

Transcript of speech delivered

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at the occasion of the conference

Merging Market Authorities: Mix & Match

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Good afternoon. I'm happy to be here. I shall only be here with you for a short while. I have to leave. This is not because I do not like being here, or because I would not be willing to answer any questions. It's because the shop remains open. One of the definitive decisions that we have taken over the past year is that the outside world would, other than engaging with us on the merger itself, in our daily business, in our daily decisions not feel any difference in the business that we had as usual. We have some people from our organizations planted here. With so many great spies and great minds around, we're sure that we will pick up some useful information.

Let me start by first thanking the Director General for putting our case so positively and putting such confidence in us. This of course creates expectations no doubt, and we are absolutely ready to fulfil those expectations. One of the first things I'd like to say, ladies and gentlemen, is that in the hearts and minds of the people in our three organizations, and certainly in the leadership, this merger is a fait accompli. There is of course legislation to come. It is an absolute fact that this is going to happen and we are working extremely hard behind the scenes, not only in terms of organizational design and in thinking about the culture and the way the business should look, but also at absolutely convincing our people there is no way back. This is where we are going to go.

If you look at the speed at which we're doing this, I think, it is extremely fast. As indeed, the Director General has said, we will present to our own people in the next two weeks our first reorganization plan, outlining how the organization will look. There is no denying that this merger is something of an arranged marriage. And there is also no denying there have been other brides. At OPTA we have been thinking and discussing about the Media Authority, the Spectrum Authority, the Privacy Authority and what have you. But again, this is a choice that has been made and we fully support that. Once you get going, once you know there is no turning back, you realize the advantages, you know the efficiencies. And more and more, also for me personally, I'm convinced that this is an excellent choice and we have a lot to learn from each other. Certainly since I have been appointed as Chairman of NMa, I know from experience the amount of expertise that is fitting and overlapping and where we can join up. So I absolutely see the benefits.

There is also no denying that behind the scenes there are cultural differences. There is a difference between the Consumer Protection Authority, which is very young, which is relatively small, and a very established organization like the NMa. Also the OPTA, which is in between, in terms of size, also with different cultures and different ways. I mean, regulators are not competition authorities – although I was a little surprised by the remark that regulators would not sanction. I'm not sure that KPN representatives

would agree to that. But maybe that's something we can have an academic look at later. It's certainly not something that comes to my mind when I think of regulation.

There is a lot of discussion, of course, behind the scenes: about how we should organize this new entity? How should we get the culture right? And again, just to quote the Director General, if there is anything that we are absolutely convinced of, then it is that this ACM is going to be more than the sum of its parts. And the question of course is: how? How do we mix the cultures? How do we get the best effects from each of these three organizations into the future?

Our first reorganization plan is due later this year, so in the next two weeks, we will outline the first drafts thereof. We will organize all consumer work in one department. So we will take OPTA's consumer-related work: spam, spyware, and all those things, and the consumer-related work from the office of the energy regulator, together with the Competition Protection Authority and make it one very strong and credible consumer protection department.

One of the other things that we are intending is to take the abuse cases from the competition department and put it in the regulation department. So we take the benefits of knowing the industry very well and combine that, in a very credible way, to develop an approach for the abuse cases under article 24.

There is no denying as well, ladies and gentlemen, that this merger is partly an austerity measure and there are going to be some cuts. The director general has said that, and we're going to adopt the necessary measures. There is no doubt we're going to do that and we're going to scale the agencies down somewhat. That is something which is, in my view, and I've been quoted on that, a good idea for any organization anyway. Also universities, also your own organizations, once every so many years you'll simply have to shuffle them and see if there's any efficiency to be gained. No fear at all from our side. But that not what it's really about. Austerity is fine, but efficiency, trying to combine the various authorities into one effective authority, is, I think, the main goal. That we have a one-stop-shop with real choices for the leadership to designate in which manner the problems in society, that fall under our remit, can be best addressed.

One of the things that, behind the scenes, is important for us is how we are engaged and going to engage with the outside world. We think it's extremely important in the future that perhaps we do that more than we're doing now. We can think of all kinds of possibilities, we had a very successful round-table yesterday on sustainability under the chairmanship of René Smits, who is here. We are increasingly going to organize possibilities for engaging with industry and society. We will do so from the consumer side, the Consumer Authority is already very active in the social media. We will exploit that further. We'll look at the regulation side, on how we can engage even further with the regulated industries. And we will do that certainly for the NMa. This is something that we will place great emphasis on: round-tables, consumer panels and the like.

That, ladies and gentlemen, brings me to style. I have introduced the word 'ambidexterity' (twee-handigheid) into the organizations, which means that engaging with the outside world will show us also which methods, for which industries, for

which subjects, for which consumers, are most suitable. There may be fines, there may be ‘lasten onder dwangsom’, and what have you, but there are also other methods. I’ve been called by Professor van Wijnbergen a ‘lethal instrument’ because I would believe in co-regulation. Well my answer would be: co-regulation is only one of the things that we can do. Fines are another, formal investigations are another, talks are another, there are many instruments which a modern regulator, a modern competition authority can use in order to attain its goals.

Also, if we try to come to a common view, it’s my feeling that sometimes the competition laws are very much regarded from a purely legal sense in do’s and don’ts. I try to install into the new organization that it’s about opportunities and options. It’s about allowing new entrants. It’s about empowering consumers, it’s about giving things to people and not simply taking things away from people. So that is the style we want in the new organization, both for consumers and for regulation and for competition. So, not as many interventions as we can possibly do, because you’re rated in the ECN list by the amount of fines you’ve given and by the amount of interventions that you have had, but by the effects that your actions have in society. And there are many methods in which you can do that. I think that this merger is in fact a perfect opportunity to do so, but that also has to do with a change of mind-set for the people within the authority itself. Solution focused thinking, so not simply taking the authority and the legal means itself as the starting point, but rather looking where the issues are and designing the measures that you take, on the basis of your analysis of a particular issue.

Flexibility. We try to organize more flexibility between the departments, between the experts from the consumer side, regulation side, and competition side, in order to exceed to the sum of the parts. We are now organizing, or at least trying to organize, an organization where we can really benefit from the expertise left and right. And as I already said, I already see the benefits in having expertise from regulation flowing to expertise from competition, and certainly also to the Consumer Authority. We are dealing with various cultures, but I already see, and everybody thinks well this ACM is going to be in place in 1-1-2013. Well, in our minds it’s already there. We’re already doing it, we’re already using each other’s experts, we’re already taking all the time to each other to create best practices.

It’s about solving dilemmas. It’s about whether using competition, whether using regulation if possible, whether focussing on the consumer. What is the consumer? Is the consumer a fragile human being that needs protection all the time? Is the consumer an independent citizen that needs to be empowered and can be left to its own devices. Probably, if I look at myself, I’m both. Sometimes, I simply don’t have the time to do anything and sometimes I am an empowered individual. I think those dilemmas: how to act in consumer problems and when you have to try to define what a consumer is for which you’re doing all this, is absolutely essential.

One thing, I’m going to leave you with a thought, is that to me the classic Chicago school thought of ‘as long as there is competition and competition works, everything will be fine; consumers will have their choice, prices will be transparent and the world will be beautiful’ is something that I do not agree with at all. I think it’s old-school and I think we’ll look further into a mix of measures, a mix of instruments, to indeed

stimulate and have competition, have proper regulation, open up markets, but look at the consumer all the time, because I don't believe competition alone will do the trick.

And that brings us to something we're looking very much into as well, yesterday we had a great meeting with the other market authorities in Amsterdam, with the Netherlands Bank and the AFM and the others, on the behavioural side of this type of regulation. How do you really influence people? And that is not just by fines and by investigations and what have you. That is by all kinds of means. And what we've been looking into yesterday together, and it's very interesting to see that the other institutions are doing exactly the same thing and that we're learning from each other, is methods and ways, also from sociology and psychology, on the way you can have a situation where you're able to solve issues, rather than purely stick to your formal methods.

I've talked about style, I've talked about ambidexterity, choosing the instrument, choosing the methods that are as suitable as possible at any particular point in time. I've been quoted in the Financial Daily in the sense that you should reach out with one hand and have the other hand ready to give an enormous blow. That is, I think, something that the new authority should understand and know and the way I try to install that on the authority: be quick and be conservative, and choose your methods and choose your style. So do not have simply one style of being this or that, and 'you're not a good regulator if not everybody hates you', as sometimes the headlines say, I don't believe in that at all: people may hate you, that's bad enough, but they should not hate you all the time, because you're engaging with them and you understand where they are coming from.

That may also be something like what happened recently when we went to the press with a report we had on the Dutch railways that was not particularly liked by the Dutch railways. Mr. Meerstadt, I understand, yesterday in an interview said that the NMa should mind its own business. My retort would be that that's exactly what we're doing. We are minding our own business. We think we have a position, we think we are allowed to have an opinion in the field of whatever industry, although we may not have any formal means of intervening on the basis of the law. We think it is more than that, we think it's about getting results.

I read with great interest newspapers and magazine all the time. I also read that mr. Pijnacker-Hordijk, he's a lawyer from the Hague, said there is a great risk that the NMa would lose focus, that the new authority would lose focus. I would retort we are not losing focus at all. We would lose focus if we would focus alone on competition. I think we are realigning the focus and we are realigning it to consumers and to regulation in order to be absolutely surgical and precise in what we are doing.

Independence. I'm not going too far into that, without promoting my own little articles - I may advise you I have drafted a small column in the 'Tijdschrift Voor Toezicht' recently, where I've tried to make some very personal remarks on that, basically saying that you can have institutional arrangements and you can have all kinds of legal and formal ways in order to ensure independence. But it's about the people. The leadership of the organization is supposed to be independent themselves, and they must deserve that independence. And I think also, because I can judge that since I'm also the head of the European Telecom regulator BEREC, if I compare the

situation in the Netherlands to many other countries in Europe, I think we are extremely well-off in Europe, not just in a formal way, and I know that the new organization will have the same character as the present NMa, so the formal independence is very much in place – but it's much more than a formality, and I think that's something we should focus on. Because behind the scenes all kinds of things may be going on. I know that in other countries that is happening, and I've said in this particular article that, in having been that chair of OPTA for over six years and of NMa for six months, I've always been able to take an independent decision in the commission that I have been a part of. That will, as far as I'm concerned, remain exactly as it is in the coming six or seven years, however long I'm going to be able to do that. So if independence is up for discussion, I do not believe that independence is a great problem, I do not believe at all that being pressurized is a big problem. It's the fact that you're able and willing to resist pressure that creates a real independence.

So with that, ladies and gentlemen, let me come to a conclusion. I understand, Professor Schinkel, that you've said you would expect or fear that something like a competition palace would be created, I was told. Well, it's not going to be a palace, it looks a palace but it isn't: it's a high class factory where highly educated people work hard to produce high class products. Products that are, by the way, throughout Europe highly respected, wherever I come as a representative of both NMa and OPTA you feel that the Netherlands, in this case these three organizations, are punching well above their weight. They're taken extremely seriously, people look at us with a certain envy of the way we're organized both in expertise and in independence. We're not worried at all, this factory will turn out beautiful products, ladies and gentlemen, for which we, in the Netherlands, should be very proud.