



Rail Regulation in the Netherlands

Looking after the market and cases

The Netherlands..small country in a big world



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Introduction ACM

- The Netherlands Authority for Consumers and Markets (ACM) ensures fair competition between businesses, and protects consumer interests.
- Mission: “Promoting opportunities for consumers and business”
- Independent Governmental organization (ZBO)
- 600 employees (mostly lawyers, economists)

What does ACM do?

- General competition law
- Consumer protection law
- Sector regulation (Telecom, Post, Energy and Transport).
 - Decisions in individual cases (breach of relevant legislation –e.g. cartels and assessing mergers)
 - Decisions affecting all players in the market (promoting competition in regulated sectors).
 - Informing and empowering consumers
 - Advice to government (ministries, parliament)
 - Other advices: market scans, advocacy, monitoring, guidance

Output 2015 and organisation ACM

- Handling 60.000 signals and complaints in 2015
- Total fines in 2015: 24 million Euro
- Benefits of ACM's oversight to consumers 1.3 billion Euro in 2015 (170 Euro per consumer in NL).



Railway Reform in Europe

- Liberalisation of the markets for train services started in 1991.
- Restructuring the European rail transport market
- Developing a strong and competitive rail transport industry
 - (1) opening the rail transport market to competition,
 - (2) improving the interoperability and safety of national networks and
 - (3) developing rail transport infrastructure.

Corridors for freight in Europe



Authority for Consumers & Markets

Source: Railway Gazette

Management of Railways



Autoriteit
Consument & Markt

Independent infrastructure manager

- Maintenance/investment
- Allocation capacity
- Charging

7000 km Network

400 stations

17 billion passenger km

40 million ton freightvolume

Highest utilisation density in EU

75% of inhabitants lives < 5 km from a station

1 billion maintenance costs

1 billion renewal and new projects


Railwaymarket in the Netherlands

Freight

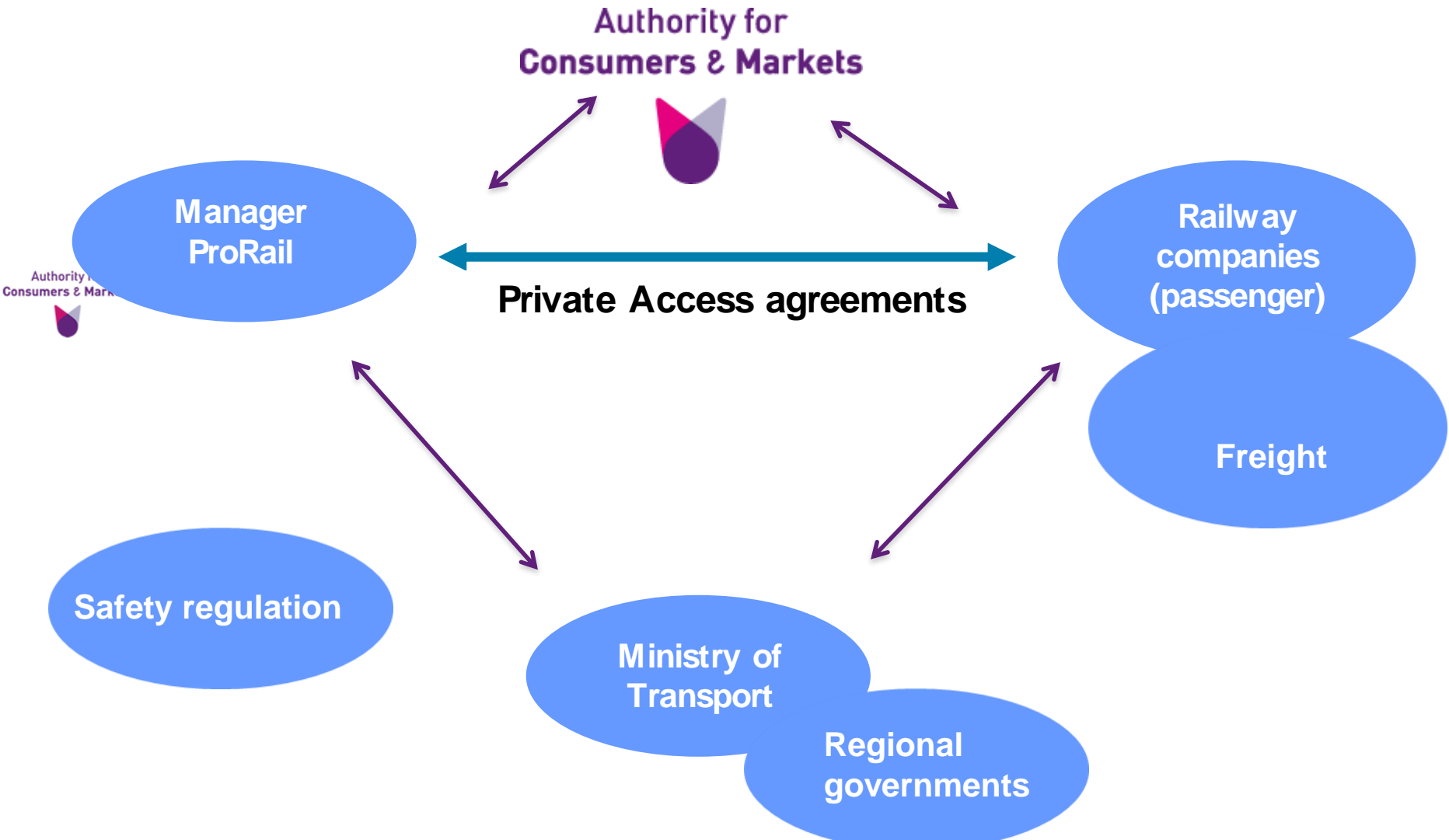
- Open access for freight since 1998
- 19 operators railway companies (licenced)
- Doubled transported volume since 2000
- 90% international freight (Germany)
- 40 million ton transported volume
- Commitment to growth
- Port of Rotterdam biggest port in Europe
- Dedicated freight line to Germany

Railwaymarket in the Netherlands

Passengers

- Direct award main network 2015-2025 to Dutch Railways (NS) 
- 23 concessions for regional lines
- 7 different operators
- Liberalized international passenger market
- 17 billion passenger km in 2015
- 5500 trains a day
- 1,3 million people transported per day

Market model in the Netherlands



Tasks Rail Regulation (national)

- Competences in Railway Act 2005
- Based on European directives and regulations (2012/34/EC) and 913/2010
- Regulation Railway Act and Competition Act
 - Non-discriminatory access to infrastructure and services
 - Content network statement, capacity allocation, user charge principles, service facilities, framework agreements
 - Ex-officio investigations
 - lead management
 - Complaints
 - Monitoring the Market
 - Abuse dominant position (Competition Act)

Tasks rail regulation (international)

- Exchanging experiences with European stakeholders (rail regulators in IRG-Rail:



- European Commission in European Network Rail Regulatory Bodies)
- ACM pro-active in IRG-Rail with Poland as chair in 2016
- Participation in working groups access, new legislative proposals, market monitor and user charge
- Cooperation in European railfreight corridors (9)

Regulation practises

- Be visible and stay independent!
- Regularly consult all Railway companies and their organizations
- Pay extra attention to new entrants
- Participate pro-actively in meetings and conferences
- Have a clear website and window for market signals
- Exchange experiences with other international market regulators
- Participate in international groups

Case 1: transparency of information for infrastructure manager

- Transparency of access conditions and prices in network statement (obligations according to European and Dutch Law)
- Checked by Regulator based on criteria
 - Completeness
 - Clarity
 - Accuracy
- Checked in 2006
- Decision of ACM followed by Inframanager
- Penalty payment if not

Case 2: fair allocation for maintenance of the railtracks

- Request for maintenance roster in annual time table (possessions on tracks during 2 nights of the week)
- 4x More time reserved than needed for maintenance;
- Railway companies felt disadvantaged (could run less trains)
- ProRail (managers) had to deliver made-to-measure to balance maintenance capacity need vs. traffic

Case 3: Market scans passenger market

- Follow-up from Complaints of regional railway companies in order to investigate the market
- Regional operators dependent of incumbent operator for crucial services (stations)
 - Control and ownership of stations by incumbent resulted in discrimination of new entrants
 - Travel information controlled by incumbent leads to potential discrimination in quality and prices
 - Control of ticket system by incumbent lead to problems with revenue allocation
- No proof of discrimination

Case 4: Rail market monitor

- 7th monitor will be published in autumn 2016
- Monitor of national railway market
- Assessment of infrastructure manager
- Increases transparency
- Getting acquainted with the market: interviews
- Visibility Regulator
- Input for Regulator to assess issues

Case 5: Railfreight corridors

- Netherlands involved in 3 corridors
- European law requires cooperation of regulators in case of discrimination and dealing with complaints
- Memorandum of Understanding closed with all rail regulators on freight corridors



Case 6: Complaint Veolia against monopoly

History

- Early signals from regional railway operators about their dependence on Dutch Railways (NS) regarding service facilities
 - Market scan passenger transport 2011
 - Quick scan rail passenger transport 2013
 - Central theme: Powerful position of Dutch Railways NS puts regional railway undertakings at a disadvantage
- NS responded on market scans by hiring consultants that denied all facts
- In July 2015 regional operators showed great concerns about the missing level playing field in the railway market for passenger transport
- New concession on the market in 2014

Monopolies of service facility' s

- Electronic ticketsystem owned by incumbent railways NS (80% shareholder)
- Setting ticket prices
- NS monopoly on travel information
- NS monopoly of ticket vending machines
- NS calculates revenue allocation for other railway companies and pay their share

Market condition in 2015

- New concession on market
- All public transport in Province of Limburg (trains and busses): including 4 railwaylines
- Joint use of main network
- Duration: 15 years
- Total turnover: 2 billion EURO (55,5 million per year)
- Final date for a tender 3 November 2014 (Arriva, Abellio and Veolia made a bid))

Procedure complaint (1)

- 5 September: complaint to ACM to take enforcement action against NS with regard to different behaviors of NS associated with the European public tender of the ' Public Transport Concession Limburg 2016-2031 ' .
- Basis: infringement of legal framework
 - ACM demanded information from parties in October and November
 - Hearing organised at ACM office on 28 November 2014
 - View in writing asked until 3 December 2014

Procedure complaint (2)

- Notice of draft decision to NS on 27 January 2015
- NS responded that the an integral part of the text was confidential
- 1 June NS ceased legal resistance against publication
- 3 June ACM published decision

Decision by ACM

- Infringement of legislation by NS
- No reasonable offer to Veolia for several services by NS
 - Offer of 15 September of NS was according to Veolia too late, not complete, not cost oriented and discriminatory
 - No level playing field in knowledge and statistics about passengers and revenue

Defense NS

- No proof that mentioned services fall under Railway Act
- NS states that Veolia has alternatives
- Offer was within reasonable time and non-discriminatory
- Request for enforcement was premature
- Questions to clarify the offer were not answered by Veolia

Considerations ACM

- If NS is owner, NS is obliged to make an offer
- If services comply with framework (Railway Act), NS is obliged to make a reasonable offer
- ACM assesses when a reasonable offer has been made against cost-oriented tariffs and on conditions that does not hamper competition
 - Timely response
 - Irrevocable offer
 - Complete offer

Considerations ACM (2)

- Based on Railway Act NS can only refuse when there is a viable alternative available under market conditions
 - From the view of passengers and contracting authority equal alternative
 - RU's against equal tariffs can buy alternative services
- For services at stations which are 100% of NS there is no alternative
- A company is disadvantaged when
 - NS did not make a reasonable offer
 - When NS uses her position to disadvantage parties

Assessed service facilities

- Pause locations at stations ✓ ☹️
- Acquisition of trains ✗
- Emergency facilities ✓ ☹️
- Ticket vending machines and electronic ticket facilities ✓ ☹️
- Travelinformation ✓ ☹️
- Connecting services (regional – IC trains) ✗
- Costs and sales commission ✗
- Assistance to disabled people ✗



Assessed service facilities

- Supply of energy and settlement of disturbances
√ 😊
- Information about turn-over X

Judgement specific services

- **X: not in legal framework**
- **X: not in legal framework because not enough info**
- √ : service facility under annex II
- 😊: reasonable offer
- ☹️: no reasonable offer

Conclusions assessed facilities

Cost-orientation

- Regarding the state of play ACM cannot judge whether offers are cost-oriented

Reasonable offer

- No reasonable offer SF
- Unfair treatment of Veolia by NS by unnecessary delays that hindered Veolia to make a bid on time

Leak competition sensitive information

- NS passed through information from Veolia and Arriva to Abellio
 - Intention to make an offer in tender
 - Offer for second hands trains
 - From Veolia and Arriva
 - About characteristics of rolling stock
- Abellio knew the answer of NS earlier than Veolia and Arriva
- Known and managed at high level functions

Conclusion

- Penalty payment not suitable (tender was awarded to Abellio at the time)
- NS has infringed article 67 of the Railway Act (no reasonable offer)
- NS has infringed article 71 of the Railway Act (leaking competition sensitive information to daughter company Abellio and Q-Buzz)

Remarks

- All earlier suspicions about the non-existing level playing field and that NS made use of their position as an exclusive owner of service facilities to disadvantage other RUs were proven right
- NS did not lodge an appeal!
- Provisional award to NS suspended
- Concession awarded to second winner Arriva

Follow up

- ACM started investigation on abuse of dominant position of NS
- As a result several high level officials resigned or were fired
- The shareholder of NS (ministry of Finance) demands a change of culture
- NS installs director ethical affairs
- Political questions
- Extra Ex ante legislation in new Railway Act

Case 7

- Concession tendered for highspeed line South in 2001
- State owned incumbent bid two times higher than was economically viable
- Could not meet the goals: result no train

- Political and economical problem
- Existing powers stop innovations

Questions?

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