

ACM procedure regarding informal opinions

The Netherlands Authority for Consumers and Markets (ACM) frequently receives requests from market participants to give assessments in writing regarding the application of laws that ACM implements or enforces. Such informal opinions are provisional and informal assessments by ACM. Informal opinions do not prevent ACM from launching investigations at a later stage or from handing down rulings (in which ACM may decide differently) afterwards. In practice, some market participants have the need to have certainty in an early stage, for example, whether or not a license or exemption is necessary in a certain situation, or whether a certain agreement or practice is allowed. This document contains criteria that your request must meet in order to qualify for receiving an informal opinion.

Criteria to qualify for receiving an informal opinion

ACM uses the following criteria for handling and accepting requests for informal opinions:

- 1) A new legal question is concerned. The same question or a similar situation must not have been assessed before in national or European case law or in decisions, guidelines, informal opinions or vision documents by ACM or the European Commission or other documents;
- 2) Significant economic interests are involved. For example:
 - large investments that are associated with a transaction in relation to the size of the undertaking or undertakings involved, or
 - the economic interest from the perspective of the user of the goods or services to which the agreement or conduct relates, and/or
- 3) A subject is concerned that directly affects the interests of many consumers or a subject that is socially very relevant, because, for example, it has sparked a public outcry or it has caused a lot of commotion among members of the public; and/or
- 4) An agreement or behavior is concerned that is likely to be more prevalent, or more people deal with the same issue, which necessitates an informal opinion since it can strategically act as a signal;
- 5) the request for an informal opinion concerns an agreement that has not yet been signed or actions that have not yet been taken.
- 6) it should be possible for ACM to issue an informal opinion based on the information provided by the applicant, meaning without the need for ACM to carry out an assessment; and
- 7) the legal question asked is not hypothetical.

If the above-mentioned criteria are met, ACM can still decide not to handle a request because of limited capacity or prioritization. In any case, ACM will *not* issue an informal opinion if another, more obvious route can be taken in order to obtain certainty.

What requirements should a request meet?

A request for informal opinions must be submitted in writing and should, in any case, contain the

following information:

- the personal data of the applicant and the contact person for ACM;
- a justification for the request, complete with underlying documents (a self-assessment must be included for questions regarding the application of Section 6 of the Dutch Competition Act);
- the reasons as to why the request meets the above-mentioned criteria;
- which of the documents included have to be marked as confidential within the meaning of the Dutch Act on Public Access to Government Information (in Dutch: Wet openbaarheid van bestuur).

ACM's procedure regarding informal opinions comes into force on the day after the date of publication of the Staatscourant in which it is published.