

MERGING MARKET AUTHORITIES: MIX & MATCH
1 DECEMBER 2011, WORKSHOP, MAIL HALL EL&I

INTRODUCTION – M.P. SCHINKEL

Good afternoon, ladies and gentlemen, welcome to this academic workshop to the occasion of the on-going merger process between ‘de NMa, de OPTA and de Consumentenautoriteit.’

My name is Maarten Pieter Schinkel. I am a professor of economics at University of Amsterdam– where I also head the research unit on Competition & Regulation of the Amsterdam Center for Law and Economics. Moreover, I am an enthusiastic market authorities-watcher.

I’ll co-chair our workshop this afternoon with Adrienne de Moor-van-Vugt, who holds the chair in Constitutional and Administrative Law at the University of Amsterdam, where she also leads our law school’s Research Group Market Regulation – and Adrienne is a Judge in the Court of Appeal for Trade and Industries in Rotterdam.

A couple of months ago, over lunch, Adrienne and I agreed it seemed about time that the speedy merger process to integrate our beloved market authorities would be fed with some ideas developed in academia – law, economics, public governance – on how in many ways – complementary and conflicting – we know competition and regulation relate – and how to get the best enforcement with good institutional design.

Minister Verhagen had just given the Tweede Kamer a briefing of a study he had commissioned to be done over last summer by the Committee van der Vlist. That study itself – to our knowledge, at least, because the report has not been made public – had drawn little or not on academic expertise, or at least not on anyone that we know.

Adrienne and I thought that we should probably signal to the merger process makers that academia has a world to offer in the form of questions that need be addressed – and some answers as well – regarding good institutional design to equip agencies with

the right structure, the proper tools and strategies to play the market oversight game well.

From a warm heart, we were ready to help!

And so we set up today's workshop.

We are very happy that the interest in it has been overwhelming. We have received many responses to the announcement of this event, by email and otherwise, from people external and internal to the merger process. There is lots of people – over 80 – present here of a wide variety of backgrounds, and we have a full program for you with leading thinkers, which we proudly present.

But first let me thank the Ministry of Economic Affairs, Agriculture & Innovation for housing us this afternoon in their hall, and welcoming us with a generous lunch. The Ministry has been very cooperative in setting up this workshop – and, I should stress, has not requested nor exerted any influence over the content of today's program – except, of course, for Mark Dierikx's own contribution – that you will hear in a minute.

Also, Chris van Vondelen – now in charge of the integration process – has been open to the idea to have this event and has contributed to it from the start.

So what's on the agenda today? Well, lots. There is many and complex issues involved, while little has been communicated so far. So people have questions. Plenty of questions. So much is clear. I see at least three categories of questions:

First questions out of sincere curiosity, such as: where will the new institution have its headquarters? What will be its organizational and financial structure? Will it have a large overall legal department and one chief economist team? Can it keep fines and

charge for licenses, for example, to make money? Will the various chambers be symmetric? If so, what savings on OPTA remain if it will no longer be financed by market parties, as the Energy Chamber isn't?

Quickly, however, such questions can become more concerned. The second category of questions is very well intended warnings – did you think of this or that potential conflict of interest? Is so or such a precious thing safeguarded? Often, I'm sure, the answer will be “yes, we did think of it – here's our solution” – and then we can debate about whether that's a good solution. But we may also raise an issue here or there into which more thinking should probably go. Those could be take-ways of this workshop.

Finally, there are remarks and questions that start crossing over into being critical, and a little suspicious maybe even. Are the people in charge of this process sufficiently aware and properly incentivized? Is independence in enforcing the laws guaranteed? Are there fire walls in place to keep lobbies at bay?

From what little of the project “Vernieuwing van de Rijksdienst” is public, the signals are a bit distressing, I must say. Maybe I'm overly concerned, but in the two Tweede Kamer reports of the discussion on “Vernieuwing van de Rijksdienst”, there is quite a lot of explicit references to the NMa supposedly hindering shrimp fishermen (to become environmentally friendly), farmers (to get a better price from supermarkets) and hospitals (that needed to hire expensive lawyers to fight off antitrust allegations – money not spent on operating on people).

These reports – and anything we found (and will find) in the public domain – are on our workshop website.

Last committee meeting in September, the Christen Democrat Party, represented by Mister Koppejan, stressed it felt it important to clearly separate “policy making” and “policy implementation” – “beleid” en “uitvoering”. Mister Koppejan said in this context that the CDA finds it – I quote – “... important to prevent ‘eigenrichting’ – which translates as ‘private justice’ – by the new authority.

I looked it up, and according to Wikipedia, *eigenrichting* is – apologies for my language – “*mores leren* van (vermeende) daders van misdrijven zonder dat hier een rechterlijke procedure aan te pas komt”.

Is this indeed the right way to think about what the NMa has done for us in the past almost 15 years?

A lighter issue, and than I'll stop for now – let me pass on what I've heard from many concerned: Is it really necessary to throw away years of good international reputation building by changing the acronym NMa?! OK, you want a new beginning with a new name. But NMa could so elegantly come to stand for Nederlandse *Markt*autoriteit, and so be new in Dutch, while preserving the Global Competition Review stars – and even keep the internet address! Aren't that savings too?

Now, about what the new “Palace of Market Oversight” could look like – here's at least one tower standing (SLIDE 2) – I'm sure we will learn a lot today from questions in all three categories mentioned, and more – and I'm looking forward to it.