Gouden Gids, in particular by charging higher prices or reducing the quality of the directories.

185. The NMa investigated the potential adverse consequences by determining the effect of the proposed concentration. The investigations show that the parties exert little mutual competitive pressure. Both the Stratus surveys of advertisers and online advertisers and behavior in practice show that advertisers do not switch frequently between the two directories, even in the event of relative price changes. Furthermore, the joint discipline exerted by advertisers that, if the parties were to increase their prices, would consider switching to other media or discontinuing advertising entirely, is substantial. Furthermore, the discipline exerted by online alternatives is likely to increase, in view of the sharp decline in the use of print directories, which has already begun and is expected to continue in the future

186. The NMa cannot rule out that a small group of advertisers will face adverse consequences of the proposed concentration, due to the possibility of the parties to discriminate among advertisers to a certain degree on the basis of price. At the same time, a large group of advertisers could benefit from the combination of the directories, because use will increase for this group.

187. In view of the foregoing, the Board does not consider it reasonable to assume that actual competition in the Dutch market or a part thereof will be significantly impeded as a result of the proposed concentration.

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<sup>178</sup> See the ESMT second opinion, pg. 10.

<sup>179</sup> See the letter from the parties dated 8 August 2008 and the letter from the parties dated 13 August 2008.

<sup>180</sup> In some regions though, the Gouden Gids circulation area needs to be harmonized with that of Telefoongids.

## IX CONCLUSION

188. On the basis of the foregoing, the Board of the Netherlands Competition Authority reached the conclusion that the transaction to which the license application relates falls within the scope of the regulation of concentrations as stipulated in Section 5 of the Dutch Competition Act. The Board takes the view that the proposed concentration will not appreciably impede effective competition in the Dutch market, or a part thereof, particularly as a result of the creation or strengthening of a dominant economic position.

189. In view of the foregoing, the Board of the Netherlands Competition Authority announces that a license is granted for the concentration to which the license application (including the amendments thereof) relates.

Date: 28 August 2008

G.J.L. Zijl

Board member

An objection to this decision, stating reasons, may be filed by the party whose interest is directly involved in this decision within six weeks after publication of this decision at the District Court in Rotterdam, Administrative Law Section, P.O. Box 20951, 3007 BM, Rotterdam, the Netherlands.