

# The Netherlands' New Authority for Consumers and Markets: Towards a Problem-Based Approach

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*Over the last two decades, there has been a trend amongst EU Member States to set up specialized market authorities with rather strictly defined competences. Recently, it seems that a different approach is favoured: EU Member States set up new authorities with broader scopes of competence or even combine existing authorities into super-authorities, thereby concentrating both power and responsibility. The Netherlands is an example where the legislator has chosen to combine three administrative bodies into one super-authority by 1 January 2013. This new entity, the Authority for Consumers and Markets (ACM), is described by its Chairman-to-be, Chris Fonteijn, as a body that applies a problem-based approach. That being so, the questions remain as to exactly how the ACM will carry out this new approach and how it will use its competences in doing so. This article places the ACM within the general European trend of merging authorities and expanding power. It aims to answer the question whether the ACM has been given the right structure and the necessary powers to live up to the legislator's expectations. In the first place, we give an overview of the trend towards more concentrated market authorities in Europe. Secondly, we explain the structural changes which the ACM will undergo and identify its key elements. Thirdly, we evaluate the strengths and weaknesses of the new super-authority and explain their practical implications. We conclude with some remarks about what other countries can learn from the Dutch example.*

The Netherlands will soon have a new and more powerful market authority resulting from a merger of The Netherlands Competition Authority (NMa), the Independent Post and Telecommunications Authority (OPTA), and The Netherlands Consumer Authority (CA).<sup>1</sup> These three entities, presently operating to a great extent independently from each other, will join forces on 1 January 2013 to form a so-called super-authority: the Authority for Consumers and Markets (ACM). Please note that there are still administrative bodies that have been kept outside of this concentration (at least for the time being), such as inspectorate bodies in the fields of media and healthcare. Although the ACM is

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<sup>1</sup> During the process of writing this article, the bill regarding the establishment of the ACM was still pending in the Dutch Parliament. Amendments to the bill have been made after the manuscript of this article was closed on 1 Sept. 2012. Changes after this date have only been taken into account by way of exception.

indeed a super-authority, it does not cover the full range of sectors of the Dutch economy.

When we use the word ‘merger’ or ‘concentration’ in the context of this article, we refer to the process of combining (and streamlining) of governmental institutions. A merger in this sense is only partially comparable to a merger of private legal persons. The legal framework differs in many ways. To avoid any confusion, the use of the term ‘merger’ in this article refers exclusively to the idiosyncratic type of combining (and streamlining) governmental institutions and is not to be understood in the context of merger control of companies.

## 1 A EUROPEAN TREND

Over the last five years, numerous EU Member States have merged their market authorities and regulators by combining competences in newly created super-authorities. The combination of competition authorities with consumer agencies has been a particularly prevalent choice. Italy, Denmark and Malta have all changed their legislation to that end and have realized combined competition and consumer authorities.<sup>2</sup> Finland will follow their example at the beginning of 2013. Ireland has announced plans for the amalgamation of its competition and consumer authority in the context of its Strategy Statement 2012–2014.<sup>3</sup> In addition, Luxembourg has merged its Competition Inspectorate, responsible for investigating anticompetitive practices, with the Competition Council, thus creating a new, more powerful authority holding both investigative and decision-making competences.<sup>4</sup> Moreover, the UK has proposed some considerable change by integrating the functions of the Competition Commission and the Office of Fair Trading (OFT) into a new Competition and Markets Authority (CMA) which would be set up to function independently from the government.<sup>5</sup>

The Dutch approach, replacing two existing authorities and one regulator by a single entity, seems to fit in perfectly with the abovementioned enumeration. However, before we go into detail about the ACM, its structure and its strengths and weaknesses, we would like to point out a few distinct differences between two sub-groups within what we perceive to be a trend amongst EU Member States.

On the one hand, there are Member States such as Malta, Luxembourg and Finland that have created or are planning to create super-authorities to develop

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<sup>2</sup> Italy in 2007, Denmark in 2010 and Malta in 2011.

<sup>3</sup> See Competition Authority Strategy Statement 2012–2014, 11, 20 and 21. This document can be found at: [http://www.tca.ie/images/uploaded/documents/Strategy%20Statement%202012-2014%20FINAL%20\(signed\).pdf](http://www.tca.ie/images/uploaded/documents/Strategy%20Statement%202012-2014%20FINAL%20(signed).pdf).

<sup>4</sup> See European Competition Network, ECN Brief 05/2011.

<sup>5</sup> See European Competition Network, ECN Brief 05/2010 and ECN Brief 02/2012.

and strengthen market supervision. In these Member States, market supervision has not been at an optimal level and the creation of new, more powerful authorities is mainly focused on increasing control and enhancing competition to benefit economic growth and consumer welfare. To attain this goal, higher expenses for e.g., additional staff are accepted.

On the other hand, there are Member States such as the UK and The Netherlands where the capacity and quality of market supervision are a less urgent concern. These Member States are assembling some of their authorities in order to reduce existing concurrencies and to exploit potential synergies in order to streamline the administrative body and, thereby, lower their government spending. Despite their very different motives, both these sub-groups of Member States seem to follow the trend of merging administrative bodies.

## 2 THE ACM

The notion to combine OPTA and NMa is not a new one. In 2002, the Dutch government announced plans to integrate OPTA into the NMa as one of its chambers. However, this disposition was postponed in 2003 and again in 2004 as the initiators did not think it was the right time for this kind of change and considered that the integration should come as corollary of a development in which both entities should grow together naturally. Moreover, when the Consumer Authority was established in 2007, the question arose as to whether to integrate the new body into the NMa or to create an independent entity. At that time, the legislator made the choice to keep these authorities separate.

In order to understand the motivation behind creating the ACM at this moment in time, it can be helpful to ask three simple questions: '*Why?*', '*Why now?*' and '*Why merge these three designated authorities into one body?*' It is clear that something has changed since 2004 and 2007, when the proposed integration of OPTA, respectively the Consumers Authority into the NMa was rejected.

We believe the answers to the three abovementioned questions to be pre-eminently financially motivated and to stem from the coalition agreement of the Dutch government coalition as led by Prime Minister Rutte – *Rutte cabinet I*<sup>6</sup> (hereinafter: 'agreement'). In the agreement, a focus is placed on enhancing the efficiency of the government and its institutions in order to balance government spending.<sup>7</sup> An essential part of the savings has to be realized by the NMa (EUR

<sup>6</sup> 'Rutte cabinet I' refers to the first cabinet formed by Prime Minister Mark Rutte in 2010. Rutte cabinet I collapsed in April 2012. New elections were held in September 2012.

<sup>7</sup> Their document can be found at: <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2010/09/30/regeerakkoord-vvd-cda.html>.

5.9 million), the OPTA (EUR 0.8 million) and the CA (EUR 0.7 million) individually or as part of the ACM collectively (EUR 7.4 million).

However, the need to reduce government spending not only constitutes the trigger for the merger, but it also dictates its timing. The timeframe given to establish a balanced government spending is set to 2015 in the agreement. In 2012, the three institutions expect to realize combined savings of EUR 1.4 million. The merger will be the result of two separate bills: the first one regarding the setup of the ACM as an independent governing body (without legal personality and staff); the second one regarding powers and competences of the new entity. The introduction of the two bills is expected to save an additional EUR 3.38 million annually,<sup>8</sup> leaving EUR 3.1 million to be realized until 2015.

The third question (*Why merge these three authorities into one body?*) is a highly debated one – especially amongst scholars. Critics argue that the NMa, the OPTA and the CA are too different in order to be successfully combined;<sup>9</sup> adherents see potential advantages in the diversity and flexibility of the newly-established entity.<sup>10</sup>

The fact is that the NMa is a typical competition authority whose main task is to supervise company behaviour and penalize violations of Dutch competition law.<sup>11</sup> Its actions are *ex-post* rather than *ex-ante* (except for its merger control tasks).

The same is true for the CA, which supervises compliance with (certain) consumer rights on the basis of a specific bill on consumer protection.<sup>12</sup>

The OPTA, on the other hand, is a sector regulator which has a range of *ex-ante* tasks. Amongst these tasks are the monitoring of the telecommunication and postal market and the enhancement of their functioning by implementing legislation.

Consumer protection is the main concern of the CA. The OPTA takes consumer interests into consideration with regard to the sectors telecommunication and postal services: its reports and monitoring thus serve and protect the rights and interests of the consumer. The goals that the NMa pursues are slightly less unequivocal, in a sense that consumer interests are served

<sup>8</sup> See letter of the Minister of Economic Affairs, Agriculture & Innovation to the 1st Chamber of the Dutch Parliament, Oct. 5, 2012, No. DGETM-MC/12330928.

<sup>9</sup> See E. Steyger, *Cocktail van NMa, OPTA en Consumentenautoriteit – Stirred or seriously shaken?*, 7 Mediaforum 209 (2011).

<sup>10</sup> See Interview with ACM Chairman-to-be Chris Fonteijn, *Zin in de fusie! Over keuzes en kansen*, 7 Actualiteiten Mededingingsrecht 145 (2011). See also: J. de Maa, *Fusie OPTA, NMa en Consumentenautoriteit logische zaak*, 3 Actualiteiten Mededingingsrecht 63 & 64 (2010).

<sup>11</sup> Besides its 'classic' competition enforcement tasks, the NMa also has tasks in the fields of energy and transport, which are (already) conducted by a special 'Energy Chamber' and a 'Transport Chamber' within the NMa.

<sup>12</sup> The so-called 'Wet handhaving consumentenbescherming' that entered into force on Jan. 1, 2008.

(indirectly) by way of ensuring the well-functioning of the market. Economic efficiency is generally considered to be the main goal, although other objectives are raised too in legal and economic doctrine.<sup>13</sup>

The different nature of the merging entities – two authorities on the one hand and a regulator on the other – must be considered carefully. In The Netherlands, the separation of legislative, executive and judicial powers forms the corner stone as to how public authorities are set up, and how they relate to other governing bodies and organs of the state. Public authorities having the power to fine private persons (e.g., the NMa) must abide by legal principles such as fair trial and a fair administrative procedure.<sup>14</sup> After all, administrative sanctions can under certain circumstances be regarded as criminal charges. Furthermore, public bodies are bound to respect and uphold the right to privacy of subjects of the state.<sup>15</sup> Hence, the establishment of the ACM is governed by several underlying principles of law that determine the way in which the authority will function.

In the following two sections of this chapter, we address *inter alia* the issue of compatibility of the NMa, the OPTA and the CA. We describe and explain the ACM both in terms of structure and functioning. We highlight the key features of the ACM and examine its strengths and weaknesses. In this context, we also refer to other EU Member States' examples from the two sub-groups identified in the first chapter. The question as to how and to what extent different motives for creating super-authorities influence the structure and operation of these new entities will be addressed where appropriate.

## 2.1 STRUCTURE OF THE ACM

The explanatory memorandum of the law establishing the ACM<sup>16</sup> (hereinafter '*memorandum*') expresses the reasons for the merger in terms of its expected outcome: the ACM has been created in order to enhance effectiveness, efficiency and quality of market supervision in The Netherlands. In other words, the ACM must produce a greater output (compared to the benchmark of the three existing entities combined) with diminished resources while delivering better results. The memorandum argues that a smaller authority is better fit to adapt to internationalization, technical developments, dynamic markets and market trends

<sup>13</sup> See A. Jones & B. Sufirin, *EC Competition Law. Text, Cases, and Materials*, 4–19 (Oxford U. Press 2011); G. Monti, *EC Competition Law*, 20–52 (Cambridge U. Press 2007); T. Prosser, *The Limits of Competition Law. Markets and Public Services*, 17–20 (Oxford U. Press 2005).

<sup>14</sup> Cf. Art. 6 of the European Convention on Human Rights.

<sup>15</sup> Cf. Art. 8 of the European Convention on Human Rights.

<sup>16</sup> Explanatory memorandum to the draft bill of May 31, 2012. This document can be found at: <http://www.internetconsultatie.nl/materielewetacm/document/549>.

because it is more flexible and can reallocate resources more easily. At the same time, the ACM is equipped with all the investigative and enforcement powers of its three predecessors. The idea is that market supervision will especially benefit from exchange of expertise, knowledge and information within the ACM. In the following paragraph, we will give an overview of the key changes that will take place.

The most obvious change to the outside world is that the NMa, the OPTA and the CA will vanish as separate entities and will be replaced by the ACM. In that regard, it is noteworthy that each of the three authorities has a different legal status under Dutch law. The NMa is an independent governing body without legal personality and staff; the OPTA is an independent governing body having both legal personality and its own staff; and the CA is a non-independent governing body which answers directly to the Dutch Minister of Economic Affairs, Agriculture and Innovation. Because of their dissimilar legal status, a decision had to be made regarding which status would best suit the ACM.

In the end, the legislator followed the model of the NMa and opted for an independent governing body without legal personality and staff. This means that the OPTA 'loses' its legal personality as a result of the merger. In practice, the question of legal personality is of little importance to the formation of the ACM because it does not affect the application of administrative tasks. Nevertheless, the fact that the ACM will not have its own staff and that its budget will be determined by the government are perceived as potential weaknesses. We will discuss this argument in greater detail in the following section.

The basic structure of the ACM is simple. Corresponding to the three former authorities, there will be three pillars including six directorates in the ACM: one pillar for consumer protection, one for sector-specific supervision, and one for competition supervision. A three-member board will manage the division of tasks. One of the new features is the creation of cross-pillar competence of the different directorates. For example, there will be a directorate dealing with all consumer issues including e.g., those arising in the field of competence of the sector-specific pillar. The sector-specific pillar, the successor of the OPTA, will be composed of two directorates, one for energy, and one for telecommunication and postal services. The competition pillar will take over the portfolio of the NMa with an exception in the fields of energy and transport, in which the sector-specific directorate and the chamber for transport may apply competition law rules themselves.<sup>17</sup> In addition to the four abovementioned directorates, there will be two supra-pillar directorates: the ACM's legal service and its operational management. The separate position of the legal service is in keeping with an

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<sup>17</sup> See parliamentary document of the 2nd Chamber 2010/2011, 31 490, nr. 69, 3.

internal division of responsibilities between the departments that carry out the investigation on the one hand, and the unit that oversees the process of punishment of legal subjects on the other hand.

In Luxembourg, the Competition Council, which recently has absorbed the Competition Inspectorate, has both investigative and decision-making powers. Even in the law-making process, the Competition Council is to be consulted on any bill or draft regulation which may affect competition.<sup>18</sup> The Dutch legislator has not gone this far in the integration of powers: the ACM has no formal role in the legislative process in Dutch Parliament. Nevertheless, it does combine administrative and enforcement competences. These enforcement powers include the possibility to sanction companies as well as individuals.

The most recent draft bill regulating *inter alia* the competences of the ACM<sup>19</sup> does not – in terms of competences – differentiate between the three pillars or the six directorates which the ACM consists of, but gives mandate to the ACM as a single entity.<sup>20</sup> The explanatory memorandum<sup>21</sup> clarifies that this approach prevents disputes over the validity of mandates from separate pillars or directorates or even employees of the ACM. It would help promote the flexible distribution of capacities.<sup>22</sup>

Questions such as ‘*Which procedure is applicable to a given situation?*’ or ‘*Which sanctions are available?*’ remain untouched by this discussion, because these questions are not answered in terms of pillars or directorates but by reference to the legal basis used. In practice, this means that a violation of competition law rules in the telecommunications sector could (potentially) be assessed by more than one directorate within the ACM. However, it does not imply that such a violation, if handled by the sector-specific pillar, is subject to a different set of legislation than if it were handled by the competition pillar. The case handlers of the ACM have to be much more aware of the question which law they are applying to a specific case than of the question which pillar or directorate they are representing at a certain given time.

<sup>18</sup> See European Competition Network, ECN Brief 05/2011.

<sup>19</sup> Draft bill of May 31, 2012: ‘Wijziging van de Instellingswet Autoriteit Consument en Markt en enige andere wetten in verband met de stroomlijning van het door de Autoriteit Consument en Markt te houden markttoezicht’. This document can be found at: <http://www.internetconsultatie.nl/materielewetacm/document/548>.

<sup>20</sup> See Art. 12a of the draft bill of May 31, 2012.

<sup>21</sup> Explanatory memorandum to the draft bill of May 31, 2012.

<sup>22</sup> *Ibid.*, 6.

## 2.2 STRENGTHS AND WEAKNESSES

The creation of the ACM has received mixed reactions in The Netherlands. In order to start on a positive note, we would first like to address some potential strengths of the new authority. Subsequently, we will discuss some potential weaknesses of the ACM.

### 2.2[a] *Strengths*

First, there is the matter of saving costs by merging different organizations into one entity. An organization that unites several regulatory/supervisory authorities can be cost-efficient: no need for separate management layers in general and management boards in specific; no need for separate facilities such as payroll administrations, library services, etc. Another contribution to the efficiency process is the aspect of information-sharing. Information gathered by, or provided to, one of the directorates of the ACM can be used by the other directorates.<sup>23</sup> Under current legislation, the NMa, OPTA and the CA already have this possibility subject to strict limitations, but those ‘checks and balances’ are not, by default, applicable to the ACM.<sup>24</sup>

The question is whether a full-fledged and entire merger is necessary in order to realize the abovementioned savings, or whether a partial merger (i.e., of certain management layers) might suffice as well.<sup>25</sup> It goes without doubt that on a managerial level certain efficiencies can be reached by merging different organizations into one entity.

An advantage of the combination of the ACM’s structure and its range of competences is promoted by Chairman-to-be, Chris Fonteijn:<sup>26</sup> the combination of strength and flexibility allows for a problem-based approach where the authority first engages in a dialogue with a particular market player in order to discuss market behaviour and ensure the well-functioning of the market. If this method does not deliver results, the great range of powers given to the ACM leaves other options to push towards a desirable outcome.

Information-sharing does not only have a cost-related dimension. It can also improve the decision-making and the output quality of an organization. An authority that unites different pillars and departments is able to build up sectorial

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<sup>23</sup> See parliamentary document of the 2nd Chamber of Dutch Parliament 2010/2011, no. 31 490, nr. 69, 3–4.

<sup>24</sup> The risks of repealing these strict limitations, as well as the importance of checks and balances, will be dealt with in the next section.

<sup>25</sup> See E. Steyger, *Cocktail van NMa, OPTA en Consumentenautoriteit – Stirred or seriously shaken?* 7 Mediaforum 207, 209 (2011).

<sup>26</sup> See K. Bojorge, ‘Je moet geen softie zijn’, Forum, Issue 22 of Dec. 1, 2011, 17.



knowledge of the economy and easily share it amongst its services. From an information perspective, an organization such as the ACM can absorb knowledge and gain expertise from various fields. Hence, it can make sure that that information is distributed within the agency and exchanged between staff members at different levels and in different parts of the organization.

At the beginning of this century, the European Commission implemented a number of changes in its organization in order to improve the quality of its decisions in the field of merger control. This happened after the European Court of Justice had annulled several decisions of the Commission in highly sensitive merger control cases. The goal of these structure adjustments of the organization was to prevent problems like 'groupthink' and tunnel vision in the future.<sup>27</sup>

Please note that the changes the European Commission implemented in its organization concerned (only) the Directorate-General for Competition. The same process of modifications in a much broader organization (such as the ACM) does not necessarily bring the same improvements in decision-making quality. In other words, the concentration of several agencies into one organization is not an absolute prerequisite for the implementation of an organizational reform like the European Commission has put through. It does, however, provide the possibility to gain information regarding sectors and to build up sectorial knowledge and expertise to an extent that will probably not be achieved in a situation of separately functioning bodies.

## 2.2[b] *Weaknesses*

Although the ACM will neither have legal personality nor its own staff, its board of directors will be formally independent of the Ministry of Economic Affairs, Agriculture and Innovation. The Minister will not have the right to take decisions in individual cases, but he will have the power to issue general policy rules.<sup>28</sup> These general rules can influence the interpretation of the governing body's discretionary powers. Thus, the Minister has the ability to exercise a certain amount of control over the performance of the tasks and duties of the ACM, e.g., in respect to general policy rules on sanctions.<sup>29</sup> The ACM does not hold an exceptional position in this regard in the landscape of administrative bodies in The

<sup>27</sup> See Q. Kroes & P. van Ginneken, *Fusie OPTA: een juist besluit om de verkeerde redenen*, 7(8) Mediaforum 197 (2011).

<sup>28</sup> See Art. 21 Kaderwet zbo's; See also Art. 5 of the Draft Dutch Competition Law of June 4, 2012. This document can be found at: <http://www.internetconsultatie.nl/materielewetacm/document/553>.

<sup>29</sup> See parliamentary document of the 2nd Chamber 2011/2012, 33 186, nr. 3, 11. See also: R. de Bree, *ACM: evolutie uit zuinigheid? Enige beschouwingen bij de totstandkoming van de Autoriteit Consument en Markt*, 4 Markt&Mededinging 143 (2012).

Netherlands, as many of them function on this basis (i.e., in a framework of policy rules). Even though the ACM itself also possesses the power to draw up general policy rules in some fields,<sup>30</sup> the position of the Minister does raise questions regarding the application of European Union rules that require the independence of regulators (for instance in the fields of gas and electricity) and exempt certain tasks even from general policy rules altogether.<sup>31</sup>

A feature that does give the ACM a special position in the landscape of administrative bodies in The Netherlands, is that there is no other administrative body in the country combining regulatory powers with enforcement competences on such a high scale. This mixture of *ex-ante* and *ex-post* administrative powers is potentially problematic, because the nature of these competences differs intrinsically.

As mentioned above, different laws provide different competences to the authority. It is the responsibility of the case handlers to apply the rules of the applicable legislation to a given case, independently of which pillar or directorate they are acting for. In fact, a case handler could be working on a competition case with regard to the postal market under the competition or the sector-specific pillar. This may fall under the discretion of the ACM. The legal basis, however, determines which procedures are to be followed and which (punitive) measures are available. That is a choice made by the legislator. Therefore, the law dictates the applicable procedures and serves as a limitation of the ACM's discretionary power to assign cases to one or the other of the three pillars.

The exchange of information between different parts of the organization may provide certain advantages that we have dealt with above. It does, however, also provide risks as to the use of the information in different *case dossiers*.

Information gained on the basis of certain provisions should not automatically be made available to case handlers that work on other dossiers. The Dutch legislator is currently reviewing the rules and conditions on use and exchange of information.<sup>32</sup> The Minister of Economic Affairs, Agriculture and Innovation is reluctant to build in additional checks and balances, despite requests to do so by various parties and stakeholders.<sup>33</sup>

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<sup>30</sup> *Ibid.*

<sup>31</sup> Cf. Art. 39 of Directive 2009/73/EC (gas), and Art. 35 of Directive 2009/72/EC (electricity). See also on this topic: A. Kleinhout, *De Autoriteit Consument en Markt: één ziet meer dan drie? Enkele bestuursrechtelijke aspecten van de samenvoeging van de NMa, OPTA en de Consumentenautoriteit*, 8 Actualiteiten Mededingingsrecht, 173 & 174 (2011).

<sup>32</sup> See parliamentary document of the 2nd Chamber of Dutch Parliament 2011/2012, no. 33 186, nr. 6, 41.

<sup>33</sup> *Ibid.* See for some highly critical comments on the lack of legal safeguards regarding the internal use of information by the ACM: P. Kuipers & F. Sickinghe, *Autoriteit Consument en Markt. De grote visvijver voor de overheid*, 9 Mediaforum 280–285 (2012).

The choice to set up the ACM as an independent governing body without legal personality and staff has an effect which may influence its functioning: the NMa, the OPTA and the CA have all been created on the basis of European directives which prescribe a certain amount of independence as a fundamental feature of every governing body. Due to its lack of legal personality, the ACM will have no staff of its own, and its budget will be determined by the Ministry of Economic Affairs, Agriculture and Innovation. Critics argue that the non-political functioning of the ACM could be undermined by its inability to operate independently on a financial level.<sup>34</sup>

### 3 CONCLUSION

EU Member States show a rising trend towards the set up of new governing bodies with broader scopes of competence and towards a merger of existing authorities into super-authorities. The Netherlands forms an example of a legislator's choice to merge three governing bodies into one super-authority by 1 January 2013. The ACM will apply a problem-based approach. Yet, ACM's own structure and functioning are not (automatically) problem-free or without legal concerns. The question remains as to exactly how the ACM will carry out its new approach and how it will use its competences in doing so.

In its present setup, the ACM raises concerns on two fronts: the use and abuse of information that has been gathered using different legal bases, and the level of independence of the organization from the Ministry of Economic Affairs, Agriculture and Innovation.

Other countries can learn from the concentration of several administrative bodies into one authority that has taken place in The Netherlands. The establishment of a 'super-authority' should abide by basic rules that aim to guarantee underlying principles of law such as the separation of powers, fair trial and fair administrative procedures, and privacy.

A super-authority must follow and apply these principles in practice, for instance in the process of opening case dossiers, in the choice of legal bases for investigative or enforcement actions, and in the use of information that is already available within the organization. In this last respect, the administrative body has the obligation not to use information that has been retrieved on the basis of competences that stem from other fields of law than the legislation on the basis of which the investigation at hand is carried out.

For the time being, Europe will not be relieved of public bodies merging into bigger, more powerful authorities. Although countries might have good reasons to

<sup>34</sup> See N.A.N.M. van Eijk, *ACM onafhankelijk?*, 44-45 *Nederlands Juristen Blad* 2987 (2011).

merge these entities, this does not discharge them from the obligation to establish the necessary checks and balances. These checks and balances have to ensure that 'super-authorities' function with a sufficient degree of independence from political influence in individual cases while respecting and upholding the rights of citizens and companies. In this regard, judicial review of administrative decisions remains utterly important in order to keep these multi-potent administrative bodies in check.