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Methodologies for Conducting Market Studies – Note by the Netherlands

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More documents related to this discussion can be found at www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm

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Netherlands

1. Introduction

1. The Netherlands Authority for Consumers and Markets (ACM) is a multifunctional authority created on 1 April 2013 by the merger of the Netherlands Competition Authority (NMa), the Independent Office for the Regulation of Telecommunications and Post (OPTA) and the Netherlands Consumer Authority (CA). ACM's strategy is focused on the welfare of the consumer. We aim to create opportunities and options for businesses and consumers.

2. This paper describes ACM's experience with market studies as a tool for competition law enforcement and guidance in solving market problems. ACM also conducts market studies and analyses in the exercise of its regulatory tasks, but these do not fall directly under the scope of this paper. Firstly, we explain what we mean by a market study in the context of this paper. Secondly, we discuss the various purposes of market studies, and explore methods of project selection and prioritization. The next section deals with how we actually conduct market studies at ACM, our research set-up and methods, as well as our formal powers. The fourth section treats of what we see as the determinants of our studies' impact, such as the interaction with stakeholders. The points made are illustrated throughout with examples of market studies in various markets.

2. What is a market study?

3. Within ACM, various initiatives fall under the term 'market study' and no specific, set definition is typically used. Broadly speaking, we characterize a market study as a research project in which a market, sector or industry is fully or partially, the subject of inquiry. In many cases the intended final result is a comprehensive report that provides a broad audience with insight into exactly how competition works and how it generates benefits for consumers in a defined market. Such a market study is primarily conducted in order to identify any market problems. It does not necessarily result in the detection of possible infringements. It may provide information that can be used to develop possible structural policy measures to promote competition and consumer welfare and resolve market problems.

4. The scope or purpose of a market study is therefore, not limited to detecting infringements of competition law. Notwithstanding this, market studies are important for the enforcement of competition law by ACM and for providing guidance in solving market problems. ACM's market studies may generate results that relate to possible infringements of the Competition Act and other acts that ACM enforces. When this is the case, ACM first collects additional relevant market information from other sources. With all the information gathered, a research team draws up a proposal for an investigation, together with a prioritisation assessment. When the infringement is sufficiently concrete, and a prioritisation decision has been made, the research team starts a formal investigation.

3. Purposes of a market study

5. Market studies serve different purposes. They are useful instruments to identify market failures and eliminate potential competition and consumer issues. The insight obtained through the market studies also provides support in the agency's assessment of concentrations and their publication can be used as a deterrent. Also, more broadly, they may contribute to a deeper understanding of the outcomes we observe in a particular industry.

6. The main objectives of market studies are:

- To contribute to setting the priorities for specific investigations in a sector.

Example: Competition overboard in the harbour¹

Early in 2016, ACM identified 6 themes for its 2016-2017 Agenda. One of the themes is Ports and Transport. ACM commissioned the VU University Amsterdam to conduct a study into the level of knowledge and the rate of compliance among companies that are active in the port of Rotterdam as well as among companies that are active elsewhere. Almost 400 individuals with commercial responsibilities were interviewed. The study has revealed that companies have insufficient knowledge of the basic competition rules.²

- To increase awareness of the standards contained in the Competition Act and the importance of compliance by structurally monitoring a sector and the publication of insights and analyses. This results in an autonomous enforcement effect. Merely addressing the issues of market failure in a study may be sufficient to alter the behaviour of market participants.

¹ “Concurrentie overboard in de haven”, A.J.M. Denkers, F.E. Jellema, December 2016. Vrije Universiteit Amsterdam in opdracht van de Autoriteit Consument & Markt. <https://www.acm.nl/nl/publicaties/publicatie/16730/Onderzoek-VU-Concurrentie-over-boord-in-de-haven/>

² See <https://www.acm.nl/en/publications/publication/16733/Concerns-about-knowledge-of-and-compliance-with-competition-rules-in-the-port-sectors/>

Example: Commercial practices of debt collection agencies

In November 2015, ACM published a study into the commercial practices of debt collection agencies. 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 study 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 made it clear in the publication of the study that these problems need to be dealt with and solved by the firms in this market: the debt collection agencies, trade association NVI, and also their clients. The report also signalled that ACM has the power to take action against misleading and aggressive commercial practices. In this way, debt collection companies were encouraged to provide better information to consumers.

- To identify market failures. Based on a market study, ACM may adopt a preliminary view that the market does not function properly, which may result in further actions taken to correct this.

Example:

In 2012, the NMa conducted a market scan of online real estate listings. NVM is the largest trade association of real estate agents in the Netherlands, and is also the owner of Funda, the biggest real estate portal of the Netherlands. The market scan revealed that listings of NVM real estate agents were always displayed higher in Funda's search results than those of non-NVM real estate agents. As a result, homebuyers were less likely to come across the listings of real estate agents affiliated with Vastgoed Pro and VBO Makelaar. Prompted by the market scan, ACM reached an agreement with Funda, whereby Funda would inform the visitors of its website that the listings of NVM real estate agents are presented first in the search results. As a result, the real estate listings on Funda have become more transparent for consumers. In late 2015, Funda revised its website and search engine. However, the real estate agents are still not treated completely equally by Funda. For example, real estate agents that are members of Vastgoed Pro and VBO Makelaar still need to pay more in order to have their listings displayed on Funda than do NVM real estate agents. ACM awaits the resolution of the civil lawsuit that has been filed over this practice.

- To provide guidance to policymakers. Not all restraints on competition can be attributed to infringements of the Competition Act. Sometimes they are caused by other factors, such as sector-specific legislation and regulations. ACM reports such insights to ministries and other authorities and in this way the studies may provide starting points for policy recommendations.

Example:

In June 2014, ACM published a study into entry barriers in the Dutch retail banking sector.³ The study showed that the entry of new players or even merely the threat of such entry will increase competition in the Dutch banking sector. This is important because the Dutch retail banking sector has become less competitive since the financial crisis. ACM provided nine recommendations to the Dutch Minister of Finance and the Dutch Cabinet to lower entry barriers for new players.

- To indicate where there may be a need for regulatory and legislative reform. For example, ACM's financial monitors may be used to formulate policy recommendations to improve the operation of market forces.

Example:

In June 2016, ACM published a study into EU-wide account number portability.⁴ With the results of this study, ACM contributes to the cost-benefit analysis of EU-wide account number portability that the European Commission will carry out in 2019. ACM's contribution has two pillars:

First, ACM asked research firm Decisio to develop a framework with which each EU Member State is able to get as complete a picture as possible of the direct and indirect benefits of account number portability. This framework takes into account the specific market conditions in each Member State, such as the level of technological innovation (FinTech), differences in price levels, and differences in switching rates. The framework has been applied to the Dutch situation. Second, ACM has fleshed out various variants of account number portability. The total costs of number portability strongly depend on how it will be introduced in Europe. Two variants of account number portability cost less than the most common variant, because banks and other market participants in the payment chain will only need to make a few adjustments in those variants. ACM prefers 'alias portability', which is a variant in which consumers and businesses pay using a unique alias, such as a social security number or the registration number with the Chamber of Commerce. In the study, ACM also made recommendations to the European Commission and the Dutch Ministry of Finance.

- To select relevant subjects for the ACM Agenda, which is determined every two years. ACM wants to focus its enforcement and advocacy efforts on those infringements that cause important negative economic effects or negatively affect consumers.

³ See <https://www.acm.nl/en/publications/publication/13257/Barriers-to-entry-into-the-Dutch-retail-banking-sector/>

⁴ See <https://www.acm.nl/en/publications/publication/15948/ACM-study-into-EU-wide-account-number-portability/>

Example:

In April 2017, a study concluded that there is more competition and there are more options for consumers in the online hotel-booking sector, after conditions were relaxed by booking platforms.⁵ The study was carried out by the ACM together with nine other competition authorities in Europe and with the European Commission. Under pressure from a number of authorities, in 2014 Booking.com and Expedia relaxed their conditions for participating hotels. ACM and the other authorities carried out a joint study into the effects of this measure. The results of the study can be used by ACM in assessing whether it is necessary to prioritize complaints from hotels or whether there is insufficient evidence of consumer harm.

- Finally, market studies are useful when the authority is required to weigh opposing effects, for example short term consumer welfare and long term sustainability considerations.

Example: “Chicken of Tomorrow”.

In January 2015, ACM published a study into the value placed by consumers on proposals on industry-wide arrangements regarding the selling of chicken meat produced under enhanced animal welfare-friendly conditions, the “Chicken of Tomorrow” agreement.⁶ The arrangement was potentially anti-competitive and triggered the ACM to conduct a study. The study revealed that consumers are prepared to pay more for animal-welfare and environmental improvements, but not for the measures proposed in this agreement. ACM discussed this analysis with the market participants involved. They announced that they would explore possible alternatives for their arrangements. With the passage of time, it appears that supermarkets have taken steps individually to encourage sales of chicken meat produced in more animal welfare-friendly conditions without implementing the anti-competitive agreement, and at a faster pace than originally proposed in the anti-competitive agreement.

3.1. Project selection and prioritization

7. It is not always feasible to conduct a market study, even in markets where such a study would be valuable according to the purposes outlined above. This section sets out how ACM selects and prioritizes projects. ACM’s primary goal as an organization is to solve problems on the Dutch market that harm consumer welfare. The criteria ACM uses for prioritization are: the harm that a potential problem inflicts on consumers; the strategic interest that is at stake, and whether ACM is able to take effective action. In constructing our portfolio of activities, we also take the deterrent effect of our enforcement into consideration. Our focus is on the expected outcome and effects of our oversight on the Dutch market. We explain the origins, nature and repercussions of market problems to stakeholders and the general public.

⁵ See <https://www.acm.nl/en/publications/publication/17134/More-variation-in-hotel-options-after-relaxation-of-conditions-of-hotel-booking-websites/>

⁶ See <https://www.acm.nl/en/publications/publication/13789/ACMs-analysis-of-the-sustainability-arrangements-concerning-the-Chicken-of-Tomorrow/>

8. ACM sets its main strategic goals based on general trends and developments in markets and oversight. External orientation is crucial for ACM and the detection teams form ACM's radar. Potential topics for market studies can be identified through; i) the organization's own efforts; ii) tip-offs, signals and leniency applications; and iii) the outcome of other market studies.

Example:

In January 2017, ACM published a study of entry and expansion barriers for companies on the Dutch health insurance market.⁷ Entry barriers are an important impediment to competition. The main result of the study is that solvency capital requirements and the difficulties insurers face to meet those requirements is an important barrier to entry and expansion. Other barriers are the licence required from the central bank and regulatory uncertainty. The study provides recommendations to lower the barriers. This study followed on from an earlier study conducted in 2016, which showed there was room for improvement in the competition between providers of health insurance in the Netherlands.⁸

9. It should be noted, however, that a market study can also originate from a formal request from the government.

⁷ See <https://www.acm.nl/en/publications/publication/16920/Capital-regulation-impedes-entry-and-competition-between-health-insurers/>

⁸ See ACM's earlier study in 2016, <https://www.acm.nl/en/publications/publication/16129/ACM-study-into-competition-in-the-Dutch-health-insurance-market/>

Example:

Examples are the different inquiries into the agricultural sector, in which pricing and costs in all consecutive steps in the value chain from producer to end user were analysed. In 2010, a study carried out by the NMa in December 2009 offered insight into the costs and margins in the food production chain in the Netherlands, from producer to supermarket, for these products: potatoes, onions, cucumbers, bell peppers, apples, bread and eggs. The NMa looked into the price-formation mechanism in the Dutch food and agro-processing industry. Its study's main conclusions revealed that on the one hand that in the period of 2005-2008, supermarkets were unable to unilaterally raise prices profitably at the expense of producers and consumers and on the other hand that retail prices of these products largely consist of costs of wholesalers and supermarkets.⁹

Again in 2013, ACM commissioned a market study in response to calls from the Dutch parliament to address the issues examined in the 2010 study. Each link in the food chain from farmer to supermarket was examined. The results showed that no party in the food chain made profits in excess of 3%. Relatively seen, farmers had the lowest profit margin. The study revealed big differences in price-forming in the relevant markets, depending on the steps in the value chain. In addition, products have individual characteristics that affect the price. For example, apples and onions have a longer shelf life than some other products. In contrast, products such as chicken, peppers and cucumbers require a speedy delivery process. The prices of such products are therefore more responsive to availability.¹⁰

4. Conducting a market study

10. There is no one-size-fits-all approach to conducting market studies. Every market and research question requires a tailored research set-up, designed by in-house experts, occasionally with the help of external consultants. In-house and external experts build on their expert knowledge and prior experience of related research projects. Nevertheless, there are common elements and recurring procedures that are useful. The steps outlined below are therefore a starting point when designing a new market study:

Research question and scope

11. The first step involves determining the relevant research questions. For example, “What are the barriers to entry for new players on this market?”. If there are already indications that we want to correct behaviour or address structural problems within a given market, a better question could be: “What pricing mechanisms would contribute to a better functioning market?”. The answer to this question will determine the scope of the investigation. However, at the start of a project, it is acceptable if the scope remains

⁹ See <https://www.acm.nl/en/publications/publication/5832/NMa-published-English-translation-of-study-Pricing-in-the-Agri-food-sector/>

¹⁰ See <https://www.acm.nl/nl/publicaties/publicatie/13680/Prijsvorming-van-voedsel/> (in Dutch).

somewhat flexible. After all, more data and insight are often needed to make sensible and detailed delineations as to what to include in or omit from a study.

Project design, with specific attention to possible involvement of stakeholders

12. The second step involves answering questions on resources, people and methods. In order to do this, we draw up a project plan which lays out which methods we want to employ, the amount of time we think this will take as well as the number of people required. In this step, we also think about whether and how we want to involve market players, other regulators and policy makers.

Data gathering

13. The third step is executing the research plan, which always includes data collection. Data collection can be done in various ways, including through desk research, interviews, literature review, meetings, roundtable discussions and questionnaires. Data found in the public domain is usually collected as part of the data gathering and in some cases proprietary data is purchased as well. ACM also has formal powers to ask businesses to produce and provide data. Failure to co-operate may result in a fine.

Analysis and conclusions

14. In the fourth step the collected data is analysed for the purpose of answering the research questions.

Ensuring support/acceptance of the study's findings¹¹

15. The fifth step is to discuss the draft study and its findings with the relevant stakeholders, especially when its results suggest a policy change. Sharing interim work products can contribute to the quality of the final report and build consensus for its findings and recommendations.¹²

Drafting and publication

16. Finally, the sixth component is to draft a report and publish it. This last step can be particularly sensitive and trying for the research team, as there may be many conflicting interests and opinions to take into account in the final drafting, prior to publication. It is advisable to establish a single author at this point, and clear deadlines. A communication plan can assist in achieving attention for the published report.

17. Whether or not ACM publishes a report on its findings depends on the purpose of the market study. If the purpose of the market study is to increase awareness of standards contained in the Competition Act and the importance of compliance with the law, for example, publication is likely. As such, these studies raise interest in competition issues and may lead to further signals of infringements. They may also prevent infringements from occurring. On the other hand, ACM may decide not to publish immediately, or to publish only partially, market studies that generate results that increase insight into possible infringement.

¹¹ The steps described here do not have to be followed in the noted order. For example, it can be helpful to start promoting the study during the data collection phase.

¹² See International Competition Network's Guiding Principles for Market Studies (May 2017).

4.1. Use of formal powers

18. Prior to the establishment of ACM, one of its predecessors, the NMa, conducted market studies on the basis of its general powers of enforcement and investigation. The ACM Establishment Act, however, has created an explicit formal basis for ACM to conduct market studies.¹³ This has the advantage that market participants may be obliged formally to provide ACM with the information necessary to conduct an effective market study. When requesting such information, ACM takes into account the administrative burdens on market participants this entails as well as the proportionality of the information requests to the issue at hand. Up to now, no formal complaints have been received with respect to the use of formal powers for market studies.

19. One of the disadvantages of using formal powers in order to conduct market studies is the deterrent effect it may have on market participants. In many market studies, the main aim is to clarify the authority's perspective of how a particular market works in order to facilitate problem-solving. Beginning a request for information with a legal caution and a reference to the dire consequences of non-compliance, is not automatically conducive to highly informative answers. Rather, it may aggravate the strategic bias which further reduces the informational content of the answers. In that respect, the authority may prefer only to use its formal powers in cases where it expects to encounter non-compliance. Of course, it is important that market participants answer questions truthfully but we do not want to deter them from answering completely out of fear of being misinterpreted. It may therefore be better to accept that some answers will inevitably lack the caution and nuance that they would have had if formal powers had been used. In the event that there is a suspicion of non-compliance with the law, ACM can always issue an enquiry, with reference to its formal powers.

¹³ Section 2(4) of ACM's Establishment Act states as follows; "One of the tasks of the Authority for Consumers and Markets shall be to conduct market studies and to draw up reports of its own accord, if such, in its opinion, is beneficial to the execution of the tasks, as referred to in the second paragraph".

Biases in qualitative data:

Interviewees are a source of knowledge and data, but may at the same time be involved in the market as market participants and possibly the subject of oversight. This requires that the research design should be mindful of several biases, such as strategic biases. Interviewees may have an incentive to steer the market study's outcome in their preferred direction. Managers, for example, may prefer to provide information that, in their view, minimizes the probability of a cartel investigation. On the other hand, buyers may favour an intervention by the authority that helps to meet their objectives, for example regulated access or reduced prices. Another common issue is the lack of certainty about the reliability of the information provided by the respondents. Moreover, measuring errors can occur, for example where respondents find it difficult to answer a specific question and thus make mistakes. It may be hard for respondents to indicate precisely why, say, new firms do not enter.

ACM uses survey methods to minimize the impact of strategic and social biases, where appropriate. One of those techniques is conjoint analysis, which uses the idea that a product or service can be decomposed into multiple characteristics, so called attributes. These attributes can be quantitative (such as price, dimension and weight) as well as qualitative (such as brand, functionality and reliability). Each attribute can have different levels. A smartphone, for example, can be decomposed into the following attributes: brand, price, weight, and number of megapixels in the camera. The decomposition into attributes reduces the risk of bias in the survey data.¹⁴

4.2. Internal or external study

20. An important issue in the set-up of a market study, is whether the study should be conducted internally by ACM- staff, or by an external party. ACM may outsource specific research, or parts of it, to external consultants who will be selected through a procurement procedure. Factors that can be relevant to this issue include, for example:

- The political sensitivity of the subject of the market study. If you are dealing with a sensitive, controversial study, it may arguably add to the study's perceived credibility if the assessment is done externally.
- Value for money and economic considerations. Where the authority has the expertise to conduct the market study, and the flexibility to speed up delivery of a final publication when necessary or expedient, then it is logical to complete the study in-house. Depending on the span of the research project, usually two or three persons are part-time engaged in a research project for a few months. It is difficult to assess the amount of resources that should be allocated to market studies. Particularly in the financial sector, where infringements are very hard to detect, contribution to the knowledge base and deterrence may be as important as the generation of leads for formal investigations.
- Supervision and the provision of assistance to a team of external consultants may prove time-consuming for the in-house experts. Some external consultants may be

¹⁴ See <https://www.acm.nl/en/publications/publication/15747/ACM-Working-Paper-about-Conjoint-Analysis-in-merger-cases/>

biased towards what they perceive as the desired outcome of study, for example in the hope of receiving further assignments.

- An in-house study may make it easier to translate the findings into improving your own internal policies. For example, when conducting a study on the healthcare market, it may become clear that insurance providers experience different levels of buyer power when they negotiate with hospitals. Therefore, when analysing market power resulting from hospital mergers, it is important to check the buyer power with several insurers, not just one big insurer, because the different insurers could be experiencing different effects. These sort of nuances emerge quickly from studies conducted in-house.
- Conducting market studies with an internal team may allow ACM to build a better understanding of the subtleties of the market. This is especially important where the study will contribute to ACM's knowledge base in an area that has been prioritised.

Example:

In September 2016, ACM launched an in-house market study into online platforms that offer videos and movies.¹⁵ Examples of such platforms are YouTube and Facebook, but also platforms specific to the Dutch market like such as NL-ziet and Dumpert. In this study, we take a closer look at the business models of the companies active on this market. We wish to find out in detail how they earn their money. The main subject of this market study is online platforms that stream videos. ACM will not just look at the platforms themselves, but also at the businesses that are somehow connected to them such as media agencies, digital marketplaces where advertisement space is sold and bought, and producers of content for these platforms. This is a fast growing market, and also a market on which major national and international businesses are active. In the market study, ACM looks at:

- The various terms and conditions, and businesses models of these platforms;
- The advertisement options and revenues generated by advertisements;
- The collection and use of personal data for personalized advertisements;
- The distribution of online videos.

- Prior experiences will make setting up new market studies easier. For example, amending research questions can be done more quickly, and correcting mistakes and discovering their source will be more efficient.
- Out-sourcing may allow the authority to gain access to state-of-the-art expertise or data sources that it does not have in-house.
- An external study may facilitate blunter, more critical answers. For example, if the market participants feel that the questions are extremely off-point, they are more likely to say that directly to a neutral third party, than to the very case handlers they will have to deal with the next time they notify a merger.

¹⁵ See <https://www.acm.nl/en/publications/publication/16342/Taking-a-closer-look-at-online-video-platforms/>

- ACM may decide to outsource because it does not have the knowledge or the capacity to conduct the research itself. It may also outsource because the ACM itself is the subject of a study.

Example:

Example: in 2011 the OPTA (one of ACM's predecessors) commissioned a report from a research consultant to investigate competition in telecommunications where the "receiving party pays"-principle is relevant.¹⁶ While the study was not theoretically complicated, it involved the time-consuming gathering of qualitative data, which it was felt could better be conducted externally. 0800-numbers are free to use for the calling party, but the receiving party needs to purchase wholesale services from each and every potential caller's operator. This potentially creates strong monopoly-like market power for mobile and fixed operators. The report investigated possible offsetting buyer power mechanisms. Substitutes for 0800-numbers were also part of the market study, such as alternative means of communication (chat and email). The study concluded that there are no effective substitutes or buyer power mechanisms and that fixed and mobile operators both possess market power based on their respective subscriber bases.

21. In selecting potential bidders, ACM takes various selection criteria into account in compliance with all the relevant rules of procurement law, such as: the knowledge of the external consultants; the proposed approach of the bidder; costs; references, and potential conflict of interests. Moreover ACM will ensure that the bidders are able to handle commercially sensitive information in accordance with provisions of confidentiality. A system that has worked very well for ACM is to conduct a study internally, in cooperation with other authorities, and then to subject the analysis to intensive external review by academic experts.

4.3. Quantitative and qualitative data

22. ACM combines a wide array of methods to produce market studies. A useful distinction is between quantitative and qualitative research, which refers to the type of data generated. Quantitative research produces data in the form of numbers while qualitative research tends to produce data that are stated primarily in spoken or written language. In order to produce different types of data, qualitative and quantitative research tend to employ different methods. Quantitative methods typically yield breadth of coverage and statistical representation, while qualitative data describe a specific locality, case or social setting. Qualitative data sacrifice breadth of coverage and statistical generalisability but yield more in depth understanding of complex cause-and-effect relationships.

23. One advantage of using quantitative data is that it can allow for greater objectivity and accuracy of results. Where interviews can give rise to distortions to e.g. social and strategic biases, or cognitive limitations, these issues are less present in quantitative data.

¹⁶ See <https://www.acm.nl/en/publications/publication/10313/Buying-power-for-the-purchase-of-call-origination-to-0800-numbers/>

However, one of the disadvantages is that quantitative data is often difficult to obtain because such information is usually confidential or simply not available.

24. In addition, there are the not inconsiderable procedural barriers to take into account. The data needed may not exist. The authority, or the entity conducting the study, needs access to the data if it does exist. There must be permission to use the data and permission to publish the analysis, and so forth.

25. Furthermore, a key consideration is the resources available. Robust quantitative work tends to be expensive. External consultants may require a lot of data, and inevitably, they risk not capturing all the nuances of market context and behaviour. Data costs can easily reach EUR 10 000 (Euros), and outsourcing a relatively straightforward market study may cost EUR 40 000 to 50 000.

5. Determinants of impact of market studies and possible recommendations

26. An important determinant of the impact of a market study is its motivation. It is imperative to clarify the motivation behind the study from the outset. Why are you conducting the study? Who are your stakeholders? What are their interests? Another determinant is engagement of the relative stakeholders: market participants, other regulators and ministries. In many situations, a positive attitude of stakeholders towards a study's findings is essential.

5.1. Interaction with market participants

27. Whether or not it is useful to seek the involvement of market participants in a market study depends on the goal of the study. If the goal of the study is to enhance the knowledge of the authority or to supervise a particular market then their involvement is useful, because market participants can provide factual information and their view of the market. However, the biases as mentioned above must always be taken into account when designing e.g. interviews and questionnaires. These biases may imply that the information provided will be distorted. On the other hand, if the market study is conducted in the course of enforcement activities, then involvement of stakeholders might be counterproductive as market participants might be tempted to destroy evidence of possible infringements of competition rules.

28. A further issue to take into account is whether the authority expects repeat interaction with the same market player. If this is the case, it can be worthwhile to build a good working relationship that will make the regulatory process overall more efficient.

29. There may also be issues when it comes to the publication of the results of the study. Sometimes, while parties are happy to contribute information to a study, they are hesitant to see the results of the study published in black and white. They may fear repercussions, or their personal market situation may have changed since they provided the answers to the study's questions. Finally, the use of formal powers to obtain information from businesses should be considered carefully as was outlined above.

5.2. Interaction with other authorities

30. ACM's previous experiences with other authorities, both national and international, with regards to market studies, have been positive. Joint market studies lead to increased mutual understanding and improve the relationship between authorities. They

may lead to more convincing guidance in solving market problems. A joint study allows the respective authorities to target the publication of the study to their own stakeholders.

Example:

In 2014, ACM, the Dutch Healthcare Authority (NZa) and the Netherlands Authority for the Financial Markets (AFM), each carried out a study into price comparison websites, and into the experiences of consumers when choosing a health insurance policy. Dutch consumers have from mid-November until January 1 to choose a new health insurance policy. Consumers that take a close look at their current health insurance policies may, for example, be able to save on their premium of the basic insurance package, or make a better choice regarding the level of their deductible. In its study, AFM looked into how price comparison websites operate. The NZa examined how health insurers provide price comparison websites with information, and what the consequences are for the accuracy and comparability of the offerings found on the various price comparison websites. The NZa reminded the health insurers of this responsibility. All three authorities called on consumers to check whether their existing offer still meets their needs, and to compare it with offers from other insurers.¹⁷

31. Economies of scale and scope also apply to market studies. The synergies of joint studies mean that more studies become feasible to undertake. However, joint work is time-consuming. Every decision has to be approved twice in a joint research study. This can lead to considerable delay in publication.

5.3. Interaction with ministries

32. When ACM conducts market studies, and the results of the studies lead to policy recommendations, this leads to contact with the relevant ministry. The findings may be relevant to the Ministry for Economic Affairs, but also, in the event of findings relating to the healthcare market, to the Ministry for Healthcare, Sport and Wellbeing or, in the event of a financial monitor, to the Ministry for Finance. Where ACM observes in the course of a market study, that the results may have significance in terms of policy, the authority endeavours to communicate in a timely way with the relevant ministry, to ensure that there are no surprises when the study is published. This allows the authority to retain its independence in terms of the substantive results of the study, but to preserve a healthy working relationship with other branches of government, and in an ideal situation, ensure that its recommendations are acted upon.

33. One possibility to contribute to the healthy working relationship is to share a draft of the report in an early stage. It also helps when the study's research question is aligned with the topics on which the ministry is also working. In some cases, the ACM may decide to launch a market study when the topic is being debated in the political arena.

¹⁷ See <https://www.acm.nl/en/publications/publication/13566/Dutch-regulators-call-on-consumers-to-take-a-close-look-at-their-health-insurances/>

Example:

In 2017, the above-mentioned market study conducted by ACM on barriers to entry in health insurance markets was referred to in political discussions in the Netherlands on the appropriateness of profit-making and dividend distribution within the health insurance sector.¹⁸

6. Conclusion

34. ACM's experiences of market studies are positive. In the areas in which the ACM is obliged to monitor certain sectors, such as the financial sector, market studies have proved to be very useful and effective tool in developing market knowledge. Market studies are also highly useful for guidance purposes as well as creating awareness of competition rules. Finally, market studies play a role in detecting potential competition law infringements. Accordingly, ACM supports closer cooperation between authorities and the linking up of market studies performed by other authorities and the European Commission in order to obtain a better understanding of markets.

¹⁸ See, for example, article in *Financieele Dagblad* d.d. 26 January 2017 <https://fd.nl/economie-politiek/1184732/kabinet-fel-tegen-verbod-op-winstuitkering-bij-zorgverzekeraars>.