

## Enclosure 2

### Guidelines for Submitting a Turnover Statement

ACM charges the providers of public electronic communications services in the Netherlands an annual fee to cover the costs of its regulatory activities. This fee is based on the providers' net turnover, referring to the net turnover for the calendar year two years preceding the year in which the fee is imposed (hereafter: the reference year). The fee that you are to pay for 2018 is thus based on your net turnover for 2016.

Net turnover refers to the turnover generated by the supply of goods and provision of services through the company of the legal person minus discounts and suchlike, and taxes levied on the turnover.<sup>1</sup> It is not the entire amount of net turnover that is relevant, only that part of the turnover that a provider has achieved through the provision of public electronic communications services, public electronic communications networks and related facilities (hereinafter referred to as public electronic activities) in the Netherlands that fall under the notification obligation of Section 2.1 of the Dutch Telecommunications Act.

If a provider belongs to a group of undertakings within the meaning of Section 24b of Book 2 of the Dutch Civil Code, the obligation to submit a group turnover specification applies.<sup>2</sup> This means that the turnovers from the provision of public electronic communications activities in the Netherlands by all companies belonging to that group must be added up. Transactions between the companies belonging to that group (internal deliveries) are excluded from this calculation. According to Section 24b of Book 2 of the Dutch Civil Code, a group is an economic entity in which legal persons and partnerships are organizationally linked. Group associations (or holdings) are legal persons and partnerships linked to each other in a group.<sup>3</sup>

Providers are classified into two categories, depending on the level of their relevant turnover with a turnover threshold of EUR 2,000,000.<sup>4</sup> Providers in the first category are charged in proportion to their relevant turnover. Providers in the second category are not charged a fee for ACM's regulatory activities.

Category	Turnover Threshold	Fee for ACM's regulatory work
1	Relevant net turnover $\geq$ EUR 2,000,000	Percentage of the relevant net turnover
2	Relevant net turnover $<$ EUR 2,000,000	No fee due

The percentage is determined annually prior to 1 May in the ACM Regulation regarding the passing on of costs by ACM. The percentage for 2018 will therefore be determined before 1 May 2018 in the amended ACM Regulation regarding the passing on of costs by ACM.

<sup>1</sup> The definition as set out in Section 377, paragraph 6 of Book 2 of the Dutch Civil Code is applied.

<sup>2</sup> Pursuant to Section 13, paragraph 1 of the ACM decision regarding the passing on of costs by ACM.

<sup>3</sup> See also: Sections 361, 379, 405 Dutch Civil Code Book 2; Section. 35, 46 WOR (Dutch Works Council Act).

<sup>4</sup> Section 4 of the ACM Regulation regarding the passing on of costs by ACM (Dutch Official Gazette no. 36296).

## **Formal requirements for the Turnover Statement**

### *Turnover Specification Form*

Please use the turnover specification form to report your turnover. You are required to state therein the amount of your net turnover (relevant or otherwise). Please return the completed and signed form to ACM, along with the appropriate enclosures. Without this form, your turnover specification is incomplete.

### *Procedure for submitting a group turnover specification*

If your company belongs to a group of undertakings, you are obliged to submit a group turnover specification. The undertakings belonging to this group are to decide amongst themselves who will be responsible for submitting the group turnover specification. ACM will send the invoice for its regulatory work to the company submitting the group specification. The names of the companies providing electronic communications activities in the Netherlands, to which the group turnover specification pertains, must be entered in the form. The auditor must verify that the group is indeed a group of undertakings, and the auditor must also verify that the undertakings named actually make up this group.

## **Material requirements for the Turnover Statement**

### *Specified Turnover Statement*

#### *Is your relevant net turnover at least EUR 8,800,000?*

If so, you are required to submit either a turnover statement in which the turnover can be derived from the annual accounts or a specified statement of your relevant net turnover. In both cases, your statement must be supported by the audited annual accounts and a report from an auditor who is registered in the Audit Register.<sup>5</sup> In the first case, you may use the auditor's report of the annual accounts. In the second case, you are required to have a separate auditor's report drawn up. A template for an auditor's report is available on the ACM-website ([www.acm.nl](http://www.acm.nl)).

A specified turnover statement gives a detailed account of your relevant net turnover. It is not sufficient to report only a single amount (that of your relevant turnover). In order for ACM to assess the turnover specification, you are required to make clear, supported with reasons, which services and thereto-related turnover you do not consider relevant. It must be clear from your supporting information that this does not constitute turnover generated by the provision of public electronic communications activities in the Netherlands.

#### *Is your relevant net turnover less than EUR 8,800,000?*

In that case, you are not required to substantiate your turnover specification by a report from an auditor. It will suffice to fill out the turnover specification form. However, ACM may request you to submit a detailed substantiation of your turnover specification if it deems such necessary in order to assess your turnover specification.

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<sup>5</sup> An Audit Register within the meaning of Section 36 of the Dutch Act on the Audit Profession.

Enclosure with ACM letter with reference: ACM/UIT/311543

**Points for attention in the Assessment**

*Media and technologies used*

The medium through which the service is provided is irrelevant for the establishment of the relevant turnover. It makes no difference whether the turnover is generated using fixed, wireless or mobile networks and connections, or connections that make use of satellites. The type of fixed connection, such as copper, fiber-optic or coaxial cable, is not relevant either. Furthermore, it makes no difference whether the services concern speech, data or images.

*Wholesale/Retail*

Any turnover achieved in a wholesale environment, as well as turnover achieved in a retail environment must be included in the calculation of the relevant turnover. This means, for example, that both turnover for call termination fees and turnover for call origination fees are relevant turnover.

*Resale*

Any turnover generated by resale services provided by other providers, are not included in the calculation of the relevant turnover. If, after the sale, there is no contractual relationship between the reseller and the buyer following the consumption of the service, it is considered resale.

*Revenues from agreements between customer and provider*

Any fees for activities performed as part of the provision of public electronic communications activities are part of the services (telecommunications or otherwise) agreed upon by the customer and the provider. These include disconnection fees, revenues from helpdesk, revenues from moves, expired call balances, connection and re-connection fees and revenue from subscription changes. These types of revenues must be included in the calculation of the relevant turnover.

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**Indicative Overview (these lists are not exhaustive)**

<b>Turnover achieved through the following activities is considered relevant:</b>	<b>Turnover achieved through the following activities is considered <u>not</u> relevant in any case:</b>
<ul style="list-style-type: none"> <li>◆ Internet access through e.g. dial-up (including dialers), xDSL, cable (broadcasting and otherwise) and satellite.</li> <li>◆ Connecting and fixed subscriptions (including call balances).</li> <li>◆ Outgoing calls.</li> <li>◆ International roaming (outgoing and incoming calls).</li> <li>◆ Data services (including SMS, GPRS, UMTS, MMS, Fax, etc.).</li> <li>◆ Accessing voicemail.</li> <li>◆ Forwarding call services (e.g. for certain types of interactive voice response systems and subscriber information services).</li> <li>◆ Terminating calls (including FTA, MTA, VoIP-In and routing calls to information numbers).</li> <li>◆ Access (including access to a network for other providers and unbundled access).</li> <li>◆ Originating calls (including VPN, CS, CPS, VoIP-Out).</li> <li>◆ Call transit (including local, inter-regional and other forms of call transit).</li> <li>◆ Calls via information numbers with payment made through the operator or by means of a phone card.</li> <li>◆ Transmission and transit of broadcasting programs (radio and television).</li> <li>◆ Making radio frequencies available to other parties to facilitate public electronic communications services.</li> <li>◆ Paging services.</li> <li>◆ Telex.</li> <li>◆ Lease lines and other point-to-point connections.</li> <li>◆ Bitstream.</li> <li>◆ Site-sharing (antenna locations for broadcasting networks).</li> <li>◆ Collocation (this refers to leasing space to facilitate or support the provision of electronic communications services).</li> <li>◆ Systems for conditional access of encrypted television programs.</li> <li>◆ Electronic television guides.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Sale of substantive information by means of electronic communications such as 0800 and 090x information numbers and SMS (provided that the accountant confirms there is no turnover involved which was achieved by providing public electronic communications activities).</li> <li>◆ Turnover pertaining to the content of the programs which are transmitted by broadcasting networks.</li> <li>◆ Sale and lease of terminal equipment.</li> <li>◆ Sale and lease of software.</li> <li>◆ Lease of hollow cable conduits.</li> <li>◆ Web hosting.</li> <li>◆ Statutory wire-tapping fees.</li> </ul>

## **Mediation for the deaf and the hard of hearing**

The Dutch Minister of Economic Affairs has appointed KPN B.V. to act as intermediary (hereinafter: Mediator) for the deaf and hard of hearing as from 1 October 2013.<sup>6</sup> The Mediator enables individuals with an auditory or speech impairment to make use of public telephone services. KPN B.V. has a right to remuneration for the costs of mediation according to Section 9.4 of the Dutch Telecommunications Act.

The costs for remuneration for mediation will be apportioned among the providers of electronic communications services and networks that had a turnover of at least EUR 2,000,000<sup>7</sup> in the calendar year preceding the calendar year related to the remuneration costs. According to the turnover specification you submit, ACM will determine the fee for each provider based on the ACM Decision on Regulatory Costs for regulation of the electronic communications sector. The amount due from each provider is determined according to the formula in Section 2.13 of the Decision for Universal Services and End User Interests.

Should your relevant net turnover in 2016 amount to at least EUR 2,000,000, ACM will charge you in 2018 for the costs of mediation that took place in 2017. You may expect to receive the invoice in mid-2018.

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<sup>6</sup> Dutch Government Gazette, 7 May 2013, 11624.

<sup>7</sup> Section 2.6 of the Decision for Universal Services and End User Interests.

## Consumer Complaints Board for Telecommunications

Section 12.1 of the Dutch Telecommunications Act mandates providers of public telephony services (fixed and mobile) to join the Consumer Complaints Board for Telecommunications (hereinafter: SGC). The SGC handles consumer complaints about fixed or mobile phone connections. A registration fee is applicable. The SGC-tariff system is as follows:<sup>8</sup>

Category	Turnover Thresholds	Annual Registration Fees	Obligation Fulfillment Guarantee Fund (one-off)
1	Relevant net turnover > EUR 20,000,000	EUR 5,000	EUR 1,000
2	EUR 2,000,000 ≤ relevant net turnover ≤ EUR 20,000,000	EUR 2,500	EUR 500
3	Relevant net turnover < EUR 2,000,000	EUR 0	EUR 0

The SGC places providers in three categories based on their relevant net turnover and will therefore send an annual invoice for Registration fees and a one-off invoice for the Obligation Fulfillment Guarantee Fund. **Attention: ACM and SGC use different categories!** ACM requests you to indicate on the Turnover Specification Form whether you give permission to inform SGC about the category (1, 2 or 3) to which you belong according to the SGC Tariff System. **ACM does not provide SGC with the exact amount of your relevant net turnover.** If you fail to indicate on the Turnover Specification Form whether you give ACM this permission, SGC will place you in category 1. It is therefore essential that you answer the question about this permission in the Turnover Specification Form (see part 5). You must also fill out the Turnover Specification Form if you do not provide telephone services to customers. By doing so, you will prevent being erroneously charged a fee.

<sup>8</sup> This refers to the tariffs for 2016. The tariffs for 2017 will be established by adjusting the 2016 tariffs for inflation.