

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

Authority for Consumers and Markets, the Netherlands

The following template is submitted by the Netherlands Authority for Consumers and Markets pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Netherlands Authority for Consumers and Markets (ACM) is a multifunctional authority and is responsible for:

competition oversight;

sector-specific regulation of several sectors;

enforcement of consumer protection laws.

ACM falls under the Ministry of Economic Affairs and Climate Policy. ACM operates independently. ACM does not take instructions from the Ministry and carries out its duties independently from political or other external influences.

Our objective is to ensure that markets work well for people and businesses. ACM enforces the rules that apply to businesses by combating unfair practices, and by promoting compliance with the rules. ACM provides information and guidance so that everyone knows the rules, and is able to comply with them. For more information, please visit www.acm.nl/en.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

*Each Participant will ensure that its **investigation and enforcement policies and Procedural Rules** afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.*

The Dutch Competition Act applies to conduct that affects competition on the Dutch market or parts thereof. The place where the undertakings involved are established, is irrelevant.

The nationality, residence, or origin of a Person being investigated is irrelevant to the application of the laws, procedural rules and policies. The laws, procedural rules and

policies afford Persons of other jurisdictions treatment no less favourable in like circumstances. All persons and companies concerned are treated in the same way.

c) Transparency and Predictability

- i. Each Participant will ensure that **Competition Laws and regulations** that apply to Investigations and Enforcement Proceedings in its jurisdiction are **publicly available**.
- ii. Each Participant with the authority to adopt **Procedural Rules** will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.
- iii. Each Participant will ensure that **Procedural Rules** that apply to Investigations and Enforcement Proceedings in its jurisdiction are **publicly available**.
- iv. Each Participant will **follow applicable Procedural Rules** in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.
- v. Each Participant is encouraged to **have publicly available guidance or other statements, clarifying or explaining** its Investigations and Enforcement Proceedings, **as appropriate**.

- i. The Competition Law and regulations are available via the official Government Gazette, which we quote when necessary in all our correspondence. See for relevant laws and regulations the following links:
 - [Dutch general administrative law act \(Awb\)](#)
 - [Dutch Competition Act \(Mw\)](#)
 - [Establishment Act of the ACM \(Instellingswet\)](#)
 - [European laws and regulations.](#)
- ii. ACM publishes all Procedural Rules on its website and is bound by these rules. See: <https://www.acm.nl/en/about-acm/mission-vision-strategy/our-powers> and <https://www.acm.nl/en/about-acm/mission-vision-strategy/legislation>
- iii. See above.
- iv. ACM follows those Procedural Rules. Compliance is enforceable in appeal proceedings.
- v. ACM produces different guidelines and information documents, which can be found on our website: https://www.acm.nl/en/publications/search-publications?publication_type=8

Each year, an overview of our activities is available in our [annual report](#).

d) Investigative Process

- i. Participants **will inform** any Person that is the subject of an Investigation **as soon as practical and legally permissible** of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with **reasonable opportunities for meaningful and timely engagement on** significant and relevant factual,

legal, economic, and procedural issues, according to the status and specific needs of the Investigation.

- iii. *Participants will **focus investigative requests** on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

i, and ii. ACM will notify the involved Person(s) as soon as possible, if this does not interfere with the ongoing procedure.

ACM will provide the involved Person(s) information about when this Person can file objections against our decision, in accordance with Section 4:8 Awb.

When ACM conducts interviews during its Investigation (orally or in writing) with the aim of imposing a fine, ACM must inform the Persons involved of their right to remain silent.

The procedures in the Investigation are also governed by the General Principles of Good Governance. One of these Principles is the Principle of due diligence: a proper, substantiated decision must be reached.

iii. Information requests from our Authority are subject to the abovementioned General Principles of Good governance. Among these principles are principles of diligence, subsidiarity and proportionality, which ensure that ACM receives the information that it needs, with as low as possible a burden on the Persons involved.

e) *Timing of Investigations and Enforcement Proceedings*

*Each Participant will **endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.***

Once ACM has drawn up a statement of objections regarding a violation, a decision about a possible fine must be taken within 26 weeks. See Sections 5:51 Awb and 12k Instellingswet. This period can be extended in consultation with the Persons involved or if such an extension is the result of the Persons involved requesting one (for example if additional time is requested for the submission of briefs or the response to requests for information). Naturally, ACM aims to conclude Investigations as quickly as possible.

f) Confidentiality

- i. Each Participant will have **publicly available rules, policies, or guidance** regarding the identification and treatment of confidential information.
- ii. Each Participant will **protect from unlawful disclosure all confidential information obtained or used** by the Participant **during** Investigations and Enforcement Proceedings.
- iii. Each Participant will take into consideration **both the interests of the Persons concerned and of the public** in fair, effective, and transparent enforcement regarding the disclosure of confidential information **during** an Enforcement Proceeding.

ACM issues its rules, policies and guidance publicly on its website. See (for a more detailed explanation of the answers): <https://www.acm.nl/en/publications/publication/14592/ACM-Publication-Procedure>

In accordance with Sections 12u, 12v, 12w and Section 7 Instellingswet, all information ACM collects is treated confidentially, except in the specific circumstances listed in those Sections.

In its Investigations and Enforcement Proceedings, ACM is required to make sure and seeks to ensure that any confidential information obtained by the ACM during enforcement proceedings is not disclosed publicly.

In all instances where ACM discloses information obtained from Persons concerned, whether it be disclosure to the public or disclosure *inter partes*, ACM weighs the interests of the persons involved against the public interest or against procedural interests. This usually results in specific information, such as business secrets and personal data, being redacted before disclosing a document.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Decisions of ACM are taken jointly by the three members of the board. Sections 3(5) and 3(6) Instellingswet prescribe that the members of the board have no direct or indirect interests (financial or otherwise) that may influence the performance of their duties or that may jeopardize their impartiality.

All employees of ACM are obligated to comply with an Integrity Code for the Government of the Netherlands and with the more specific Integrity Code of ACM. Both integrity codes cover material and financial conflicts of interest.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding **timely notice** of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, **parties should be**

informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.

- ii. Each Participant **will provide** Persons **subject to a contested Enforcement Proceeding** with **reasonable and timely access to the information** related to the matter in the Participant's possession that is **necessary to prepare an adequate defense**, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.
- iii. Each Participant will provide Persons **subject to an Administrative Proceeding** with reasonable **opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.**

i. ii. iii. ACM notifies the parties involved of alleged violations or claims against them as soon as possible, but only when this does not interfere with its Investigation. In its decisions, ACM always elaborates on its arguments, both economic and legal.

This procedure is mandated by law. Before taking a decision (fining or otherwise), parties first get an opportunity to have access to the file and to present their views on the case, in writing or orally.

The rules applicable are laid down in Sections 4:8 (duty to hear), 5:40 (competence to impose fines), 5:48 (statement of objections), 5:49 (access to file).

i) Representation by Counsel and Privilege

- i. No Participant will **deny, without due cause**, the request of a Person **to be represented** by qualified legal counsel of its choosing.
- ii. Each Participant will provide a Person a **reasonable opportunity to present views regarding substantive and procedural issues via counsel** in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.
- iii. Each Participant will **recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice.** Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.

A stakeholder involved with an administrative body can be presented by a counsel if they so choose. See Sections 2:1 and 8:24 Awb. For further rules about this relation and confidential information, see Sections 4:8, 5:20, 5:48 and 8:29 Awb.

See: <https://www.acm.nl/en/publications/publication/12771/2014-ACM-Procedure-regarding-the-legal-professional-privilege-of-lawyers> and under 'legal aid when appealing a fining decision': <https://www.acm.nl/en/about-acm/mission-and-strategy/imposing-fine>

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its **final decisions** or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, **as well as describe any**

remedies or sanctions. Each Participant will ensure that all final decisions are **publicly available**, subject to **confidentiality rules** and applicable **legal exceptions**.

- ii. Each Participant will ensure that all **commitments it accepts to resolve competition concerns are in writing**. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.

i. Section 3:46 Awb prescribes that all decisions are to be based on sound reasoning. Any remedies or sanctions will be mentioned in the operative part of a decision taken by ACM. Sections 12v and 12w Instellingswet prescribe when ACM can or must publish decisions. Section 12v stipulates that a fining decision must be made publicly available, save for confidential information. Section 12w applies to all other decisions and gives ACM the option to make those publicly available based on an assessment of interests.

ACM makes a non-confidential public version of all its binding decision(s), which the involved Persons can check for any confidential information or price-sensitive information. Furthermore, before publishing a decision, ACM will check whether the publication may have an effect on the stock price of the involved companies. If such is the case, ACM will only publish after the relevant stock exchange has closed.

ii. With regards to commitments: ACM sends its decisions directly to the involved Persons and makes its decisions publicly available. Section 12h Instellingswet contains special rules for commitments, most notably in what type of situations ACM can impose this remedy and what the consequences are for the involved Persons.

k) Independent Review

*No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an **opportunity for the Person to seek review by an independent, impartial adjudicative body** (e.g. **court, tribunal, or appellate body**).*

All formal decisions are subject to judicial review. Parties can first file objections against the decision with ACM. A different team will then review the decision, and ACM can change the decision if this team decides to follow their argumentation. If needed, the Parties can go to the District Court of Rotterdam, and file an appeal. After appeal proceedings at the Court of Rotterdam, parties have a second opportunity for appeal with the Dutch Trade and Industry Appeals Tribunal.

The rules regarding objections and judicial appeal are laid down in chapters 6, 7 and 8 Awb.