

# Regulating the Regulators

A Formal Law-Based Philosophy

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# Monitoring/Supervisory Powers NL Rail Regulators

The Regulators of the NL Rail transport markets:

**1. The Competition Authority (anti-trust/ M&A control)**

**Legal Basis: The Dutch Competition Act**

**2. The Vervoerkamer (monitoring Public Rail transport i.a.)**

**Legal Basis: The Rail Act and Public Transport Act**

**Both recently reorganized within *ACM* =**

**Authority for Consumers and Markets**

# Legal Rights of Protection for the Regulated Companies

**Operators on NL Rail markets have:  
deeply rooted rights in the General Act on Administrative  
Law (Awb)**

- \* of protection and rights of defence against**
- \* a broad scope of initiatives and/or acts and/or decisions**
- \* of administrative entities or bodies such as ACM**

***However***

**classical “hurdles and risks” between  
having rights and exercising rights notably for incumbents**

# Towards a new ACM “Philosophy”?

**Broad criticisms from:**

**The NL Council of State (RvS), The Scientific Council for Government Policy (WRR) and NL anti-trust lawyers and (regulated) companies with regard to:**

- 1. draft ACM *powers aligning Act* (Stroomlijningswet”);**
- 2. The ACM *concept Strategy*: (a) Shift from “formal repression” to “informal supervision”, (b) Integration of Abuse of Dominant Position Cases within ACM (c) Policy advisor on market regulation = voicing it’s views in public political debate.**

# Reaction : Regulation of the Regulators

Any choice to attribute a set of market-intervention and/or regulatory powers for a specific market should be:

1. By government/parliament
2. To an independent body or authority
3. Nature and Scope of powers
4. Based on legally defined Decision-Making criteria
5. Dynamic approach

# Rules of the Regulations game(s) needed

## Perceived Problems:

1. **Increasing Costs of financing Regulators;**
2. **Especially when introducing ex-ante supervisory powers for Regulators (heavy-handed Model);**
3. **Regulators are : Executive power and not to turn into (full-fledged) Legislative power;**
4. **Increase in Legal uncertainty = the Regulators view on “The general public/consumer interests prevails”;**
5. **Increase in tasks and powers: publishing inspection reports, market – studies.**

## A Challenge: decision-making criteria - checks & balances

- **Government has primary responsibility for policy and regulation;**
- **Regulators should not have the right to publish “views” with regard to market behavior of individual companies /operators when this behavior is fully in line with excising laws and regulations = no blaming and shaming;**
- **Having powers to impose high fines in combination with very open and/or vague norms leads to disproportionate wide powers for the Regulators;**
- **Regulating markets should target the biggest risks (risk based and trust-based).**