



A study into the commercial practices of debt collection agencies

The Netherlands Authority for Consumers and Markets
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Executive summary

This study conducted by the Netherlands Authority for Consumers and Markets (ACM) contains the findings of a market scan into the commercial practices of debt collection agencies. As regulator, ACM has the power to take action against violations of laws it enforces. Under the Dutch Act on Enforcement of Consumer Protection (Whc), ACM also enforces the Dutch Unfair Commercial Practices Act.

ACM has carried out this study in order to get an impression of the magnitude and nature of consumer problems with regard to debt collection in the Netherlands. ACM regularly receives indications from consumers about such problems. The total amount of outstanding debt in 2014 was approximately EUR 5 billion. Even with small amounts, the total potential harm to consumers is substantial.

ACM comes to the conclusion that consumers suffer emotional stress from and are financially harmed by the way debt collection agencies operate. This mostly affects individuals without college degrees, and low-income individuals. ACM sees three key problems:

1. Debt collection agencies confront consumers with wrongful or expired claims. This may be the case if an agreement between consumer and company is missing, for example, in the case of follow-up shipments after a 'free' sample.
2. Debt collection agencies confront consumers with wrongful costs and/or unclear costs. In these situations, the calculation method of the total amount of the claim is not correct (wrongful cost item, or item with too high costs), the general terms and conditions contain unreasonable provisions (such as that the remaining terms of a subscription become due for payment immediately), and cost specifications are lacking.
3. Debt collection agencies put pressure on consumers in an unacceptable way to pay their debts. They threaten to use powers they do not have, they claim assertively that the consumer must pay the debt collection costs, and they approach consumers in an aggressive manner.

ACM has found there are sufficient indications that these problems occur on a regular basis, both with individual debt collection agencies as well as with agencies that are members of trade association NVI. ACM also believes that these problems need to be dealt with and solved. In that context, ACM believes that the market has a clear responsibility: the debt collection agencies, trade association NVI, and also their clients.

In the approach to this problem, ACM can play a role, particularly because ACM has the power to take action against misleading and aggressive commercial practices. The findings of this study are enough reason for ACM to name unfair debt collection practices as one of the themes for its 2016 Agenda. ACM will coordinate with the Netherlands Authority for the Financial Markets (AFM) the exact division of powers since AFM also has enforcement powers under the Dutch Act on Enforcement of Consumer Protection.



1 Study into commercial practices of debt collection agencies

In this chapter, ACM explains the background and the objective of the study into the commercial practices of debt collection agencies. This chapter concludes with a short explanation of the research method.

Background

ACM has looked into the commercial practices of debt collection agencies because of several reasons. The first reason was that, through consumer information portal ConsuWijzer, ACM regularly receives indications from consumers about, for example, debt collection practices, which show that businesses benefit when employing unfair commercial practices. The potential harm to consumers because of these practices is substantial. Furthermore, these are most likely consumers in a vulnerable position, often dealing with more complex debt problems.

The other reason is the public and political attention that commercial practices of debt collection agencies attract. Consumer watchdog shows on television, other media, and consumer interest groups are often critical of the methods that debt collection agencies employ. In addition, two Dutch political parties, the socially-progressive Christian party ChristianUnion (CU) and the center-left Dutch Labor Party (PvdA), are working on a bill that seeks to improve the quality of the debt collection industry as a whole.

Under the Dutch Act on Enforcement of Consumer Protection (Whc), ACM has the power to act against these potentially unfair commercial practices, since this act also applies to debt collection agencies (and their activities) and their clients.¹ ACM can take action if consumers have been deceived as a result of having been provided incorrect or incomplete information about debt collection fees. ACM is also able to take action if the practices of debt collection agencies are aggressive. Practices can be considered aggressive if agencies exert unacceptable pressure or wrongfully collect claims. Furthermore, a commercial practice is unfair if a debt collection agency's actions are in violation of the standards of professional conduct. And more specifically, if members of a trade organization do not operate in accordance with their own code of conduct, they are considered to have used unfair commercial practices.

Objective

The objective of this study is to get an impression of the magnitude and nature of consumer problems with regard to debt collection in the Netherlands. Based on the identified problems, ACM is able to determine whether ACM can play a role in dealing with these problems. And if so, what that role could be.

¹ In the case of financial services, the Netherlands Authority for the Financial Markets (AFM) has the power to take action under the same law.



Scope

This study focuses on extrajudicial debt collection processes of private firms that are aimed at collecting debts from consumers.

Debt collection processes *between firms*, services by public debt collection agencies such as the Central Fine Collection Agency (CJIB), and debt collection processes because of arrearage with health insurance premiums fall outside the scope of this study. This also applies to the way debt collection agencies handle personal data of debtors. That is the task of the Dutch Data Protection Authority (CBP). Finally, this study will only very briefly touch upon the judicial route of debt collection, and the role of bailiffs therein.

Explaining the research method

The findings in this report have been based on an analysis of the indications that consumers have submitted to consumer information portal ConsuWijzer and to online discussion boards on consumer topics, of studies (scientific or otherwise), and of media reports. ACM has additionally consulted with a large number of industry experts, the courts, debt relief agencies, scholars, and international regulators. Also, ACM analyzed almost 400 debt collection letters (anonymized), which it received from two municipal debt-relief agencies, and from the industry association of debt relief agencies. Finally, ACM commissioned research firm Motivaction to carry out a consumer study.² This study's objective was to gain insight into the effect of debt collection processes on consumers. In the study, consumers were asked about their experiences in the previous year. Motivaction's report is an annex to this study.

The combination of information from various sources provides ACM a sufficiently solid basis for putting together an accurate picture of the debt collection industry. What is revealed is that there are clear indications of consumer problems in debt collection processes. All of the information appear to indicate that these problems occur regularly across the entire industry, both with independent agencies as well as with firms that collect debt themselves, and both with debt collection agencies that are member of trade organization NVI as well as with agencies that are not.

² Motivaction, consumer study, December 2014.



2 Background information about debt collection processes

In this chapter, ACM explains its definition of a debt collection agency, and that of a debt collection process (including the level of the claim). A description of the market is given, followed by conclusions.

What is a debt collection agency?

A debt collection agency is a business that carries out activities for the purpose of collecting outstanding debts owed by consumers, either for itself (sometimes called a first-party agency) or on behalf of another business (then it is sometimes called a third-party agency), generally on a “*no cure, no pay*” basis. Creditor clients usually have a structural business relationship with debt collection agencies. In addition, debt collection agencies sometimes buy debts that are difficult to collect for a fraction of their nominal value, and subsequently attempt to collect them in full for themselves. In those cases, the debt collection agency has become the owner of the debt, and, as such, the creditor.

Debt collection agencies do not have any statutory powers. Anyone can carry out debt collection activities. In practice, lawyers, bookkeepers, administrative service organizations, and firms with bailiff services also carry out such activities.

Debt collection processes

Consumers who do not pay (or pay too late) for products or services that have been provided by a business are in arrears. The business in question will then as creditor seek to collect the debt himself or it will transfer the debt to a debt collection agency. This is usually followed by a protracted process with a lot of back-and-forth (over the phone or mail). On the one hand, the debt collection agency wishes to collect the debt as quickly as possible and in full. On the other hand, the consumer involved may be unwilling or unable to pay. Tensions between the agency and the consumer are thus inherent to debt collection processes. A study of the Research and Documentation Centre (WODC) reveals that the majority of debtors eventually pay the debt collection agency. If payment is not made, the debt collection agency may then choose to take the legal route by having the consumer in question be summoned by a bailiff. Debt collection agencies are unable to do this themselves. If the court rules in the debt collection agency’s favor, the bailiff will then collect the debt.

Revenues for debt collection agencies, costs for consumers

Since the adoption of the Dutch Act on the Standardization of Extrajudicial Collection Costs (In Dutch: Wet ter normering buitengerechtelijke incassokosten, or Wik) in 2012, rules have been in place about in what cases and how debt collection agencies are allowed to charge collection costs when collecting outstanding debt. In this way, the legislature aims to enable creditor and consumer to



set the maximum amount of collection costs together in a simple manner. Legal certainty in extrajudicial collection processes thus increases.

Under the Wik, debt collection agencies are allowed to charge consumers collection costs should they fail to pay the debt within 14 days after receiving a notice. This notice that the agency sends must mention the payment period of 14 days, as well as what the collection costs are if the consumer fails to pay on time.

In addition, the act also sets the calculation method for the maximum collection costs (see the text box below), using a so-called stepped-pricing system. The collection costs are at least EUR 40 and no more than EUR 6,775. Debt collection agencies cannot charge consumers any other costs such as summons costs, reminder costs, registration costs, or file costs.

Debt collection costs: stepped-pricing system		
<i>Level of claim (debt)</i>	<i>Max. percentage</i>	<i>Debt collection costs</i>
- over the first EUR 2,500	15%	Minimum EUR 40
- over the next EUR 2,500	10%	
- over the next EUR 5,000	5%	Maximum EUR 6,775
- over the next EUR 190,000	1%	
- over the amount above that	0.5%	

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The claim that is brought by the debt collection agency against the consumer thus consists of:

- The initial claim (debt): the amount that the creditor originally had charged the consumer.
- The debt collection costs: the maximum amount that the debt collection agency is allowed to charge for any costs it incurs.
- VAT over the debt collection costs: although some industries and activities are exempted from VAT, VAT may be charged on the debt collection costs when the debt is transferred to a debt collection agency.
- Interest: after each year, interest may be added to the initial claim. If the contract does not mention anything about the interest rate, then the statutory interest applies.

Impression of the debt collection market

A WODC study from 2012 revealed that an estimated 444 companies in the Netherlands carry out debt collection activities.³ Of these 444 companies, approximately 65 percent carry out debt collection activities only, while the other 35 percent also carry out other activities. In 1989, trade organization NVI was established, which has 31 debt collection agencies as its members. One of the NVI's objectives is to ensure that its members' operations are professional, and that they comply with the requirements of the Debt Collection Hallmark (in Dutch: *Incasso-Keurmerk*) and with the code of conduct. As such, these member agencies are able to differentiate themselves from other

³ Geurts, T., *Markt van buitengerechtelijke incasso*, Research and Documentation Centre (WODC), 2012.



organizations that use illegal practices, and they are able to improve the industry's reputation, according to their objectives.

According to NVI data, it turns out that the total amount of outstanding debt that its members were handling rose from EUR 6.2 billion in 2013 to EUR 7 billion in 2014. Of this amount, approximately 80 percent concerned consumer debt. As NVI members claim that they represent 70 percent of the market, the total amount of outstanding debt in the Netherlands must be considerably higher.

The number of people that end up in debt relief programs is increasing, as is the average debt that these individuals have when entering these programs (that average is currently at EUR 38,500). A report by the Dutch Ministry of Social Affairs and Employment reveals that 32 percent of Dutch households in 2014 were in arrears. One in six households are at a risk for problematic debt situations. This has consequences for the number of debt collection processes. According to the consumer study, it turns out that almost 8 percent of consumers had to deal with a debt collection agency last year. More than a quarter of these individuals deal with debt collection agencies on a regular basis. In addition, 69 percent of these individuals say they have had one or multiple problematic experiences with debt collection agencies.

Conclusions

Based on the background information regarding debt collection processes, ACM comes to the following conclusions:

- The market for outstanding consumer debt is substantial, and by extension, so are the potential consumer problems. When combined, outstanding debts with different firms may lead to a larger debt problem among consumers.
- For consumers, it can be difficult to understand the claim that the debt collection agency has filed against them. After all, the total amount consists of different cost items, each of which have different origins.
- Trade organization NVI has a code of conduct for its members. If trade organization members do not comply with their code of conduct, it is a violation of the consumer regulations that ACM enforces. ACM may then decide to take enforcement actions.



3 Consumer problems in debt collection processes

In this chapter, ACM explains the three consumer problems that occur in the market for debt collection processes. These findings have been based on an analysis of all the information that has been obtained. Wherever relevant, ACM refers to sources, even though it does not attempt to provide an exhaustive list of references.

Overarching problem

ACM comes to the conclusion that consumers suffer emotional stress from and are financially harmed by the way debt collection agencies operate. Consumers experience problems in various steps of debt collection processes: when they receive a claim, when they are faced with the total amount of the claim they received, and by the way debt collection agencies operate when the claim is collected.

In this context, ACM sees three key problems:

1. Debt collection agencies confront consumers with wrongful or expired claims.
2. Debt collection agencies confront consumers with wrongful costs and/or unclear costs.
3. Debt collection agencies put pressure on consumers in an unacceptable way to pay their debts.

Problem 1: wrongful or expired claims

ACM has established that consumers are drawn into debt collection processes because the debt collection agency has filed a claim that is or may be wrongful or expired.

Wrongful claims

A claim is considered wrongful if a legally valid agreement between the consumer and the business in question is lacking. However, the business subsequently does insist on payment of the claim.⁴ ACM regularly receives reports from consumers about businesses that try to make money out of their unfair commercial practices by using debt collection processes, for example, through unsolicited follow-up shipments that follow after 'free' samples (also called subscription traps). Claims can also be wrongful if these are fraudulent, if consumers have already paid them, or if the debt has been forgiven. In such cases, good record-keeping may prevent disputes.

The vast majority of reports about debt collection filed with ConsuWijzer concerns wrongful claims. In the consumer study, several reasons for negative experiences with debt collection agencies are discussed, including⁵:

- 14 percent of consumers disagree with the level of the claim;

⁴ According to NVI, consumers sometimes deliberately challenge an agreement in order to defer payment.

⁵ See table 2.1 of Motivaction's consumer study.



- 14 percent suddenly had to deal with a debt collection process after not having heard anything (from the business) for two years;
- For 11 percent of consumers, the claim concerned products or services that had not been provided (in full or partially);
- 10 percent had not asked for the product or service.

Another finding in the study is that it is plausible that consumers often fail to recognize wrongful claims as such or, in many cases, are not competent enough to be able to take action in such situations.

Additionally, according to the Fraud Help Desk (in Dutch: *FraudeHelpdesk*), the number of fraudulent bills is rising: in 2014, consumers paid EUR 12.7 million in wrongful claims, which is EUR 4.5 million more than in 2013. NVI has already contacted the Fraud Help Desk about possibly fraudulent clients.

Old and expired claims

As long as the creditor continues to send out reminders, its claims do not expire. If he does not send out any reminders, the statutory period of limitation of 20 years, in principle, applies. However, there are several exceptions: a period of two years applies to consumer purchases and to the supply of energy. Since creditors send out reminders often, many old claims continue to be outstanding. And because of interest, these outstanding amounts can become quite huge. And, especially in combination with the practice of selling outstanding debts to others, consumers can face a lot of uncertainty. After all, consumers often do not have the relevant documents any more, not even in order to prove that they *have* paid. Furthermore, consumers themselves must invoke the period of limitation. To be able to do so, they obviously need to know this rule exists, and, moreover, they need to have properly kept their records. It is assumed that this is often not the case.

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Problem 2: wrongful costs and/or unclear costs

ACM has indications that debt collection agencies do not always comply with the official rules concerning costs. This results in wrongful costs and/or unclear costs. Costs are wrongful if there is a cost item that should not have been charged or if the calculated costs of a specific item are too high.

Wrongful costs

The calculation method for determining the maximum amount of collection costs that debt collection agencies are allowed to charge has been laid down in the Wik. ACM has established that agencies do not always do this correctly: debt collection agencies charge collection costs twice, VAT is sometimes charged wrongfully, the calculation is incorrect (calculating the collection costs first, and then adding the claims instead of the other way round), and sometimes extra costs have been added after all.

In approximately 20 percent of the analyzed letters, ACM found that the collection costs had been calculated incorrectly. The consumer study, too, has revealed that consumers see too high costs (including collection costs) as the most problematic issue: more than half of them have indicated



this.⁶ Multiple interviewees have noted that they regularly encounter situations where wrongful or too high costs have been charged.

According to ACM estimates, the magnitude of the harm per consumer is not that considerable. However, considering the high number of debt collection processes, total consumer harm could be substantial. ACM considers this a significant risk, and shares the industry's opinion that these are not isolated incidents.

Cost-raising provisions in the terms and conditions

ACM has observed that businesses (and, by extension, the debt collection agencies that they hire) use provisions in the terms and conditions, which, from a legal perspective, are unnecessarily burdensome. Moreover, these provisions also lead to higher costs for consumers. First of all, businesses sometimes use an interest rate that is higher than reasonable. The jurisprudence so far has not yet given a clear answer as to which interest rate is too high, and which is not. This varies per product or service. If the level of the interest rate is not laid down in a contract, the statutory interest rate applies.

Second, ACM has noticed that the terms and conditions of some subscriptions mandate that, in case of non-payment, the remaining terms become due for payment immediately, whereas the service will stop. The fact that nothing is given in return for that period makes these types of provisions unnecessarily burdensome, according to a national consultation forum on technical legal issues for the sub-district and civil sectors (LOVCK or *Landelijk Overleg Vakinhoud Civiel en Kanton* in Dutch).

ACM has looked into the general terms and conditions of telecom providers and of several other businesses. Virtually all telecom providers use the statutory interest rate, while one provider deviates from that rate. However, all telecom providers use the provision that any remaining terms of the contract will become due for payments immediately. This is not the case with the other businesses that have been looked at. In the consumer study, 16 percent of consumers indicated that they have experienced too high interest rates in debt collection processes. However, the question is whether this was actually the case, or that consumers are not always aware of what interest rate is reasonable. Finally, ACM notes that it seems that debt collection agencies do not (or hardly) check the level of the claim, which is based on, among other things, the provisions in the terms and conditions. For NVI-members, this seemingly violates their code of conduct, in which it is laid down that any amount that is charged cannot be at odds with the law.

⁶ See table 2.1 of Motivaction's consumer study. However, this should be put in the right perspective, as consumers are apparently not always aware of the statutory cap on debt collection costs.



Unclear costs

According to ACM, debt collection agencies sometimes do not give any cost specifications (or very limited ones) to consumers. This is the case with both NVI-members as non-NVI-members. In the NVI code of conduct, members are required to specify all costs when filing a claim. Despite the recommendations of the LOSR (a national organization for social workers) from 2008, the term 'specify' has not been clarified in more detail, for example, to include the individual cost items of the original amount (or the calculation thereof), the interest rate, the debt collection costs, and any VAT charged on the debt collection costs.

An analysis of the letters of municipal debt-relief agencies has revealed that, in one in three letters, debt collection agencies do not provide any cost specification, but only mention the total amount. In the other letters, specifications varied from very limited to extensive. This was the case for both NVI-members and non-NVI-members. Commercial advisors and municipal debt-relief workers underline that debt collection agencies hardly provide any insight into the costs (or even none at all). The consumer study, too, shows that, to 10 percent of those consumers who experience problems, it was unclear on which bill the claim they had received was based, and to 8 percent, it was unclear on behalf of which firm the debt collection agency acted.

According to ACM, consumers often receive poorly specified or completely unspecified cost information. As a result thereof, it is difficult for consumers to be able to check these costs themselves.

Problem 3: unacceptable pressure when collecting the claims

ACM has established that debt collection agencies regularly exert unacceptable pressure when collecting claims from consumers. Situations of unacceptable pressure include threatening with powers that debt collection agencies do not have, and approaching consumers aggressively. For the record, ACM would like to note that pressure on debtors will always exist in one form or another, and that consumers will always perceive certain behavior as such. However, as long as the pressure that is exerted is acceptable, ACM will not consider such behavior a problem.

Threatening with powers that debt collection agencies do not have

In their communication, debt collection agencies threaten with taking measures (legal or otherwise) of which they lack the power (statutorily) to do so, such as summons, forced sales, evictions, and seizures of bank accounts, salaries or social benefits. They do so mostly as a way to force immediate payment.

In the consumer study, consumers indicate that debt collection agencies regularly threaten with seizures: 23 percent of all consumers that have had a problematic experience in a debt collection process over the past year have said they have received such threats. Consumers also mention threats with a negative credit score (with BKR, the Dutch credit score agency), and threats with bank account seizures. Interviewees underline that such practices do occur. In their observations, debt



collection agencies sometimes also indicate in their letters that they are already in possession of a court ruling, whereas such is not the case. The letters of municipal debt-relief agencies that ACM has analyzed reinforce that impression. In one in two letters, the debt collection agencies threatened to take steps themselves even though they lacked the necessary statutory powers to do so.

Aggressive behavior

Debt collection agencies sometimes behave aggressively towards consumers. The consumer study reveals this usually involves using abusive language and scare tactics against consumers. Other behavior includes contacting consumers on social networks, or contacting their employers or social security office. In addition, interviewees note that debt collection agencies use impressive logos, send multiple text messages, make repeat calls (including automated calls), and claim assertively that consumers will have to pay the process costs. They also noted that debt collection agencies are subsequently unavailable or very hard to contact, and that they sometimes are unwilling to help with setting up a debt repayment plan or with statutory debt-relief assistance. The latter is predominantly observed with purchased debts. ACM notes that debt collection agencies are not required to cooperate. For consumers however, it means that it becomes more difficult for them to get out of debt.

ACM concludes that this problem can be enormous. Independently of each other, various interviewees mention similar practices. In addition, ACM has observed in approximately 8 percent of the analyzed letters that unacceptable pressure has been exerted on consumers.

Conclusions

ACM comes to the following conclusions:

- Debt collection agencies exerting some pressure on consumers is justified. However, there is also the risk of unacceptable pressure, which may be classified as an aggressive commercial practice. This risk is presumably higher in the case of purchased debts, as structural business relationships with customers are lacking.
- Based on all the information, ACM believes that there are sufficient indications that consumers are financially harmed and suffer emotional stress when having to go through debt collection processes, both by misleading practices as well as by aggressive behavior by debt collection agencies.
- Individuals with low incomes are particularly harmed. ACM finds this situation distressing.
- One aggravating factor is that debt collection agencies are often not good at keeping records of the backgrounds of individual debt collections processes. Another factor is that the courts do not conduct ex-officio checks on prescription, and that, due to a lack of time, debt relief workers hardly deal with the validity of the claims in the files of debtors that they assist.
- The problem is of such a magnitude that it is necessary to find an approach and solution to the three identified problems, even though the exact magnitude is not easily determined.



- It is obvious that ACM can play a role in this context as the three identified problems appear to violate the provisions of the Dutch Unfair Commercial Practices Act.



4 Relevant circumstances

This chapter discusses circumstances or trends that aggravate or may aggravate the consumer problems ACM has identified.

Adoption of the Wik

The adoption of the Wik (the Dutch Act on the Standardization of Extrajudicial Collection Costs) in 2012 had an effect on the day-to-day operations of debt collection agencies. For example, several experts believe that the introduction of the 14-day term limit has led to consumers being confronted with debt collection costs sooner than previously. Companies saw a business case in the debt collection costs. That is why they began carrying out the debt collection processes themselves. According to the NVI, this has led to a turnover shift of approximately 20 to 30 percent from independent debt collection agencies to debt collection departments of major firms. However, the market is currently moving in the opposite direction again, says the NVI.

In addition, economic developments have resulted in an increase in debt collection processes. Interviewees also indicate that the revenues of debt collection agencies have come under more pressure as clients increasingly look at prices. That increased focus on prices is because they are getting more and more debtors, which drives up the costs of debtor records management. This is particularly the case with health insurances and energy, in which cases it is not possible to stop the service quickly if customers are in arrears. These trends have led to debt collection agencies searching for new business models for adding value and for reducing costs. Examples that are mentioned include secondment of staff, providing expertise, reorganizing one's own company, and automating internal business processes.

Purchasing debts

Debts have been purchased for years now, and this practice is growing. Interviewees say that this rise is particularly observed in the telecom and energy industries, and with finance corporations. According to the NVI, the percentage of purchased debts compared with the total number of debts is low. Also, it is said that mostly the larger debt collection agencies purchase debts. Another interviewee indicated that approximately 60 percent of the activities of the five largest debt collection agencies involve purchased debts.

Contrary to the original creditor, the debt collection agency does not have a structural business relationship with the consumer in question. Moreover, mostly old debts are involved, meaning that the consumer has not paid for quite a while. On the one hand, this situation can lead to unacceptable pressure exerted by the debt collection agency in an attempt to force payment after all. On the other hand, communication issues may arise if the consumer in question is not informed of the transfer of his debt to another company, and if the debt collection agency does not have a complete file (including the original agreement) or any other arrangements made between the original company and the consumer. According to various sources, if consumers or their representatives have any



questions about their debts (or the calculation thereof), debt collection agencies respond slowly, insufficiently or fail to respond at all. However, the NVI notes that debt collection agencies have an interest in having correct and reliable processes, as a result of which more debts can be paid either in full or in part.

Increase in court fees

Rising court fees have an effect on day-to-day operations of debt collection agencies. After all, this cost item is a key variable in the creditors' risk assessment of summoning consumers, especially if small debts are concerned. On the one hand, it can lead to more pressure on the extrajudicial route with possibly unacceptable behavior as a result thereof. On the other hand, it could lead to possible loss of revenue for debt collection agencies, because the costs and risks of a judicial process may not offset the potential benefits.

Poor knowledge among consumers

Consumer studies reveal that consumers are not fully aware of what debt collection agencies can and cannot do. More than half of consumers do not know or not fully know what powers debt collection agencies have. This lack of knowledge is most apparent among individuals without a college degree and among low-income individuals. In addition, 67 percent of consumers do not know that, according to the Wik, debt collection costs for small claims cannot exceed EUR 40. And that companies are only allowed to charge debt collection costs after 14 days after the consumer has received a notice.

One possible explanation for this lack of knowledge is that the relevant information cannot be easily found or understood, for example, the information about the correct calculation method for the debt collection costs. A lot of capacity (cognitive or otherwise) is needed to be able to understand such information. For individuals without a college degree, this may prove very difficult. Moreover, interviewees say that receivers, debt relief workers and debt collection agency staff do not always have enough time and/or knowledge to inform consumers properly.

Because of their lack of knowledge, some consumers may decide sooner to pay (while others do not, even though they have to pay), they experience more stress, and complain less, thereby keeping the problem under the radar. ACM also believes that consumers are not fully able to recognize wrongful claims and incorrect costs, and, by extension, to take any action if they did.

Conclusions

ACM comes to the following conclusions:

- Economic and legal trends affect market dynamics. This gives debt collection agencies incentives to innovate. ACM welcomes the dynamism in the market, as it creates opportunities for other companies (new and incumbent). However, it also creates additional



risks: debt collection agencies may approach consumers in an aggressive manner or they may give them misleading information.

- The lack of knowledge among consumers makes them vulnerable. Moreover, consumers may have difficulties using the knowledge they *do* have due to the stress they might experience. One of ACM's concerns is that it mostly affects individuals without college degrees, and low-income individuals.

5 Conclusions

ACM promotes opportunities and options for businesses and consumers. Enhancing consumer welfare in the broadest sense of the word is the key driver behind ACM's actions. ACM has carried out this study in order to determine the nature and magnitude of consumer problems in extrajudicial debt collection processes.

ACM comes to the conclusion that consumers suffer emotional stress from and are financially harmed by the way debt collection agencies operate. In this context, ACM sees three key problems:

1. Debt collection agencies confront consumers with wrongful or expired claims.
2. Debt collection agencies confront consumers with wrongful costs and/or unclear costs.
3. Debt collection agencies put pressure on consumers in an unacceptable way to pay their debts.

ACM believes that there are sufficient indications that these problems occur on a regular basis. And it believes that these problems need to be dealt with and solved.

In that process, ACM believes that the market has a clear responsibility. This applies to both the individual debt collection agencies as well as to the NVI as the trade association, and particularly to the companies that act as clients of these debt collection agencies. From a legal perspective, they can be considered actors within the meaning of the Dutch Act on Enforcement of Consumer Protection (Whc). ACM also believes that consumers have a responsibility of their own, and that, in some cases, they can take that responsibility a bit more. Consumers should pay correct bills on time and in full, whenever possible. If consumers are not able to take that responsibility in practice, help is needed.

In the approach to this problem, ACM also recognizes that it can play a role, too, particularly because ACM has the power under the Dutch Act on Enforcement of Consumer Protection to take action against misleading and aggressive commercial practices of debt collection agencies and their clients. ACM therefore has the statutory tools to help find a solution to this problem. On top of that, ACM has, more broadly speaking, a responsibility to empower consumers. Also, the debt collection market is a substantial market with problems for vulnerable consumers. Finally, ACM sees that it can play a role as society and lawmakers see the importance of having a well-functioning debt collection market with few consumer problems.



The findings of this study are enough reason for ACM to name unfair debt collection practices as one of the themes for its 2016 Agenda. ACM will coordinate with the Netherlands Authority for the Financial Markets (AFM) the exact details of this theme since AFM also has enforcement powers under the same act.