

Autoriteit Consument & Markt



Enclosure 2

Guidelines for Submitting a Turnover Statement

ACM charges the providers of public electronic communications services¹ in the Netherlands an annual fee to cover the costs of its regulatory activities. This fee is determined using the net turnover.

The turnover from which year should you report?

ACM base the fee that you need to pay on your net turnover, referring to the net turnover for the calendar year two years preceding the year in which the fee is imposed. The fee that you are to pay for 2019 is thus based on your relevant net turnover for 2017.

What is the relevant net turnover?

It is not the entire amount of net turnover² 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. Turnover generated from other activities are not considered relevant.

In what situations should you pay a fee for ACM's regulatory activities?

Providers are classified into two categories, depending on the level of their relevant turnover with a turnover threshold of EUR 2,000,000.³ 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 for 2019 is determined before 1 May 2019 in the 2019 ACM Regulation regarding the passing on of costs by ACM.

¹ Providers of a public electronic communications service, a public electronic communications network or thereto-related facility within the meaning of Section 2.1 of the Dutch Telecommunications Act.

² Under Section 2:377, paragraph 6 of the Dutch Civil Code, the following is considered net turnover: 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.

³ Section 4 of the ACM Regulation regarding the passing on of costs by ACM (Dutch Official Gazette no. 36296).

When submitting your turnover specification, what requirements need to be met?

Use the Turnover Specification Form

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

How do you submit a turnover specification if you are part of a group of undertakings?

Does your company belong to a group of undertakings, within the meaning of Section 24b, Book 2 of the Dutch Civil Code⁴? And do other undertakings within the group also offer electronic communications services? If so, you will have to submit a joint turnover specification. This means that one undertaking within the group submits a turnover specification on behalf of all undertakings within the group.

Discuss with all the other undertakings within the group which one of you is responsible for submitting the joint turnover specification. In the form, the undertaking that submits the turnover specification only enters the total of the relevant turnovers of all undertakings belonging to that group. Internal supplies between the undertakings belonging to the group can be excluded from this calculation. **Attention!** In all cases, you will have to submit a form yourself, even if you are not the undertaking submitting the joint turnover specification on behalf of the group. In field 2, you can enter the name of the undertaking that will submit the turnover specification on your behalf.

The undertaking submitting the joint turnover specification receives the invoice for ACM's regulatory activities. In the turnover specification form, the undertaking submitting the joint turnover specification enters the names of the undertakings to which the joint specification relates. 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.

How can the turnover specification be substantiated?

In some cases, you will have to substantiate your turnover specification. There are two possible situations:

1. *Your relevant net turnover is equal to or exceeds €12 million⁵*

If so, you will have to include several data with your turnover specification. Is your relevant net turnover equal to the total net turnover? Please include the audited annual accounts and the auditor's report⁶ with your turnover specification.

Is your relevant net turnover lower than your total net turnover, for example because you also carry out activities other than public electronic communications services? Then you will have to specify your relevant net turnover.

⁴ 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. See also: Sections 361, 379, 405 Dutch Civil Code Book 2; Section. 35, 46 WOR (Dutch Works Council Act).

⁵ The turnover threshold is EUR 12 million under Section 12a, paragraph 4, of the ACM Regulation regarding the passing on of costs by ACM in conjunction with Section 6 of the ACM Regulation regarding the passing on of costs by ACM in conjunction with Section 396, paragraph 1 under b of Book 2 of the Dutch Civil Code.

⁶ A report drawn up by an auditor who is registered in the Audit Register within the meaning of Section 36 of the Dutch Act on the Audit Profession.

A specified turnover statement gives a detailed account of your relevant net turnover. It is not sufficient to report only a single amount as the relevant net 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. Please include the audited annual accounts and have an auditor draw up a report for your specified turnover statement.

2. Your relevant net turnover is lower than €12 million

In this case, you are not required to substantiate your turnover specification with a report from an auditor or the audited annual accounts. 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.

What turnover is relevant?

Do the media or technologies used affect the calculation of the relevant turnover?

The medium through which the service is provided is irrelevant for the establishment of the relevant turnover. Furthermore, 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.

Is turnover generated from wholesale and retail services included?

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.

Are you a reseller?

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.

What revenues from the agreements between customers and providers are included?

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.

Indicative overview (these lists are not exhaustive)

| Turnover achieved through the following activities is considered relevant: | Turnover achieved through the following activities is considered <u>not</u> relevant in any case: |
|---|---|
| <ul style="list-style-type: none"> ◆ Internet access through e.g. dial-up (including dialers), xDSL, cable (broadcasting and otherwise) and satellite. ◆ Connecting and fixed subscriptions (including call balances). ◆ Outgoing calls. ◆ International roaming (outgoing and incoming calls). ◆ Data services (including SMS, GPRS, UMTS, MMS, Fax, etc.). ◆ Accessing voicemail. ◆ Forwarding call services (e.g. for certain types of interactive voice response systems and subscriber information services). ◆ Terminating calls (including FTA, MTA, VoIP-In and routing calls to information numbers). ◆ Access (including access to a network for other providers and unbundled access). ◆ Originating calls (including VPN, CS, CPS, VoIP-Out). ◆ Call transit (including local, inter-regional and other forms of call transit). ◆ Calls via information numbers with payment made through the operator or by means of a phone card. ◆ Transmission and transit of broadcasting programs (radio and television). ◆ Making radio frequencies available to other parties to facilitate public electronic communications services. ◆ Paging services. ◆ Telex. ◆ Lease lines and other point-to-point connections. ◆ Bitstream. ◆ Site-sharing (antenna locations for broadcasting networks). ◆ Collocation (this refers to leasing space to facilitate or support the provision of electronic communications services). ◆ Systems for conditional access of encrypted television programs. ◆ Electronic television guides. | <ul style="list-style-type: none"> ◆ 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). ◆ Turnover pertaining to the content of the programs which are transmitted by broadcasting networks. ◆ Sale and lease of terminal equipment. ◆ Sale and lease of software. ◆ Lease of hollow cable conduits. ◆ Web hosting. ◆ Statutory wire-tapping fees. |

Mediation for the deaf and the hard of hearing

The Dutch Minister of Economic Affairs and Climate Policy has appointed KPN B.V. (KPN) to act as intermediary (Mediator) for the deaf and hard of hearing.⁷ The Mediator enables individuals with an auditory or speech impairment to make use of public telephone services. KPN has a right to remuneration for the costs of mediation⁸.

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. When calculating the fee for each provider, ACM will use the turnover data that is submitted for the calculation of the fee for ACM's regulatory activities. The amount due from each provider is calculated according to the formula in Section 2.13 of the Decision for Universal Services and End User Interests.

If your relevant net turnover in 2017 was at least EUR 2,000,000, ACM will charge you in 2019 for the costs of mediation that took place in 2018. The invoice is expected to be sent out in the fall of 2019.

Consumer Complaints Board for Telecommunications

Do you provide public telephony services (fixed and mobile) to consumers? If so, you are statutorily required⁹ 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. In the table below, it is explained what you need to pay.¹⁰

| 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!

Why does ACM ask for your permission to forward this data to SGC?

ACM and SGC have agreed on ACM informing SGC about the category that you fall into according to the SGC-tariff system. In that way, you will not have to submit your turnover specification twice. ACM requests you to indicate on the Turnover Specification Form whether you give permission to inform

⁷ Dutch Government Gazette, 7 May 2013, 11624.

⁸ Under Section 9.4 of the Dutch Telecommunications Act.

⁹ Section 12.1 of the Dutch Telecommunications Act

¹⁰ This refers to the tariffs for 2018. The tariffs for 2019 will be established by adjusting the 2018 tariffs for inflation.

SGC about the category (1, 2 or 3). ACM does not provide SGC with the exact amount of your relevant net turnover, but will only inform SGC about the category.

If you do not give permission, or if you do not indicate anything, SGC will then place you in category 1. It is therefore essential that you complete field 5 in the Turnover Specification Form. 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.

Do you have any other questions about SGC?

Please contact SGC by calling +31-70-3105-371 or by sending an email to registrant@degeschillencommissie.nl.