

# The new Dutch Authority for Consumers & Markets (ACM)

## Institutions and Competition Policy

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Prof. dr. Maarten Pieter Schinkel  
University of Amsterdam



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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

