



ACM Procedure regarding

Market investigations

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1 Introduction

Under Section 2, paragraph 4 of the Establishment Act of the Netherlands Authority for Consumers and Markets (hereafter: IwACM), the Netherlands Authority for Consumers and Markets (ACM) has the power to conduct market investigations and to draw up reports, if it considers this to be beneficial to the performance of its duties: ensuring that markets work well, that market processes are orderly and transparent, and that consumers are treated with care.¹

This procedure explains why ACM will conduct more market investigations (*chapter 2*), and how ACM will select the market investigations that it will conduct (*chapter 3*). Also, this procedure offers insight into the process that ACM will typically use when conducting market investigations (*chapter 4*). In that context, the procedure will clarify how and when ACM requests and processes information, and what the individuals involved can expect from ACM, and vice versa. In that way, this procedure helps create a clear and understandable approach to market investigations.²

Attention: not all investigations or studies that ACM conducts are market investigations within the meaning of Section 2, paragraph 4, IwACM. Market investigations that are conducted on the basis of this power will be clearly designated as such and can be recognized as such by the public announcement thereof as well as on ACM's website.

2 Why market investigations?

ACM is committed to ensuring that markets work well for people and businesses, now and in the future. With that goal in mind, ACM conducts competition oversight, regulates several specific sectors, and enforces compliance with consumer law. We do so by, for example, drawing up rules, combating distortions of competition, and educating consumers. In order to be able to carry out its statutory duties properly, ACM can conduct market investigations.³ Market investigations offer ACM greater insight into the functioning of markets and any bottlenecks such as barriers to entry, restrictions of the consumer choice process, and reduced incentives to innovate. In that way, ACM carries out its duty of ensuring that markets work well, even without a suspected violation of the rules. With a market investigation, ACM looks at the underlying causes and effects of a market that is not functioning well, and offers solutions for ensuring that it can work better. On the basis of these market investigations, ACM can put forward recommendations to consumers or businesses or, if such is more logical, propose solutions with regard to the domains of others, such as other regulators or policymakers.

In the past, ACM conducted market investigations into various sectors, whether or not in collaboration with other regulators. Examples include the study into differentiation opportunities and consumer choices in the health insurance market⁴, the market investigation into competition on the Dutch savings market⁵,

¹ Section 2, paragraph 5, IwACM.

² This procedure offers an overview of how market investigations are usually conducted. It may happen in individual market investigations that not all of these steps need to be taken or, in fact, that additional steps need to be taken. This procedure can be revised from time to time following real-world experiences and insights, and also to reflect trends and developments in markets, economic theories and/or the legal foundations.

³ Section 2, paragraph 4, IwACM.

⁴ ACM and NZa (2024), Policy differences and consumer choices on the health insurance market (in Dutch: Polisverschillen en consumentenkeuzes in de zorgverzekeringsmarkt), ACM / NZa: Den Haag / Utrecht [Rapport ACM en NZa: Polisverschillen en consumentenkeuzes in de zorgverzekeringsmarkt | ACM.nl](#)

⁵ ACM (2024), Competition on the Dutch savings market, ACM: Den Haag [Having consulted its study into the savings market, ACM publishes the definitive version thereof | ACM](#)

the market investigation into cloud services⁶, the market investigation into app stores⁷, and the market investigation into the effects of paid rankings on consumer welfare⁸.

One key reason for conducting market investigations is that ACM regularly sees complex market problems that involve multiple regulatory and policy domains, as a result of, among other reasons, economic developments such as digitalization, the sustainability transition, and increased market concentration. This calls for a holistic and analytical approach, while also paying attention to multiple perspectives. Also, situations may arise where competition is impeded with undesirable consequences for people and businesses, even though no obvious violation in any specific regulatory domain is committed. With market investigations, ACM is able to investigate such market outcomes, gain insight into the underlying causes and mechanisms, and, based thereon, come up with solutions.

ACM does not have a general power to set out rules or impose instructions on businesses after such market investigations. However, ACM can, during a market investigation, identify undesirable market outcomes, and make recommendations to the legislature to introduce new rules, or to call on businesses to adjust certain practices. As such, the instrument of market investigations is an additional tool in ACM's toolkit for ensuring that markets work well. Should ACM, during a market investigation, come across a possible violation of one of the laws ACM enforces, ACM can take enforcement action on the basis of that law. With those instruments, violations can be ended.

3 Selecting market investigations

ACM can launch market investigations of its own accord. In that context, it is important to select those markets where there are indications that they are not working properly. For the selection of such relevant markets, ACM uses various sources. For example, ACM looks at reports that it receives such as complaints filed by consumers (or consumer organizations) and businesses. Consumers and businesses can file reports about markets that do not function properly with ACM on [its website](#) (in Dutch). ACM also actively searches for markets that do not function properly by looking into public sources (such as reports in the media), analyses of market characteristics, and discussions with scholars, policymakers, and market participants. Finally, ministers can, possibly following a request from the Dutch House of Representatives, ask ACM if it sees reason for launching a market investigation.

ACM must make choices about which markets it will investigate and which not. ACM will investigate those markets with a prominent social relevance, for example, a market where a large group of consumers is affected directly or indirectly. In addition, it can also be decided to investigate a market that fits with ACM's focus areas (promoting an open and fair digital economy, accelerating the energy transition, and making the economy more sustainable). Finally, there must be a possibility that the market can function better as a result of ACM's recommendations.

Since it is often not immediately clear on the basis of the first reports how big the problem actually is, a short internal investigation (preliminary investigation) is usually carried out in order to get a better overview of the problem. In that preliminary investigation, questions need to be answered such as "What is the actual problem (clear theories of harm)?", "Is ACM the best placed authority to investigate this market?", "Can the problem actually be investigated, and how can this be done best (research

⁶ ACM (2022), Market investigation into cloud services, ACM: The Hague, [Market investigation into cloud services | ACM.nl](#)

⁷ ACM (2019) Market investigation into app stores, ACM: The Hague, [ACM launches investigation into abuse of dominance by Apple in its App Store | ACM.nl](#)

⁸ ACM (2021), Sponsored Ranking: an exploration of its effects on consumer welfare, ACM: The Hague, [ACM sees risks associated with paid ranking for consumers and competition | ACM.nl](#)

methods)?" and "Are there any recommendations possible that will help the market function better?". This will result in a problem-definition memo, which will be used as the start of the market investigation.

4 Process of market investigations

This chapter describes what phases ACM goes through in market investigations. Since each market is different, the structure of market investigations may vary. ACM seeks to publish a definitive market investigation, possibly including recommendations, within one year after the public announcement and the publication of the problem-definition memo.

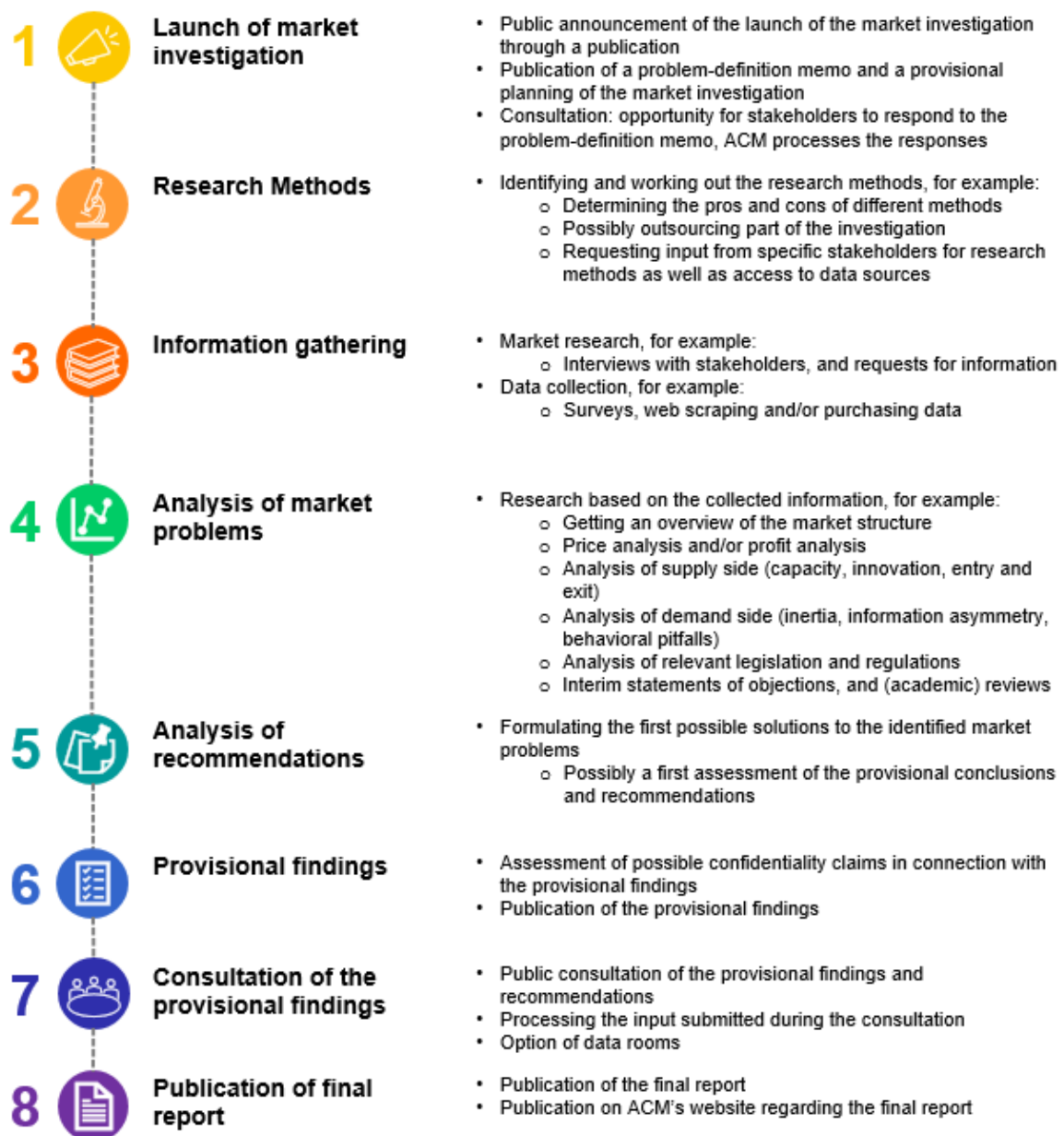
ACM will create on its website a separate page with information about ongoing market investigations. On this page, ACM publishes documents that are related to market investigations such as a schedule, provisional findings, and the final report. Communications with stakeholders is also published on this page, such as the responses of stakeholders at different stages in the process.

ACM divides its market investigations into five different phases. These phases are subdivided into different steps that ACM takes in each phase. Figure 1 is an overview of the different steps. The five phases are as follows:

1. Launch of the investigation
2. Information gathering and analysis
3. Publication of the provisional findings, and the public consultation thereof
4. Publication of the final report and recommendations, if any
5. Evaluation of the market investigation

During the market investigation, ACM may come across indications of a possible violation of the rules that ACM enforces, for example a violation of consumer law or the Dutch Competition Act (in Dutch: Mededingingswet). In such situations, ACM can decide to launch an enforcement investigation. Enforcement investigations come with other legal certainties and procedures.

Figure 1: an overview of the different steps that ACM takes during a market investigation



4.1 Launch of the market investigation

The market investigation officially starts with the publication of a problem-definition memo by ACM. In this memo, ACM explains why it will investigate the market in question. ACM also discusses the scope of the market investigation as well as the theories of harm. In addition, the research methods and information sources are explained, and a provisional schedule with key milestones is given (information gathering, draft statement of objections, consultations, etc.).

At the start of the market investigation, stakeholders are given the opportunity to respond to the problem-definition memo, and to put forward suggestions. The response deadline will, generally speaking, be short because of the lead time of the market investigation, and will be set in the schedule

at the start of the market investigation. ACM publishes the responses of stakeholders on the market investigation's page, together with an explanation of how this input leads to any changes to the market investigation.

At the start of the market investigation, ACM approaches other regulators that conduct oversight over the market in question (or a part thereof). Effective coordination among the different regulators is vital for preventing any duplications or any discussions about powers.

4.2 Information gathering and analysis

In this phase, ACM gathers and analyzes information in order to get a picture of the market and of the theories of harm. At the end of this phase, ACM works out its recommendations on the basis of any bottlenecks. In Figure 1, this phase encompasses steps 2 through 5.

ACM carries out a market investigation by holding interviews and requesting information from businesses, such as cost data, sales data, interviews, and strategic documents.⁹ ACM can conduct a study among consumers using surveys, interviews, and focus groups. The market investigation can additionally consist of literature research, sessions with experts, and information from public sources.

During the market investigation, the findings may result in the theories of harm needing to be changed. In the case of major changes, ACM can inform the stakeholders about those changes, so that they are able to respond to them, if necessary. Results of studies (or substudies), too, can be published prematurely. If advanced and complex analyses are conducted in the market investigation, ACM can have a review carried out by an expert (academic expert or otherwise).

On the basis of the findings from the market investigation as well as the identified theories of harm, ACM draws conclusions about the functioning of the market, and, if necessary, puts forward recommendations for improving that functioning. In that context, think of making an appeal to businesses, carrying out specific actions targeting consumers, or giving advice to the legislature. One possible conclusion can be that ACM has not identified any major bottlenecks in the market, or that ACM does not see any opportunities to improve the functioning of the market.

At the end of this phase, ACM can submit any preliminary conclusions or recommendations to the stakeholders to test whether the conclusions are sound and the recommendations are feasible, and whether they can be expected to help improve the functioning of the market.

ACM ultimately includes the findings of the market investigation and any recommendations in the provisional findings.

4.3 Publication of provisional findings and public consultation

In this phase, ACM publishes on its website the draft report of the market investigation, and all stakeholders have the opportunity to respond to that draft statement of objections. In Figure 1, this phase encompasses steps 6 and 7. ACM sends key stakeholders a version of the provisional findings to which everyone can respond. These stakeholders will have the opportunity to respond to the draft statement of objections with recommendations. The response deadline will be announced at the start of the market investigation. The basic principle is that the responses to the consultation will be publicly disclosed.

⁹ Businesses are required to submit information under Section 6b of IwACM.

ACM examines the responses submitted by stakeholders, and lists all points in an overview. In that overview, ACM will also indicate what it has done with the input of stakeholders. This overview is published on the website.

ACM publishes the market investigation. When drawing up the market investigation (draft or final), ACM can choose to describe the results in more general terms or to list the results per business. In that case, ACM assesses the confidentiality of the information, and will, if necessary, summarize the information or redact any information, in accordance with standing practice.¹⁰ If the results of a market investigation might harm any stakeholders, ACM will give those stakeholders the opportunity to take note of the statement of objections (draft or final) of the market investigation, and will subsequently wait with the publication thereof for ten days. In the intervening period, a stakeholder can ask a judge to prohibit (fully or partially) the publication of the statement of objections.

4.3.1 Data room

As part of the market investigation, ACM gathers all kinds of information. It is possible that stakeholders wish to gain insight into the data that ACM has gathered in order to check how ACM has reached its conclusions. The information used by ACM during a market investigation can be made available to stakeholders or their advisors (economic or otherwise) by means of a data room¹¹. In that way, they themselves can carry out analyses (additional or otherwise) or sensitivity analyses of ACM's calculations. Since the data may contain business-confidential information, safeguards are in place for such information, and restrictions can be imposed on the degree and manner of access.

4.4 Publication of final report and recommendations

ACM presents the results of the market investigation in a final report. See step 8 in Figure 1. The final report contains a description of the market, how this market functions, and whether there is any evidence of the theories of harm. In the final report, ACM also publishes any identified market problems and recommendations.

At the same time with the final report, a summary of the consultation is published, too. For full transparency, the individual responses from the consultation will also be published. After the publication of the final report, it may be advisable to remain in contact with the stakeholders in order to ensure that the recommendations are implemented properly. ACM is always open to such follow-up discussions.

4.5 Evaluation of market investigations (optional)

It may be useful to evaluate a market investigation after a certain period. In such an evaluation, ACM can examine whether the functioning of the market has improved, and whether the recommendations of ACM's market investigation have contributed to that improvement. With these kinds of evaluations, ACM learns about the effectiveness of the instruments it used as well as about the effects of the recommendations. With such evaluations, ACM ensures that the market-investigation tool can be used more effectively with time.

¹⁰ See for example section 7.2 of the [ACM Procedure regarding concentration cases](#) (in Dutch)

¹¹ The data-room procedure will be similar to the data-room procedure for concentration cases, see [ACM Procedure regarding concentration cases](#) (in Dutch)