

The new Dutch Authority for Consumers & Markets (ACM)

Institutions and Competition Policy

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Amsterdam Center for Law & Economics

The Dutch Ministry of Economic Affairs

proudly presents

Autoriteit Consument en Markt (ACM)

starring the former

Netherlands Competition Authority (NMa)
Independent Postal and Telecom Authority (OPTA)
Consumer Authority (CA)

opens 1 April 2013

in a market near you!

Autoriteit
Consument & Markt



One speedy merger process

- 28 March 2011: letter Ministry Economic Affairs to Parliament:
 - Telecom has become competitive
 - Synergies to be had – 9%, euro 7,4 million euro annually by 2015
 - Need to cut red tape for business – “inspection vacation”
 - No own legal identity – “klein ZBO”
 - Future enlargements possible – water, healthcare, media
 - To be operational asap – by 1 January 2013
- December 2011: outcry for a public debate – from academia
- Little of no expert or public consultation
- Two separate bills:
 - Institution law – “Instellingswet” (made public 28 February 2012)
 - 2 October 2012 through Parliament
 - 26 February 2013 through House of Lords
 - Streamlining law – “Stroomlijningswet”
 - 16 May 2013 send to Parliament
- ACM opened up shop on 1 April 2013



Some remarkable features of the laws

- Board appointed by the Minister – chair for 7 years, once renewable
- All personnel seconded by the Ministry
- Budget determined by the Ministry

- Ministry has to approve ACM policy rules in advance
- Minister(s) can annul ACM decisions, if ACM is deemed “unauthorized”
- ACM to weigh wide “public interests” – e.g. durability

- Extended competencies to request information
- Case team cannot be involved in the remedy
- Obligation to warn – enforcement by press release

- Fewer possibilities for appeal
- Appeal no longer suspends payment of fine
- Market parties to pay for the costs of the ACM

- No further development towards criminal law enforcement



A short agency life-cycle, 1/2

- Netherlands “cartel paradise”
- 1998: first competition law passed, NMa established
- 5 March 2008: CDA Minister of Economic Affairs announces to clip NMa’s wings
- Ultimately leads to amendment: Ministry has to approve NMa’s policy rules in advance
- Early 2011: new CDA Minister starts merger process – appoints intended chairman
- 15 September 2011, CDA MP Ad Koppejan states motive:

“We think it is very important that *private justice* (“eigenrichting”) also by the new authority is prevented ...”

- Concerns by the Raad van State brushed off – Parliament passes the law





NMa's Tenth Anniversary
Haagse Schouwburg, 5 March 2008



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A short agency life-cycle, 2/2

- CDA Minister pushes law off through the House of Lords
- October 2012: new government states a fine return target of 125 million annually
- Long discussion in the House of Lords about the independence of the ACM
- Lords pass the law after amendments:
 - sector specific decisions cannot be annulled – in view of European requirements
 - reintroduction of *ex ante* approval of policy rules
- New chairman calls concerns about independence “flauwekul” (1. rubbish)



Some concluding concerns

- Lost opportunity for smart institutional design
- Lack of transparency and accountability

- Political influence – directly and via resources
- Private lobby's – 'public interest', style of enforcement
- Priorities – cartels and abuse cases likely to come last

- Critical review of European Commission
- Opportunity for debate again around the second law – any time now

