
The Dutch Consumer Authority: an introduction

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1 January 2007 will see the Consumer authority, the newest member of the family of market and other supervisory authorities, open its doors for business. The Consumer authority will be operating in a busy playing field already occupied by other supervisory authorities, civil society organisations and various self-regulation initiatives.

Administrative law enforcement of predominantly consumer law regulations under private law is to some extent virgin territory in the Netherlands. This is why we are taking this opportunity to outline the various features of the Consumer authority and the basic principles that will underlie our supervisory and enforcement activities in practice.²

1 Why the Consumer Authority?

Briefly, the main reasons for setting up the Consumer authority are firstly that we have witnessed a lack of compliance with regulations in consumer markets, and second, the expansion of the internal market. The reasoning behind the decision to set up the Consumer authority is therefore twofold and can be traced back to the cabinet policy stemming from a Strategic Action Programme for consumer policy³ and to Regulation 2006/2004 on consumer protection cooperation (hereafter: the Regulation).⁴

1.1 Cabinet policy – strategic action programme for consumer policy

The reasons for the formulation of the strategic action programme for consumer policy were the Dutch Cabinet's view of the way in which consumer and other markets were working, along with research into a number of 'blank spaces' in the consumer protection system⁵ and developments at a European level. The strategic action programme outlines the consumer policy and the protection of the economic interests of the consumer. In order to

¹ Whose positions at the Consumer Authority (which organisation is in the process of being formed) are respectively Senior Staff Member of Strategy and International Affairs and Head of Supervision.

² This statement is based on the bill for the Consumer Protection Enforcement Act ('Wet handhaving consumentenbescherming') in the form it was in at the time that this article was written. See the Senate of the Dutch Parliament, parliamentary year 2005-2006, Parliamentary Document ('Kamerstuk') 30 411, A.

³ House of Representatives of the Dutch Parliament, parliamentary year 2003-2004, Parliamentary Document 27879 nrs. 9 and 10.

⁴ Regulation (EC) 2006/2004, O.J. 2004 L 364/47.

⁵ Including 'Investigation into the handling of individual consumer complaints' (Onderzoek naar afhandeling van individuele consumentenklachten), Twijnstra Gudde, April 2004 and 'Consumer complaints and collective actions' (Consumentenklachten en collectieve acties), EIM, April 2004.

monitoring compliance with these directives and who consequently have to have certain powers to investigate and enforce. Each member state also has to designate a single liaison office that is charged with coordinating the application of the Regulation in that member state.

Competent authorities in the different member states can submit 'requests for mutual assistance' to each other, consisting of a request for the exchange of information or a request to take enforcement measures. In principle, the recipient authority is obliged to comply with a request for mutual assistance.

The competent authorities are also obliged to report possible cross-border infringements to the network whose members include all the competent authorities.

2 Consumer Protection Enforcement Act

The above Regulation is being implemented in the Netherlands by means of the Consumer Protection Enforcement Act ('Wet handhaving consumentenbescherming', hereinafter Whc). At the time this article was being written, the bill to this end had been passed by the House of Representatives and lay before the Senate.⁶

The Whc satisfies such requirements as the need to designate 'competent authorities' in the Netherlands within the meaning of the Regulation. At that time, there was no public supervisory authority in the Netherlands that was charged with monitoring compliance with regulations of *generic* consumer law.⁷ This has now been rectified by the provisions made in the Whc for the foundation of the Consumer authority. The Consumer authority has been designated as the 'competent authority' for the majority of the directives. The Consumer authority has also been designated the Single Liaison Office for the Netherlands. Under the Regulation, the AFM (Netherlands Authority for the Financial Markets), the Dutch Media Authority, the Transport and Water Management Inspectorate, the Health Care Inspection Agency, and the VWA (Food and Consumer Product Safety Authority) have been designated as a 'competent authority' for one or more of the directives, as has the Consumer authority.

⁶ Senate of the Dutch Parliament, parliamentary year 2005-2006, Parliamentary Document 30 411. A.

⁷ In addition to the generic consumer law regulations laid down in the Netherlands Civil Code, consumer law regulations have been laid down in certain sector-specific laws such as the Telecommunications Act and the Electricity Act, which are enforced by sector-specific supervisory authorities.

3 Basic principles for the Consumer Authority's work

3.1 Positioning

The Consumer authority is established within the Minister for Economic Affairs. Those powers relating to monitoring and enforcement have been assigned directly to the Consumer authority, which emphasizes the independent decision-making abilities of the Consumer authority in these areas. Nevertheless, the Minister remains fully responsible for the Consumer authority's actions. For instance, it is the Minister who prepares the annual report and sends it to both Houses. The Minister can also issue instructions, both general instructions – in the form of policy regulations – and instructions in a particular case.

Initially, the Consumer authority will be staffed by 25 FTEs, of which 8.5 FTEs will be performing supervisory tasks.

3.2 Mission, tasks and objectives

The Consumer authority's Mission is: *To promote fair trade between businesses and consumers, based on the economic interests of consumers.*

The Consumer authority bears this mission in mind when it carries out its tasks, which may be described as follows:

- 1) monitoring compliance with the consumer law regulations, and if necessary taking action to enforce them;
- 2) coordination of cross-border requests for mutual assistance on the basis of the Regulation (as Single Liaison Office), and
- 3) providing information to consumers and suppliers via a helpdesk (called ConsuWijzer).

The first two tasks relate to statutory tasks arising from the Regulation and the Whc, with the third task supporting the first two tasks and being a consequence of the strategic action programme for consumer policy.

The Consumer authority's mission can be translated into two objectives:

- 1) *to promote compliance with the consumer law regulations;*
- 2) *to improve consumers' and suppliers' knowledge of consumer laws and obligations and of the options for obtaining legal redress.*

Both objectives aim to restore and/or improve consumer confidence in the markets. After all, collective infringements prevent consumers from making informed and efficient choices, which leads to imperfect operation of a market, in which fraudulent suppliers would be able to unfairly take sales away from bona fide suppliers. The Consumer authority's mission and the two objectives that stem from it are designed to combat this.

The above-mentioned objectives are inextricably bound to each other and support each other. After all, the Consumer authority receives information from

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3.3 What will t

The Consumer authority's national and cross-border information fields of:

Provision

Misleading advertising

Package tours, including holiday packages and roundtrip packages

Unfair contract terms in consumer contracts

Timesharing

Distance selling

Certain aspects of the sale of and for consumer goods

E-commerce

Agreements entered into away from premises (i.e. doorstep selling)

Quoting of prices for products offered to consumer

Figure: Overview of the Consumer Authority's fields of

Consumer Authority's work

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ConsuWijzer that it can use to monitor infringements of consumer laws, and conversely the Consumer authority can inform consumers via ConsuWijzer for instance that an investigation has been completed into a supplier's unfair contract terms. The Consumer authority also believes that keeping consumers better informed about their rights and obligations will make the market more likely to play by the rules. If consumers tackle businesses about infringements themselves then businesses will be quicker to comply with the rules and regulations. Furthermore, keeping suppliers better informed about their rights and obligations should help to reduce the number of infringements.

3.3 What will the Consumer authority be supervising?

The Consumer authority is authorised to take action against national and cross-border infringements of consumer law provisions in the fields of:

Provision	Article(s) of the law
Misleading advertising	Articles 194a up to and including Article 196 of Book 6 of the Civil Code
Package tours, including holiday packages and roundtrip packages	The provisions from or by virtue of Articles 500 up to and including 513 of Book 7 of the Civil Code.
Unfair contract terms in consumer agreements	Articles 231 up to and including 247 of Book 6 of the Civil Code
Timesharing	The provisions from or by virtue of Articles 48a up to and including 48g of Book 7 of the Civil Code
Distance selling	Articles 46a up to and including 46j of Book 7 of the Civil Code and Articles 11.7 and 11.8 of the Telecommunications Act.
Certain aspects of the sale of and guarantees for consumer goods	Articles 5 up to and including 6a, Articles 17 up to and including 19, Articles 21 up to and including 23 and Article 25 of Book 7 of the Civil Code
E-commerce	Articles 15a up to and including 15f of Book 3, Article 196c and Articles 227a up to and including 227c of Book 6 of the Civil Code
Agreements entered into away from business premises (i.e. doorstep selling)	The provisions from or by virtue of the Door-to-Door Sales Act, insofar as they do not relate to a financial service or activity.
Quoting of prices for products offered to the consumer	The provisions from or by virtue of Articles 2b and 3, insofar as they relate to Article 2b of the Prices Act.

Figure: Overview of the Consumer authority's supervisory domains

Note that the Consumer authority is not authorised to take action in the financial sector, which remains the exclusive supervisory domain of the AFM.

3.4 Collective consumer interests

The Consumer authority cannot take action against every violation (whether cross-border or national) – it can only act when the *collective* interests of consumers are affected. This requirement is set by Article 3 paragraph b of the Regulation as well as in Article 1.1 under f of the Whc. Article 3 paragraph k of the Regulation defines the term 'collective interests of consumers' as '*the interests of a number of consumers that have been harmed or are likely to be harmed by an infringement.*' The Regulation does not define the circumstances under which the interests of a number of consumers could be harmed. Nevertheless, a number of general conclusions relating to the interpretation of the term 'collective interests of consumers' can be made from the tenor and wording of the Regulation.

In the first place, the Consumer authority cannot take action if just a single consumer feels that he has been affected by a violation. In other words: the Consumer authority will not intervene in disputes between a single consumer and a supplier of a product or service. If other consumers have not been affected by the deliberate violation or if the violation was not followed or preceded by similar violations then the violation will not affect consumers 'collectively' and thus the Consumer authority cannot take action against it.

In the second place, the number of complaints that the Consumer authority receives about a particular supplier will not be the deciding factor in any assessment of whether there has been a violation of the collective interests of consumers. After all, these complaints may all relate to individual, standalone cases that do not constitute a collective infringement. All the same, a single complaint may be sufficient grounds for the Consumer authority to start an investigation, if it suspects that the supplier's conduct is such that more consumers have been or could be affected in the same way.

The above leaves many possible scenarios unresolved – for instance, conduct by a local supplier will affect fewer consumers than conduct by a national supplier. The Consumer authority will use the above general basic principles to define the term 'collective interests' in respect of its day-to-day supervisory activities in practice. Furthermore, agreement may be reached within Europe on a definition of the term 'collective interests'. After all, this would help to ensure that this term is interpreted in the same way in each member state.

Note too that the Consumer authority is less interested in finding the 'lower intervention threshold'; instead, it will endeavour to deploy its resources and funds in those areas and for that conduct where there is the greatest need for consumer protection (see also Section 3.7).

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3.5 Supervisory powers

In order for the Consumer authority to be able to fulfil the supervisory tasks and duties assigned to it, those of its officials designated as supervisors have been given the powers set out in Articles 5:15 up to and including 5:19 of the General Administrative Law Act (the 'Awb'). This relates to the following powers:

- 1) *The right to carry out on-site inspections* (Article 5:15 Awb);
Consumer authority supervisors are entitled to enter any site and may call for police assistance in this respect. Officials of the Consumer authority may be accompanied by other persons, such as IT and forensic experts;
- 2) *The right to demand information* (Article 5:16 Awb).
Consumer authority supervisors are authorised to demand information. The interviewee must answer truthfully.
- 3) *The right to demand personal identification* (Article 5:16a Awb);
A supervisor is authorised to demand that persons show him/her personal identification as referred to in Article 1 of the Compulsory Identification Act.
- 4) *The right to inspect information and documents* (Article 5:17 Awb);
The officials are authorised to insist that they be permitted to view commercial information and documents and to make copies of them. If necessary, this information may be removed for copying purposes. An exception is made for those documents exchanged between an offender and a lawyer that are kept at the offices of the lawyer (pursuant to 5:20 Awb) or offender (pursuant to Article 2.4 para. 2 Whc).
- 5) *The right to investigate, record and take samples* (Article 5:18 Awb);
Consumer authority supervisors are authorised to investigate items, to record them and to take samples of them.
- 6) *The right to investigate vehicles* (Article 5:19 Awb);
Officials are authorised to investigate cars and other vehicles.

Pursuant to Article 5:20 Awb, all parties are obliged to cooperate with the Consumer authority's supervisors. The Consumer authority can compel the person or company in question to cooperate, by means of the imposition of a fine in the event of non-compliance (Article 2.10 para. 2 Whc).

3.6 Powers of enforcement

The Consumer authority has various powers of enforcement that it can use to enforce compliance. The powers it will have in a particular case depend on the regulation that has been violated.

3.6.1 Powers of enforcement under civil law

The Consumer Authority may enforce under civil law those provisions whose enforcement has been entrusted to it and which have been implemented in the Civil Code by means of 'open standards'.

In order to end an infringement 'without delay', as required by the Regulation, a special application procedure for the Consumer authority has been put in place at the Court in The Hague ('Gerechtshof Den Haag'). The Court in The Hague has to hear applications by the Consumer authority 'without delay' (Article 3:305d CC (Civil Code)). At the Consumer authority's request, the Court in The Hague can order that an infringement be ended, and may also impose a fine in the event of non-compliance. The Consumer authority can also ask the Court in The Hague to order the infringer to have the ruling on the application made public, at the infringer's expense.

The Consumer authority may use information obtained from supervisory activities in its application procedure. Note too that pursuant to Article 2.5 Whc the Consumer authority will give the offender the opportunity to end the infringement before it submits an application to the court. The Consumer authority will also allow the offender to view the information on which the intention to initiate an application procedure was based, this information being contained in the investigation report (the 'onderzoeksrapport').

Apart from the opportunity afforded by the above-mentioned special application procedure, the Consumer authority is also authorised to start a 'standard' collective action *qualitate qua*, on the basis of Article 3:305b CC. In such a proceedings commenced by a summons, an injunction, ban or declaratory judgement may be requested. This power will be used less often, given the available option of using the above-mentioned special accelerated application procedure.

3.6.2 Powers of enforcement under administrative law

The Consumer authority may enforce under administrative law those provisions of the Civil Code whose enforcement it has been entrusted with and that are embodied in the so-called 'closed standards' (such as the 'blacklist' ['zwarte lijst'] referred to in Article 6:236 CC) and the provisions of the Doorstep Selling Act and the Price Indication Act. It is likely that these will be supplemented by 'closed' provisions from the directive on unfair commercial practices.

If the Consumer authority is of the opinion that there has been an infringement of one of the provisions that is/are being enforced under administrative law then it is authorised to:

- 1) impose a fine in the event of non-compliance;
- 2) impose an administrative fine.

The administrative fine and imposed in combination. As soon as it is evident that the consumer has not been satisfied (the 'nie-tieve last'), Article 2.16, paragraph 1, in the event of non-compliance may be imposed, as well as on the actual management of the business. The maximum is a maximum of EUR 45,000 in the fifth category as referred to in Article 2.16, paragraph 1.

3.6.3 Disclosure

In addition to the event of non-compliance, the Consumer authority may also order the following:

- a decision that no fine is to be imposed;
- a decision concerning the event of non-compliance;
- an undertaking from the infringer to end the infringement.

The authority to disclosure means that the Consumer authority may order an offender and then to make the entire process through to the event of non-compliance that he will end his infringement and any (further) enforcement measures. Disclosure means that consumer information is made public.

For a civil law case too, the Consumer authority may go to court – accept an undertaking – and then be made public.

3.6.4 Class settlements

Pursuant to Article 3:305b CC, the Consumer authority is authorised to enter into an agreement with the infringer whose enforcement the agreement the infringing party has to accept arising from the violation. At the same time, the agreement is binding on persons who have not entered into an agreement.

However, the Consumer authority is also in the light of the remark in Article 3:305b CC ('Memorie van Toelichting') the opinion that the market (e

The administrative fine and the fine in the event of non-compliance can be imposed in combination. A fine in the event of non-compliance can be imposed as soon as it is evident that the violation could occur (a 'preventive fine' ['preventieve last'], Article 2.16, para. 3 Whc). The administrative fine and the fine in the event of non-compliance may be imposed on a natural person or legal entity, as well as on the actual manager or mandator in question. The administrative fine is a maximum of EUR 45,000.00 per violation (equivalent to the fine for the fifth category as referred to in Article 23 of the Dutch Penal Code).

3.6.3 Disclosure

In addition to the imposition of an administrative fine or fine in the event of non-compliance, the Consumer Authority is authorised to disclose the following:

- a decision that no fine in the event of non-compliance or administrative fine is to be imposed;
- a decision concerning the imposition of an administrative fine or fine in the event of non-compliance;
- an undertaking from the offender that the violation shall be ended.

The authority to disclosure does not come from the Awb but from the Regulation. The Consumer authority sees its authority to accept an undertaking from an offender and then to make this public as an alternative to having to follow the entire process through to the imposition of an administrative fine or fine in the event of non-compliance. After all, it has been agreed with the offender that he will end his infringement and that the Consumer authority will not take any (further) enforcement measures as long as the offender keeps his promise. Disclosure means that consumers are informed about this undertaking.

For a civil law case too, the Consumer authority may – as an alternative to going to court – accept an undertaking from the violating company that will then be made public.

3.6.4 Class settlement

Pursuant to Article 2.6 Whc, the Consumer authority is authorised to enter into an agreement with a party that has violated one or more provisions whose enforcement the Consumer authority is charged with, under which agreement the infringing party undertakes to pay compensation for the loss arising from the violation. At the parties' request, the court may declare such an agreement binding on persons who have suffered loss as a result.

However, the Consumer authority will deploy this power with restraint, also in the light of the remarks on this subject in the Explanatory Memorandum ('Memorie van Toelichting') for the Whc. The Consumer authority is of the opinion that the market (e.g. consumer organisations) should take the lead

with such initiatives. After all, deploying this power means that the Consumer authority would become a party to a civil law or other settlement agreement, something that should be reserved for exceptional circumstances.

3.7 Prioritisation

The Consumer authority aims to take action effectively and decisively. One aspect of this is having a policy of systematic enforcement, under which transparent, well-reasoned decisions are taken about the question which cases to take up by the Consumer authority. It is important to note that this freedom of choice in decision-making is limited to 'national' cases. After all, the Consumer authority is in principle obliged to heed requests for assistance submitted from other EU member states. We expect a significant part of the Consumer authority's capacity to be taken up by these international cases.

In contrast to the 'ad hoc' taking up of national cases, the Consumer authority will endeavour to pursue a policy of systematic enforcement. Briefly, this means devoting our limited capacity and resources to those areas/cases that require the most attention, which have been identified beforehand as satisfying certain criteria ('priorities'). After all, if we simply tried to take up every case presented to us, our limited capacity would soon be spread in a fragmented way, something that would make it more difficult to achieve the desired structural changes in behaviour.

Each year, the Consumer authority will consult with stakeholders as to possible priorities, which will then be decided on and set out in an Agenda. A 'priority' could for instance be a particular industry or a particular type of infringement. When a priority has been identified then a 'programme' will be developed that will set out in detail the chosen approach to the problem in question (such as changing behaviour in a particular market), along with the suitable resources and instruments to be used to combat this problem. The primary objective behind this approach is to reduce the overall number of infringements of consumer protection regulations.

Prioritisation criteria

The Consumer authority will use the following criteria to select its priorities. Each year, stakeholders will be consulted about this selection, after which the priorities will be set down in detail in an annual Agenda.

The key criterion when making this selection will be the *impact* of non-compliance with the regulations: which legal and other interests would be harmed and to what degree? The criteria that play a role in this decision are:

- 1) the *extent of the loss suffered by consumers*: what is the actual, estimated or potential total economic loss suffered by consumers (i.e. how many consumers were actually or could potentially be harmed and what is the average loss per consumer?);
- 2) *impact on consumer confidence*: is a particular issue relevant with a view to restoring or improving consumer confidence?

- 3) the *impact on market impact* that a particular case could have on the market.

4 Cooperating

When cooperating with a number of other organisations, such as other national authorities, in the preceding section, the Regulation; we will n organisations within the

4.1 Relation

The basic principle is that the organisations themselves who will be participating in the disputes. The existing prioritisation initiatives such as the Commission, the Competition in the SER-CCA (Socio-Economic context, industry-wide context, this basic principle. The basic principle or these principles

It follows from this that action if a problem cannot be solved by the system or if the Consumer authority will following factors will play a role:

- a) if the Consumer authority is able to rectify an infringement, rectification will in principle be preferred;
- b) 'rectifying an infringement' (just) a solution in which the supplier reaches a settlement with the organisation) in which the supplier has made a settlement with the organisation may be grounds for action;
- c) the above-mentioned part of the Consumer authority will be responsible for consumers and co

means that the Consumer settlement agreement, circumstances.

- 3) the *impact on market forces* in a particular sector, which refers to the impact that a particular type of conduct (e.g. misleading advertising) could have on the level of competition and fairness in a particular sector.

4 Cooperation

When carrying out its tasks, the Consumer authority will be cooperating with a number of different organisations, both nationally and internationally, such as other supervisory authorities and civil society organisations. In the preceding section, we looked briefly at international cooperation under the Regulation; we will now do the same in the context of cooperation with other organisations within the Netherlands.

4.1 Relationship with existing 'private sector initiatives'

The basic principle is that it will be consumers and businesses themselves who will be primarily responsible for solving consumer rights disputes. The existing private sector initiatives, including the existing self-regulation initiatives such as consumer organisations, the Dutch Advertising Code Commission, the Complaints Boards, the general discussion of contract terms in the SER-CCA (Socio-Economic Council/Commission for Consumer Affairs) context, industry-wide codes of conduct, certifications and so on, all belong in this basic principle. The arrival of the Consumer Authority will not affect this basic principle or these private sector initiatives.

It follows from this that in principle the Consumer authority will only take action if a problem cannot be effectively rectified within the above-mentioned system or if the Consumer authority has an additional role to play. The Consumer authority will decide on a case-by-case basis whether this is so. The following factors will play a role in this decision:

- a) if the Consumer authority expects the market players in question to be able to rectify an infringement efficiently and effectively themselves then rectification will in principle be left to these parties;
- b) 'rectifying an infringement efficiently and effectively' is defined as the finding of a solution that ends a structural infringement and that is not (just) a solution in an individual dispute. In other words, the fact that a supplier reaches a settlement with an individual consumer (or consumer organisation) in an individual case does not automatically mean that the supplier has made a systematic change to his conduct. In such a case, this may be grounds for the Consumer authority to take action (after all);
- c) the above-mentioned basic principle does not imply any passivity on the part of the Consumer authority. For instance, it does not mean that the Consumer authority will only take action if all legal remedies open to consumers and consumer organisations have been exhausted. If it does

not look like the market players will be able to rectify the infringement quickly and efficiently themselves then this may be reason enough for the Consumer authority to take the lead directly, for example if the infringement (and the resulting loss for the consumer) means that we cannot wait a long time for the infringement to be rectified or if it is a repeated offence. Considerations in the decision to take action, even though consumers and/or consumer organisations still have legal remedies open to them, include the fact that any action taken by the Consumer authority as a supervisory authority would have a certain deterring effect and/or that it has certain supervisory and enforcement instruments not available to parties in the private sector;

- d) finally, it is not the case that the Consumer authority will always take action in situations where the market players are unable to solve the dispute themselves: the Consumer authority's decision whether to take action will be based on the criteria that it uses to decide whether or not it should take up a case (i.e. its prioritisation criteria).

4.1.1 The SRC

The SRC (the Dutch Advertising Code Commission) has set itself the objective of acting as a body that rules quickly and effectively on private sector complaints about advertisements, including those from consumers. To this end, the SRC has drawn up regulations that advertising must comply with, namely the NRC (the Dutch Advertising Code). In addition, the Advertising Code Committee, an independent body, has been set up, whose job it is to assess whether the advertisement being complained about violates the NRC. Articles 12, 15 and 16 of the Television Without Frontiers directive, one of the directives under the Regulation, have been implemented in the Netherlands in the NRC. In line with the basic principle that the Consumer authority will leave the existing private sector initiatives intact, the Consumer authority will in principle leave it to the SRC to handle any infringements in the field of misleading advertising that fall within the latter's jurisdiction. The Consumer authority can take action (after all) in cases where a supplier does not comply with the SRC's ruling, as well as in cases where the NRC does not apply. The above will be worked out in more detail in a cooperation protocol between the SRC and the Consumer authority.

4.1.2 Consumer organisations

Dutch consumer organisations such as the Consumentenbond and the Ombudsman Foundation play an important role in representing the collective interests of consumers. It is important for the Consumer authority to cooperate well with these organisations, in order to be able to operate effectively. To this end, agreements are being made with them on procedures such as

the reporting of the latest developments in regulations.

In addition, consumer organisations will be able to use collective action and to use the Consumer authority. Consumer organisations and the Consumer authority will coordinate their enforcement activities. This will be agreed with the consumer organisations.

4.1.3 Social consultation

We have already mentioned that the Whc will dovetail its activities with those of the consumer organisations in the form of self-regulatory arrangements, consumer associations and the similar arrangements. The Whc provides for a social consultation process. This process is first of all to implement the Whc's objectives. The Whc's objectives are designed to protect the consumer and to obtain feedback from civil society on the implementation of the Whc's objectives.

The social consultation process will be carried out in the following way:

4.2 Relationships

The Whc will be working with other supervisory authorities in the following categories, namely:

- a) other competent authorities
- b) supervisory authorities and
- c) other supervisory authorities

Special mention must be made of the Whc's relationship with the Public Prosecution Office).

a) Cooperation with the other supervisory authorities within the Netherlands

In addition to the Consumer authority, there are other supervisory authorities which have been established ('bevoegde autoriteit') under the Regulation: the AFM (Netherlands Authority for the Financial Markets), the Transport, Public Works and Water Management Authority, the Health Care Protection Authority, the Product Safety Authority).

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the reporting of the latest developments regarding compliance with consumer regulations.

In addition, consumer organisations can take advantage of their right to take collective action and to use the new application procedure set down in the Whc. Consumer organisations and the Consumer authority must always properly coordinate their enforcement measures in this regard. Procedures for this too will be agreed with the consumer organisations.

4.1.3 Social consultation

We have already noted above that the Consumer authority will dovetail its activities with those of the private sector initiatives that already exist in the form of self-regulation, consumer organisations, centralised employers' associations and the similar. In order to facilitate consultation with these players, the Whc provides for a social consultation process. The purpose of the social consultation process is firstly to ensure that the Consumer authority's work to implement the Whc dovetails as far as possible with private initiatives that are designed to protect the consumer, and secondly to allow the government to obtain feedback from civil society organisations as to the effects and effectiveness of the Whc's implementation.

The social consultation process will take place every quarter.

4.2 Relationship with other supervisory authorities

The other supervisory authorities that the Consumer authority will be working with when carrying out its tasks may be divided into three categories, namely:

- a) other competent authorities under the Regulation within the Netherlands;
- b) supervisory authorities where there is a concurrence of statutory powers, and
- c) other supervisory authorities.

Special mention must be made of the relationship with the OM (the Public Prosecution Office).

a) Cooperation with the other competent authorities under Regulation 2006/2004 within the Netherlands

In addition to the Consumer Authority, there are a number of other Dutch supervisory authorities who have been designated a 'competent authority' ('bevoegde autoriteit') under the Regulation. These are the (already mentioned) AFM (Netherlands Authority for the Financial Markets), the Dutch Media Authority, the Transport, Public Works and Water Management Inspectorate, the Health Care Protection Inspection, and the VWA (Food and Consumer Product Safety Authority).

In principle, there is no overlap between the tasks allotted to these supervisory authorities and to those of the Consumer authority. Each of these supervisory authorities has been designated an independent competent authority for one of the directives, or provisions contained therein, under the Regulation. In the case of the AFM, the Whc specifically stipulates that the Consumer Authority will not supervise the financial markets, as this financial supervision is to remain the exclusive jurisdiction of the AFM.

Accordingly, the Consumer authority's relationship with these competent authorities will mainly be informed by its role as Single Liaison Office for the Netherlands. Cooperation protocols will be signed with the above-mentioned competent authorities.

b) Cooperation with those supervisory authorities where there is a concurrence of statutory powers

Apart from the above competent authorities, the Consumer authority also works with a number of supervisory authorities whose powers overlap to some extent with those of the Consumer authority. These supervisory authorities are:

- the NZa (the Dutch Healthcare Authority);
- the OPTA (Dutch Independent Post and Telecommunications Authority) and
- the NMa/DTe (Netherlands Competition Authority/Office of Energy Regulation) as supervisory authority for the energy markets.

In the terminology of the Regulation and the Whc, these supervisory authorities are designated as 'other public bodies'. In certain cases, these other public bodies can take action against an infringement of consumer protection regulations that are actually enforced by the Consumer authority, by virtue of their 'own' sector-specific legislation and regulations. In this case, their statutory powers overlap with those of the Consumer authority. If in a particular case both the Consumer authority and another public body are authorised to enforce or supervise, then in principle the Consumer authority will not utilise its powers unless the other government agency asks it to. This basic principle is regulated in Article 4.2 para. 1 of the Whc and applies to both national and cross-border cases. The reason for this arrangement is that in many cases the special standards in the sector-specific regulations go beyond the more general standards laid down in the Civil Code. This arrangement also prevents the practice of so-called 'forum shopping', and also prevents 'double supervision'.

Nevertheless, the Consumer authority could still work together with one of the above-mentioned other authorities, should this be the most effective approach for a particular case.

Procedures for cooperation with the above-mentioned other government agencies will be set down in cooperation protocols, along with agreed interpretations of terms.

c) Cooperation with other supervisory authorities, for example to exchange information

Worth noting in this respect is the cooperation between the Consumer authority and the Competition Authority for competition matters. Although the Consumer authority has a clear sense to carry out joint market investigations with the Competition Authority, we might also find such cooperation in other areas (such as the VWA). The Consumer authority and the Competition Authority have a common ground and will take

d) The OM (Public Prosecution Service)

A particular infringement of consumer law is deemed to be a criminal offence if the conduct is deemed to be a criminal offence. In short, the Whc stipulates that in such a case, there is an overlap with the Criminal Law. In short, the Whc stipulates that the Consumer authority must submit the case to the Public Prosecution Service since the Consumer authority may act to enforce the law.

The above will be set out in the Cooperation Protocol with the OM, in which the Consumer authority will cooperate with the OM in cases of criminal offences in the area of consumer law. The OM has a corrective supervisory jurisdiction in cases of criminal offences and prize draws.

5 Conclusion

The Consumer authority's enforcement activities on 1 January 2007. In some light on the way in which the Consumer authority will enforce general basic principles it will be regulated in more detail and finally our improved knowledge

c) Cooperation with other supervisory authorities

The Consumer authority may work together with other supervisory authorities, for example to exchange reports about possible violations.

Worth noting in this respect is the NMa – the generic supervisory authority for competition matters. After all, a certain market may be imperfect from both consumer protection and competition points of view. In such a case, it makes sense to carry out joint market analyses or perform joint enforcement measures. We might also find such common ground with other supervisory authorities (such as the VWA). The Consumer authority will actively investigate such common ground and will take joint action where this is appropriate.

d) The OM (Public Prosecution Service)

A particular infringement of consumer law regulations may be coupled with conduct deemed to be a criminal offence, such as fraud or deception. In such a case, there is an overlap with the jurisdiction held by the OM under criminal law. In short, the Wbc stipulates that in such a case the Consumer authority must submit the case to the OM. If the OM then declares that it will not be initiating criminal proceedings, or should a period of 13 weeks have elapsed since the Consumer authority submitted the case to the OM, then the Consumer Authority may act to enforce the law, administrative or otherwise.

The above will be set out in more detail in cooperation agreements with the OM, in which the Consumer authority will endeavour to agree on joint action with the OM in cases of conduct where there is an overlap between the respective supervisory jurisdictions, such as in the case of misleading lotteries, sweepstakes and prize draws.

5 Conclusion

The Consumer authority will commence its supervisory and enforcement activities on 1 January 2007. This article has endeavoured to shed some light on the way in which the Consumer authority will operate, and on the general basic principles it will follow in the process. This policy will be formulated in more detail and fine-tuned in the light of our experiences in practice and our improved knowledge of consumer markets over time.