



Amicus Curiae

Article 15, paragraph 3, of the Regulation (EC) no 1/2003 (hereafter: the Regulation) states that the European Commission and the national competition authorities may, acting on their own initiative, submit written observations to their national courts in cases in which they are no party themselves, and which relate to the application of Article 101 or Article 102 of the Treaty on the Functioning of the European Union (TFEU). This power of the European Commission and the Netherlands Authority for Consumers and Markets (ACM) is also referred to as the power to act as ‘amicus curiae.’

The amicus-curiae power was introduced in the Regulation in order to ensure uniform application of Articles 101 and 102 of the TFEU when applied at a national level by national courts and competition authorities throughout the European Union. The European Commission and ACM do not require permission from the administrative-law courts to draw up written observations, but they do need permission to make oral observations. In the Netherlands, civil-law courts, next to administrative-law courts and ACM, may also apply Articles 101 and 102. In civil-law proceedings, ACM may intervene as amicus curiae if, in its opinion, competition law (at a substantive level or otherwise) is explained and/or applied incorrectly. The observations of the European Commission and ACM are of an advisory nature, and are not binding on the courts.

Until January 1, 2013, the amicus-curiae power was fleshed out in Sections 89h- 89j of the Dutch Competition Act. One of the legal predecessors of ACM (the Netherlands Competition Authority, NMa) had also drawn up guidelines in which it indicated in what way it would use the power to intervene as amicus curiae (Amicus Curiae Guidelines, August 13, 2004, Dutch Government Gazette 2004, 159).

When the Administrative Procedure Law Amendment Act (*Wet aanpassing bestuursprocesrecht*) came into force on January 1, 2013, this power was transferred from the Dutch Competition Act to Section 8:45a of the Dutch General Administrative Law Act (*Algemene wet bestuursrecht, Awb*). Section 8:45a, paragraph 1 of the Awb states that the European Commission and ACM, not acting as a party in the proceeding at hand, may submit written observations under Article 15, paragraph 3, first section, of the Regulation if they have expressed the wish to do so. Pursuant to this amendment, the Amicus Curiae Guidelines have been repealed, and will be revised, also in view of the legal succession by ACM as of April 1, 2013. The way in which ACM will use this power will not fundamentally differ from the NMa’s use thereof.

ACM’s Legal Department will perform the amicus-curiae interventions. All correspondence with regard to an amicus-curiae intervention must be sent by email to AmicusCuriae@acm.nl.