

**Speech by the Director-General Energy, Telecom and
Competition of the Ministry of Economic Affairs,
Agriculture and Innovation, Mr Mark Dierikx, at the ACLE-
workshop “Merging Market Authorities: Mix & Match”, on
the 1st of December in The Hague**

Thank you very much Adrienne and Maarten Pieter,
Ladies and gentlemen,

[Introduction]

It is my pleasure to host this workshop, organized by the Amsterdam Center for Law and Economics and the Research Group Market Regulation of the University of Amsterdam, in close cooperation with the Ministry of Economic Affairs, Agriculture and Innovation. It is an even greater pleasure to welcome you all in such large numbers here in the Main Hall of the Ministry.

It is telling that the upcoming institutional merger between the Netherlands Competition Authority (NMa), the Independent Post and Telecommunications Authority (OPTA) and the Consumer Authority attracts so much attention. Attention from within the ministry and the three authorities off course. But a lot of attention from the worlds of science and law and other fields as well. More attention than the average debate on competition policy or regulation in Parliament I can assure you.

In my view this broad attention proves that the merger is not just a matter of internal organization of the central government, its departments and its independent administrative bodies. It is

more than that. We are laying the basis on which to build a strong, effective and efficient market enforcement in the Netherlands. Even stronger, more effective and more efficient than the three existing authorities independently. And since the ultimate objective is consumer welfare, this is a topic that deserves our close attention.

I hope this workshop can contribute to that foundation. That it will deliver useful insights, conclusions and recommendations to us, the responsible and lawmaking ministry, and to the three merging authorities. And I'm sure it will, since ACLE succeeded in bringing together excellent speakers and an excellent audience here in this hall.

My own [modest] contribution to the discussion will be to introduce you to the background, history and considerations of the upcoming merger. Why did the Minister decide to prepare a merger? And what has already been done preparing this merger? I will conclude my speech with a quick look into the near future of the merger process.

[History and background of the merger]

Ladies and gentlemen,

The idea of bringing market enforcement in the Netherlands together in one single authority is not new. Previous Ministers of Economic Affairs have considered the possibilities and pro's and cons before.

The last of these feasibility studies was conducted a few years ago. Main question was whether supervision and enforcement on the markets of electronic communication and media was future-proof, given the increasing convergence of these markets. The study concluded that interaction between the different authorities had grown due to convergence. So cooperation was even more crucial. Merging the authorities was deemed unnecessary at that time since overlap between their distinct tasks was limited.

New developments occurred however. Partly in response to the economic downfall the government strives to build a more effective and more compact public administration. 'Lean' and 'mean' are the key words here. In order to accomplish this, we aim at reducing the number of rules and legislation, at reducing

the number of government managers and directors, and at reducing the number of government officials.

The ambition to be lean and mean is not limited to the central government where, as you all probably know, one of the measures was to merge the former ministries of Economic Affairs and Agriculture to form the new Ministry of Economic Affairs, Agriculture and Innovation. Local and decentralized governments and authorities have to contribute, and naturally this holds for market authorities as well.

The challenge is not only to achieve more efficiency, but to enhance the effectiveness of market enforcement. I'll get back to this later.

[Scope of the merger]

Ladies and gentlemen,

As opposed to the previous feasibility study the current merger will not be limited to the markets of electronic communication and media. The merger comprises all tasks of the NMa, OPTA and Consumer Authority.

Financial market supervision, as it is carried out by De Nederlandsche Bank and the Netherlands Authority for the Financial Markets, and healthcare market enforcement, as carried out by the Dutch Healthcare Authority, are for different reasons not part of the merger. The same holds for the Radiocommunications Agency Netherlands and the Dutch Media Authority, since their tasks do not or hardly include market enforcement.

[Establishing the Consumer and Markets Authority]

Ladies and gentlemen,

Against this background and within this scope we started preparing the merger earlier this year. And I am very pleased to say that, thanks to the very cooperative and constructive attitude of the three authorities – for which I am very grateful to the boards of the Consumer Authority, the OPTA and the NMa – the merger is right on schedule.

The Dutch cabinet decided in favour of the merger only last March. Subsequently the cabinet informed the Parliament about its plan and the ministry started working on the necessary legislation to establish the new authority. This legislation was adopted by the cabinet in September already and will presumably, after the mandatory review by the Council of State, be submitted to Parliament next January. Meanwhile the NMa, OPTA and Consumer Authority are working hard to prepare the organisations and the employees for the merger and to build the organisation of the new Authority for Consumers and Markets. To my knowledge the elaborated blueprint will be produced later this month.

That is, I'm proud to say, a strong and quick piece of joint work!
If all goes well the Authority for Consumers and Markets will
see the light as scheduled in little more than a year, on the 1st of
January 2013.

[Independence]

Ladies and gentlemen,

Lately scholars and enforcement experts – probably some of them present in this hall – expressed their concerns on the independence of the new authority, or rather the lack thereof. The merger is sometimes believed to prelude the end of an independent authority.

Let me reassure you. The merger by no means spells the end of independence. On the contrary. The Authority for Consumers and Markets will have the same status the NMa has now, as an autonomous administrative body. This is firmly secured in legislation and will safeguard its independence in individual cases. It will also retain a distinctive, recognisable position, in keeping with the European rules for market enforcement of telecommunications and energy.

The independence of the new authority is off course not at all unlimited. The Consumer and Market Authority is allowed to enforce independently in individual cases. But in doing this, she naturally has to comply with existing laws and legislation. She can't just randomly enforce whatever she likes to enforce.

[Building a strong, effective and efficient authority]

Ladies and gentlemen,

Establishing an independent Authority for Consumers and Markets is only half the battle. If that was the end of the story I am sure we wouldn't be gathered here to discuss the merger. No, establishing the new authority is just the start.

The new authority should be more than just the sum of its parts. We intend to improve the effectiveness and decisiveness of market enforcement. That's the only way to really become 'lean and mean' and serve consumer interests best. To achieve this it is important that the Authority for Consumers and Markets harmonizes its procedures and adopts a comprehensive approach to supervision and enforcement.

In other words, the merger must enable synergy. Synergy between the different types of sectoral regulation: energy, telecommunications, postal services and transport. Synergy between general and sectoral consumer protection. Synergy between sectoral regulation and general competition enforcement. This is what the real gains of the merger are. At the same time, this is where the real challenges and potential difficulties lie.

In part this synergy can be accomplished by creating a smart organisational structure, which facilitates exchange of knowledge and expertise between the different types of enforcement and an efficient deployment of employees. This part of the merger is the sole competence and responsibility of the three authorities themselves. I expect that Chris Fonteijn will elaborate on this in his speech.

But to be able to fully grasp the benefits of the merger, legal procedures, tasks and powers need to be streamlined and simplified as well. In the current situation the NMa, OPTA and Consumer Authority each have their own and different procedures and powers. Different regimes for publishing decisions. Different competences during dawn raids. Different procedures to appeal decisions. Different rules on legal privilege. And so on, and so on ...

These differences will not be maintained unless they are strictly necessary for the well-functioning of a specific sector.

Otherwise they will obstruct effective and efficient enforcement – and thereby consumer welfare – to a large extent. The ministry started preparation of legislation in September in close cooperation with the three authorities.

Although we haven't finished a first draft of the law yet, I will give you a sneak preview of some of our proposed measures to enhance the effectiveness and efficiency of the new authority.

- Improving the pre-emptive effect of consumer protection by enabling the new authority to collect evidence more effectively, to give binding instructions to companies and to impose higher penalties on offenders.
- Shortening procedures without diminishing legal certainty by improving the quality of verdicts and decisions, and thereby shortening objection and appeal.
- Enhancing transparency and prevention by compelling the new authority to publish all penalties and sanctions.
- Simplifying procedures by abolishing existing dual systems and creating a single, administrative system.

These individual measures might not be revolutionary in themselves, but I am convinced the total package will enable the new authority to use the full potential and synergy of the merger.

Due to its complexity and scope, this law will consume a lot of time, effort and capacity. For this reason it will take effect no earlier than the 1st of January 2014, a year after the establishment of the new authority.

[Closing]

Ladies and gentlemen,

Whatever challenges and difficulties we will meet, I am confident that we are able to deal with them. And that we will jointly establish a strong, effective and efficient authority that will contribute to the protection of consumer rights and well-functioning of markets in the Netherlands.

I wish you all a pleasant, productive and fruitful workshop.

Thank you.