



Annual Report
ACM in 2016

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ACM 2016 Highlights

1

Dutch consumers save EUR 790 million

ACM wishes to take action in those areas where it can truly make a difference for consumers and businesses. That is why we calculate how much our work has saved Dutch consumers. In 2016, that figure was approximately EUR 790 million. In addition, we study the effects of our oversight efforts. In 2016, for example, we looked into the use of 'rapid interventions' and the consumer awareness campaigns of our consumer information portal ConsuWijzer. And we held a conference on 'impact'. Among the attendees were other regulators and scholars from home and abroad, who all shared valuable insights about the possibilities, challenges and limitations of impact studies.

2

'Cartels never go unnoticed'

ACM has gone on the offensive against cartel agreements, also in the ports and transport sector. Cartels are illegal agreements between businesses in order to eliminate the competition. With our campaign 'Cartels never go unnoticed,' we have raised people's awareness of cartel agreements. The idea behind this campaign was: cartel agreements are concluded by real, actual people. So there are always people who know about these illegal agreements. We have called on these individuals to report any abuses that they know of. The number of tip-offs we received went up right after the launch of the campaign.

3

Fines on online stores

In 2016, ACM took action against various online stores in order to ensure that consumers would get their money refunded after cancellation of their purchases. We imposed fines totaling EUR 505,000 on five online fashion stores. On their websites, they provided consumers with insufficient information about cancellations. In addition, ACM imposed fines totaling EUR 500,000 on online stores and their executives for violating the rules on refunds when cancelling orders.

4

Healthier competition in ready-mix concrete sector

In 2016, ACM's efforts resulted in healthier competition in the ready-mix concrete sector, which is an important commodity in the construction industry. A substantial number of firms in this sector made commitments to ACM. For example, they promised to scale down collaborations. The likelihood of exchanging competition-sensitive information has thus been reduced. In addition, the commitments make it easier for new competitors to enter the market. As a result of our actions, we have taken away anticompetitive concerns in the ready-mix concrete sector. That is good for prices, quality, service, and innovation, which will ultimately benefit governments, businesses, and consumers.

5

'Debt collection? Only pay if the facts are correct'

In 2016, ACM launched an awareness campaign to empower consumers against unfair practices in the debt collection industry. In the campaign 'Debt collections? Only pay if the facts are correct,' ACM and the Netherlands Authority for the Financial Markets (AFM) called on consumers to take action against unjust, incorrect or aggressive debt collection. ACM and AFM explain and enforce the rules in the debt collection industry. ACM investigated this industry because consumers had reported a lot of problems to consumer information portal ConsuWijzer. Unfair commercial practices substantially harm consumer confidence. With this campaign, we have informed many consumers about their rights, so they do not overpay for no reason.

6

Lower prices for sustainable energy

In accordance with the Dutch Energy Agreement, 16 percent of the Dutch energy mix must come from renewable sources by 2023. That is why the Netherlands wishes to generate more wind energy, including from offshore wind farms. ACM certified Dutch transmission system operator TenneT as the operator of the offshore grid relatively quickly. TenneT was thus able to make a swift start to executing its tasks: ensuring that the future offshore windfarms are connected in an efficient and timely manner. We also set the rules for determining the maximum revenues of TenneT for the period of 2017 through 2021. As a result, market participants know where they stand. That is also how we help achieve lower prices for sustainable energy.

7

ACM's decisions upheld in court

ACM also defends its decisions in court. By defending our decisions in court, we contribute to the development of the law. In 2016, several important cases were upheld in higher proceedings. The District Court of Rotterdam and the Dutch Trade and Industry Appeals Tribunal (CBb) ruled on 77 ACM decisions in 2016. Almost 80% of these rulings were in ACM's favor, in that the court ruled in ACM's favor on the most critical points in the case.

8

Record number of individuals have switched energy providers

In 2016, a record share of 16.4% of all Dutch consumers switched energy providers. Never before have so many consumers switched providers in a single year. Consumers can save a lot by switching. By shopping around, consumers stimulate energy companies to keep their prices and service competitive. That is why we find it important that consumers are able to compare offers properly. We have helped introduce the 'personalized offer.' With such personalized offers, we made it easier for consumers to compare prices.

9

ACM sets the tariffs wherever there is insufficient competition

In 2016, ACM set tariffs in the following sectors: telecommunications, postal services, aviation, rail, maritime pilotage, and energy. Customers in these sectors are not always able to choose from different providers, which means they sometimes pay too much. ACM oversees all of these markets, making sure that providers operate efficiently, that their operations meet specific quality requirements, and that they do not charge too high tariffs for their services.

10

Sufficient dedicated mobile-phone codes for consumers

If you want to place a call, you need a phone number. ACM manages the supply of phone numbers in the Netherlands. We make sure that telecom providers assign the right numbers to their customers' devices. For example, in 2016 we prevented firms from incorrectly allocating premium-rate phone numbers, and consumers from paying too high tariffs. As a result of our efforts, sufficient dedicated mobile-phone codes remain available to consumers.

11

Healthy cooperation between hospitals

In 2016, mergers and collaborations between hospitals attracted a lot of attention. ACM assessed several mergers between big hospitals. We also carried out studies to gain more insight into the effects of hospital mergers on quality. In addition, we sought to clarify that competition law offers room for cooperation between hospitals provided that such cooperation was in the interests of patients and the insured. For example, 3 hospitals have been allowed to collaborate in the treatment of several rare types of cancer. Furthermore, we explained the opportunities that hospitals and insurers have for collaboration in the procurement of prescription drugs. As a result, they are able to negotiate more effectively with pharmaceutical companies, which ultimately benefits consumers.

12

ACM monitors the trends on the parcel market

Dutch consumers continue to shop online in even greater numbers. The number of parcel deliveries has therefore grown tremendously over the past few years. The parcel delivery market is changing at great speed. For example, providers have concentrated their efforts on developing innovative delivery methods. And the prices in various market segments are constantly evolving. In 2016, ACM carried out a study into the parcel market. We mapped the market structure and determined the competitive positions of the different parcel services providers. From now on, we will continue to monitor the sector, and we will include this market segment in our annual monitor of competition trends on the postal services market.

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1 2016-2017 ACM Agenda

In its Agendas, the Netherlands Authority for Consumers and Markets (ACM) announces what topics it will focus on. Consumers and businesses thus know what they can expect from us.

The topics in 2016-2017

ACM has identified six topics for its 2016-2017 Agenda. These are:

1. [Health collaborations in health care](#)
2. [Energy markets in transition](#)
3. [Digitalization - Online consumers](#)
4. [Ports and transport](#)
5. [Clear prices and conditions](#)
6. [Competitive neutrality](#)

We have chosen these themes based on complaints filed with ConsuWijzer, consultations with businesses and consumer organizations, and on our own investigations.

- [Watch the video about the 2016-2017 ACM Agenda](#) (in Dutch)

On the dedicated website for the online discussions (denkmee.acm.nl), businesses, consumers, local governments, and other organizations were able to join the discussion with ACM about the six topics on the ACM Agenda. We also received responses on [Facebook](#) and [LinkedIn](#).

1.1 Healthy collaborations in health care

Health insurers and municipalities collectively bear responsibility for making sure that health care is accessible, affordable, and of high quality. Health care providers and health insurers collaborate in many different ways. Collaborations can sometimes benefit consumers, but sometimes they do not.

Room for collaborations

In the health care market, there is room for collaborations that offer benefits to consumers (both as patients and insured), for example, if they improve health care affordability or the quality of treatments. However, some forms of cooperation do not benefit consumers such as price-fixing agreements or unnecessarily restricting the options of consumers when selecting a health care provider.

Results in 2016

In 2016, ACM focused its efforts on healthy collaborations in health care. Some of our successes of the past year include:

- Hospitals and health insurers were able to increase their clout in the collective procurement of prescription drugs;
- Primary care providers were offered more latitude to launch joint initiatives that improve health care;
- Hospitals were given the opportunity to self-assess their planned collaborations in rare, complex care.

ACM's contributions to meetings about competition and cooperation

In 2016, we also participated in meetings where competition and collaborations in health care were on the agenda. Some of the meetings where we gave presentations include:

- The SIGRA Network Meeting on Youth in June 2016
- The Dutch Association for Logoeedics and Phoniatics (NVLF) in October 2016
- The Dutch Hospital Association (NVZ) in November 2016
- The Netherlands Federation of University Medical Centers (NFU) in November 2016

In addition, we regularly keep an eye on plans concerning collaborations, for example in the field of obstetrics. That is why we have published general principles and answers to [frequently asked questions about cooperation between obstetricians](#) (in Dutch).

1.1.1 Cooperation in the procurement of prescription drugs for hospital care

Purchasing agents of hospitals and health insurers can increase their clout by collectively purchasing prescription drugs for specialist medical care more often. If they do so, ACM believes that they are able to negotiate lower drug prices and better conditions.

Guidelines on collective procurement of prescription drugs

In June 2016, ACM published the '[Guidelines on collective procurement of prescription drugs](#)'. These guidelines explain to hospitals and health insurers about the room that the competition rules offer for collective procurement of prescription drugs. ACM observed that, in some cases, there may be some hesitation to collaborate, even if cooperation would be in the interest of patients and the insured. With these guidelines, ACM wishes to offer more clarity about the opportunities that the competition rules offer for collective procurement.

Rules of thumbs for collective procurement

If purchasing agents follow these rules of thumb, ACM does not expect to see any problems for competition, which means the collective-procurement arrangement is allowed.

1. The total costs of the drugs purchased collectively cannot comprise more than a limited share of the hospital costs.
2. Other buyers must be able to join any group purchasing organization (or joint purchasing organization).
3. It must be easy to leave a group purchasing organization (or joint purchasing organization).

It should be noted that, outside of these rules of thumb, cooperation between purchasing agents continues to be possible. In order to determine whether a specific collaboration complies with general antitrust rules, a more extensive analysis of the collaboration in question could be necessary.

Responses and roundtable discussions

ACM had previously released the draft version of these guidelines. Interested parties were given the opportunity to comment on these guidelines. In addition, ACM organized several roundtable discussions with health insurers and hospitals to see whether the guidelines offered them enough guidance that they could apply in the real world. In the final version, ACM clarified several parts of the guidelines, and ACM launched an [FAQ section about the guidelines on its website](#) (in Dutch). In addition, [Chris Fonteijn, Chairman of the Board of ACM, held a speech about the final version of the guidelines](#) (in Dutch) at a June meeting at the Ministry of Health, Welfare, and Sport (VWS).

1.1.2 Collaborations between primary care providers

Pharmacists, general practitioners (GPs), physical therapists, psychotherapists, speech therapists, and all other primary-care providers often collaborate. Close collaborations offer benefits for patients and insured. Think of collaborations in order to improve the quality of treatments or to introduce new treatment methods and innovative technologies.

Basic principles for ACM's oversight of collaborations in primary care

In September 2015, ACM confirmed in its publication titled '[Basic principles for the oversight of primary care](#)' (in Dutch: 'Uitgangspunten toezicht eerstelijnszorg') the options for collaborations between primary care providers. We explained what latitude providers have when it comes to cooperation in the interest of patients and insured, and how we seek to prevent harmful collaborations. ACM sees sufficient room for collaborations without compromising the competition rules.

Effects of the basic principles

In 2016, we assessed whether the Basic principles for our oversight of primary care have been effective. As part of that assessment, we monitored the real-world experiences of these Basic principles among the parties involved, and we tested whether the assumptions were correct (or still are correct). In addition, we wanted to know whether and how parties made use of the latitude for collaborations in primary care. We sat down with various parties that are active in primary care.

The publication titled '[Monitoring the Basic principles for ACM's oversight of primary care providers](#)' (in Dutch) revealed that the first reports about the Basic principles' effectiveness have been positive. For example, care providers are getting cold feet less often when it comes to launching new initiatives for health care improvements. We encourage care providers to take joint health-care improvement efforts one step further. They should not be unnecessarily hindered by presumed anticompetitive risks. We are calling on health care providers to involve actively in those efforts the patient organizations and health insurers. At the same time, ACM encourages patient organizations and health insurers themselves to try actively joining such initiatives, and to assess their benefits and drawbacks.

Reporting problems

In its oversight, ACM focuses on types of cooperation that harm patients and insured. For example, primary care providers could decide to defend their business interests collectively such as the level of their reimbursements, keeping out new providers, or sharing patients in order to secure their turnovers.

ACM welcomes any reports about collaborations that are not in the interest of patients. If we receive any such reports, it will possibly lead to enforcement actions by ACM. In 2017, we will carry out several targeted enforcement actions following reports that we received in 2016.

1.1.3 Collaborations between hospitals

We are observing that more and more hospitals collaborate in complex care. The Dutch Competition Act does not stand in the way of collaborations that clearly benefit patients and the insured.

Identifying the benefits and drawbacks by oneself

If hospitals or other care providers wish to collaborate, they will have to carry out a self-assessment first. ACM suggests them to look into the following points of attention:

- Do not only identify the benefits of a collaboration, but also the drawbacks (potential and real);
- Also identify the consequences of the restriction of competition;
- Weigh the collaboration's benefits and drawbacks with regard to quality, accessibility and affordability of health care;
- With regard to the identified benefits and drawbacks, substantiate their projected effects as much as possible by providing factual data.

ACM's opinion on collaboration in complex cancer care

Three hospitals in the central Dutch province of Utrecht wished to cooperate closely with regard to treatments of several rare types of tumors. These hospitals were the University Medical Center Utrecht (UMC Utrecht) in the city of Utrecht, the Meander Medical Center (MMC) in the city of Amersfoort and the St. Antonius Hospital in the cities of Utrecht and Nieuwegein.

ACM published [an informal opinion about this collaboration in complex cancer care](#). In this opinion, we came to the conclusion that this collaboration offered sufficient benefits for patients and insured. Its benefits would likely offset the anticompetitive concerns such as a reduction in the options for patients.

The three hospitals involved did perform a competition-law self-assessment on their planned collaboration first. As part of that self-assessment, they also talked to health insurers and patient organizations about the benefits and drawbacks. Next, they requested us to issue an opinion. We tested all of their information against the Dutch Competition Act and [the guidelines on Assessing mergers and collaborations in hospital care](#). ACM believes it is plausible that this collaboration can be in the interest of patients and insured.

1.2 Energy markets in transition

The energy market is undergoing major changes. Energy is generated more and more in a sustainable manner. New services are introduced, and new competitors enter the market.

New questions

The transition towards a more sustainable supply of energy does not only raise tons of questions for the energy sector, but obviously also for ACM as energy regulator. For example, large-scale investments in solar and wind power will result in more volatile energy-production levels. Can security of supply be guaranteed if the wind is not blowing or if the sun is not shining? And if there is a strong wind or the sun is shining brightly, will it lead to congestion? In such situations, is the grid still reliable?

System operators are statutorily charged with safeguarding the reliability of their grids. It may help to adjust the rules, where necessary, in order to help distribute flexibility more easily, thereby being able to ensure secure grids in a more efficient manner. The increased volatility of the generation of electricity will, one way or another, call for more flexibility in the demand of energy consumers. Higher energy prices at times of the day when supply is limited, and lower prices at times when supply is abundant, may help in that regard. That will require adjustments in the way consumer prices for electricity are determined.

ACM's role in the energy transition

ACM plays a role in the process of finding answers to the challenges that we face as a result of the energy transition. That is why ACM contributed in late-June 2016 to the so-called '[Energy dialog](#)' (in Dutch), which is a public debate organized by the Ministry of Economic Affairs.

In [its contribution](#), ACM identified various basic principles, questions, and dilemmas regarding the energy transition that we, in our capacity, believe to be important. We also clearly explained how we see our position as regulator with respect to sustainability initiatives and the realization thereof. That is because the energy transition attaches extra weight to sustainability as a public interest next to the public interests of affordability and security of the energy supply. Tensions may arise between affordability and security. On the one hand, consumers should not end up paying more for their energy than necessary. On the other hand, energy should always be available to all buyers. Sustainability adds another dimension to this: after all, sustainability may be at odds with both affordability and security.

Against the backdrop of such complex tensions, ACM sees as its task ensuring that the transition towards a sustainable supply of energy is as efficient as possible, while continuing to meet the preconditions of affordability and security. We do so by:

1. Continuing to work towards well-functioning markets and towards market integration;
2. Giving system operators the opportunity to recoup its efficient costs;
3. Empowering consumers in the market (old and new), activating them, and protecting them, where necessary.

These were the ways in which ACM, over the past year, made efforts of reaching sustainability and security objectives in an efficient manner.

1.2.1 Market integration and better functioning markets

One of ACM's aims is the realization of better functioning markets and market integration. That is how we ensure that sustainability initiatives are realized in an efficient manner.

Market integration and security of supply

Completion of the internal market will give an enormous boost to the transition towards a sustainable supply of energy. A single European energy market, in which electricity and natural gas are able to flow freely from areas with low prices to areas with higher prices, is a condition for having an efficient supply of energy. That will result in maximum welfare for European consumers. Yet, many member states in recent years often went their own way by taking measures in order to realize a sustainable supply of energy. This is for example what we saw with solutions introduced by member states to problems regarding security of supply in the form of capacity mechanisms.

In 2016, ACM consistently made a case for a European approach to questions regarding security of supply and the way the market functioned. We did so on several occasions such as in several European working groups of ACER and CEER in which we participated. More specifically, we contributed to the creation of a European imbalance market with effective price incentives. In the energy transition, its importance will only grow, especially because of the increased volatility of the future generation of electricity.

Multiple power suppliers on a single connection

ACM wants consumers and businesses to be able to take out contracts with multiple electricity suppliers on a single connection. That is why ACM in March 2016 ordered the sector to make preparations for a code change in order to make it possible to have multiple suppliers on a single connection. An extended period of research and close consultations with the sector had preceded that order.

With the issuance of the order, a procedure was launched that should make taking out contracts with multiple suppliers on a single connection on different meters possible. This will open the door to new market concepts that can be of importance to the energy transition.

Feasibility and Enforceability Test on the Progress of the Energy Transition bill

ACM tested the Progress of the Energy Transition bill (VET) for potential problems regarding its feasibility and enforceability:

- ACM is in favor of having a clear definition of the system operators' role in order to prevent potential anticompetitive behavior;
- Any other activities that system operators engage in, either by their nature or scope, should not lead to any risks to their task of system management;
- System operators should be transparent about all their activities.

Investigations into other activities of system operators

Allego, a subsidiary of distribution system operator (DSO) Alliander, is an operator of charging stations for electrical vehicles. Alliander is also the parent of regulated network operator Liander. System operators cannot belong to the same group as companies that trade in electricity and natural gas. That is why ACM objected against Allego's practices, which bought and sold electricity through its charging stations. [Allego](#) subsequently adjusted its practices.

ACM also carried out an investigation into the [activities of HOOM, MPARE and EXE](#), which are three other subsidiaries of Alliander. Energy company RWE/Essent had asked ACM to take enforcement

action against Alliander because it allegedly acted in violation of the prohibition on other activities and the group prohibition. Having carried out an investigation, ACM came to the conclusion that the law in its current form does not prohibit the activities of HOOM, MPARE and EXE, since these activities are associated with system management. RWE has subsequently filed an appeal against this decision.

1.2.2 Efficient costs of system management

ACM makes sure that the costs that system operators incur are efficient.

Why does ACM want to ensure that costs are efficient?

Efficient costs are costs that, according to ACM, system operators inevitably need to incur in order to be able to carry out their statutory tasks, including a return that does not exceed what is considered a usual return in the market. End-users directly or indirectly pay for the investments of system operators in sustainability and security. In order to make that possible and, at the same time, to safeguard affordability, regulation by ACM is necessary. The objective of our regulatory efforts is and continues to be the compensation of the efficient costs of system operators.

Offshore wind farms in the North Sea

One of the goals laid down in the [Energy Agreement](#) is to have 16 percent of the Netherlands' energy mix come from renewable sources by 2023. In order to achieve that goal, the Netherlands wishes to generate more and more energy from wind farms, including offshore ones.

ACM has [certified](#) TenneT as the operator of the offshore grid. TenneT, which is also the transmission system operator (TSO), is to ensure an efficient and timely connection of the future offshore wind farms. We assessed whether TenneT met all the statutory requirements. We completed the certification process relatively quickly, which means that TenneT will be able to commence with the execution of its duties soon.

We set [rules](#) for determining the maximum revenues of the operator of the future offshore grid for the period of 2017 through 2021. The supply of energy should not just be sustainable but also affordable and secure. ACM makes sure that the system operator is able to recoup its investments in the construction of the offshore grid, insofar such investments are efficient. That is how we provide clarity and certainty. As soon as the offshore grid becomes operational, ACM will assess the efficiency of the costs incurred by the system operator. The system operator's revenues are financed by the [subsidy program SDE+](#).

Certification and rules about the level of the revenues offer certainty to market participants. That is how ACM has contributed to the low prices for sustainable energy.

1.2.3 ACM strengthens the position of consumers

One of ACM's objectives is to have energy consumers who are engaged and active, and who are able to make well-informed choices from all of the new products and services. We make sure that the range of energy products and services are easy-to-understand and correct.

Trends in the energy sector

Smart meters can help consumers make conscious decisions. Approximately 2.9 million households currently have smart meters. As the smart meter is progressively rolled out, more and more data becomes available, based on which energy companies (suppliers but also new competitors) are able to develop and offer new services and products.

We make sure that we are able to spot market trends quickly, and to incorporate and apply them in our regulatory work. After all, we do not want to interfere with innovation. We actively participate in discussions with the sector about charting the best course towards sustainability. For example, we are taking part in the dialog through several working groups as part of the so-called Consultation Forum on Energy Supply (in Dutch: Overlegtafel Energievoorziening).

Choices that are easy-to-understand

The choices that consumers have should not be made unnecessarily complex. The challenge that businesses are thus faced with is offering products and services that are easy-to-understand and easy-to-use. Furthermore, consumers should be guaranteed that they own their own data, and that their privacy is protected.

On its consumer information portal ConsuWijzer, ACM offers consumers tips and tools in order for them to be able to make the right choice from all available energy products. For example, an online tool called 'Switching Coach' (in Dutch: [Overstapcoach](#)) helps consumers find the energy product that best meets their needs.

Cooperation

We work closely together with other regulators that play an important role in the energy market such as the Dutch Data Protection Authority (the Dutch DPA). The Dutch DPA makes sure that energy firms handle personal details safely and properly.

1.3 Digitalization - online consumers

People in the Netherlands are very active online: we shop online, we are active on social media, we play games, and we watch videos and shows online. ACM wishes to prevent anticompetitive problems and consumer problems online. ACM assesses whether companies strengthen their potentially dominant positions on the Internet by using personal information of users. In addition, ACM makes certain that online stores comply with the rules. At the same time, we want to enable new firms to offer their services online.

Results in 2016

Over the past year, we focused on the following:

- Protecting the [privacy of consumers](#) online;
- Identifying the benefits and drawbacks of [online platforms](#);
- Assessing whether or not the [bundling of telecom products](#) is a problem.

International attention for digitalization and online platforms

In 2016, ACM took a closer look at online platforms. This topic has also attracted attention from around the globe. For example, online platforms were a key topic of the [European Consumer and Competition Day](#) (ECCD), which was held on April 18, 2016 in Amsterdam. This one-day conference was jointly organized by the Ministry of Economic Affairs and ACM. Competition rules and consumer protection rules should not unnecessarily stand in the way of innovation. Online platforms offer consumers many advantages. At the same time, businesses that operate such platforms cannot use their possibly dominant positions to stop innovation or to prevent newcomers from entering the market. To that end, enforcement of the rules may be needed.

In November 2016, Johan Keetelaar, Director of ACM's Telecommunications, Transport and Postal Services Department, contributed to a panel discussion organized by the [European Competitive Telecommunications Association](#) (ECTA) about regulation of platforms. In his contribution, he discussed the role of influence of platforms in the digital age.

1.3.1 Privacy of consumers

Consumers say it is important that their privacy is also respected online. In practice however, they often appear to do little to protect their personal information such as their browsing history or phone contacts.

Changes to cookie policies

In 2016, ACM instructed the companies behind the 100 most popular websites in the Netherlands to adjust their cookie policies. A cookie is a small text file that is stored on the user's computer, when visiting a website. These cookies are able to track users across multiple websites.

ACM has checked whether these companies inform their visitors, and ask for their consent before storing any cookies. Almost none of these companies did so in a correct and clear manner. As a result of ACM's intervention, the largest websites now inform their visitors better, and ask for their consent before storing or accessing cookies.

ConsuWijzer campaigns

Via its consumer information portal ConsuWijzer, [ACM called on consumers to come into action for their online privacy](#) (in Dutch). This call tied in with the larger national awareness campaign called [Alert Online](#).

1.3.2 Online platforms under the microscope

In 2016, ACM gave attention to online platforms. Online platforms bring together different groups of users such as, on the one hand, providers, and, on the other hand, consumers.

Market study into online video platforms launched

In September, we announced the launch of a market study into online platforms that offer videos and movies. Michiel Denkers, Director of ACM's Competition Department, explained in a [video about the role of online platforms and talked about the market study into video streaming platforms](#) (in Dutch). 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.

Article: Big platforms, big problems?

Simultaneous with the launch of the market study, ACM published the [article 'Big platforms, big problems?'](#) (in Dutch). In this article, ACM explores the benefits and drawbacks of platforms for consumers and competition. Platforms offer consumers and providers plenty of benefits, and can become very big very fast. Gaining a strong position in the market also carries risks. ACM will assess benefits and drawbacks on a case-by-case basis. Furthermore, in order to be able to oversee online platforms properly, we need to expand our knowledge about the functioning of platform markets, and we need to be in contact with market participants.

Monitoring the commitments made by online hotel-booking platforms

In the summer of 2016, ACM launched [a study into the effects of adjustments made to contracts between hotels and online hotel-booking websites](#). In July 2015, online hotel-booking websites Booking.com and Expedia relaxed the so-called 'lowest price guarantee' that these websites used to impose on hotels. In practice, this clause dictated that the prices of hotel rooms of the hotels in question had to be the same across all sales channels. After the adjustments, hotels were allowed, among other things, to set different room rates on different hotel-booking websites, which may boost competition between booking sites.

ACM, the competition authorities of nine other EU countries and the European Commission carried out this joint study. The results of this study will be used to determine whether further action by regulators is necessary in this sector.

Enough delivery and takeout options for consumers and restaurants

ACM also carried out [a preliminary investigation into a requirement that Dutch meal-delivery service provider Thuisbezorgd.nl](#) (internationally branded as Takeaway.com) imposes on restaurants. Thuisbezorgd.nl wants restaurants to charge the same prices on their own websites and on the website of Thuisbezorgd.nl.

ACM concluded that consumers and restaurants have enough options for meal delivery or takeout. Furthermore, ACM anticipates that the market for online food-delivery platforms and take-out food will change tremendously. New competitors continuously enter the market with new concepts, challenging the existing platforms. ACM thus believes that the 'same-price' guarantee' currently does not negatively affect consumers. That is why we did not see any reason to launch a further investigation.

1.3.3 Is bundling good or bad for consumers?

In 2016, ACM launched a [study](#) to determine whether the bundling of telecom products has any positive or negative effects on consumers.

What is bundling?

ACM has seen that consumers increasingly opt for multiple telecom products in a single package, combining television services, broadband access, and fixed telephony. In recent years, mobile services have also been added. Consumers are able to get better conditions by taking out multiple telecom products in a single package. But the bundling of services can also make it harder for consumers to switch providers.

Choices in different types of offerings and services

In said study, we looked at the freedom of choice in so-called 'content' services. Think of the range of television stations and video on demand. Some services such as Netflix are available to everyone. Consumers are able to order these services without the interference of the internet provider. Other services such as sports channel Fox Eredivisie Live can only be ordered through a television provider. Then there are also services such as sports channel Ziggo Sport that is owned by an internet provider, which it resells to other internet providers. Finally, internet providers may offer exclusive services such as internet provider KPN, which offers the series *Brussels*, and cable company Ziggo, which offers the hit series *Game of Thrones*. ACM assesses the benefits and drawbacks of these different ways to offer services to consumers.

1.4 Ports and transport

The ports of the Netherlands, especially the Port of Rotterdam, are key drivers of the Dutch economy. Goods are imported, stored, processed, and redistributed: over 4 billion tons per year in total. Companies that operate in these ports work together a lot, and with great success. Cooperation is definitely needed if they want to process the goods quickly and efficiently, and to transport them from A to B. However, collaborations can also go too far.

When do businesses go too far?

Companies go too far if they do not compete fairly, for example by fixing the prices that they charge their customers, or if they share the market amongst themselves. Not only does this kind of behavior harm the competitive position of the ports, but it will also harm consumers. They will end up paying too much for products that are shipped and redistributed through these ports. [Scientific research](#) has revealed that businesses in the ports had violated competition rules. ACM had also received indications about this.

What did we accomplish in 2016?

As part of the topic of 'Ports and Transport' on the ACM Agenda, we focused on [education about cartel prevention](#) and [dealing with cartels](#).

Our educational efforts about the **prevention** of cartels consisted of the following activities:

- We launched an anti-cartel campaign;
- We used LinkedIn to reach individuals who work in the port of Rotterdam;
- On ACM's website, we offered information about fair competition in the ports;
- In November 2016, we gave a speech at the Port Seminar in Rotterdam.

As part of our effort to deal with cartels, we carried out the following activities:

- We imposed fines on various parties in the sector for cartel activities;
- We examined multiple indications about cartel activities;
- We commissioned a study into the level of compliance with competition rules among businesses active in the ports.

1.4.1 ACM launches educational anti-cartel campaign

In 2016, ACM took steps to help prevent cartels in the ports and transport sector. We used different types of educational measures in that effort.

Cartels never go unnoticed

From June 2016, ACM ran an [awareness campaign titled 'Cartels never go unnoticed'](#) with the aim to raise awareness about cartels, and to have individuals come forward and report cartels. The campaign kicked off with [a video that put a humorous spin on ACM's investigation methods](#).

A lot of information about cartels can be found on ACM's website. In addition, ACM created a so-called '[cartel check](#)' (in Dutch) with which people are able to learn more about cartels. We are convinced that more knowledge about cartels will result in more valuable tip-offs about illegal agreements, and in higher levels of compliance with the rules.

ACM used the power of LinkedIn

As part of the campaign, ACM investigators visited over 6,500 LinkedIn-profiles of individuals that work in the Port of Rotterdam or in the ports and transport sector. On these LinkedIn-profiles, the investigators left a trace leading to an ACM website with more information about cartels.

These LinkedIn visits had an informative nature. We wanted to make clear that the ports sector was on ACM's agenda, that we offered information about cartels, and that we were open to individual and personal conversations. The result of the campaign was that a human face was literally put on ACM among workers in the ports sector, that ACM was visited a lot in return on LinkedIn, and that we obviously received valuable clues.

Information online about competition in the ports

On the ACM website, we created a [separate page about competition in the ports](#) (in Dutch). On that page, we have included information about fair competition in the ports, and about the thereto-related rules. We make clear what is and what is not allowed. The rules are:

1. You do not make any agreements with competitors about sharing customers;
2. You do not make any agreements with competitors about prices;
3. You cannot share any competition-sensitive information;
4. You and your competitors do not consult each other about your bids or who gets to secure a contract in a tender process.

Speech by the Director of ACM's Competition Department at Havenseminar

Michiel Denkers, Director of ACM's Competition Department, gave a speech on November 2, 2016 at the [Havenseminar conference in Rotterdam](#) (in Dutch). The topic of this one-day conference was cooperation in the ports and competition law. Our message was: cooperation in the ports sector in order to increase efficiency is good for the economy. But competition must be fair. So there are limits to what such collaborations can entail. Price-fixing agreements, market-sharing, bid-rigging, and the exchange of competition-sensitive information are all prohibited.

1.4.2 ACM deals with cartels

Cartels are illegal agreements between businesses with the intent to eliminate mutual competition. Examples include arrangements about charging higher prices or sharing the market. Cartels drive up costs for customers. They also make the ports less competitive.

Fines for cartel agreements in the sector

ACM tracks down cartels, ends illegal agreements, and is able to impose high fines on the companies and individuals involved. Fines can be as high as tens of millions of euros for each company involved, and, since July 1, violations can even result in individual fines (on de facto executives) of up to EUR 900,000.

In the ports and transport sectors, we have completed various investigations. For example, [the District Court of Rotterdam upheld in 2016 that three maritime-waste collectors had violated the cartel prohibition](#) (in Dutch). They had secretly shared the market, and had made illegal price-fixing agreements. In these appeal proceedings, the court set the total fine at approximately EUR 2.7 million. An appeal was filed against the Court's ruling with the Dutch Trade and Industry and Appeals Tribunal (CBb).

Furthermore, we also announced in 2016 that we [imposed fines totaling almost EUR 12.5 million on 4 companies in the cold storage industry](#). These companies are a key link in our economy in the ports and transport sectors. They made price-fixing agreements, exchanged competition-sensitive information, and shared customers. Mutual competition had thus been seriously impeded. Several parties have filed objections and appeals against ACM's ruling. These proceedings are still ongoing in 2017.

Investigations following indications about possible cartels

ACM has also invested in its ability to track down new cartels. Over the past year, various indications were submitted about the ports and transport sectors. We assess such indications very thoroughly. ACM also works together with various other regulators as part of their efforts to track down cartels.

Concerns about compliance with competition rules

We had [VU University Amsterdam conduct a study into the level of knowledge of and the rate of compliance with competition rules](#) among companies that are active in the port of Rotterdam as well as among companies that are active elsewhere. This study was conducted with the support of several of ACM's behavioral scientists.

The study revealed that 70 percent of the companies complied with the Dutch Competition Act, but that there was also a substantial group of firms prepared to ignore those rules. Businesses are apparently insufficiently aware of the basic rules about fair competition. ACM has therefore expressed concern over these results, and believes that the knowledge of and compliance with competition rules should be raised. While it seems that the potential for possible violations may be confined to a minority of companies, this group may have a negative effect on trade affecting all companies in the port sectors, even those that do compete fairly. Cartels lead to price increases, reduced quality, and less innovation. That will ultimately hurt shipping volumes, as well as the competitiveness of Dutch ports in the global market.

1.5 Clear prices and conditions

These days, consumers are able to choose from many different options. But are consumers also able to make the right choice? That is only possible if prices and conditions are clear.

What is the problem?

With some products, consumers only find out during the purchasing process that more and more costs need to be added. Think of service fees when purchasing concert tickets or when picking up a new car. We call this phenomenon 'drip pricing.' Companies must inform consumers before the actual purchase about the price and all additional costs, as well as about the conditions associated with the purchase. Businesses owe such clarity to consumers, but also to one another. After all, if businesses are unclear about their prices and conditions, they help create an unlevel playing field.

What did we accomplish in 2016?

In 2016, we took action on multiple occasions against companies that had failed to inform consumers in advance correctly. In addition, we carried out a study into switching barriers that consumers experience in the telecom market.

1.5.1 ACM makes sure consumers have clear information

In 2016, ACM took action against different market participants that had failed to provide consumers with clear tariffs and conditions. These actions resulted in:

- Fines on online stores that had failed to inform consumers correctly;
- Instructing the car industry to list unavoidable costs with prices.

Fines imposed on online stores that had failed to inform consumers correctly

ACM has imposed [fines totaling EUR 590,000 on five online fashion stores](#). These stores had failed to inform consumers correctly on their websites about the rules regarding order cancellations (right of withdrawal). As a result, consumers did not know what their rights were, such as their right to a full refund, including reimbursement of the shipping costs, in a timely manner. Four of these five stores have filed objections against ACM's decision. These proceedings are still underway in 2017.

In addition, ACM has imposed [a fine of EUR 500,000 on online stores and their directors](#) for violating the rules on refunds when cancelling orders. The owner of these stores has filed objections and appeals against ACM's decisions. These proceedings are still underway in 2017.

ACM has also [fined a Dutch tour operator EUR 350,000](#) for incorrectly displaying prices on its website. The company displayed the prices of trips and individual airline tickets incorrectly because it had failed to list all additional costs directly with the advertised price. These costs were only added to the price later in the booking process. Consumers were thus unable to compare different offers. ACM had already reminded tour operators of this obligation before. This company has filed objections and appeals against ACM's decisions. These proceedings are still underway in 2017.

The Dutch car industry must include all unavoidable costs in the car prices

ACM is of the opinion that [the Dutch car industry should make the prices of new cars more transparent](#). Following a study conducted by ACM, consumers almost always end up paying more than the advertised price. This is caused by the so-called 'closing fees' (or 'on-road costs') that car dealers add to the suggested retail price. These fees can vary from EUR 600 to EUR 1,500 per car.

Since November 1, 2016, importers can be imposed an order subject to periodic penalty payments or a hefty fine if they fail to include all unavoidable costs in the suggested retail price. In early-2017, ACM may announce enforcement actions it could take.

1.5.2 Insight into prices and conditions

In 2016, we carried out several investigations in order to know more about tariffs and conditions of energy providers and telecom providers. We wanted to know what this meant for consumers.

Energy suppliers inform consumers better about their offers

A study conducted by ACM has revealed that [consumers are now better able to understand and compare offers from energy companies](#). Energy suppliers have taken major steps in the right direction. In some cases, ACM had to exert some pressure by imposing an order subject to periodic penalty payments. Consumers receive offers that are clearer and easier to compare, thanks to the so-called 'personalized offers'. Consumers now know in advance how much they will have to pay and for how long. Also, suppliers have to inform customers clearly about price adjustments in advance, so that customers have a choice to make use of a better offer. Finally, suppliers now inform customers clearly about the manner in which the contract will be continued after the expiration date.

As a final step, we are now focusing our attention on the annual bills and final bills. These need to become clearer, too.

Unclear conditions of telecom services

In the spring of 2016, ACM [conducted a study among consumers about their behavior in the telecom market](#) (in Dutch). One of the questions was, for example, whether consumers believe it is easy to switch providers. Another question was whether they believe different offers can be easily compared.

One of the study's findings is that consumers find it difficult to compare prices of telecom providers because the conditions of their products are unclear. ACM has discussed this with the telecom providers.

1.6 Competitive neutrality

The Dutch government is a key player in the Dutch economy. The government introduces laws and rules, it regulates, and it stimulates the economy. However, it is also active in markets, acting as businesses, as owners/shareholders, and as clients. The government thus also participates in the market process. The roles and rules must be clear to every market participant.

ACM oversees local governments that are active on markets. In our oversight, we also take into account public interests. In certain situations, the market is disrupted if the government interferes in it. We can take action against such market disruptions.

ACM informs governments in a timely manner about the effects of their policies on competition and the market. ACM protects business owners against unfair competition from government businesses. And we see to it that government businesses compete fairly. Equal opportunities for all businesses help realize healthy competition, and increase the economy's innovative capabilities.

What did we accomplish in 2016?

In 2016, we performed the following actions for this topic on the 2016-2017 ACM Agenda, among other activities:

- Calling attention to the potential conflict between the government's commercial interests and public interests.
- Calling municipalities to account for competing unfairly with commercial businesses.

1.6.1 InSight about public interests and commercial interests of the government

In '[InSight 2016](#)', ACM called attention to the potential conflict between the government's commercial interests and public interests.

Dilemmas

In a [March 2016 interview with Dutch newspaper Trouw](#) (in Dutch), Chris Fonteijn, Chairman of the Board of ACM, cited several examples of dilemmas that can occur if certain commercial activities of the government are coupled with the protection of certain public interests. In this context, he mentioned rail and aviation.

What does ACM do in this context?

ACM carefully assesses situations where a potential conflict between the government's commercial interests and public interests may occur. In the course of 2017, we hope to be able to release the results of several long-term studies. In general, we do not publish any results as long as the study is still ongoing.

What is InSight?

ACM is an active participant in the public debate. In InSight, ACM calls the attention of the government, lawmakers, and the corporate sector to certain issues when we believe that changes to rules (planned or existing), policies or activities may help us carry out our tasks.

1.6.2 Enforcement of the Dutch law on competitive neutrality

The government is allowed to offer products and services on the market. However, it needs to comply with the rules when offering them. These rules are to protect businesses against unfair competition from the government. These rules have been laid down in the Dutch law of competitive neutrality, the Dutch Act on Government and Free Markets. This act is part of the Dutch Competition Act.

Competitive neutrality in 2016

The Dutch law of competitive neutrality mandates, among other requirements, all municipalities to include all costs in their tariffs, when offering products and services on the market. In addition, they are not allowed to give preferential treatment to their own government undertakings over their competitors, for example, by offering favorable conditions on loans. As independent regulator, ACM enforces compliance with these rules.

In 2016, ACM took the following decisions, among other ones:

- The town of Hellevoetsluis [competed unfairly with commercial marinas](#);
- Photo booths in Amsterdam [did not constitute unfair competition with professional photographers](#).

In both cases, appeal proceedings have been launched, which are still underway in 2017.

We have explained in our instructions and decisions how municipalities should calculate the integral costs. In that way, other municipalities, too, are able to see how ACM rules on the calculation of the 'integral costs' and what activities are considered 'commercial activities'.

Order subject to periodic penalty payment on town of Heerhugowaard

In early-2016, ACM concluded that [the Dutch municipality of Heerhugowaard \(in the northwestern part of the Netherlands\) was competing unfairly with other commercial marinas and berths](#) because it failed to include all berth-related costs in its tariffs. This is not allowed under the Dutch law on competitive neutrality. The municipality thus distorted competition with other commercial marinas.

In late-2016, ACM found that Heerhugowaard still did not include all costs in its berth tariffs. ACM subsequently gave Heerhugowaard twelve weeks for adjusting the berth tariffs. If the municipality failed to do so, they would be imposed [an order subject to periodic penalty payments of EUR 5,000 per week](#).

In early-2017, the municipality announced it would issue a so-called 'decision of general interest' with regard to the commercial exploitation of the marina. As a consequence, the rules of the Dutch Act on Government and Free Markets no longer apply.

2 Consumers

ACM takes action against businesses that do not play by the rules or harm consumers and competitors.

Businesses should be able to compete freely for the favor of consumers. It is important that consumers know their rights, and take on an active role in the market. That in turn forces businesses to do their best.

Since ACM recognizes the central role that consumers have, it informs them about their rights through its consumer information portal [ConsuWijzer](#) (in Dutch). Using campaigns, information and other tools, ConsuWijzer makes sure that consumers are equipped with the right knowledge in order for them to take on that envisaged active role in the market. Conversely, through ConsuWijzer, ACM receives indications from consumers about any problems they run into. That is how ACM is open to concerns and reports coming from the public.

2.1 Consumer education

Through its consumer information portal ConsuWijzer, ACM is able to engage directly with consumers. ConsuWijzer serves two roles: promoting consumer education, and collecting indications from consumers and other members of the public. In its educational role, ConsuWijzer educates consumers about their rights, and how to exercise them. That is one of ACM's statutory tasks. The other role consists of recording indications that consumers submit about businesses that violate consumer protection laws. Such indications are a critical source for ACM's investigative and oversight efforts with regard to consumer protection.

ACM fulfills its task of promoting consumer education in the following ways:

- The website of ConsuWijzer.nl;
- The front office and back office of ConsuWijzer;
- ConsuWijzer's awareness campaigns among consumers;
- The Facebook and Twitter accounts of ConsuWijzer.

ConsuWijzer.nl

ConsuWijzer.nl is our consumer education website, offering news, information, sample letters, step-by-step guides, FAQs, and interactive tools about virtually any consumer topic. In addition, consumers are able to submit complaints and indications to ACM via ConsuWijzer.nl. In 2016, the website was visited 2.8 million times.

Front office and back office of ConsuWijzer

Consumers are able to contact the front office and back office of ConsuWijzer with their complaints and indications, either in writing or by phone. A team of experts will answer all consumer questions. In 2016, this team handled a total of 57,000 calls and emails from consumers. According to customer satisfaction surveys in 2016, consumers gave a mark of 8.1 (from a scale of 1 to 10) for ConsuWijzer's interaction over the phone (the same as in 2015). Consumers gave a mark of 6.9 (in 2015, this was a 6.6) for ConsuWijzer's interaction over email.

ConsuWijzer's awareness campaigns

Several times a year, ConsuWijzer runs awareness campaigns about topical consumer topics. These campaigns may involve the use of free publicity channels, messages on social media, mass-media messages such as radio ads, and customized educational content on consuwijzer.nl. In 2016, ConsuWijzer's awareness campaigns were able to reach over 4 million consumers.

Facebook and Twitter accounts of ConsuWijzer

With social media, ACM is able to deliver consumer-oriented news to consumers more directly. This can include warnings, fines, practical tips, or a call for submitting indications. In 2016, ConsuWijzer posted 59 messages on Facebook. These messages were displayed 4.1 million times, and were liked, shared and commented on approximately 0.5 million times. The main reason behind this high level of reach is the sponsoring of messages as part of the ConsuWijzer campaigns. In late-2016, ConsuWijzer had over 42,000 fans on Facebook, and 6300 followers on Twitter. ConsuWijzer posted 65 tweets in 2016.

In 2016, a small but steadily growing number of consumers submitted their questions, complaints and indications to ConsuWijzer via its Facebook and Twitter accounts. We respond to these indications through those same social media.

2.1.1 Trends on consumer information portal ConsuWijzer

We keep a close watch on the trends in the questions, complaints, and indications we receive through ConsuWijzer. Several significant trends have emerged with regard to 2016. In addition, we have gained valuable insight into several popular topics.

Trends on ConsuWijzer in 2016

Consumers appear to be getting better and better at exercising their rights themselves. One of the reasons behind this finding is the growing number of consumers that, in 2016, used the educational resources, tools, sample letters, and step-by-step guides on ConsuWijzer.nl.

In 2016, the ConsuWijzer.nl website was visited 2.8 million times: this is an increase of 12% compared with 2015.

Additionally, consumers in 2016 were able to exercise their rights more and more. Consumers said that their calls and emails to ConsuWijzer were of great help in order for them to take action against businesses with unfair commercial practices. This was found by a customer satisfaction survey commissioned by ACM. Half of all consumers reaching out to ConsuWijzer stated in the survey that they exercised their rights, and three in four said they did so within two weeks. Forty percent of those respondents said that their problems had consequently been resolved.

What topics were popular in 2016?

The tool that was used the most by consumers were the sample letters on Consuwijzer.nl, which help consumers exercise their rights.

These sample letters, over a hundred of them, were viewed nearly 400,000 times in 2016.

Another popular item was the information about what debt collection agencies are allowed to do, as well as the information about what consumers can do against unfair debt collection practices. That spike in interest was the result of our awareness campaign on unfair debt collection practices.

Other topics about which consumers contacted ConsuWijzer in 2016:

- How do I get rid of unsolicited follow-up shipments or subscriptions?
- How do I cancel subscriptions or contracts?
- What are my rights in the case of distance-buying (in an online store, over the phone or on the street)?
- What are my options if the product is faulty?

2.1.2 Public awareness campaigns in 2016

Through ConsuWijzer, ACM ran four public awareness campaigns about topical consumer topics.

The overarching theme running through all of these campaigns was showing to consumers what opportunities they have when taking action themselves. That theme is reinforced by the titles of the four campaigns:

1. 'Debt collection? Only pay if the facts are correct' (in Dutch: 'Check je incassobrief op consuwijzer.nl')
2. 'Do not pay the price for misleading special offers' (in Dutch: 'Betaal niet voor onzinacties')
3. 'Report fake online reviews' (in Dutch: 'Meld nep-beoordelingen op internet')
4. 'Delete your browser history and cookies regularly' (in Dutch: 'Wis regelmatig je browsergeschiedenis en cookies')

In these campaigns, we referred consumers to tools, step-by-step guides, and sample letters found on ConsuWijzer.nl in order to make as easy as possible to take action themselves.

Campaign: 'Unfair debt collection practices'

ConsuWijzer's biggest campaign in 2016 was the one targeting unfair debt collection practices. In the campaign, called '[Debt collection? Only pay if the facts are correct](#)', ConsuWijzer and the Netherlands Authority for the Financial Markets (AFM) call on consumers to take action against unjust, incorrect or aggressive debt collections.

The campaign's objective was to raise awareness among consumers about unfair debt collection practices, and to call on them to pay only if the facts are correct. On ConsuWijzer.nl, consumers were able to find a campaign video, sample letters, and interactive tools including a collection letter checklist, enabling consumers to find out whether the collection letter is correct, and what consumers can do if the letter is not. If the facts are not correct, the tool will automatically present the right sample letter to consumers, allowing them to respond directly to the business or the debt collector.

What did we do and what did we accomplish?

- The press release about our campaign received national coverage in practically all of the Netherlands's relevant media outlets, including radio, television, national and regional newspapers, consumer-oriented media, and industry-specific media outlets;
- A radio ad was produced for the campaign. The ad ran for two weeks, and reached 3.5 million listeners;
- A short version of the campaign video was displayed 3.2 million times as a commercial prior to videos watched on Uitzending gemist, which is the catch-up TV website of the Netherlands Public Broadcasting (NPO). And it was watched 358,000 times as a commercial on YouTube;
- A series of Facebook posts and tweets reached a substantial number of viewers on social media, as over 1.5 million readers watched the campaign video on these channels;
- With the help of eight civil society partners, we were able to bring the campaign to the attention of specific target audiences;
- During and after the campaign, a substantial number of additional indications were submitted, and the number of website visitors spiked, including about other topics;
- As a result, spontaneous name recognition of ConsuWijzer increased.

Campaign: ‘Do not pay the price for misleading special offers’

In the run-up to the Easter and Pentecost holidays, ConsuWijzer ran a social-media campaign titled [‘Do not pay the price for misleading special offers.’](#) (in Dutch). The campaign called on consumers to ignore fake offers and misleading offers, and to report them to us. The Facebook posts were displayed almost 0.5 million times to the target audience, and they generated several useful indications for ConsuWijzer’s front office.

Campaign: ‘Share your experiences with online reviews’

In June, we called on consumers in national newspapers and on social media to [share their experiences with online reviews](#). More and more online stores and online platforms display these so-called reviews with consumer products and services such as home appliances, hotels, restaurants and vacation deals. The question is how trustworthy a five-star review or a high rating is. Do they genuinely mean something or are consumers misled? The nationwide call did yield several useful indications for the front office of ConsuWijzer. The press release was picked up by several national media outlets. Our Facebook posts (four in total) were displayed to the target audience almost 200,000 times.

Campaign: ‘Take action and protect your online privacy’

In October, ACM took part in the [national public awareness campaign Alert Online of the government platform veiliginternetten.nl](#). Alert Online draws attention to the importance of online security and privacy. Almost 200 civil society partners and commercial partners participated in the campaign.

ConsuWijzer’s contribution was the creation of a campaign, titled ‘take action and protect your online privacy’ (in Dutch: ‘Kom in actie voor je online privacy’), using free publicity channels such as free local papers and social media. In the campaign, [ConsuWijzer gave 8 tips on how to protect your online privacy](#) (in Dutch). For example, change the settings on your phone, or delete the cookies. In addition, attention was drawn again to 2015 ConsuWijzer campaign [‘Each app has its price’](#) (in Dutch ‘Elke app heeft een prijs’).

The campaign led to several publications in national media. Our Facebook posts (4 in total) generated almost 500,000 displays, and were shared 600 times. The campaign page containing our tips was visited 23,000 times. Over 4,800 visitors followed the link to www.veiliginternetten.nl for more information.

2.2 Consumer protection

ACM enforces the rules that protect consumers against unfair treatment by businesses. ACM acts against businesses that do not comply with these rules.

In 2016, ACM took on many different cases in various industries. ACM tries to find the best solution to the identified problems. When selecting its instruments, ACM also draws on the knowledge of its behavioral scientists.

ACM promoting 'Clear tariffs and conditions'

In 2016, ACM took action several times against businesses that had failed to inform consumers clearly. This was part of the [ACM Agenda's topic of 'Clear tariffs and conditions'](#). One example of our efforts in this area is our call on the car industry to include all unavoidable costs in the price in order to avoid the practice of 'drip pricing.' This term refers to all the costs that creep in during the purchasing process, for example 'closing fees' (or 'on-road costs'). Businesses need to inform consumers about the price and all associated costs prior to the purchase. Businesses also need to inform consumers about what they can and cannot expect from the purchase. That also includes the rules that apply to cancellations.

Consumer problems with a significant impact on society

Some consumer problems also have a significant on society. In 2016, ACM launched [an investigation into the use of modified software in Volkswagen diesel cars](#). The question is whether Volkswagen, by using said software, has violated consumer protection rules, and has misled consumers. This investigation was triggered by the request filed with ACM by the Dutch Consumers Association (Consumentenbond) asking ACM to launch such an investigation. The investigation is expected to be completed in the first half of 2017.

2.2.1 ACM's rapid interventions protect consumers

ACM wishes to end as soon as possible any harmful practices of businesses that bother consumers. Sometimes, a lot of indications are submitted about one particular practice or one particular company. ACM will then assess whether such a case lends itself for a rapid intervention. With such rapid interventions, ACM is able to solve consumer problems in a fast and efficient manner with lasting results.

Making it easier for consumers to cancel their recipe boxes

In 2016, a rapid intervention by ACM enabled consumers to cancel their subscriptions to recipe boxes (also called food boxes or farm boxes) much easier. ACM was able to obtain [a commitment from the six largest providers of recipe boxes](#) that they would comply with the statutory cooling-off period, and that they would actively inform consumers about it. ACM will make sure that suppliers of recipe boxes comply with the rules.

Dutch Railways NS informs consumers more clearly

ACM also made sure in 2016 that that [information that Dutch Railways NS presented on its website or included in its emails to consumers was adjusted](#). The information that NS gave to consumers was either incorrect or unclear on several points. The information about cancelling passes in particular did not comply with the rules.

2.2.2 Attention to vulnerable consumers

In its choice of making the interests of consumers central to its philosophy, ACM believes that consumers themselves generally know best what their interests are and how these can be best served. For various reasons, some vulnerable groups are less able to do so. In 2016, ACM carried out several enforcement actions that were in the interest of these groups of vulnerable consumers.

Attention to unjust practices in the debt collection sector

In 2015, ACM investigated the debt collection sector. The investigation revealed that several firms regularly harmed vulnerable consumers in particular with their practices. These debt collection firms confront consumers with unjust debt collections, charge unjust fees, their invoices are unclear, and they exert unacceptable pressure on consumers.

As consumers have insufficient knowledge or no knowledge at all of their rights when it comes to debt collections, ACM together with the Netherlands Authority for the Financial Markets (AFM) launched in 2016 [an awareness campaign](#) to empower consumers against unfair practices in the debt collection sector. Titled 'Debt collection? Only pay if the facts are correct' (in Dutch: 'Incasso? Betaal, maar alleen als het klopt'), the campaign called on consumers to take action against unjust, incorrect or aggressive debt collections.

Fines for misleading homeseekers

In 2016, [ACM imposed fines totaling EUR 985,000 on two firms and three individuals](#) for having seriously misled people that were looking for rental homes and apartments. These individuals were sold an expensive service without being aware of what exactly they had agreed to, what it cost, and what it would bring them. Both firms have been negligent in their treatment of a vulnerable group of consumers who were trying to find affordable housing. One of these firms has filed objections and an appeal against ACM's fine. These proceedings are still underway in 2017.

Fines on seven pawnshops

ACM also imposed [fines totaling EUR 437,500 on seven pawnshops](#). These pawnshops charged consumers an interest rate of 9 percent per month, when they were not allowed to charge more than 4.5 percent a month. These fines sent a clear signal to the pawnshop sector. Consumers that have decided to use items as collateral for cash must not be confronted with high fees. The pawnshops have filed objections against ACM's fines.

3 Competition

The objective of ACM is to make markets work in the interest of consumers. This means that businesses must be able to compete with one another so that consumers have enough options.

Competition and free markets

To that end, ACM takes action against cartels and businesses that abuse their dominant positions. In addition, ACM assesses mergers and acquisitions in order to prevent businesses from becoming so large because of such concentrations that they can dominate the market. In that way, consumers continue to have an actual choice, and businesses continue to compete with each other for the favor of customers.

Competitive neutrality

In addition, ACM enforces compliance with the [Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets](#). This law contains rules the government must comply with in order to prevent unfair competition with commercial businesses. ACM is an independent regulator. That is why it also oversees government organizations that are active on markets.

The Monitor Financial Sector

The Monitor Financial Sector (MFS), which is a special team within ACM, carries out on a permanent basis studies into the functioning of the financial sector. MFS looks into markets of which we have found indications that they do not function optimally, or that they function poorly. MFS studies can be prompted by indications submitted by consumers, businesses, regulators or ministries. MFS helps ACM track down violations of the Dutch Competition Act, and assess mergers and acquisitions.

3.1 Competition oversight

ACM takes action against cartels and abuses of dominant positions.

Cartels

Companies sometimes agree not to compete with one another. They raise prices together or they agree not to work in each other's territories. These kinds of arrangements are called cartels. Under Dutch and European antitrust rules, cartels are prohibited. They distort competition, which, at the end of the day, is harmful to consumers. That is why we take decisive action against cartels.

[Companies that confess their involvement in a cartel to us may escape a potential fine](#) (this is called leniency). Full cooperation with an ACM investigation may also result in reduced fines on companies that are involved in cartels.

Abuse of a dominant position

ACM can also take action if a company with a dominant position harms the competitive positions of its competitors. For example, the dominant firm excludes competitors from a market at the expense of consumers, as they will have fewer options. In addition, taking advantage of buyers by asking unreasonably high prices, or refusing to supply products to certain buyers may also be abuses of dominance.

What did we accomplish in 2016?

Some of our accomplishments in 2016 are:

- People are more alert to cartel agreements, and they report possible abuses to ACM more often;
- Competition in the ready-mix concrete sector has improved as a result of commitments made to ACM by a large group in the sector;
- The competition problems in the financial sector and the insurance market have been identified, which means we are now able to work on solutions;
- It has become clearer to businesses under what circumstances their sustainability arrangements may or may not pose any anticompetitive risks.

By employing our instruments, we seek the most effective and efficient method to tackle any identified competition problem.

3.1.1 Campaign: Cartels never go unnoticed

There are always people who know about illegal agreements between competitors. That is why ACM in June 2016 launched a campaign to make people aware of cartel agreements.

ACM launched offensive against illegal cartel agreements

With the launch of its campaign called '[Cartels never go unnoticed](#),' ACM went on the offensive against illegal cartel agreements. Our goal was to raise awareness about this topic, and to urge potential informers to come forward. In the run-up to the campaign, ACM's behavioral scientists analyzed the reasons as to why individuals decide to submit (or not to submit) a tip-off to us. In order to reach new target audiences, we ran this campaign on social media.

Part of the campaign was also visiting over 6,500 LinkedIn profiles of individuals that work in the port of Rotterdam or in the ports and transport sector in general. The ports and transport sector was selected by ACM as one of its key priorities [in the 2016-2017 ACM Agenda](#). On these LinkedIn profiles, ACM investigators left a trace leading to an ACM website with more information about cartels.

Campaign video

The campaign kicked off with [a video that put a humorous spin on ACM's investigation methods](#). With this unique campaign, we targeted the most vulnerable link of cartels: the people close to the cartel, who know or hear about it, or who need to carry it out. So there are always people who know about these illegal agreements, and who have [the opportunity to report those to ACM in confidence](#).

Cartel checklist

Our website offers a lot of information about cartels. ACM has developed a '[cartel checklist](#)' (in Dutch), enabling individuals who are not sure whether or not they are dealing with a cartel to expand their knowledge about cartels. We are convinced that increased familiarity with cartels will result in more valuable clues about illegal agreements.

What did we accomplish?

Even our campaign itself has not gone unnoticed:

- The number of tip-offs after the launch of the campaign increased;
- Our campaign video attracted over 400,000 views;
- The campaign received national media coverage;
- Multiple law firms capitalized on our campaign by organizing informational meetings, for example;
- At the [ICN Cartel Workshop in Madrid, Spain](#), we presented the campaign to other European authorities.

3.1.2 Competition in the ready-mix concrete sector

In 2016, we made efforts to improve competition in the ready-mix concrete sector. Ready-mix concrete is an important commodity in the construction industry

Improved competition

Companies in the ready-mix concrete sector will be better able to compete with one another following [far-reaching commitments made to ACM by a large group of companies in this sector](#). Major clients and large-scale users of ready-mix concrete such as the central-government infrastructure agency (Rijkswaterstaat) expect to be able to benefit from the improved competitive environment in the sector. We have explained our efforts in the ready-mix concrete sector in greater detail in an [animation video](#) (at the bottom of the press release).

What was the problem?

ACM had established that the structure of the sector combined with the close ties between the firms and/or their employees could be harmful to competition. One of the risks was that [competition-sensitive information could be exchanged](#) because of close collaborations between competitor firms. For example, several plants are jointly used and managed by competitors. Another risk is a company carrying out a job with another competitor. Furthermore, ready-mix concrete companies have mutual interactions in many other ways.

What did we accomplish?

In order to solve these problems, seven ready-mix concrete firms made extensive and far-reaching commitments to ACM. As a result, serious risks for unfair competition have been eliminated. These commitments entail local changes to the market structure of the ready-mix concrete sector. Some of these commitments include:

- Collaborations between ready-mix concrete firms that have a combined market share of 40 percent or more in a certain region are to cease within three years;
- Carrying out jobs with other competitors will only be done if there is no other option. In addition, clients must be notified of such collaborations.
- Interactions will only take place if they are necessary for carrying out activities of one's own company. If the individuals involved are authorized to take commercial decisions, they will register such interactions.

These seven ready-mix concrete companies have made the commitments to ACM:

1. Mebin
2. Cementbouw
3. Dyckerhoff Basal Nederland
4. Bruil Beton & Mix Groep
5. Mortelcentrale Cuijk
6. Rouwmaat Groep
7. AGAR Holding

Entry into the market to become easier

Another accomplishment is that it will become easier for others to enter the ready-mix concrete sector. For example, when selling sites, firms will no longer be allowed to set conditions on the future use of those sites. Competitors are thus allowed to buy a site or plant, and use it towards its own production and selling of ready-mix concrete.

The commitments will take immediate effect, and they will be valid for the next 10 years. ACM will

check whether the ready-mix concrete firms will stick to their commitments.

What are commitment decisions?

Commitment decisions require market participants or businesses to take the initiative. They could ask ACM to declare certain commitments binding in order to alleviate the identified anticompetitive concerns. With the issuance of a commitment decision, ACM no longer has the option of imposing a fine for the same practices.

3.1.3 Competition in the financial sector

ACM wishes to stimulate competition in the Dutch financial sector. That is why the Monitor Financial Sector (MFS), which is a special team within ACM, carries out on a permanent basis studies into competition problems. ACM comes up with recommendations for policymakers, the sector itself or other interested parties. That is how ACM helps create healthy competition in the financial sector in addition to its regular oversight efforts.

Bank account portability

‘Europe, take action on EU-wide account number portability when switching banks.’ That was our central message to the European Commission following [the study into the options of consumers and businesses to retain their account numbers when switching banks](#). ACM wants bank customers to be able to do so. In ACM’s view, this is the best way to ensure that consumers can switch easily. The ability of consumers to switch easily will keep banks on their toes, which will lead to more competition. Direct benefits for Dutch consumers and businesses have been estimated at approximately EUR 400 million over a period of ten years.

FinTech developments in the payments industry

The rise of firms that use technology for providing financial services (‘FinTech’) can potentially have an enormous impact on the financial sector. In 2016, we launched a study into FinTech developments in the payments industry. Prior to that study, we issued a call ‘[FinTech and competition](#)’ and we organized the [seminar ‘What does FinTech mean for oversight?’](#) (in Dutch).

The study’s objective was to determine what obstacles FinTech firms encounter when competing with incumbent providers, and what risks exist on new dominant networks or platforms in the payments system.

Saving money on financial products by comparison-shopping

Consumers are able to [save hundreds of euros if they comparison-shop when purchasing financial products](#) such as insurances, mortgages, and loans. For 15 financial products, ACM calculated the potential savings that different household types are able to realize. The exact amount of savings varies per situation, but it can be as high as EUR 2,000 per year.

Consumers who switch keep businesses sharp. After all, they will have to make and keep their products and services desirable enough in order to attract and retain consumers.

3.1.4 Competition in the health insurance market

Together with the Dutch Healthcare Authority (NZa), ACM looks at ways to boost competition between health insurers. Health insurers have a key role in making sure the Dutch health care system remains accessible, affordable, and of high quality. Effective competition stimulates health insurers to procure better health at more competitive rates. That will ultimately benefit consumers.

Room for increasing competition

A preliminary study commissioned by ACM in 2016 revealed that [health care laws and regulations limit the ability of health insurers to separate themselves](#). Health insurers are not taking full advantage of the opportunities that they do have to separate themselves, for example with their product ranges, but also with the service they provide to their customers. As a result thereof, variation among health insurance policies is rather small.

That is why we came to the conclusion that there is [room for increasing competition in the health insurance market](#). ACM expects that more consumers that switch providers and the entry of new competitors may boost competition, and will therefore carry out follow-up studies into:

- [Barriers to entry and to expansion in the health insurance market](#);
- Incentives for major health insurers to separate themselves, and to attract new customers;
- The transparency (and lack thereof) and the complexity of the offerings of health insurers.

Switching health insurances

Each year, ACM monitors [switching behavior among consumers in the health insurance market](#) (in Dutch). The 2016 results reveal that 'lower premiums' are the most important reason for switching. In addition, 'coverage' is becoming more and more important for consumers. A majority of consumers (over 70%) has not looked around for a possible switch.

Switching is not a goal unto itself. However, healthy competition among health insurers calls for consumers that are active and that make deliberate choices. If consumers are well informed, and are able to choose consciously the health insurer that offers the best deal for them, they stimulate health insurers to do their best in meeting their customers' needs. That will eventually lead to lower premiums, freedom of choice, and high-quality health care.

3.1.5 Competition control and sustainability arrangements

When companies wish to do business in a more sustainable manner, they may need to make certain arrangements with other companies. In its oversight of sustainability arrangements, ACM exercises restraint.

What are the basic principles in ACM's oversight of sustainability arrangements?

ACM drew up [basic principles for its oversight of sustainability arrangements](#) (in Dutch). With these principles, we wish to explain to businesses in what situations ACM does and does not step in.

Three basic principles govern our oversight of sustainability arrangements:

1. ACM does not step in if the sustainability arrangements in question enjoy wide support from all parties involved such as government, citizen representatives, and businesses;
2. If ACM receives complaints or indications about sustainability arrangements, it may launch an investigation;
3. ACM will help seek a swift and effective solution to any problem it encounters.

What can businesses do to determine whether or not their sustainability arrangements are allowed?

We created an interactive '[decision tree](#)' (in Dutch), which can be found on our website. Businesses can use this decision tree to do an initial check of whether or not their arrangements may pose any anticompetitive concerns. If the arrangements do restrict competition, the benefits of the sustainability arrangements will have to offset the drawback of the restriction of competition. The arrangements will also have to be necessary for actually reaping those benefits, and cannot completely eliminate competition.

ACM thinks along with businesses about covenants

In 2016, ACM, in an informal capacity, thought along with businesses about various covenants on responsible business. Several examples include:

- The [International Responsible Business Conduct Sector Agreement on Sustainable Garment and Textile](#);
- The [Dutch Banking Sector Agreement on International Responsible Business Conduct regarding Human Rights](#);
- Arrangements regarding the reduction of salt in food products ([at the request of the Dutch Consumers' Association](#) – in Dutch).

In these cases, ACM did not have any fundamental objections against these arrangements.

2016 Policy Rule on Competition and Sustainability

The Dutch Minister of Economic Affairs published a revised version of its [Policy Rule on Competition and Sustainability](#) (in Dutch). This policy rule sets out what ACM must take into account in its assessments of sustainability arrangements. As a result of the changes to the Policy Rule, slightly more room has been given to sustainability arrangements than before. We carried out a so-called [Feasibility and Enforcement Test on this revised Policy Rule](#) (in Dutch). We consider the rules to be feasible and enforceable except for one article, which is Article 2 under a. This article is about what ACM should assess if the anticompetitive agreement is part of a set of sustainability measures.

3.2 Concentration control

Businesses may decide to merge, acquire a competitor, or launch a new business together. These new businesses can become so large that too little competition remains in the market. The government has drafted rules to prevent this. ACM ensures that businesses comply with the rules, and assesses mergers and acquisitions before they take place.

Our oversight efforts in 2016 in a nutshell

In 2016, ACM issued a total of 100 decisions about planned concentrations. For example, we ruled on mergers and acquisitions in the bread sector, in the wholesale market for drugstores, in the hospital industry, and in the pharmacy market. In addition, ACM closely followed the market dynamics in the telecom industry. With the [merger of Ziggo and Vodafone](#), a second major telecom provider in the Netherlands will emerge next to rival KPN.

Concentration control in the health care sector

In 2016, ACM took a total of 14 decisions about planned concentrations in the health care sector. For example, we issued decisions in the pharmacy market ([Brocacef-Medig](#)), in the hospital industry, about hearing aids ([Sonova-AudioNova](#)), and in the mental health care market.

In addition, we launched studies into the functioning of the health care markets with an eye to making concentration control in the health care market stronger. In September 2016, we published the results of the study into [the effects of hospital mergers on health care quality](#). In the first half of 2017, we expect the results of the study into the effects of mergers on the prices in hospital care to be published. In early-2017, ACM also launched a [study into the level of detail with which we ought to look at the type of care in hospitals as part of our merger assessments](#) (in Dutch), such as the distinction between high-complexity care and primary care.

Court upholds decision blocking the merger between two hospital groups

In late-September 2016, [the District Court of Rotterdam upheld the July 2015 decision blocking the merger between two hospital groups: Albert Schweitzer Hospital and Rivas Zorggroep](#) (in Dutch). This was the first time that we did not clear a hospital merger. The hospital groups in question had filed an appeal against ACM's decision.

3.2.1 Concentration in the wholesale market for pharmacies

ACM cleared two acquisitions by Holland Pharma, which is a wholesale company trading in drugstore items. In both cases, ACM concluded that sufficient competition would remain, and that consumers would keep sufficient options.

Acquisition of DA by Holland Pharma

In April 2016, we [greenlit the acquisition of DA by Holland Pharma](#). As a result, Holland Pharma acquired both the wholesale activities and the retail locations of DA. Sufficient alternatives would remain in the market after the acquisition. Consumers, too, would continue to have plenty to choose from. Next to DA, various other drugstore chains are also active in the market such as Etos, Trekpleister and Kruidvat. Furthermore, many drugstore items are also available at supermarkets, pharmacies, and on the Internet.

Acquisition of FACO by Holland Pharma

In late-2016, [Holland Pharma was also allowed to acquire FACO](#). ACM conducted an extensive investigation into the wholesale market for drugstore products. After all, the two merging companies are important wholesale companies for independent drugstores. In addition, they each have their own drugstore chain. If a wholesale company's market position became too strong, it could lead to higher prices and reduced service.

ACM reached the conclusion that there are enough other wholesale companies where drugstores are able to purchase products, for example Vriesia and Unipharm. Furthermore, it would not be easy for Holland Pharma to raise prices. Too many consumers would then switch to a competitor such as Etos, Trekpleiser, or Kruidvat.

3.2.2 Changes in the telecom industry

ACM closely follows the developments in the Dutch telecommunication landscape. Two major developments took place in 2016:

1. After the European Commission cleared the merger between telecom provider Vodafone and cable company Ziggo, a major provider effectively left the Dutch telecom market;
2. The European Commission is working on a review of the telecom rules.

Ziggo – Vodafone merger

In August 2016, the European Commission conditionally cleared the [joint venture of Ziggo/Vodafone](#). As a result of this collaboration between Vodafone and Ziggo, a second telecom provider will emerge next to rival KPN, which operates both a fixed network and a mobile network. Vodafone did have to let go of its fixed network in order to prevent possible anticompetitive effects. In late-2016, ACM [greenlit the acquisition of Vodafone's fixed telephony network by T-Mobile](#).

Review of telecoms rules

In September 2016, Henk Don, Member of the Board of ACM, talked about [upcoming EU legislation for the cable and telecom market](#) (in Dutch) in Dutch financial newspaper FD. According to ACM, the review of the legislation insufficiently takes into account the developments in the Netherlands. For example, with the Ziggo-Vodafone merger, a second major provider has emerged next to rival KPN. According to Henk Don, new rules from Brussels are needed in order to be able to realize access regulation in these kinds of situations.

Launch of preliminary study for telecom market analysis

As part of our regulatory task, we launched a preliminary study in 2016 into the current state of play in the telecoms market, and into market developments such as the rise of all-in-1 packages. In September 2016, ACM called on the market to provide [input for the preliminary study for the telecoms market analysis](#) (in Dutch).

3.2.3 Concentration in the pharmacy market

In June 2016, ACM conditionally cleared the acquisition of Mediq by Brocacef in the market for pharmacies and wholesale companies trading in pharmaceutical products.

What were the conditions?

[Brocacef was allowed to acquire pharmacy chain Mediq under strict conditions](#). Brocacef was required to sell wholesale company Distrimed. In addition to that, the combined Brocacef/Mediq had to hive off a total of 89 pharmacies (38 wholly-owned pharmacies and 51 associated ones). As the franchise and associate pharmacies could not be sold, Brocacef offered as a solution (remedy) to end the relationships with these pharmacies, and not to maintain wholesale relationships with them for two years. With these conditions, hospitals and consumers will have sufficient options for purchasing prescription drugs and other pharmaceutical products.

Court rules on the conditions

Following ACM's decision, Brocacef acquired Mediq, and subsequently filed a request with the court in interlocutory proceedings, asking to suspend the wholesale prohibition with the 51 franchise and associate pharmacies. [The court turned down this request](#) (in Dutch). One of the reasons behind the court's ruling was that it found it was impossible to request suspension of just a single component of the solution offered by Brocacef. Brocacef would have had to challenge the entire decision of ACM.

ACM is pleased to see that the court supports our line of reasoning. Merger parties put forward their own proposals to take away any anticompetitive concerns. If parties basically withdraw their own proposals after clearance by ACM, it would run counter to the principles underpinning the regulatory process.

Changes to the conditions in ACM's decision

In November 2016, [Brocacef requested ACM to change the strict conditions](#) (in Dutch) that it had laid down in the decision. Brocacef asked ACM to change the conditions in The Hague. We granted this request. The proposed amendment offered the same protection against the previously identified anticompetitive concerns in The Hague.

Proceedings on the merits against ACM's licensing decision are still ongoing at the District Court of Rotterdam.

3.2.4 Hospital mergers

ACM assesses mergers in the health care sector. This includes mergers between hospitals, but also between elderly-care institutions, mental health care institutions or youth care institutions. We examine whether sufficient competition remains in the market after the concentration. Mergers cannot be completed if they can affect competition negatively, and, ultimately, affect patients and/or insured negatively.

What hospitals wished to concentrate in 2016?

Some of the mergers ACM cleared last year included:

- [The Slingeland Hospital in the town of Doetinchem and the Queen Beatrix Regional Hospital \(SKB\) in the town of Winterswijk](#)
- [The Waterland Hospital in the city of Purmerend and the Westfriesgasthuis hospital in the city of Hoorn](#)

Our investigations revealed that, in these cases, few patients regarded the merger hospitals as each other's alternatives. These hospitals thus hardly competed with each other. Furthermore, health insurers and patient councils were mostly positive about these mergers.

In late-2016, we concluded that [further investigation was needed into the effects of the planned merger between two academic medical centers in Amsterdam](#) (AMC-VUmc). ACM wished to examine in greater detail the competition in high-complexity hospital care. Such high-complexity care includes complex surgeries, patients with multiple conditions, or treatments that require highly specialized equipment.

Effects of hospital mergers on quality

Over the past year, ACM had a [study](#) carried out into the quality effects of 14 hospital mergers in the period of 2007-2013. On the basis of that study, we concluded that mergers between hospitals have not demonstrably helped improve health care quality.

On the basis of the study, ACM has formulated the following recommendations:

1. If hospitals put forward quality benefits as an argument, ACM will critically assess these in its merger assessment. For hospitals, this means that, in any case, they need to substantiate concretely and in detail the expected quality benefits;
2. Further development of quality indicators that are unequivocal, accessible, and easy-to-understand continues to be necessary, and ACM will support such initiatives;
3. When seeking to achieve the desired quality benefits, hospitals should consider less far-reaching forms of collaborations more often.

What are the opinions of ENT specialists about the effects of mergers on health care quality?

At a conference held in October 2016, approximately 400 ENT specialists voiced their expectations regarding health care quality if their hospital were to merge with a nearby hospital. Chris Fonteijn, Chairman of the Board of ACM, discussed the results in his speech at the [2016 Conference on Trends in Competition Law](#) (in Dutch).

4 Sector-specific regulation

ACM regulates the energy market, telecom market, postal service market, and several transport markets. These are markets with few providers, and, in some cases, even a monopolist. With its sector-specific regulation, ACM aims to offer consumers more options, and to ensure that they are able to get services at a good price-quality ratio.

These complex markets call for a professional approach from the regulator. Depending on the individual market, ACM can use different instruments. For example, ACM sets the tariffs of system operators, because they do not have any competitors as a result of their natural monopolies. On the telecom and postal-services markets, ACM is able to open up networks. That is how competitors are able to use those networks in order to offer services themselves. This leads to more options for consumers and businesses. In several transport markets, ACM makes sure, for example, that monopolists do not charge more costs than allowed.

4.1 Regulation of the energy market

ACM's regulation of the energy market promotes innovation, safeguards the investment climate, and ensures that prices for natural gas and electricity are as low as possible.

Regulation of energy companies

The energy market consists of various participants such as companies that operate networks, and companies that supply energy to consumers and businesses using one of these networks. Supplying energy is a competitive market in which buyers enjoy freedom of choice. The system operators are monopolists. That is why specific legislation, which ACM enforces, applies to the energy market. ACM does so because consumers benefit from having affordable and secure energy.

Regulation of drinking water and electricity in the Caribbean Netherlands

The Act on Electricity and Drinking Water on BES (in Dutch: Wet Elektriciteit en Drinkwater BES) entered into force on July 1, 2016. BES stands for the Caribbean islands of Bonaire, Sint Eustatius and Saba, which are part of the Netherlands. This act charges ACM with the task of setting tariffs for electricity and drinking water in the Caribbean Netherlands. As part of that process, ACM in October 2016 drafted a [method](#), and, in December 2016, ACM set the production prices for electricity and drinking water. These prices have been determined by calculating the production costs of one cubic meter of drinking water or one kilowatt hour of electricity.

For this task, ACM has temporarily stationed two members of its staff on the island of Bonaire. In 2016, they built ACM's regulatory operations from the ground up on Bonaire, Sint Eustatius and Saba. They also regularly visited the three islands holding discussions with utility companies, consumers, and other stakeholders.

ACM gives advice on the costs and tariffs of drinking water

In 2016, ACM gave advice to the Dutch Human Environment and Transport Inspectorate (ILT) regarding the calculation of the drinking water tariffs. In its advice about the 2013 drinking water tariffs, we found that the drinking water companies did not fully comply with drinking water laws and regulations. On several counts, we found transparency to be insufficient.

As part of the assessment of the 2016 tariffs, all drinking water companies handed over cost price models. We concluded that the cost price model is a step in the right direction in order to provide more clarity regarding what costs are covered by the drinking water tariffs. However, with regard to the shortcomings identified in 2013, ACM believes that these have not sufficiently been taken away yet.

4.1.1 ACM makes energy affordable

ACM has set new rules for the system operation tariffs. The 2017 tariffs have been based on those rules.

ACM sets new rules for system operation tariffs

ACM makes sure that electricity and natural gas continue to be affordable in the future. ACM has drawn up [new rules](#) for determining the revenues of the system operators for electricity and natural gas for the period of 2017 through 2021. Each year, ACM sets, on the basis of these 'method decisions,' the tariffs that system operators are allowed to charge their buyers (businesses and consumers).

ACM has published the method decisions for the distribution system operators (DSOs) for natural gas and electricity, for the transmission system operator (TSO) for electricity, and for the operator of the offshore grid. In the two latter cases, that operator is TenneT. The purpose of the method decisions is to come to reasonable tariffs for buyers for the transport and distribution of electricity and natural gas. In that process, operators must be able to recoup their investments, for example in sustainability, insofar such investments are efficient. In that way, consumers do not end up paying too much, while system operators are able to recoup enough of their investments in order to continue making investments in a sustainable and secure supply of energy.

The method decision for the TSO for natural gas, Gasunie Transport Services (GTS), will be released later in 2017.

Lower costs for transmission of electricity, while those for natural gas are up

In 2017, consumers will pay on average [13 EUR per year more](#) for the transmission of electricity and natural gas by their distribution system operators. The transmission tariffs for electricity will decrease by EUR 5 per year, while, for natural gas, the tariffs will increase by EUR 18 per year.

Transmission tariff of electricity over grid increases

The [revenues of TenneT will increase in 2017 by EUR 40 million](#) compared with 2016. In 2017, TenneT is allowed a maximum revenue of EUR 508 million. One of the reasons for this increase is the large investments that TenneT has to make with regard to the expansion of the national grid. This concerns national grid connections such as the Randstad 380 kV Ring system, located in the densely-populated western part of the Netherlands, and cross-border connections such as the Doetinchem-Wesel connection between the Netherlands and Germany, and the COBRA-cable between the Netherlands and Denmark.

In addition, TenneT in 2017 is allowed a [maximum revenue of more than EUR 22 million](#) for its tasks associated with constructing and operating the offshore grid. This has been determined by ACM. TenneT has been granted a subsidy from the Minister of Economic Affairs for these revenues.

4.1.2 ACM makes energy secure, and safeguards quality

Through various actions in 2016, ACM gave a boost to the security and quality of the energy supply in the Netherlands.

ACM assesses unbundling plans of energy companies

In 2016, ACM assessed the unbundling plans of energy companies Eneco and DELTA. In 2017, ACM will oversee the actual unbundling process. As a result of unbundling, consumers and businesses will avoid running the risk of no longer being supplied electricity or natural gas. After all, once the unbundling process has been completed, the system operation activities are no longer exposed to any risks that the commercial operations face.

The Independent Grid Administration Act (WON), also called the 'Unbundling Act,' stipulates that generation and supply of energy can no longer take place in a group in which the energy networks are also operated. In the past, Eneco and Delta have opposed this stipulation. In 2015, the Supreme Court of the Netherlands ruled that the group prohibition in the Unbundling Act is not at odds with European law. This means that Eneco and Delta, too, will have to unbundle. In late-2015, ACM set a deadline for this process to be completed. Eneco will have to unbundle before February 1, 2017, and DELTA before July 1, 2017. In 2016, ACM reaffirmed these deadlines in a [decision on objection](#) (in Dutch).

Exemptions for closed distribution systems

In 2016, ACM gave seven exemptions to closed distribution systems, and it turned down five applications for exemptions. Owners of grids or gas transmission networks are required to designate a public system operator. That operator will then manage the network in accordance with all relevant statutory requirements. In some situations, ACM can grant a network owner an exemption from this requirement. We call this an exemption for a closed distribution system. Examples of such closed distribution systems are railway stations, hospitals, airports, and chemical industry sites.

Investigation into power outage in Diemen completed

In 2016, ACM conducted an investigation into the [large-scale power outage](#) near the town of Diemen (near Amsterdam) on March 27, 2015. Approximately one million households in a part of the province of Flevoland and a large part of the province of North-Holland. The cause was a combination of a technical failure and a human error at a high-voltage substation of transmission system operator TenneT. ACM did not establish any violation of the statutory requirements. TenneT has made plans to prevent a repeat. ACM monitors the implementation of these improvements.

4.1.3 Towards a single European market

ACM helps realize the European integration, implements European rules, and enforces the rules. With regard to energy, ACM [actively](#) collaborates with other regulators, Member States, and the European Commission. Many of the collaborations take place within [ACER](#) (ACER is the European agency for cooperation between energy regulators) and [CEER](#) (CEER is a collaboration between European energy regulators), and focus on one of the priorities of the European internal energy market.

European integration of the electricity market

In 2016, ACM was co-chair of the working group that advised the European Commission on the new ruling for 'balancing.' Balancing means maintaining a stable power grid. The balancing market is the final segment of the electricity market that has not yet been integrated at the European level. [New rules for balancing](#) will make it easier and less costly for transmission system operators to maintain a stable power grid. This market-oriented approach helps complete the internal European energy market in an efficient manner. The new rules will be finalized in early-2017. In addition, ACM in 2016, like in previous years, helped promote the ongoing completion of the market integration on the other short-term markets (the so-called intraday and day-ahead markets) and medium-term markets.

ACM also helped draft [new European rules](#) for grid operation, and helped create a coordinated code approach to emergency and restoration procedures for grids that have been connected with each other across Europe. In that context, two new European Regulations have been established, which will significantly help the internal European electricity market function better, and help with the integration of renewable energy.

ACM helped draft new European legislation

In 2016, ACM helped in various ways draft new European rules regarding electricity.

First of all, ACM contributed to the discussions in the Netherlands and in Europe about the new market model for electricity. This new market model is a major element of the legislative package that the European Commission published in late-2016 ("[Clean Energy for All package](#)"). This legislative package is a proposal, and it describes how the internal energy market is able to help realize the energy transition in the most efficient manner. This package is expected to enter into force around 2020. The energy transition changes the way the electricity market operates because we will have to deal with other renewable sources of energy such as solar and wind.

ACM has helped draft new European rules on calculating the gas transmission tariffs. These new rules will ensure a more transparent calculation of those tariffs. In 2017, ACM will commence with the implementation of these rules. ACM has additionally helped with the amendments to the European rules on the allocation of cross-border capacity. These rules had thus far only concerned the allocation of existing capacity. As a result of these changes, they now also stipulate how new capacity is to be allocated, and when new capacity is to be added. With these changes, ACM has taken important new step towards further integration of the European gas market.

Furthermore, we also drafted a CEER handbook for the harmonization of measuring data with which the functioning of the retail market can be assessed. Moreover, we made significant contributions to the first products of CEER on cybersecurity, and we co-authored a [report](#) on what the best options are to regulate distribution systems with the use of positive incentives.

Implementation of European rules

In 2016, a lot of attention was given to the implementation of [rules that make cross-border energy trade easier](#). In addition, ACM continued its ongoing effort to implement the [measures that help connect the European electricity and gas networks better](#), and to deal with possible shortages of natural gas and/or electricity at a cross-border level.

2016 was also the year in which ACM launched the actual implementation of the European market rules for electricity. For the further integration of the European electricity market, the first step is to identify regions within Europe where the system operators for electricity (TSOs) have to cooperate and have to make capacity calculations. In the end, [ACER took the decision](#) about these so-called capacity calculation regions, since the national regulators were unable to agree unanimously on the proposals of the system operators for electricity.

For the calculation of the available capacity at a cross-border connection, the TSOs in Europe need to make a mathematical model of the system. As part of that process, the TSOs need to know what flows they are expecting to process over their systems, and what system configuration they will use. For these projections, they need information from producers (the larger ones) and buyers including the distribution system operators (DSOs). The TSOs put forward a proposal explaining what information they needed from each market participant. ACM and the other European regulators unanimously approved this proposal. This marked the first step towards a more accurate calculation of cross-border capacity that is available for trade.

ACM determines what market participants are allowed to sell transmission capacity for electricity on our national borders. In late-2016, APX merged with EPEX Spot. In that context, we assessed whether EPEX complied with the statutory requirements such as integrity, non-discrimination, and low barriers to entry. ACM is of the opinion that [EPEX](#) (in Dutch) meets these requirements. As a result thereof, EPEX and Nord Pool are now the two power exchanges in the Netherlands appointed as NEMOs (Nominated Electricity Market Operator). With this appointment, market participants are now able to choose between exchanges with which they are able to gain access to the European market.

With regard to natural gas, ACM in 2016 worked on various cases. For example, we implemented rules that will result in improved coordination of standards, procedures, and the exchange of data between countries. Natural gas will thus be able to flow more easily between different countries. In addition, ACER established that the Netherlands implemented properly the rules for allocation and improved utilization of cross-border connections, and those for balancing the gas network. ACER did recommend though adjusting parts of the rules for balancing. ACM will look into this in 2017 in consultation with GTS. In addition, the implementation of the rules for allocation and utilization of the cross-border connections has in practice raised various questions. Together with regulators in our neighboring countries, we came up with solutions to these issues.

ACM enforces the current rules

In 2016, TenneT did not want to auction any yearly capacity from the Netherlands to Germany. Sometimes, the German grid is unable to handle any additional import from the Netherlands because of wind generation in northern Germany. In consultation with the German regulator, ACM asked TenneT to look for alternative solutions for those few hours of overload rather than reducing yearly capacity to zero. In the end, TenneT offered [400 MW](#) (in Dutch) on the yearly auction, and 432 MW on the monthly auction. In this manner, the market is facilitated best.

Trust in energy trading is a critical precondition for a well-functioning European energy market. That is why ACM wishes to combat insider trading and market manipulation in the energy markets, which will eventually lead to a level playing field for businesses, and to lower energy prices for consumers. Together with ACER, ACM explained the rules to market participants as laid down in the Regulation Energy Market Integrity and Transparency (REMIT) by the European Parliament. Almost all energy traders have [registered](#) (in Dutch) with ACM. They now report to ACER their transactions and orders to trade. As a result, ACER and other regulators are able to monitor the market effectively. In 2016, ACM professionalized its operational processes with regard to data security and data access in order to be able to do more data-driven detection in the future. We will thus be able to track down possible violations sooner. ACM oversees the markets by itself, and looks in particular at the proper publication of insider knowledge. ACM receives concrete indications about this, and is able to take enforcement actions following investigations.

4.1.4 Heat

ACM sets the maximum tariffs for the supply of heat, and is responsible for the issuance of licenses to heat suppliers.

2017 tariffs

In late-2016, ACM set the 2017 for heat. In [2017](#), consumers and businesses that get their heat from individual-building heating or district heating will pay on average EUR 24 more than in 2016. Approximately half a million consumers and a share of the small and medium-sized businesses are affected. Households consume on average 35 GJ per year. This will on average cost them EUR 1,093 in 2017. ACM sets the heat tariffs because consumers and businesses are unable to switch heat suppliers or switch to natural gas. The increase of gas-heating costs in 2017 is primarily caused by higher transmission tariffs.

23 heat supply licenses issued

ACM in 2016 issued 23 [licenses](#) (in Dutch) for the supply of heat. There are now a total 26 license holders that are allowed to supply heat.

A license requirement for heat suppliers has been included in the Dutch Heat Act. This requirement applies to all heat suppliers except for small heat suppliers and for suppliers that own or rent out the building that is supplied heat.

Dutch Heat Act Revision Bill

In the fall of 2016, ACM ran a feasibility and enforceability test on the Dutch Heat Act Revision Bill.

The bill includes clearer definitions of a substantial number of concepts. Setting maximum tariffs for heat exchangers, the connection fee, and the disconnection fee will result in increased certainty and clarity for suppliers and consumers. Furthermore, the revised compensation scheme is a better fit with the real-world situation, and the regulation of the cold part of STES systems (seasonal thermal energy storage) will result in improved protection of consumers. One of the bill's aims is to exempt lessors and homeowner associations from the requirements in the Dutch Heat Act, thereby reducing the administrative burden of these parties.

4.2 Regulation of the telecom market

ACM regulates the telecom market. Because of the high investments costs involved, the telecommunication market has always had a limited number of competing networks.

What does ACM do?

Every three years, ACM analyzes the various telecom markets in order to see whether there is still enough competition. If some companies do enjoy powerful market positions, ACM will take measures to stimulate competition. ACM then subsequently oversees the implementation of and enforces compliance with these measures. In addition, the Dutch Telecommunication Act contains rules for the protection of consumers and businesses, and for ensuring well-functioning telecommunication markets (such as the issuance of telephone numbers). ACM enforces compliance with these rules.

ACM's contribution to BEREC

ACM also collaborates with other European regulators when it comes to telecom. This cooperation takes place within [BEREC](#), which stands for Body of European Regulators for Electronic Communications. This is a European collaboration between national telecom regulators. Within BEREC, we share experiences, and develop common practices in those areas where it will help the European telecom market.

In February 2016, ACM hosted a BEREC conference in Rotterdam. At that conference, we discussed, among other topics, the European Commission's proposals regarding the review of the telecommunications regulatory framework. We also discussed the revised rules about roaming that would come into force in the European Union on April 30, 2016.

4.2.1 Review of the European telecom framework

The main theme of 2016 was turning the European Commission's strategy into concrete steps in order to realize a digital internal European market ([Digital Single Market](#)). One key element of that process is the review of the European regulatory framework.

On September 14, 2016, the European Commission presented a proposal for a Directive for a [European Electronic Communications Code](#) (the Code). This proposal is a combination of, among other documents, various European directives and connectivity proposals ([Communication 'Towards a European Gigabit Society'](#)).

The Code contains various proposals for reviewing the European telecom framework, for example with regard to access regulation and spectrum management. ACM co-authored BEREC's [opinion](#) of December 2016 about the review of the electronic communications framework.

4.2.2 ACM's oversight of net neutrality

Having an open internet is critical for the free dissemination of information, and for the development of innovative services. ACM makes sure that internet providers offer access to the internet while observing net neutrality. That means that internet providers are not allowed to block any content, and they cannot slow down, restrict or discriminate against certain services either.

BEREC guidelines on net neutrality

The European net neutrality regulation came into force on April 30, 2016. This regulation contains rules aimed at safeguarding access to an open internet. The European rules have direct effect, which means that they can be applied directly without the need for them to be transposed into national law.

On August 30, 2016, European telecommunication regulators issued [joint guidelines](#) in which they explain how they will apply the European net neutrality rules. ACM helped draft these guidelines. With regard to price discrimination, the guidelines offer a less strict interpretation of the net neutrality regulation than the Dutch legislature had intended. According to BEREC, certain online services such as music streaming or social media, can, under strict conditions, be offered at lower prices or for free. According to the Dutch legislature, the European rules do not allow for any distinction whatsoever with regard to tariffs. In order to clarify this, a bill was submitted proposing an absolute ban on price discrimination. The [Dutch Senate](#) (in Dutch) passed the bill on October 11, 2016.

T-Mobile's Data-free Music service

In late-December 2016, ACM forced telecom provider T-Mobile to stop offering and operating its ['Data-free Music' service](#) (in Dutch: Datavrije Muziek). With this service, T-Mobile customers in the Netherlands are able to stream music for free. Streaming music will not count against the data plans of these customers. T-Mobile customers thus essentially pay a zero rate for the data consumption associated with this service. However, data consumption associated with all other online services does count against their data plans. This is a form of price discrimination, which is also called 'zero-rating.'

Dutch law, in which an absolute ban on price discrimination has been laid down, does not allow for any distinctions with regard to tariffs. Internet providers must charge the same tariff for the consumption of all data. That is why ACM had established that T-Mobile violated the ban on price discrimination with this service. According to the Dutch legislature, internet providers are not allowed to charge higher or lower tariffs for specific apps and services.

ACM's decision that T-Mobile needs to stop offering this service has been brought to court. T-Mobile challenges whether the national legislation with the absolute ban on price discrimination is allowed to exist alongside the net neutrality regulation.

4.2.3 European agreement on reduction of roaming costs

In 2016, agreement was reached in Europe about reducing the costs of using mobile services abroad, which are also called roaming costs.

Towards the elimination of roaming costs

Since April 30, 2016, roaming costs for calls, texts, and internet access within the European Union have gradually gone down. From June 15, 2017, all differences between domestic and international consumption will have disappeared as a result of that process. Roaming costs will have been eliminated.

In December 2016, European member states reached agreement on a proposal put forward by the European Commission containing so-called '[fair-use rules](#)' for roaming. This means that criteria have been created for defining fair use of roaming. In addition, safeguards have been put in place in order to prevent abuse. However, member states were not yet able to reach agreement on the maximum tariffs that telecom providers are allowed to charge each other for handling traffic over their own networks (the so-called wholesale tariffs). ACM has provided assistance to the Ministry of Economic Affairs in this process.

BEREC guidelines on roaming

On February 12, 2016, BEREC published [guidelines](#) for the implementation of the Regulation on roaming that the European Commission published earlier in November 2015. ACM made an active contribution to the creation of those guidelines. The guidelines explain in greater detail in what way regulators should interpret the rules on retail roaming, which came into force on April 30, 2016. In 2016, ACM was also involved in a [technical briefing](#) (in Dutch) held in the Dutch House of Representatives about the EU proposals on roaming.

4.2.4 Safeguarding effective competition and options on telecom markets

In 2016, ACM devoted time and effort in safeguarding effective competition for businesses, and protecting options for consumer on telecom markets.

Implementation of market analysis of unbundled access

In 2016, the regulatory framework for the market of [unbundled access](#) entered into force. KPN must grant access to the final stretch of connection to people's homes. It is not profitable for KPN's competitors to build such infrastructure themselves. With KPN granting access, its competitors are able to offer services to consumers and business end-users. KPN must grant access to its copper network and its fiber-optic network. In 2016, ACM set the [maximum tariffs for unbundled fiber-optic access](#) that KPN is allowed to charge for access to its fiber-optic network to residential homes (FttH). In addition, rules have been fleshed out that should ensure that KPN does not offer its services to business end-users at below cost price. If KPN did, its competitors would not stand a chance.

In 2016, access to the copper network was designed in such a way that KPN was better able to invest in making the network faster. And KPN did just that. As a result, customers of KPN and those of its competitors that buy access to KPN's copper network are able to benefit from higher and higher download speeds.

Study into required regulation of business telecom markets

In 2016, ACM carried out a study into competition on the business telecom markets. We came to the conclusion that KPN was not required to grant access to its businesses fiber-optic network that is currently being rolled out ([business fiber-optic networks](#), FttO). The reason for that is that other market participants, too, such as Eurofiber have partially rolled out similar networks. The study into whether regulation of other high-quality network services and business telephony is necessary is still ongoing.

Is the current regulatory framework still up to the mark with the duopoly of KPN and Vodafone/Ziggo?

In 2016, cable company Ziggo and Vodafone created a [joint venture](#). One of the conditions attached to the clearance was the sale of Vodafone's fixed services. T-Mobile bought these. As a result of this collaboration, two providers (rival KPN and Vodafone/Ziggo) operate both a fixed network and a mobile network, while two other market participants (Tele2 and T-Mobile) operate a mobile network, but no fixed network of their own. For the delivery of fixed services, they rely on regulated access. In 2016, we launched the preliminary investigation into whether the existing access regulatory framework is still sufficient for ensuring enough freedom of choice for consumers.

4.2.5 Oversight of correct use of dedicated mobile codes

ACM manages the supply of phone numbers in the Netherlands. ACM oversees the correct use of those phone numbers.

Correct use of phone numbers

Since 2015, ACM has stepped up its oversight of telecom providers, since they were lagging behind with using 097-numbers for devices that exchange data using an internet connection. In 2016, too, did ACM ensure that telecom providers used these dedicated mobile codes (06 and 097) correctly.

For example, ACM in July 2016 published a [fact sheet](#) (in Dutch) for telecom providers about dedicated mobile codes. In the fact sheet, ACM explains in what situations telecom providers must issue a 097-number or a 06-number, and who is responsible for the correct use of such numbers. Incorrect use of 06-numbers could result in scarcity of those numbers. Telecom providers are allowed to use 06-numbers for mobile phones only, not for mobile data communication. For devices that communicate with other devices, for example over the Internet, they are required to use 097-numbers instead. Examples include tablets, GPS navigation devices, security systems, underground waste containers, and vending machines.

In the fall of 2016, ACM sent a [request for information](#) (in Dutch) about dedicated mobile codes to telecom providers. In that request, it asked providers to indicate how they inform their customers about the correct use of dedicated mobile codes, and what measures they have taken to encourage the correct use of 097-numbers. Several providers launched projects to reorganize their systems so that they are able to use 097-numbers for mobile data applications. In addition, they changed their information about 097-numbers.

The Scarcity Report

In July, ACM published its [2015 Scarcity Report](#). In the annual Scarcity Report, ACM reports on the numbers it has issued, and gives an overview of the availability of numbers. One of its findings was that the number of available 06-numbers continued to decrease, meaning that mobile-network codes are becoming scarcer. Providers need such mobile-network codes in order to be able to offer mobile-phone services.

4.2.6 Oversight of use of premium-rate phone numbers

ACM issues premium-rate phone numbers to number holders.

Most premium-rate phone number holders comply with the rules

In 2016, ACM conducted a [study](#) into premium-rate telephone numbers beginning with 0900, 0906, 0909, and four-digit telephone numbers beginning with 18. ACM issues such numbers to number holders. Based on this survey, it turns out that these number holders mostly comply with the rules regarding the correct use of these numbers.

ACM has conducted a survey among 1,200 holders of premium-rate telephone numbers. The rules governing the use of premium-rate telephone numbers are strict, for example regarding maximum rates and accessibility. Consumers must be able to rely on the correct use of premium-rate telephone numbers. Based on the survey, it turned out that these number holders generally issue correct information regarding call rates, that the information services are easily accessible, and that the information numbers are used in accordance with their intended purposes.

Violations lead to sanctions

ACM did discover violations at about a dozen businesses. For example, some businesses did not answer the phone, or had failed to provide services. ACM also encountered businesses charging call rates that were too high. In almost all cases, the offending businesses adjusted their practices after receiving warnings from ACM. Businesses that still fail to comply with the rules after being warned can expect follow-up investigations by ACM. If these investigations confirm that certain businesses indeed misuse numbers or offer incorrect information on rates, ACM will sanction those businesses.

In 2016, directory assistance services using 090x numbers received negative media coverage: consumers do not always realize that they still pay the high call rates for the 090x number after being connected with the requested phone number. That is why ACM is currently investigating whether it can prevent these types of undesirable practices by enforcing the correct use of premium-rate numbers.

4.3 Regulation of transport markets

Transport markets tend to have little room for multiple market participants. In some markets, there are monopolies (sometimes even legal monopolies) and dominant positions. That is why special laws exist to promote competition in the markets or to protect passengers. ACM enforces these laws. These include the Dutch Pilotage Act, the Dutch Aviation Act, the Dutch Railway Act, and the Dutch Passenger Transport Act. In addition, ACM gives advice to the Ministry of Infrastructure and the Environment when these laws are amended.

ACM's contribution to IRG-Rail

ACM works together with other rail regulators within [IRG-Rail](#). IRG-Rail is the European network of independent rail regulators. This network is crucial because having regulators that cooperate closely with each other is a prerequisite for a well-functioning European rail market. In January 2016, Henk Don, Member of the Board of ACM, spoke at a [conference](#) in Berlin on 'Assessing competition in the European Railway Market'. In 2016, IRG-Rail released several publications, including a position paper on the Fourth Railway Package. ACM helped draft this paper, and, through, IRG-Rail, thus gave advice to the European Commission and the European Parliament. ACM in consultation with the European Commission also contributed to the Implementation regulation for services and facilities. Furthermore, ACM contributed to various working groups of IRG-Rail. In the summer of 2016, the TEN-T days were held in Rotterdam, focusing on the trans-European transport network, and which were organized by the European Commission. IRG-Rail issued a statement about the improvement of coordination of cross-border freight transport.

ACM's input to the Dutch House of Representatives

In 2016, ACM helped respond to the requests from the Dutch House of Representatives to inform them about the transport markets. In June 2016, Michiel Denkers, Director of ACM's Competition Department, gave a technical briefing on competition-law aspects of the market scan of transport over the HSL-Zuid high-speed rail line. And in December 2016, Henk Don, Member of the Board of ACM, spoke at the request of the Dutch House of Representatives about the [positioning of infrastructure manager ProRail](#) (in Dutch). The plans of the Dutch cabinet to reorganize ProRail into public body were the backdrop of this discussion. Finally, the Dutch House of Representatives asked us to give [advice](#) (in Dutch) about scenarios, which the cabinet will have fleshed out for the organization of the rail market in the long term. In 2017, ACM will give advice to the investigation commission.

Feasibility and enforceability test

In the fall of 2016, ACM carried out a feasibility and enforceability test on the [Decision on the commercial exploitation of Amsterdam airport Schiphol](#) (in Dutch). This decision contained certain rules that the Ministry of Infrastructure and the Environment had laid down, which Schiphol as the provider of aviation activities at the airport had to comply with. ACM will enforce compliance with these rules. In the test, ACM looks at, among other aspects, the measures that have been taken in order to ensure that the operator is able to calculate the costs in a fair manner.

4.3.1 Approval of 2017-2018 cost allocation system for Amsterdam airport Schiphol

In June 2016, ACM approved the changes to the 2017-2018 cost allocation system of Schiphol.

About the cost allocation system

The cost allocation system for Schiphol's aviation-related activities determines to a large extent the allocation of costs to the airlines, as well as Schiphol's thereto-related tariffs. Schiphol is only allowed to pass on to airlines costs that are associated with aviation-related activities (such as baggage-handling costs) and security.

Background

The current cost allocation system, which ACM in 2015 approved for the period 2016-2018, was no longer suitable. This was because Schiphol in 2015 implemented an adjustment in the Asset Management division. Schiphol subsequently had to change the system. The revised system was submitted to ACM for approval. ACM assessed these changes to the system, and finally [approved](#) (in Dutch) them in June 2016.

4.3.2 Reduction of tariffs for infrastructure charge

In December 2016, ACM ruled that infrastructure manager ProRail must adjust the infrastructure charge for railway undertakings. This is the fee that railway undertakings need to pay ProRail for the use of the main railway infrastructure.

ACM's decision means that ProRail must retroactively adjust its 2015 and 2016 tariffs. This decision comes after several decisions taken in 2015.

Previous decisions on complaint filed in 2015 by FMN

In [two separate decisions](#) (in Dutch), ACM in 2015 ruled on the level of the charges for using the main railway infrastructure in 2015 and 2016. These decisions had been prompted by a complaint filed by railway undertakings Arriva, Connexxion, Syntus and Veolia about these infrastructure charges.

The complaint of the Federation of Transport Operators in the Netherlands (FMN) was triggered by the increase in the tariffs in 2015 and 2016: from EUR 279 million in 2014 to EUR 330 million in 2016. In the first decision, ACM ruled that ProRail had to adjust the calculation of the infrastructure charge on three points. In addition, ACM instructed ProRail to come up with a better justification for the other points, and to resubmit that to ACM for approval. In the second decision, ACM ruled that ProRail's justification for several systems was still insufficient. With the imposition of a binding instruction, ACM asked ProRail for a more detailed justification.

Third decision on complaint filed in 2016 by FMN

For this [third decision](#) (in Dutch), ProRail put forward a report compiled by one of its own experts as justification for the systems, supplemented by a review of an external consultancy. ACM is of the opinion that this justification, which has resulted in a tariff reduction of EUR 4 million, is sufficiently clear and sound. The tariff reduction does not only benefit the railway undertakings that had filed a complaint, but also all other railway undertakings.

Review of the infrastructure charge

In 2016, ACM took part in consultations led by ProRail about the review of the infrastructure charge, which was proposed by the Ministry of Infrastructure and the Environment. The objective of said review of the infrastructure charge is to increase stability, transparency, and predictability of the infrastructure charge. To that end, ProRail is granted the ability to charge extra fees and to create additional price incentives for railway undertakings. ACM has carried out an Implementation and Enforceability Test on the planned order in council (in Dutch: algemene maatregel van bestuur). The review of the infrastructure charge will result in additional tasks for ACM, too, in the assessment of the infrastructure charge such as setting extra fees (mark-ups) on the infrastructure charge.

4.3.3 Decision on complaint of RailGood

ACM carried out an investigation into ProRail's decision-making process regarding the closure of the Moerdijk bridge. This investigation was prompted by a complaint filed by RailGood, which is an interest group representing rail freight undertakings RFF, Locon and LTE.

ProRail insufficiently involved smaller rail firms in bridge closure

Between April 13 and April 15, Dutch rail infrastructure manager ProRail insufficiently coordinated with three smaller undertakings, RFF, Locon and LTE, when [the Moerdijk bridge had to be closed](#) on short notice. ProRail thus treated them unfairly. In December 2016, ACM carried out an investigation, at the request of RailGood, into the whole process of closing the Moerdijk bridge. RailGood is an interest group representing rail freight undertakings RFF, Locon and LTE. The Moerdijk bridge had to be closed for rail traffic from April 13 through April 15, 2016 after several rail defects had been found. In situations like these, coordination is mandated by Dutch rail regulations.

4.3.4 Publication of the International passenger-transport services policy rule

In April 2016, ACM published the new [International passenger-transport services policy rule](#). The new policy rule provides clarity regarding the assessment method that ACM uses if railway undertakings wish to launch a new international passenger transport service.

European directive

The policy rule is based on a European directive ([Directive 2012/34 EU](#)) that was implemented into national legislation on December 15, 2015. This directive aims to open up the market for international passenger rail services. With the market opening, railway undertakings are able to carry out international passenger rail services without a license after notification with ACM. ACM is able to refuse the international rail undertaking access to the railway infrastructure, if the economic equilibrium of national railway license is compromised by the entry of international railway undertakings.

4.3.5 Public-transport pilot with touching on and off once

In June 2016, ACM welcomed a public-transport pilot with touching on and off once.

No major anticompetitive risks

ACM did not identify any major anticompetitive risks with regard to the [pilot project where passengers on a regional rail line in the eastern part of the Netherlands were able to touch on and touch off only once](#). We announced this in June 2016, following plans of various public-transport companies that wished to collaborate on rail services over the Valleilijn (in Dutch, literally 'Valley Line').

At Amersfoort station and Ede-Wageningen station on the Valley Line, smart card readers of two public-transport companies (NS and Connexxion) are located next to each other on the platforms. During the trial period, passengers on the Valley Line no longer needed to touch off and on when changing to trains of the other operator. Riding this line thus became easier and cheaper for all passengers.

Safeguards in place during the trial period

ACM did mandate several safeguards to be in place so that, during the trial period, Dutch Railways NS and rival public-transport company Connexxion exchanged as little as possible any commercially-sensitive information. After the trial period, such information could not be used for commercial purposes or any future tender processes. The trial period could only last 12 months at the most. In the fall, NS and Connexxion presented an alternative proposal to ACM because of the restrictions imposed on the trial. In this alternative proposal, the data of one undertaking will not be sent directly to the other undertaking, but rather through a third party. This trial will start in March 2017.

4.3.6 Clarity in advance for rail undertakings in regional rail tender processes

In 2016, the groundwork was laid for a new task of ACM's to clear in advance the conditions and tariffs of the rail service offerings in rail tender processes.

Dialog

In connection with this new task, ACM held a meaningful dialog with Dutch Railways NS and infrastructure manager ProRail, the operators of services at stations.

ACM's approval

In late-2016, ACM approved the conditions and fees of ProRail's rail services in two regional rail tender processes: train services in [two northern provinces](#) (in Dutch), and train services on the [Merwede-Linge line](#). The conditions and fees for the rail services of NS, Arriva and Vivens are expected to be approved by ACM in early-2017 for these tender processes.

The tender process in the northern provinces is expected to be launched in February 2017, and the tender process of the Merwede-Linge line in early-April 2017.

4.3.7 ACM sets maritime pilots' tariffs

Maritime pilots enjoy a monopoly position in the Dutch ports. Under the Dutch Pilotage Act, ACM is charged with oversight of the pilots' tariffs. Our oversight ensures that customers of pilots do not pay too much when hiring a pilot.

Slight increase of pilotage tariffs in 2017

ACM annually sets the pilotage tariffs. In 2016, we assessed and set the pilotage tariffs for 2017. These are the tariffs that maritime pilots are allowed to charge their customers for piloting vessels into and out of ports. The [pilotage tariffs in 2017 will slightly increase](#) by 1.42 percent compared with 2016. The tariff decisions apply to all six Dutch port regions: Delfzijl/Eemshaven, Harlingen/Terschelling, Den Helder, Amsterdam-IJmond, Rotterdam-Rijnmond, and Scheldemonden. As part of that process, ACM assesses a tariff proposal that the Dutch Pilots' Corporation (NLC) submits halfway through the year. ACM may deviate from the proposal if it believes that NLC's proposal would insufficiently help in achieving the most efficient production process or productivity levels, or in case of special circumstances. Some of the reasons for the tariff increase are a decrease in the number of pilotage trips, and scheduled maintenance works on the pilot boats.

In addition, ACM in 2016 set [the other tariffs for 2017 regarding maritime pilots](#) such as providing copies from the pilots' register.

Reduced compensation for capital costs of maritime pilots for 2017-2019

In December 2016, ACM set the compensation for [capital costs](#) (in Dutch) of maritime pilots for 2017-2019 at 6.3%. By setting this percentage, ACM determines the amount of capital costs that pilots are allowed to incorporate into their tariffs. Earlier this year, ACM set the percentage at 6%. However, the compensation was adjusted following an objection filed by Dutch pilots regarding an inaccuracy in the calculation. The compensation is now higher than the 7.8% that the Dutch pilots were allowed to charge between 2014 and 2016. One of the reasons for this adjustment was the lower interest rate.

4.4 Regulation of the postal services market

ACM enforces compliance with the Dutch Postal Act 2009. This act imposes, among other things, requirements on the delivery of Dutch postal operator PostNL, and on the universal service obligation (USO), including the stamp rate. Each year, ACM assesses whether PostNL meets these requirements. An additional objective of the Dutch Postal Act is to promote competition in the postal market.

Changes

ACM's regulatory regime regarding the Dutch Postal Act will see changes. In 2016, PostNL still had to grant other postal operators access to its sorting and delivery networks under the same conditions as those for its own customers. Under the new regime, ACM draws up a market analysis, in which we lay down proportional regulatory measures based on the possible anticompetitive problems.

4.4.1 Safeguarding a competitive and innovative postal services sector

ACM aims to have a well-functioning postal market.

Study into time-critical bulk mail

ACM continued in 2016 its analysis of the postal market. This analysis focuses on the delivery of so-called time-critical bulk mail. This is mail of business senders that needs to be delivered the next day. ACM has not yet completed this market analysis.

In December 2016, the Minister of Economic Affairs published a policy rule concerning the postal market. In this policy rule, the minister sets out more detailed requirements for the obligations that ACM, under the Dutch Postal Act, can impose on PostNL. ACM carried out an implementation test on this policy rule. Following that test, ACM was critical of the policy rule's usefulness and necessity. ACM currently applies the policy rule to the design of the regulatory regime based on said market analysis.

For the delivery of time-critical mail, PostNL's competitors lack a delivery network with national coverage. This means that they have some of their customers' mail delivered by PostNL. In that context, it is important to know what conditions PostNL uses. In 2016, ACM slapped PostNL on the wrist on several occasions, because PostNL gave preferential treatment to its own customers over other postal operators. Several lawsuits over this issue are still ongoing. [In a suit about the condition of a single sender address, the Dutch Trade and Industry Appeals Tribunal \(CBb\) reversed a decision of ACM](#) (in Dutch).

Analysis into anticompetitive problems for non-time-critical letter-size mail

In 2016, ACM asked the market to name anticompetitive problems with regard to non-time-critical mail, and whether ACM should also launch a market analysis into them. The situation in that market is different from the one of time-critical mail, because mail company Sandd also has a delivery network with nationwide coverage for some services. The preliminary analysis is still underway.

4.4.2 ACM to keep a closer eye on parcel delivery market

These days, increasingly fewer letters are sent. At the same time, the number of parcel deliveries has grown tremendously over the past few years. That is largely caused by the surge in online shopping.

Parcel Market Scan

In 2016, ACM assessed the functioning of the parcel market. One of the findings of the so-called [Parcel Market Scan](#) was that the market for domestic parcel services is a concentrated market, as parcel companies PostNL and DHL Parcel together control the largest share of this market. Another finding was that, next to introducing new services, parcel companies predominantly compete on price.

In ACM's opinion, it is important that this market continues to be sufficiently dynamic, and that providers have enough choice. From now on, ACM will keep a close eye on the parcel delivery market, and will therefore include this market segment in its annual monitor of the postal services market.

4.4.3 Safeguarding a mail delivery system that is accessible and affordable

In 2016, ACM set the maximum price increases for [stamps](#) and [other universal postal services](#).

Rates are allowed to go up

People sent less and less mail. That means the costs associated with mail delivery need to be recouped with fewer mailpieces. In order to prevent PostNL from suffering losses, PostNL is allowed to raise its rates.

In addition, 95% of this mail must be delivered the next day. In 2016, ACM established that PostNL met that requirement in 2015.

5 Impact

ACM wishes to be an effective and efficient regulator. We want to step in wherever our actions can truly make a difference for consumers and the market. That is why we attach great value to the impact of our work.

Outcome in 2016: EUR 790 million

Each year, ACM estimates how much money consumers have saved as a result of our interventions in the market. This is called the outcome. The total outcome for consumers in 2016 is estimated at approximately EUR 790 million. This figure is composed of EUR 320 million coming from activities that ACM completed in 2016, and EUR 470 million coming from activities in previous years, the impact of which still lasted in 2016.

Impact assessment

ACM also monitors the conduct of businesses. More and more often we also assess *after* the market intervention the impact that we have achieved. This is called impact assessment. With impact assessment, we are able to gain more insight into the real-world implications of our interventions and decisions. We can subsequently take into account such insights when planning our next interventions or drafting our next decisions. For example, we are very critical of quality benefits that hospitals claim their merger will realize, because impact assessments have revealed that such mergers usually do not lead to improved quality. And we continue to use rapid interventions in order to nip problems in the bud, since, in our observation, that results in improved compliance with the rules. Not all effects can be expressed in monetary terms. That is why ACM also measures other types of impact such as changes in behavior among businesses and consumers, as well as the influence on consumer confidence. However, it is not very efficient to make individual impact assessments of all interventions. ACM therefore also looks at how stakeholders experience its effectiveness as a whole.

ACM is in the vanguard when it comes to insight into regulatory impact. We regularly share knowledge and experiences with other regulators and scholars, both home and abroad, in order to gain insight into the methods and results of others, too. For example, we give presentations at conferences, and we actively take part in working groups (national and international ones) such as those at the OECD or at the International Consumer Protection and Enforcement Network (ICPEN).

ACM organizes conference on impact assessment

On November 16, 2016, ACM held a conference titled '[Impact Assessment of Interventions of Competition and Consumer Authorities](#)' for regulators, scholars, and other interested parties. Various impact studies were presented and discussed in different sessions on competition, telecom, health care, energy, and consumer protection. Some of the studies included the regulatory impact in the energy sector, and mergers between telecom providers. The insights gained from these studies contain valuable information for future policy-making and interventions. In some cases, critical information is lacking in order to draw firm conclusions about outcome and effectiveness. In those situations, we will have to make do with a tentative conclusion or the usual reservations. This conference is an example of ACM taking actively part in the current debate on the opportunities, challenges and limitations of outcome and impact assessments.

5.1 Impact assessment

What is impact assessment? In a nutshell, it is comparing the pre-intervention, pre-campaign or pre-merger situation with the post-intervention, post-campaign or post-merger situation, as well as determining who or what made the difference. In such assessments, we use both qualitative and quantitative information. Questions that we seek to answer with impact assessments include:

- Is compliance with the rules indeed higher after interventions by ACM?
- Do consumers become more aware and more assertive after consulting ConsuWijzer?
- Do mergers truly yield the benefits that were claimed beforehand?

Impact of our interventions

For several interventions, ACM in 2016 assessed afterwards what their effects have been. One of the findings was that, after 'rapid interventions,' businesses followed the rules much better. We also found that, as a result of explaining and providing information about the rules (which may include keeping orders subject to periodic penalty payments in reserve), price transparency among car importers quickly went up, and that telecom providers started using dedicated mobile codes correctly. In addition, ACM explained to primary-care providers what kinds of collaborations are allowed. With regard to several interventions, their impact assessments are still ongoing. This is because the effects of interventions do not always occur directly, but sometimes much later.

Impact of our campaigns

ACM also identifies the results of its campaigns. In 2016, the ConsuWijzer-campaigns on misleading special offers, online reviews, online privacy and unfair debt collection practices have generated the necessary media attention and visits to ConsuWijzer. With the information and guides on ConsuWijzer's websites, consumers are able to exercise their rights. A new campaign in 2016 was ACM's [anti-cartel campaign, which targeted individuals with knowledge of illegal agreements between companies](#), for example in the ports and transport sector. ACM's impact assessment has revealed that, in the weeks following the campaign, twice as many tip-offs were submitted to ACM than the average number of tip-offs in the period leading up to the campaign. Those tip-offs help ACM track down cartels.

Impact of mergers

Finally, ACM looks into the effects of mergers it has approved, conditionally or not. Based on [a 2016 study we come to the conclusion that hospital mergers often do not demonstrably help improve health care quality](#). These findings thus give ACM reason to assess critically in advance the quality benefits that hospitals claim their merger will generate.

5.1.1 Follow-up check of interventions

In order to determine the effects of our interventions, we analyze the market situation both pre-intervention and post-intervention, wherever possible, as well as the extent to which businesses comply with the rules.

To that end, ACM uses various instruments such as questionnaires, requests for information, and so-called 'sweeps'. The latter is a form of monitoring where we check the level of compliance among companies in regards their websites. Sometimes, measuring the change is a matter of just counting the numbers, while, other times, a more complex statistical analysis is required. We subsequently determine, based on available qualitative and/or quantitative information, whether that change is actually caused by ACM and/or by an external factor such as a campaign run by the Dutch Consumers' Association at the same time.

In 2016, we determined the impact of a number of interventions, including:

1. Rapid interventions
2. Information about 'closing fees' (or 'on-road' costs)
3. Information about 097-numbers (dedicated phone codes)
4. Basic principles for the oversight of primary care

Rapid interventions

If many indications about a particular business are submitted to ConsuWijzer, ACM may choose to hold that business to account for its undesirable behavior, and may require it to adjust its practices straight away. With these kinds of rapid interventions, ACM is able to nip such violations in the bud, thereby preventing further consumer harm. In 2016, ACM used this approach with great results. For example, a provider of discount travel deals immediately ended its misleading pricing practices, and reimbursed customers that were harmed. And a telecom provider improved its customer service straight away, so that customers are now served faster and better.

For each rapid intervention, we check at a later time, and sometimes even multiple times, whether or not the parties involved still comply with the rules. The follow-up check in 2016 revealed that the rapid interventions have been effective. All companies that ACM has taken action against have complied with the rules since. The number of reports from consumers about these businesses has dropped significantly.

Closing fees

ACM is of the opinion that consumers must be able to compare cars more easily. To that end, it was necessary for the so-called 'closing fees' (or 'on-road costs') to be included in the suggested retail price. In [August 2016, ACM contacted the importers of new cars](#), because they are almost always responsible for the national advertisements, flyers, and other marketing materials. The importers were given until November 1, 2016 to include unavoidable closing fees in retail prices. If they had failed to do so, they could have been imposed a fine or an order subject to periodic penalty payments.

Having carried out a follow-up check, ACM established that the advertised prices of new cars now include the unavoidable 'closing fees'. Dealers of new and used cars will eventually have to comply with this rule, too. ACM will continue its activities in this industry in 2017.

097-numbers

Having had an explanation from ACM about the rules, more telecom providers have started using 06-

numbers and 097-numbers correctly. In the Netherlands, mobile phones use 06-numbers. As more and more devices need simcards in order to function, the supply of 06-numbers could be finished one day. That would have major financial and social consequences. That is why all telecom providers are required to use 097-numbers instead of 06-numbers for applications that are not related to mobile telephony. Following an informational meeting for the sector in 2015, [ACM in 2016 handled a request for information and published a factsheet](#). The factsheet contains all relevant information about 097-numbers and 06-numbers. After all, if the rules are clear, compliance with them becomes easier.

ACM's follow-up check has revealed that a number of providers launched big projects in order to set up their systems in such a way that they can issue 097-numbers for mobile-data applications, and no longer 06-numbers. They have additionally adjusted their information about 097-numbers. In 2017, ACM will continue to keep a close watch on these developments.

Basic principles for the oversight of primary care

In 2015, ACM presented its basic principles for the oversight of primary care. With these principles, we wished to give primary-care providers more room for improving health care together. In a nutshell, these principles say that, if collaborations are in the interest of patients, take place out in the open, and the parties involved are satisfied with the final result, then ACM will not take any action. However, if ACM receives any complaints, the parties to the agreement are first given the opportunity to adjust their potentially harmful behavior as swiftly as possible.

In 2016, ACM [assessed](#) (in Dutch) the extent to which our oversight in the health care sector, after the release of our basic principles, is still a limiting factor in collaborations aimed at improving health care. ACM has had discussions with 17 market participants that are active in primary care. Based on these discussions, ACM has provisionally drawn the conclusion that, following the publication of these basic principles, competition oversight is, in effect, no longer regarded as a limiting factor in care-based collaborative initiatives. In 2017, too, ACM will monitor whether the basic principles offer sufficient latitude. In that context, it recommends health care providers to involve health insurers and patient organizations in their plans.

5.1.2 Impact of campaigns

ACM also presents the impact of its campaigns.

ConsuWijzer campaigns

The objective of ConsuWijzer campaigns is to help consumers solve problems they have with businesses. Or better yet: to prevent such problems. That is why ACM publishes sample letters and step-by-step guides, among other publications, enabling consumers to exercise their rights. When assessing the effectiveness of our campaigns, we ideally look into the degree to which the ultimate goals of those campaigns have been achieved. However, this is not always possible. We therefore also measure interim results such as the number of visits to ConsuWijzer and the media reach of our campaigns. Add to that the mark that consumers give to ConsuWijzer, and we get an idea of the effectiveness of our campaigns. In 2017, ACM plans to continue its efforts to assess the impact of ConsuWijzer campaigns with regard to consumers.

In 2016, we [launched 4 ConsuWijzer campaigns](#). These campaigns centered on misleading special deals, online reviews, online privacy and unfair debt collection practices. The results of these 2016 campaigns are:

- Visits to ConsuWijzer.nl in the past year rose sharply to a total of 2.8 million visits (a 12% increase compared with 2015);
- The more than 100 sample letters on ConsuWijzer.nl have been downloaded almost 400,000 times;
- Half of all consumers reaching out to ConsuWijzer stated in the annual customer satisfaction survey that they exercised their rights
 - Three in four said they did so within two weeks
 - Forty percent of those respondents said that their problems had consequently been resolved.

Anti-cartel campaign

In June 2016, ACM launched a campaign called "[Cartels never go unnoticed](#)." It targeted individuals that know of illegal agreements between competitors. As a result of the campaign, ACM received twice as many tip-offs as normal. Tip-offs help ACM track down cartels.

The campaign consisted of a [video](#) that put a humorous spin on ACM's investigation methods, clear information about what exactly constitutes a cartel (including a so-called 'cartel checklist'), and several activities on social media. Part of the campaign was also visiting over 6,500 LinkedIn profiles of individuals that work in the port of Rotterdam or in the ports and transport sector in general. Businesses, employees, but also public employees, lawyers, and scholars were approached in this way. With this campaign, ACM became the first Dutch regulator to use social media in this manner for educational purposes.

For the impact assessment, we measured the number of tip-offs per week for the period of week 23 through week 31. The statistical analysis revealed that the average number of tip-offs per week over that period was twice as high as the average number of tip-offs during the period prior to the campaign, from 2014. The number of additional tip-offs is not the only aspect that is of importance: since the launch of the campaign, ACM especially observed an increase in tip-offs and contacts that were of high quality.

5.1.3 Impact of mergers

ACM looks into the effects of mergers it has approved, conditionally or not.

What does ACM assess?

We do not review all mergers, but mostly mergers in markets where mergers regularly take place, or where there are discussions about the market structure that are relevant for policymaking. In such merger reviews, we analyze, for example, potential price and quality trends after the merger, comparing them with non-merged competitors and/or similar markets where no mergers have taken place yet. As a result, we are able to determine the actual effects of the mergers in question, and we are able to assess future mergers better. For example, ACM in 2015 had a study carried out into the [effects of supermarket mergers](#) and ACM together with the European Commission among other agencies studied the effects of a number of [international telecom mergers](#).

Effects of hospital mergers on quality

In 2016, one of the key issues were the effects of hospital mergers on quality. ACM had a [study](#) carried out into the effects of 14 hospital mergers (between 2007 and 2013) on the quality of care. Using 97 quality indicators, including health care-based factors such as patient experiences, waiting times, and mortality rates, these trends have been compared with those at non-merged hospitals.

The findings suggest that hospital mergers predominantly affect process characteristics and structural characteristics, but usually do not lead to any quality improvements. The mergers therefore do not appear to be necessary for realizing any quality benefits. However, it is important that the availability of information about the quality of care gets better. The study's results give us reason to assess critically any quality benefits that hospitals put forward as an argument.

In addition to the study into the quality effects of hospital mergers, ACM is currently also studying the price effects of hospital mergers. The results of this study are expected to be released in early-2017.

5.2 Overview of outcome of ACM's work

The total outcome for consumers in 2016 is estimated at approximately EUR 790 million.

Breakdown of total outcome

This figure of EUR 790 million is composed of:

- Approximately EUR 320 million comes from activities that ACM completed in 2016.
- Approximately EUR 470 million comes from activities in previous years.

The amounts are expressed in 2016 euros. This means that ACM has adjusted these amounts for inflation.

We look in particular at the projected outcome (based on a simple calculation) of our actions to consumer welfare in the short term. The outcome is sometimes directly visible, but often there are indirect effects (or in addition to direct effects).

The calculation method for these effects is explained in the working paper "[Outcome of ACM – Calculation method of the outcome of ACM](#)" (in Dutch). At the request of ACM, the Netherlands Bureau of Economic Policy Analysis (CPB) tested the outcome calculations for [2013](#) and [2014](#) (see the 2013 Annual Report and the 2014 Annual Report). Like last year, the CPB did not test the outcome this year. The reason behind this decision was that ACM had not changed the way it operates compared with the past three years.

Basic principles in the calculation

When calculating the outcome, ACM primarily looks at effects on price, quality, and choice. In that calculation, the following basic principles are used:

- The effects must be calculated in a relatively easy manner.
- The effects must be quantifiable (in monetary terms) with a reasonable degree of certainty (anticipatory effects are thus avoided).
- The outcome calculation refers to the expected future outcome for consumers.
- The effects are presented for each individual case as much as possible. However, this is not always possible because of confidentiality.
- Outcomes are expected to last for 3 years, which is in line with international outcome calculations. This means that ACM will include 2015 cases in its outcome calculations in 2017 and 2018. If ACM expects the effect to last shorter than 3 years, ACM will explicitly say so.

ACM uses conservative assumptions in the outcome calculation in order to prevent an overestimation of the effects. In addition, ACM rounds off amounts in order to avoid the impression that these are somehow precise estimates. That is why the total amount can differ from the sum of the individual amounts.

5.3 Outcome of consumer protection

The estimated outcome of ACM's consumer protection in 2016 is EUR 47.9 million.

Breakdown of total outcome of consumer protection

A breakdown of the estimated total outcome of consumer protection of EUR 47.9 million is as follows:

- Approximately EUR 27.2 million for activities that were completed in 2016
- Approximately EUR 20.7 million for activities from 2015, the outcomes of which are still in effect in 2016.

This outcome is based on 8 cases: 7 cases of unfair commercial practices, and 1 case where a rapid intervention was carried out.

Actual effect is greater

The actual effect of consumer protection, however, is greater than the outcome expressed in monetary terms. It is difficult to calculate an outcome for many of ACM's consumer protection activities. The impact of such activities is not easily expressed in monetary terms. One such example is the improved information that online stores provide.

For each case, whenever possible, ACM explains how it calculated the outcome. But, for confidentiality reasons, ACM does not specify the outcome for each case. The outcome for each consumer protection case is included for two years in accordance with the [Calculation method](#) (in Dutch), unless stated otherwise.

5.3.1 Regulation of electricity and natural-gas tariffs in the consumer market

The outcome of the so-called safety net regulation for 2016 is over EUR 800,000.

ACM has the statutory task to test the tariffs for the supply of electricity and natural gas to small-scale users against reasonableness. If we find a tariff to be unreasonable, we can impose a maximum tariff on the supplier. This is called 'safety net regulation.'

In 2016, ACM twice found the proposals of energy suppliers to be unreasonable, after which the tariffs were adjusted. The price effect per buyer is the difference between the tariff that the supplier had initially submitted to ACM, and the reduced tariff that this market participant actually charges after ACM's intervention. We have information about how many households have taken out the contracts in question. In the calculation of the outcome, we assume average consumptions in kWh or m³.

The duration of the outcome depends on the contract period of the tariffs in which ACM intervened. If the tariff proposals concern a 3-year contract, then the intervention also has an effect for three years.

5.3.2 Enforcement actions in the energy sector

The outcome of enforcement actions with regard to energy is over EUR 900,000.

In 2016, ACM carried out two enforcement actions that we have included in the outcome. Both of these cases involved errors in the administrative systems as a result of which consumers had to pay too high an amount for their service fees (or fixed charges) or they had received too little discount. In both cases, the consumers in question were compensated, and the tariffs were adjusted for new customers.

5.3.3 Unfair commercial practices

The outcome of unfair commercial practices in 2016 is almost EUR 11 million.

Unsolicited follow-up shipments (subscription traps)

Companies try to approach consumers through advertisements on social media, websites or in the streets in order to have them get to know their products or services for free. What often happens is that consumers automatically sign up for follow-up shipments as part of the free sample, even though this was not mentioned in the advertisement. However, according to the law, they do not need to pay if they had not explicitly agreed to those paid follow-up shipments.

In 2016, ACM has convinced various companies, including suppliers of recipe boxes (also called food boxes or farm boxes), not to send unsolicited follow-up shipments any longer. Consumers are now better informed about their cancellation options as well as about the right of withdrawal of 14 days, and cancelling subscriptions has been made easier.

Pawnshops

Since July 1, 2015, the maximum interest rate for pawn loans is 4.5 percent per month. Pawn loans also need to meet several requirements with regard to transparency. ACM has assessed whether pawnshops comply with these rules. ACM subsequently forced multiple pawnshops to adjust the interest rates.

Online stores

ACM in 2016 conducted various investigations into online stores that:

- Informed consumers insufficiently about their rights when they wanted to cancel their purchases within the cooling-off period;
- Failed to comply with the obligations for online stores;
- Conducted unfair commercial practices.

The companies that were the object of ACM's enforcement actions have adjusted their practices. Now they inform consumers about their rights within the cooling-off period after the purchase, they comply with the obligations for online stores, and ceased their unfair commercial practices.

Lower payment fees for online purchases

ACM has tackled several businesses, including the largest meal-delivery service providers and airline ticket providers in the Netherlands, about their payment fees. They charged consumers too high fees when paying for their online purchases using payment methods such as credit cards or iDeal, a widely-used online payment method in the Netherlands. These providers have now reduced the fees they charge consumers, bringing them in line with the rules. According to the rules, businesses can only charge the actual costs for payment.

Rapid interventions

Rapid interventions are aimed at getting in contact with traders quickly in order to end a violation (suspected or real) of consumer protection law. In addition, rapid interventions can also result in damages for injured parties, where possible. In 2016, ACM carried out various rapid interventions. For confidentiality reasons, we cannot comment on these rapid interventions. For each rapid intervention, the outcome was calculated by multiplying the average harm per consumer by the number of harmed consumers (estimated or real).

5.3.4 Price transparency

The outcome of improved price transparency in 2016 is over EUR 14.5 million.

Travel industry

ACM wants consumers to be given clear information about prices when booking trips. To that end, we announced in 2013 five points of attention on which law enforcement focuses. When announcing these points of attention, ACM said it would enforce actively. In 2016, there were two commitments, and one fine in the travel industry. These companies now display all additional costs in a clear and transparent manner.

Because of the lack of transparency surrounding unavoidable costs, consumers face additional search costs, and run the risk of making the wrong choice (meaning too expensive). ACM assumes that these extra costs and the costs of a wrong choice concern in total 0.75% of the turnover generated as has been done in the case “Transparency in travel costs” in 2013 and in similar cases in the travel industry in 2015.

Closing fees (or on-road costs)

In 2016, ACM checked whether all advertised prices for new cars were transparent so that consumers would not be surprised by unavoidable fees when buying a car. Having clear prices makes it easier for consumers to compare cars.

As a result of a lack of transparency surrounding unavoidable costs, consumers are faced with extra search costs, and run the risk of making the wrong choice (meaning too expensive). It is estimated that these extra costs and the costs of making the wrong choice are lower than in the travel sector. A new car costs much more than a trip, and ACM expects the extra costs to be relatively lower than for a trip. ACM assumes that these extra costs and the costs of a wrong choice concern in total 0.1% of the turnover generated.

5.4 Outcome of competition oversight

The total estimated outcome of competition oversight for 2016 is over EUR 235 million. This figure covers our competition oversight and concentration control efforts.

Breakdown of total outcome of competition oversight

The total estimated outcome of competition oversight of over EUR 235 million consists of:

- Over EUR 195 million for activities that were completed in 2016
- Approximately EUR 40 million for activities from 2014 and 2015, the outcomes of which are still in effect in 2016.

As part of its competition oversight efforts, ACM in 2016 issued one commitment decision in the ready-mix concrete sector. This outcome and previous cases from 2014 and 2015 result in the total estimated outcome of competition oversight for 2016 EUR 50 million.

The outcome coming from our competition oversight efforts is based on the concentration decisions Brocacef-Mediq and Audionova-Sonova. Together with previous cases from 2014 and 2015, the total estimated outcome of concentration control for 2016 is EUR 185 million.

For each case, whenever possible, ACM explains how it calculated the outcome. But, for confidentiality reasons, ACM does not specify the outcome for each case.

5.4.1 Commitments in ready-mix concrete sector

In 2016, seven ready-mix concrete firms made commitments to ACM. These seven firms own more than half of all ready-mix concrete plants. As a result of these commitments, the number of intensive collaborations between competitor firms will go down. This will lead to increased competition. In addition, other market participants will be able to enter the ready-mix concrete market more easily.

ACM has declared these commitments binding for a period of 10 years. For the calculation of the price effect, ACM used, as a rule of thumb, 10% of the relevant turnover of the 7 ready-mix concrete firms involved.

ACM assumes the effect of this outcome will last for three years.

5.4.2 Concentration between Brocacef and Mediq

In 2016, ACM cleared the acquisition of Mediq by Dutch company Brocacef under strict conditions. Brocacef must hive off a total of 89 pharmacies, leaving consumers with sufficient choice near their homes, and preventing the position of Brocacef vis-à-vis health insurers from becoming too strong. In addition, Mediq must sell its wholesale company Distrimed to Pluripharm, thereby ensuring that hospitals, too, will continue to have enough to choose from when purchasing prescription drugs.

This is a case where ACM conditionally cleared the concentration after conducting an additional investigation. That is why ACM uses 100% of the relevant turnover of the relevant market as the starting point. According to the rules of thumb, ACM assumes that its contribution is 3% of the turnover in question.

ACM assumes the effect of this outcome will last for three years.

5.4.3 Concentration between Sonova and Audionova

In 2016, ACM cleared the acquisition of AudioNova by hearing-aid manufacturer Sonova on the condition that it sell two locations first. Sonova has fifteen stores under the name Connect Hearing. AudioNova owns over 200 Schoonenberg stores in the Netherlands.

For the estimate of the price effect, ACM uses 100% of the relevant turnover of the relevant market. Since no price effect was determined, ACM uses the rule of thumb of 3% of the relevant turnover.

ACM assumes the effect of this outcome will last for at least three years.

5.4.4 Correction to the outcome of previous years

In 2016, the Dutch Trade and Appeals handed down a ruling as a result of which ACM had to adjust the outcome of prior years. This ruling reversed the decision in the concentration case of A.A. ter Beek-Continental Bakeries of 2012. The reversal of the decision is final.

For confidentiality reasons, it is not possible to publish the reduction of the estimated outcome for the years of 2012, 2013 and 2014.

5.5 Outcome of energy regulation

The total estimated outcome of energy regulation for 2016 is over EUR 187 million.

Breakdown of total outcome of energy regulation

The total estimated outcome of energy regulation of over EUR 187 million consists of:

- Over EUR 96 million for activities that were completed in 2016
- Approximately EUR 91 million for activities from previous years, the outcomes of which are still in effect in 2016.

The outcome of activities that were completed in 2016 is based on two cases:

- The method decisions and subsequent calculations of the revenues of the distribution system operators for electricity
- The tariff reduction in connection with the adjustment of the composition of natural gas

5.5.1 Method decisions for system operators of electricity and natural gas

ACM issues method decisions in which it sets the maximum revenues of system operators for electricity and natural gas for a certain period of time. Based on these permitted revenues, ACM each year issues tariff decisions in which the tariffs are set that the system operators are allowed to charge their buyers. ACM's regulation acts as an incentive for the system operators to operate more efficiently while, at the same time, there must be sufficient room for making necessary investments.

In this way, ACM help realize an affordable, secure, and sustainable supply of energy. As part of its tariff regulatory efforts, ACM this year issued a number of method decisions. In these method decisions for the period of 2017 through 2021, ACM set the revenues, and thus the tariff trend, of individual system operators.

Combined outcome of method decisions and tariff decisions

For the estimation of the outcome, ACM must make assumptions about what would have happened had regulation not occurred. We assume that, as described in the [Outcome of ACM – Calculation method of the outcome of ACM](#)⁷ (in Dutch), an unregulated company with market power at least adjusts its tariffs each year for inflation, and incorporates any structural cost increases in the tariffs (eventually). We subsequently compare the tariffs based on that assumption with the regulated tariffs. If the regulated tariffs are lower, we tend to speak of a positive outcome for consumers.

The tariff cuts in the method decisions for the distribution system operators of electricity will result in an annual positive outcome for consumers of approximately EUR 88 million through 2021. The outcome from the tariff decision, in which ACM applies corrections to the prior estimated costs of these system operators, is approximately EUR 41 million. We spread out these equally over the 5-year regulatory period.

As a result of increased investments, the tariffs of the transmission system operators for electricity (TenneT) and the distribution system operators for natural gas go up. These investments help boost security of the energy supply. The method decisions and tariff decisions of these system operators therefore do not generate additional financial outcome for consumers for the regulatory period of 2017 through 2021 as a result of the regulation. In this period, investments in the improvement of the network are considered more important than a reduction of the transmission tariffs. ACM will set the method decision and tariff for GTS at a later stage, and has not been included in the 2016 outcome.

5.5.2 Reduction of tariffs for task of adjusting the gas composition

One of the tasks of transmission system operator for natural gas GTS is processing natural gas to make it suitable for injection into the gas network. DONG and Eneco brought a dispute to ACM about the tariffs for processing natural gas imported through the Gate terminal. ACM ruled that, since 1 October 2014, GTS had charged too high tariffs.

The tariff GTS charged covered more than the efficient costs. The fact is that GTS charged a surcharge on top of the reasonable return as determined in the Method decision GTS 2014-2016. ACM estimates that buyers would have paid approximately EUR 336,000 less if the efficient cost had been used as the basis.

ACM assumes the effect of this outcome will last for three years.

5.6 Outcome of regulation of telecom, transport and postal services

The total estimated outcome of regulation of telecom, transport and postal services for 2016 is approximately EUR 320 million.

Breakdown of total outcome of regulation of telecom, transport and postal services

The total estimated outcome of regulation of telecom, transport and postal services of almost EUR 320 million consists of:

- Almost EUR 260,000 for activities that were completed in 2016
- Almost EUR 320 million for activities from previous years, the outcomes of which are still in effect in 2016.

The outcome of activities that were completed in 2016 is based on two cases:

- Too high roaming costs of Lycamobile
- The financial accountability of Schiphol for 2014

5.6.1 Too high roaming charges of Lycamobile

The estimated outcome of Lycamobile's too high roaming costs is almost EUR 150,000.

In 2011 and 2012, telecom provider Lycamobile charged its customers too high roaming costs. Customers that placed mobile calls, received mobile calls, or sent text messages when abroad (within the EU), thus paid too much for these services

Thanks to ACM's intervention, Lycamobile reimbursed some of the affected consumers. In addition, ACM prevented Lycamobile from being able to charge too much for much longer.

ACM assumes the effect of this outcome will last for two years.

5.6.2 Financial accountability of Schiphol for 2014

ACM established that Amsterdam airport Schiphol did not calculate correctly the interest on a planned settlement. As a result, users were reimbursed too little in the settlement.

Schiphol pledged to settle the figure of almost EUR 115,000 in the tariffs from April 1, 2017, in favor of users.

ACM assumes the effect of this outcome will last for one year.

5.6.3 Correction to outcome in previous years

In 2016, the Dutch Trade and Appeals Tribunal (CBb) handed down a ruling as a result of which ACM had to adjust the outcome of prior years. This ruling reversed the decision about the tariffs of postal operator PostNL for bulk mail from different senders. The reversal of the decision is final.

For confidentiality reasons, it is not possible to publish the reduction of the estimated outcome for 215.

6 ACM and the courts in 2016

In 2016, the District Court of Rotterdam and the Dutch Trade and Industry Appeals Tribunal (CBb) issued 77 rulings in cases that involved ACM. Approximately 80% of these rulings are positive for ACM. That means that the decision passed judicial muster (for the most part).

The CBb handed down final rulings in a number of areas:

- The long-running appeals against the method decisions for the regulatory period of 2014-2016 for the distribution system operators for electricity and natural gas have been completed;
- In Energy, Postal services and Telecom, several key rulings have been handed down, which clarify the boundaries of regulation;
- Several rulings in individual cases are of importance to the protection of consumers and businesses;
- The CBb offered a favorable assessment of ACM's approach in several long-running cartel cases;
- The ruling on the duty of confidentiality (regarding competition-sensitive information) has an effect on all of ACM's policy areas.

6.1 Regulated markets

Several important rulings in Energy, Postal services and Telecom have been handed down, which clarify the boundaries of our regulation.

Energy

In 2016, the Dutch Trade and Industry Appeals Tribunal (CBb) handed down rulings on appeal in the cases concerning the 2014-2016 method decisions for the distribution system operators for electricity and natural gas, and the transmission system operators for electricity and natural gas. With these rulings, the long-running appeal cases about this regulatory period have been completed. The CBb also handed down rulings in several disputes between system operators and clients. Anyone engaged in a dispute with a system operator about the way the operator carries out its tasks can ask ACM to arbitrate in the dispute. ACM will assess whether the system operator carries out its task in accordance with the law. ACM's decisions in disputes are binding, but any party can file an appeal with the CBb. Some of the CBb's rulings also touched on the Dutch Heat Act. The CBb settled several issues concerning the costs of specific grids such as the electricity cable between Norway and the Netherlands.

Telecom

With regard to telecom, several cases concern rulings of the European courts. European frameworks, standards, and concepts usually form the basis of ACM's actions. Their substance and scope can, when applied in actual cases, lead to complex discussions, which the national courts then can submit to the European courts. In that way, it is safeguarded that European standards and frameworks are applied unequivocally in the different member states of the European Union.

Postal services

The CBb has annulled an order subject to periodic penalty payments on postal operator PostNL. Under the Dutch Postal Act, PostNL is required to offer competitors the same services and conditions that PostNL offers its own clients. In 2013, PostNL changed the conditions as a result of which competitors were put at a disadvantage, according to ACM. The CBb ruled that ACM had insufficiently assessed whether or not an objective justification for these conditions existed.

6.1.1 2014-2016 method decisions

In 2016, the long-running appeal cases against the method decisions for the regulatory period of 2014-2016 for the distribution system operators for natural gas and electricity have been completed.

Background

ACM sets out in method decisions the method with which the tariffs are to be set that the transmission system operators for electricity and natural gas are allowed to charge. ACM's regulation thus ensures that a reasonable price is paid for the transmission of natural gas and electricity.

Several system operators had filed an appeal with the CBb against the method decisions for the period of 2014-2016. In an interim ruling in early-2016, the CBb already handed down its final ruling on a number of points. However, the CBb did rule that ACM should change the so-called WACC or should substantiate further as to why the decision on this point was indeed correct. WACC is an acronym for *weighted average cost of capital*. With it, ACM calculates how much capital costs a regulated participant is allowed to incorporate into its tariffs. After ACM had taken a repair decision on this point, the only question that remained was what data ACM should use for this repair decision.

Ruling of the CBb

The CBb agreed with ACM that ACM should use the most recent data for this, and not, as the system operators had argued, the same data used for the original decision. As a result, the WACC remained unchanged. The CBb further agreed with TenneT that ACM had used too small a margin of safety in the results of the international benchmark. That margin was necessary because of the differences that could arise with these results, depending of the used parameters. According to the CBb, ACM should use a margin of 10%, not 5%.

- [Interim ruling of the CBb on the WACC \(in Dutch\)](#)
- [Final ruling of the CBb on 2014-2016 method decisions \(in Dutch\)](#)

6.1.2 Costs of NorNed cable, and purchasing costs of adjacent grids

The CBb handed down two rulings on appeal filed by TenneT about the tariff decisions for the years of 2011-2013. These appeals concerned two topics, which were the NorNed costs and the purchasing costs of adjacent grids. These are grids of other system operators that are adjacent to that of TenneT's.

NorNed costs

The NorNed cable is high-voltage direct-current cable that lies on the bottom of the North Sea, running between Norway and the Netherlands. TenneT built this cable together with a Norwegian system operator. TenneT did not agree with the way the operational costs of the NorNed cable were to be compensated. The CBb ruled that the operational costs should be compensated through the tariffs, and not, as argued by TenneT, through the proceeds of the auction of interconnection capacity.

Purchasing costs of adjacent grids

In the tariff proposal for 2013, TenneT asked ACM to include in the permitted tariff revenues for the 2013 transmission tariffs the purchasing costs of the adjacent grids of Stedin and Liander, which concern the years 2009 through 2011. TenneT had submitted this compensation as a one-off correction for the purpose of a subsequent calculation. ACM was of the opinion it was not authorized to do a subsequent calculation considering the specific circumstances of this particular case.

In an interim ruling, the CBb ruled that ACM is indeed authorized to do a subsequent calculation. When the underlying method decision was set, it was assumed that the costs did not exist, so that a subsequent calculation was not provided for. According to the CBb however, this does not mean that ACM would not be authorized to do a subsequent calculation if those costs did turn out to exist. With regard to the assessment of interests, the CBb considers that a key principle of regulation is that a regulated party should be able to recoup its efficient costs plus a reasonable return. Any deviation therefrom should be justified properly. The CBb has instructed ACM to issue a new decision.

- [Ruling of the CBb on x-factor 2011 – 2013 and 2011 tariffs \(in Dutch\)](#)
- [Ruling of the CBb of 2013 tariffs \(in Dutch\)](#)

6.1.3 Dispute about gas connection in heat-distribution area

An inhabitant of an area that is supplied heat over the heat network that is installed in that area submitted a dispute to ACM about the question of whether he had a right to a gas connection.

Background

Based on the Territorial Allocation for Natural Gas (in Dutch: Gebiedsindeling Gas), Stedin, as system operator of natural gas, is exempted from the duty to connect in this particular area. ACM ruled that the inhabitant therefore did not have a right to a gas connection. In appeal proceedings, the inhabitant invoked the duty to connect and the consumer's freedom to choose one's provider, which were supposedly based on European law.

Conclusion of the CBb

The CBb comes to the conclusion that ACM had ruled correctly that Stedin was not required to grant the inhabitant access to the gas network. Unlike with electricity, there is no such thing as an absolute right (in European law) to a gas connection. The right to a connection, and, by extension, the duty to connect that a system operator has, is bounded in the Netherlands by the Territorial Allocation for Natural Gas. The freedom to choose one's provider exists within the boundaries of the right to be connected. The CBb is of the opinion that an incorrect interpretation of the Gas Directive was not assumed in the implementation thereof. In addition, the CBb thinks the ban on discrimination is not violated. After all, buyers within the heat area are not the same as buyers outside the heat area. This means that these cannot be seen as similar cases that are treated differently within the context of the Dutch Gas Act.

- [Ruling of the CBb on Stedin's duty to connect to a gas connection \(in Dutch\)](#)

6.1.4 Dispute concerning USG/Enexis connection

In early-December 2016, the CBb confirmed that Enexis correctly charged USG connection tariffs and transmission tariffs.

Background

At a business park, various chemical companies are connected to a private grid (the USG grid). This private grid was connected to the public net of Enexis.

ACM has established that Enexis was allowed to charge USG connection tariffs and transmission tariffs. USG argued that Enexis was *not* allowed to do so, because USG's private grid was coupled at the same voltage level as Enexis' public grid. According to USG, that meant there was no connection in the legal sense, and Enexis was thus not authorized to charge any tariffs. ACM did not agree with that line of reasoning. According to ACM, couplings between two grids at the same voltage level also constitute connections in the legal sense. With this explanation, ACM also safeguarded the European right to access to grids for USG.

CBb upheld our explanation

On 1 December 2016, the CBb confirmed this explanation. The CBb's ruling is important, because it is now definite that system operators are also allowed to charge tariffs in the case of connections between two grids at the same voltage level.

- [Ruling of the CBb on connection USG/Enexis \(in Dutch\)](#)

6.1.5 Exemptions for Rendant and Dow Chemical

The CBb regularly handles cases involving exemptions from the obligation to designate a system operator for a grid or gas network. It also did so in 2016.

Background

Under the Dutch Electricity Act 1998 and the Dutch Gas Act, a system operator must be designated for each grid or gas network. That designation as system operator carries several statutory obligations. For example, ACM's tariff regulation targets the system operators. However, for certain grids (especially smaller ones) such as those in business parks, tariff regulation would go too far. That is why the Dutch Electricity Act and the Dutch Gas Act include the option of applying for an exemption from the obligation of designating a system operator. A grid with an exemption is called a Closed Distribution System (CDS).

Exemptions for Rendant

The CBb has ruled that ACM correctly turned down the exemption applications filed by Rendant, because it failed to meet the statutory requirements for exemption. Furthermore, the CBb considers that exemption applications cannot be filed for future situations. The argument that the applicant (Rendant) would meet the requirements in the future is not a reason for granting the exemption, says the CBb, as the current situation is critical for the assessment.

In these appeal proceedings, the CBb also ruled that an exemption application is filed on the condition that there is no direct line (DL). In its ruling, the CBb, perhaps unnecessarily, considers that ACM's response to a notification of a DL results in a decision, against which the applicant may or may not file an objection. So these objections cannot be up for discussion in appeal proceedings concerning the exemption application.

- [Ruling of the CBb on exemption for Rendant Electricity \(in Dutch\)](#)
- [Ruling of the CBb on exemption for Rendant Natural Gas \(in Dutch\)](#)

Exemption for Dow Chemical

At the request of Dow Chemical, ACM granted an exemption for its CDS for electricity. During the application process, Dow realized that its installation was not a CDS, but a direct line. However, Dow did not withdraw the application in the hope that ACM would turn it down. When ACM granted the exemption, Dow filed an appeal against this decision.

In this ruling, the CBb continues the line of reasoning adopted in the Rendant case. Dow's application qualifies as a conditional application, namely on the condition that the installation is not a direct line. The CBb therefore does not get around to the questions of whether ACM designated Dow's installation as a CDS.

- [Ruling of the CBb on exemption for Dow Chemical \(in Dutch\)](#)

6.1.6 Dutch Heat Act: enforcement action against Vestia

The aim of the Dutch Heat Act is to protect buyers of heat against the monopoly position of heat suppliers. The CBB rules that this also applies to water at lower temperatures.

Background

Inhabitants of a certain district had asked ACM to take enforcement action against energy provider Vestia, because they felt they were paying too much for the supply of hot water. When it comes to hot water, the inhabitants have to rely on the facilities of Vestia, which supplies groundwater to them through a hot and cold water system, called Bronnet. The water, with an average temperature of 11.95 °C, is subsequently heated to a higher temperature using the heat pumps located in homes. After that process, the water can be used for domestic purposes.

ACM turned down the request for enforcement, because the water temperature was too low to be designated as 'heat' within the meaning of the Dutch Heat Act. According to ACM, the legislative history of this act mandates the water, at the point of delivery, be 'suitable' for direct use. As the water is just 11.95 °C, ACM ruled that this requirement has not been met. The Dutch Heat Act would thus not be applicable, as a result of which ACM was not authorized to take enforcement action.

The CBB ruled against ACM

According to the CBB, ACM passed over the fact that the Dutch Heat Act's objective is to protect users who rely on a single heat provider for their heat supply. Types of heat with lower temperatures, too, fall under the scope of the Dutch Heat Act.

- [Ruling of the CBB on enforcement action against Vestia \(in Dutch\)](#)

6.1.7 Tariffs and conditions of PostNL

According to ACM, Dutch postal operator PostNL discriminates between its buyers and competitors. That is why ACM imposed an order subject to periodic penalty payments on Post NL. However, the CBb found that ACM had insufficiently assessed two possible justifications that PostNL had put forward.

PostNL treats customers and mail delivery companies differently

Competitors of PostNL are allowed to give mail that they cannot deliver themselves to PostNL. Under the Dutch Postal Act, PostNL must deliver this mail under at least the same conditions and tariffs as the mail of its own customers. Since 2013 however, PostNL has treated a batch of mail from a competitor as a more expensive product. This mail does not meet PostNL's demand that there can only be a single sender for a batch of mail. With that demand, PostNL seeks to prevent mail delivery companies from benefiting from the discount scheme that PostNL uses when it consolidates batches of mail.

Possible justifications

The CBb rules on appeal that PostNL is guilty of discrimination. According to the court however, ACM insufficiently assessed the two justifications that PostNL had put forward. First of all, mail consolidated like that is possibly more difficult to process, and therefore more expensive. Second, a ruling of the European Court of Justice offers a starting point for treating consolidated batches of mail differently. The CBb thus reverses the decision.

- [Ruling of the CBb on PostNL and uniform sender addresses \(in Dutch\)](#)

6.1.8 Tariffs for call termination

In September 2016, the European Court of Justice answered questions that the CbB had asked regarding the question to what extent the national courts are bound to Recommendations of the European Commission.

Background

If an individual is called, their telecom provider will ask a compensation from the caller's provider for using the former provider's network. That compensation is called the call termination tariff. In its market analysis decision, ACM sets call termination tariffs in accordance with a Recommendation issued by the European Commission. Telecom providers KPN, T-Mobile and Vodafone have opposed this in appeal proceedings. They argue that, by following the Recommendation, the call termination tariffs have been set too low. The CbB therefore wonders how much a Recommendation of the European Commission is worth to ACM and to the national courts. Formally speaking, Recommendations are not binding.

Questions to the Court of Justice

The CbB subsequently asked the Court for a more detailed explanation. The main question was whether the courts are allowed to deviate from Recommendations of the European Commission, while the regulator had ruled that following the Recommendation fits in the most with the Dutch market.

- [Interim ruling of the CbB on questions to the Court of Justice \(in Dutch\)](#)

In its answers to the CbB's questions, the Court said that national courts have some degree of latitude for making their own assessments. They can assess whether or not the obligation is proportional to the objectives of the Regulatory Framework (in Dutch: Regelgevend Kader). The national court can only deviate from the Recommendation if they are of the opinion that the specific characteristics of the market in the member state involved so require. The national court thus cannot easily put aside a Recommendation.

- [Ruling of the Court of Justice](#)

In January 2017, a follow-up session was held at the CbB about the consequences of the Court's ruling. The CbB's final ruling is expected later in 2017.

6.1.9 Tariffs for 0800 and 0900 numbers

ACM was not allowed to impose a sanction on KPN for charging transit tariffs to information numbers. The CBb made this conclusion in this final ruling of 21 November 2016.

Background

Individuals calling information numbers (meaning 0800 numbers or 0900 numbers) pay a traffic tariff and a service tariff. The transit tariff is only a minor component of the total tariffs for calls. A transit tariff must be paid if the caller's telecom provider is not the same as that of the person being called. KPN is often the one making the connection between both providers, and charges the telecom providers these costs. The telecom providers eventually pass on those costs to consumers.

For connections to information numbers, KPN charged approximately 3 eurocents per minute more than for connections to, for example, regular area codes such as 020 numbers for Amsterdam. ACM ruled that these tariffs did not meet Article 5 of the Interoperability Decision (in Dutch: Besluit Interoperabiliteit). That is why ACM wanted KPN to lower the transit tariffs for calls to information numbers, and therefore imposed in 2013 an order subject to periodic penalty payments on KPN. KPN did not agree with this, and filed an appeal.

The proceedings at the CBb, and the final ruling on the imposed order

In these proceedings, the CBb asked the Court of Justice of the European Union several questions. In 2015, the Court answered those questions. The legislature is allowed to impose a tariff obligation such as Article 5 of the Interoperability Decision (BI) as long as such an obligation is objective, transparent, proportional, necessary, and non-discriminatory. The national courts then need to assess whether such is the case. The CBb ruled that Article 5 BI was neither necessary nor proportional with regard to the transit tariffs, and reversed ACM's order subject to periodic penalty payments.

- [Ruling of the Court of Justice](#)

On the basis of the Court's answers, the CBb eventually ruled that it was neither necessary nor proportional to impose an order subject to periodic penalty payments on KPN. The transit tariff is only a minor component of the total tariffs for calls. That is why the CBb reversed the order subject to periodic penalty payments imposed by the CBb.

- [Ruling of the CBb on transit tariffs \(in Dutch\)](#)
- [ACM's press release about the CBb's ruling \(in Dutch\)](#)

6.2 Consumer protection

In 2016, several rulings were handed down that are favorable to the protection of consumer rights (online and offline):

- ACM correctly fined an airline that had failed to include all unavoidable costs in the ticket prices on its website;
- In two special cases, ACM was authorized to take action against violations of the spam prohibition;
- Charging end-users higher or lower tariffs for certain internet services, in this case for pay-tv channel HBO, violates Dutch rules on net neutrality.

6.2.1 Ryanair airfares

The CBb upheld the fines that ACM in 2013 imposed on Irish airline Ryanair.

What was the case about?

The tariffs for aviation services (airline tickets) must include all unavoidable and foreseeable costs. In this way, consumers are able to compare the prices of different airlines better. ACM imposed a fine on Ryanair for failing to include all of these costs in the prices of their airfares listed on the website. The CBb upheld this fine in appeal proceedings.

- [Ruling of the CBb on price transparency and Ryanair](#) (in Dutch)

6.2.2 Enforcement of the spam prohibition

The District Court of Rotterdam ruled positively on ACM's fining of two extraordinary cases regarding violations of the spam prohibition. The first case revolved around a foreign undertaking that ACM had fined for violating the Dutch spam prohibition. In the second case, ACM had fined a so-called 'affiliate network'.

The spam prohibition

Sending spam messages (unsolicited emails) causes consumers and businesses a lot of inconvenience and harm. That is why ACM takes action against businesses that violate the spam prohibition.

ACM can hold Belgian undertaking to account

As a Dutch regulator, ACM is allowed to fine a Belgian undertaking that sent out unsolicited emails. According to the court, there were sufficient connections with the Netherlands to establish a violation of the spam prohibition. Furthermore, the Court ruled that, generally speaking, it is not required for a regulator to issue a warning first before a fine can be imposed.

- [Ruling of the CBb on the spam case involving a Belgian undertaking \(in Dutch\)](#)

Spam prohibition also applies to affiliate networks

The question was whether ACM was also able to impose a fine on an affiliate network for violating the spam prohibition. Affiliate networks manage networks where advertisers and affiliates (businesses that own a medium for distributing ads) are able to find each other in order to send commercial messages to consumers and businesses. Advertisers distribute promotional material in their networks. Affiliate networks form a key link between both groups.

The court is of the opinion that the spam prohibition also applies to affiliate networks. In its assessment, the court looked at the degree of substantive involvement of the network in the dispatch of the emails themselves.

- [Ruling of the District Court of Rotterdam on the affiliate network \(in Dutch\)](#)

6.2.3 Net neutrality

Charging a higher or lower tariff for certain internet services violates Dutch rules on net neutrality (prohibition of tariff differentiation). The District Court of Rotterdam confirmed this in the net neutrality case involving Vodafone.

What is net neutrality?

The Internet is an open source, accessible for everyone. That basic principle must always be safeguarded. Internet providers must charge the same tariff for all data traffic.

Fine on Vodafone for violating the net neutrality rules

This case was about Vodafone's appeal against the EUR 200,000 fine that ACM had imposed on Vodafone for violating the prohibition on tariff differentiation. Vodafone offered subscriptions with which customers were able to watch pay-tv channel HBO through an app without the data that was consumed for watching HBO counting against their data plans. In that way, Vodafone influenced its customers' actions on the Internet. The court agreed with ACM that, with these practices, Vodafone violated the rules on net neutrality. Vodafone did not file an appeal with a higher court.

- [Ruling of the District Court of Rotterdam on Vodafone and net neutrality](#) (in Dutch)

On April 30, 2016, a net neutrality obligation came into effect in Europe as well. Internet providers are not allowed to distinguish between different types of data such as content or apps over the Internet. According to the Dutch legislature, the European rules do not allow any form of tariff differentiation.

6.2.4 KPN's duty of care

In November 2016, the CBb upheld the fine of EUR 364,000 that ACM had imposed on KPN for violating the duty of care and duty of cooperation.

Background

ACM's investigation was triggered by a hack into KPN's network, which KPN had notified ACM of. ACM subsequently carried out an investigation into the creation of and compliance with KPN's security policy. Following this investigation, ACM established that, in the period prior to the hack, had taken insufficient measures to protect the information of its subscribers and users. Under the law, KPN must take care of this. ACM has therefore imposed a fine on KPN for violating the duty of care.

CBb confirms the duty of care

KPN challenged the fine it was imposed. The District Court of Rotterdam had already ruled against KPN. The CBb upheld the court's ruling. The CBb dismissed all of the grounds put forward by KPN, which were mostly of a European-law nature. According to the CBb, ACM was not required to set policy rules first. ACM was free to impose a fine on KPN, and the CBb found the level of the fine to be reasonable.

- [Ruling of the CBb on KPN's duty of care \(in Dutch\)](#)

6.3 Long-lasting cartels

Cartels often consist of various practices carried out by a group of businesses in different configurations. With these practices, they wish to realize a shared objective or plan in order to restrict competition. In a number of these long-lasting cartels, the CBb, as the highest court in antitrust matters, upheld ACM's approach.

A single continuous infringement

In the CBb's rulings, one of the main questions was whether cartelists can be held accountable for their conduct ('a single continuous infringement') or whether their practices should be seen as isolated violations. The CBb clarified under what circumstances 'a single continuous infringement' can be established.

6.3.1 Flour cartel

The imposed fines on 11 flour producers for illegal cartel agreements in 2010 have largely been upheld. The CBb agreed with ACM that this cartel was a single continuous infringement.

Background

In 2010, ACM fined eight Dutch, German and Belgian flour producers for their participation in a cartel for many years, the so-called flour cartel. The flour producers had concluded a non-aggression pact, enabling each of them to retain as many customers of their own as possible. In addition, they collectively bought up a discounter, they dismantled a flour plant, and they compensated one of the cartelists when its customer did switch producers.

A single continuous infringement

The CBb confirmed that ACM had correctly applied the concept of 'a single continuous infringement'. The CBb dismissed the appeal filed by three (Dutch and Belgian) flour producers.

Evidence of participation

The court was of the opinion that ACM had failed to prove that two German flour producers had participated in the infringement. In the appeal proceedings, the CBb ruled in ACM's favor, stating that the court had used an incorrect evidentiary standard. The CBb confirms that a leniency application, in principle, has a higher evidentiary value. It is about the trustworthiness of the statement. The mere fact that it belongs to a leniency applicant does not necessarily make the statement untrustworthy. Furthermore, leniency statements that corroborate and support each other constitute evidence against an undertaking, even though various other undertakings may dispute them. That is why the participation of one of the two flour producers can be proven. In the end, seven of the original eight flour producers were found to be correctly fined for their participation in the flour cartel.

Separate violation

In 2010, ACM fined five other flour producers (Belgian and German) for their participation in the purchase and dismantling of the flour plant. ACM's appeal against the reversal of four of these fining decisions by the court did not succeed. The CBb however did confirm the participation of the Belgian flour producer, and also confirmed ACM's assessment that this, too, constituted a single continuous infringement.

- [Ruling of the CBb about undertaking I \(in Dutch\)](#)
- [Ruling of the CBb about undertaking G \(in Dutch\)](#)
- [Ruling of the CBb about undertaking D \(in Dutch\)](#)
- [Ruling of the CBb about undertaking E1 and H \(in Dutch\)](#)
- [Ruling of the CBb about undertaking A \(in Dutch\)](#)
- [Ruling of the CBb about undertaking J \(in Dutch\)](#)
- [Ruling of the CBb about undertaking B \(in Dutch\)](#)

6.3.2 Silverskin onions and first-year onion sets

In the so-called silverskin onion cartel case, the CBb confirmed in appeal proceedings that ACM had correctly imposed fines on growers and processors of silverskin onions for making agreements on the maximum sown area of silverskin onions, for buying up assets of competitors, and for exchanging price information. All of these practices were aimed at stabilizing the market, and to achieve higher prices for silverskin onions, and thus constituted a single continuous infringement.

Exchanging competitive-sensitive information

In the case about first-year onion sets, the CBb confirmed that the exchange of competitive-sensitive information among growers, and that the agreements about the destruction of sown acreage of onion sets constituted a violation. In this case, it was a one-off supply restriction for the production year 2009.

Fining the non-Dutch turnover

Both cases involved a Dutch cartel with only Dutch participants. A considerable share of the silverskin onions and onion sets was for export, and was supplied to non-Dutch buyers. The CBb confirmed that ACM was allowed to use the turnover earned from sales outside the EU in the starting point for the fine.

- [Ruling of the CBb on silverskin onions \(in Dutch\)](#)
- [Ruling of the CBb on first-year onion sets \(in Dutch\)](#)

6.3.3 Foreclosure auctions

Following the court's ruling in December 2014 on the first 14 traders active on foreclosure auctions that were fined by ACM, the ruling in the cases about approximately 50 other traders was handed down in 2016. The court confirmed that ACM had sufficient evidence for the traders' practices, and that these constituted a so-called single continuous infringement.

Participation of the traders

All of the traders participated in the same practices at foreclosure auctions, but did so in varying team compositions as well as at different foreclosure auctions throughout the Netherlands. The varying degree to which each individual trader participated in these practices is sufficiently reflected in their individual fines.

Lowering of the fines

However, the fines on the traders have been lowered because these would have serious financial consequences for the traders, and because of the considerable length of the procedure. In one case, the court reversed ACM's fining decision. ACM had unjustly held a partnership liable for the activities of one of its partners, who acted on his own behalf at foreclosure auctions.

- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 1 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 2 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 3 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 4 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 5 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 6 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 7 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 8 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 9 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 10](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 11](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 12](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 13](#)
- [Ruling of the District Court of Rotterdam on the Foreclosure auctions 14](#)

Appeals have been filed against the 2014 rulings as well as the 2016 rulings. All appeal cases will be jointly processed by the CBb.

6.3.4 Industrial-laundry cartel

The District Court of Rotterdam ruled that ACM correctly imposed fines on industrial laundries that had made a market-sharing agreement. These industrial laundries wash, among other items, bed linen and working-clothing for health care providers.

Market-sharing agreement

The agreement between the laundries entailed the sharing of markets coupled with a ban on customer recruitment activities (passive and active recruitment) outside their own regions. With this agreement, the laundries thus shared the market. In addition, they were not allowed to approach customers in the regions of other laundries that participated in the agreement (active recruitment). If a customer from another region approached a laundry, that laundry had to refer the customer to the laundry that had been allocated that particular region (passive recruitment). With this agreement, the cartel prohibition has been violated. These types of agreements significantly disrupt competition in a market. Market-sharing agreements are therefore considered very serious violations of competition law.

The court's ruling

According to the court, ACM had sufficiently investigated the market in order to get an idea of how it functioned, and thus of the agreement's significance for the market. The agreement constitutes a single continuous infringement. With regard to one laundry, the court ruled that ACM had insufficiently investigated this undertaking's involvement in the agreement after 28 August, 2003, when this undertaking reportedly limited its activities to personal laundry. Therefore, the court subsequently reversed the fine imposed on this undertaking.

- [Ruling of the District Court of Rotterdam in Laundries \(in Dutch\)](#)

An appeal has been filed against this ruling with the CBb.

6.3.5 Taxi firms

The District Court of Rotterdam ruled that ACM unjustly imposed fines on two taxi firms and on their de facto executives in the greater Rotterdam region. The taxi firms had engaged in bid-rigging arrangements involving taxi services.

ACM insufficiently investigated the geographical market

According to the court, ACM had insufficiently investigated the geographical market. The court argues that ACM had insufficiently justified why there was no national taxi market as ACM *had* previously assumed in the concentration decision involving Veolia-Transdev. The court believes that a proper geographical market definition is needed in order to be able to determine whether or not the parties involved had an extremely weak position on the market. In addition, it would also allow ACM to determine whether or not the bagatelle provision laid down in the Dutch Competition Act is applicable. That provision contains a minimum market share as the lower limit for establishing a violation. As this assessment cannot be carried out, no violation can be established. Since ACM was not allowed to fine the undertakings, the court therefore also reversed the fines on the de facto executives.

ACM filed an appeal against the reversed fines on the undertakings with the CBb, but did not do so against the reversal of the fines on the de facto executives.

- [Ruling of the District Court of Rotterdam on undertaking 1 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on undertaking 2 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on de facto executive 1 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on de facto executive 2 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on de facto executive 3 \(in Dutch\)](#)
- [Ruling of the District Court of Rotterdam on de facto executive 4 \(in Dutch\)](#)

6.4 Concentration control

In 2016, several major rulings regarding concentration control were handed down.

- The CBb struck down ACM's refusal to grant a license to two rusk producers that wished to concentrate;
- The District Court of Rotterdam ruled that ACM had properly justified the decision not to clear a hospital merger;
- In a merger between two pharmacy groups, the judge in interlocutory proceedings of the District Court of Rotterdam ruled on the operation of the conditions under which a license is granted (also called remedies).

6.4.1 Merger decision of rusk producers reversed

In appeal proceedings, the CBb reversed the decision of ACM regarding the planned merger between Dutch baking company A.A. ter Beek (with its flagship brand Bolletje) and rival baking company Continental Bakeries.

Merger between rusk producers blocked

In its decision, ACM refused to grant a license for the merger between the rusk producers, because, together, they would become too strong on the market where rusk producers offer their products to retailers (supermarkets).

CBb disagrees with ACM's market definition

For the refusal to grant the license, it was important that ACM regarded the market on which rusk producers sold their rusk as a single market. In that definition, ACM did not distinguish between a market for private-label rusk and a market for branded rusk. The CBb disagrees with ACM's market definition.

According to the CBb, ACM failed to make a plausible case as to why private-label rusk and branded rusk would belong to the same market for production and sale of rusk. As a result, ACM insufficiently justified why the merger company would become such a big competitor on the market. The CBb therefore reverses the decision with which the merger had been blocked.

- [Ruling of the CBb on the reversal of the merger decision regarding rusk producers \(in Dutch\)](#)

6.4.2 Hospital merger blocked

In late-September 2016, the District Court of Rotterdam upheld the July 2015 decision blocking the merger between two hospital groups in the southwestern part of the Netherlands, near the cities of Dordrecht and Gorinchem: Albert Schweitzer Hospital and Rivas Zorggroep. This marked the first time ever that we blocked a hospital merger.

Background

In the summer of 2014, ACM decided to block the proposed merger of two hospital groups near the cities of Dordrecht and Gorinchem: Albert Schweitzer Hospital and Rivas Zorggroep. That marked the first time that ACM blocked a hospital merger. ACM had conducted a thorough investigation. For example, ACM looked at patient flows and travel times, it conducted surveys among GPs and health insurers. ACM took into consideration the results of all of these analyses, and came to the conclusion that the merger would cause too much harm. The opinions of the two largest health insurers in the region played a key role in that assessment. These health insurers expressly and repeatedly reminded ACM of the risks that they believed this merger would create for patients and insured.

ACM's decision sufficiently justified

The District Court of Rotterdam ruled that ACM had sufficiently justified its decision to refuse the license. With the patient flow analysis, ACM had demonstrated that, prior to the merger, both hospitals exerted competitive pressure on each other, and that the merger would take away a significant share of that competitive pressure. The court subscribed to ACM's conclusion that other hospitals did not exert sufficient competitive pressure.

In addition, the court agreed with ACM that it had attached great value to the different opinions of the health insurers. ACM did not blindly copy these positions, but it sufficiently carefully assessed them in greater detail. In that context, the court sympathized with the fact that ACM must conduct an overall assessment in which all indications must be appreciated in relationship to each other.

- [Ruling of the District Court of Rotterdam on the decision to block a merger between hospitals \(in Dutch\)](#)

6.4.3 No suspension of execution of a remedy

In September 2016, the District Court of Rotterdam ruled on the request filed by Brocacef to suspend the wholesale ban imposed by ACM. The judge in interlocutory proceedings turned down Brocacef's request.

Concentration on pharmacy market

Brocacef and Mediq are both active on the retail market for public pharmacies, and on the market for wholesale operations to hospitals. ACM [conditionally granted Brocacef a license to acquire parts of Mediq](#). ACM attached these conditions because several antitrust problems, resulting from the merger, were found. For example, ACM found that consumers in these regions would be left with too few choices.

As a solution, Brocacef offered to cut franchise and partner ties with 89 pharmacies *and* not to maintain wholesale relations with these pharmacies for two years ("wholesale ban"). This solution is also called 'a remedy.'

Request to suspend the wholesale ban

Brocacef acquired Mediq and subsequently asked the judge in interlocutory proceedings of District Court of Rotterdam to suspend the wholesale ban. The judge turned down this request. The first reason was that Brocacef only had a financial interest in suspension of the wholesale ban. That is insufficient cause for granting a provisional injunction. Second, the judge considered that it is not possible to seek suspension of only one of the remedies. Brocacef would have to challenge the full license decision, and then seek suspension thereof.

This ruling prevents ACM's practice of remedy proposals from being eroded. If the judge had agreed to suspend the remedy, it could have been expected that this would happen more often in future cases. ACM would then have to look at remedy proposals differently, if it were clear that parties that were granted licenses could simply seek suspension of part of the remedies.

- [Ruling of the judge of interlocutory proceedings on Brocacef / Mediq \(in Dutch\)](#)

A proceeding of the merits is still pending at the District Court of Rotterdam against ACM's license decision. Multiple market participants, including two health insurers, also raised objections against the clearance of the acquisition. They wish to have the court issue a full ruling on it. Meanwhile, Brocacef and several pharmacies have withdrawn their initial appeals, and have resigned themselves to the wholesale ban.

6.5 Publicity / confidentiality

ACM is a transparent regulator, and, in principle, publishes all of its decisions. However, this does not mean that ACM discloses competition-sensitive information that it has collected as part of its oversight efforts or that ACM is allowed to pass such information on to a third party (for example a competitor).

Duty of confidentiality

In a ruling on principle, the CBB confirmed that ACM has a duty of confidentiality with regard to information from market participants and consumers. This duty of confidentiality takes precedence over the Dutch Act on Public Access to Government Information (Wob). In another ruling, the CBB confirmed that this duty of confidentiality also includes information from a foreign regulator, which ACM may possess.

Access to documents in the file

During legal proceedings, much discussion may break out over the extent to which market participants gain access to all the documents in the file. In the case involving magazine-pack suppliers, the examining judge introduced a new method in order to do more justice to the interest of the defense. In this case, the judge allowed that only the lawyer of one of the parties could have access under strict conditions to the documents designated as confidential, and only in the court building itself.

6.5.1 Sandd / ACM's confidentiality

In June 2016, the CBb handed down a ruling on principle regarding the duty of confidentiality that ACM has under the Establishment Act of ACM.

The underlying Wob-request

Postal operator Sandd filed a request invoking the Dutch Act on Public Access to Government Information (Wob) in which it asked ACM for all the information regarding ACM's approval of PostNL's postal tariffs. ACM turned down this request, reminding Sandd of the duty of confidentiality.

Duty of confidentiality takes precedence over the Wob

Following the District Court of Rotterdam, the CBb ruled that the duty of confidentiality as well as its related publication policy that has been laid down in the Establishment Act of ACM is a special and exhaustive system, one that puts aside the Wob. Any information that is related to the tasks that ACM carries out as part of its regulatory, enforcement and oversight efforts cannot be given to third parties. In other words, ACM cannot share any information it obtains from undertakings and market participants with others, for example competitors that seek such information, invoking the Wob.

- [Ruling of the CBb on ACM's duty of confidentiality \(in Dutch\)](#)

6.5.2 GTS and request for information

Gasunie Transport Services B.V. (GTS) wished to have a number of confidential cost and output data that were used in a benchmark study. This benchmark study had been conducted for a method decision that ACM had to issue.

Data from the German energy regulator

The data came from the German energy regulator, the Bundesnetzagentur (BNetzA). At ACM's request, BNetzA provided this data to a research firm on the condition that this confidential information remain secret. Commissioned by ACM, the research firm used the data for a study into GTS' efficiency levels. GTS filed two separate requests with ACM in order to obtain access to the data.

ACM is not required to ask the Germany energy regulator for information

GTS had requested ACM to ask BNetzA for the confidential cost and output data. ACM turned down this request, in part because BNetzA had already prior indicated that the data would not be provided to ACM. ACM ruled in its decision on objection that the rejection was not open for objection or appeal, because the action of asking by ACM for the information as referred to by GTS is a factual act, not a decision. The CBb agreed with that interpretation.

- [Ruling of the CBb on GTS' request for information from BNetzA \(in Dutch\)](#)

Duty of confidentiality applies to BNetzA's data

Furthermore, GTS requested ACM to provide the information, invoking the Dutch Act on Public Access to Government Information (Wob). ACM turned down this request as well. ACM noted that the requested documents are not held by ACM. That is why ACM can neither provide nor disclose the requested information. If ACM had held the requested information, the duty of confidentiality laid down in the Establishment Act of ACM would have stood in the way of distribution.

According to the CBb, the duty of confidentiality in the Establishment Act of ACM applied to the information requested by GTS. This section takes precedence over the Wob. According to the CBb, the court therefore ruled correctly that if ACM did hold the requested documents, ACM would not be allowed to distribute them. The CBb thus confirmed the Sandd ruling.

- [Ruling of the District Court of Rotterdam in the publication case involving GTS \(in Dutch\)](#)
- [Ruling of the CBb in the publication case involving GTS \(in Dutch\)](#)

6.5.3 Access to confidential documents in court proceedings

In court proceedings, certain documents can be classified as confidential for one or more parties involved in the proceedings. For example, the case file may contain competition-sensitive information of other parties involved in the case. That is why ACM asks the examining judge to treat such information as confidential. As a result, only the judges that handle the case are allowed to access this information. The examining judge makes a decision about such requests.

New method introduced in the magazine-pack case

In a ruling of December 29, 2016, in the magazine-pack case, the examining judge introduced a new method in order to do more justice to the interests of the defense. According to the examining judge, it can be decided that a party's lawyer, but not that party itself, is allowed to take cognizance of the documents that ACM had requested to be treated as confidential. Strict conditions are attached to that cognizance taken by solely the lawyer. These conditions are to prevent the lawyer from sharing with their client in any way the information that they take cognizance of.

- [Decision of the examining judge on the Section 8:29 request.](#)

7 Monitors

ACM gives a structural overview of the developments and trends in a number of markets. By actively monitoring these markets, ACM offers more insight into the latest trends that can be observed in these markets. These insights are published below in the following monitors:

- 2016 Energy Monitor
- 2016 Telecom Monitor
- 2016 Postal Monitor

7.1 Energy monitor

ACM is charged with monitoring the energy market

As part of that task, we did the following in 2016:

- Publication of 'Fact sheets on Quality' about the quality of distribution system operators
- Taking a closer look at the Dutch natural-gas market
- Contributed to a European monitor report
- Publication of the biannual Energy monitor, in which we identify the trends on the energy supply market

Fact sheets about the quality of distribution system operators

ACM collected and published information about the quality of the Dutch distribution system operators. By quality, ACM means: the security of a network, safety, product quality (such as voltage quality) and the provision of service. The [fact sheets](#) (in Dutch) provide insight into the performance of system operators. They reveal how the system operators score individually as well as in relation to each other. By publishing their performances, ACM wishes to stimulate system operators to maintain the quality of their networks at a certain level.

Functioning of the wholesale market for natural gas in the Netherlands

ACM [evaluated](#) (in Dutch) the functioning of the Dutch wholesale market for natural gas. ACM concluded that the Dutch exchange (TTF) meets the needs of market participants. The evaluation also revealed that the market is competitive and resilient with a high level of security of supply. ACM carried out this evaluation as part of the updated Gas Target Model that ACER published in January 2015. This model explains how Europe can realize competitive, resilient and liquid gas markets that enable consumers to benefit from a secure supply of natural gas and from effective competition on the retail markets.

Market Monitoring report

ACM [actively contributed](#) (in Dutch) to the creation of the Market Monitoring Report that ACER (*Agency for the Cooperation of Energy Regulators*) and CEER (*Council of European Energy Regulators*) [published](#) in November 2016. The report contains an extensive analysis of the functioning of the electricity and natural-gas markets at the wholesale and retail levels in Europe, and it also devotes attention to the developments in consumer protection. One of the findings is that the electricity price has structurally decreased since 2007. This is because, among other reasons, the opportunities for exchanging electricity with other European countries are utilized more and more, but also because of structural overcapacity in the European market.

The costs in the Netherlands for balancing supply and demand of electricity are among the lowest in Europe, even though this market has not yet been integrated at a European level. The costs for these markets as well as other markets can be lowered even further by making the existing physical transmission capacity more available to the market. This means more trade and smaller price differences, without any additional investments.

With regard to natural gas, the report reveals that the Dutch exchange TTF, together with the British exchange NBP, has the most developed market for short-term and long-term products. As such, TTF plays a leading role in Europe. The prices on the TTF more and more often act as reference prices for other markets on the European continent. Increasing trade on the exchanges and increasing supply of long-term products on the TTF may attract new market participants. As a result, natural-gas prices are an even better reflection of supply and demand on the European gas market.

At the retail level, the Netherlands has one of the most competitive markets for both electricity and natural gas. The Energy monitor reveals that relatively many consumers switch energy providers. When switching, they are able to choose from a relatively wide selection of suppliers, and are able to compare prices easily.

Energy monitor for the consumer market

ACM has monitored the trends on the Dutch supply market for energy and [published its findings in the biannual Energy monitor](#). These trends include the level of concentration in the market, prices, selection, but also consumer behavior such as customer satisfaction and switching barriers. In 2016, 16.4% of all Dutch consumers switched energy providers. Never before did so many consumers in the Netherlands switch energy providers in the space of twelve months. One of the reasons is that switching still offers a lot of potential savings. Also, ACM's efforts have resulted in offers that must be tailored to the individual customer's needs, enabling consumers to switch more easily.

7.2 Telecom monitor

ACM is also charged with monitoring the telecom market. Every quarter, ACM publishes the Telecom Monitor.

What is the Telecom monitor?

Based on data from the most important market participants in the telecom industry, the Telecom Monitor gives an overview of the trends and developments in the various telecom markets. The Telecom Monitor is an important source of information for ACM's market analyses. In these analyses, ACM determines whether there is enough competition in the telecom markets.

The Telecom Monitor gives an overview of the trends and developments in these markets:

- mobile services
- fixed telephony
- broadband
- television
- business network services
- bundles

2016 trends

In 2016, ACM noted four major trends:

1. Mobile data usage keeps on increasing as all mobile operators have rolled out their 4G networks;
2. Consumers increasingly opt for fixed and mobile telephony in a single package;
3. Download speeds that consumers take out have increased tremendously;
4. For the time ever, fewer than 1 million consumers have a traditional landline.

The data mentioned come from the period of Q3 2015 through Q2 2016.

Links:

- [Telecom Monitor Q2 2016](#)
- [Telecom Monitor Q1 2016](#)
- [Telecom Monitor Q4 2015](#)
- [Telecom Monitor Q3 2015 \(in Dutch\)](#)

7.2.1 Data consumption continues to increase

In 2016, data consumption increased by 57 percent compared with the same period last year (from 92.2 billion MB to almost 144.5 billion MB).

Improved selection

Telecom providers are offering increasingly larger plans. Tele2 has rolled out a fourth network in the Netherlands next to the existing three networks of KPN, T-Mobile and Vodafone. This has led to more competition. This competition has stimulated all mobile operators to improve their offerings.

Roaming costs

ACM has observed that telecom providers more and more often enhance their plans for using phones abroad without any additional costs. They do so in anticipation of the new regulations that come into effect in June 2017. Once the new regulations come into effect, consumers can use their plans in the entire EU.

7.2.2 Consumers more and more opt for fixed and mobile telephony in a single package

Four-in-one packages are gaining ground. Such packages combine television services, broadband access, fixed and mobile telephony.

Increase in four-in-one packages

In 2016, the number of households with four-in-one packages increased by 33% compared with 2015. More than 1 in 10 households currently has a four-in-one package (716,000 connections). This growth was made possible because households with multiple separate plans replaced them with a single four-in-one package. Next to the fixed services, they also took out mobile services from the same provider. ACM believes that the telecom providers' marketing efforts have contributed to this trend. With great deals or additional channels, they stimulate customers to take out more services.

Outlook for 2017

ACM expects the market share of four-in-one packages to continue to grow in 2017. The joint venture of Vodafone/Ziggo enables this provider to offer such packages. Now that T-Mobile takes over Vodafone's fixed network, it can also start offering such fixed-mobile packages. And Tele2, too, can do the same with its own mobile network and its fixed customer base.

7.2.3 Download speeds become faster and faster

Over the past year, the number of internet connections has increased further to over 7.1 million connections. Compared with other countries, the Netherlands is among the countries with the highest internet usage.

Download speeds go up

Almost 70% of all households currently have an internet connection with a download speed of 30 Mbit/s or higher. This is the result of the speed increases that have been implemented by providers such as KPN and Ziggo. For the next couple of quarters, ACM expects a further increase of download speeds. This is because KPN is currently investing heavily in upgrading its copper network by changing parts of it to fiber-optic, and by implementing new technologies. As a result, KPN is able to offer its users download speeds of over 100 Mbit/s on its copper network.

Bandwidth goes up too

Demand for higher bandwidths among end-users has grown substantially over the past year. The number of end-users that have an internet connection of 100 Mbit/s or higher in particular have risen sharply by 85% over the past year (from 1.25 million to 2.3 million connections). This stark increase of the connections with speeds of 100 Mbit/s or higher can be explained by several reasons. The most important ones are:

- Cable companies have raised the download speeds of their plans;
- Consumers more and more often choose fiber-optic connections (growth of +25%), which are capable of higher download speeds;
- KPN is able to achieve download speeds of 100Mbit/s and higher through upgrades to its copper network.

7.2.4 Stark decline in traditional phone connections

ACM sees that consumers predominantly switch from traditional landlines to broadband connections when making calls.

Broadband connections

Telecom providers often offer consumers great deals that combine broadband access with voice over broadband. As a result, 84% of the fixed phone connections are now part of packages that include broadband access, television and/or mobile telephony.

New business services

In the market for single call services, the number of PSTN-connections (landlines) has decreased by over 200,000 connections. There are currently fewer than a million active PSTN-connections.

Furthermore, the number of traditional phone connections on the business markets for call services (single and multiple call services) has decreased. One of the reasons is that businesses are able to manage with fewer connections, and another reason is that businesses switch to new versions of call services such as Hosted Voice, where the switchboard is no longer located at the customer, but in the cloud (online data storage).

7.3 State of the Dutch postal market

ACM is charged with the task of identifying the trends and developments on the postal market, as well as the effects of liberalization of that market.

In 2016, ACM published the market monitor for the [postal market for 2015](#), based on key figures provided by 26 postal operators. It revealed that:

- There is less addressed mail;
- There is a market leader, which is PostNL;
- Smaller postal operators rely on PostNL's network.

Less addressed mail

In 2015, 3.1 billion mailpieces were sent, which is 7 percent less than in 2014. Consumers sent 7 percent of the total mail volume, and businesses the other 93 percent. The turnover in the market dropped less sharply than volumes did: the turnover in 2015 was EUR 1.32 billion, which was 6 percent lower than in 2014. While the volume of letter-size mail is shrinking, the market for parcel delivery is growing. Between 2012 and 2015, total turnover in the delivery market even grew by 4 percent. Postal operators partially compensate the drop in volume of letter-size mail with higher rates. They also focus more on parcel delivery.

PostNL remains market leader

PostNL is the only operator with an intricate network of drop-off locations with nationwide coverage. As such, PostNL remains, by far, the most important operator for consumer mail. On the business market, more competition exists. PostNL delivers the majority of the 24-hour mail of business customers. In addition, over 100 other postal operators are active regionally or locally that deliver mail up to five days a week. Their market share slightly increased in 2015. The regional and local postal operators are active in various regions in the Netherlands. They do not exclusively focus on densely-populated areas. In fact, the Netherlands' most densely-populated area, the Randstad, is even slightly underrepresented. In the 72-hour postal market, Sandd and PostNL each have a nationwide delivery network, and both companies have a substantial market share.

Smaller postal operators partially rely on PostNL's network

The regional and local postal operators also have mail that needs to be delivered outside their own areas. These operators outsource some of these deliveries to each other. For delivery of the rest, however, they rely on PostNL. In 2015, approximately 40 percent of the mail that regional or local operators pick up at business customers is delivered using PostNL's network. In previous years, that percentage was over 50% or even higher. Reliance on PostNL has thus become smaller. ACM also regulates the conditions and tariffs that PostNL uses vis-à-vis other postal operators for further transport.

8 Key figures

By publishing these key figures, ACM offers insight into its activities it carried out in 2016, in a transparent and quantifiable way.

Key figures

Key figures are the quantifiable data underpinning ACM's activities. We provide insight into important facts and figures such as the lead times, the number of complaints, and indications.

About ACM

We also provide insight into internal ACM affairs such as HR matters, satisfaction with consumer information portal ConsuWijzer, and with ACM. In addition, we give attention to the cooperation with other regulators and organization, both home and abroad.

Annual account

Finally, ACM publishes its annual account. This covers the entire calendar year of 2016.

8.1 Activities of ACM

In its work, ACM aims to carry out its work as efficiently as possible, and to keep lead times of investigations, objections, sanctions, and other cases as short as possible. In that context, ACM obviously takes into consideration the necessary substantive quality, and the available resources.

Attention to websites

At the request of the Dutch Ministry of Economic Affairs, research agency Kwink in 2015 examined how ACM functioned. One of its recommendations was to improve the user-friendliness and accessibility of the websites by presenting the information with the target audience in mind, and by making it easier to understand for individuals without a legal background. We focused on these objectives in 2016.

In this annual report, we also included how many visits ConsuWijzer had. This is a new statistic. We also list consumer satisfaction with ConsuWijzer's and ACM's service.

Lead times

The term limits that are used in the Dutch General Administrative Law Act (Awb) are taken as a guideline for ACM. Sometimes, the statutory term limit for handling a case is exceeded. One of the reasons is that, in our work, we often deal with multiple parties involved, massive files, and complex procedures. In the majority of cases, ACM responds within the statutory time limit. In 2016, we continued to refine our method for measuring lead times within the organization. With such steps, ACM wishes to improve the quality and the reliability of the measurement of lead times.

Median

In its annual report, ACM presents the medians of its lead times. The median is the middle value in a series of numbers. ACM uses the median as it better represents ACM's usual lead times than would the average. ACM's lead times often have several outliers. For example, an appeal case could last two years, whereas most cases are completed within several months.

8.1.1 Investigations

ACM carries out investigations into compliance with statutory or other obligations.

Number of requests per subject area

If a consumer or market participant files a complaint with ACM about another market participant, it is considered a decision request. ACM processes such decision requests as quickly and carefully as possible. The term limit can be extended if the complainant approves such an extension.

In 2016, ACM completed in total 23 decision requests. This is a slight drop compared with 2015, when there were 28. With regard to most requests, lead times went down compared with 2015. This concerns formal requests for enforcement only. Other complaints, tip-offs, and indications can be found in the tables about '[Indications from consumers](#)' and '[Indications from businesses](#)'.

Table 1: Number of requests per subject area

	Consumer protection	Energy	Competition	Telecom & Postal	Transport
Number of resolved decision requests against market participants	n/a	12	5	4	2
<i>Median lead time (days)</i>	n/a	58	194	24	123
<i>Statutory lead time (days)</i>	n/a	56	56	56	56

European requests for information and enforcement

ACM is a member of the '[Consumer Protection Cooperation](#)', a European collaboration between consumer protection authorities. These regulators in the different Member States are able to call each other for help when dealing with cross-border violations. The requests themselves vary from information about an undertaking to a request for launching an investigation and to take enforcement actions. ACM handles these requests as quickly as possible, but also as carefully as possible. The requesting Member State closes the request if it accepts ACM's answer.

Table 2: European requests for information and enforcement

Consumer protection		2016	2015
Number of European requests for information	<i>Sent</i>	4	0
	<i>Received</i>	5	5
	<i>Processed</i>	5	5
Number of European requests for enforcement	<i>Sent</i>	4	2
	<i>Received</i>	5	2
	<i>Processed</i>	3	6

Disputes in energy and telecom sectors

Consumers and businesses do not always agree with the way system operators or telecom providers operate. In such cases, consumers or businesses may ask ACM to hand down a decision, which is called dispute settlement. These disputes concern existing legislation and regulations as well as current market problems. With its dispute decisions, ACM clarifies how certain pieces of legislation or regulations should be interpreted. If parties file appeals against the dispute decisions, they are submitted to the CBb. ACM seeks to resolve disputes to the parties' satisfaction. We also seek solutions so that the parties involved do not have the need to file objections or appeals against the decisions. ACM handles disputes in the energy and telecom sectors.

In 2016, ACM did not settle any disputes in the telecom sector. In the energy sector, decisions have been taken in 22 dispute requests. One dispute fell outside the scope of ACM's authority. This party was referred to the right organization. Appeals have been filed with the CBb against half of the dispute decisions. The dispute decisions can be found on our website. ACM takes decisions within two months. This time limit can be extended by another two months.

Table 3: Number of disputed in the energy and telecom sectors

Total	Energy	Telecom
Number of resolved disputes, including resolved in objection & appeal (or higher appeal) proceedings	22	n/a
<i>Founded</i>	11	n/a
<i>Unfounded</i>	10	n/a
<i>Applicant is not allowed to submit a dispute</i>	1	n/a
<i>Median lead time (days)</i>	121	n/a
<i>Statutory lead time (whether or not postponed)</i>	<i>4 months</i>	<i>56 days</i>

Number of investigations per focus area

ACM carries out investigations into compliance with statutory or other obligations. Lead times of investigations depend on the nature, type and scope of each investigation, and on the instrument that was used. As a result, lead times of investigations can thus vary significantly, and they cannot be compared properly on all aspects. As some cases may continue beyond the calendar year in which they originally started, the number of launched investigations is not equal to the number of completed investigations. In some instances, ACM comes to the conclusion after an extensive investigation that no market problem exists or that no violation was committed. In those instances, we stop the investigations without any interventions.

With regard to the use of its instruments, ACM has, besides the ability to draw up fining decisions, a broad range of instruments at its disposal to solve market problems. The different instruments have their own dynamism. When using its instruments, ACM works very carefully, and observes the general principles of sound administration.

Before issuing a fining decision, ACM may draw up a statement of objections. In such statements of objections, ACM lays down the suspicion of a violation. Statements of objections must meet quite a lot of requirements (legal or otherwise). It must not only offer ACM a sound basis for the imposition of a fine, but it must also, after the sanction has been imposed, be tenable before the courts. Undertakings subsequently have the opportunity to file objections against sanctions. In situations where ACM chooses to use a different instrument, it must also operate with great care, and, for

example, apply the principle of audi alteram partem. In addition, we have to substantiate our decisions thoroughly. ACM closes a case only if, after a check, it has been established that the violation has actually been ended.

In 2016, a decrease in lead times compared with 2015 can be observed in most areas. Yet, the opposite is also observed.

Table 4: Number of investigations launched per subject area

	Consumer protection	Energy	Competition	Telecom & Postal	Transport
Number of investigations launched	85	14	12	11	2

Table 5: Number of investigations completed per subject area

Investigations completed by way of	Consumer protection	Energy	Competition	Telecom & Postal	Transport
Statement of objections	9	1	4	0	2
<i>Median lead time (days)</i>	<i>180</i>	<i>189</i>	<i>480</i>	<i>-</i>	<i>436</i>
Order subject to periodic penalty payments	1	0	0	1	0
<i>Median lead time (days)</i>	<i>240</i>	<i>-</i>	<i>-</i>	<i>59</i>	<i>-</i>
Another instrument	65	1	9	0	1
<i>Median lead time (days)</i>	<i>214</i>	<i>391</i>	<i>227</i>	<i>-</i>	<i>230</i>
Suspended without any intervention	3	10	4	2	1
<i>Median lead time (days)</i>	<i>33</i>	<i>353</i>	<i>424</i>	<i>281</i>	<i>380</i>
Total number of completed investigations	78	12	17	3	4

8.1.2 Investigations under the Dutch act on competitive neutrality

Government organizations are allowed to offer products and services on the market. If they do, they will have to play by the rules though. Those rules are to protect commercial businesses against unfair competition by government organizations. These rules have been laid down in the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets. This act is part of the Dutch Competition Act. ACM can conduct further investigations based on questions, tip-offs, and indications it receives about unfair competition by government organizations. In 2016, 19 such investigations were conducted.

Table 6: Number of investigations under the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets

		Number in 2016
Total		19
Of which:	<i>Order subject to periodic penalty payment</i>	1
	<i>Enforcement decisions</i>	2
	<i>Offender (actual or alleged) stops the violation</i>	9
	<i>Investigation suspended/no violation</i>	4
	<i>Continuing in 2017</i>	3

8.1.3 Concentrations

If businesses wish to merge, acquire another business, or wish to set up a new undertaking together, they will have to notify ACM of their plans, under certain conditions. ACM will then assess the effects of this concentration on competition. In a so-called first phase, we determine whether or not the concentration can go through or whether a further investigation is required. If ACM, after the first phase, has concerns about the effects on competition, the merger parties will have to apply for a license. ACM will then conduct a further investigation in the so-called second phase.

Will competition be jeopardized as a result of the concentration? And are the final effects on consumers thus also negative? In that case, the merger or acquisition cannot go through. The merger parties may propose solutions in order to mitigate the effects of the merger or acquisition on competition. One such example is hiving off a business unit. If ACM finds the proposed solutions sufficient, the merger or acquisition can go through after all.

As some cases may continue beyond the calendar year in which they originally started, the number of notified concentrations is not equal to the number of decision. All concentration assessments have been completed within the statutory term limits.

Table 7: overview of concentrations

	Number in 2016	Number in 2015
Notifications of mergers, acquisitions and joint ventures (concentrations)	105	89
Concentration notifications that did not have to be notified	2	2
Withdrawn notifications	2	2
Exemptions granted *	4	4
Decisions on notifications of concentrations	100	88
License required for concentration	2	3
License applications	1	3
License applications withdrawn	-	-
Decisions on license applications	2	3

* Large undertakings are, normally speaking, only allowed to merge after they have notified ACM of their planned concentration, and after ACM has completed its assessment thereof. In critical situations, ACM can grant an exemption in order to prevent irreparable damage inflicted on the undertakings involved if they had to wait for ACM's assessment.

8.1.4 Exemptions and licenses in energy sector

Licenses

All providers that supply heat to consumers and small-scale users have a license obligation. This obligation does not apply to small heat providers and providers that own or rent out the building to which heat is supplied.

In 2016, ACM granted 24 licenses for the supply of heat. There are currently a total of 26 license holders.

Exemptions

Owners of grids or gas transmission networks must designate a system operator. That has been laid down in the law. Sometimes there may be circumstances in which it is unreasonable to designate a system operator. For example, railway stations, hospitals, airports, and chemical plants are able to run their own grids. Such organizations can apply for an exemption with ACM. For exemption applications, a statutory time limit of six months (with the option to extend it once by another six months) applies. Sometimes, exemptions are postponed for a certain period of time after consultation with the parties involved, for example, when awaiting a ruling of the CBB.

In 2016, ACM handled 21 exemption applications.

Table 8: Number of licenses and exemptions in the energy sector

	License	Exemption
Granted	24	7
Not granted	0	7
Withdrawn or completed without a decision	-	7
<i>Median lead time (days)</i>	<i>89</i>	<i>477</i>
Total number of completed cases	24	21

8.1.5 Sanctions

In 2016, ACM imposed several fines following violations of the various laws that it enforces. Sometimes, a single case can have multiple undertakings that are fined.

Here is an overview of several relevant aspects of 2016:

- We completed 11 cases, imposing fines totaling EUR 3.3 million;
- We fined 17 undertakings;
- We fined 5 de facto executives.

Compared with 2015, we handled more sanction cases (2015: 9), fined more undertakings (2015: 10), but imposed lower fines (2015: EUR 23.5 million).

In many cases, the parties involved filed objections against these fining decisions.

Table 9: Overview of sanctions

Completed by means of:	Consumer protection	Energy	Competition	Telecom & Postal	Transport
Fine (in millions of euros)	3.11	-	-	0.196	-
Number of cases in which a fine was imposed	10	-	-	1	-
<i>Median lead time (days)</i>	<i>150</i>	-	-	<i>72</i>	-
<i>Statutory lead time (days)</i>	<i>91</i>	-	-	<i>91</i>	-
<i>Statutory lead time in case of postponement (days)</i>	<i>182</i>	-	-	<i>182</i>	-
<i>Percentage of cases where statutory lead time was met (including cases with postponements)</i>	<i>30%</i>	-	-	<i>100%</i>	-
Number of times that undertakings were fined	16	-	-	1	-
Number of fines imposed on de facto executives	5	-	-	0	-

8.1.6 Objections and appeals

If a party disagrees with ACM's decision, it can file an objection or an appeal. ACM has tracked the lead times for objections. With regard to appeals, we are dependent on the schedules of the court and the CBb. For each case, we track their durations, and whether the term limit has been postponed on time (whether or not after consultation with the parties involved). For 2016, a significant improvement can be observed in all areas compared with [2015](#).

Table 10: Number of resolved objections against decisions (these do not include cases involving the Dutch Act on Public Access to Government Information)

	Consumer protection	Energy	Competition	Telecom & Postal	Transport
Objections founded	0	0	0	1	0
Objections unfounded	2	25	5	11	0
Objections withdrawn	0	4	6	30	7
Objections inadmissible	1	3	1	6	0
Direct appeal	1	2	1	0	0
Objections partially allowed	2	0	1	3	1
Total number of resolved objections	6	34	14	51	8
<i>Median lead time (days)</i>	<i>34</i>	<i>117</i>	<i>74</i>	<i>49</i>	<i>2</i>
<i>Statutory lead time without postponement (days)</i>	<i>42</i>	<i>42</i>	<i>42</i>	<i>42</i>	<i>42</i>
<i>Statutory lead time with postponement (days)</i>	<i>84</i>	<i>84</i>	<i>84</i>	<i>84</i>	<i>84</i>
<i>Percentage of cases in which statutory lead time has been met (including cases with postponement)</i>	<i>100%</i>	<i>26%</i>	<i>57%</i>	<i>75%</i>	<i>100%</i>

Table 11: Number of resolved appeals (including appeals to a higher court) and provisional injunctions

		Consumer protection	Energy	Competition	Telecom & Postal	Transport
Number of resolved appeals	<i>Founded</i>	2	15	15	2	0
	<i>Unfounded</i>	0	7	6	4	0
	<i>Withdrawn</i>	0	8	1	1	0
	<i>Inadmissible</i>	0	9	1	0	0
	<i>Partially allowed</i>	0	0	4	0	1
Number of resolved appeals to a higher court *	<i>Founded</i>	0	0	0	1	0
	<i>Unfounded</i>	0	0	11	2	0
	<i>Withdrawn</i>	2	0	0	0	0
	<i>Inadmissible</i>	0	0	0	0	0
	<i>Partially allowed</i>	0	0	0	1	0
Total number of resolved appeals (including appeals to a higher court)		4	39	38	11	1
Number of resolved provisional injunctions **		0	2	5	0	0

* This should be interpreted as: appeal was considered founded or unfounded against ACM's decision.

** These also include provisional injunctions for which no hearings have been held, because they have been withdrawn.

8.1.7 Requests under Dutch Act on Public Access to Government Information

Consumers and businesses can ask for information regarding the government's actions. They can do so under the Dutch Act on Public Access to Government Information (Wob).

In 2016, ACM received a total of 23 Wob-requests. 6 Wob-requests were handled in objection and appeal (including appeal to a higher court). This is less than in 2015 and 2014 (41 and 31 requests respectively).

The median lead time for Wob-requests was 20 days in 2016. The statutory lead time is 28 days. With regard to 3 Wob-requests (13%), the statutory term limit was exceeded. The median lead times for Wob-requests has improved compared with 2015.

Table 12: Wob-requests*

	Number in 2016	Number in 2015
Number of received Wob requests	23	41
<i>Median lead time (days)</i>	20	25
<i>Statutory lead time (days)</i>	28	28
Number of completed Wob-requests on objection and appeal	6	12

* Wob = Dutch Act on Public Access to Government Information

8.1.8 Indications submitted by consumers

Number of indications

At the request of the Dutch Minister of Economic Affairs, [consultancy firm Kwink](#) (in Dutch) in 2015 reviewed ACM's performance. One of its recommendations was to improve user-friendliness and accessibility by gearing the information on the websites more to the target audience, and making it easier-to-understand for non-lawyers. ACM implemented these recommendations in 2016. Consumers are now able to find answers to frequently asked questions on our website much easier. As a result, fewer consumers need to contact our information desks directly. Other factors, too, may have contributed to that such as online complaints desks, discussions forums on complaints, and the use of social media.

In 2016, ACM received 57,004 questions and complaints from consumers through ConsuWijzer. That is 1,365 fewer indications than last year. The indications are submitted by phone, email or letter. In 26% of these cases, ACM referred the consumer to another organization. The remaining 74% fell under our scope.

Table 13: indications submitted to ConsuWijzer

	Number in 2016	Percentage
Telephone	35,821	62.8%
Email (web form)	20,849	36.6%
Letter	334	0.6%
Total	57,004	100%

Table 14: Within ACM's regulation / Referrals

	Number in 2016
Within ACM's regulation	42,183
Referrals	14,821

Sales channel

Consumers purchase products and services through sales channels. These can be brick-and-mortar stores, but the product or service can also be purchased online or over the phone. ACM keeps track of what sales channel the products or services have been purchased regarding the indications it receives. The category 'website' was further broken down in 2016 into 'mobile phone or tablet' and 'desktop'. Like last year, the most indications came from purchases of products or services on websites 'online', 11,083 indications in total. ACM devotes much attention to 'online consumers'. ['Digitalization – online consumers'](#) is one of the key priorities on the 2016-2017 ACM Agenda.

Table 15: Top 5 indications per sales channel

	Number in 2016	Number in 2015
1. Telephone	7,368	6,567
2. Website (mobile)	7,358	11,267
3. Shops (including markets)	7,282	7,965
4. Website (desktop)	3,725	(see 2)
5. Doorstep / sales demonstration	1,545	1,322

Sectors

ACM bases its oversight to a large extent on the number of indications it receives. For example, a lot of indications about 'fashion' were submitted in 2016. Following the high number of indications, ACM imposed fines on 5 online stores in the fashion sector. On their websites, these stores informed consumers insufficiently about the rules regarding cancellations of purchases. This meant that consumers did not know what their rights were such as the fact that the entire purchase amount including delivery costs must be refunded in a timely manner.

Table 16: Top 5 sectors, based on indications

Sectors	Number in 2016
1. Advice, research, and specialist services	4,776
2. Electronics	3,244
3. Energy providers	3,145
4. Telecom	3,049
5. Fashion	2,206

Subject of the indication

Consumers contact ACM for various reasons. ConsuWijzer categorizes each indication it receives (the main subject of the problem). In 2016, most indications were about faulty products or services and warranties (like in 2015 and 2014). Many complaints about customer recruitment and selling methods were also filed.

Table 17: Top 5 topic/nature of complaint

Topic/nature of the complaint	Number in 2016
1. Faulty product/service and warranty	10,725
2. Customer recruitment, and selling methods	8,937
3. Termination and cancellation of contracts (including unwanted ones)	6,177
4. Bills and payments	5,536
5. Delivery issues	3,720

ConsuWijzer.nl

In 2016, ConsuWijzer.nl had 225,584 more visits than in 2015. The information about 'cancelling contracts and subscriptions' and 'automatic renewals' in particular attracted many visits, as did the information about 'rights in case of a faulty product' and 'warranties'.

Table 18: Visits to ConsuWijzer.nl

	Number in 2016	Number in 2015
Visits	2,792,298	2,546,714*

* This is an approximation. It concerns approximately 350,000 non-registered indications from January until April 2016 and 2,216,714 registered indications from April through December 2016.

8.1.9 Indications submitted by businesses

In 2016, 6,696 indications were submitted to the ACM business desk. This is an increase compared with 2015 and 2014 (5,766 and 5,211 respectively). Based on these figures, we conclude that businesses are finding it easier to contact ACM. In 34% of these cases, it concerns situations where ACM has referred businesses to other organizations. 66% of the indications fell within the scope of our regulation.

Table 19: Number of indications submitted to ACM Business Desk

	Number in 2016	Percentage
Within ACM's regulation	4,419	66%
Referral	2,277	34%
Total	6,696	100%

This top 3 is similar to those in 2014 and 2015. With regard to 'Telecom and internet,' most questions concern regulations. The number of indications about 'Competition' has increased compared with 2015. Many questions were asked about dominant positions, cartels, and vertical agreements. The increase in that number could be correlated to the anti-cartel campaign launched in early-2016. With regard to 'Energy', as with 'Telecom and internet', most questions concerned regulations.

Table 20: Top 3 of indications submitted by businesses

	Number in 2016	Number in 2015
1. Telecom and internet	1,634	1,375
2. Competition	906	856
3. Energy	829	882

8.1.10 Spam complaints board Spamklacht

ACM oversees compliance with spam regulations. On the website of spam complaints board www.spamklacht.nl, consumers are able to file complaints about spam.

In 2016, ACM received 26,177 spam-related complaints. That is 479 fewer complaints than in 2015. There is no clear cause for this minor decrease.

Table 21: Indications submitted to spam complaints board

Type of indication	Number in 2016	Number in 2015
1. Email	25,438	25,807
2. Text messages	407	459
3. Fax	6	11
4. Phone	130	150
5. Social media	26	32
6. Other	170	197
Total	26,177	26,656

8.1.11 Numbers and registrations

ACM manages the supply of phone numbers in the Netherlands. Telecom providers and businesses can apply for numbers with ACM. Each group of numbers must be used for a specific purpose. For example, 0800 numbers should be used for free information services, and 06 numbers for mobile phones. ACM assigns numbers, and oversees the use thereof, for example, of mobile numbers. ACM keeps track in a register what telecom provider or what business is the holder of any one number.

Table 22: Number of assigned and withdrawn numbers

	Assigned	Withdrawn
1. Other numbers	6,525,033	778,019
2. Business numbers	221,315	126,738
3. 0800 numbers	874	1.004
4. 0900 numbers	408	1.205
5. 0909 numbers	213	236
6. 0906 numbers	38	467

Table 23: Overview of percentage of available numbers

Number series	% available numbers as of 31-12-2016	% available numbers as of 31-12-2015
Short 0900-numbers	42.64%	44.40%
Short 0800/0906/0909-numbers	76.42%	78.10%
Long 0800/0900/0906/0909-numbers	99.81%	99.81%
Mobile numbers	9.12%	9.15%
Carrier selection (4 digits)	48.00%	49.00%
Business numbers	65.82%	67.06%
18xy – subscriber information service numbers	51.51%	60.61%

Table 24: Overview of registrations of various market participants

	As of January 1, 2015	As of January 1, 2016	New registrations	Terminated registrations	As of December 31, 2016
Provider of a public electronic communication network	740	815	84	80	819
Provider of a public electronic communication service	661	729	115	65	779
Provider of related facilities	24	28	23	0	51
Provider of qualified certificates	7	7	0	0	7
Category Postal Services					
<i>Postal delivery providers</i>	117	121	5	7	119

Table 25: Number of registrations for electronic communication

	2016	2015
Number of registrations for Electronic Communication (including termination)	367	207
Percentage of registrations within the statutory term limit	100%	100%

8.2 About ACM

In its annual report, ACM also provides insight into its internal affairs.

These consist of the following:

- HR matters, including staff expenditures and staff utilization;
- Satisfaction with ConsuWijzer and ACM;
- Complaints against ACM or ACM staff;
- The tasks and roles of the board of ACM, and those of the individual departments;
- Our policies with regard to diversity, inclusion, and integrity;
- Cooperation with other regulators and organizations within the Netherlands and abroad.

8.2.1 Human Resources

In 2016, ACM managed to overcome a situation of understaffing. One of the reasons was that ACM hired people for senior positions that had been vacant for a long period of time. This explains the figures in the below tables.

Table 26: Personnel expenditures (in euro)

	2016	2015
Salary costs	42,408,162	38,444,658
Average salary	81,024	76,771

Table 27: Employee utilization rate

	Number of employees	Fte	Men (in %)	Women (in %)
1 January 2016	535	503.40	50.6%	49.4%
31 December 2016	574	543.40	49.7%	50.3%

Table 28: Job market

	Total	Men	Women
Inflow	71	32	39
Outflow	35	16	19

Table 29: Age structure of staff

	2016	2015
24 years and younger	8	7
25 through 34 years	145	123
35 through 44 years	202	209
45 through 54 years	158	136
55 through 59 years	30	32
60 years and older	31	28

Table 30: Absenteeism

	Verbaan rate *	2016	2015
Absentee rate	3.5	3.8	4.2

* 'Verbaan' rate = the average absentee rate for similar professions

8.2.2 Satisfaction about ConsuWijzer and ACM

ACM measures customer satisfaction with its educational activities all year round. ACM measures satisfaction with educational efforts targeting businesses through ACM itself, as well as satisfaction with education efforts targeting consumers through ConsuWijzer.nl.

ACM measures to what degree consumers take steps in order to exercise their rights following their interaction with ConsuWijzer. According to this measurement, approximately half of those interviewed said they wished to take steps, and approximately three in four of those actually did so within two weeks after their interaction. These figures are more or less the same as in previous years.

Table 31: Satisfaction with ConsuWijzer and ACM

Desk	Channel	Mark*
<i>ConsuWijzer</i>	Phone	8.1
	Email	6.9
	Website	6.7
<i>ACM</i>	Phone	7.8
	Email	6.7
	Website	6.0

*on a scale from 1 to 10

8.2.3 Complaints against ACM or ACM employees

If an individual does feel that they are not treated properly by ACM or its staff, they have the opportunity [to file a complaint](#) (in Dutch).

ACM handles complaints in accordance with its Complaints procedure. This procedure is based on the Dutch General Administrative Law Act (Awb), which stipulates how ACM should handle complaints. The complaints officer handles the complaints, and gives the board advice about them. It is the board that has the final say.

Complaints in 2016

In 2016, ACM received 14 complaints against ACM and/or ACM-employees. In 2015, that number was 11. Several complaints did not qualify (partially or in full) for handling in accordance with the complaints procedure. These complaints concerned (among other things) ACM's general strategy or a ministry's general strategy, or concerned the behavior of individuals other than ACM employees. In three complaints, ACM in consultation with the complaints officer tried to reach solutions in a different manner. ACM sat down with the complainants in order to come to a solution together. As a result, they no longer saw any reason to have their complaints handled substantively.

ACM issued decisions on 2 complaints. These complaints concerned the following:

1. Communication within the context of an interrogation
2. Treatment of a complainant in a fining procedure

Of these cases, ACM disallowed one complaint, and partially allowed the other complaint.

In addition, ACM received a complaint regarding the use of regulatory and investigative powers. ACM ruled on that complaint, saying that this matter should be addressed in the relevant sanction procedure, and in a subsequent appeal procedure, if any. A complaint against the use of regulatory and investigative powers does not fit in the framework of complaints within the meaning of Chapter 9 of the Awb.

8.2.4 Board, directors, and staff

Board

The Board is the executive body of ACM. Responsibility for all decisions of ACM lies with the Board of ACM. The Board consists of three members.

Chris Fonteijn is the Chairman of the Board of ACM. The other Members of the Board in 2016 were Anita Vegter and Henk Don. Each member of the Board has their own portfolio:

- Chris Fonteijn: Strategy, General Competition Oversight, the Health Care Taskforce, International Affairs, and Communication;
- Anita Vegter: Consumers, Legal Affairs, and Corporate Services;
- Henk Don: Sector-specific Regulation (energy, telecom, transport, postal services) and the Office of the Chief Economist.

On January 1, 2017, [Cateautje Hijmans van den Bergh was appointed Member of the Board of ACM](#), succeeding Ms. Vegter.

[Ms. Vegter was appointed Director General for the Administration of Justice and Law Enforcement](#) at the Ministry of Security and Justice. The appointment took effect on September 1, 2016.

Departments

ACM consists of 8 departments and the Board. In the fall of 2015, ACM also created the Health Care Taskforce. ACM's organizational structure follows its mission and strategy. Each director is responsible for their department's contributions to ACM's objectives. The Board and the directors sit down on a regular basis, discussing the strategy, choices and considerations in the most important regulatory cases.

Staff

ACM is an open, independent and professional regulator. ACM employees determine the success of the organization. ACM requires highly-educated and professional employees to carry out its activities effectively. ACM wishes to continue to innovate, and to have a balanced workforce, including in terms of age.

Employee participation

The Works Council (OR) is the link between ACM employees and the Board. It gives the Board advice about topics that are relevant to ACM employees.

During meetings with the Board in 2016, the OR expressed its opinions on the following topics, among other ones:

- The appointment policy;
- Practical implementation of the principle of flexible workplace and work time;
- The Board member candidates;
- The external evaluation of ACM;
- Air quality in the workplace;
- The OR's findings with regard to the results of the employee satisfaction survey;
- HR issues, such as absenteeism and the recruitment policy;

Within the Departmental Works Council (DOR), ACM contributed to discussions about the performance review policy, and about the way job openings are handled at an EZ level. Furthermore, in 2016, the chair of the DOR came from the ACM Works Council.

Inflow and outflow of staff

In 2016, ACM hired 71 new employees, and 35 employees left the organization. ACM stays within the boundaries of the staffing structure. When an employee leaves the organization, ACM first investigates if the vacancy can be filled by internal candidates. This approach ensures employee mobility, increase of knowledge, and enables a flexible deployment of employees. The room that is thus created offers opportunities for attracting fresh graduates or government trainees on a temporary basis.

Absenteeism

In 2016, the absentee rate was 3.8 percent. This is 0.4 percentage points lower than in 2015, when it was 4.2 percent. Prevention of absenteeism and reduction of the absentee rate were critical issues for 2016.

Diversity and inclusion

ACM aims to have a diverse workforce. Diversity and ACM are a natural fit. ACM is for all consumers and businesses alike. Diversity helps us detect and understand problems in the market from a broader perspective, and it subsequently helps us select the best solutions to those problems. ACM aims to create a workplace environment where everyone feels welcome and included, regardless of their individual background.

In 2016, a considerable amount of attention has been given to diversity and inclusion. Several employees participated in the workshop 'Success in abundance' (in Dutch: succes in veelvoud). This workshop was about how diversity in teams leads to better results and to higher performance. In addition, ACM took part in the 'Diversity Week', a week-long awareness campaign at the Ministry of Economic Affairs (EZ) and its affiliated agencies, including ACM. Furthermore, ACM's HR advisers and communication experts joined forces to redesign the recruitment pages of ACM (in Dutch: 'Werken bij ACM'). In the new structure, diversity and inclusion are now given attention in our recruitment advertising, too.

The Dutch central government has signed the so-called 'Diversity Charter' (in Dutch: Charter Diversiteit) in order to promote diversity in the workplace with regard to five areas: sexual orientation, gender, age, disability, and ethnic and cultural background. EZ has created the Consultation Forum for Inclusion (in Dutch: 'Vakberaad Inclusief'), which helps implement the Diversity Charter at EZ level. Two ACM employees sit on this Consultation Forum for Inclusion on behalf of ACM.

8.2.5 Integrity

For ACM, as an independent regulator, integrity is of great importance. In fact, it is an element of the ACM core value 'Professionalism.' ACM devotes much attention to its integrity code, for example by educating executives and employees.

Integrity compliance officers

ACM has two integrity compliance officers. They have been appointed by the Secretary-General of the Ministry of Economic Affairs (EZ). ACM employees can contact them about integrity questions or to report integrity violations. The officers provide the Board of ACM and management with independent advice, both at the request of the Board or of their own accord.

Integrity regulations

ACM has drawn up an integrity code. In addition, ACM uses several integrity regulations of the Ministry of Economic Affairs. Additional rules have been developed regarding several topics, including financial interests of employees, outside activities, and receiving gifts.

Compliance

The two integrity compliance officers are also compliance officers (regular ones), which means they have a supervisory role when dealing with financial interests in particular in cases where a conflict of interest, or a semblance thereof, could exist.

8.2.6 ACM Academy

ACM employees determine the success of the organization. That is why it is important that they keep on developing their skills and knowledge.

Training programs and knowledge

The ACM Academy offers training programs, and knowledge and skill courses, among other programs. ACM senior employees teach these courses as much as possible. In this way, knowledge is transferred properly, and ACM employees are able to learn from cases of ACM itself. In 2016, the ACM Academy further expanded the selection of knowledge courses.

In addition, ACM believes it is important to bring in outside knowledge. It works together with academia and other regulators in order to exchange and expand knowledge.

Furthermore, a lecture program has been set up. Speakers from the corporate arena, science, and politics are invited to speak about the challenges of the future.

Skills

We also invest in the skill sets of our employees. Think, for example, of discussion techniques, negotiation skills, interrogation techniques, and hearing skills.

In 2016, we also gave attention to learning on the job in addition to learning through formal training. As part of that effort, we developed customized programs for various employee groups within ACM.

8.2.7 Cooperation

Within the Netherlands, ACM works together with fellow regulators and other organizations in order to realize efficient and effective oversight.

Consultation Forum of Regulatory Bodies (MTB)

ACM works together with other regulators towards more efficient and more effective oversight. The Consultation Forum of Regulatory Bodies (MTB) is an informal network of 7 regulators. Its participants are: ACM, the Netherlands Authority for the Financial Markets (AFM), the Dutch Data Protection Authority (AP or the Dutch DPA), the Netherlands Gaming Authority (Kansspelautoriteit), the Dutch central bank (DNB), the Dutch Healthcare Authority (NZa), and the Dutch Media Authority (CvdM). The objective of the MTB is to share knowledge among fellow regulators, to learn from each other, and to work together.

In 2016, the MTB organized two seminars. At MTB seminars, the participating regulators exchange knowledge and experiences about shared topics in an atmosphere of openness and mutual trust. The topics of the 2016 seminars were 'Oversight and communication' and 'The impact of innovation on markets and oversight'.

International cooperation

Consumer and business problems do not stop at the border. That is why ACM regularly works together with fellow regulators and other agencies outside the Netherlands. This cooperation is aimed at exchanging knowledge and experience, and at formulating a joint approach to market problems.

Among other platforms, ACM participates in European and international bodies of competition authorities ([ECN](#) and [ICN](#)), of telecom regulators ([BEREC](#)), or electricity and gas regulators ([ACER](#) and [CEER](#)), consumer authorities ([CPC](#) and [ICPEN](#)), and rail regulators ([IRG-Rail](#)).

Many other European regulators have brought competition oversight and consumer protection together. However, bringing together both consumer protection, competition oversight, and sector-specific regulation under one roof is unique in Europe. By making the effects of its work central to its strategy, ACM is internationally regarded as an innovative regulator. Like in previous years, ACM in 2016 was invited several times to international events to speak about its multi-disciplinary structure and its oversight philosophy.

8.3 Annual statement of accounts

This annual statement of accounts concerns 2016 in its entirety. In the tables below, nominal amounts are used, and amounts are rounded up or down to the nearest euro. As a result, rounding errors may occur.

ACM Organization

From a financial point of view, the ACM Organization is an integral part of the Ministry of Economic Affairs (EZ) without any statutory obligation to publish an independent annual statement. The accounting check takes place at EZ level.

In addition, the so-called Authorization Directive (EU Directive 2002/20/EC) applies to the ACM Organization. The ACM Organization uses a cash-basis accounting system in the administration of EZ. There is no balance sheet or profits-and-loss account. ACM kept time in accordance with a system based on the method of passing on costs to regulated industries (in Dutch). This method came into force on January 1, 2015.

8.3.1 Expenditures of ACM organization

The table below lists the cash expenditures as of December 31, 2016 and December 31, 2015.

Table 32: Cash expenditures of ACM organization (in euros)

	2016	2015
Salary costs	42,408,162	38,347,958
Temporary employees	2,469,760	2,125,900
Travel expenses	1,031,852	952,081
Education	879,265	932,537
Other personnel costs	640,359	574,709
Government prosecutor	522,876	355,362
Total personnel costs	47,952,273	43,288,547
Housing	4,170,368	5,078,565
Research	3,847,810	3,680,564
IT	6,776,452	4,164,066
Catering/security/cleaning/general expenses	881,920	882,468
Office furniture and supplies	577,146	682,402
Education and events	35,163	238
Other material costs	225,563	172,036
Damages/compensation for loss of income	1,012,037	-
Total material costs	17,526,457	14,660,339
Total expenditures	65,478,730	57,948,886

Throughout the central government, several ledger accounts have, over the course of 2016, been moved from the material budget to the personnel budget. In order to be able to compare the 2015 and 2016 figures, these adjustments have also been applied to the 2015 tables.

The salary costs have increased. This is because vacancies have been filled faster, including vacancies that had been unfilled for a long period of time. Another cause has been the expansion of statutory tasks as well as the effect from the collective labor agreements. This has also had an effect on the travel expenses and other personnel costs.

Legal representation by the government prosecutor has posted an increase compared with the previous year. This is dependent on the cases that the CBb handles. As a result, legal representation by the government prosecutor varies from year to year. In 2016, more hours have been billed for appeal cases (including appeals to a higher court).

In the period of 2013-2015, the office building was refurbished in order to make the building ready for flexible workspaces, allowing ACM to need less space on balance. These costs were incidental. As a result, the housing expenses decreased in 2016. In 2016, costs were incurred for much-needed software and hardware replacements. These were also necessary for creating an architecture and IT infrastructure that are location-independent, offering advantages in terms of maintenance and management, because everything can be managed from a single environment. This has also had an

impact on the hiring of temporary employees.

In connection with legal proceedings, ACM in 2016 paid damages for incurred costs or paid compensations for loss of income of regulated market participants.

Claims

ACM is handling six claims. Two claims have a combined value of EUR 5.6 million. The value of the other claims has not been determined yet.

8.3.2 Income of ACM organization

The levels of the contributions from market organizations are laid down in the [Regulation on the passing on of costs to regulated parties](#) (in Dutch). In 2015, for the first time ever, the new method of passing on costs to market organizations came into force, as laid down in the [Decision on the method of passing on costs to regulated industries](#) (in Dutch).

Table 33: Income of ACM Organization 2016 (in euros)

	2016	2015
Telecom contributions		
• Electronic communication	5,702,713	5,404,442
• Numbers	3,313,089	1,159,514
• TTP	486,401	373,902
Total Telecom	9,502,204	6,937,858
Postal services contributions		
• Non-Universal Service Obligation	1,283,551	201,274
• Universal Service Obligation	531,609	532,525
Total Postal Service	1,815,160	733,799
Energy contributions		
• Distribution system operators (DSOs) electricity	714,897	1,412,843
• Distribution system operators (DSOs) natural gas	1,267,302	1,087,309
• Transmission system operator (TSO) electricity	2,651,372	1,977,495
• Transmission system operators (TSO) natural gas	2,223,145	2,408,988
Total Energy	6,856,716	6,886,635
Transport contributions		
• Registered pilots		297,611
• Aviation		141,633
Total Transport	-	439,244
Merger notifications	1,633,473	1,339,025
Licenses of energy providers	13,296	13,189
Sanctions (including repayments)	30,719,491	31,269,251
Receipts from Personnel / Materials	1,111,764	960,674
Total income	51,652,103	48,579,675

Income per market category may change from year to year. The reason is that, on the one hand, more or fewer economic and technical studies (direct material costs) are needed for ACM's tasks, and that, on the other hand, the number of hours that is needed for ACM's tasks is not always the

same every year for all activities.

In 2016, ACM received payments of invoices that had been sent in previous years. ACM was mostly able to clear a backlog, especially with regard to Numbers, in the invoicing over previous years. This has resulted in an incidental increase in income for Number in 2016.

In 2016, ACM collected payments for the contribution Postal Service non-Universal Service Obligation over 2015 and 2016. This has resulted in an incidental increase.

In accordance with the Regulation on the passing on of costs to regulated parties, ACM in 2016 collected total payments of EUR 596,804 for registered pilots and aviation on behalf of the Ministry for Infrastructure and the Environment, to which the receipts were transferred during the year. That is why this item does not have an amount in the 2016 statement. At the time, the balance of EUR 439,244 from 2015 had yet not been settled with the Ministry.

Sanctions that ACM has imposed under the former statutory regime only need to be paid by parties after the highest court has ruled on their cases. Therefore, the period between the imposition of the sanction and the actual payment therefore can take multiple years, because of the legal procedures. As a result, receipts from sanctions can greatly vary from year to year. Under the Streamlining Act, which came into effect on August 1, 2014, ACM can demand payment of the sanctions within 6 or 24 weeks, depending on whether or not the party involved files an objection. A transitional period is in effect until the outstanding, pre-Streamlining Act receivables have been processed.

The amount of received sanctions (including repayments) is EUR 30.7 million. EUR 32.0 million has been received, and EUR 1.3 million has been repaid following court rulings.

8.3.3 Outstanding receivables of ACM organization

The table below lists the outstanding receivables as of December 31, 2016 and December 31, 2015.

Table 34: Outstanding receivables of ACM Organization (in euros)

	2016	2015
Telecom contributions		
• Electronic communication	217,308	1,378,621
• Numbers	735,752	936,264
• TTP	-	102,845
Total Telecom	953,060	2,417,730
Postal services contributions		
• Non-Universal Service Obligation	-	664,774
• Universal Service Obligation	-	273,995
Total Postal Service	-	938,769
Merger notifications	437,324	473,173
Sanctions	64,396,968	103,788,494
Other (receivables)	947,949	732,148
Total	66,735,301	108,350,314

The amount of outstanding receivables for sanctions has dropped from EUR 103.8 million in 2015 to 64.4 million in 2016. This drop can be explained as follows. We received EUR 32 million. Furthermore, several previous sanctions have been lowered as a result of court rulings, in total EUR 25.1 million, while other sanctions have been increased, in total EUR 14.0 million. In addition, over EUR 3 million in new sanctions have been registered. Also, approximately EUR 0.7 million in earned statutory interest have been included. This results in a balance of EUR 64.4 million.

The decrease of the outstanding balance "Total Postal Service" is caused by the collection of the 2015 and 2016 invoices in 2016. The reason for the decrease of the outstanding balance "Total Telecom" is that the invoicing took place earlier in the year. This has had a positive effect on receipts.

8.4 Breakdown of expenditures along market organizations

In the [Decision on the method of passing on costs to regulated industries](#) (in Dutch) and its [amendment](#) (in Dutch), it has been laid down how ACM can pass on costs to market organizations. This method has been applied since 2015, and affects the 2016 income. According to this method, the income of the year in question is based on the actual expenditure of the previous year. The market categories and the formula have been explained in more detail in the explanatory notes to the Decision on the method of passing on costs to regulated industries of October 27, 2014, and December 10, 2014, respectively. Per sector, ACM calculates the expenditures to be passed on to the relevant categories. For each category, ACM has one or more timekeeping codes. This will ensure that ACM is able to allocate the costs to the right category. In addition, ACM prevents market organizations in one category from paying (or co-paying) the costs of other categories.

ACM calculates the amount to be passed on per category as follows:

1. Per category, the 'direct material costs' are determined, which are the direct costs relating to economic and technical studies.
2. Next, the remaining amount is determined, consisting of the indirect material costs and all direct and indirect personnel costs. These costs are allocated based on the actual hours spent on these categories.

The below table provides a breakdown of the cash expenditures for ACM Organization and for the Autonomous Administrative Authority ACM (Dutch abbreviation: ZBO ACM).

Table 35: Total cash expenditures (in euros)

	2016			2015
	ACM Organization	ZBO ACM	Total	Total share
Direct material costs	4,922,354	-	4,922,354	3,760,428
Remaining costs based on actual direct hours				
Consisting of: personnel costs	47,952,273	634,586	48,586,859	43,419,914
+ indirect material costs	12,604,103	2,330	12,606,433	11,417,120
Total personnel and indirect material costs	60,556,376	636,915	61,193,291	54,837,034
Total expenditures	65,478,730	636,915	66,115,645	58,597,462

The direct material costs are 8% of the total cash expenditures. The total indirect material costs are 19% of the total cash expenditures. ACM's total cash expenditures in 2016 were higher than those in 2015. Some of the reasons were an increase in the salary costs, and an increase in the IT costs. In 2016, ACM paid compensations for costs incurred or loss of income of regulated parties. Compensations are part of the costs of the market category 'State'.

Table 36 gives a breakdown of the expenditures of ACM Organization and ZBO ACM to be passed on to market organizations on the basis of the Decision on the method of passing on costs to regulated industries. Please note: the amount in the column "Total share" is the amount to be passed on to the market organizations. It is not the total amount that has been spent on that sector. Example: sanction procedures in one of the regulated industries are not passed on to the market organizations but to the Dutch State.

Table 36: Overview of the allocation of the expenditures of ACM Organization and ZBO ACM in 2017 to be passed on to market organizations based on the Decision on the method of passing on costs to regulated industries (in euros and hours)

Decision on the method of passing on costs to regulated industries of ACM Organization and ZBO ACM					
	2016				2015
	Direct hours	Direct material costs	Personnel & indirect costs based on share of hours	Total share	Total share
	<i>in hours</i>	<i>in euros</i>	<i>in euros</i>	<i>in euros</i>	<i>in euros</i>
<i>Telecom</i>					
<ul style="list-style-type: none"> Public electronic communication services, public electronic communication networks, and related facilities 	30,630	408,658	3,615,507	4,024,165	3,705,853
<ul style="list-style-type: none"> Numbers 	17,923	-	2,115,533	2,115,533	2,102,716
<ul style="list-style-type: none"> Certification services providers 	1,579	-	186,386	186,386	237,057
Subtotal Telecom	50,132	408,658	5,917,425	6,326,084	6,045,626
<i>Postal Service</i>					
<ul style="list-style-type: none"> Universal Service Obligation 	2,485	6,086	293,320	299,406	273,814
<ul style="list-style-type: none"> Non-Universal Service Obligation 	6,315	-	745,457	745,457	619,837
Subtotal Postal Service	8,800	6,086	1,038,778	1,044,864	893,651
<i>Energy</i>					
<ul style="list-style-type: none"> Distribution system operation - electricity 	5,150	32,787	607,861	640,648	714,898
<ul style="list-style-type: none"> Distribution system operation – gas 	11,557	60,669	1,364,137	1,424,806	1,267,209
<ul style="list-style-type: none"> Transmission system operation – E 	26,786	23,229	3,161,759	3,184,987	2,691,872
<ul style="list-style-type: none"> Transmission system operation – G 	26,337	523,793	3,108,760	3,632,553	2,263,645
<ul style="list-style-type: none"> Supply of heat 	1,615	-	190,624	190,624	576,588
Subtotal Energy	71,444	640,478	8,433,141	9,073,619	7,514,212
<i>Transport</i>					
<ul style="list-style-type: none"> Registered pilots 	1,976	35,116	233,235	268,351	228,065
<ul style="list-style-type: none"> Aviation 	1,604	-	189,321	189,321	368,739
Subtotal Transport	3,580	35,116	422,556	457,672	596,804
Total market organizations	133,956	1,090,338	15,811,900	16,902,238	15,050,293
<i>Central government</i>					
<ul style="list-style-type: none"> State/treasury 	384,465	3,832,016	45,381,391	49,213,407	43,547,169
Total	518,422	4,922,354	61,193,291	66,115,645	58,597,462

The reasons behind any differences in the total share of costs per market category are that, on the

one hand, more or fewer economic and technical studies (direct material costs) are needed for ACM's tasks, and that, on the other hand, the number of hours that is needed for ACM's tasks is not always the same every year for all activities. That is why the share of costs per market category has changed.

8.5 Annual account of ZBO ACM

This financial account of the Autonomous Administrative Authority ACM (ZBO ACM) concerns the entire calendar year of 2016. The ZBO ACM concerns the Board of ACM. The Board used a cash-basis accounting system in the administrative system of the Ministry of Economic Affairs.

8.5.1 Expenditures and income of ZBO ACM

The below tables the expenditures and income as of December 31, 2016. Table 38 also lists the figures over 2015.

Table 37: Realization compared with budget (in euros)

	Budget	Expenditures	Income
Total ZBO ACM	677,000	636,915	162,120
Difference compared with budget	-	40,085	-162,120
As a percentage		5.9%	

Table 38: Total expenditures and income of ZBO ACM (in euros)

	2016	2015
Salary costs	523,667	544,517
Travel expenses abroad	30,608	23,009
Travel and accommodation expenses (domestic)	53,017	78,370
Various expenses	8,993	1,513
Employee training	18,301	-
Total personnel	634,586	647,409
Contributions and memberships	2,091	1,168
Social allowance	238	-
Total material costs	2,329	1,168
Total expenditures	636,915	648,577
Total income	162,120	2,147

In 2016, one of ACM's Board Members left the organization. That is why salary costs, and the travel and accommodation expenses were lower than in 2016. The position has been filled as of January 1, 2017. ZBO ACM has not yet received all invoices for the travel and accommodation expenses over the fourth quarter of 2016.

The reason for the increase in income is that, since 2016, the expenditures of the ZBO, too, have been included in the Decision on the method of passing on costs to regulated industries. Through 2015, the Ministry of Economic Affairs had used a transitional regime, where a generic discount was applied to the ZBO expenditures that were to be passed on. From 2016, that discount has been reduced to zero.

8.5.2 Corporate services of ZBO ACM

This section on corporate services lists all relevant points of attention in the operations of ZBO ACM. In accordance with the Government Accounts Act 2001, the corporate-services section is organized as an exception report. The information included in this section has been collected from the management control system of the ZBO ACM and from information coming from the audit of the Central Government Audit Service. The corporate-services section consists of four mandatory elements: lawfulness, establishment of policy information, financial and material management, and other aspects related to corporate services.

I Lawfulness

Based on information at my disposal, irregularities with regard to the accountable lawfulness of the expenditures of the ZBO ACM have been established, which have exceeded the relevant reporting tolerance thresholds.

Exceeding the reporting tolerance thresholds

With regard to the expenditures of the ZBO ACM, a lawfulness irregularity of EUR 20,636 has occurred. This concerned invoices for transport (travel and accommodation expenses domestic) that have incorrectly not been put out to tender in Europe. The transport contract in question was immediately cancelled once the irregularity was found.

Table 39: Overview of accountability amounts that apply to the ZBO ACM

(1) Reporting tolerance	(2) Accountable amount in euros (basis for amount: 636,915 + 162,120)	(3) Reporting tolerance for irregularities in euros	(4) Amount of irregularities in euros	(5) Percentage of irregularities as a share of accountable amount = (4)/(2) * 100%
Total expenditures and income	799,035	7,990	20,636	2.6%

II Establishment of policy information

Based on information at my disposal, no shortcomings have occurred in the establishment of policy information.

III Financial and material management

No irregularities have occurred.

IV Other aspects related to corporate services

No irregularities have occurred.