



Strategy Document (draft)

The Netherlands Authority for Consumers and Markets

1. Introduction

The Netherlands Authority for Consumers & Markets (ACM) is the new market authority that is created through the consolidation of the Netherlands Consumer Authority (CA), the Netherlands Independent Post and Telecommunication Authority (OPTA) and the Netherlands Competition Authority (NMa). It creates a single authority for consumer protection and market oversight. This merger lays the foundation for effective and efficient oversight on well-functioning markets for the purpose of optimizing consumer welfare.

For effective and efficient oversight, it is critical that the different departments of ACM are on the same page. To that end, ACM has a single objective, mission, and oversight philosophy. This helps us combine our knowledge and tools to achieve the best results possible. In this way, ACM can build on the work of its three predecessors. Over the next few years, the ACM's approach will be adjusted, as necessary, to reflect the Authority's developing experience.

This memo outlines the ACM's main objective, mission, core values and oversight philosophy. In addition, several important topics that link the different ACM departments are discussed such as the ACM's organization and oversight style. This strategy document is the final product of a process in which ACM relied not just on in-house expertise, but also on multiple consultations (interviews, roundtable sessions and meetings with market participants, scholars, and interest groups) in order to collect external opinions on how the new regulator should operate.

2. Main objectives of oversight in the Netherlands

The task that ACM has been given by the European and Dutch legislatures determines its actions. The ACM's activities encompass general competition oversight, regulation of the energy, telecommunication, postal services, and transport markets (or parts thereof), and consumer protection. The common objectives behind these activities are promoting well-functioning markets, ensuring well-organized and transparent market processes, and fair treatment of consumers.



Competition oversight safeguards and promotes well-functioning markets in all industries of the Dutch economy. Through regulation, special conditions have been created on certain markets, wherever the Dutch legislature has found it necessary so that competition can exist. Enforcement of consumer protection regulations ensures that, when interacting with companies, consumer rights are always respected. This empowers consumers, and strengthens their confidence. By bringing together these tasks, the previous overlap in the activities of the merging authorities will cease to exist. In this way, an integral and balanced approach to market and consumer problems will become possible. ACM aims to take advantage of the synergies created by combining competition oversight, industry-specific regulation, and consumer protection.

The legislative context in which ACM operates is primarily based on European regulations. These rules are aimed at promoting further development of the European single market, and making possible an effective approach to cross-border market and consumer problems, among other objectives. The ACM's geographical scope is therefore not limited to the Netherlands alone. ACM closely cooperates with regulators outside the Netherlands and with European agencies.

3. ACM's mission

Increasing consumer welfare is ACM's primary goal. It's about making markets work in the interest of consumers. ACM wishes to see markets in which consumers have an actual choice, and in which businesses can compete freely for the favor of consumers. That is why we have incorporated our statutory task in the following mission statement:

"ACM promotes opportunities and options for businesses and consumers"

ACM seeks to strengthen the position of consumers, making them better informed and thus enabling them to make well-informed choices. ACM stimulates competition, and regulates markets in a way that optimizes the outcome for consumers. The desired result is sustainable welfare growth in the broader sense of the word. It includes welfare growth as a result of financial and qualitative effects for consumers, in the short run and in the long run.

We are fully aware of the social context in which we operate. The creation of ACM coincides with a broader social trend, where the free-market system is scrutinized, and the protection of public interests must meet ever stricter requirements. ACM therefore chooses to approach market and consumer problems in an integrated manner, while keeping in mind the different public interests that are at issue.

In the next sections, we discuss how ACM translates its mission to its approach and to the way ACM is organized.



4. Core values of ACM

ACM acts in accordance with three core values: independence, openness, and professionalism. These core values form the basis of all of ACM's actions. If these core values are compromised in any way by anyone at ACM, they can be held accountable for their actions, both by other ACM employees and by others.

Independence

The independent position of ACM is formally enshrined in its legal status of autonomous administrative authority under Dutch law. ACM fulfills its tasks independent of lawmakers and businesses, in line with the requirements set by European regulations. In practice, the independent position of ACM as an organization means, on the one hand, taking a critical attitude and exercising independent judgment, and, on the other, maintaining open and constructive relationships with ministries, other regulators, and stakeholders.

Openness

ACM has a well-developed ability to sense what is happening in the world outside its walls, and it wishes to be engaged in a permanent and constructive dialog with its stakeholders. Through our activities, we aim to be sensitive to broader social trends that affect the areas of our oversight. Communicating clearly and in a timely manner about what ACM does, why and for whom are all elements that are critical to that aim. And with that aim in mind, we plan to release, among other publications, an ACM Agenda every two years, in which we expound on our priorities.

ACM seeks to generate public support for its actions. Before the ACM Agenda is finalized, we will publicly release a draft version for consultation. We plan to sit down with members of the Dutch House of Representatives once every year to explain our work, based on our Annual Report. ACM and the ministries responsible for the areas in which we operate (the Ministry of Economic Affairs, and the Ministry of Infrastructure and the Environment) and other stakeholders will consult with one another on a regular basis in order to promote a good execution of the ACM's tasks.

Professionalism

ACM's professionalism is reflected in the expertise, commitment, and flexibility of its staff. Further professionalization is a permanent task at every level within the organization. We invest in employee training and development. To that end, we are launching the ACM Academy, as well as other initiatives, which allow our employees, and also students and researchers, to take training courses, and improve their knowledge and skills. In that context, ACM seeks to cooperate with training and development programs at other regulators, government agencies, and universities.

Being professional also means that our employees know what is happening in the market. By gaining complete knowledge of a market or industry, ACM is able to determine its position in a balanced and proactive manner, and is thus also able to choose an approach and an instrument mix that are the most effective in that particular market or industry. This



prevents the ACM's oversight efforts from being reactive and incident-driven. We will therefore also apply ourselves to carrying out market-wide studies, and to taking our detection methods to the next level.

5. The ACM's oversight philosophy

ACM's oversight philosophy expresses how ACM seeks to fulfill its mission. In the sections below, we explain how ACM wants to make consumers central to its oversight philosophy, how we deal with questions regarding public interests, and what oversight style we choose to adopt.

5.1. Consumers are central

Consumers are central to ACM's thinking. This principle applies to all ACM's departments, from the execution of specific consumer-protection tasks to the application of sector-specific competition rules. This central position of consumers will be reflected in the ACM's prioritization policy, its oversight style, and its selection of instruments. ACM thus continues the course of its three predecessors, which was also aimed at increasing consumer welfare.

In its choice of making the interests of consumers central to its philosophy, ACM believes that consumers themselves generally know best what their interests are and how these can be served. The core principle of free-market thinking is the sovereignty of individual consumers. This idea dovetails with European and international views on consumers. If this sovereignty is jeopardized, consumer welfare may be adversely affected, and so can specific groups of consumers (for example, the more vulnerable ones).

ACM has been given powers that enable us to prevent or address behavior that harms consumer welfare.

ACM safeguards and promotes competition in Dutch markets

Competition is a tool to increase consumer welfare. Therefore, the most important reason for ACM to act is in response to the effect that undertaking's behavior on the market has on consumer welfare. In well-functioning markets, goods and services are offered at price/quality ratios, which serve the interests of consumers. Safeguarding competition is a cornerstone of the execution of our tasks: healthy competition creates opportunities and options for business and consumers alike.

However, markets do not always function as they should. Consumers can be harmed directly, for example, because companies engage in cartel activities, and, as a result, charge excessive prices, or they restrict consumer choice. They can also be harmed indirectly, for example, because companies make arrangements concerning costs they charge other companies for products or services, or companies rig bids in case of government tenders. After all, the additional costs associated with such actions will eventually be included in prices or taxes, and thus be passed on to consumers. ACM takes action against



anticompetitive behavior on consumer and intermediate markets that directly or indirectly result in consumer interests being harmed.

When assessing the potential harm of anticompetitive behavior, ACM will also take into account the long-term effects on consumer welfare. These are not just the effects on prices, but also the effects on innovation and on the quality and diversity of products and/or services. Our oversight efforts are not only focused on the behavior of companies, but also on market structures, for example, through merger review.

In *regulated* industries, ACM has specific tasks. When it comes to their competitive positions, providers (new and incumbents) in these industries are usually dependent on a small number of established parties (which often used to be the only providers in those markets). These established parties control the infrastructure (for example, telecommunications networks, grids, transmission towers, rail networks or entire airports), which cannot be reconstructed (partially or fully) because of the high costs involved. In order to make sure that consumers do have a choice in such markets, ACM sets prices and conditions for certain infrastructures, which allows competitors to offer services themselves. In some cases, market conditions dictate there can only be one network provider (natural monopolies), for example, in the energy industry. In such markets, ACM directly sets the prices this network provider is allowed to charge its customers (consumers and/or businesses).

In the short run, consumers, generally speaking, benefit from competition and low prices, but, at the same time, investments in networks and facilities are necessary to guarantee the diversity and/or quality of services and/or products in the long run. If the compensation received for the commercial exploitation of his infrastructure is too low, the willingness of the network provider to continue to invest and innovate could be harmed. We take into consideration these conflicting interests by using a reasonable return on investment when setting the tariffs. Wherever it is possible, ACM offers room for competition, and oversees prices of products and/or services or prices for using the network, particularly where competition is not possible. At the same time, providers need to be stimulated to keep investing in their infrastructures. In this way, we constantly try to balance the short-term and long-term effects of our enforcement actions on consumers.

ACM promotes the creation of optimal conditions so that consumers have a good bargaining position

If there is a clear difference in knowledge about the products or services between the providers thereof and consumers, it may lead to an unbalanced market outcome. In cases where consumers (or groups of consumers) are unable to properly assess information or are insufficiently able to compare products, ACM seeks to raise consumers' awareness of their rights and options. ACM helps consumers actively exercise their rights (through consumer empowerment), not just by pointing out to consumers what their rights are, but also by explaining how they can make well-informed decisions. ConsuWijzer, the consumer information website operated by ACM, will play a crucial role in that context.



ACM therefore expressly aims at strengthening the demand side of the market, which still offers considerable potential for improving competition. To that end, ACM also works together with private organizations. The basic principle is that, where the market or consumers (or consumer organizations) can realize this aim themselves in a timely and efficient manner, the regulator should step back. When faced with the question of whether, as well as providing information to consumers, any additional measures are needed, ACM will always assess whether ACM is the right party to take the initiative or whether it can be left to the market or to private consumer organizations.

ACM enforces consumer protection laws

The Dutch legislature has specifically acknowledged that, in a number of situations, consumers and providers have different bargaining positions. Consumer protection laws impose on providers certain obligations aimed at countering unfair commercial practices. These obligations concern, for example, the way information is provided, applicable contractual terms, sales methods, and the quality of products and services that are offered. Should collective consumer problems arise because undertakings fail to meet these obligations, ACM will step in to restore the balance of power between consumers and businesses. Furthermore, this helps realize a level playing field on which undertakings can compete with one another for the favor of the consumer.

5.2. Public interests in ACM's oversight efforts

One of the important questions ACM faces is how to deal with the different public interests that play a role in our market oversight. The Netherlands Scientific Council for Government Policy (WRR) gave the following definition of public interests (2000):

'If the government is concerned about the protection of a societal interest based on the belief that this interest would otherwise not properly be protected, it is considered a public interest. Being concerned about societal interests as public interests thus means that the government makes the protection thereof the objective of its policies.'

The public interests, which the legislature has designated as such, form the starting point. Well-functioning markets, optimal regulation of statutory or natural monopolies, and consumer protection are public interests that must be protected, according to the legislature. That is why OPTA, the NMa, the predecessor of the Office of Energy Regulation, the Office of Transport Regulation, and the Netherlands Consumer Authority were created. The underlying objective is that, by protecting these public interests, welfare for the Dutch consumer is increased. ACM therefore has tasks and powers to intervene in situations where such public interests are jeopardized as a result of the market structure or market participant behavior. Examples include cartels or market-sharing agreements in order to raise prices, the exercise of market power by undertakings, or information asymmetry between providers and buyers. Such situations might call for ACM intervention in order to protect consumers or to restore the conditions in order for markets to function well.



Public interests and regulation

On the basis of the specific regulations for transport, telecommunication, energy and postal services, ACM additionally protects public interests relating to the affordability, quality, and availability of certain products and services. For example, this concerns the right of consumers to be connected to the power and natural-gas networks, or the right to a basic service of access to the telephony and internet networks. In that regard, it is critical to safeguard the quality and reliability of networks, as well as network investments to guarantee enough room for innovation. Moreover, it is also crucial for the power and natural-gas networks that investments are made in such a way that it becomes possible to get an increasingly larger share of energy from renewable sources. The costs that are associated with such investments are to be passed on to the end user, one way or another. Within the legislative limits, ACM will take sustainability and innovation questions into account to make the assessment of 'clean and affordable' coherent and consistent.

Public interests and competition

A free-market system can sometimes have adverse effects, for example, on the environment, which cannot be solved by the market or by consumer protection laws (so-called negative external effects). Conversely, it can also produce positive external effects (for example innovation), which are critical to competitiveness and long-term welfare growth. Having arrangements between undertakings could thus be desirable in order to protect public interests such as the environment and innovation. At the same time however, such arrangements could run counter to the public interest of having well-functioning markets.

Such arrangements could, for example, lead to higher consumer prices, thereby reducing consumer welfare, at least in the short run. In situations of both positive and negative external effects, competition regulations offer ACM the option to allow such arrangements subject to conditions. In such situations, ACM will always assess the necessity, proportionality and effectiveness of such arrangements between undertakings, which are claimed to promote, for example, innovation or sustainability. In addition, we explain what options for cooperation the Dutch Competition Act offers in this area, for example through the Knowledge Bank on Sustainability on ACM's website.

5.3. The ACM's oversight style

Enforcement is one of ACM's core tasks. However, ACM does not want to enforce just for the sake of enforcement. The impact of our actions is central. That is why ACM looks at the broader context when carrying out its statutory tasks. That entails, for example, exploring the question of whether an observed violation is an isolated incident or a symptom of a larger, underlying market problem. The objective is to solve market and consumer problems. We will thus continuously take into consideration the context and market structure. For example, are consumers in the market in question active or inactive? Are there any switching barriers? And is this market sufficiently transparent? We will also take advantage of academic insights into consumer behavior.



ACM thus takes a broader perspective, and will not merely investigate the alleged violation, but will also determine the root cause of the market or consumer problem in question. ACM subsequently selects the instrument or a combination of instruments that offers the highest probability of producing a structural solution to the problem. In that regard, it is crucial to look at the entire selection of formal and informal instruments at ACM's disposal. In certain cases, a fine imposed on an undertaking for a violation could be perfectly complemented with an awareness campaign aimed at the market's demand side (consumer empowerment). ACM has a wide range of statutory powers, and in order to fulfill our tasks as efficiently as possible, we aim for swift and pragmatic solutions where possible.

Imposing sanctions is and continues to be an important instrument, and ACM will not hesitate to use it in case of violations. In addition, ACM will use, among other instruments, norm-transmitting discussions, commitment decisions, monitoring, and market scans, whenever circumstances allow. We also intend to use strategic communication, aimed at increasing the willingness to comply, as an instrument to find solutions to market problems. Finding customized solutions based on sound problem analyses – that is what it is about.

In that process, ACM expressly has an eye for the safeguards for stakeholders, and for the care it must exercise in its actions. We make sure that our actions are of the highest quality in terms of legal soundness.

Looking from the outside in

From detection to finding solutions to market and consumer problems, oversight effectiveness is greatly influenced by the quality and intensity of our relationship with the rest of society. That is why we want to firmly embed external orientation into our organization and operations. We do so, for example, by creating detection teams in the oversight and regulation departments. These teams form the ACM's radar. They are constantly on the lookout for the most important consumer and market problems.

In that regard, the consumer information desk Consuwijzer plays a crucial part, too. Consuwijzer provides ACM with real-time information about the markets that we oversee. In addition, we wish to engage in a dialog with stakeholders by sitting down with them on a regular basis, discussing critical topics. Above all, the concept of 'looking from the outside in' is a guiding principle for our employees in all areas we operate in.

Thematic, sector-based and chain-based approaches

Problems we identify are dealt with as far as possible in an integrated manner, thereby either adopting an ACM-wide thematic, sector-based or chain-based approach. ACM-wide teams will assess what interventions and/or instruments at our disposal under the different legal powers and responsibilities are needed to find solutions. Such integrated approaches



are relevant for, for example, the housing market (construction, supply, financing) and health care market (car providers, health insurers, patients and the insured).

Cooperation with other regulators

Since market problems usually do not usually follow neatly the organization of their oversight, ACM seeks to cooperate, where needed, with other Dutch and international regulators. In that area, there is much untapped potential when it comes to ‘achieving more results with fewer resources.’ ACM has been given statutory powers to share information with other regulatory bodies, for example with the Dutch Tax Administration. This can be an added value when detecting, analyzing, solving, and preventing problems. We plan to take active part in the Consultation Forum of Regulatory Bodies (MTB), which is a forum where Dutch regulators work together towards more effective and more efficient oversight. ACM aims to be a thought leader in oversight innovation, and in the development of best practices for solving market problems. The effectiveness and efficiency of this collaboration can be further enhanced, for example by launching a joint investigation with fellow regulators into the state of play in certain markets, following up with a joint strategy for those markets.

International ambitions

ACM is an internationally-oriented regulator. We aim to be a leading and pioneering thought leader in market oversight, both within Europe as well as in the world. ACM will build on existing collaborations and will take advantage of the networks of the merging authorities. By helping harmonize and implement European legislation and regulations, consistency in oversight is increased. Consumers are thus given confidence, and firms that want to do business internationally are given certainty.

Advocacy

ACM takes part in the public debate. We spread our knowledge about those areas with which our oversight is concerned, for example, through questions regarding industrial organization. We do so by conducting market studies, and by identifying problems or shortcomings of our toolkit or of regulation. This position dovetails with that of our three predecessors. For example, the NMa recently pointed out the shortcomings in the regulatory framework for the rail and aviation markets. The way competition took shape in these markets has not yet led to the benefits that were initially expected for consumers. ACM will continue to identify such problems in the future.

ACM will release a Market Outlook every year, in which we outline the trends in our field, and highlight specific topics and problems. Whenever our own toolkit proves to be insufficient to solve identified problems and protect relevant consumer interests, ACM will raise these concerns in its Market Outlook.

Prioritization

ACM cannot solve every problem consumers or companies face. Given our limited resources, it is inevitable that too much will be asked of us. Realistic expectations about what ACM can



or cannot do must be managed carefully. That is why we will constantly have to decide on what market and consumer problems we tackle and which ones we do not. In this prioritization process, some of the most important criteria we use are the potential harm to consumers that the behavior of companies might inflict (quantitatively and qualitatively, directly and indirectly), the public interest that is at stake (for example, taking away consumer concerns or giving clarification of a statutory norm), and whether ACM is able to take action effectively and efficiently.

6. ACM as an organization

ACM's organizational structure follows its mission and strategy. That is why its regulatory and oversight tasks have been organized in such a way that their synergies can be maximized.

First, that means that all consumer tasks of the NMa, OPTA and the Netherlands Consumer Authority have been housed in a single department: the Consumer Department. This move enables ACM to provide consumer protection in an integrated and coherent fashion, thereby enhancing the oversight's effectiveness.

ACM's regulatory tasks have been housed in two departments. The Energy Department is charged with regulation of the energy and drinking water markets, which are industries that are and continue to be natural monopolies. The second department is the Telecommunication, Transport and Postal Services Department, which is charged with regulation of those industries. In the telecommunication, transport and postal services industries, competition is possible between or on networks. Here, we are talking about transport in the broadest sense of the word: transport of messages, goods, and people. These regulation departments are also charged with oversight on potential abuse of dominant positions in these regulated industries. ACM is thus able to use its sector-specific knowledge as effectively as possible, and to tackle market failures in an integrated manner.

The Competition Department focuses on safeguarding and promoting competition, thereby providing businesses with fair opportunities to do business and to innovate, which results in consumers actually having something to choose from. This department aims at solving the most important antitrust problems. It handles all concentration cases and cartel investigations. In addition, it is responsible for cases involving abuse of dominance, except for those in the regulated industries.

The Legal Department is responsible for the sanction decisions, objections, and all appeals. In addition, the department has advisory and coordination tasks such as safeguarding the quality of ACM's legal work, uniformity when handling requests under the Dutch Act on Public Access to Government Information, and legislative matters. So-called Chinese walls between the Legal Department and the enforcement departments ensure that employees that were involved in the first phase of investigations are not part of the teams in the second phase.



The Corporate Affairs and Communication Department (BBC) and the Office of the Chief Economist (EB) have ACM-wide tasks related to strategy, national and international cooperation, communication, and corporate affairs (BBC), and to economic analyses, quantification, and harm and outcome calculations (EB). As such, these departments form a vital connecting link between the various parts of ACM.

The Corporate Services Department provides corporate services to the rest of the organization such as integrated and advanced IT facilities.

The Board leads ACM. The members of the Board are thus the public faces of the organization, both within the Netherlands and abroad. The Board is the executive body of ACM. The Board, which consists of three members, decides by a collegiate vote.

With this organizational structure, we expect to be able to carry out our tasks effectively and efficiently, especially because, in addition to the 'hard' organizational structure, a number of important measures have been taken that stimulate ACM-wide cooperation, the philosophy of 'looking inwards from the outside', and an integrated approach to market and consumer problems. For example, the consumer information desk Consuwijzer plays a critical role for all of ACM's areas. Not only does it collect information from the market, and register consumer complaints and questions, it also provides consumers with information on the various industries and areas ACM oversees. Furthermore, ACM will set up a business information desk, which offers businesses a single desk covering the entire spectrum of ACM's activities.

Next, ACM has created a wide network of detection officers. This network collects and analyzes indications and market information that is retrieved through various channels. All of that information is used as a basis for an ACM-wide prioritization of market and consumer problems.

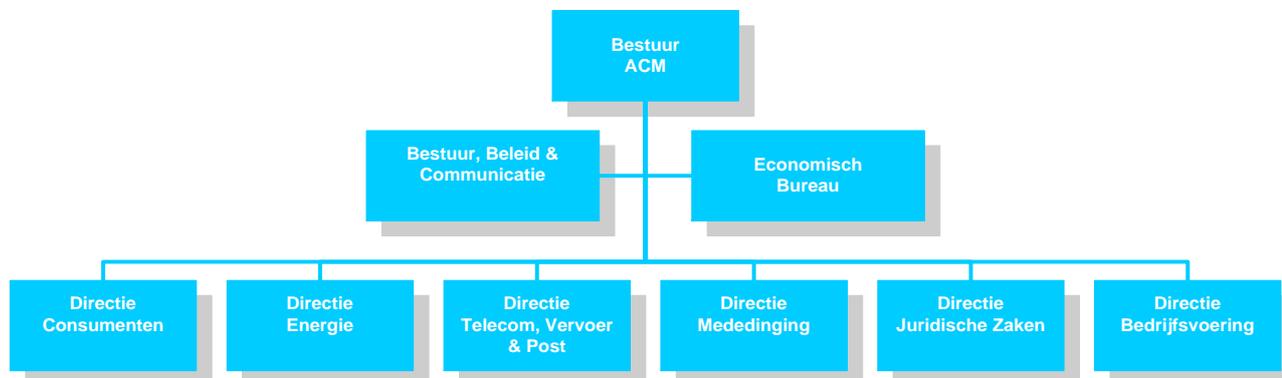
Furthermore, cross-departmental teams will be formed wherever such teams lead to effective approaches. Our employees are first and foremost ACM employees, who can be deployed in the execution of any of ACM's tasks.

7. In conclusion

We build on the work of the ACM's predecessors: the NMa, OPTA and the Netherlands Consumer Authority. However, ACM wishes to be more than just the sum of its parts. By bringing together the powers and expertise of the three regulators, and by reorganizing the new authority, we aim for a higher level of effectiveness and efficiency. Consumer interests and consumers are the common thread in all of our work. The ACM's strategy is not absolute and unchanging. In the next few years, we will anticipate new developments and changing circumstances. We are thus open towards our stakeholders, and will include them in finding solutions to problems.



Organizational chart of ACM



Bestuur ACM

Board of ACM

Bestuur, Beleid & Communicatie

Corporate Affairs and Communication

Economisch Bureau

Office of the Chief Economist

Directie Consumenten

Consumer Department

Directie Energie

Energy Department

Directie Telecom, Vervoer & Post

Telecommunication, Transport and Postal Services
Department

Directie Mededinging

Competition Department

Directie Juridische Zaken

Legal Department

Directie Bedrijfsvoering

Corporate Services Department