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ACM's guidelines for simplified resolution of cases involving a fine Questions and answers

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1. What is simplified resolution of cases involving a fine?

The Netherlands Authority for Consumers and Markets (ACM) has the power to impose fines on undertakings or executives that have violated the law. If the undertaking or executive is prepared to acknowledge the violation, and to accept the fine for that violation, ACM may be in contact with them to simplify the procedure for that case. ACM will take that route if sufficient efficiency gains can be expected from doing so. If the undertaking or executive cooperates with ACM in the simplified procedure, ACM will lower the fine by 10%. The case will then have been finally resolved.

2. Why has ACM published these guidelines for simplified resolution of cases involving a fine?

ACM has gained experience with simplified resolution in some competition and consumer cases. With these guidelines, ACM aims to provide clarity regarding the process that has been established. The Guidelines explain the main elements of ACM's procedure regarding simplified resolution. This enables the parties involved to assess the benefits and drawbacks of simplified resolution.

3. What are the benefits of simplified resolution?

Simplified resolution avoids protracted legal proceedings. Cases can thus be completed sooner and more cost-effectively by ACM and the other parties involved. Parties are able to make a clean sweep, and ACM is able to handle other cases. Simplified resolution therefore benefits both ACM and the parties involved.

4. How does simplified resolution work?

If ACM considers a case suitable for simplified resolution, it will contact the parties involved to explore this. Parties are able to express their interest in this to ACM, too. ACM subsequently presents the parties involved with its views regarding the violation and the planned fine. Parties will have the opportunity to respond, but ACM will not negotiate. When opting for simplified resolution, the party involved provides a submission acknowledging their participation in the violation and acceptance of a fine. ACM then grants the party a reduction of 10% on the fine, and issues a streamlined fining decision, which is shorter than one in the regular procedure.

5. What cases are suitable for simplified resolution?

It is up to ACM to decide whether or not a case is suitable for simplified resolution. There is no such thing as a right to simplified resolution. In principle, all cases in which ACM can impose a fine may be

eligible for simplified resolution, provided, however, that it offers ACM actual efficiency gains, and that the party involved is prepared to acknowledge the violation and accept a fine. If a case involves multiple parties, ACM will, in principle, only offer the simplified procedure if all parties are open to acknowledging the violation and accepting a fine.

6. When can you ask for simplified resolution?

In principle, this is possible at any time. However, ACM will only opt for simplified resolution if the violation is sufficiently clear. In practice, that means that the simplified-resolution process can only be launched when the investigation into the violation has been completed. In addition, ACM will only opt for simplified resolution if it offers sufficient efficiency gains, and the party involved is prepared to acknowledge the violation and accept a fine for that violation.

7. Can simplified resolution help you escape a fine?

No, simplified resolution still involves the imposition of a fine. This fine is 10% lower as a result of cooperating with ACM's procedure.

8. What would you give up if you opted for simplified resolution?

Opting for the simplified procedure is on a voluntary basis. Parties involved do not lose their right of defense in simplified procedures. Parties consciously and voluntarily opt for a procedure that is aimed at finally resolving the case by way of a streamlined decision. This procedure consists of holding discussions with ACM. Parties can end the simplified procedure at any moment, and switch (or switch back) to the regular procedure. Information and representations provided by this party in the simplified procedure will not be used against it by ACM.

9. Is simplified resolution the same as settlement?

Simplified resolution is sometimes also referred to as settlement. However, the term settlement has different meanings. In order to avoid any confusion, ACM chooses to use the term simplified resolution in order to make clear that negotiations are not involved, and that ACM does establish a violation.

10. Are third parties able to use the submission when filing damages claims?

ACM will not give third parties that are involved in damages cases access to the submission in which an offender acknowledges its violation (unless ACM is statutorily required to do so). ACM cannot ensure that third parties who believe to have been harmed in connection with the violation, will not file a claim for damages. ACM will publish a decision, also in the simplified procedure, but the description of the facts will be less detailed than in regular sanction decisions. ACM will only provide third parties with further information if it is statutorily required to do so.

11. What are the differences between the leniency program and simplified resolution?

A leniency process is different from cooperating with ACM in a simplified procedure.

Leniency requests can only be filed in cartel cases. An undertaking or executive that files a leniency request can make a clean sweep by notifying ACM of the cartel, and by providing ACM with information about the cartel. Leniency requests may be of help to ACM in its investigations. In return,

the undertaking or executive may get a reduced fine or may even escape a fine altogether. That depends on at what stage the request is filed, and on how useful the information is.

Simplified resolution is instead about cooperating with ACM in the procedure by acknowledging the violation and accepting the planned fine. Even if the party involved has already entered ACM's leniency program, simplified resolution will still be possible. In that case, when determining the fine, ACM will add up the reduction percentages for leniency and the simplified procedure.

12. What are the differences between commitments and simplified resolution?

ACM has various instruments at its disposal for tackling market problems. Examples of these instruments are fines, orders subject to periodic penalty payments, binding instructions, informal opinions, and warnings. Commitments and simplified resolution are also instruments ACM can choose, but there are clear differences.

Simplified resolution is possible if a party involved is prepared to acknowledge its violation and to accept the fine ACM plans to impose. This results in a streamlined fining decision in which ACM establishes a violation and imposes a fine. In return for its cooperation with ACM in this procedure, the party involved will get a lower fine.

With a commitment, an undertaking explains how it will change its conduct in order to remove the risk of violations. An undertaking that makes a commitment is not required (as opposed to simplified resolution) to acknowledge explicitly that it has violated the law. When ACM declares a commitment binding, it is no longer allowed to impose an order or fine for that violation. That is why simplified resolution and commitments do not go together.