

## Editorial

### Keeping up Pressure for Changes in Rail Industry

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Keeping up the pressure for the necessary changes in the rail industry – that is the vision that drives the Office of Transport Regulation (“Vervoerkamer”, VK), the Dutch rail regulator. If alternative enforcement yields insufficient results, more serious measures are taken, and investigations could even lead to fines.

Having issued Directive 91/440/EEC, the EC ordered member states to separate management and operation in the rail industry, and to facilitate market entry for new railway undertakings. The rules of how manager and operator should interact have been laid down in Directive 2001/14/EC.

In accordance with these rules, Netherlands Railways (“Nederlandse Spoorwegen”, NS) was broken up in 1995 into several new undertakings. Management of the Dutch rail network is carried out by ProRail, and, recently, by Keyrail as well.

Passenger transport is carried out by various private undertakings, having been granted concessions from the national or local government to do so. The freight rail market has been liberalized.

The profound changes in operational management at the rail companies have become visible by now. Nowadays, the network manager announces almost a year before the start of the timetable what it can offer the operator (the Network Statement); agreements between manager and operator are laid down in writing; and the operators pay the manager. The capacity allocation process starts much earlier in the year now, is more transparent, and has been harmonized with other European managers. Even in a small country like The Netherlands more than 30 organizations are involved in this process.



The EC mandated the creation of a strong, independent regulator that would look after these changes. The VK is aware of the profundity of these changes, and of the fact that changes take time. Early on, the VK thus closely consulted with the manager about the interpretation of the rules, and assessed

proposed solutions. Imposing an order for incremental penalty payments is an effective enforcement tool to put changes that were at a standstill back on track. However, in cases where the law is still not observed, even after seven years, the VK proceeds to enforcement by imposing fines – for example, when the VK established that the manager wrongfully benefited itself vis-à-vis the operators, when it allocated capacity. The VK also established that the manager discriminated against a new entrant vis-à-vis the biggest operator in the annual capacity allocation process. The Netherlands Competition Authority (“Nederlandse Mededingingsautoriteit”, NMa) therefore imposed the

first fines on the manager this year. Moreover, the operators already filed seven complaints with the NMa in 2008.

The sweeping changes have been worth it. Freight transport in the Netherlands has grown spectacularly since the separation, and the arrival of new regional passenger rail companies has also boosted the quality of rail transport in general. A welcome next step is to have the domestic and international passenger rail markets function even better so they can realize higher quality and more growth as well.

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