



Annual Report
ACM in 2017



Foreword from the Board

In the annual report of the Netherlands Authority for Consumers and Markets (ACM), we give account of our activities of the previous year. This annual report shows the breadth of our oversight with regard to consumer protection, competition oversight, and sector-specific regulation. We particularly focus on the impact of our work, and on the priorities in the 2016-2017 ACM Agenda.

A selection of our results from 2017

With our mission in mind, “creating opportunities and options for businesses and consumers,” we achieved great results in 2017. We used various instruments to solve market problems and consumer problems effectively. Examples include: the fine imposed on Dutch Railways NS for abusing its dominant position in the tender process for the public-transport contract in the southern Dutch province of Limburg; the market analysis decisions for telecom and postal services, which safeguard effective competition in these sectors; our consumer awareness campaigns about impulse purchases over social media; our studies into the functioning of online video platforms and health insurances; and the commitments made by Amsterdam airport Schiphol, which help realize a level playing field for all airlines.

Our collaborations with national and international regulators help increase our effectiveness. Over the past year, for instance, we worked together with other financial regulators in the Netherlands with regard to innovative technologies in the financial sector (such as fintechs in the payments sector). And international collaborations have contributed to decisive actions against Volkswagen for its misleading practices in the diesel emissions scandal.

We are preparing ourselves for the challenges of tomorrow

Changing markets make great demands on our flexibility. Digital developments played a huge role in all of the areas we oversee, and that role will only grow further. We are therefore investing in our digital knowledge and in our IT infrastructure. In addition, such developments call for a careful and strategic staffing plan: who do we need in order to be able to take on these challenges?

The coalition agreement of the current Dutch cabinet contains various references to ACM. To us, that tells us that ACM has become a household name. The cabinet makes an appeal to us, for example within the context of the digital economy and the agro-food chain. Keeping public interests in mind, and also where we can be effective when it comes to dealing with problems, we determine how we can help realize the cabinet’s ambitions.

Celebrating ACM’s five-year anniversary

In 2018, ACM turns five. And on April 26, 2018, we will celebrate this anniversary by holding a conference. The theme of this jubilee conference is the digital economy and what the role of regulators should be (*‘The Digital Economy – friend or foe?’*).

For five years, consumers have been central across the entire spectrum of our oversight activities. In our work, consumers play many different roles: users, buyers, patients, and insured. Our success is determined by the effect of our interventions that we make in order to solve market problems and consumer problems. Each year, we seek to show this in our annual report.

Chris Fonteijn
Chairman

Cateautje Hijmans van den Bergh
Board Member

Henk Don
Board member

ACM 2017 highlights

1

Dutch consumers save EUR 1 billion

ACM takes 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 1 billion. In addition, we study the effects of our oversight efforts. In 2017, for example, we studied the effects of hospital mergers, as well as ACM's use of 'rapid interventions,' and looked into our oversight of collaborations in primary care. Furthermore, ACM collaborated with economic journal 'De Economist' to publish an edition on impact assessment. Researchers and enforcement officials presented the most important insights at the conference '*Impact Assessment of Interventions of Competition and Consumer Authorities*', which ACM organized in late-2016.

2

ACM's decisions critically reviewed by the courts

Many parties appeal ACM's decisions in court. In most of the appeals, the court follows us in the choices that we have made. In 2017, the courts upheld all of the decisions related to our sector-specific regulation. With regard to sanction decisions, the court first assesses whether ACM correctly established a violation, and subsequently whether the imposed fine was appropriate. The established violations have also been upheld, but the courts have often found the imposed fines too high. ACM also loses cases. In 2017, our decisions on the 'foreclosure auctions' were overturned on appeal to the court of final instance. From our perspective, that was a setback. It is important that the courts review ACM's work critically. The insights gained from the judicial process helps us enhance our effectiveness.

3

Better informed online consumers

In 2017, we paid special attention to digitalization and online consumers. We put a great deal of effort into making sure consumers are informed better online. For example, we studied the reliability of online reviews. And we launched an awareness campaign about purchases through social media (social selling). We also extensively studied the functioning of online video platforms as well as the potential risks to competition. We have voiced our concerns about the general terms and conditions that these types of online platforms use for consumers. Together with our European partners, we are tackling this problem. 'Digitalization - online consumers' is one of the key priorities in ACM's 2016-2017 Agenda.

4

Cooperation helps ACM intervene effectively

Through cooperation, we are able to increase the effectiveness of our actions. In 2017, for example, we worked together with our international counterparts to solve consumer problems in the diesel emissions scandal. This resulted in ACM imposing a fine on Volkswagen for having misled consumers (unfair commercial practices). In addition, we worked closely together with the German competition authority in their investigation into a cartel in the harbor towage sector. That investigation led to fines totaling approximately EUR 13 million on German and Dutch towage service providers in the ports of Hamburg and Rotterdam for their involvement in the cartel. 'Ports and transport' is one of the key priorities in ACM's 2016-2017 Agenda.

5

Intensified attention for anticompetitive risks of hospital mergers

Once again, in 2017, hospital mergers attracted a lot of attention. ACM cleared several concentrations in the hospital sector such as the acquisition of the Admiraal De Ruyter Hospital by Erasmus Medical Center, and the merger between Academic Medical Center (AMC) and VU University Medical Center (VUmc) in Amsterdam. Furthermore, we attached requirements to the planned merger between two southern hospitals, Catharina Hospital and Sint Anna Hospital. In late-2017, we announced that ACM has intensified its attention for anticompetitive risks of hospital mergers. An important reason for this was that the results of our studies into the effects of hospital mergers on quality, price, and volumes did not indicate any improvements. The public debate about mergers predominantly centers on the question of what mergers mean to the hospital's manageability and to the 'human dimension.' As part of our 'intensified attention' for the anticompetitive risks of hospital mergers, we argued that, if lawmakers wish to have other public interests play a role in hospital merger assessments, they be incorporated into the health-care-specific merger assessment. Clear and concrete standards are critical if this route is chosen. 'Healthy collaborations in health care' is one of the key priorities in ACM's 2016-2017 Agenda.

6

Consumers have better access to ACM

Consumers visit ConsuWijzer, ACM's consumer information portal, more and more often. In 2017, ConsuWijzer was visited over 3 million times, which is 9% more than in 2016. Our tools, sample letters, and step-by-step guides are also used more frequently. For example, our sample letters were viewed almost 500,000 times in 2017. We are constantly working on reaching more and more consumers. In the past year, for example, we experimented with WhatsApp for the first time. We received over 1,300 questions and complaints via WhatsApp.

7

Tackling abuse of premium-rate numbers

In 2017, ACM took down the premium-rate number of Dutch YouTube vlogger Snapking because he had failed to comply with the rules on premium-rate numbers. ACM manages the supply of phone numbers in the Netherlands. We make sure that numbers are used for the right purposes. And we take action in case of abuse because that harms consumers. In 2017, we repeatedly received questions and complaints about expensive directory assistance services, and premium-rate services. That is why ACM drew up a policy rule with stricter rules for holders of directory assistance numbers. We may withdraw numbers if their holders fail to comply with the rules. In 2018, ACM will continue with its stricter checks and will intervene actively against abuse of directory assistance numbers.

8

Anticompetitive problems at state-owned enterprises tackled for passengers

In 2017, ACM tackled several anticompetitive problems at two state-owned enterprises: Dutch Railways NS and Amsterdam airport Schiphol. Competition rules do not apply to private undertakings alone. Our oversight also extends to state-owned enterprises, companies of which the Dutch state is shareholder. ACM established that NS had abused its dominant position in the tender process for the public-transport contract in the southern province of Limburg. This harms passengers. NS has filed objections against the fine. In addition, ACM found that there had been interactions between Schiphol and Dutch airline KLM, which entailed anticompetitive risks. These interactions covered, among other things, the reduction of growth opportunities of other airlines. Schiphol and KLM made commitments to ACM about eliminating those risks. ACM did not establish a violation. The commitments help create a level playing field at the airport. That will benefit passengers. 'Competitive neutrality' is one of the key priorities in ACM's 2016-2017 Agenda.

9

Different energy suppliers to choose from

From 2018, consumers and businesses will be able to take out contracts with multiple electricity suppliers on a single connection. For example, consumers will be able to choose a different supplier for their home charging stations (for electric vehicles) than for their home energy. And businesses may choose a different supplier to sell their self-generated electricity back to than the supplier from which they purchase energy. The decision 'Multiple suppliers on a single connection' is based on a proposal put forward by companies in the energy sector, and has been the result of an extensive collaborative effort between ACM and the sector. 'Energy markets in transition' and 'Clear prices and conditions' are key priorities in ACM's 2016-2017 Agenda.

10

Effective competition in telecom and postal services

ACM is dedicated to safeguarding effective competition for businesses, and to creating options for consumers on the telecom and postal-services markets. We do so through our market analysis decisions in which, for example, we set requirements for market participants or we set tariff caps. In 2017, we took decisions on 'fixed telephony' and 'fixed and mobile call termination'. ACM also issued a market analysis decision on the postal-services market. We set the conditions that PostNL is allowed to use for time-critical letter-size mail (24-hour business mail). As a result, senders of business mail continue to have a choice.

11

Stability and a secure investment climate for transmission of natural gas

ACM has set the rules that it will use to determine the level of the annual revenues of Dutch gas transmission system operator Gasunie Transport Services (GTS) for the period of 2017 through 2021. As result of these rules, GTS' revenues will drop by approximately EUR 200 million over the next five years in favor of consumers. It turned out that the decrease in revenues was possible because of an international benchmark study. Based on these rules, ACM annually sets the tariffs that GTS is allowed to charge its buyers. These rules were finalized after discussions with GTS and interest groups. As a result, these parties will not legally challenge various key elements of the rules. Buyers and GTS therefore have more certainty regarding the level of the tariffs for the next few years. This will contribute to stability and a more secure investment climate.

12

Engaging with consumers and businesses

For the effectiveness of our oversight, it is critical to be engaged with all of our stakeholders. In order to engage with consumers and businesses on a constant basis, we increasingly use visuals such as infographics, social media, and awareness campaigns. In this way, we are able to influence more effectively consumer and business behavior. In our campaign 'Don't just order something on social media. Find out first who they really are', we warned consumers against impulse buying on social media such as Facebook and Instagram. ACM also collaborated with popular vloggers on YouTube to reach youth who are particularly susceptible to impulse buying, because they are very active on social media. In addition, we launched an online toolkit that makes it easier for debt counsellors to take action against unfair commercial practices on behalf of their clients. ACM thus sought to reach less-empowered consumers who need debt counsellors to solve their debt problems. In addition, ACM in 2017 again warned against illegal cartels through its anti-cartel campaign 'Cartels never go unnoticed'. In order to provide more insight into how we deal with tip-offs, we put a video online in which we explained that process.

Contents

Foreword from the Board	2
ACM 2017 highlights	3
1 2016-2017 ACM Agenda	12
1.1 Healthy collaborations in health care	13
1.1.1 Collaborations between primary-care providers	14
1.1.2 Collaboration in emergency home care	15
1.2 Energy markets in transition	16
1.2.1 Market integration and better functioning markets	18
1.2.2 ACM strengthens the position of consumers	20
1.3 Digitalization - online consumers	21
1.3.1 Reliability of online reviews	22
1.3.2 Privacy of consumers	23
1.3.3 A closer look at online platforms	24
1.3.4 For now, there is sufficient competition in bundling telecom products	25
1.4 Ports and transport	26
1.4.1 ACM provides education in order to prevent cartels	27
1.4.2 ACM deals with cartels	28
1.5 Clear prices and conditions	29
1.5.1 ACM makes sure consumers have clear information	30
1.5.2 Rates and conditions on the energy market	31
1.6 Competitive neutrality	32
1.6.1 Make full use of the strengths of the market and the government	33
1.6.2 Enforcement of the Dutch law on competitive neutrality	34
2 Consumers	35
2.1 Consumer education	36
2.1.1 Trends on consumer information portal ConsuWijzer	37
2.1.2 Public awareness campaigns in 2017	38
2.2 Consumer protection	40
2.2.1 ACM's rapid interventions protect consumers	41
2.2.2 Attention to vulnerable consumers	42
3 Competition	43
3.1 Competition oversight	44
3.1.1 ACM dealt with price-fixing agreements for batteries of forklift trucks	45

3.1.2	Level playing field at Amsterdam airport Schiphol	46
3.1.3	Competition in the health insurance market.....	47
3.1.4	Competition in the financial sector	48
3.1.5	Explaining competition rules for independent contractors.....	49
3.1.6	Guidelines on publication of hospital tariffs	50
3.2	Concentration control	51
3.2.1	Concentrations in the media sector.....	52
3.2.2	Hospital mergers	53
4	Sector-specific regulation	55
4.1	Regulation of the energy market	56
4.1.1	ACM makes energy affordable.....	58
4.1.2	ACM makes energy secure, and safeguards quality.....	60
4.1.3	Towards a single European market	62
4.1.4	Heat.....	64
4.2	Regulation of the telecom market.....	65
4.2.1	Review of the European telecom framework	66
4.2.2	Safeguarding effective competition and options on telecom markets	67
4.2.3	ACM's oversight of net neutrality	69
4.2.4	New roaming rules	71
4.2.5	Consultation of policy rule on network termination points	72
4.2.6	Oversight of correct use of dedicated mobile codes	73
4.3	Regulation of transport markets	74
4.3.1	Helping realize well-functioning transport markets.....	76
4.3.2	Dutch Railways NS abused its dominant position in regional tender process	77
4.3.3	Schiphol's customers had to be involved better in a recent consultation.....	78
4.3.4	ACM sets maritime pilots' tariffs	79
4.4	Regulation of the postal services market	80
4.4.1	Safeguarding a competitive and innovative postal services sector.....	81
4.4.2	Safeguarding a mail delivery system that is accessible and affordable	82
5	Impact	83
5.1	Impact assessment	84
5.1.1	Impact of our interventions	85
5.1.2	Impact of our campaigns	88
5.1.3	Impact of mergers	89
5.2	Overview of outcome of ACM's work	90
5.3	Outcome of consumer protection	91

5.3.1	Regulation of electricity and natural-gas tariffs in the consumer market.....	92
5.3.2	Unfair commercial practices	93
5.3.3	Price transparency	94
5.4	Outcome of competition oversight.....	95
5.4.1	Cartel agreement concerning batteries of forklift trucks.....	96
5.4.2	Other cartel agreements	97
5.4.3	Concentration of Parnassia-Antes	98
5.4.4	Concentration of Sint Anna-Catharina	99
5.4.5	Correction to the outcome of previous years	100
5.5	Outcome of energy regulation	101
5.5.1	Method decision for transmission system operator of natural gas	102
5.5.2	Subsequent calculations	103
5.5.3	Intervention on the meter market for large-scale users.....	104
5.6	Outcome of regulation of telecom, transport and postal services	105
5.6.1	Market analysis decision for fixed telephony.....	106
5.6.2	Market analysis decision for fixed and mobile call termination (FTA-MTA-5)	107
5.6.3	Market analysis decision for 24-hour bulk mail	108
5.6.4	Abuse of premium-rate number by vlogger Snapking	109
5.6.5	Correction to outcome in previous years.....	110
6	ACM and the courts in 2017	111
6.1	Use of powers	112
6.1.1	Digital-data inspection procedure: mobile phones	113
6.1.2	Use of collected data.....	115
6.2	Role of the government in markets: competitive neutrality.....	116
6.2.1	Ferry flights	117
6.2.2	Passport photo boots	118
6.2.3	Marinas	119
6.3	Impermissible market conduct in tender processes	120
6.3.1	Tender process for home care in province of Friesland.....	121
6.3.2	Cover pricing by demolition firms in tender processes.....	122
6.3.3	Final ruling on foreclosure auctions	123
6.4	Online consumer protection	124
6.4.1	Fine on outdoor company Bever: incorrect information	125
6.4.2	Fine on Shoebaloo 2: incorrect information	126
6.4.3	Fine on Corendon for advertised prices	127
6.4.4	Right of cancellation	128

6.5	Regulated markets	129
6.5.1	Net neutrality	130
6.5.2	Market analysis decision regarding unbundled access 2016-2019	131
6.5.3	Telemarketing fine on Pretium	132
6.5.4	Providing subscriber details to Belgium	133
6.5.5	Ancillary activities of network companies	134
7	Monitors	135
7.1	Energy monitor	136
7.2	Telecom Monitor	138
7.3	Postal and Parcel Markets Scan	140
7.4	Rail Monitor	141
7.5	Number Issuance Monitor	143
7.6	Health Care Monitor	144
8	Key figures	145
8.1	Activities of ACM	146
8.1.1	Investigations	147
8.1.2	Investigations under the Dutch act on competitive neutrality	151
8.1.3	Concentrations	152
8.1.4	Exemptions and licenses in energy sector	153
8.1.5	Sanctions	154
8.1.6	Objections and appeals	155
8.1.7	Requests under Dutch Act on Public Access to Government Information	157
8.1.8	Indications submitted by consumers	158
8.1.9	Indications submitted by businesses	161
8.1.10	Spam complaints board Spamklacht	162
8.1.11	Numbers and issuance	163
8.2	About ACM	165
8.2.1	Board, departments, and staff	166
8.2.2	Integrity	169
8.2.3	Complaints against ACM or ACM employees	170
8.2.4	Satisfaction with ConsuWijzer and ACM	171
8.2.5	ACM Academy	172
8.2.6	Cooperation	173
9	Annual statement of accounts ACM	175
9.1	Annual statement of accounts of ACM Organization	176
9.1.1	Expenditures of ACM organization	177

9.1.2	Income of ACM organization	179
9.1.3	Outstanding receivables of ACM organization	181
9.2	Breakdown of expenditures along market organizations.....	182
9.3	Annual account of ZBO ACM	185
9.3.1	Expenditures and income of ZBO ACM	186
9.3.2	Corporate services of ZBO ACM.....	187

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 compete with each other, and so do health insurers. But these market participants also collaborate in many different ways in order to improve quality, efficiency, and innovation in health care.

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 2017

In 2017, ACM focused its efforts on healthy collaborations in health care. Some of our successes of the past year include:

- Primary-care providers are now less likely to get cold feet with regard to collaborations between health care providers;
- However, it is clear that there are limits to such collaborations such as organizing a collective boycott of a health insurer's contract proposal;
- Home care providers, too, take advantage of the room for cooperation with regard to home care.

In the past year, too, we regularly reviewed collaboration plans or self-assessments of health care providers or health insurers.

ACM's contributions to meetings about competition and cooperation

In 2017, 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:

- April 2017: The national conference 'Horizontal oversight in health care' (in Dutch: 'Horizontaal toezicht zorg'), where we, together with the Dutch Healthcare Authority NZa, gave a workshop on 'Healthy collaborations in health care' (in Dutch 'Gezond samenwerken in de zorg').
- April 2017: the 2017 Masterclass 2017 of Medical Business with a contribution about 'Competition law in mergers and alliances.'
- May 2017: An international scientific conference about competition in the hospital sector organized by Erasmus University Rotterdam, the Dutch Healthcare Authority (NZa) and ACM.
- September 2017: a policy seminar organized by the Netherlands Bureau for Economic Policy Analysis (CPB) about 'Room for differences between health insurers.'
- September 2017: A meeting of the Netherlands Federation of University Medical Centres (NFU) about 'Competition oversight and collaboration between hospitals.'

1.1.1 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.

In 2016, ACM published the document '[Monitoring the Basic principles for ACM's oversight of primary care providers](#)' (in Dutch). This document revealed that the first reports about the Basic principles' effectiveness have been positive. In 2017, we assessed whether the [Basic principles for the oversight of primary care were effective](#) (in Dutch). In this evaluation, we examined to what extent health care providers, health care procurers and patient organizations were familiar with and understood the Basic principles. We subsequently analyzed what the effect of the Basic principles was on the actions of health care providers and on ACM's regulatory style. The evaluation has revealed that the Basic principles have reduced the restraints exhibited by health care providers, and that they have created more calmness and latitude. Furthermore, familiarity with the Basic principles could improve. That is why we adjusted our website. If trade associations give us real-world examples, we can use those in our education. ACM encourages health care providers to involve health insurers and patient organizations more when drawing up collaboration initiatives.

Limits to cooperation: collective boycott

ACM's regulatory efforts are aimed at those types of collaborations that have drawbacks for patients and insured. This could be, for example, if primary-care providers decided to defend their business interests collectively.

In October 2017, we received reports about [primary-care providers collectively refusing contracts](#). Such collective boycotts are a violation of competition rules. Collective boycotts could lead to price increases without any improvements for patients and the insured in return. This will unnecessarily drive up health care costs.

Following these reports, ACM sat down with various parties involved. In these discussions, ACM explained the boundaries of collaborations in negotiations. In 2018, we will enter into a dialog with several trade associations in primary care. In consultation with them, we wish to decide on possible steps in order to prevent these established norms from being violated in the next few contracting periods.

1.1.2 Collaboration in emergency home care

In 2017, ACM looked into the [room for collaborations in emergency home care](#). Emergency home care is available 24/7. It consists of specialized nurses who can be reached by phone, consultations concerning the need for care and referrals (triage), and arranging visits from health care providers.

Cooperative health care institution Thuis & Veilig asked ACM to review their plans for procurement of emergency home care from regional providers, bundling this care, and selling it at a national level to health insurers. ACM concluded that the benefits of this collaboration are greater than its potential anticompetitive risks.

Few anticompetitive risks

ACM has estimated that the potential anticompetitive concerns resulting from the collaboration regarding emergency home care are small. This is because the collaboration has, partly in consultation with ACM, been designed in such a way that sufficient choice and sufficient competitive pressure will continue to exist. Thuis & Veilig procures this care from various providers through a public tender process. And clients will continue to have complete freedom of choice for regular home-care providers. Health insurers, too, will have something to choose from as they can also buy emergency home care from providers that are not a member of the cooperative.

Benefits for consumers

The planned collaboration of Thuis & Veilig leads to benefits in quality, continuity, and affordability of emergency home care for patients and insured. Emergency home care no longer has to be provided on a small scale by each home care provider. This ensures the continued availability of emergency home care and a more efficient spending of municipal health care funds.

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?

The increased volatility of electricity generation will, in any case, call for more flexibility in energy consumers' demand. Higher energy prices at certain times of the day when there is little supply, and lower prices when there is great supply may help create more flexibility. This requires adjustments to the way consumer electricity prices are determined. In that context, system operators are statutorily charged with safeguarding the reliability of their grids. It may help in adjusting the rules, where necessary, in order to help distribute flexibility in supply and demand in other ways too, thereby being able to ensure secure grids in a more efficient manner.

In order to achieve the aims of the Paris Climate Agreement, natural-gas consumption in built-up areas will have to make way for sustainable alternatives such as district heating, all-electric solutions or perhaps the use of hydrogen as an alternative to natural gas. The heat transition will have major implications for all market participants, especially for the natural-gas system operators.

In the energy transition, too, affordability of the energy supply continues to be one of ACM's main objectives. That is why we consider it our role to let the entire process (and its individual steps) towards a sustainable energy supply take place efficiently, and, in that process, to continue to comply with the preconditions of security of supply. We do so by:

1. Continuing to work towards well-functioning markets and market integration;
2. Giving system operators the opportunity to recoup their efficient costs, thus enabling system operators to make investments, and preventing consumers from paying more than necessary;
3. Empowering consumers on the market (including the new one), stimulating them, and protecting them where necessary.

In the past year, ACM carried out the following activities, among other activities, to realize the sustainability goals in an efficient manner.

Multiple power suppliers on a single connection

From 2018, consumers and businesses will be able to take out contracts with multiple electricity suppliers on a single connection. This has been revealed by ACM's decision 'Multiple suppliers on a single connection' (in Dutch: [Meerdere leveranciers op een aansluiting](#)). This decision is based on a proposal put forward by companies in the energy sector, and has been the result of an extensive collaborative effort between ACM and the sector.

As a result of this decision, consumers will be able to choose a different supplier for their home EV charging stations than for their home energy. This is particularly important for when electric vehicles become even more popular. And businesses may choose a different supplier to sell their self-

generated electricity back to than the one from which they buy power.

ACM's participation in the roundtable discussion about the Progress of the Energy Transition bill (VET) in the Dutch House of Representatives

ACM took part in the roundtable discussion about the Progress of the Energy Transition bill (VET) in the Dutch House of Representatives on January 17, 2017.

In its [contribution](#), ACM argued to give the market the opportunity as much as possible to function properly in the energy transition. That will result in innovation and competitive prices. Market participants must be able to make optimal use of the grid. Distribution system operators (DSOs) must facilitate them by focusing on their core task: providing access to the grid, and transmitting power at efficient costs. Also, network companies (which DSOs are a part of) must limit their activities. That is how we want to prevent DSOs from being exposed to irresponsible commercial risks, and to prevent market participants from being put at a disadvantage. With this vision, ACM supports the division of roles laid down in the Progress of the Energy Transition bill (VET). ACM was in favor of the bill being passed quickly by the House. The House debated the bill in January 2018.

Organization of seminar about European Commission's Energy Package

In March 2017, ACM organized a seminar about the package of energy measures presented by the European Commission ('*Clean Energy Package for all Europeans*'). ACM invited suppliers, producers, leaders of local initiatives, system operators, environmentalists, scholars, and the government to discuss about what the Energy Package would mean for the Dutch energy market and the ambitions with regard to sustainability.

Some of the most important conclusions from this seminar were as follows. The Energy Package can, by changing the electricity market, help promote the sustainability process, and help strengthen the position of consumers. However, there are also concerns that the European Commission has too far-reaching ambitions to bring about harmonization and to impose obligations on member states. Harmonization is desirable if there is sufficient room for customization at the national level.

The most important thing is that consumers have freedom of choice, but the question is whether consumers always have the ability to make a choice themselves. One of ACM's critical tasks is to inform consumers properly, thereby helping them in that choice process; in order to promote consumer participation on the energy market, any concerns that they have should be alleviated as much as possible.

Contributions to OECD and European Commission meetings about the energy transition

In June 2017, ACM attended an OECD meeting on innovation and energy. We gave a presentation about our vision on the options for improving the functioning of the energy market. Also in June 2017, we gave a presentation at a meeting of the European Commission on digitalization in the energy sector. This was organized as part of the *Sustainable Energy Week*.

1.2.1 Market integration and better functioning markets

One of ACM's aims is the realization of better functioning markets and market integration.

Strengthening the European market

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 2017, 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. We actively contributed to the drawing up of joint white papers on various elements of the Clean Energy for all Europeans Package (CEP). This legislative package of the European Commission aims to make possible the integration of large volumes of sustainable energy production (especially wind and solar) in the European electricity market, and, at the same time, to strengthen that market. The *'white papers'* contain a first assessment of the European Commission's proposals, and, where necessary, suggestions for changes. In addition, the European approach, which we pursue, applies especially to our efforts with regard to the creation of a European imbalance market with effective price incentives. The necessity thereof increases with the energy transition, particularly because of the greater volatility of the future electricity production.

In the final months of 2017, the Electricity Balancing Guideline and the Emergency & Restoration Network Code came into effect. These were the last two European directives on electricity that came into force, thereby completing the legislative process of the third package. ACM can now fully focus on the implementation process. As part of the implementation of the European Directives on Electricity, ACM this year took approximately 20 decisions. Examples include:

- How transmission system operators (TSOs) determine the model with which cross-border capacity is calculated;
- How nominated electricity market operators (NEMOs) collaborate in shaping the European day-ahead and intraday market coupling;
- How TSOs will set up and design the Single Allocation Platform and the allocation of costs associated with the auctioning of long-term transmission rights;
- What emerging technologies are largely exempted from European requirements for electricity producers.

Rendo and Cogas to set themselves apart from affiliated commercial firms

Distribution system operators [Rendo and Cogas will differentiate themselves completely from their affiliated commercial companies](#) in terms of name and logo. They have made that commitment to ACM. As a result, the commercial companies are no longer able to benefit improperly from the brand recognition of the system operators they are affiliated with. ACM wants consumers to see clearly who they are dealing with: the system operator that performs statutory tasks such as the transmission of electricity and natural gas, or a commercial company that is affiliated to that operator. Consumers need to know that, for the commercial services, they are often also able to turn to another company. If this is unclear, competitors without system operators are at a disadvantage. ACM wants consumers to see that they have options.

ACM fines Westland Infra Netbeheer for supplying energy meters

ACM imposed [a fine of EUR 600,000 on distribution system operator Westland Infra Netbeheer](#) for supplying gas meters and electricity meters to large-scale users between 1 January 2013 and 1 January 2017. Westland Infra Netbeheer violated the Dutch Electricity Act and the Dutch Gas Act by supplying gas meters, and by supplying electricity meters outside its own distribution area. If system operators were to engage in commercial activities such as supplying certain meters for large-scale users, it could have an anticompetitive effect. Competitors would be put at a disadvantage, since system operators, given their public task, have access to customer data, and are able to benefit from their name recognition. Furthermore, these activities pose financial risks to system operators. By taking such risks, system operators make it more likely that their statutory task of ensuring a smooth transmission of energy comes under pressure. An appeal has been filed against ACM's decision.

1.2.2 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. By the end of 2016, approximately 3 million households had 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 impede innovation. We actively participate in discussions with the sector about charting the best course towards sustainability.

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.

For example, ACM imposed [a fine of EUR 1 million on an energy provider](#) for the incorrect registration of customer data in the Dutch central registry of energy companies. Having reliable data in this registry is essential for a well-functioning energy market. If the data is incorrect, consumers will be misinformed about their options, and providers will be unable to compete fairly with one another. The company in question filed an appeal against ACM's decision. That appeal process has continued into 2018.

Cooperation

We work closely together with other regulators that play an important role in the energy market such as the Dutch Data Protection Authority (AP). The AP makes sure that energy firms handle personal details securely 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 2017

Over the past year, we focused on the following:

- Getting an overview of the reliability of online reviews
- Raising consumer awareness of the risks associated with impulse buying over social media
- Protecting consumer privacy online
- Identifying the pros and cons of online platforms
- Assessing whether bundling of telecom providers poses problems

1.3.1 Reliability of online reviews

Since such reviews play an increasingly larger role in the decision-making process of consumers, it is critical that they are reliable.

In 2017, ACM carried out [a study into the reliability of online reviews](#). ACM has not found any indications of structural problems at this point. However, we do see a risk for consumers being misled, and for harm to businesses in the future, especially as a result of the lack of transparency as well as of methods that lead to reviews being displayed in a misleading fashion.

In order to ensure the reliability of online reviews in the future as well, ACM reminds companies of the rules they should follow, such as:

- Inform consumers on how reviews are aggregated and presented;
- Treat positive and negative reviews equally as much as possible;
- Publish reviews as soon as possible. This should be done, in any case, on the date of publication and not on the date of writing. If the review that was written earlier is published on a later date but contains the date of writing, it will not end up at the top of the search results, and would thus be difficult to find;
- Be transparent about the circumstances in which the reviews were written, such as 'reviewers were allowed to test this product for free', 'the reviewer received a remuneration for writing this review', or 'this review was edited after deliberation with the company', etc.

Having interacted with ACM, 4 major review sites have indicated they will apply these rules.

1.3.2 Privacy of consumers

Websites of companies cannot just track the surfing behavior of their visitors, not with cookies nor with any other technologies that can gain access to the computers of visitors. Non-functional cookies, which have implications for the privacy of consumers, can only be stored if consumers have given their consent. ACM makes sure that websites that track surfing behavior comply with the rules.

Medical websites change their cookie policies

ACM requested [several medical websites to stop storing and accessing information through cookies and similar techniques without user consent](#). The Dutch Consumers' Association (Consumentenbond) had established that this was being done by websites with information about diseases, addictions, and general health issues. Websites are not allowed to store cookies that record a user's browsing behavior without the user's consent. They are required to ask users for their consent. These rules apply to all websites, but privacy is an even more delicate issue for health websites.

Stemwijzer.nl removes advertisement cookies

ACM and the Dutch Data Protection Authority (the Dutch DPA) have contacted the webmaster of [StemWijzer.nl, a Dutch voting advice website, regarding the use of advertisement cookies and the security of the website](#). Websites that want to store or access advertisement cookies are only allowed to do so after visitors have been informed about such cookies, and after they have consented to them. Since StemWijzer.nl also processes data about the political preferences of visitors via its website, it deals with sensitive personal data. StemWijzer.nl is only allowed to process such data for advertisement purposes if visitors have explicitly consented to this.

1.3.3 A closer look at online platforms

Online platforms bring together different groups of users such as, on the one hand, providers, and, on the other hand, consumers. In 2017, we published the results of our studies into online video platforms and online hotel booking sites.

Constant attention for competition in digital markets

The rapid developments in digital markets call for constant attention. The importance thereof is underlined by the ambition of the current Dutch cabinet as revealed in its coalition agreement '[Confidence in the Future](#)'. In it, special attention is called to "digital competition". Since the potential problems in this area are usually broader in scope than just competition, ACM will work together with other regulators. In late-2017, we announced that [ACM and the Dutch Media Authority \(CvdM\) would launch a joint study into whether online platforms have an impact on the freedom to gather news and on media diversity](#). And together with the British Competition and Markets Authority (CMA) and the Italian Competition Authority (AGCM), we looked into the challenges for oversight of coordination (including price coordination) through algorithms. Chris Fonteijn, Chairman of the Board of ACM, [announced this at the annual Conference on Developments in Competition Law](#) (in Dutch).

No indications for anticompetitive risks with regard to online video platforms

In 2016, we launched a market study into online video platforms. Michiel Denkers, Director of ACM's Competition Department, explained in a [video the role of online platforms and talked about the market study into video streaming platforms](#) (in Dutch). ACM carried out this study in order to gain more insight into the functioning, the market participants, and the dynamics of this part of the online economy.

In August 2017, we published [a study 'A close look at online video platforms'](#). In it, we first explain how the market for online video platforms functions. Then we analyze several scenarios where anticompetitive risks can arise. Based on our market study, we currently do not have any indications for anticompetitive concerns with regard to online video platforms. There is sufficient competition among market participants, and the market is sufficiently dynamic. However, the likelihood of anticompetitive concerns and the impact thereof are strongly related to future market developments. That is why we will continue to keep a close watch on those developments. ACM also conducted a preliminary study into the general terms and conditions that online video platforms use vis-à-vis consumers. That study confirmed that some conditions are unfair, for example, certain conditions deny consumers certain rights. These types of conditions are not unique to video platforms. They can be found in many online services. ACM has expanded the investigation into such conditions, together with its European counterparts.

More variation in hotel options after relaxation of conditions of hotel-booking websites

Together with nine other competition authorities in Europe and with the European Commission, [ACM carried out a joint study into the effects of the relaxation of the terms and conditions used by hotel-booking sites](#). Booking.com and Expedia had previously demanded of hotels always to offer on their platform the lowest price for an overnight stay. Under pressure from several European competition authorities, Booking.com and Expedia relaxed their conditions in 2014. These competition authorities had concerns that this 'lowest price guarantee' would harm competition between the various booking websites. ACM studied the effects of this measure specifically for the Netherlands. The joint study revealed that there is more competition and there are more options for consumers in the online hotel-booking sector. It also revealed that nearly 50% of the investigated hotels (in the Netherlands, 40%) were unaware that the conditions of hotel-booking websites had been relaxed. So far, they have thus not been able to take advantage of the latitude that they had been given.

1.3.4 For now, there is sufficient competition in bundling telecom products

In July 2017, ACM published [a study into bundling of telecom services and content](#). It showed that, for now, there is sufficient competition on the telecom market, despite the trend of bundling telecom products in all-in-one packages.

The impact of all-in-one packages

This has been the conclusion of ACM after its market study into the impact of all-in-one packages on the telecom market: fixed telephony, mobile telephony, broadband access, and television services. Providers also add exclusive content to packages, such as free movies, series, or sports broadcasts. This can be attractive to consumers.

However, bundling can also create anticompetitive risks in the long term. For example, consumers may be less likely to switch. Also, bundling can have negative effects on smaller providers. They often depend on regulated access to fixed networks. And, because they are smaller, sometimes they can only buy content at less favorable conditions. As a result, there is a risk that these smaller providers will eventually disappear from the telecom market.

Monitoring

For healthy competition, it is important that smaller telecom providers with competitive prices also exist. We will continue monitoring the market, with said potential risks in mind. In addition, we keep a close watch on how availability of packages (including the individual components thereof) and content further evolve. ACM is currently assessing what regulation is needed for the next few years in order to ensure sufficient competition continues to exist.

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.

In 2017, we again called attention for cartels in our [campaign 'Cartels never go unnoticed'](#). In 2016, we launched this campaign as part of 'Ports and transport', which was one of the key priorities on the ACM Agenda, in order to raise awareness about cartels, and to call on everyone to report cartel activities. The campaign kicked off with [a video that put a humorous spin on ACM's investigation methods](#).

What did we accomplish in 2017?

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

In 2017, our educational efforts about the prevention of cartels consisted of the following activities:

- We provided information to 3,500 businesses operating in the ports or in port-related sectors about the basic rules on fair competition;
- For businesses operating in the port sector, we launched an online 'Cartel Test for the Port Sector'. With this tool, businesses are able to check quickly and easily to what extent they run the risk of violating competition rules;
- We identified the risks associated with exchanging competition-sensitive information about the ports and transport sector;
- At a seminar, Chris Fonteijn, Chairman of the Board of ACM, sat down with businesses operating in the port sector discussing the competition rules;
- We took a critical look at potential anticompetitive risks of the 'Employment security agreement for the container sector in Rotterdam.'

As part of our effort to deal with cartels, we carried out the following activities in 2017:

- We launched an investigation into a possible cartel in the bunker sector;
- A collaboration with our colleagues from the German competition authority led to settlements in the towage sector.

1.4.1 ACM provides education in order to prevent cartels

In 2017, ACM took steps to help prevent cartels in the ports and transport sector. We used different types of educational measures in that effort.

ACM calls port industry's attention to competition rules

In May 2017, ACM sent a letter explaining [the basic rules regarding fair competition](#) to over 3,500 businesses based in Amsterdam and Rotterdam that are active in the ports of those cities. We did so because a previous study held among businesses in the ports and transport sectors had revealed that businesses were insufficiently aware of the basic rules regarding fair competition. Approximately 20 percent of the companies did not know that price-fixing agreements are illegal. And more than half of the firms did not know it is prohibited to make customer-sharing arrangements with competitors.

Launch of 'Cartel Test for the Port Sector'

For businesses operating in the port sector, ACM launched an online '[Cartel Test for the Port Sector](#)'. With this tool, businesses are able to check quickly and easily to what extent they run the risk of violating competition rules. The test can be filled out anonymously.

Risks of exchanging competition-sensitive information

ACM held discussions with businesses and trade associations in the ports and transport sectors about how and in what ways information is exchanged. Exchanging competition-sensitive information between firms could constitute a cartel. In most situations, any information about prices, inventories, customers, offers, investments, and market shares is considered competition-sensitive. If companies have competition-sensitive information about their competitors, some of the uncertainty about their competitors' actions is taken away. It could also lead to coordination between companies. That is why [ACM identified the anticompetitive risks of the exchange of competition-sensitive information](#).

Holding a dialog with the Port of Amsterdam: 'Improving knowledge'

In collaboration with ACM, the Port of Amsterdam and trade association ORAM in December 2017 organized a seminar on competition. [Chris Fonteijn, Chairman of the Board of ACM, sat down with businesses active in the port sector about competition rules](#) (in Dutch). All agreed on one thing: competition rules are important. Competition leads to a flourishing industry and to innovation. Furthermore, competition makes sure that the port of Amsterdam is able to compete at an international level. A previous study done by VU University Amsterdam revealed that businesses in the ports sometimes know too little about competition rules. ACM, the Port of Amsterdam and ORAM are committed to improving the knowledge among market participants.

No anticompetitive concerns over agreement on employment in Rotterdam harbor

In early-2017, ACM did not see [any anticompetitive concerns over the 'Employment security agreement for the container sector in Rotterdam'](#). The objective of this agreement is to prevent forced layoffs as much as possible as a result of automation in the industry. This Employment security agreement contains several temporary measures such as seconding or temporarily hiring workers, and expanding a program for older employees (called SHFR), where they are able to stay in the same job but work fewer hours. The Employment security agreement is a concrete example that the Port of Rotterdam has submitted to ACM, and for which it wants clarity from ACM about competition rules. The measures in the Employment security agreement have not been fleshed out sufficiently enough in order to conduct a careful competition-law assessment. However, as long as the temporary measures are fleshed out in line with the objective of the Employment security agreement, ACM does not see any reason to take action. With our educational efforts, we prevent businesses from unnecessarily exercising restraint vis-à-vis collaborations.

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.

Investigation launched into possible cartel in bunker sector

In July 2017, ACM [launched an investigation into a possible cartel in the bunker sector](#). Several companies may have concluded illegal price-fixing agreements. In the bunker sector, marine gas oil and fuel oil are produced, processed, traded, stored, and transported. Marine gas oil and fuel oil are fuels that are used to power ships. This investigation involves companies that are active in the ports of Amsterdam, Rotterdam and Antwerp.

The Dutch Public Prosecution Service (OM) provided ACM with valuable information about the bunker sector coming from the police. That information was one of the reasons to launch this investigation. ACM has already conducted several dawn raids in this sector. ACM will assess whether the Dutch Competition Act has indeed been violated. If a violation has been established, then the parties will be heard first before any violation can be established definitively, possibly followed by a sanction. ACM could also come to the conclusion that no violation has been committed.

Collaboration between Bundeskartellamt and ACM leads to settlements in towage sector

In late-2017, the German competition authority, the Bundeskartellamt, announced it had reached settlements with three undertakings and their executives, totaling approximately EUR 13 million in connection with their involvement in a cartel in the harbor towage sector. [These settlements have been the result of investigations that ACM and the Bundeskartellamt launched in November 2014 into harbor towage service providers in the Netherlands and Germany](#). A total of four undertakings have acknowledged their involvement in cartel activities.

The [Bundeskartellamt's press release](#) revealed that German and Dutch harbor towage service providers had concluded cartel agreements since 2000/2001. These were market-sharing agreements for several German ports. Towage service providers use harbor tugs, which tow larger vessels in and out of the harbor.

Said investigations had been triggered by leniency requests coming from the sector. As part of these investigations, ACM and the Bundeskartellamt took advantage of the opportunities that European competition authorities have for exchanging information and coordinating investigations.

1.5 Clear prices and conditions

These days, consumers are able to choose from many different options. But are consumers also able to make a sound 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 will help create unfair competition.

What did we accomplish in 2017?

In 2017, we took action on multiple occasions against companies that had failed to inform consumers in advance correctly.

1.5.1 ACM makes sure consumers have clear information

In 2017, ACM took action against different market participants that had failed to provide consumers with clear tariffs and conditions. These actions resulted in:

- The inclusion of all unavoidable costs in the prices of online tickets for concerts, theatre shows and festivals;
- The inclusion of 'closing fees' in all car prices.

Prices of online tickets for events now include unavoidable costs

An assessment the major online providers of tickets for concerts, theatre shows, and festivals by ACM revealed that [prices of online tickets for concerts, theatre shows, and festivals are now displayed with all unavoidable costs included](#). Previously, customers were often confronted with additional costs during the booking process, such as administrative costs or print costs. ACM had therefore called on providers to adjust their pricing.

Consumers are now able to see at the start of the booking process what a ticket will cost them, including all unavoidable costs. This will enable them to compare prices better. Providers are able to compete more fairly on price.

Dutch car industry has included the unavoidable costs in car prices

In 2016, ACM instructed [the Dutch car industry to make the prices of new cars more transparent](#). Following a study conducted by ACM, it turned out that consumers almost always ended 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.

That is why ACM instructed all 29 car importers and their dealers to include all unavoidable costs in their advertised prices. Having carried out a follow-up check, [ACM established that the advertised prices of new cars now include the unavoidable 'closing fees' \(or 'on-road costs'\)](#).

1.5.2 Rates and conditions on the energy market

In 2017, ACM conducted investigations into the verifiability and ease-of-understanding of energy bills.

ACM takes action against unclear energy bills

Of the 40 energy providers whose energy bills ACM examined, 16 providers issued clear bills on the reference date of July 1, 2017. 21 providers still needed to take several steps in order to get there. However, three providers performed so badly that ACM announced orders subject to periodic penalty payments. [Eventually, two of these were indeed imposed orders subject to periodic penalty payments.](#) ACM's measures are the final piece in a process ensuring that energy companies provide information that is clear and easy-to-understand about their offers, the contracts, and bills. Consumers must be able to verify whether providers deliver what they had agreed to, and at what price. In 2018, too, ACM will continue to make sure that energy providers provide clear and easy-to-understand information.

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 2017?

In 2017, 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.

In 2017, ACM also dealt with anticompetitive problems at two state-owned enterprises, which were Dutch Railways NS and Amsterdam airport Schiphol. ACM established that Dutch Railways NS abused its dominant position in the 2014 tender process for the public-transport contract in the southern Dutch province of Limburg. Furthermore, ACM found that KLM Royal Dutch Airlines (KLM) and Amsterdam Airport Schiphol had interactions that carried anticompetitive risks.

1.6.1 Make full use of the strengths of the market and the government

Make full use of the strengths of the market and the government. That is the central message that ACM put forward in [the 2017 edition of 'InSight'](#) (in Dutch: Het Signaal). In ACM's view, combinations of government and market often offer the best outcomes for society.

What was InSight 2017 about?

In the 2017 edition of InSight, we presented several examples showing what the strengths of the market are, and how markets are able to safeguard public interests. We also indicated the areas where markets are not up to the task. That is where the government has a clear role. In the 2017 edition of InSight, ACM makes three recommendations on how to make full use of the strengths of government and the market. All three of these recommendations fall under the heading of 'high trust, high penalty':

1. Create trust by offering clarity about the rules;
2. Offer more latitude for individual responsibility;
3. Take advantage of that trust, but monitor the outcome.

As long as the government sets the boundaries, making effective use of the market can benefit consumers and public interests.

What is InSight?

ACM is an active participant in the public debate. InSight is an annual publication of ACM, in which we call attention to societal developments and policy questions that are important to our oversight.

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 on competitive neutrality, the Dutch Act on Government and Free Markets. This act is part of the Dutch Competition Act.

The Dutch law on 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.

Competitive neutrality in 2017

In the past year, ACM achieved the following results, among other results:

- [Royal Netherlands Navy stops unfair competition with wholesalers](#)
- [Dutch town of Veenendaal favored own municipal car parks](#)
- [Dutch municipality to reimburse costs for commercial conservators](#)

Appeal proceedings in the case involving the municipality of Veenendaal are still ongoing.

We explain in our guidelines and decisions how municipalities should calculate the integral costs. In that way, other municipalities are able to see how ACM assesses the calculations of the 'integral costs' and what activities are considered 'economic activities'.

Order subject to periodic penalty payments on municipality of Heerhugowaard

In 2017, [the Dutch municipality of Heerhugowaard had to pay a penalty payment of EUR 5,000](#). This was because Heerhugowaard issued a decision designating a service of general economic interest too late.

In early-2016, ACM concluded that [Heerhugowaard 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 applied. It issued this decision too late, and hence, it had to pay a penalty payment.

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. The questions and indications ConsuWijzer receives are a critical source of information for ACM's investigative and oversight efforts.

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 2017, the website was visited over 3 million times.

Front office and back office of ConsuWijzer

Consumers are able to contact the front office and back office of ConsuWijzer with their questions and indications, either in writing or by phone. A team of legal experts will answer all consumer questions. In 2017, ACM experimented with communicating over WhatsApp for these interactions.

In 2017, this team handled almost 57,000 calls and emails from consumers. According to customer satisfaction surveys in 2017, consumers gave a mark of 8.2 (from a scale of 1 to 10) for ConsuWijzer's interaction over the phone (in 2016, this was 8.1). Consumers gave a mark of 6.8 (in 2017, this was a 6.9) 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 2017, 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 2017, ConsuWijzer posted 56 messages on Facebook. These messages were displayed 12.9 million times, and were liked, shared and commented on approximately 100,000 times. The main reason behind this high level of reach is the sponsoring of messages as part of the ConsuWijzer campaigns. In late-2017, ConsuWijzer had over 44,000 fans on Facebook, and 6,700 followers on Twitter. ConsuWijzer posted 48 tweets in 2017.

In 2017, 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 2017. In addition, we have gained valuable insight into several popular topics.

Trends on ConsuWijzer in 2017

In 2017, the ConsuWijzer.nl website was visited over 3 million times: this is an increase of 9% compared with 2016. The tools, sample letters, and the step-by-step guides have also been used more than the previous year. As in previous years, the more than 100 sample letters have proven to be very popular. They have been viewed almost 500,000 times.

Another striking result is that the number of questions and indications sent by e-mail has increased, whereas that number had been decreasing for years. In 2017, ConsuWijzer also experimented with communicating over WhatsApp. Consumers were able to reach us easily on that channel.

What topics were popular in 2017?

We are seeing an increase in the number of problems with online purchases. This includes many problems with product samples and unsolicited follow-up shipments. Online selling is increasingly done using social-media channels such as Facebook and Instagram. Since many online retailers operate internationally, we see at the same time an increase in cross-border problems. In these cross-border situations, it is often difficult to determine what laws are applicable.

In addition, many consumers are contacted over the phone with offers for subscriptions to exclusive deals or for participating in lotteries. It then turns out it is difficult to get rid of such offers. And, in many cases, problems with debt collection agencies subsequently arise. Finally, it is noteworthy that independent contractors and other small businesses often assume that consumer protection law also applies to their business expenses. Since consumer protection law does not apply to business expenses, ConsuWijzer cannot help this target group.

The most frequently heard topics for which consumers contacted ConsuWijzer:

- “How do I get rid of unsolicited follow-up shipments or subscriptions?”
- “How do I cancel subscriptions or contracts?”
- “The product is faulty, what can I do?”
- “What are my rights in the case of distance-buying (in an online store, over the phone or on the street)?”
- “What are rights when roaming: calling, texting and surfing when abroad?”

2.1.2 Public awareness campaigns in 2017

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. 'Don't just order something on social media. Find out first who they really are'
2. 'Online reviews? See further than the end of your nose'
3. 'Say no to unsolicited telemarketing'
4. 'Take action and protect your online privacy'

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: 'Don't just order something on social media. Find out first who they really are'

It is getting easier and easier to purchase products or services directly using social media. With this campaign, we sought to make consumers aware of the risks of impulse buying on social media. And we gave them tools to prevent problems. The campaign targeted individuals who use social media a lot, regularly make online purchases, and specifically young people between the ages of 15 and 25.

Concept

"Ordering cool sneakers on Instagram? They're just a few clicks away." But from whom do you actually buy them? In order to make consumers aware of these types of questions, we placed video ads of our own on Facebook, Instagram, YouTube and Marktplaats (one of the leading classified ads sites in the Netherlands). A couple of seconds into the ads, the characters came to life, and revealed that, behind the pretty façade, there may be a fraudulent or unprofessional entrepreneur, with all the consequences that such scenarios entail. The ads contained links to the Online Shop Check of ConsuWijzer. The Online Shop Check offered consumers useful tips on how to check an online store's trustworthiness.

Strategy

The campaign used the same platforms that sellers on social media use themselves: Facebook, Instagram, YouTube and Marktplaats. Furthermore, we hired two well-known YouTube stars (StukTV and Anna Nooshin) in order to reach Dutch youth in particular.

Results

Free-publicity (organic) reach:

- The campaign's press release was picked up by practically all relevant national media. It drew a lot of attention from radio, television, newspapers (national and regional), and from media for consumers, youth and the public in general. Reach: 5 million people.
- Through partners who shared our message, we were able to reach an additional 0.5 million people.

Paid reach:

- The 5 campaign videos realized a paid reach of 17 million impressions, and a unique reach of several million people who were presented the campaign four times on average.
- The 2 influencers, StukTV and Anna Nooshin, reached over 1 million views and almost 100,000 likes with their YouTube video, and Story and posts on Instagram. Moreover, at least half of the StukTV's video was viewed by over 50% of the 500,000 youth.
- Over 35,000 people clicked on the link to the Online Shop Check.

We have measured the effects of this campaign. For the results, go to section 5.1.2.

Campaign: ‘Say no to unsolicited telemarketing’

In national newspapers and on social media, ACM in October called on consumers to ignore unsolicited telemarketing calls. We also offered three tips on how to act in such situations:

1. “Do not say yes just to get it over with”
2. “Exercise your right to object”
3. “Do not give away your details just like that”

The press release was picked by many national media. And on social media, the mini campaign was presented almost 200,000 times to the target audience, and generated approximately 7,000 clicks.

Campaign: ‘Take action and protect your online privacy’

As part of the annual, national public awareness campaign Alert Online organized by veiliginternetten.nl, a governmental platform, ACM in the fall ran a mini campaign on social media. With the tagline “Take action and protect your online privacy,” we gave 3 tips on how to protect your online privacy. Our Facebook messages generated over 125,000 impressions and approximately 4,000 clicks.

Campaign: ‘Online reviews? See further than the end of your nose’

In the spring, we pointed out to consumers the pros and cons of online reviews posted by customers. With the tagline “Online reviews? See further than the end of your nose,” we offered a checklist to assess the trustworthiness of such reviews. The mini campaign had a reach of 113,000 impressions. The press release, too, was picked by most national media and media for the general public.

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 2017, 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 2017, 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 that providers of online tickets for concerts, theatre shows, and festivals now display their prices with all unavoidable costs included. Providers must clearly inform consumers about the prices and all associated costs prior to the purchase, and about what they can and cannot expect from the purchase.

Consumer problems with a significant impact on society

Some consumer problems also have a significant impact on society. In 2017, ACM established that [Volkswagen AG \(Volkswagen\) had misled consumers when selling its diesel cars with type EA 189 engines](#). Volkswagen advertised these cars as environmentally friendly, while the results of emission tests had been manipulated by illegal software. As ACM had established unfair commercial practices, it imposed a fine of EUR 450,000 on Volkswagen. This is the maximum fine that ACM is able to impose in this case. Volkswagen filed an appeal against this fine. These appeal proceedings will last through 2018.

In 2016, ACM launched [an investigation into the use of modified software in Volkswagen diesel cars](#). This investigation was triggered by the request filed with ACM by the Dutch Consumers Association (Consumentenbond) asking ACM to launch such an investigation.

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.

ACM urges provider of computer maintenance services to give clearer information

[ACM sat down with the owner of Direct PC](#), which offers subscriptions to service contracts for computer maintenance services, following complaints from older consumers in particular. The company subsequently adjusted its selling methods straight away. Direct PC no longer pressures consumers to agree to an offer when selling door-to-door. Moreover, consumers are provided with better information about the content of the service, the costs, and the cooling-off period.

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 2017, ACM carried out several enforcement actions that were in the interest of these groups of vulnerable consumers. In addition, ACM devoted attention to the debt collection sector, like in 2016.

Online debt-collection toolkit for debt counsellors

In 2015, ACM studied the debt collection sector. It revealed that several debt collection agencies regularly harm vulnerable consumers with their commercial practices. These debt collection agencies confront consumers with wrongful claims, confront consumers with wrongful costs, their invoices are unclear, and they put pressure on consumers in an unacceptable way to pay their debts.

Building on [the awareness campaign launched in 2016](#), aimed at empowering consumers against unfair practices in the debt collection sector, [ACM in 2017 launched an online toolkit](#) that makes it easier for debt counsellors to take action against unfair debt collection practices on behalf of their clients. With these tools, they are able to give their clients certainty quickly about their rights with regard to debt collection, and explain how their clients are able to exercise those rights.

Warning against commercial practices of online store

In 2017, [ACM issued a warning against the commercial practices of an online store](#). The company 123concepts B.V. sold self-test kits for sexually transmitted diseases (STDs) or infections (STIs). ACM had sufficient reason to believe that 123concepts did not deliver the ordered and paid kits, and thus violated consumer protection rules. Since the online store failed to deliver the ordered products, buyers were not only harmed financially, but their health was also at risk since they were unable to test for an STD or STI quickly. In order to prevent further harm to consumers, ACM thus decided to issue a warning about the online store.

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.

Cartels

ACM takes action against 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.

Dominant positions

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.

Mergers and acquisitions

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. We also carry out market studies in order to get a clearer picture of the markets that we oversee. Market studies may reveal anticompetitive problems. We also provide education about the application of competition rules, for example by publishing guidelines.

When using our instruments, we look for the most effective and efficient way to tackle anticompetitive problems.

What did we accomplish in 2017?

Some of our accomplishments in 2017 are:

- Imposed fines for price-fixing agreements involving forklift truck batteries
- Helped ensure a level playing field for airlines at Amsterdam airport Schiphol
- Pointed out the impediments to competition in the health insurance market
- Drew attention to the risks of foreclosure of fintechs in the payment system
- Clarified how competition rules are applied with regard to independent contractors
- Explained the conditions under which hospital tariffs can be made public

In addition, ACM established that Dutch Railways NS abused its dominant position in the 2014 tender process for the public-transport contract in the southern Dutch province of Limburg. For more information, go to section 4.3: Regulation of transport markets. Furthermore, we ensured that [the collaborations between 6 ready-mix concrete plants, in which either Mebin or Dyckerhoff participated, had to be adjusted](#) in connection with the commitments that they agreed to in 2016.

Requests for enforcement

In 2017, ACM received several requests for enforcement. ACM cannot solve all problems that consumers and businesses face. We therefore have to make choices. When determining which cases we will be dealing with, we ask ourselves the following three questions:

1. What is the magnitude of the harm to consumers?
2. What is the public interest?
3. Are we able to solve the problem effectively?

In the document '[Prioritization of enforcement investigations by ACM](#),' we give insight into the reasons as to why we carry out enforcement investigations in some cases, and not in other cases.

One example of prioritizing a request for enforcement is the [one filed by cable company CAIW in connection with the changes to the conditions that media company Fox imposed last year on the broadcasting rights for live matches of the Eredivisie](#), which is the top division of the Dutch football league. In our preliminary investigation, conducted in July 2017, we found insufficient evidence that consumers were harmed by these changes. Further investigation was therefore not necessary. CAIW and KPN have filed an appeal against ACM's decision.

Launched in 2017

In 2017, we communicated externally in several cases about the launch of investigations into possible cartels or the abuse of dominant positions. For example, in December 2017, we announced the launch of [an anti-cartel investigation into a large tender market](#). Information about this investigation came to light after [a ruling of the District Court of The Hague](#) (in Dutch) concerning the ACM Procedure for the inspection of digital data. We also announced the launch of [an investigation into a possible cartel in the bunker sector](#).

3.1.1 ACM dealt with price-fixing agreements for batteries of forklift trucks

ACM in 2017 imposed [fines totaling over EUR 16 million on importers of batteries for forklift trucks, among other vehicles, and on their trade association BMWT](#). These companies and the association had agreed on using a so-called 'lead surcharge.'

What was the problem?

Five importers of batteries for forklift trucks, among other vehicles, and their trade association BMWT had agreed on using a so-called 'lead surcharge.' The objective of this 'lead surcharge' was to incorporate in a structural manner the widely fluctuating price of lead into the retail price of batteries. In addition, they also shared competition-sensitive information among each other. These actions resulted in a restriction of competition.

Warning against the exchange of competition-sensitive information

ACM warned trade associations not to participate in the collection and sharing of competition-sensitive information. Trade associations should also not cooperate with anticompetitive arrangements that members conclude with each other. ACM's investigation revealed that such practices occurred in other parts of BMWT. For example, the trade association conducted surveys about price trends. One of these surveys contained questions about planned rates for service mechanics, and ones about the actual rates charged. ACM did not find any violations there, and did not impose any fines (in case numbers [7618](#) and [7617](#)). However, the trade association stopped the collection and circulation of this kind of competition-sensitive information.

In other sectors, too, we pointed out the risks associated with the exchange of competition-sensitive information. We did so, for example, in the ports and transport sector.

3.1.2 Level playing field at Amsterdam airport Schiphol

In 2017, we took action to ensure a [level playing field for all airlines that fly out of or to Amsterdam airport Schiphol](#). KLM Royal Dutch Airlines (KLM) and Amsterdam Airport Schiphol made commitments to ACM preventing KLM from getting improper preferential treatment over other airlines. These commitments therefore help create a strong airport with excellent facilities for all airlines. Passengers will benefit from competition between airlines: more destinations, lower ticket prices, and better facilities.

What was the problem?

ACM found out that KLM and Schiphol regularly held discussions, in which they also talked about the relative positions of other airlines operating at the airport. KLM and Schiphol agreed that KLM and its partners would operate approximately 70 percent of all flights, and the other airlines approximately 30 percent. KLM and Schiphol discussed Schiphol's plans that could put pressure on KLM's competitive position. In this way, the growth opportunities of other airlines may have been frustrated.

What did we accomplish?

KLM and Schiphol made concrete commitments to ACM in order to take away such anticompetitive risks:

- KLM and Schiphol will not have any contact with each other about limiting the growth opportunities of other airlines;
- Schiphol will develop its own plans for investments, airport charges, and marketing strategy. KLM and Schiphol are open about any mutual interactions, and will record these. In this way, ACM will be able to review such interactions as well as the topics discussed.
- KLM and Schiphol will not have any contact about requests for bases, lounges, or other specific facilities of other airlines. Any interactions regarding such requests can only take place if the other airline gives its consent. Schiphol will assess all requests of airlines independently.

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 health insurance market

In 2017, we carried out multiple studies in order to understand better how the health insurance market functions. We have published about the following findings:

- [Barriers to entry and expansion in the Dutch health insurance market](#) (January 2017)
- [Consumer survey about the health insurance market](#) (April 2017)
- [Room for competition between health insurers](#) (July 2017)
- [Basic health insurance packages and the options of consumers](#) (preliminary findings; December 2017)

Capital regulation impedes entry and competition between health insurers

ACM conducted [a study into the barriers to entry and expansion in the Dutch health insurance market](#). Some of our conclusions were that the stringent European capital requirements and limited opportunities to meet these restrict entry and competition between health insurers. Other major barriers are the process of obtaining a license from the Dutch central bank, and regulatory uncertainty.

Consumer survey about health insurance market

In 2017, too, ACM published its Health Care Monitor. This is an annual survey among consumers into the health insurance market, asking about their reasons for choosing their health insurances. The [2017 Health Care Monitor](#) revealed, among other findings, that premium increases do not result in more switchers. For more information on the Health Care Monitor, go to section 7.6.

Room for competition between health insurers

ACM and the Dutch Healthcare Authority (NZA) [conducted a joint study into the room that health insurers have to differentiate themselves more](#). More diversity between health insurers gives patients and insured more options to choose what they consider important, both when choosing an insurance policy and when selecting a health care provider.

The study revealed that the major health insurance companies are able to differentiate themselves more on the services to their customers and on group insurances. Not only do the insured directly benefit from better service, it also contributes to the quality and diversity of health care services of providers. With customized group insurances, too, health insurers are able to contribute to a better quality of care and prevention.

Basic health insurance packages and consumer choice

In late-2017, the provisional conclusions of [a study carried out by ACM and the Dutch Healthcare Authority \(NZA\) were released](#). In the report (called 'A real choice on the market for policies?' or 'Echte keuze op de polismarkt?' in Dutch), it was concluded that three quarters of insured in 2016 had a basic health insurance package for which there was a cheaper, comparable alternative. Since consumers need to decide before January whether or not they want to switch insurers, ACM and the NZa in December called on consumers to pay close attention when choosing a basic health insurance package.

The study was subsequently made available for consultation. Health insurers, consumer associations and patients' associations, and other market participants were able to comment on the research methodology, the provisional results, and the possible solutions that ACM and the NZa proposed. The comments are used in the finalization of the final report.

3.1.4 Competition in the financial sector

The Monitor Financial Sector (MFS), which is a special team within ACM, carries out on a permanent basis studies into competition problems in financial markets. In 2017, we gave special attention to fintech developments in the payment system. ACM believes it is important that the financial sector sees more competition and innovation. New providers with innovative technologies, called ‘fintechs’, are the driving force behind modernizing the financial sector.

Fintechs in the payment system: the risk of foreclosure

In its study “[Fintechs in the payment system](#),” ACM looks at the position of fintechs in the payment services system. Banks possess information that fintechs need in order to be able to offer their services. One of ACM’s conclusions is that there is a genuine risk of foreclosure of these new providers. That is why ACM will keep a close watch on whether or not banks offer providers of new payment products access to payment information. If necessary, ACM can take enforcement action against anticompetitive practices, on the basis of its powers laid down in the Dutch Competition Act. In addition, ACM presented several recommendations for reducing the risk of foreclosure.

ESB special on fintech

In 2017, ACM and the Dutch central bank DNB helped create [a special of ESB](#), a Dutch economic journal. This special edition contains many articles on innovation in payment systems, for example, on the influence of fintech on public interests in the payment system, and about possible foreclosure of new entrants in the payment market.

Regulatory fees do not constitute obstacles for new providers in the financial sector

ACM commissioned [a study, carried out by consultancy firm EY, into the regulatory fees for fintechs](#). The Dutch Authority for the Financial Markets (AFM) and the Dutch central bank (DNB) are responsible for oversight of the financial sector. Market participants must pay a fee for this oversight. The study looked into the question whether those fees impeded the entry and expansion of fintechs in the Netherlands. In late-2017, we published the report, revealing that regulatory fees do not have any major effect.

3.1.5 Explaining competition rules for independent contractors

In 2017, we also devoted attention to [independent contractors](#) (in Dutch: *zelfstandigen zonder personeel*, often abbreviated to *zzp'ers*). In the public debate, there are concerns about the incomes and social security of these independent contractors. One solution that is sometimes proposed is laying down minimum pay rates in collective bargaining agreements for independent contractors. ACM has published [guidelines on competition rules for independent contractors](#) (in Dutch). In these guidelines, ACM explains what rules apply in pay rate negotiations.

Independent contractors are business owners

In the guidelines, we explain that independent contractors are business owners who decide for themselves at what price they accept assignments. Laying down minimum pay rates in collective bargaining agreements (or union contracts) for independent contractors falls under the cartel prohibition. However, the cartel prohibition does not apply to independent contractors that have the same business relationship as employees have. Employees misclassified as independent contractors (or 'false self-employed') have less control over where, when and how they do their job than genuine independent contractors. The European Court of Justice made this exception in [a ruling on substitute musicians in orchestras](#).

In the guidelines, ACM gives parties involved in the process of collective bargaining several suggestions on how to prevent illegal arrangements from being included in collective bargaining agreements. ACM emphasizes that compliance with competition rules when concluding collective bargaining agreements is the responsibility of all parties involved.

Coalition agreement

In October 2017, the Dutch coalition government presented its coalition agreement '[Confidence in the future](#)'. In it, the government proposed a new bill, which "[...] must, on the one hand, assure genuine self-employed people and their clients that there is no formal employment relationship and, on the other, prevent false self-employment, particularly in the lower segment". In addition, the bill also proposes that "for self-employed persons without personnel, the rule will be that there is always an employment contract if the rate is low and the duration of the contract is long or if the rate is low and the work constitutes regular business activities".

ACM will keep a close watch on social measures for independent contractors that fall under the scope of the Dutch Competition Act.

3.1.6 Guidelines on publication of hospital tariffs

In September 2017, ACM released the [Guidelines on the publication of hospital tariffs](#) (in Dutch). Our message was: “Health insurers should make the next step in making hospital tariffs transparent”. After all, health insurers have contracts with various hospitals, and directly charge the insured the hospital tariffs through the deductible.

ACM thinks it is important that consumers who seek hospital care are able to have insight in advance into the tariffs of the treatments that they need. This concerns the tariffs of hospital treatments that fall below the deductible. ACM sees anticompetitive risks if all hospital tariffs are published. Hospitals and health insurers could then use that tariff information, and adjust their market behavior accordingly, thereby harming consumers.

Safe zone

In the guidelines, ACM offers market participants information on compliance with competition rules when publishing hospital tariffs. We have explained under what conditions we do not foresee any anticompetitive risks:

- Health insurers are allowed to publish hospital tariffs that fall under the threshold of the maximum deductible level of EUR 885. ACM mandates health insurers not to publish such information. Alternatively, health insurers can inform their clients in a different manner about the tariffs of treatments in the various hospitals.
- Others, too, are allowed to publish tariff information, but only when all negotiations about those tariffs have been completed, and the information has been sufficiently aggregated so that it is anonymous and the identities of the parties involved cannot be deduced.
- Tariffs that are older than three years can be published without any restrictions.

Outside this ‘safe zone,’ market participants themselves must assess on a case-by-case basis whether publication of the tariffs meet the exemption criteria of the cartel prohibition.

3.2 Concentration control

ACM assesses in advance whether an acquisition or a merger has any serious consequences for competition. In that way, ACM prevents large businesses from arising as a result of mergers or acquisitions, which may abuse their strong positions. That is how we protect competitors and consumers.

Our oversight efforts in 2017 in a nutshell

In 2017, ACM issued 105 decisions involving planned concentrations, including one mandating a merger license (for the [planned merger between two hospitals based in the greater Eindhoven area, Catharina Hospital and St. Anna Hospital](#)). Our concentration-control decisions covered mergers and acquisitions in many sectors, including the media sector (see section 3.2.1) and in the hospital sector (see section 3.2.2).

Furthermore, [waste management company Shanks was cleared in February 2017 to acquire its rival Van Gansewinkel](#). ACM mainly investigated residual waste produced by businesses, glass recycling, hazardous waste, and the treatment of other types of special waste. Our conclusion was that the acquisition would leave sufficient room for competition in the waste management industry. In addition, in the Netherlands, as well as in Belgium and Germany, there are enough competitors of Shanks and Van Gansewinkel that are able to provide waste-treatment services. [The Belgian Competition Authority has also assessed the acquisition of Van Gansewinkel by Shanks](#) (in Dutch).

In June 2017, two Rotterdam-based mental-health care institutions, [Parnassia Groep and Stichting Antes](#), were allowed to join forces under strict conditions. This link-up would create a near-monopoly for mental-health care in the greater Rotterdam area. That is why several clinics, treatment centers, and patients had to be transferred to a competitor, GGZ Delfland. In that way, patients and health insurers will continue to be able to choose between different mental-health care institutions.

And in September 2017, ACM cleared [the acquisition of some of Dutch brewing company Heineken's wholesale activities by wholesale food supplier Sligro](#). According to ACM, the acquisition will not create any anticompetitive problems. Sufficient alternatives will continue to exist for buyers. An appeal has been filed against this decision.

3.2.1 Concentrations in the media sector

The Dutch media landscape has changed tremendously over the past few years due to the rise of online media. We are seeing major shifts in the sector: readers increasingly opt for online media, and advertisers, too, increasingly go for online ads. Last year, we established this trend, when we were assessing the [acquisition of British publishing company Mecom by its Belgian rival De Persgroep in 2015](#), and this year, too, we see this trend in our decisions in the media sector.

Radio, tv and advertisements

In July 2017, Talpa Holding was cleared to acquire media company Sanoma Image (which includes SBS). Talpa has several radio stations as well as a company that sells broadcasting time for advertisements (OMS). Sanoma Image houses the Dutch television stations SBS6, Net5, Veronica, and SBS9. In addition, Sanoma Image sells broadcasting time for TV commercials, and offers online-marketing services. ACM did not foresee this acquisition harming the options for consumers and advertisers. The acquisition would have little effect on the media landscape in the Netherlands. The radio and television stations will continue to exist. ACM conducted a further investigation into the advertising market. ACM came to the conclusion that OMS's strong position on this market cannot be transferred to the radio and television advertising market on the SBS stations. This is mainly because competitor stations of Netherlands Public Broadcasting (NPO) and of commercial broadcaster RTL have a large reach. ACM established that Talpa was not materially able to put its competitors at a disadvantage by offering advertisers combined radio and television advertising space. Here too, ACM did not foresee any issues regarding the options for consumers and advertisers.

In late-2017, Talpa was also [cleared to acquire Dasym Emesa Holding](#) (in Dutch). Dasym Emesa Holding's activities include the online selling of promotional products and arrangements, and online ads.

Newspapers

In May 2017, ACM [cleared the acquisition of the Telegraaf Media Groep \(TMG\) by Belgian publishing company Mediahuis](#). Following a study, ACM came to the conclusion that there were no significant consequences for competition in the markets for national and regional newspapers, and for advertising space (online and offline). Newspaper readers would keep the same options after the acquisition. Also, Algemeen Dagblad (part of media company De Persgroep) remains a formidable competitor regarding advertising options in newspapers. This applies to both national and regional newspapers. Finally, advertising budgets of companies are more and more often spent on online advertisements, for example through Google or Facebook. As a result, the influence of newspapers on the advertising market becomes increasingly smaller.

In late-2017, ACM ruled that [Dutch regional newspapers PZC and BN/De Stem are no longer required to operate independently from each other](#). In 2000, ACM attached instructions to the concentration of PZC's and BN/De Stem's parent companies, VNU Dagbladen and Wegener. With the instructions, ACM wanted to maintain competition between the two regional newspapers in the region of Zeeuws-Vlaanderen, which is in the southwestern part of the Netherlands, and to safeguard the independence of the editorial boards of both papers. With the rise of online media, local market conditions have changed so much that the abovementioned instructions no longer served any purpose. With the advent of regional-news websites, sufficient competitive pressure is placed on the regional newspapers in Zeeuws-Vlaanderen. Furthermore, circulation figures of these two regional newspapers are in decline. ACM therefore would not expect any anticompetitive risks if the newspapers were no longer to operate independently.

3.2.2 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 2017?

In 2017, ACM cleared several concentrations, including [the acquisition of part of the orthopedic treatments of the St. Maartenskliniek hospital in the town of Woerden by the St. Antonius Hospital in the nearby town of Nieuwegein](#) and [the acquisition of the Admiraal de Ruyter Hospital \(ADRZ\) by the Erasmus University Medical Center \(Erasmus MC\)](#).

Furthermore, ACM in September 2017 cleared the merger between the Academic Medical Center (AMC) and the VU University Medical Center (VUmc) in the city of Amsterdam. We launched an investigation into the merger's consequences for competition, especially with regard to high-complexity care or complex hospital care. ACM found that these hospitals have a limited combined market share (between 30 and 40 percent) on this market, and that other hospitals in the region (including the OLVG hospital and the Antoni van Leeuwenhoek hospital) act as alternatives for insurers and patients. During the merger investigation, ACM did, however, receive indications that these hospitals could use their position in unique care to strengthen their hands in the negotiations with health insurers about basic care and high-complexity care, which are segments where competition is allowed. ACM together with the Dutch Healthcare Authority (NZa) launched a preliminary investigation into this anticompetitive risk on the basis of other statutory powers both regulators have.

In November 2017, ACM decided that [two southern Dutch hospitals were then not allowed to merger yet](#). Based in the greater Eindhoven area, Catharina Hospital and St. Anna Hospital had to apply for a merger license if they wanted to go through with their planned merger. ACM established that, after the merger, few options for general hospital care would remain in the greater Eindhoven area for patients and health insurers. This could lead to higher health care costs for the insured. In the [explanatory notes to the decision](#) (in Dutch), ACM noted that health insurers substantiated their objections against the merger using data analyses. ACM was able to verify this data. Based on this data, we came to the conclusion that, after the merger, health insurers seemed to be insufficiently able to and to have insufficient tools to exert pressure in the negotiations with the hospitals.

Intensified attention for anticompetitive risks of hospital mergers

In late-2017, we announced that [we would intensify our attention for anticompetitive risks of hospital mergers](#). This means that we may establish anticompetitive problems more often, and we may thus block hospital mergers sooner. If the public and lawmakers want additional safeguards for public interests in health care, ACM then sees opportunities for incorporating such safeguards in the health-care-specific merger assessment (in Dutch: zorgspecifieke zorgtoets).

Our intensified attention is connected to:

1. Our increased understanding of the functioning of the market, particularly the indications of, on average, [a relative price increase of health care provided by merged hospitals](#), and to study findings showing that [hospital mergers do not have a demonstrable positive effect on health care quality](#).

2. The trend that market participants such as health insurers and competitor hospitals, have more attention for anticompetitive risks of planned mergers, and provide more and more elaborate substantiations.
3. Practical experience among health insurers with mergers is expanding, and insurers are able to substantiate their arguments with data analyses.

For more information, see our [‘Explanatory notes: Intensified attention for anticompetitive risks of hospital mergers’](#).

Study into the market definition of hospital care

When assessing mergers and collaborations in the hospital sector, the definition of the product market is a critical step. Up until now, ACM has used the following classifications: general clinical hospital care, general non-clinical hospital care, and high-end care. We want to see whether it is necessary to use different classifications in the future. In addition, we wish to gain a better understanding of the difference between high-complexity care and non-high-complexity care. That is why ACM had a study carried out into this matter, and, in early-2017, [we published the results](#) (in Dutch). ACM will examine whether the results give reason to use a different, more detailed market definition of hospital care. We would like to discuss this with various market participants.

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.

Depending on the individual market, ACM can use different instruments. For example, ACM sets the tariffs and other conditions 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 can mandate open access to 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, more specifically the production tariffs and distribution tariffs for electricity and drinking water. In the Caribbean Netherlands, it has been statutorily decided that there cannot be a free market for the supply of electricity and drinking water. ACM regulates the entire chain from production to distribution, and, in that context, sets maximum tariffs. These maximum tariffs are cost-based. ACM has laid down how it calculates these cost-based tariffs, and what cost-efficiency incentives will be used.

As of January 1, 2017, ACM has set the [production prices for electricity and drinking water for Bonaire and Sint Eustatius](#). For Saba, ACM has only set the production prices for electricity (on January 1, 2017).

As of July 1, 2017, ACM has subsequently set [the distribution tariffs for electricity and drinking water for Sint Eustatius, and the distribution tariffs for electricity for Saba](#). As of that same date, ACM has set a component of those distribution tariffs for Bonaire, which are the connection tariffs and the reconnection tariffs for electricity and drinking water. In late-2017, ACM once again set these production prices and distribution tariffs for 2018. Specifically for Bonaire, ACM also set the other components of the distribution tariffs, which are the fixed and variable user tariffs. The new tariff system for Bonaire will take effect on April 1, 2018. That is why no direct effect for consumers can be calculated yet for Bonaire.

The introduction of the new tariff system on July 1, 2017, had a net positive effect for consumers. One of the reasons for that is that the Ministry of Infrastructure and Water Management (for drinking water) and the Ministry of Economic Affairs and Climate Policy (for electricity) have offered a subsidy. On Saba, the introduction of the new tariff system by ACM had a net neutral effect for the largest group of consumers, in part because of the subsidy of the Ministry of Economic Affairs and Climate Policy. A small group of consumers on Saba has experienced an increase in the electricity tariffs.

In October 2017, ACM took decisions on the objections that the utility companies on Bonaire and Sint Eustatius had filed against ACM's decisions. The utility companies subsequently filed appeals against the decisions on objection with the Court of first instance on Bonaire and with that on Sint Eustatius, respectively.

For its statutory duties, ACM has temporarily stationed two members of its staff on the island of Bonaire, who are assisted by ACM staff in The Hague. In 2016 and 2017, 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 2017, ACM gave advice to the Dutch Human Environment and Transport Inspectorate (ILT) regarding [the calculation of the drinking water tariffs](#). In our recommendations, we suggested that drinking water companies should more clearly indicate the breakdown of their tariffs, and that they should better substantiate all costs incurred. For example, they should indicate what share of the costs incurred can be attributed to drinking water, and what share to other activities.

Based on ACM's investigation, among other things, ILT decided that, if water companies failed to solve these deficiencies by the time the 2018 tariffs are set, they would risk being imposed an official instruction.

4.1.1 ACM makes energy affordable

ACM sets the energy transmission tariffs for transmission system operators TenneT and GTS, and for the distribution system operators.

ACM sets new rules for system operation tariffs for natural gas

ACM has set [the rules that it will use to determine what the annual revenues of Dutch gas transmission system operator Gasunie Transport Services \(GTS\) can be for the next few years \(2017-2021\)](#). For each year, ACM will set the maximum tariffs, in accordance with these rules, that GTS is allowed to charge its buyers.

In order to determine the level of the tariffs, ACM had, for the first time ever, two external benchmark studies carried out. In these studies, ACM compared GTS' cost efficiency with that of other European TSOs. These studies revealed that GTS is less efficient than its most efficient European counterparts. When determining the revenues that GTS is allowed to charge its customers, ACM took the findings of these two studies into consideration. As result of the method decision, GTS' revenues in 2017 will drop by approximately EUR 100 million, followed by a gradual drop of over EUR 100 million in total between 2018-2021.

The rules were established following talks with GTS and various interest groups in the Dutch energy sector (the Dutch representative of business energy users VEMW, the trade association of the Dutch energy industry Energie-Nederland, the trade association of gas storage operators in the Netherlands Vereniging Gasopslag Nederland, the Netherlands Oil and Gas Exploration and Production Association NOGEP, and the Dutch Renewable Energy Association NVDE). Based on these consultations, the parties have agreed not to challenge several key elements of the method decision. As a result, buyers and GTS have more certainty regarding the level of the tariffs for the next few years. That will help increase stability and help towards a more secure investment climate.

Transmission tariff for natural gas to decrease in 2017 and to increase in 2018

Based on the method decision, ACM in June 2017 set the tariffs that GTS is allowed to charge its buyers. The transmission tariff for natural gas in 2017 decreased by more than 11 percent compared with 2016, which means [a total reduction of over EUR 207 million for consumers and businesses](#).

In November 2017, ACM set the transmission tariffs for natural gas for 2018. GTS's tariffs are to increase, on average, by 4 percent in 2018. The transmission volumes are expected to decrease. On balance, [GTS' revenues will subsequently increase by EUR 2 million to a total of EUR 886 million](#).

There are two reasons for the tariff increase. First, the tariffs in 2017 were relatively low. In the previous years, GTS had received too much as a result of measurement corrections, which ACM corrected in 2017. Second, GTS is expected to sell less transmission capacity in 2018 as less Groningen gas will be exported and because market participants increasingly book transport capacity to their needs.

Transmission tariffs for electricity and distribution tariffs for electricity and natural gas to increase in 2018

In November 2017, ACM set the tariffs for the distribution system operators (DSOs) and Dutch transmission system operator (TSO) TenneT. [The transmission of energy will increase on average by EUR 12 per Dutch household in 2018](#).

The increase of tariffs of DSOs is largely caused by a specific type of municipal tax. Municipalities

levy this tax as a fee for the use of public land for, for example, cables and pipelines. DSOs include this tax in their tariffs.

One of the reasons for the increase of TenneT's tariffs is the large investments that TenneT has to make for the expansion of the national grid, for example because of the energy transition. The grids need to be strengthened in order to be able to transport large volumes of electricity from the offshore wind farms, and to integrate the energy markets in Europe further. Because of that and for other reasons, the revenues that TenneT is allowed to earn in 2018 increase by EUR 15 million compared with 2017.

The offshore grid

Each year, ACM sets the revenues that Dutch transmission system operator TenneT is allowed for its statutory tasks associated with operating the offshore grid. In [the 2018 revenue decision for TenneT for the offshore grid](#) (in Dutch), ACM in 2017 determined that TenneT, as the operator of the offshore grid, is allowed an amount of approximately EUR 33.5 million in 2018. The operator's revenues are financed through a subsidy. In this way, the operator is able to recoup its investments, insofar these are efficient. As soon as the offshore grid comes online, ACM will assess whether the costs that the operator has incurred are efficient.

Policy rule on efficient costs

In the Dutch Gas Act and the Dutch Electricity Act, it has been laid down that ACM is to draw up a policy rule in order to be able to assess whether or not specific investments of operators are efficient. In 2017, ACM adjusted and revised the policy rule, which was drawn up in 2011. With [the revised policy rule](#) (in Dutch), ACM is now also able to assess investments in the offshore grid and in connections of wind farms on land for efficiency. Furthermore, the policy rule has been made clearer, and, in some areas, has been tightened. The policy rule offers the operator an incentive to make its investments in an efficient manner. It also ensures that buyers only pay for efficient investments.

4.1.2 ACM makes energy secure, and safeguards quality

Through various actions in 2017, ACM gave a boost to the security and quality of the energy supply in the Netherlands.

ACM visits two of TenneT's high-voltage stations following major outage

ACM paid [a visit to two high-voltage stations, Oostzaan and Hemweg](#), operated by Dutch transmission system operator (TSO) TenneT. At these locations, TenneT informed ACM about the power outage that took place on Tuesday, January 17, 2017. Large parts of the cities of Amsterdam, Zaandam and Landsmeer were without power for several hours. The purpose of ACM's visit was to gain more clarity about the cause of that power outage. ACM keeps a close watch on TenneT's improvements aimed at minimizing the likelihood of a repeat of such outages.

Exemptions for closed distribution systems

In 2017, ACM gave 9 exemptions to closed distribution systems. 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.

TenneT did not comply with statutory requirements in Diemen power outage

TenneT failed to comply with its statutory requirements in [the power outage](#) that occurred in the high voltage power station in Diemen (near Amsterdam) in March 2015. This has been determined by ACM in a dispute that international steel producer Tata Steel filed with ACM in 2017. Following the dispute filed by Tata Steel, ACM launched a new, wider investigation into the power outage in TenneT's 380kV network.

A previous investigation had revealed that the outage was caused by a combination of a technical failure and a human error. That investigation was conducted by an external consultancy commissioned by TenneT, under the watchful eye of ACM. In the newer, wider investigation, ACM also looked at the "N-1"- criterion. This statutory criterion means that an outage in one part of the grid, for example in a circuit or in a transformer, cannot lead to an interruption in the transmission of electricity. TenneT has violated this standard through the way in which the Diemen power station was designed. The aim of the second investigation, which has been conducted by ACM, was to obtain the necessary information to be able to settle the dispute between Tata Steel and TenneT.

Due to the power outage of 27 March, 2015, approximately 1 million households in the Dutch province of North-Holland (which includes the Dutch capital of Amsterdam) and the adjacent province of Flevoland were left without power for one hour.

Quality and capacity documents

In December 2017, ACM received 'Quality and Capacity Documents (QCD)' from the ten DSOs and the TSOs. In these QCDs, they explain their plans for how to keep the quality and the capacity of the transmission network at a certain level. In a sense, this is how system operators offer us a glimpse behind the scenes. The assessment of these QCDs is a critical element on ACM's oversight of quality.

TenneT's QCD, which ACM received in late-2016, has not yet been approved by ACM. TenneT will first draw up a plan for solving the problems identified by ACM. These concern questions regarding

the state of maintenance processes. The outages at TenneT's stations in 2017 have provided a lot of information in that regard. If TenneT's plan sufficiently takes away the identified problems, ACM may still approve the QCD in 2018.

4.1.3 Towards a single European market

ACM helps realize the creation of a single European energy market.

Creating 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 the creation of the European internal energy market.

European integration of the electricity market

Since November 2017, Remko Bos, Director of ACM's Energy Department, was elected [chairman of the Distribution Systems Working Group of the Council of European Energy Regulators](#) (CEER). One of the tasks of this group is helping create the European energy market of the future. It does so, for example, by clarifying the division of roles between system operators and other market participants, by exchanging knowledge about regulation, and establishing best practices. The working group also takes stock of security of supply for electricity and natural gas across Europe with respect to the well-functioning of networks. With these activities, the working group helps realize an affordable, secure, and affordable supply of energy. ACM is additionally active in other working groups: Electricity Working Group, Gas Working Group, Consumer and Retail Markets Working Group and the Market Integrity and Transparency Working Group. We actively contribute to multiple products from these working groups, and we chair various underlying Taskforces.

ACM helps realize the coupling of electricity markets

In 2017, ACM helped in various ways draft new European rules regarding electricity.

The transmission system operators in various European member states in 2017 took a major step forward in the coupling of the electricity markets in Europe. They have made several recommendations, based on new regulations, with which they can match supply and demand of electricity even better. That ability is becoming increasingly important as sustainable solar power and wind power are on the rise. Supply of those kinds of energy sources can vary tremendously depending on location and time. If the sun is not shining in the Netherlands, and the wind is not blowing, other European countries will have to be able to step in, and vice versa. The joint regulators, including ACM, have assessed these recommendations. Several of these have been amended at the request of the regulators, several other recommendations have been forwarded to ACER, and the rest have been approved. This process will continue through 2018. In addition, new regulations regarding balancing and system operations were passed by EU member states in 2017.

ACM, transmission system operator TenneT and the trade association of the Dutch energy industry Energie-Nederland have repeatedly made a strong case in Europe for the current system in the Netherlands. In it, market participants are given incentives to support the system's balance themselves whenever needed. As a result, TenneT has the lowest costs for 'balancing' in Europe. The new European Regulation largely mirrors this system.

Implementation of European rules for the natural-gas market

In 2017, ACM started [the implementation of new European rules on the calculation of transmission tariffs for natural gas](#). These new rules have been laid down in the network code on harmonized transmission tariff structures for gas. The new rules determine how the tariffs for the transmission of natural gas in Europe are to be calculated. Market participants, such as traders and buyers of natural

gas, should gain more insight into the breakdown of their tariffs, and should reasonably be able to predict the future trend thereof. In 2017, ACM, together with transmission system operator GTS, organized various meetings with interested parties. Also, ACM published a lot of information on the breakdown of the tariffs that GTS is allowed to charge. In 2018, ACM will decide how exactly the rules will be implemented.

Virtual interconnection points

By November 1, 2018, transmission capacity on the border with Germany and Belgium should be sold on virtual interconnection points. In 2017, ACM held many discussions with GTS about the way these virtual interconnection points (VIPs) should be created. In 2018, the implementation of these points should be completed.

ACM clarifies the rules

The rules ensuring that the energy markets function well have been laid down in codes. In 2017, ACM issued various codes. With these, the rules have been clarified, among other results. In addition, the needs of market participants have been satisfied. And finally, more transmission capacity on the gas market can become available.

ACM enforces compliance with the rules on market transparency and integrity

Having confidence in energy trade is a critical prerequisite for a well-functioning European market for energy. To that end, ACM, in 2017 too, undertook various activities in order to combat insider trading and market manipulation on the energy markets. This will ultimately lead to a level playing field for businesses and lower energy prices for consumers. Together with ACER, ACM explained to market participants the rules as laid down in the 'Regulation Energy Market Integrity and Transparency' (REMIT) by the European Parliament. Almost all energy traders have registered with ACM. In 2017, they were urged to have solid rules in place concerning the publication of foreknowledge in order to safeguard transparency in the market. In 2017, ACM regularly interacted with the market, and stimulated brokers and exchanges to oversee even better, where necessary, which they are statutorily required to do. With the ACER transaction data at its disposal, ACM is now able to track down, analyze, and, where necessary, take actions against violations. We have regularly received indications of violations from other sources too. Several of these are now under investigation. In these investigations, we work closely together with ACER, the Dutch Authority for the Financial Markets (AFM) and other regulators.

ACM continues to make sure that any publication of foreknowledge is correct, and it will take action where necessary. ACM will step up its enforcement of the prohibition on market manipulation and insider trading.

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-2017, [ACM set the 2018 tariffs for heat](#). In 2018, consumers and businesses that get their heat from individual-building heating or district heating will pay on average EUR 58 (including VAT) more than in 2017. 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. On average, they will pay EUR 1,151 in 2018. 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 the increase in the tariffs for gas and an increase in the energy tax.

Financial-returns monitor

Under the Dutch Heat Act, ACM studied the financial returns of heat suppliers ([Financial-returns monitor](#) in Dutch). ACM publishes this monitor once every two years. ACM reports the results to the Minister of Economic Affairs and Climate Policy. This has been the second Financial-returns monitor since the Dutch Heat Act came into force, and it looks into the returns over 2015 and 2016. The Financial-returns monitor was carried out by an external research firm. The main conclusion was that heat suppliers in 2015 and 2016 earned returns that were below the range of reasonable returns. This is similar to 2014, whereas heat suppliers in 2013 did earn reasonable returns. The study is based on the cost and turnover data of the heat license holders, which have a combined market share of approximately 59%.

Technical briefing in the Dutch Parliament on the revision of the Dutch Heat Act

On 30 November 2017, ACM took part in a [technical briefing in the Dutch House of Representatives on the revision of the Dutch Heat Act](#) (in Dutch). The bill proposing such a revision has already been brought before the Dutch House of Representatives. At the technical briefing, ACM argued in favor to pass this bill as soon as possible because it contains several important improvements over the current Dutch Heat Act.

In the bill, many terms have been defined more clearly. Setting the price caps for heat exchangers, the connection fee, and the disconnection fee will lead to increased clarity and certainty for suppliers and consumers. Furthermore, the amended compensation scheme fits in better with real-world situations, and the regulation of the cold part of Heat and Cold Storage systems will result in better protection of consumers. This bill aims to exempt lessors and homeowners' associations from the obligations laid down in the Dutch Heat Act, thereby reducing the administrative burden for these market participants.

Order subject to periodic penalty payments imposed on Vestia

[Dutch housing corporation Vestia must send at least once a year a bill to 30 inhabitants of the town of Naaldwijk](#) that have had heat and cold storage since 2014. These bills must clearly specify how much energy each household has consumed. ACM gave Vestia six weeks to organize this. After these six weeks, a periodic penalty payment of EUR 10,000 per week would kick in, up to a maximum of EUR 150,000. These individuals had filed a complaint with ACM about the fact they had been given insufficient information from Vestia about the amount of heat they consumed. The inhabitants filed an appeal against ACM's decision.

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.

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.

Regulation of telecommunication and postal services in the Caribbean Netherlands

Since 2013, ACM and the Radiocommunications Agency Netherlands (AT) are jointly responsible for the implementation and [enforcement of telecommunication regulations in the Caribbean Netherlands under the BES Telecommunications Act](#). ACM enforces compliance with license requirements by telecom providers and settles disputes between telecom providers. but ACM also:

- Enforces compliance with the requirements concerning the construction, maintenance and removal of telecommunication infrastructure, and regulates the use of telephone numbers;
- Enforces compliance with the rules on the postal services market;
- Oversees the performance of the concession awarded to postal operator FXDC in the Caribbean Netherlands, including requirements concerning the maximum time for delivering mailpieces on the islands themselves or from one island to another.

What did ACM do in 2017?

In the fall of 2017, ACM paid a visit to the islands of Bonaire and Curaçao as part of its regulation of telecommunication and postal services in the Caribbean Netherlands. ACM sat down with market participants and local enforcement officials about ACM's oversight methods in the Caribbean Netherlands, as well as about the challenges this oversight poses. We also helped settle a dispute between telecom operators UTS and Flamingo TV against Telbo concerning submarine cable access on Bonaire. The parties involved have reached an agreement in principle. In addition, ACM has been involved in possible amendments to laws and regulations of the Ministry of Economic Affairs and Climate Policy with regard to the Caribbean Netherlands.

4.2.1 Review of the European telecom framework

A key element of the European Commission's strategy in order to realize a digital internal European market ([Digital Single Market](#)) is the review of the European regulatory telecom framework.

Within the context of the review of the European telecom framework, there is discussion about whether regulators have sufficient instruments to intervene if intervention is needed in a market with two strong competitors.

In February 2017, ACM published an [opinion article](#) about regulation of duopolies in response to a publication in trade journal MLex. In this opinion piece, we respond to the provocative statement that regulators love to regulate a lot, and that, in the case of a duopoly, it is better not to regulate at all, instead of regulating for eternity. In the article, ACM explains why it disagrees with that position. We argue that oligopolies in the telecom sector should be assessed on a case-by-case basis.

4.2.2 Safeguarding effective competition and options on telecom markets

In 2017, ACM devoted time and effort in safeguarding effective competition for businesses, and protecting options for consumer on telecom markets. We did so by issuing market analysis decisions for fixed telephony, and for fixed and mobile call termination, among other measures.

Sufficient fixed-telephony options for consumers and large-business users

In 2017, ACM lifted its regulation of the consumer market and large-business market for [fixed telephony](#). ACM concluded that, in these markets, consumers and large businesses have sufficient fixed-telephony options.

ACM does preserve its regulation of KPN's ISDN2 in the small-business market. In that market, KPN has a dominant position. ACM established that, without regulation, end-users would have insufficient choice. We did impose fewer obligations than in the previous market analysis decision for fixed telephony in 2012. ACM believes it is no longer necessary to impose obligations on KPN in order to prevent KPN from charging too low prices. The decision came into force on March 1, 2017. An appeal against this decision has been filed.

Maximum tariffs for fixed and mobile operators

In July 2017, the Dutch Trade and Industry Appeals Tribunal (CBb) [ruled in ACM's favor](#) (in Dutch) with regard to the choice for 'pure-BULRIC' as the cost allocation system for setting the maximum tariffs for call termination. With this ruling, the protracted legal battle over the cost basis for the termination tariffs has come to an end. The ruling has cleared the way for further reductions of the termination tariffs as of July 12, 2017, based on the new decision of June 2, 2017. This will benefit end-users. They will pay less for their phone calls.

Background

On June 2, 2017, ACM issued the [market analysis decision on call termination](#) (in Dutch) in which it set the maximum tariffs that providers of fixed and mobile telephony are allowed to charge each other for forwarding calls to each other's users. With call termination, each provider has a monopoly on their own networks, because callers cannot choose the provider for handling their calls. Without regulation, call termination tariffs would be too high.

In its market analysis decision, ACM set a maximum tariff based on a pure-BULRIC cost allocation system. ACM also chose that system in the 2013 market analysis decision on fixed and mobile call termination. The European Commission has recommended the use of that cost allocation system.

In 2013, [the CBb ruled in a provision ruling that the use of the pure-BULRIC cost allocation system by ACM had been too strict](#) (in Dutch). The CBb then substituted the tariffs with the higher 'BULRIC Plus' tariffs. In order to come a final ruling, the CBb in 2015 first asked [prejudicial questions to the European Court of Justice](#) (in Dutch) in Luxemburg concerning the market analysis decision. In 2016, the CoJ explained to what extent a recommendation of the European Commission should be taken into account.

On June 2, 2017, in its new market analysis decision on call termination, ACM once again chose pure-BULRIC. According to ACM, this calculation system is the best contributor to promoting competition on the underlying retail markets, to protecting consumer interests, and to realizing the internal European market. The CBb ultimately confirmed ACM's choice for pure-BULRIC. However, an appeal has been filed against the new decision, too.

Draft recommendations about 2019 multiband spectrum auction

In October 2017, ACM presented its [draft recommendations](#) to the Ministry of Economic Affairs and Climate Policy in the run-up to the government's auction of mobile frequency bands in 2019.

In January 2017, the Ministry of Economic Affairs and Climate Policy made available for public consultation its [draft memorandum on mobile communication](#) (in Dutch). In that draft memorandum, the ministry presents an outline of the policy framework for the 2019 auction of the scarce 700 MHz, 1400 MHz and 2100 MHz frequencies. At this auction, approximately a third of the total multiband spectrum will be auctioned off. This is the first major allocation of the mobile multiband spectrum since the 2012 auction, in which, by obtaining spectrum, Tele2 was able to enter the market as the fourth competitor with a network of its own.

In its draft recommendations, ACM looked at, among other issues, the question of what measures the government should take in order to protect the mobile market in the future. In December, it was announced that T-Mobile Netherlands wished to acquire Tele2 and become an integrated telecom provider on the Dutch market. ACM will postpone the publication of its final recommendations until after that concentration assessment has been completed.

4.2.3 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. In 2017, the courts provided clarity regarding the question of whether Dutch laws can co-exist with the European net neutrality regulation. This is not the case.

Background: the case of T-Mobile

In October 2016, telecom operator T-Mobile launched its Data-free Music service (in Dutch: Datavrije Muziek). With this service, T-Mobile customers can stream music that does not count against their data plans. Using other online services does. This form of price discrimination is called zero-rating. In late-December 2016, ACM forced T-Mobile to stop offering and operating its Data-free Music service. [ACM imposed an order subject to periodic penalty payments on T-Mobile](#). ACM decided to do this because, under Dutch law, zero rating is prohibited under all circumstances. ACM's decision that T-Mobile had to stop offering this service was brought before the court. T-Mobile challenged whether the national law prohibiting price discrimination can co-exist alongside the European regulation on net neutrality.

ACM rules that T-Mobile can continue to offer its Data-free Music service

In April 2017, the court ruled that, on this point, Dutch law is incompatible with the European regulation. ACM indicated that [it would not file an appeal with a higher court](#) against the court's ruling as it was clarified that Dutch law cannot co-exist with the European regulation. As a result of the court's ruling, the order subject to periodic penalty payments that ACM had imposed on T-Mobile has lapsed.

ACM subsequently tested the service against the relevant European rules. ACM's assessment from October 2017 revealed that the service is not incompatible with European rules on net neutrality, because the service is available to all music streaming services, and because the service does not limit the options of end-users. That is why ACM ruled that T-Mobile's Data-free Music service is not incompatible with European rules on net neutrality. [Dutch digital-rights organization Bits of Freedom has asked ACM to prohibit T-Mobile's service on the basis of the European regulation](#) (in Dutch). ACM turned down this request. ACM ruled that the service is not incompatible with European rules. Bits of Freedom filed an objection against ACM's decision. In early-2018, [this objection was disallowed](#) (in Dutch).

Tele2 must adjust its conditions about sharing an internet connection with other devices

In 2017, [telecom company Tele2 adjusted its conditions](#) about sharing a smartphone's internet connection with other devices such as laptops and tablets. ACM had reminded Tele2 that internet providers cannot restrict customers from sharing the internet connection on their smartphones with other devices. Sharing one's internet connection is called 'tethering,' and is a right that consumers have under the European regulation on net neutrality. According to European net neutrality rules, internet users cannot be restricted in their online behavior or in the choice of terminal equipment they wish to use to go online with. Telecom companies are only allowed to require their customers to use devices that meet European technical specifications.

Publication of policy rule on internet-speed information

In November 2017, ACM drew up [a policy rule on the provision of information concerning internet speeds](#). This policy rule ensures that internet providers offer their customers accurate information about the download speeds they offer.

In this policy rule, ACM offers its interpretation of the different internet speeds which, in accordance with the net neutrality regulation, internet providers must provide information about. In their contracts, internet providers must be transparent about what they and the customer agree upon. The policy rule explains what normal, minimum, and maximum download speeds are. This policy rule entered into force on January 1, 2018 for new contracts, and on March 1, 2018 for existing contracts of both consumers and business end-users.

4.2.4 New roaming rules

On June 15, 2017, [new rules on tariffs for calling, texting or surfing online](#) with a mobile phone in another European country than your own came into effect. These rules are the result of a 2016 agreement reached by European member states about the abolition of costs charged for using mobile services abroad (roaming costs).

Since June 15, people pay the same tariffs as those in their plans back home, when using their phones abroad. This new situation applies to consumers and business customers. The new roaming rules apply to mobile plans and prepaid SIM cards. The basic principle of these new roaming rules is that mobile-phone owners within the European Union can use their domestic plan abroad just like at home. Norway, Iceland, and Liechtenstein have also adopted these new rules. They do not apply to all other countries. Telecom providers are free to determine how much they charge for their roaming services in those countries. However, providers must still comply with transparency rules regarding roaming costs in those other countries.

Telecom providers are, however, allowed to protect themselves against abuse. They can add a surcharge if customers are abroad for a longer period of time and use more data than at home. In addition, for customers with an unlimited data plan or a cheap data plan, telecom providers can limit the amount of mobile data to a reasonable amount.

Calculation tool for consumers

ACM has created a handy [Roaming Calculation tool for consumers](#) on ConsuWijzer.nl (in Dutch). With it, consumers are able to calculate easily how many GB they are at least entitled to use abroad at 'roam-like-at-home' rates. Most telecom companies seem to apply the new rules for calling, texting or surfing online abroad correctly. In December 2017, ACM sent a letter to providers reminding them to comply with the roaming rules constantly and properly. In the letter, we also indicated that we would take action against offers that do not comply with the new roaming rules.

4.2.5 Consultation of policy rule on network termination points

In December 2017, the Ministry of Economic Affairs and Climate Policy [made available for consultation a policy rule stipulating that the termination point of a telecom network is located in front of a network's modem or router](#). ACM and the ministry worked together on this policy rule.

With the policy rule, the Netherlands is able to complete the implementation of a European directive on competition in the markets in telecommunications terminal equipment. This directive promotes competition in the terminal equipment market. Routers and modems also belong to this market. In this way, consumers are given the opportunity to choose for themselves the terminal equipment for telecom services that meets their needs.

The policy rule mainly benefits consumers and businesses that want to manage their terminal equipment themselves completely. Terminal equipment is likely given more functions, and will become more user-friendly. By using their own equipment, consumers and businesses have more control over their privacy. Conversely, telecom providers have expressed their concerns about the new policy rules. They are concerned about security of their network and the safety of terminal equipment.

4.2.6 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. ACM issues numbers to number holders, and tackles abuse of numbers. We are able to withdraw numbers if their holders do not comply with the rules.

Publication of policy rule about granting and withdrawal of premium-rate numbers

In December 2017, ACM published a [policy rule containing tightened rules for number holders of premium-rate numbers](#) (in Dutch).

Why a policy rule?

One of the reasons for the new rules is the constant flow of questions and complaints about expensive directory assistance services and payment services. Starting in January 2018, ACM will step up its oversight, and take action actively against abuse of premium-rate numbers beginning with 0900, 0906, 0909, and the four-digit numbers starting with 18. Indications received by ACM reveal that these numbers are sometimes abused by directory assistance services in particular. With this policy rule, ACM has clarified the rules regarding these premium-rate numbers.

The new rules prevent numbers beginning with 0900 or 0909 from being used for charging the directory assistance rate as long as possible. Number holders are not allowed to keep callers on hold endlessly. Prior to the call, callers must be notified of the following: (1) that they are put through during the call, (2) that they are using a directory assistance service, and (3) what the rate of the call is after being put through. All of this information must clear before the call has started. If this is not the case, ACM [may withdraw the number](#) (in Dutch).

ACM) took down the premium-rate number of Dutch YouTube vlogger Snapking

In 2017, ACM took down the premium-rate number 0909-0400528 of [Dutch YouTube vlogger Snapking](#). ACM received several complaints about the premium-rate number via Twitter and consumer information portal ConsuWijzer.

Snapking urged callers to call this number without being clear about the terms and conditions of getting in touch with him. Callers were then put on hold for a long time without getting anyone on the phone. The total call charges for all affected consumers amount to over EUR 13,000. Consumers particularly complained because especially minors were misled. ACM's investigation has revealed that the premium-rate number was dialed over 6,000 times between 21 March and 14 April 2017. In only five cases did callers get in touch with Snapking. To prevent further harm to consumers, ACM took the premium-rate number down.

ACM announced in September that [consumers who called Snapking between March 21 and April 14, would have their call charges reimbursed](#) by their telecom providers. Even though the telecom providers did not commit the abuse, the law says that they are responsible for refunding the unlawfully collected charges.

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. These include the Dutch Pilotage Act, the Dutch Aviation Act, the Dutch Railway Act, and the Dutch Passenger Transport Act.

As independent regulator, we enforce compliance with these laws. 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. We do so by exchanging knowledge and experiences. In 2017, IRG-Rail helped create the 'Implementing Act on access to service facilities and rail-related services,' which will come into force on June 1, 2019. This act will help realize transparent and equal access to service facilities that railway undertakings need for their transport services. In 2017, the fifth IRG-Rail 'Market Monitoring report' was published with market data from 24 European countries. In addition, a list with harmonized key performance indicators was published, which can be applied to the performance schemes. Finally, overviews were published of all infrastructure charge schemes for both infrastructure access and services access.

Input to Thessaloniki Forum

The [Thessaloniki Forum of Airport Charges](#) is an expert group of airport regulators that gives advice to the European Commission on the implementation of the Airport Charges Directive. The Forum's objective is to promote an effective performance of airport regulation. In 2017, a working group of the Thessaloniki Forum issued two recommendation reports on market analyses on airports. The first report concentrates on the desirability of conducting market analyses at airports in order to see whether economic regulation is desirable. A second report contains recommendations on how these market analyses can be conducted. ACM chaired this working group.

ACM's input to the Dutch House of Representatives

In April 2017, ACM gave [recommendations](#) (in Dutch) to the research commission for a [report](#) (in Dutch. Its Dutch title: Kiezen voor een goed spoor') of research firm ABDTOPConsult. The report explores the scenarios for the organization and direction of the railway system after 2024. ACM issued the recommendations at the request of the Dutch House of Representatives following a [motion](#) of then-MP Van Veldhoven (currently the State Secretary for Infrastructure and Water Management). ACM's recommendations are about, among other topics, the importance of an independent, sector-wide monitor for measuring and comparing performances of railway undertakings, and the ability to reorganize control over stations in the various scenarios. They also looked into the option of putting the high-speed rail segment HSL-Zuid out to public tender before 2025, should the performance of the current concession holder give reason for doing so.

Feasibility and enforcement test

At the request of the Ministry of Infrastructure and Water Management, ACM in January 2017 conducted a feasibility and enforcement test on the [draft decision on the charge for using the main railway infrastructure](#) (in Dutch). This decision offers Dutch network infrastructure manager ProRail the opportunity to charge railway undertakings an additional fee for covering the fixed costs. In addition, the decision makes it possible to apply supplementary price incentives. In the test, ACM argued in favor of simplifying the procedure for setting the additional fee, because of overlap in the

proposed distribution of powers between ACM and the Minister of Infrastructure and Water Management.

At the request of the Ministry of Infrastructure and Water Management, ACM on July 19, 2017, conducted a feasibility and enforcement test on the [bill for the implementation of the Fourth Railway Package](#) (in Dutch). Among other objectives, the Fourth Railway Package aims to increase access to the domestic rail markets in order to promote expansion of supply, and to improve the quality and efficiency of passenger transport. To those ends, the Fourth Railway Package contains an obligation to put public transport out to tender. Direct awards are only possible under certain conditions. In addition, the Fourth Railway Package introduces the right to access to the infrastructure for domestic passenger rail services. Until now, this right only applied to international passenger rail services. In the feasibility and enforcement test, ACM stated that the bill containing the implementation method of the right to open access was not feasible. The bill should make it clearer as to what the right to open access entails, and what the possible restrictions to the right to open access are.

The 'airport charges directive' mandates member states to impose a minimum set of obligations on airports handling over 5 million passenger movements. In 2017, the Ministry of Infrastructure and Water Management repaired several shortcomings in the implementation of these rules for other airports (not Schiphol). These rules will apply to Eindhoven Airport, which passed the 5 million mark in passenger movements in November 2017. ACM will enforce compliance with these rules. In 2017, ACM twice issued a feasibility and enforcement test on a [draft bill](#) and a draft order-in-council. The draft bill and the draft order-in-council concerned civilian airports (not Schiphol) and military airports with civilian use. ACM considers the proposed rules feasible and enforceable.

4.3.1 Helping realize well-functioning transport markets

Through its oversight, ACM helps transport markets function well. In 2017, ACM handed down several decisions with regard to the rail sector, which offer clarity in advance to railway undertakings in regional tender processes. ACM also fined Dutch Railways NS for abusing its dominant position in a regional tender process in the southern province of Limburg. In addition, ACM fined Schiphol for not complying with the rules of a mandated consultation process for bus transport for passengers between certain gates and the terminal building.

Approval of the conditions and fees of rail services

In March 2017, [ACM approved the conditions and fees that operators of rail services wish to apply in regional rail tender processes](#). This concerns the conditions and fees for rail-related services that are necessary for passenger train operations, such as employee break rooms and train cleaning systems.

This marks the first time that operators have submitted their conditions and fees to ACM prior to the tender process. In 2016, ACM was granted statutory powers for such approval. In the assessment, ACM examined whether the access conditions resulted in equal treatment of rail undertakings, and whether or not too much costs are charged.

In 2017, two regional rail concessions were put out to tender: the train services in the northern part of the Netherlands, and the so-called Merwede-Linge line. Four operators offer services on these lines: ProRail, Vivens, Arriva and Dutch Railways NS (which includes passenger rail undertaking NS Reizigers, maintenance firm NedTrain, and train station manager NS Stations). ACM handed down various approval decisions. In these decisions, ACM approves the conditions and fees of the services offered by NS, Arriva and Vivens in those tender processes.

- With regard to [NS](#) (in Dutch), it is about the rail services that several NS subsidiaries (NS Stations, NS Reizigers and NedTrain) wish to offer.
- With regard to [Arriva](#) (in Dutch), it is about the conditions of Arriva for the acquisition of the train wash facility.
- And with regard to [Vivens](#) (in Dutch), it is about the conditions of Vivens for supplying fuel in the refueling stations in Leeuwarden and Groningen.

Appeals have been filed against these decisions.

4.3.2 Dutch Railways NS abused its dominant position in regional tender process

In June 2017, ACM imposed a fine of EUR 40,950,000 on NS. Dutch Railways NS [abused its dominant position in the 2014 tender process for the public-transport contract in the southern Dutch province of Limburg](#).

ACM determined that, in order for transport markets to function well, it is critical that all market participants play by the rules. According to ACM, NS had failed to do so for which it was fined. ACM fined NS for two violations.

The first violation is that NS submitted a lossmaking bid in the 2014 tender process for the public-transport contract in the province of Limburg: the costs incurred by NS would be higher than its expected revenues from the regional contract in Limburg. As a result, the other bidders were not given a fair chance.

The second violation is a combination of several related actions: (1) NS used confidential information that it had obtained from a former director of rival operator Veolia. (2) NS put its competitors at a disadvantage by responding slowly and providing incomplete answers in response to their requests for access to certain services and facilities at train stations. And (3) NS passed on confidential information about its competitors Veolia and Arriva to its own subsidiary Abellio, through which NS participated in the tender process.

Regional tender process in Limburg as a pilot

The Dutch Ministry of Infrastructure and the Environment treated the tender process in Limburg as a pilot for possible future decentralized contracts with multiple operators on the same railway tracks. For that reason, NS wanted to secure the Limburg contract at all costs. To achieve this, it obstructed its competitors. NS viewed the possibility of two railway operators sharing the same tracks in Limburg as a threat. In such a scenario, there would be a chance of proving that trains of a regional operator could successfully use the same tracks as the NS trains on the main railway network. The province eventually awarded Arriva the contract.

NS has filed an objection against ACM's fine.

4.3.3 Schiphol's customers had to be involved better in a recent consultation

ACM imposed a [fine of EUR 25,000 on Amsterdam airport Schiphol](#) for failing to comply with the rules of a mandated consultation process for bus transport for passengers between certain gates and the terminal building.

Amsterdam airport Schiphol should have consulted airlines more properly in the recent consultation process about the new conditions for bus transportation between certain gates (remote stands) and the terminal building. Schiphol had failed to do so. In June 2015, Schiphol introduced a new procedure for bus transport. In order to establish the procedure, it is necessary to follow all the steps in the mandated consultation process. It is important that airlines are consulted properly when conditions are determined. Schiphol had failed to do so. ACM had previously pointed out the importance thereof. Schiphol has filed an appeal against the decision.

4.3.4 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 decrease of pilotage tariffs in 2018

In 2018, ACM assessed and set the 2018 pilotage tariffs. These are the tariffs that maritime pilots are allowed to charge their customers for piloting vessels into and out of ports. [The pilotage tariffs for 2018 decrease by 1 percent](#) compared with the 2017 tariffs.

Each year, 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. A combination of three factors has led to the slight drop. The most important factor is that world trade is picking up. It is therefore expected that 2018 will see more pilotage trips than in 2017. As a result, tariffs can decrease. Also, the creation of alliances in the container sector is expected to continue in 2018. The Dutch maritime pilots use a frequency discount scheme: the more often a shipping company or a cluster of vessels requests pilotage trips, the higher the discount will be. In consultation with the sector, the Dutch maritime pilots have reduced the maximum percentage of the frequency discount. This will lead, on average, to lower discounts, and therefore to lower base tariffs. This will benefit smaller shipping companies that qualify for small frequency discounts (or none at all).

ACM in 2017 also set [the other tariffs for 2018 regarding maritime pilots](#) (in Dutch) such as providing copies from the pilots' register.

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. ACM analyzes the postal services market to see whether there is sufficient competition. If a market participant has a dominant position, we can take measures in order to promote competition. ACM subsequently oversees the implementation and enforces compliance with these measures.

Developments

In 2017, ACM completed its analysis of the level of competition in time-critical bulk mail. This is mail of business senders that needs to be delivered the next day (24-hour bulk mail). For the first time ever, ACM handed down a decision based on a new power granted under the Dutch Postal Act. In 2017, more clarity was given with regard to the rules that apply to postal operators, mandating them to have [employment contracts with at least 80% of their mail carriers](#) from January 1, 2018. ACM will enforce compliance with these rules.

Contribution to ERGP

With regard to oversight of the postal services market, ACM works together with fellow regulators in Europe. For example, it does so through [ERGP](#) (European Regulators Group for Postal Services), which is the European body of national postal-services regulators. Experiences are exchanged, and a common practice is developed, wherever this helps the European postal market. Within ERGP, ACM in 2017 contributed to several reports on access and cross-border packages.

Contribution to Dutch House of Representatives

In 2017, ACM contributed to requests from the Dutch House of Representatives to inform MPs about the postal market. In June, ACM organized [a technical briefing about the '2011 temporary decision on mail carriers'](#) (in Dutch). That decision concerned the requirement on postal operators to sign employment contracts with at least 80% of their mail carriers. And in December, ACM organized a [technical briefing](#) (in Dutch) for the Dutch House of Representatives on possible cross-subsidization at PostNL from the universal service obligation to the business mail market.

4.4.1 Safeguarding a competitive and innovative postal services sector

ACM aims to have a well-functioning postal market.

ACM hands down decision on time-sensitive bulk mail

In 2017, ACM completed its analysis of the market for time-sensitive bulk mail. ACM has assessed whether there is effective competition in the delivery of 24-hour bulk mail. ACM came to the conclusion that there is none. Based on the decision, [PostNL must continue to offer other postal operators access to its sorting and delivery network](#).

Options for senders of business mail

For the delivery of time-sensitive bulk mail, PostNL's competitors do not have nationwide coverage. They are partially dependent on PostNL's delivery network in order to be able to offer nationwide 24-hour delivery of bulk mail. Based on the decision, businesses and organizations will continue to be able to choose from multiple postal companies businesses for their time-sensitive mail. This allows regional postal operators to offer nationwide 24-hour delivery of bulk mail, too.

With this decision, access to PostNL's network for 24-hour bulk mail delivery has been safeguarded from August 1 onwards as well. On that day, Section 9 of the Dutch Postal Act, which regulated this access, expired.

Conditions that PostNL may apply

In its market analysis decision, ACM set out what conditions PostNL may apply for delivering this mail. These include, among other conditions, the times by which other postal companies should deliver their mail to PostNL, and the tariffs that PostNL is allowed to charge them. The tariffs have been set in such a way that PostNL is not only able to recoup its costs, but is also able to earn a reasonable return. An appeal has been filed against this decision.

4.4.2 Safeguarding a mail delivery system that is accessible and affordable

In 2017, ACM set the maximum price increases for [stamps](#) (in Dutch) and [other universal postal services](#) (in Dutch).

Consumers and businesses sent less and less mail. That means the costs associated with mail delivery need to be recouped with fewer mailpieces. The Dutch Postal Act and the underlying regulations impose rules on PostNL because it, as the only postal operator in the Netherlands, is required to offer a minimum set of postal service (the universal service obligation).

Based on the rules for adjusting the tariffs of the universal service obligation, PostNL can only recoup the costs that it incurs for delivering that mail. It is allowed to earn a reasonable return on that service. Using the rules from the [Postal regulation](#) (in Dutch), ACM calculates the maximum range for tariff increases. And ACM assesses whether the tariff changes that PostNL wishes to implement fall within that range. In 2017, ACM rules that this was the case for the tariff changes that take effect on January 1, 2018.

ACM also ruled that PostNL was allowed to [raise the rate of the December stamps](#) (in Dutch) from 65 cents to 73 cents. The increase in the December stamp rate falls within the permissible range.

Furthermore, there are statutory requirements that PostNL has to comply with. [These requirements concern the quality of mail delivery, and the accessibility of postal services](#). In 2017, ACM established that PostNL complied with those requirements.

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 2017: EUR 1.0 billion

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 2017 is estimated at approximately EUR 1.0 billion. This figure is composed of EUR 290 million coming from activities that ACM completed in 2017, and EUR 740 million coming from activities in previous years, the impact of which still lasted in 2017.

Impact assessment

ACM also monitors the conduct of businesses. More and more often we also assess the impact that we have achieved, *after* the market intervention. 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. 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 contributed to special edition on impact assessment

In 2017, ACM collaborated with economic journal 'De Economist' to publish [an edition on impact assessment](#). Researchers and enforcement officials presented the most important insights at the conference 'Impact Assessment of Interventions of Competition and Consumer Authorities', which ACM organized in late-2016. The special edition was published in early-2018.

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 2017 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, following ACM interventions, compliance with the rules for large-scale users of energy improved. Furthermore, following explanations given by ACM, market participants in the primary-care sector are holding back less with regard to forging collaborations. For several interventions, the impact assessments are still ongoing. That is because the impact does not always take place directly, but sometimes only much later.

Impact of our campaigns

ACM also identifies the results of its campaigns. In 2017, the ConsuWijzer-campaigns on online reviews, aggressive telemarketing, risks of purchases made on social media, 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.

Impact of mergers

Finally, ACM looks into the effects of mergers it has approved, conditionally or not. Based on a 2017 impact study, we came to the conclusion that hospital mergers and price increases often go hand in hand. These findings thus give ACM reason to sharpen our focus on anticompetitive risks of hospital mergers.

5.1.1 Impact of our 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 2017, we determined the impact of a number of interventions, including:

1. Rapid interventions
2. Basic principles for the oversight of primary care
3. Meter market for large-scale users of energy
4. Turnover data of postal operators and communication companies

Impact assessments cannot always take place in the same year as when the intervention took place. This is because the effects may not always occur immediately, but sometimes only much later. In a number of cases, we have, however, already made a start with the impact assessments. We expect the results in 2018. We would like to highlight 2 examples:

1. Online toolkit for debt counsellors
2. Clear energy bills

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. For example, [8 medical websites in 2017 stopped storing cookies without the consent of consumers](#), following requests from ACM. In another case, [Direct PC, which offers subscriptions to service contracts for computer maintenance services, adjusted its methods](#) after ACM had reprimanded them after receiving complaints from seniors in particular about misleading and aggressive door-to-door selling methods. We have hardly received any complaints since. And [Blendle will display its prices on social media more clearly](#) (in Dutch) following an intervention of ACM.

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 checks in 2017 revealed that the majority of companies that ACM has taken action against have complied with the rules since.

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 will first be given the opportunity to adjust their potentially harmful behavior as swiftly as possible.

In 2017, ACM [studied to what extent, after the publication of the basic principles, our oversight of the health care sector continued to be a restricting factor](#) (in Dutch) in collaborations aimed at improving health care quality. We came to the conclusion that the basic principles have reduced the tendency in health care providers of holding back unnecessarily, but that ACM continues to have a supervisory role to play. In that context, real-world examples could help clarify ACM's oversight style in primary care.

Meter market for large-scale energy consumption

Large-scale users of energy often do not know that they are able to choose the company they can buy or lease their energy meter from. If system operators give preferential treatment to their sister-meter company, large-scale users may not be able to make optimal choices. That is why ACM looked into the methods of system operators, and explained to them how to comply with the Dutch Electricity Act and the Dutch Gas Act in such a manner that they do not give preferential treatment to the metering company in the same holding. In addition, ACM included information about this market on its website, and had frequently visited information websites adjusted in order to inform the large-scale users better. These interventions were aimed at making the market function better. The study also revealed that one system operator had violated the law in the past by supplying energy meters to large-scale users: this system operator was fined.

A follow-up check revealed that virtually all system operators comply with the rules now. At some point, we will measure whether or not the knowledge of the law among large-scale users has improved as a result of these regulatory activities, and whether or not large-scale users switch metering companies more than before.

Turnover data of postal and communication companies

We wanted more companies in the postal services sector and the electronic communication sector to submit their turnover data on time. Based on that turnover data, ACM calculates their fees for ACM's oversight of those sectors. Using theories from behavioral science, ACM adjusted the reminder letters, and tested whether more companies responded within the stated deadline. One group of companies received the adjusted letter, another group received the letter like in previous years (the control group).

In the postal services sector, among the companies that received the adjusted letter, significantly more responded, whereas in the electronic communication sector, we did not observe any difference. Follow-up studies need to verify whether the findings in the postal services sector can be repeated, and thus can be attributed to the adjusted reminder. The study results did, however, provide insights that are useful for future approaches: for example, we noticed that company size did not matter, and that companies that did not respond in 2016, often did not do so in 2017 either. They probably require a different approach.

Online debt collection toolkit for debt counsellors

In 2017, ACM launched an online toolkit that makes it easier for debt counsellors to take action against unfair debt collection practices on behalf of their clients. With these tools, they are able to give their clients certainty quickly about their rights with regard to debt collection, and explain how their clients are able to exercise those rights. In late-2016, ACM and the Netherlands Authority for the Financial Markets (AFM) launched an awareness campaign (via ConsuWijzer) to empower consumers against unfair practices in the debt collection industry. ACM now reaches out to consumers who are less self-reliant through intermediaries such as debt counsellors, social workers,

personal-finance counsellors, and budget counsellors.

Prior to the launch of the toolkit, debt counsellors were asked to take part in a survey. 88 debt counselors did so. Despite the relatively small sample, this baseline measurement did paint a slightly precarious picture. Even though the knowledge of debt collection rules among debt counsellors was high, they did not always recognize debt collection fees that were too high or incorrect. Moreover, these debt counsellors regularly encounter unlawful claims and letters that miss certain pieces of information, and debt collection agencies threaten to use powers they do not have. In 2018, we will repeat this measurement in order to see whether the situation has improved after the publication of and hands-on experience with the online toolkit.

Clear energy bills

Following indications about unclear energy bills, [ACM in the spring of 2017 informed energy suppliers about the basic principles regarding clear and verifiable energy bills](#). This was part of a series of actions in the energy sector in order to make the entire process from offer to contract to bill clear and verifiable. Suppliers were given until the end of June to comply with the basic principles.

In order to gain better insight into the magnitude of the problem, we asked in early-July for a contract, information on price changes, and a bill from all suppliers. This was basically the pre-measurement. Of the 40 energy suppliers we examined, 16 suppliers complied with the basic principles. We sent a letter with recommendations to 21 suppliers. However, three providers performed so badly that we announced orders subject to periodic penalty payments. On two of these, we eventually did impose those orders. The third one was able to implement the required changes. In 2018, we will check one more time whether the energy bills meet the basic principles, and, as a result, are presumably clearer for consumers. This is the measurement afterwards.

5.1.2 Impact of our 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. In the 2017 campaign on purchases made over social media, we looked in more detail into the campaign's impact on consumers, using a control group.

In 2017, we launched 4 ConsuWijzer campaigns. Their topics were: online reviews, aggressive telemarketing, risks of buying on social media, and unfair debt collection practices.

Here is an overview of the results of 2017:

- With our campaigns, we realized millions of impressions on social media (Facebook, Instagram, Twitter, YouTube and LinkedIn)
- In addition, the campaigns also reached millions of consumers because of the attention they attracted in other online or offline media (general and specialist)
- The campaigns' reach was high among vulnerable groups: especially among youth between the ages of 15 and 25, and individuals in arrears and in debts (through intermediaries)
- In total, visits to ConsuWijzer.nl have increased over the past year to over 3 million visits (9% more than in 2016)
- The 100+ sample letters on ConsuWijzer.nl have been downloaded over 500,000 times

Campaign against the risks of buying on social media

In the fall of 2017, ConsuWijzer ran [a campaign, aimed at making consumers aware of the risks of impulse buying on social media](#) (also called social selling). ACM created a social-selling campaign, specifically targeting youth (17-25 years of age) in order to point out the risks to online consumers, to stimulate them to exhibit smart buying behavior, and to preempt misleading or unfair selling practices. The campaign consisted of 'fake ads' for products such as facial masks and infant clothes to be bought on social media. The campaign reached 3.3 million online consumers between the ages of 15 and 45. Approximately 36,000 online consumers visited the Online Shop Check-page on ConsuWijzer.nl in the period through 31 December 2017.

Commissioned by ACM, a research firm studied the possible effect of the campaign. Using tracking methods, we were able to distinguish between groups of individuals who have and have not been exposed to the campaign. After the campaign, both groups were asked to fill out a survey. That is how we were able to see to what extent the campaign was related to and possibly have led to a shift in knowledge, mentality, and online buying behavior. We did not find a significant difference between both groups in terms of the degree to which people see online purchases on sponsored social media ads as safe. However, consumers who were exposed did indicate that they run suppliers by the police and/or the Dutch Chamber of Commerce. And, they also indicated considerably more often that they talked to others about the risks of purchases on social media (50% of respondents versus 20% of the respondents who had not been exposed to the campaign).

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 2016 studied [the effects of hospital mergers on health care quality](#), and in 2015, it 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 price and volume

In 2017, ACM looked into [the effects of 12 hospital mergers between 2007 and 2014 on price and volume](#) after the mergers have been completed, compared with price and volume trends of non-merged hospitals. ACM obtained the data using so-called difference-in-differences regression analyses of 62 of the 65 patient groups defined according to the medical criteria by the Dutch Healthcare Authority (NZa). The 62 patient groups account for over 99% of the hospital turnover generated among patient groups. We saw an indication of a relative rise in prices of health care provided by merged hospitals compared with the prices of health care provided by non-merged hospitals, whereas there were only very limited indications of a systematic difference in the development of volumes. The results are in line with previous empirical studies into the price and volume effects of hospital mergers.

The previous study from 2016 into the effects of hospital mergers on health care quality revealed that there are no demonstrable quality gains even though prices increase. The findings of both of these studies give ACM reason to intensify its attention for anticompetitive risks of hospital mergers.

5.2 Overview of outcome of ACM's work

The total outcome for consumers in 2017 is estimated at approximately EUR 1 billion. Here is a breakdown of that figure.

- Approximately EUR 290 million comes from activities that ACM completed in 2017.
- Approximately EUR 745 million comes from activities in previous years, the outcome of which still continues throughout 2017.

The amounts are expressed in 2017 euros. This means that ACM has adjusted these amounts for inflation.

The outcome is higher than last year's outcome of approximately EUR 790 million. This difference can mostly be explained by the fact that, last year, no outcome could be calculated for the method decision for transmission system operator GTS. This decision was taken in 2017. However, the method decision concerned the tariffs for the period of 2017-2021. In general, we assign the outcome of a method decision to the entire regulatory period. This means that a share of the outcome is also assigned to last year. As a result, the outcome for 2016 thus increases to approximately EUR 990 million.

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.

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 2017 cases in its outcome calculations in 2018 and 2019. 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 2017 is EUR 48.4 million.

The outcome of consumer protection of completed activities in 2017 is approximately EUR 22.3 million and is based on 7 cases:

1. Regulation of electricity and natural-gas tariffs in the consumer market
2. Retailers Kruidvat and Flywise adjust their conditions
3. Online store 123 Soatest
4. Energy supplier Oxxio fined for incorrect registration of customer data
5. Online tickets include unavoidable costs
6. Administrative costs of energy suppliers
7. Rapid interventions

Outcome from previous years

The outcome from previous years, which are still in effect in 2017 is approximately EUR 26.1 million and is based on 1 rapid intervention and 8 cases:

1. Regulation of electricity and natural-gas tariffs in the consumer market
2. Oversight actions in energy
3. Unsolicited follow-up shipments (subscription traps)
4. Interest rate changes of pawnshops
5. Unfair commercial practices of online stores
6. Reduction of payment costs for internet purchases
7. Non-transparent costs in the travel sector
8. Car prices including closing fees (or on-road costs)

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 2017 is over EUR 5 million. 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 2017, 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 Unfair commercial practices

The outcome of unfair commercial practices in 2017 is over EUR 6.5 million.

Drugstore chain Kruidvat adjusted conditions of travel coupon deal

Drugstore chain Kruidvat did not offer a cooling-off period (right of withdrawal) of 14 days, which is statutorily required, on travel coupons sold online. Kruidvat has adjusted this. In addition, ACM reprimanded Flywise, the company that organizes these trips. It has made improvements to its operations, which means that Flywise currently complies with the rules that apply to the sale of package holidays. Both companies fully cooperated with ACM in the implementation of these adjustments.

123 Soatest

ACM issued a warning against the commercial practices of online store www.123soatest.nl, which sold self-test kits for sexually transmitted diseases (STDs) or infections (STIs). ACM received police reports as well as indications from consumers through its consumer information portal ConsuWijzer, and ACM carried out investigations of its own. ACM had sufficient reason to believe that 123concepts did not deliver the ordered and paid kits, and thus violated consumer protection rules. The online store has closed down since, thereby stopping the consumer harm.

Energy supplier Oxxio fined for incorrect registration of customer data

Dutch energy provider Oxxio had its permanent contracts wrongfully registered with an end-date. When consulting the registry, it thus seemed as if the customer in question had a fixed-term contract. This meant that consumers had to wait before they could switch providers or they had to pay a fee. As a result of ACM's intervention, the data has been corrected, and it has since become clear to consumers when they are able to switch providers.

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 2017, 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).

5.3.3 Price transparency

The outcome of improved price transparency in 2017 is approximately EUR 10.8 million. 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 2014.

Online providers of tickets to list unavoidable costs with prices

Before, consumers were confronted with additional costs of tickets (for concerts, theatre shows, and festivals) during the booking process such as administrative costs, service fees, or print costs. The law stipulates that providers must include all unavoidable costs (calculated per ticket) in the base price. A similar rule applies to mandatory costs that apply per booking (so not those per ticket). Thanks to an ACM intervention, prices now include all the unavoidable costs per ticket, and the mandatory costs that apply per booking (so not those per ticket) are now displayed at the start of the booking process.

Administrative fee charged by energy suppliers

An ACM investigation found that energy suppliers charged its customers some form of additional fee. These costs were not communicated clearly to consumers in advance, and the fee can be designated as unavoidable costs. As such, these should be included in the fixed supply costs. ACM has instructed the energy suppliers in question to include these costs in the fixed supply costs so that consumers continue to be able to compare energy prices in a transparent manner.

5.4 Outcome of competition oversight

The total estimated outcome of competition oversight for 2017 is approximately EUR 249 million.

The outcome of competition oversight for activities that were completed in 2017 is over EUR 2 million, and covers our competition oversight and concentration control efforts.

- The outcome coming from our competition oversight efforts in 2017 was over EUR 2 million, and is based on two cartel decisions. This outcome and previous cases from 2015 and 2016 result in the total estimated outcome of competition oversight for 2017 of EUR 44 million.
- The outcome coming from our concentration control efforts in 2017 was over EUR 16 million, and is based on the adjusted merger Parnassia Groep-Antes and the withdrawn merger Sint Anna-Catharina. This outcome and previous cases from 2015 and 2016 result in the total estimated outcome of concentration control for 2017 of approximately EUR 204 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.

Outcome from previous years

The outcome coming from previous years of which the effect still continued in 2017 is approximately EUR 230 million, and is based on:

- Cartel agreements in natural vinegar and cold-storage firms
- Commitments in the ready-mix concrete sector
- The concentration Albert Schweitzer-Rivas, De Persgroep-Mecon, Brocacef-Mediq, and Sonova-Audionova

5.4.1 Cartel agreement concerning batteries of forklift trucks

ACM imposed [fines totaling over EUR 16 million on importers of batteries for forklift trucks, among other vehicles, and on their trade association BMWT](#). These companies and the association had agreed on using a so-called 'lead surcharge.' The objective of this 'lead surcharge' was to incorporate in a structural manner the widely fluctuating price of lead into the retail price of batteries. In addition, they also shared competition-sensitive information among each other. The violation lasted from 2004 until 2013.

As a result of ACM's actions, buyers pay less. These are not necessarily the final consumer, but, as described in the calculation method, ACM assumes that the impact on the direct buyer will eventually find its way to the final consumer.

For the calculation of the price effect, ACM used, as a rule of thumb, 10% of the relevant turnover of the undertakings involved. ACM assumes the effect of this outcome will last for three years.

5.4.2 Other cartel agreements

In another case, fines were imposed for violation of the cartel prohibition. These violations consisted of price coordination. ACM is expected to announce the details of these cartel cases at a later point in 2018.

As a result of ACM's actions, buyers pay less. Since no information about any price effect was included in the case file, ACM used the rule of thumb of 10% of the relevant turnover of the undertakings involved. ACM assumes the effect of this outcome will last for three years.

5.4.3 Concentration of Parnassia-Antes

In 2017, ACM cleared the concentration between two Rotterdam-based mental-health care institutions, Parnassia Groep and Stichting Antes, once several clinics, treatment centers, and patients have been transferred to a competitor, GGZ Delfland. In that way, patients and health insurers will continue to be able to choose between different mental-health care institutions.

This is a case where ACM conditionally cleared the concentration after a more detailed investigation. That is why we take 100% of the relevant turnover of the relevant market as the starting point. In accordance with the calculation method, ACM assumes that its contribution is 3% of the relevant turnover, since no price effect was determined in the decision. The duration of this outcome is three years.

ACM stresses that, in these outcome calculations, rules of thumb are used (see section 5.2). Aided by ex-post studies such as the ACM study '[Effects of hospital mergers \(2007-2014\) on price and volume](#)', we calculate the effects of mergers more specifically. See also section 3.2.2. Different calculation methods thus exist.

5.4.4 Concentration of Sint Anna-Catharina

In 2017, ACM decided that [Catharina Hospital and St. Anna Hospital](#), both based in the greater Eindhoven area, would have to apply for a merger license if they wanted to go through with their planned merger. The hospitals subsequently decided not to apply for a license, thereby abandoning their merger plans.

No specific price effect was mentioned in the notification decision of the concentration Sint Anna-Catharina. In late-2017, ACM published the study '[Effects of hospital mergers \(2007-2014\) on price and volume](#)'. It describes the effects of hospital mergers on prices and volumes in health care. The study gives an indication of a rise in prices of health care provided by merged hospitals compared with the prices of health care provided by non-merged hospitals.

In the standard method for outcome calculations, too, ACM assumes that a price increase can be prevented if merger plans are abandoned. This methodology is in line with the study's conclusions. We use the general rule of thumb of a prevented price increase of 3%. This percentage is of the same magnitude as the price effects found in the ACM study.

As the merger plans have been withdrawn following ACM's first-phase decision, we assume 70% of the price effect to be outcome. The duration of this outcome is three years.

ACM stresses that, in these outcome calculations, rules of thumb are used (see section 5.2). Aided by ex-post studies such as the ACM study '[Effects of hospital mergers \(2007-2014\) on price and volume](#)', we calculate the effects of merges more specifically. See also section 3.2.2. Different calculation methods thus exist.

5.4.5 Correction to the outcome of previous years

In 2017, the Dutch Trade and Appeals handed down a ruling as a result of which ACM had to adjust the outcome of prior years. This concerns the overturning of the fines in the foreclosure auctions case (see section 6.3.3). The reversal of the decision is final. In connection with confidentiality of the figures, ACM cannot disclose the reduction of the estimated outcome over the years 2011, 2012 and 2013.

5.5 Outcome of energy regulation

The total estimated outcome of energy regulation for 2017 is approximately EUR 386 million.

The outcome of energy regulation of completed activities in 2017 is approximately EUR 201 million and is based on 3 cases:

1. The method decision for the transmission system operator of natural gas
2. Subsequent revenues calculations for the transmission and distribution system operators
3. The intervention on the market for metering services for large-scale services

Outcome from previous years

The outcome from previous years, which are still in effect in 2017 is approximately EUR 185 million and is based on:

- The introduction of flow-based market coupling
- The tariff reduction by using the auction revenues in the tariffs of TenneT
- The tariff reduction for the change in the composition of natural gas
- The method decision for distribution system operators for electricity

5.5.1 Method decision for transmission system operator of natural gas

In 2017, ACM set the rules that it will use to determine what the annual revenues of Dutch gas transmission system operator Gasunie Transport Services (GTS) can be for the next few years (2017-2021). For each year, ACM will set the maximum tariffs, in accordance with these rules, that GTS is allowed to charge its buyers.

As result of the method decision, GTS will have lower revenues than if it could set its own tariffs. We assume that the revenues between 2017 and 2021 without regulation would have increased at the rate of inflation. Compared with that scenario, GTS would earn approximately EUR 1 billion less between 2017 and 2021. As a result of its regulation, ACM thus realizes an estimated welfare gain of EUR 1 billion for consumers.

By distributing the outcome of EUR 1 billion evenly over all years in the regulatory period, ACM estimates an annual outcome of EUR 200 million for consumers. Since the regulatory period already began last year, we retroactively add this estimated annual outcome to the 2016 outcome.

5.5.2 Subsequent calculations

In 2016, ACM issued several decisions on the calculation method for the revenues that transmission and distribution system operators for natural gas and electricity are allowed to charge consumers and businesses. In the tariffs decisions, ACM adjusts the calculated revenues from these methods decisions on several points. The method decisions were based on estimates of several cost items such as expenditures on local fees. In the tariff decisions, ACM settles the differences between the estimates and the actual costs. Additionally, ACM adjusts the tariffs following rulings in legal proceedings.

The positive outcome of the adjusted tariffs is primarily caused by the 2017 tariffs decision of GTS. One adjustment that ACM included in the tariffs was the incorporation of the balance between costs and benefits of an administrative imbalance, which GTS steadily created between 2012 and 2016. The reason behind an administrative imbalance is that market participants injected or extracted more gas or less gas into/from the network than measured. The measuring differences mean that GTS owes a debt to a market participant or vice versa. These debts or claims cannot be easily settled between GTS and individual market participants, because it cannot be deduced from measuring data to which market participant GTS owes a debt. Until last year, GTS thus held a reserve, with which it could settle a debt or claim, if necessary. In practice, however, it turned out that, each year, GTS owed debts to market participants, the majority of which could not be settled with individual market participants. That is why GTS gradually retired these debts in the form of non-tariff-regulated revenues.

As a result, GTS's 2017 revenues were lowered once by EUR 55 million. After settlement with the other adjustments in GTS's tariffs and the adjustments in the tariffs of the other system operators, there is still a saving of over EUR 4 million per year. This saving is allocated to all years of the regulatory period.

5.5.3 Intervention on the meter market for large-scale users

In 2017, ACM intervened in the meter market for large-scale users. These are buyers with electricity connections larger than 3x80A or with gas connections with a capacity of over 40 cubic meters per hour.

ACM saw that the meter market for large-scale users was not functioning properly, because large-scale users hardly seemed to take advantage of the opportunity to switch meter companies. One underlying cause was that system operators may have given preferential treatment to their own meter companies. As the law is quite unclear about what system operators are allowed and are not allowed regarding offering meter services, ACM has offered the system operators an interpretation of the law in a guideline. System operators have subsequently adjusted their methods, as a result of which meter companies are no longer able to be given preferential treatment.

Thanks to ACM's intervention, large-scale users are able to make a conscious choice for a meter company, and, consequently, pay less for meter services. We have calculated an estimated annual outcome of EUR 900,000 for consumers. This is based on data on the number of large-scale users that currently takes out services from system operators (or their commercial subsidiaries), on the average contract length of meter services, on the switching percentage in the energy market, and on the price differences between meter companies. ACM will include this amount for three years in its calculation of the outcome in energy regulation.

5.6 Outcome of regulation of telecom, transport and postal services

The total estimated outcome of regulation of telecom, transport and postal services for 2017 is almost EUR 352 million.

The outcome of regulation of telecom, transport and postal services of completed activities in 2017 is over EUR 46 million and is based on 4 cases:

1. Market analysis decision for fixed telephony
2. Market analysis decision for fixed and mobile call termination (FTA-MTA-5)
3. Market analysis decision for 24-hour bulk mail
4. Abuse of premium-rate number by vlogger Snapking

Outcome from previous years

The outcome from previous years, which are still in effect in 2017 is approximately EUR 305 million and is based on:

1. Lycamobile's too high roaming costs
2. Schiphol's 2016-2018 cost allocation system
3. 2016-2018 decision on unbundled access (ULL)
4. Decision on the tariff headroom of the universal service obligation of PostNL
5. ACM's intervention with regard to the surcharge for delivering mail too late by alternative postal operators
6. Market analysis decision for wholesale broadband

5.6.1 Market analysis decision for fixed telephony

ACM came to the conclusion that KPN does not enjoy significant market power (SMP) on the consumer and large-business market for fixed telephony. That is why ACM stops imposing obligations on KPN in the markets.

However, ACM did conclude that KPN does enjoy SMP on the small-business market for fixed telephony. That is why ACM has imposed obligations on KPN in this market. KPN must continue to offer competitors access to its network. As a result thereof, consumers continue to have sufficient choice with regard to fixed telephony.

In order to estimate the effect on consumer welfare, ACM assumes a price effect of 2% on the small-business market. The estimated outcome of this decision is approximately EUR 2.8 million per year. The duration of the outcome is equal to that of the decision: 3 years.

5.6.2 Market analysis decision for fixed and mobile call termination (FTA-MTA-5)

In the market analysis decision on call termination, ACM set the tariffs that telecom providers are allowed to charge each other when forwarding each other's users.

The telecom provider of the individual that is called charges the provider of the customer that makes the call a fee for the use of its network. That fee is called the termination tariff. Callers cannot choose themselves which network handles their calls. In effect, every provider is a monopolist of their termination tariffs. Without regulation, the call termination tariffs could thus become too high. That is why ACM has set maximum tariffs for both fixed and mobile providers.

ACM has set the maximum tariffs based on the pure-BULRIC cost method. The estimated outcome for consumers is approximately EUR 15.1 million per year. This is the outcome for consumers with the new regulatory regime in place compared with the situation with the former regulatory regime. The duration of the outcome is equal to that of the decision: 3 years.

5.6.3 Market analysis decision for 24-hour bulk mail

In the market analysis decision on 24-hour bulk mail, ACM analyzed the delivery of 24-hour bulk mail. In its decision, ACM found that PostNL enjoys significant market power (SMP). That is why ACM decided to impose obligations on PostNL regarding access, tariffs, and transparency.

With this market analysis decision, ACM ensures that regional postal operators, too, will be able to continue to offer nationwide delivery of 24-hour bulk mail under reasonable conditions. ACM expects competition to improve as a result thereof. This will prevent excessive prices, improves quality, and creates more options for business that seek 24-hour bulk mail services.

In the market analysis decision, ACM has estimated the effect on consumer welfare. This is the outcome for consumers with the regulatory regime in place compared with the situation without one.

ACM will include the outcome in its calculations for three years. For 2017, the outcome for consumers is estimated at over EUR 28 million. With decreasing volumes, the estimated outcome will decrease to approximately EUR 25 million in 2018 and approximately EUR 22 million in 2019.

5.6.4 Abuse of premium-rate number by vlogger Snapking

ACM took down the premium-rate number of Dutch YouTube vlogger Snapking. Snapking urged callers to call this number without being clear about the terms and conditions of getting in touch with him. Callers were then put on hold for a long time without getting anyone on the phone. In only five cases did callers get in touch with Snapking. The total call charges for all affected consumers amount to over EUR 13,000.

Thanks to ACM's intervention, telecom providers reimbursed callers these costs, which they were statutorily required to do. The outcome for consumers is thus EUR 13,000.

5.6.5 Correction to outcome in previous years

Since 2015, an outcome is calculated for the Decision on the tariff headroom of the universal service obligation of PostNL. The outcome depends on the volume of the universal service obligation. Production figures have shown that the projections of the volumes for 2015 and 2016 were too high. This results in a reduction of the outcome for 2015 of approximately EUR 240,000 and a reduction of the outcome for 2016 of approximately EUR 700,000.

6 ACM and the courts in 2017

In 2017, the District Court of Rotterdam and the Dutch Trade and Industry Appeals Tribunal (CBb) handed down a total of 41 final rulings. In these rulings, we note several important and interesting trends.

- The judge in interlocutory proceedings has given its opinion on ACM's digital-data inspection procedure. The court examined the questions of whether ACM used its powers correctly in a specific case.
- The first rulings on violations of the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets, have been handed down by the District Court of Rotterdam. In these rulings, the court clarified the boundaries of this law, as well as the standards that apply, as laid down in the law. In addition, the CBb provided clarity with regard to the question of what other activities network companies are allowed to engage in.
- The CBb ruled on impermissible market conduct in tender processes. And a final ruling was handed down in a case about a long-term cartel.
- ACM defended the interests of online consumers, and fined several undertakings for unfair commercial practices on their websites. In the first couple of rulings on this issue, the District Court of Rotterdam has largely upheld the fines imposed. In this context, one interesting observation is the argument put forward by various undertakings regarding the principle of equality.

6.1 Use of powers

As part of an investigation, ACM can copy files on mobile phones of employees (of the undertakings under investigation). In 3 rulings, the court expressed its opinion on the question of to what extent ACM has the power to do so, and what data ACM can access and use for its investigations.

In 2 rulings in interlocutory proceedings, the District Court of The Hague examined the question of what data fall within the investigation (its scope), and what data cannot be selected. For these situations, ACM uses a digital-data inspection procedure, which has different steps in order to safeguard the proportionality of the investigation involving digital data. The court in summary proceedings subsequently assessed this procedure in greater detail.

A follow-up question, which is dealt with in the third ruling, is whether, if the data fall within the scope of the investigation, that data can also be used in another investigation.

6.1.1 Digital-data inspection procedure: mobile phones

In 2 rulings of the District Court of The Hague, the court examined the question of what data fall within the investigation (its scope), and what data cannot be selected.

Selection of digital data

In the first ruling on ACM's digital-data inspection procedure, the court examined the multi-stage selection process of the data that ACM can use in its investigation. During a dawn raid at an undertaking, ACM seized a large amount of digital data that, using ACM's procedure for the inspection of digital data, was "narrowed down" to a "within-scope dataset", which can be used for ACM's investigation. With respect to a portion of the digital data, the undertaking in question claimed that it fell outside of the scope of the investigation, and that the investigation was therefore disproportional.

The judge turned down the undertaking's demands, due to the fact that it had failed to substantiate at a document level (but was able to do so only for 5 categories using general arguments) as to why specific documents should remain outside of the investigation data set. In principle, it is up to ACM to decide on how to structure its investigations. The digital-data inspection procedure and the specific search terms were sufficiently careful and focused, according to the court. What was not at issue was the question whether ACM went beyond its mandate. However ACM should still give the undertaking the opportunity to substantiate at a document level whether or not they fall outside the scope of the investigation (and should therefore be destroyed).

In conclusion, ACM was sufficiently selective in its choice of search terms, and it was sufficiently plausible that all documents selected in this manner were relevant within the context of ACM's investigation.

The undertaking filed an appeal with the Court of Appeal of The Hague against the District Court's ruling.

- [Ruling of District Court of The Hague on the selection of digital data \(in Dutch\)](#)

Accessing smartphones

The judge in interlocutory proceedings of the District Court of The Hague issued a second ruling regarding ACM's digital-data inspection procedure, with regard to accessing cell phones. During a dawn raid, ACM requested, among other requests, access to the cell phone data of six individuals involved in the undertaking involved. The question at hand was how the investigation data could be separated from private data of the phones' users. The undertaking claimed that, by making full copies of the cellphones, ACM overstepped its power of investigation. It is plausible that the cellphones contained private data, whereas ACM is only allowed to demand business data that falls within the scope of the investigation. In doing so, ACM may have violated Article 8 of the ECHR.

The Court argues that, considering the total amount of data (18.7 GB), it is not possible on-site to distinguish between relevant business data and private data. As a consequence, ACM may thus have copied data that may have been private. The Court does not consider this to be unlawful considering ACM's investigatory interests. In this case, those interests are not offset by the right to privacy, provided that sufficient safeguards are in place to prevent ACM from gaining access to data that it is not authorized to access, according to the Court. The Court considers ACM's digital-data inspection procedure to offer sufficient safeguards as described above, and dismisses the undertaking's request to prohibit ACM from using the data in its investigation.

No appeal has been filed against this ruling.

- [Ruling of District Court of The Hague on accessing mobile phones \(in Dutch\)](#)

6.1.2 Use of collected data

In this case, the question was whether data collected by ACM during a dawn raid could also be used in other proceedings (ongoing). The undertaking in question requested the judge in interlocutory proceedings to prohibit ACM from using the data found during a dawn raid at the undertaking in other proceedings. According to the undertaking, this use (known as 'transport of data') was not necessary, and therefore in violation of the necessity requirement laid down in the Establishment Act of ACM (Iw).

The judge turned down the request without a hearing. According to the judge, adding file data to another ongoing proceeding was a case of an act without legal effect. The rights and obligations of the undertaking do not change. The judicial assessment of the transfer and the use of data should be performed within the context of the ruling in which these were used: in this particular situation, that were dispute-settlement decisions. In the judicial assessment of those decisions, another question that should be raised is whether it was allowed to use the data, and if the necessity requirement principle was met. Necessity is thus assessed afterwards by the court, not in advance.

In line with the ruling of the judge in interlocutory proceedings of the District Court of Rotterdam, the judge in interlocutory proceedings of the Dutch Trade and Industry Appeals Tribunal (CBb) also ruled in favor of ACM regarding the legal protection/legal process against the use (or reuse) of data from a dawn raid. The judge in interlocutory proceedings of the CBb concluded, though on a different basis (Section 8:29 Awb) than Section 7 Iw, that legal protection after the fact sufficiently safeguards against the transport/use of data for other decisions.

With their rulings, both judges have blocked a prior, separate judicial process, and an assessment of solely the transport and use of data by the administrative court. Going to the civil-law courts for an interlocutory proceeding against the factual act of transfer was still open.

With the clarification of the judicial process, little has been said regarding the material assessment, specifically the question whether the transfer was legal, i.e. whether it meets the necessity requirement of Section 7 Iw, and whether there may be reason for excluding the relevant documents as evidence. This will be ruled on in the proceedings on the merits afterwards by the CBb.

6.2 Role of the government in markets: competitive neutrality

In 2017, the District Court of Rotterdam handed down the first rulings on the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets. As a result of this act, the Dutch Competition Act contains a code of conduct that applies to all levels of government when engaging in activities that are carried out (or also carried out) by private undertakings. In the context of the Dutch Act on Government and Free Markets, ACM makes sure government undertakings compete fairly.

One of the first questions that the court answered was what activities fall under the scope of this act. The court clarified this in the case on ferry flights. And in the cases on photo booths and marinas, the court further explained the standards.

6.2.1 Ferry flights

The Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets, is only applicable if government organizations engage in economic activities. In this case, the question was whether the activity at hand was an economic activity or a governmental task, to which the Dutch law on competitive neutrality does not apply.

Economic activity or actual activity

In 2014, Peru bought two Fokker-50 transport planes from the Netherlands. Peru asked the Dutch Minister of Defense to provide support for flying the aircraft to the desired location, i.e. so-called ferry flights. According to ACM, the minister acted in violation of the Dutch law on competitive neutrality by not charging all of the costs associated with the support for the ferry flights. The minister disputed that the Dutch law on competitive neutrality applied in this case, because the support of the ferry flight did not constitute an economic activity, but an actual activity within the context of a typical governmental task.

Ruling of the court

The court ruled that, under EU case law, this does constitute an economic activity. This means the code of conduct laid down in the Dutch law on competitive neutrality applied. The Minister should thus have included in the price all the costs that they incurred for this service. As the Minister had failed to do so, ACM thus correctly established a violation.

- [Ruling of District Court of Rotterdam on ferry flights \(in Dutch\)](#)

6.2.2 Passport photo booths

In this case, the central question was whether the municipality of Amsterdam included too little costs in the lease price that the operators of passport photo booths had to pay for leasing the space for these unmanned passport photo booths.

Cost calculation

The Dutch law on competitive neutrality mandates government organizations to include all costs. The Dutch trade association for photography (SNF) and a number of Amsterdam-based photography retailers believed that the municipality of Amsterdam failed to do so. They filed a request for enforcement with ACM. This request was rejected due to the fact that an investigation concluded that the municipality acted in accordance with the law. SNF and the retailers subsequently filed an appeal with the court.

Geographical market definition

In order to assess the case properly, it was important to define the geographical market. According to the photography retailers, each city district formed a distinct geographical market. This would imply that residents would only have their passport photos taken in their own districts. Because the municipality added the costs of all city district offices together and subsequently evenly divided these over each city district, too few costs had been included in the lease price in the city center of Amsterdam, according to the claimants' argumentation. The court, in line with ACM's point of view, dismissed this ground, ruling that the market is much larger, covering the entire city of Amsterdam. The municipality therefore used the right level of aggregation in connection with the costs.

Furthermore, the Court thoroughly examined the municipality's cost calculation and ACM's assessment thereof, and reached the conclusion that the assessment was done correctly. ACM was allowed to base its assessment on the data provided by the municipality, without performing an investigation themselves.

In conclusion, the court ruled that ACM correctly turned down the request for enforcement.

- [Ruling of District Court of Rotterdam on passport photo booths \(in Dutch\)](#)

6.2.3 Marinas

The Dutch Act on Government and Free Markets stipulates, among other things, that government undertakings offering products or services on the market must include all relevant costs (integral costs) in the prices of the products or services for buyers.

The violation

ACM established that, in the commercial exploitation of its marinas, the Dutch municipality of Hellevoetsluis did not include all relevant costs in the prices of berths for visitors. For example, the municipality did not include in the berth tariffs the indirect infrastructure costs, such as maintenance of quays and bridges. Furthermore, ACM believes that the costs of capital for the marina waters are higher than the average costs of capital for the municipality.

Ruling of the court

The Court rules that a portion of the total infrastructure costs should be attributed to the berths. The basic principle is that all costs that are somehow related to the performance of an economic activity must be included in the tariffs. In that context, the Court considered it important that:

- the required connection was clear from the municipality's own cost accounting records
- that it was quite conceivable that private businesses also used infrastructure for the purpose of an economic activity
- and that private businesses also pay towards maintenance of the infrastructure through the taxes they pay.

➤ [Ruling of District Court of Rotterdam on marinas \(in Dutch\)](#)

An appeal with a higher court has been filed in this case.

6.3 Impermissible market conduct in tender processes

The Dutch Trade and Industry Appeals Tribunal (CBb) handed down two rulings on the question of what market participants can and cannot do in tender processes. The CBb ruled that the practice of 'cover pricing' harms the competitive process in tender processes. In addition, the CBb expressed its opinion about what the relevant market is for establishing such violations, which is the individual tender process. The ruling in the home care case shows that the impact of the coordination is a factor in determining the level of the fine.

Also, the CBb handed down a final ruling on the complex and continuous violation in the foreclosure auction case. In this large case, the CBb ruled that ACM did not demonstrate for all foreclosure traders that they participated in this complex and continuous violation.

6.3.1 Tender process for home care in province of Friesland

In 2010, ACM imposed fines on two Dutch home care institutions, TZWF and de Friese Wouden, for coordination during the joint tender process of five municipalities in the Dutch province of Friesland in 2006. Before they submitted their tenders, they had coordinated in what municipality they would submit it and for what price. The District Court of Rotterdam had earlier ruled that ACM correctly established a violation.

Ruling of the CBb

The Dutch Trade and Industry Appeals Tribunal (CBb) ruled that ACM correctly established illegal exchange of information prior to the submission of their bids. Considering the tender processes had been organized, as well as the competitive landscape, this exchange of information had an object to restrict competition. Also, ACM had conducted sufficient background research.

With regard to the fine, the CBb said that ACM insufficiently took into consideration the specific circumstances of the case. One of those circumstances is the impact on the involved companies of the introduction of a market-based system under the Social Support Act (WMO). That is why the CBb lowered the fine.

- [Ruling of the CBb on home care providers in Friesland](#) (in Dutch)

6.3.2 Cover pricing by demolition firms in tender processes

In late-2012 and in 2013, ACM imposed fines on multiple demolition firms for violating the cartel prohibition. ACM established that the demolition firms used cover pricing in various tender processes. Prior to submission of the bids, information was exchanged regarding the planned bidding behavior, including the bid price. The objective was that, based on this information, one of the involved companies can bid a higher price without running the risk that the project will actually be awarded to them.

Restriction of competition

The CBb concluded that, in the case of cover pricing, there is no independent market behavior. The exchange of information and coordination of market behavior impedes the free-market process in each individual tender process. The CBb concludes that cover pricing is a type of behavior that restricts competition to a sufficient degree, and that, by its nature, it is harmful to the proper functioning of the free-market process.

Bagatelle provision

The demolition firms had earlier claimed that ACM had to calculate the exact market shares on the relevant market. If the combined market shares were below 5 or 10% (i.e. the legal threshold for market shares under the old and new bagatelle provision), the practice of the involved companies would fall outside the cartel prohibition. Because the combined market share, in all five tender processes, exceeded the bagatelle threshold, the practice fell under the cartel prohibition.

The CBb slightly lowered the fines, because it found that cover pricing is less harmful to competition than 'bid rigging', which was the case in the construction industry fraud case.

- [Ruling of the CBb on demolition firms \(in Dutch\)](#)

6.3.3 Final ruling on foreclosure auctions

In 2011 and 2013, ACM imposed fines on over 70 traders on foreclosure auctions for participating in illegal cartel activities between 2000 and 2009. In 2014, the court ruled on the appeals filed by the first 14 fined traders. In 2016, the court ruled on the appeals filed by the remaining traders. At the time, the court ruled that the fines were lawfully imposed.

However, the CBb reversed the fines imposed on the traders. The court had previously handed down separate rulings on each of the three different tranches, but the CBb ruled on all cases collectively.

A single continuous infringement was not proven

The CBb starts by noting that this concerns a cartel case that has certain special characteristics. It concerns a large group of traders, who, with varying motives, took part in the foreclosure auctions with different degrees of intensity and frequency. In the cases at hand, traders worked together in the first phase of the auction. Such collaborations could be the steppingstone to collusion in the second phase of the auction, and to a secret auction (a so-called “after-auction”) where properties were resold among each other, sharing the price differences resulting from said collusion. ACM deemed the collaboration between traders at over 2,300 foreclosure auctions as a single continuous infringement.

According to the CBb, ACM has not been able to prove a violation of that nature and magnitude. For the majority of the affected auctions, ACM could not establish these after-auctions have indeed taken place. In addition, ACM could not prove that joint bidding in the first phase always led to collusion in the second phase. Only for a limited number of auctions where after-auctions have indeed been established, the CBb shared ACM’s opinion that the traders’ conduct could be deemed anticompetitive. However, the CBb cannot establish that those instances collectively constitute a single continuous infringement. ACM was not given the opportunity to analyze and assess the case in greater detail, especially because of the identified shortcomings in the evidence in this case.

- [Ruling of the CBb on the foreclosure auctions \(in Dutch\)](#)

6.4 Online consumer protection

ACM has fined several online stores for providing incorrect information on their websites about the rights of consumers. A number of fines have been lowered because of the limited financial strength of the undertakings. One interesting aspect from the rulings is that the undertakings had invoked the principle of equality. The question that the undertakings put forward was why some undertakings did receive a warning, and then fined, while others did not. In one case, this appeal was allowed, not in the other.

6.4.1 Fine on outdoor company Bever: incorrect information

ACM imposed two fines amounting to EUR 198,000 on Dutch outdoor company Bever for:

1. providing incorrect information on its website regarding returns;
2. not always reimbursing return shipment costs to consumers.

The Court ruled that the violations were proven and that the collective consumer interests were violated.

Invoking the principle of equality

In its investigation, ACM warned 40 online stores that they did not fully comply with information requirements, and that ACM would impose fines if their websites were not revised. Bever was not warned by ACM. The Dutch Consumers' Association investigated on its own initiative whether the online stores complied with refund obligations. If they did not, the Dutch Consumers' Association confronted them with the conclusions of the investigation. ACM consequently believes that these online stores had also been warned that they did not fully comply with the rules. Bever posited that ACM acted in violation of the principle of equality by fining it without giving a warning first.

Opinion of the court

The court considers that ACM's approach (to communicate in general first, then warn individually, and finally enforce) is not unreasonable. However, if ACM warns some online stores before taking enforcement actions, but not other stores (because these had been warned by the Dutch Consumers' Association), then ACM violates the principle of equality. The Court points out that the Dutch Consumers' Association's warning cannot be equated to a warning issued by ACM. The Court rules that ACM has violated the principle of equality with regard to violation 1. ACM should thus not have used its power to impose fines (violation 1). The court reversed the fine for violation 1 (EUR 90,000), but upholds the fine for violation 2 (EUR 108,000). The above does not apply to the second violation.

The undertaking filed an appeal against this decision. ACM also filed an appeal.

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

6.4.2 Fine on Shoebaloo 2: incorrect information

ACM imposed a fine of EUR 72,000 on fashion retailer Shoebaloo for three violations of information obligations with regard to distance selling. For instance, Shoebaloo stated on its website that consumers were allowed to terminate an agreement within 14 days, but that they also had to return the order within this same period. This is incorrect, since consumers are allowed an additional 14 days to return the order after termination. Shoebaloo also stated on its website that discounted items cannot be returned. This is in violation of the law: discounted items may be returned, too. Lastly, Shoebaloo did not state clearly on its website that consumers were to pay the shipping costs in case of termination. Shoebaloo only filed an appeal with regard to the third violation. Shoebaloo stated an "administrative fee of EUR 15" in case of termination on its website and claimed to have met the information obligation in doing so.

Ruling of the court

The court ruled that the term "administrative fee" did not make it clear to the average consumer that they had to pay the direct costs of their return shipment. Furthermore, EUR 15 exceeded the cost of a return shipment. Additionally, only stating the information regarding return shipments in the general conditions is not sufficient. This information should be clearly stated on the website, for example on a page describing how to return an order.

Principle of equality

Shoebaloo invoked the principle of equality in vain. It argued that ACM violated the principle of equality by imposing a fine. According to Shoebaloo, a large number of online shops did not comply with regulations. The court ruled that ACM's limited enforcement capacity means that not every violation can be tracked down and fined. Random checks do not necessarily violate the prohibition on arbitrariness or the principle of equality as long as ACM acts consistently.

The appeal of the online store is disallowed. The fines are thus upheld. The undertaking filed an appeal with a higher court.

- [Ruling of the District Court of Rotterdam on fine on fashion retailer Shoebaloo \(in Dutch\)](#)

6.4.3 Fine on Corendon for advertised prices

In its oversight of the travel industry, ACM's starting point is that all fixed, unavoidable costs must be included in the advertised price from the start. All variable, unavoidable costs must be listed directly with the advertised price. One example of variable costs is charging additional costs per booking, while the price of the trip is calculated per person.

Displaying unavoidable costs

When consumers booked holiday packages and airline tickets, Corendon charged them additional variable unavoidable costs without listing them directly and clearly with the price. That is why ACM fined the tour operator.

Invoking the principle of equality

The court upheld the fine. The court dismissed Corendon's appeal on the basis of this principle of equality. Considering its limited enforcement capacity, ACM cannot act against all violations (at the same time or consecutively). Corendon is not the only undertaking confronted with enforcement actions by ACM. KLM, Ryanair, and WTC all received fines previously for similar violations. During the proceedings, ACM pointed out that a number of investigations into operators are still ongoing, and that certainly not all cases are comparable.

- [Ruling of the District Court of Rotterdam on fine on tour operator \(in Dutch\)](#)

6.4.4 Right of cancellation

Consumers buying a product in an online store have, in most cases, the right to cancel the purchase agreement within 14 days.

Incorrect information about right of cancellation

In its sanction decision, ACM established that TOM B.V., which sells various products online to consumers, including bicycles, sporting goods, clothing and toys, committed three violations with respect to that right:

1. TOM provided misleading information about the right of cancellation,
2. With regard to consumers who wished to cancel, TOM did not reimburse them using the correct form of payment,
3. TOM had a policy of not taking any action themselves when a return shipment was rejected, for instance because a consumer did not include their bank account number, but instead waited for the consumer to contact them.

ACM imposed three fines on TOM, within the ranges of the fining categories, totaling EUR 625,000, which were lowered by 20% to a total of EUR 500,000 because of interrelatedness. The two de facto executives each received a fine of EUR 125,000.

Interrelatedness of violations

The court agreed with ACM in its explanation of the violations, but lowered the fines considerably to EUR 250,000, respectively EUR 75,000 for the de facto executives because of the considerable degree to which the violations are interrelated, and the "more than usual negative publicity" that TOM B.V. and its de facto executives received in the media. ACM filed an appeal against this last consideration. TOM B.V., too, and the de facto executives filed appeals.

- [Ruling of District Court of Rotterdam on online store and the right of cancellation \(in Dutch\)](#)

6.5 Regulated markets

In 2017, net neutrality was a topic that came up several times. In a ruling of the District Court of Rotterdam, which concerned the fine imposed on T-Mobile for violating the rules on net neutrality, the relationship between the European regulation and the Dutch rules was discussed.

The CBB handed down an interesting ruling on the question of whether or not ACM has the power to regulate the market unbundled access. KPN argued that ACM is not authorized to do so. The CBB did not follow KPN's argument. The CBB also ruled in an old OPTA-case (one of ACM's predecessors). OPTA had imposed a fine for failing to offer the right to reject. This fine did not hold out, as ACM failed to meet its burden of proof.

In addition, the CBB issued a major ruling on the question what ancillary activities network companies are allowed to engage in, and on the meaning of the so-called unbundling rulings handed down by the Supreme Court of the Netherlands.

Finally, a ruling of the Court of Justice in Luxemburg provided certainty regarding the question of whether Dutch telecom providers are required, when asked, to provide subscriber details to a foreign directory assistance service. The latter wanted to use such data for its digital phonebook.

6.5.1 Net neutrality

Since April 2016, net neutrality rules have been enshrined in a European regulation. The Dutch legislature has, in addition, retained the Dutch provision on net neutrality in the Dutch Telecommunications Act (Section 7.4a, paragraph 3). The regulation contains a prohibition against technical discrimination, which means that the internet provider is not allowed to block or delay services on the internet. The Dutch provision contains a prohibition against price discrimination, which means that the internet provider must use a single tariff for all internet traffic within the plan.

Data-free music

Since late-2016, T-Mobile offers the 'Data-free music' service (see section 4.2.3). Customers are able to use music streaming services for free, and using these services does not count against their data plans. According to ACM, this service violated the Dutch provision.

Ruling of the court

According to the court, the Dutch provision is non-binding because it evidently violates the EU regulation.

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

This ruling has created clarity for the market: there is no absolute prohibition on price discrimination. ACM is not authorized to enforce the Dutch provision. The ruling does not automatically mean that T-Mobile's service is allowed. ACM has assessed whether or not the Data-free Music service violates European rules.

[Digital-rights organization Bits of Freedom had asked ACM to prohibit T-Mobile's 'Data-free music' service on the basis of European regulations](#). ACM turned down this request of enforcement. ACM assessed that the service does not violate European rules on net neutrality. Bits of Freedom has filed an objection against ACM's decision. [This objection was turned down](#) (in Dutch) in early-2018.

6.5.2 Market analysis decision regarding unbundled access 2016-2019

Based on the market analysis decision, Dutch telecom provider KPN has been required, since 1 January 2016, to provide competitors access to its fixed telecom networks (DSL and fiber-optic). KPN did not agree with this decision, and argued, among other things, that ACM did not have the power to regulate the market for unbundled access.

Ruling of the CBb

The CBb's ruling means that ACM is authorized to regulate KPN's fixed networks at least as long as KPN enjoys significant market power on the retail market for business telecom services. KPN has a considerably stronger position on that business market than its competitors. The competitive landscape in the other retail markets for internet access, on which KPN does not have significant market power, does not stand in the way of ACM's power to regulate. According to the CBb, the competitive landscape (including consumer harm) is especially relevant to the proportionality of the obligations that ACM imposes.

- [Ruling of the CBb on the market analysis decision regarding unbundled access 2016-2019 \(in Dutch\)](#)

6.5.3 Telemarketing fine on Pretium

The CBb has overturned an old telemarketing fine that the Netherlands Independent Post and Telecommunications Authority (OPTA) had imposed on Pretium.

Right to object

Under the Dutch Telecommunications Act (Tw), the right to object must be offered to subscribers. Between 2007 and 2009, Pretium made telemarketing calls to convince customers to switch from KPN to Pretium, but failed to offer a proper right to object. In these calls, the right to object was, at best, offered in the form of a recorded message that directed listeners to a website. In those instances, subscribers had to go to this website themselves, and configure their settings in order to stop Pretium from contacting them again. In most cases, no right to object was offered at all. OPTA imposed a fine of EUR 300,000 for this in 2011.

Ruling of the CBb

The CBb focused on the question whether ACM actually met the burden of proof. ACM must demonstrate that Pretium did indeed speak with *subscribers*, and not with random users, for example a housemate. Since ACM was unable to prove subscriber status, no violation took place according to the CBb. As such, the fine was overturned.

- [Ruling of the CBb on the telemarketing fine on Pretium \(in Dutch\)](#)

6.5.4 Providing subscriber details to Belgium

Belgian directory assistance service European Directory Assistance N.V. (E.D.A.) wanted access to subscriber data of Dutch telecom providers so it could include these in its digital telephone directory. Said telecom providers (Tele2, Ziggo and Vodafone) refused to do so, because they were of the opinion that they did not have to provide these to foreign telephone directories. The parties submitted their dispute to ACM. ACM agreed with E.D.A., and obligated the telecom providers to provide the subscriber details. But the telecom providers had to obtain explicit consent from their customers.

The telecom providers did not agree with this decision, and filed an appeal against this dispute settlement decision. According to the telecom providers, they are not required to hand over data to directory providers domiciled in another member state.

Prejudicial questions

As part of these proceedings, the Dutch Trade and Industry Appeals Tribunal (CBb) asked the Court of Justice in Luxembourg several questions. These questions concern the interpretation of the Universal service directive. The first question was whether the obligation on telecom providers to provide data also applies to cross-border situations. In addition, the CBb asked if, when asking the consent that the provider seeks from the customer in order to be included in the directory, a distinction can be made between member states.

Answers of the Court of Justice

The Court has given clarity on the issue. First of all, the Court concludes that the requirement of article 25 of the Universal service directive also applies to cross-border requests. On the second question, the Court replied that the telecom provider is only allowed to ask for consent to be included in a directory once, and that the provider cannot differentiate between member states.

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

Final ruling of the CBb

Armed with the answers of the Court of Justice, the CBb has ruled on the appeal of parties. In line with the Court of Justice's ruling, the CBb confirmed that Dutch telecom providers are required to provide subscriber details in connection with inclusion in directories (including digital ones) in another EU member state. The consent that subscribers give for such inclusion also applies to other EU member states.

- [Ruling of the CBb on EDA \(in Dutch\)](#)

6.5.5 Ancillary activities of network companies

System operators are responsible for the construction and maintenance of the energy grid. Each region has one system operator. The Dutch Electricity Act and the Dutch Gas Act contain a prohibition on ancillary activities for network companies. These are companies to which system operators belong. In short, these prohibitions mean that network companies cannot engage in activities (commercial or otherwise) that are in contravention of the need of system operation. In addition, the Dutch Electricity Act and the Dutch Gas Act contain a so-called group prohibition. Based on said prohibition, system operators cannot belong to a group of undertakings that also supplies, generates or trades energy.

According to Essent (formerly RWE), Alliander's subsidiaries violated the two prohibitions, which, as a result, constitutes unfair competition. In a nutshell, the ancillary activities of these subsidiaries relate to sustainable energy. Essent thus filed a request for enforcement in 2015. ACM dismissed this request.

Assessment framework for ancillary activities

In direct appeal proceedings, Essent and Nuon argued that ACM should have applied a much more restrictive assessment framework. In order to substantiate their arguments, both parties explicitly referred to the so-called "unbundling rulings", which state that the law can mandate an unbundling of system operations and other activities. According to both parties, network companies such as Alliander can only engage in ancillary activities under very strict conditions. For example, this would include activities that strictly related to infrastructure.

The Court does not follow the parties' argument. The Court agrees with ACM that it cannot be inferred from the unbundling rulings that, when using the term 'non-energy-related activities' (in Dutch: energievreemde activiteiten), the Supreme Court of the Netherlands would have meant that the activities of the network companies cannot have any overlap with energy infrastructure. The Court also confirmed that the legislature did not posit a restrictive list of allowed ancillary activities for network companies.

No violation of the group prohibition or prohibition on ancillary activities

The Court considers that, in line with ACM's decision, the activities of the subsidiaries are sufficiently related to system operations. The Court also refers to the fact that activities that contribute to a secure and sustainable energy system are permissible ancillary activities. In addition, the Court does not see the need of system operation being compromised.

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

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:

- 2017 Energy Monitor
- 2017 Telecom Monitor
- 2017 Postal and Parcels Markets Scan
- 2017 Rail Monitor
- 2017 Number Issuance Monitor
- 2017 Health Care Monitor

7.1 Energy monitor

ACM is charged with monitoring the energy market.

As part of that task, we did the following in 2017:

- Publication of 'Fact sheets on Quality' about the quality of distribution system operators
- 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.

In the 2016 Fact sheet on quality, published in July 2017, it was striking that, in 2016, the annual duration of natural-gas outages was again at the same level as in 2012 and 2013. The annual duration of natural-gas outages in 2014 and 2015 was higher. The annual duration of power outages has been fairly stable over the past few years. Each year, users have no power for, on average, 20 minutes due to an interruption in the distribution system. Interruptions in the transmission system of TenneT have not been included.

Market Monitoring report

Like in previous years, ACM actively contributed 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 October/November 2017. 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.

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

In August 2017, ACM published the [2016 Telecom Monitor](#). The key trends with regard to internet, telephony, and television over the past four years are:

1. Massive increase in mobile data consumption
2. Consumers take out more and larger packages;
3. Consumers increasingly go online using very fast broadband connections;
4. Marked increase in the number of connections for internet of things;
5. Mobile operators without a network of their own in particular are growing tremendously;
6. Market shares in the consumer market for internet are stable.

See also:

- [Telecom Monitor: Q4 2016 \(in Dutch\)](#)
- [Telecom Monitor: Q3 2016 \(in Dutch\)](#)

Massive increase in mobile data consumption

Dutch consumers keep on using their mobile phones more and more for calling and surfing the Internet. Mobile data consumption continues to increase. In 2016, total data consumption was 185 billion MB, which is an increase of 63% compared with 2015, and an increase of over 500% compared with 2013. The number of text messages continues to decline.

Consumers take out more and larger packages

More and larger packages have become staples in the telecom sector. Consumers increasingly take out a combination of services such as broadband access, television services, fixed telephony, and mobile telephony in a single package. At the end of 2016, the number of households that took out a package has risen to almost 6.5 million. In 2016, the number of households that took out a four-in-one package rose by 190,000 connections (31%) to almost 800,000. The number of three-in-one packages in 2016 rose by 245,000 connections (6%). The number of two-in-one packages decreased by 187,000 connections (-12%).

Consumers increasingly go online using very fast broadband connections

Fast internet connections have become more and more common for consumers. In 2016, one in three consumer connections had superfast speeds of over 100 Mbps. In late-2013, that percentage

was just 9%. The percentage of slow connections (lower than 10 Mbps) dropped in 2016 to 2% of all connections. In 2013, that percentage was still 31%.

Marked increase in number of connections for internet of things

In the mobile market, the number of connections used for devices that communicate over the Internet is increasing tremendously. This concerns SIM cards with 097 numbers for objects such as trash cans, alarm systems, and smoke detectors. The number of SIM cards for devices that communicate over the Internet rose from over 1.2 million in late-2013 to almost 4 million in late-2016.

Mobile operators without a network of their own in particular are growing tremendously

In 2016, the number of mobile bundles (plans with data and voice) increased significantly, from 12.64 million in 2015 to 13.83 million in 2016 (+ 9%). In the postpaid and prepaid segments, the mobile operators without a network of their own in particular experienced growth in 2016. The number of postpaid and prepaid connections among these market participants increased by 19% in 2016. They purchase access from one of the four major market participants that have a network of their own. Among these mobile operators that have a network of their own, the average growth rate was markedly lower: 2.5%.

Market shares in the consumer market for internet are stable

Since cable companies UPC and Ziggo merged in 2014, the market shares in the consumer market for internet have remained stable. Over the past three years, both KPN and Ziggo had stable and similar market shares of approximately 40-45%. Next to these two competitors, Tele2 was able to maintain a small yet stable market share of 0-5% over the same period. The other market participants had a combined market share of approximately 5-10%. KPN must give other market participants access to its fixed network. This fixed network is regulated. The market share of the market participants that take advantage thereof is approximately 5-10%.

7.3 Postal and Parcel Markets Scan

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 August 2017, ACM published the [2016 Postal and Parcel Markets Scan](#). This scan has been compiled using data from 28 postal operators and 6 parcel couriers in the Netherlands. The scan reveals the following trends in 2016:

- More parcels and fewer lettersize mailpieces have been sent
- Investments by postal operators and parcel operators have been realized
- More competition in lettersize mail delivery has arisen

More parcels and fewer lettersize mailpieces

The Netherlands has a growing delivery market: the parcel market is growing faster than the mail market is declining. In 2016, the total turnover from mail and parcel deliveries increased to nearly EUR 3 billion, the highest level since 2013. Most operators that transport mail, deliver parcels too. Postal operators and parcel couriers compete with each other for the favor of business senders, and make investments to improve their service.

In 2016, business senders sent 2.6 billion letters, magazines, and business mail, which is 10 percent less than in 2015. Consumers sent 196 million mailpieces such as letters and cards in 2016, an average of 12 mailpieces per person. In 2015, that average was still 13. Businesses and consumers sent a total of 350 million parcels in 2016. The number of parcels in 2016 is 12 percent higher than the number in 2015, which is an increase in turnover of 8 percent. Within the Netherlands, most parcels were sent by businesses to consumers: 152 million mailpieces. Businesses sent nearly 70 million parcels to each other. Consumers sent 7 million parcels.

Investments by postal operators

In 2016, postal operators invested in sorting machines, better software, and electric bicycles. Some have also invested in business software for planning and registration. Several postal operators have introduced services and new products such as bicycle courier services, letterbox packages, and personalized Christmas stamps. In 2016, regional postal operators also invested in the expansion of their own delivery networks. Wherever they do not deliver themselves, they are able to use the network of PostNL.

Increasing competition on the postal market

Competition on the postal market is increasing. Overall, the market share of PostNL has declined slightly. The market share of regional operators in particular is increasing. Next-day delivery for business mail has fewer competitors than slower mail. In 2016, PostNL's competitors delivered 10 to 15 percent of the mail that arrives after one working day. There is more competition in slower mail. 35 to 40 percent of this mail is delivered by other operators than PostNL. In parcel deliveries, PostNL has a market share of about 60 percent, which makes it the largest operator for domestic parcel delivery. In cross-border delivery of parcels, there are multiple operators that are more or less similar in size with market shares of approximately 25 percent.

7.4 Rail Monitor

ACM is also charged with monitoring trends and developments in the rail sector.

In March 2017, ACM published the [2016 Rail Monitor](#). In it, ACM discusses recent trends and developments in the Dutch rail sector, and presents the results of a survey held among 43 stakeholders, who responded to various questions posed by ACM. The findings from this survey cover the period from early-2014 to August 2016. The previous Rail Monitor was published in October 2014.

With the Rail Monitor, ACM presents the experiences that various users of the rail network have with the services of the rail infrastructure manager and with those of various other providers. Based on the findings of the stakeholder survey, ACM examines potential bottlenecks. These can subsequently be used in our agenda. [In the Rail Monitor, ACM shares the findings from the survey](#) (in Dutch) with the manager, rail users, and other 'stakeholders' in the rail sector such as the Ministry of Infrastructure and Water Management.

The stakeholders have responded to our questions about the management and services of network infrastructure manager ProRail, and the rail-related services of other providers. Stakeholders also commented on the performance of the 'OV-chipkaart', the national contactless smart card for public transport in the Netherlands. And they shared their opinion on their experiences with regional rail tender processes.

The Monitor shows that freight rail transport and passenger rail transport continue to grow in 2016. Freight rail undertakings and passenger rail undertakings also have concerns about the affordability and availability of rail capacity.

Pressure on rail capacity is rising

ACM observes that freight rail transport and passenger rail transport continue to grow. Passenger rail transport has risen from 144.8 million train kilometers in 2014 to 145.6 million train kilometers in 2015, and to 147 million in 2016. Freight rail transport has risen from 10 million train kilometers in 2014 to 10.6 million in 2015, and to 11 million in 2016.

Concerns over affordability and availability of rail capacity

Freight rail undertakings and passenger rail undertakings have concerns about the affordability and availability of rail capacity. Rail undertakings each pay an infrastructure charge to ProRail for using the rail infrastructure. In their view, the infrastructure charge (the fee they have to pay for using the rail infrastructure) is too high. The freight rail undertakings are of the opinion that the current price structure makes it more difficult to compete with road transport and water transport. They also believe that too little capacity is available. This capacity has particularly come under pressure since Dutch network infrastructure manager ProRail is carrying out maintenance works at numerous locations.

Equal opportunities for passenger rail undertakings

Passenger rail undertakings that wish to enter the Dutch rail market have concerns about the opportunities that they have to compete for rail transport concessions. At the moment, they can only compete in tender processes for regional concessions. The concession for passenger rail transport on the main railway network and the high-speed rail line has been directly awarded to Dutch Railways NS until 2025 (without any competition). The opportunities that passenger rail undertakings get are linked to the choices that are made with regard to the organization of the Dutch rail market. In

2017, an independent commission studied various scenarios with regard to the organization of the rail market after 2024. This study was triggered by a recommendation of the parliamentary inquiry commission on the Fyra high-speed train, proposing to flesh out general scenarios for the rail market organization after 2024.

At the request of the Dutch House of Representatives, ACM in 2017 gave [advice](#) (in Dutch) related to [the report of this commission](#) (in Dutch).

Requests for information in rail sector from 2017

From 2017, ACM requests information from market participants using a request for information. ACM uses the collected information for three reports: the IRG-Rail Market Monitoring Report, the RMMS Report of the European Commission, and finally, the ACM Rail Monitor. Based on this information, ACM assesses whether there are any bottlenecks in the rail market.

7.5 Number Issuance Monitor

Since 2008, ACM each year published an overview of the available numbers and the effects of ACM's regulation of available number capacity. This report used to be called the Scarcity Report. In 2017, it was rebranded as the [Number Issuance Monitor](#) (in Dutch).

In June 2017, ACM released the 2016 Number Issuance Monitor. This report provides an overview of all numbers that are used in the Netherlands, and of the available numbers as of 31 December 2016. Several trends outlined in the report are:

- Pressure on mobile phone numbers remains high because of new applications
- Fewer calls using the landline, more geographic phone numbers
- Pressure on mobile network codes expected to rise

Pressure on mobile phone numbers

ACM does not expect a shortage of 06-numbers to occur anytime soon (in the Netherlands, mobile phones are assigned 06-numbers). Almost 91% of all available numbers for mobile phones have already been assigned to telecom providers, but it turns out that they still have approximately 35% of those numbers in stock. For all devices that require an internet connection but with which you cannot make any calls, telecom providers must use 097-numbers. However, pressure on 06-numbers in the Netherlands will continue to be a point of attention in the long term. Demand for 06-numbers remains high, for example, because of innovative electronic communication services.

Fewer calls using the landline, more geographic phone numbers

Fewer people use landlines. Yet the number of geographic phone numbers continues to grow. This growth is primarily fueled by an increase in the number of market participants that use geographic phone numbers to offer business phone services over the Internet. ACM does not expect a shortage of geographic numbers.

Pressure on mobile network codes

Telecom providers need mobile network codes in order to offer mobile services and to guide telecom traffic to the right network. These codes determine whether a mobile sim card gains access to a mobile network. With network codes of their own, telecom providers are able to issue their own sim cards. As a result, they rely on wholesale providers. ACM expects demand for mobile network codes continues to rise over the next few years. In order to gain more insight into the current use of issued mobile network codes, ACM in 2017 sent number holders of mobile network codes a request for information. Mobile network codes that are not used will be withdrawn in 2018.

7.6 Health Care Monitor

The [2017 Health Care Monitor](#) reveals that premium increases of health insurances do not lead to more switchers. The Health Care Monitor is an annual survey among consumers into the health insurance market, and is carried out by ACM.

Consumers seek assurance

The 2017 Health Care Monitor shows that consumers seek assurance when choosing health insurance. This holds especially true for consumers who have been with the same health insurer for a longer period of time. Almost half of these consumers say they would consider switching if they were given the assurance that their new health insurer offered them the same coverage.

Consumers seek information

In order to compare health insurances properly, consumers would like to have better information about reimbursements in the supplemental insurance plans (39%), about the quality of the contracted health care providers (26%), and about premiums (24%). A majority of consumers are not yet familiar with certain sources of useful information such as the so-called health insurance overview. With that tool, consumers are able to compare the various basic health insurance packages more easily.

Trends in the health insurance market

ACM examines how competition evolves in the health insurance market. One of the contributing factors to that evolution is the degree to which consumer switch health insurers. Switching is not a goal unto itself. However, consumers who have had the same health insurance for a long period of time may no longer have the insurance that fits their needs best. Switching health insurers could then be beneficial.

Health Care Monitor

The Health Care Monitor provides insight into, among other aspects, consumer attitudes and behavior with regard to switching health insurers. In addition, the Health Care Monitor gives insight into consumer satisfaction with their current health insurers, prices, and the need for information when looking around for a new health insurer.

8 Key figures

By publishing these key figures, ACM offers insight into its activities it carried out in 2017, 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 of cases, 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 2017.

8.1 Activities of ACM

In its work, ACM aims to carry out its work as professionally and 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.

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. For the majority of our subject areas, lead times compared with 2016 and 2015 have decreased. In 2017, we continued to reduce lead times further. Over the next few years, we will continue to work on improving our 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. By using the medians, lead times do not become disproportionate.

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 statutory term limit is 56 days. The term limit can be extended if the complainant approves such an extension. In practice, we can see that, in practically all decision requests, the term limits are extended, and that ACM stays within the extended term limit.

In 2017, ACM completed in total 24 decision requests. This is comparable with 2016, when there were 23. 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

	Energy	Competition	Telecom	Postal	Transport
Number of resolved decision requests against market participants	10	5	5	4	0
<i>Median lead time (days)</i>	194	228	109	41	-
<i>Idem 2016</i>	58	194		24	123
<i>Idem 2015</i>	135	79		149	159

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 on 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. Most of the requests that ACM receives concern the same company. 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. In 2017, five requests that ACM had sent were closed.

Table 2: European requests for information and enforcement

Consumer protection		2017	2016
Number of European requests for information	<i>Sent</i>	2	4
	<i>Received</i>	5	5
	<i>Processed</i>	2	5
Number of European requests for enforcement	<i>Sent</i>	7	4
	<i>Received</i>	22	5
	<i>Processed</i>	10	3

With regard to competition oversight, European authorities, including the European Commission, are able to ask each other for assistance in investigations. Under Article 22 of Regulation 1/2003, ACM in 2017 provided assistance to other competition authorities within the EU five times. In addition, ACM

requested other competition authorities for assistance three times. All three of these requests have been handled by the competition authorities in question.

Disputes in energy and telecom sectors

Consumers and businesses do not always agree with the way operators or providers in the energy, telecom, postal services or transport sectors 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.

ACM takes decisions within two months. This time limit can be extended by another two months. ACM seeks to settle the disputes to everyone's satisfaction. If parties file appeals against the dispute decisions, they are submitted to the Dutch Trade and Industry Appeals Tribunal (CBb).

In 2017, ACM settled 22 disputes. The dispute decisions can be found on our website. Appeals have been filed with the CBb against 17 dispute decisions.

Table 3: Number of disputes in the energy, telecom, postal services and transport sectors

	Energy	Telecom	Postal services	Transport
Number of resolved disputes	11	4	5	2
<i>Median lead time (days)</i>	57	102	108	84
<i>Idem 2016</i>	121	n/a	-	-
<i>Idem 2015</i>	124	298	-	-
<i>Statutory lead time (whether or not postponed)</i>	2-4 months	2-4 months	2-4 months	2-4 months
Appeals	14	3	0	0
<i>Founded</i>	0	2	-	-
<i>Unfounded</i>	3	0	-	-
<i>Withdrawn</i>	11	1	-	-
<i>Inadmissible</i>	0	0	-	-

Number of investigations per subject 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. In some cases, we hand over indications or investigations to other authorities in the Netherlands or abroad. Those cases are not included in these tables.

ACM has 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 2017, a decrease in lead times compared with 2015 can be observed in most areas. On the other hand, an increase can be observed in investigations that have been completed with a statement of objections.

Table 4: Number of investigations launched per subject area

	Consumer protection	Energy	Competition	Telecom & Postal	Transport
Number of investigations launched	34	26	11	6	4

Table 5: Number of investigations completed per subject area

Investigations completed by way of	Consumer protection	Energy	Competition*	Telecom & Postal	Transport
Statement of objections	5	2	0	0	0
<i>Median lead time (days)</i>	356	375	-	-	-
<i>Idem 2016</i>	180	189	480	-	436
<i>Idem 2015</i>	344	n/a	555	1299	n/a
Order subject to periodic penalty payments	2	0	1	1	0
<i>Median lead time (days)</i>	56	-	338	72	-
<i>Idem 2016</i>	240	-	-	59	-
<i>Idem 2015</i>	184	154	-	n/a	n/a
Another instrument	114	13	13	4	0
<i>Median lead time (days)</i>	45	406	232	45	-
<i>Idem 2016</i>	214	391	227	-	230
<i>Idem 2015</i>	125	407	114	411	n/a
Suspended without any intervention	2	1	6	2	3
<i>Median lead time (days)</i>	23	644	135	117	243
<i>Idem 2016</i>	33	353	424	281	380
<i>Idem 2015</i>	-	327	488	492	264
Handled by a foreign authority	0	0	1	0	0
<i>Median lead time (days)</i>	-	-	1227	-	-
Total number of completed investigations	123	16	21	7	3

* This includes the completed investigations under the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets.

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 2017, 18 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 2017	Number in 2016
Total		18	19
Of which:	<i>Order subject to periodic penalty payments</i>	1	1
	<i>Enforcement decisions</i>	2	2
	<i>Offender (actual or alleged) stops the violation</i>	3	9
	<i>Investigation suspended/no violation</i>	5	4
	<i>Continuing in 2018</i>	7	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 decisions. All concentration assessments have been completed within the statutory term limits.

Table 7: Overview of concentrations

	Number in 2017	Number in 2016
Notification phase / first phase		
Notifications of mergers, acquisitions and joint ventures (concentrations)	102	105
Concentration notifications that did not have to be notified	0	2
Withdrawn notifications	1	2
<i>Decisions on notifications of concentrations</i>	103	100
<i>License required for concentration</i>	1	2
<i>Exemptions granted under Section 40 Mw.*</i>	1	4
License phase / second phase		
<i>License applications</i>	1	1
<i>License applications withdrawn</i>	0	0
<i>ACM decisions on license applications</i>	2	2
<i>Exemptions granted under Section 46 Mw.*</i>	0	0

* 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

ACM grants licenses and exemptions in the energy sector.

Licenses

For the supply of electricity and natural gas, suppliers need to have a license. In 2017, ACM granted three supply licenses, and withdrew two supply licenses on request. All providers that supply heat to consumers and small-scale users, too, 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 2017, ACM granted 1 license for the supply of heat.

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.

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

	License	Exemption
Granted	4	9
Not granted	0	1
Withdrawn or completed without a decision	2	1
<i>Median lead time (days)</i>	67	224
<i>Idem 2016</i>	89	477
Total number of completed cases	6	11

8.1.5 Sanctions

In 2017, ACM imposed several fines following violations of the various laws that it enforces. Fines can only be imposed based on a statement of objections. Sometimes, a single case can have multiple undertakings that are fined.

Here is an overview of several relevant aspects of 2017:

- We completed 14 cases (drawing up a statement of objections)
 - In 11 of those cases, fines have been imposed totaling EUR 64.6 million;
 - The other 3 cases were completed without any fines being imposed.
- We fined 21 undertakings;
- We fined 5 de facto executives.

Compared with 2016, we handled more sanction cases (2016: 11), fined more undertakings (2016: 17), and imposed higher fines (2016: EUR 3.3 million).

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

Table 9: Overview of sanctions

	Consumer protection	Energy	Competition	Telecom & Postal	Transport
Fine (in millions of euros)	2,815,000	325,000	61,424,000	-	25,000
Number of cases in which a fine was imposed	5	1	4	0	1
Undertakings fined	7	1	12	-	1
De facto executives fined	3	-	2	-	-
<i>Median lead time (days)</i>	<i>106</i>	<i>197</i>	<i>174</i>	<i>-</i>	<i>174</i>
<i>Idem 2016</i>	<i>150</i>	<i>-</i>	<i>-</i>	<i>72</i>	<i>-</i>
<i>Idem 2015</i>	<i>101</i>	<i>n/a</i>	<i>367</i>	<i>164</i>	<i>-</i>
<i>Statutory lead time (days)</i>	<i>91</i>	<i>91</i>	<i>91</i>	<i>91</i>	<i>91</i>
<i>Statutory lead time in case of postponement (days)</i>	<i>182</i>	<i>182</i>	<i>182</i>	<i>182</i>	<i>182</i>
<i>Percentage of cases where statutory lead time was met (including cases with postponements)</i>	<i>40%</i>	<i>0%</i>	<i>79%</i>	<i>-</i>	<i>100%</i>
Cases completed without fines	-	-	3	-	-

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. Each objection or appeal is counted separately, even if the objection and appeal is withdrawn or if the appeals of multiple parties are joined together by a judge to a single case.

ACM keeps track of the lead times of appeal cases. 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 2017, a significant improvement can be observed in all areas compared with 2016.

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 services
Objections founded	1	0	2	0	0
Objections partially founded	0	26	0	2	2
Objections unfounded	4	9	4	6	1
Objections withdrawn	2	17	2	20	0
Objections inadmissible	0	4	1	5	2
Direct appeal	2	1	0	1	0
Total number of resolved objections	9	57	9	34	5
<i>Median lead time (days)</i>	<i>64</i>	<i>105</i>	<i>31</i>	<i>39</i>	<i>60</i>
<i>Idem 2016</i>	<i>34</i>	<i>117</i>	<i>74</i>	<i>49</i>	<i>-</i>
<i>Idem 2015</i>	<i>59</i>	<i>159</i>	<i>64</i>	<i>50</i>	<i>-</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>47%</i>	<i>67%</i>	<i>91%</i>	<i>80%</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	3	0	8	0
	<i>Unfounded</i>	0	0	0	5	0
	<i>Withdrawn</i>	5	6	25	10	0
	<i>Inadmissible</i>	1	27	7	2	8
	<i>Partially allowed</i>	0	2	2	4	0
Number of resolved appeals to a higher court *	<i>Founded</i>	-	0	61	5	-
	<i>Unfounded</i>	-	0	1	0	-
	<i>Withdrawn</i>	-	1	3	3	-
	<i>Inadmissible</i>	-	0	1	1	-
	<i>Partially allowed</i>	-	1	0	0	-
Total number of resolved appeals (including appeals to a higher court)		8	40	100	38	8
Number of resolved provisional injunctions **		1	0	5	5	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 2017, ACM received a total of 14 Wob-requests. This is less than in 2016 and 2015 (23 and 41 requests respectively). Seven Wob-requests were handled in objection and appeal (including appeal to a higher court).

The median lead time for Wob-requests was 28 days in 2017. The statutory lead time is 28 days. With regard to 7 Wob-requests (50%), the statutory term limit was exceeded.

Table 12: Wob-requests*

	Number in 2017	Number in 2016
Number of received Wob requests	14	23
<i>Median lead time (days)</i>	28	20
<i>Statutory lead time (days)</i>	28	28
Number of completed Wob-requests on objection and appeal	7	6

* Wob = Dutch Act on Public Access to Government Information

8.1.8 Indications submitted by consumers

Consumers contact consumer information portal ConsuWijzer for various reasons. They can ask questions, but also file complaints about a company. We refer to such questions and complaints as indications.

Number of indications

In 2017, ACM received 56,687 questions and complaints from consumers through ConsuWijzer. That is 317 fewer indications than last year. The indications are submitted by phone, email or letter. In September 2017, ACM started an experiment with a new channel: WhatsApp. 1,314 questions and complaints were received via this channel. In 23% of all cases, ACM referred the consumer to another organization. The remaining 77% fell under our scope.

Table 13: indications submitted to ConsuWijzer

	Number in 2017	Percentage	Number in 2016	Percentage
Telephone	32,418	57.2%	35,821	62.8%
Email (web form)	22,724	40.1%	20,849	36.6%
Letter	231	0.4%	334	0.6%
WhatsApp	1,314	2.3%	-	-
Total	56,687	100%	57,004	100%

Table 14: Within ACM's regulation / Referrals

	Number in 2017	Number in 2016
Falls within ACM's regulation	43,649	42,183
Referrals	13,038	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. Like last year, the most indications came from purchases of products or services on websites 'online', 12,117 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 2017	Number in 2016
Website (mobile/desktop)	12,117	11,093
Phone	7,247	7,358
Shops (including markets)	6,098	7,282
Doorstep / sales demonstration	1,314	1,545
Email	994	935

Sectors

ACM bases its oversight to a large extent on the number of indications it receives. For example, a lot of indications in 2017 were about faulty products in the electronics sector, and about services (debt collection agencies, intermediaries, and discount services).

Table 16: Top 5 sectors, based on indications

Sectors	Number in 2017
Retail	15,969
Services	12,743
Telecom services	3,967
Energy providers	3,957
Postal services	289

Table 17: Top 3 indications per sector

Sectors	Sub-sector	Number in 2017
Retail	Electronics	2,891
	Fashion	2,339
	Interior decoration	2,064
Services	Consultancy, research, and specialist services	3,694
	Discount sites	1,686
	Travel agencies and travel intermediaries	1,497
Telecom services	Combination product	1,326
	Mobile telephony	1,227
	Fixed internet	416
Energy and heat	Electricity and natural-gas suppliers	2,382
	System operator	823
	Heat suppliers	650
Postal services	Mail delivery in general	147
	24-hour mail	118
	Collection boxes	17

Subject of the indication

Consumers contact ACM for various reasons. ConsuWijzer categorizes each indication it receives (the main subject of the problem). In 2017, most indications were about faulty products or services and warranties (like in previous years). Many complaints about customer recruitment and selling methods were also filed.

Table 18: Top 5 topic/nature of complaint

	Number in 2017	Number in 2016
Faulty product/service and warranty	10,046	10,725
Customer recruitment, and selling methods	9,094	8,937
Termination and cancellation of contracts (including unwanted ones)	5,105	6,177
Bills and payments	4,828	5,536
Delivery issues	4,178	3,720

ConsuWijzer.nl

In 2017, ConsuWijzer.nl had 248,562 more visits than in 2016, which is an increase of 9%. 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'. This has remained unchanged since last year.

Table 19: Visits to ConsuWijzer.nl

	Number in 2017	Number in 2016
Visits	3,040,860	2,792,298

8.1.9 Indications submitted by businesses

In 2017, 6,534 indications were submitted to the ACM business desk. This is a slight decrease compared with 2016 (162). In 28% of these cases, it concerns situations where ACM has referred businesses to other organizations. 72% of the indications fell within the scope of our regulation. The number of referrals thus dropped in 2017. The number of indications that fall within our regulatory jurisdiction increased by 286 compared with 2016.

Table 20: Number of indications submitted to ACM Business Desk

	Number in 2017	Percentage	Number in 2016	Percentage
Within ACM's regulation	4,705	72%	4,419	66%
Referral	1,829	28%	2,277	34%

This top 3 is similar to those in previous years. However, a shift within the top 3 did occur in 2017. 'Energy' moved up a spot from third place to second place, thereby pushing down 'Competition' into third place. 'Telecom and Internet' still tops the list with a lot of questions about slamming (unsolicited transfer of telecom subscriptions). The number of indications about 'Competition' has decreased compared with 2016. The increase in the number of indications in 2016 could be related to the anti-cartel campaign that was launched in early-2016. In mid-2017, ACM did, however, warn against illegal cartel agreements.

Table 21: Top 3 of indications submitted by businesses

	Number in 2017	Number in 2016
Telecom and Internet	1,468	1,634
Energy	961	829
Competition	749	906

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 2017, ACM received 18,737 spam-related complaints. That is 7,440 fewer complaints than in 2016. In 2017, a new website for filing spam-related complaints was launched, and we have observed that the flow of complaints on this new website is not at the same level as before.

Table 22: Indications submitted to spam complaints board

Type of indication	Number in 2017	Number in 2016
1. Email	18,185	25,438
2. Text messages	356	407
3. Fax	2	6
4. Phone	88	130
5. Social media	15	26
6. Other	91	170
Total	18,737	26,177

8.1.11 Numbers and issuance

ACM manages the supply of phone numbers in the Netherlands. Telecom providers and businesses can apply for numbers with ACM. ACM maintains a register, keeping track of what telecom provider or company holds what numbers. 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. In 2017, the policy rule '[Assignment and withdrawal of 090x and 18xy-numbers](#)' (in Dutch) was released. In this policy rule, the rules for issuance and use of these numbers have been tightened.

Table 23: Number of assigned and withdrawn numbers

		Assigned	Withdrawn
1.	Other numbers	7,380,014	1,214,029
2.	Business numbers	196,200	90,400
3.	0800 numbers	825	810
4.	0900 numbers	274	1,119
5.	0909 numbers	182	211
6.	0906 numbers	17	220

Table 24: Overview of percentage of available numbers

Number series	% available numbers as of 31-12-2017	% available numbers as of 31-12-2016
Short 0900-numbers	51.64%	42.64%
Short 0800/0906/0909-numbers	78.48%	76.42%
Long 0800/0900/0906/0909-numbers	99.87%	99.81%
Mobile numbers	9.20%	9.12%
Carrier selection (4 digits)	60.00%	48.00%
Business numbers	66.64%	65.82%
18xy – subscriber information service numbers	47.47%	51.51%

Table 25: Overview of registrations of various market participants

Registrations of providers of electronic communication	End of 2015	End of 2016	New registrations	Terminated registrations	End of 2017
Provider of a public electronic communication network	815	819	104	27	896
Provider of a public electronic communication service	729	779	199	48	930
Provider of related facilities	28	51	31	3	79
Provider of qualified certificates	7	7	0	0	7
Category Postal Services					
Postal delivery providers	121	119	9	7	121

Table 26: Number of registrations for electronic communication

	2017	2016
Number of registrations for Electronic Communication (including termination)	412	367
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:

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

8.2.1 Board, departments, 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. In 2017, the Board consisted of Chris Fonteijn (Chairman), Henk Don, and Cateautje Hijmans van den Bergh. On January 1, 2017, Cateautje Hijmans van den Bergh was appointed Member of the Board of ACM.

Each member of the Board has their own portfolio:

- Chris Fonteijn: General Competition Oversight, Health Care, Strategy and Communication;
- Henk Don: Sector-specific Regulation (energy, telecom, transport, postal services) and the Office of the Chief Economist;
- Cateautje Hijmans van den Bergh: Consumers, Legal Affairs, the ACM Academy, and Corporate Services.

Departments

In 2017, ACM consisted of 8 departments. In the fall of 2015, ACM 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.

Table 27: Employee utilization rate

	Number of employees	Fte	Men (in %)	Women (in %)
1 January 2017	574	543.40	49.7%	50.3%
31 December 2017	562	526.60	48.4%	51.6%

Table 28: Age structure of staff

	2017	2016
24 years and younger	8	8
25 through 34 years	128	145
35 through 44 years	187	202
45 through 54 years	169	158
55 through 59 years	35	30
60 years and older	35	31

Table 29: Personnel expenditures (in euro)

	2017	2016
Salary costs	44,491,471	42,408,162
Average salary	78,330	81,024

The average salary is based on the average of the total number of employees at the beginning and the end of 2017.

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. In 2017, OR elections were held. All 11 seats were filled. The term for OR members has been extended from 2 years to 3 years.

During meetings with the Board in 2017, the OR expressed its opinions on the following topics, among other ones:

- The evaluation of the Health Care Taskforce and the ACM Academy and their places within the organization;
- ACM's privacy policy;
- The new case system, and the new time-keeping system including their privacy concerns;
- ACM's IT strategy;
- ACM's finances;
- HR issues, such as absenteeism and the recruitment policy;

Within the Departmental Works Council (DOR), ACM contributed to discussions about ACM's compliance with the Dutch act on creating jobs for individuals with special needs (in Dutch: Participatiewet), and about the way job openings are handled at an EZ level. It also provided input for the memo on working in a healthy and safe manner. Furthermore, in 2017, the chair of the DOR came from the ACM Works Council.

Inflow and outflow of staff

In 2017, ACM hired 52 new employees, and 62 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.

Table 30: inflow and outflow of staff

	Total	Men	Women
Inflow	52	21	31
Outflow	62	36	26

Absenteeism

In 2017, the absentee rate was 3.2 percent. This is 0.6 percentage points lower than in 2016, when it was 3.8 percent. As a result, ACM's absentee rate was below the so-called Verbaan rate of 3.5%.

Table 31: Absenteeism

	Verbaan rate *	2017	2016
Absentee rate	3.5%	3.2%	3.8%

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

Diversity and inclusion

ACM aims to have a diverse workforce. 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 2017, a considerable amount of attention was given to diversity and inclusion. ACM's network for young employees organized a luncheon discussion on diversity. The topic was 'Women leaders and female leadership'. Cateautje Hijmans van den Bergh, Member of the Board of ACM, talked about her own experiences with this topic. And ACM also celebrated IDAHOT, the international day against homophobia and transphobia.

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 and Climate Policy (EZK) and its affiliated agencies, including ACM. Several ACM employees took active part in workshops, debates, and lectures that week. And ACM also hosted one of the activities: the screening of a film about racism and exclusion. Attendees shared their own personal experiences with this topic, thereby sparking a very deep and serious conversation. Furthermore, ACM's HR advisers and communication experts joined forces to redesign and improve 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 and inclusion in the workplace with regard to five areas: sexual orientation, gender, age, disability, and ethnic and cultural background. EZK has created the Consultation Forum for Inclusion (in Dutch: 'Vakberaad Inclusief'), which helps implement the Diversity Charter at EZK level. Two ACM employees sit on this Consultation Forum for Inclusion on behalf of ACM, thereby giving a substantial boost to the subjects of diversity and inclusion within EZK.

8.2.2 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

In 2017, ACM had one integrity compliance officer, and one vacancy. Integrity compliance officers are appointed by the Secretary-General of the Ministry of Economic Affairs and Climate Policy (EZK). 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.

In addition, ACM has two harassment compliance officers. These certified compliance officers have been appointed by the ministry. Employees are able to contact them anonymously and confidentially, whenever they have concerns with regard to all kinds of harassment.

Integrity regulations

ACM has drawn up an integrity code. In addition, ACM uses several integrity regulations of the Ministry of Economic Affairs and Climate Policy. 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.

Privacy

As regulator, we aim to protect personal data as much possible, data of external individuals and also data of our employees. That is why ACM in 2017 took further steps to meet privacy-related rules and regulations. A privacy policy has been drawn up, ACM's privacy statement has been updated, and a Data Protection Officer has been appointed.

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 2017

Citizens are finding it increasingly easier to contact ACM, including via the complaint form on ACM's website. In 2017, we received a total of 49 complaints against ACM and ACM staff. In 2016 and 2015, that number was 14.

Complaints not concerning ACM

Not all of the complaints that ACM received in 2017 were meant for the complaints officer. An increasing number of complaints (25 in 2017, 5 in 2016) did not qualify (in full or in part) as complaint. This concerned, for example, complaints about the behavior of businesses that ACM regulates (14), or complaints that were not meant for ACM (2), or situations in which the complainant sought general information (2) or the complaints were actually requests or objections (3). Of the complaints that did not concern ACM, the complaints officer in many cases (15) was able to resolve the case to the complainant's satisfaction by giving an explanation or more information or by guiding the complainant to the right organization, such as the complaints board or another regulator.

Complaints concerning ACM

The number of complaints concerning ACM and ACM staff increased this year, from 9 in 2016 to 24 in 2017. These complaints vary tremendously in terms of topic. In 2018, ACM will check whether this was an outlier or the beginning of a trend. We will look whether there are developments that may be able to explain the increase such as increased brand recognition of ACM and increased assertiveness of citizens.

In consultation with the complaints officer, ACM has solved 17 complaints through consultations and the provision of explanations.

ACM issued formal decisions regarding two complaints. These complaints concerned:

1. a. Designating a letter as an objection
b. Not being allowed to provide information about a study (or the results thereof)
2. Failing to provide individual feedback to indications submitted to ConsuWijzer

ACM has disallowed these complaints.

Finally, two complaints had not yet been handled by the end of 2017. And 3 complaints did not result in decisions because:

- The complainant did not respond anymore (1)
- The complainant did not appreciate further handling of the complaint (1)
- In one specific case, the national ombudsman handled the complaint directly, and closed the file.

8.2.4 Satisfaction with 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.

According to this measurement, approximately half of all consumers say they wish to take steps in order to exercise their rights. Approximately three in four of those actually did so within two weeks after their interaction with ConsuWijzer. These figures are more or less the same as in previous years. In 2017, visitors of ConsuWijzer.nl were asked for the final time to give a mark. Instead, we now ask visitors of the different websites whether or not the information has helped them. And if not, we ask them how we can improve the information. In this way, we get better input in order to improve our websites.

For ACM.nl, we did ask this year to give a mark for our website. That mark is lower than last year (6.0). No less than 52% of respondents said that their dissatisfaction was caused by problems with filling out forms. We believe that these problems were caused this year by issues related to spamklacht.nl. Those causes have now been identified, and we are working hard on solving them.

Table 32: Satisfaction with ConsuWijzer and ACM

	Channel	Mark*
ConsuWijzer	Phone	8.2
	Email	6.8
	Website	9.0
ACM	Phone	8.0
	Email	6.7
	Website	5.4

*On a scale from 1 to 10

8.2.5 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 lectures

The ACM Academy helps ACM employees learn and develop. The ACM Academy offers training programs, and knowledge and skill courses, among other programs. ACM senior employees teach most of these courses. In this way, knowledge is transferred properly, and ACM employees are able to learn from cases of ACM itself. In 2017, 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. ACM employees attended workshops organized by the OECD, for example on 6 March 2017 in Paris on the selection and prioritization of sectors for sectoral studies.

The ACM Academy also organized a lecture series in 2017. Speakers from the corporate, academic and political arenas share their visions on the challenges of tomorrow. For example, over 150 ACM-employees on 21 February 2017 attended a lecture on the role of platforms in digital markets. And on 12 June 2017, a member of the Council of State gave a lecture at ACM on legal protection in administrative fines.

Skills

We also invest in the skill sets of our employees. Think, for example, of discussion techniques, negotiation skills, interrogation techniques, and hearing skills. For various groups of employees, the Academy developed and organized tailored programs. In 2017, we paid attention to different learning methods: learning on the job, interactive learning methods, intervision-based learning or learning in large meetings.

8.2.6 Cooperation

Within the Netherlands and abroad, 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 2017, the MTB organized 2 meetings for employees of all MTB members. At these meetings, enforcement officials share their knowledge and experiences with broader topics. The theme of the March was independence. The theme of the September meeting was: 'The regulator of tomorrow – craftsmanship in a society that is changing faster and faster'.

International cooperation

Opportunities for consumers and businesses 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. Moreover, the legal framework for oversight is largely determined at a European level. This is especially true for competition rules and for the regulation of the energy and telecom markets, and, to a lesser degree, that of the postal-services and transport markets.

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](#)), rail regulators ([IRG-Rail](#)), airport regulators ([Thessaloniki Forum](#)), and postal-services regulators ([ERPG](#)). Chris Fonteijn, Chairman of the Board of ACM, was vice-chairman of ICN. In 2017, Remko Bos, Director of ACM's Energy Department, was vice-president of CEER, and became chair of a CEER working group at the end of 2017.

Multiple 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 2017 was invited several times to international events to speak about its multi-disciplinary structure and its oversight philosophy.

ACM also works closely together with other regulators. ACM leads a joint effort of EU regulators, urging Volkswagen, among other things, to speed up repairing its cars following the emissions scandal, and providing better information. Furthermore, ACM and the German Bundeskartellamt in November launched in 2014 investigations into the towage sector. In this investigation, ACM and the Bundeskartellamt took advantage of the opportunities that European competition authorities have for exchanging information and coordinating investigations.

With regard to telecom, ACM and BEREC actively work towards incorporating applicable rules in the new telecom framework. And at a BEREC level, ACM additionally sought to realize an effective

application of the net neutrality regulation. Within ACER and CEER, ACM helps realize a European internal energy market. For example, ACM is active in the CEER working group that clarifies the division of roles between system operators and other market participants, and collaborates within ACER to combat insider trading and market manipulation.

9 Annual statement of accounts ACM

ACM's 2017 annual statement of accounts consists of three parts:

1. Annual statement of accounts of the ACM Organization
2. Annual statement of accounts of the Autonomous Administrative Authority ACM (ZBO ACM)
3. Corporate affairs of the Autonomous Administrative Authority ACM (ZBO ACM)

This annual statement of accounts concerns 2017 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.

9.1 Annual statement of accounts of ACM Organization

From an administrative point of view, the ACM Organization is an integral part of the Ministry of Economic Affairs and Climate Policy (EZK) without any statutory obligation to publish an independent annual statement. The accounting check takes place at EZK 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 EZK. 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.

9.1.1 Expenditures of ACM organization

The table below lists the cash expenditures for 2017 and 2016.

Table 33: Cash expenditures of ACM organization (in euros)

	2017	2016
<i>Personnel costs</i>		
Salary costs	44,491,471	42,408,162
Temporary employees	2,946,959	2,469,760
Travel expenses	1,321,369	1,385,225
Education	707,943	879,265
Other personnel costs	246,916	286,986
Government prosecutor	619,865	522,876
<i>Total personnel costs</i>	<i>50,334,523</i>	<i>47,952,273</i>
<i>Material costs</i>		
Housing	3,418,598	4,170,368
Research	3,488,039	3,847,810
IT	5,669,320	6,776,452
Catering/security/cleaning/general expenses	712,733	881,920
Office furniture and supplies	598,475	577,146
Education and events	7,063	35,163
Other material costs	162,982	225,563
Damages/compensation for loss of income	5,000,000	1,012,037
<i>Total material costs</i>	<i>19,057,212</i>	<i>17,526,457</i>
Total expenditures	69,391,735	65,478,730

As a result of the effects of the collective labor agreement and a higher average utilization rate in 2017, salary costs in 2017 have increased compared with 2016.

The increase of EUR 0.5 million in temporary employees is primarily caused by the need for specialist knowledge with regard to replacement, development, and operation of system for the technical infrastructure, office IT systems, and the primary process.

Through 2016, the accommodation costs for company travel had fallen under 'Other personnel costs'. As accommodation costs are related to travel expenses, they will be included in the travel expenses from 2017 onwards. For reasons of comparison, the adjustment of EUR 0.35 million has also been incorporated in the 2016 figures presented in the table.

The lower expenses for education are connected to the inflow of many new employees. These employees follow an internal educational program first.

Compared with 2016, total housing expenses in 2017 decreased by EUR 0.7 million because of a lower tariff per square meter, a lower user fee charged by the Central Government Real Estate Agency, and fewer expenses on minor renovations.

In 2017, several necessary investments were made in IT hardware and software. These investments

were smaller than those in 2016. As a result of this investment, older and vulnerable equipment could be divested. This has resulted in lower maintenance expenses. Total IT expenses are, on balance, EUR 1.1 million lower.

In connection with legal proceedings, ACM in 2017 paid damages for incurred costs or paid compensations for loss of income of regulated market participants.

Claims

ACM is handling 7 claims. Two claims have a combined value of EUR 9.4 million. The value of the other claims has not been determined yet.

9.1.2 Income of ACM organization

The levels of the income from market organizations are largely determined by the contribution scheme and the sanctions imposed. The levels of the contributions from the market organizations have been laid down in the [Regulation on the passing on of costs to regulated parties](#) (in Dutch).

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.

Table 34: Income of ACM organization (in euros)

	2017	2016
<i>Telecom</i>		
• Electronic communication	4,084,174	4,928,084
• Numbers	2,318,783	3,313,089
• TTP	-	486,401
• Arbitration services	782,627	774,629
<i>Total Telecom</i>	<i>7,185,584</i>	<i>9,502,203</i>
<i>Postal services contributions</i>		
• Universal Service Obligation	283,206	531,609
• Non-Universal Service Obligation	726,557	1,283,551
<i>Total Postal Service</i>	<i>1,009,763</i>	<i>1,815,160</i>
<i>Energy</i>		
• Distribution system operators (DSOs) electricity	640,648	714,897
• Distribution system operators (DSOs) natural gas	1,424,806	1,267,302
• Transmission system operator (TSO) electricity	3,144,487	2,651,372
• Transmission system operators (TSO) natural gas	3,592,053	2,223,145
• Heat license holders	190,624	-
<i>Total Energy</i>	<i>8,992,618</i>	<i>6,856,716</i>
Merger notifications	1,943,873	1,633,473
Licenses of energy providers	4,898	13,296
Sanctions (including repayments)	70,817,794	30,719,491
Receipts from Personnel / Materials	784,275	1,111,764
Total income	90,738,805	51,652,103

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. That, in turn, also affects the number of hours that is needed for ACM's tasks. The income in 2017 is largely based on the expenditures to the market category as calculated in 2016.

Telecom

The reason for the drop in income from Electronic Communication in 2017 is that, in 2016, payments were received over 2016 and 2015. As a result, 2016 had an incidental increase. In 2017, the income from Numbers is lower than in 2016. In 2016, ACM also had an incidental increase in income, which meant the backlog in invoices for Numbers was slightly cleared. From 2017, the arbitration services have been listed as a separate category in the table. In 2016, this was included under Electronic Communication.

With the implementation act eIDAS coming into force, the oversight activities related to TTP (Thrustrud Third Party Organization) have been transferred to the Radiocommunications Agency Netherlands (AT). As a result, costs are no longer passed on to the market for this category.

Postal services

One explanation for the difference in income in the category Postal Services is that the 2015 contribution Postal Services was only received by ACM in 2016. This effect did not occur in 2017.

Energy

The income for Energy has increased. In 2017, invoices were also sent to Heat license holders. Furthermore, method decisions for Energy were issued, as a result of which higher costs were billed and received in 2017.

Transport (not included in the table as balance is zero)

In accordance with the Regulation on the passing on of costs to regulated parties, ACM in 2017 collected a total of EUR 0.5 million from registered pilots and aviation for the Ministry of Infrastructure and Water Management. The income was transferred to the ministry over the course of the year.

Sanctions

The amount of received sanctions (including repayments) is EUR 70.8 million. The breakdown is as follows:

- Received related to sanctions EUR 72.3 million,
- EUR 1.5 million has been repaid following court rulings.

9.1.3 Outstanding receivables of ACM organization

The table below lists the outstanding receivables as of December 31, 2017 and December 31, 2016.

Table 35: Outstanding receivables of ACM Organization (in euros)

	2017	2016
Telecom: Electronic Communication	164,994	217,308
Telecom: Numbers	321,849	735,752
Energy: Heat license holders	1,684	-
Merger notifications	331,550	437,324
Energy supplier licenses	2,398	-
Sanctions (including statutory interest)	52,685,420	68,303,433
Other receivables	931,952	947,949
Total	54,439,847	70,641,766

In 2017, the Ministry of Economic Affairs and Climate Policy (EZK) implemented an overhaul of the system for the category of sanctions. From 2017, the balance of outstanding receivables for sanctions will include the earned statutory interest. In order to compare the 2016 and 2017 figures, the amount of outstanding sanctions for 2016 includes an estimated amount of the earned statutory interest.

The 2016 balance for sanctions is EUR 68.3 million. The breakdown is as follows: outstanding receivables from 2016 totaling EUR 64.4 million plus the calculated amount of earned statutory interest of EUR 3.9 million.

The amount of outstanding receivables for sanctions has dropped from EUR 68.3 million in 2016 to 52.7 million in 2017. This drop can be explained as follows. We imposed new sanctions, totaling EUR 65 million. On balance, we received EUR 72.3 million. Furthermore, several previous sanctions have been lowered as a result of court rulings, resulting in, on balance, a decrease of EUR 8.9 million. Also, approximately EUR 0.5 million in earned statutory interest have been included. This results in a change of EUR 15.6 million, and the balance of outstanding receivables is EUR 52.7 million.

9.2 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. 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. ACM calculates the amount to be passed on per category as follows:

1. Per category, the 'direct material costs' are determined, which are the costs that can be directly attributed to this category.
2. Next, the remaining amount is determined, consisting of the indirect material costs and all direct and 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 36: Total cash expenditures (in euros)

	2017			2016
	ACM Organization	ZBO ACM	Total	Total
Direct material costs	8,679,589	-	8,679,589	4,922,354
Remaining costs based on actual direct hours				
Consisting of: personnel costs	50,334,523	636,177	50,970,700	48,586,859
+ indirect material costs	10,377,623	4,844	10,382,467	12,606,433
<i>Total personnel and indirect material costs</i>	<i>60,712,146</i>	<i>641,021</i>	<i>61,353,167</i>	<i>61,193,291</i>
Total expenditures	69,391,735	641,021	70,032,756	66,115,645

The direct material costs in 2017 are higher than those in 2016 as a result of the increase of the item 'paid compensations' in 2017. Compensations are part of the costs of the market category 'State'.

The below table 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 37: 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)

	2017				2016
	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>					
• Public electronic communication services, public electronic communication networks, and related facilities	28,556	274,108	3,395,823	3,669,931	4,024,165
• Numbers	20,005	51,701	2,378,940	2,430,641	2,115,533
• Certification services providers	-	-	-	-	186,386
Subtotal Telecom	48,562	325,809	5,774,763	6,100,572	6,326,084
<i>Postal Service</i>					
• Universal Service Obligation	2,574	561	306,128	306,689	299,406
• Non-Universal Service Obligation	11,571	223,332	1,375,989	1,599,321	745,457
Subtotal Post	14,145	223,893	1,682,117	1,906,010	1,044,864
<i>Energy</i>					
• Distribution system operation – E	4,857	6,177	577,576	583,753	640,648
• Distribution system operation – G	8,503	6,177	1,011,108	1,017,285	1,424,806
• Transmission system operation – E	26,820	99,839	3,189,304	3,289,144	3,184,987
• Transmission system operation – G	24,525	150,675	2,916,439	3,067,114	3,632,553
• Supply of heat	1,580	72,615	187,872	260,487	190,624
Subtotal Energy	66,284	335,484	7,882,299	8,217,784	9,073,619
<i>Transport</i>					
• Registered pilots	1,318	6,219	156,760	162,979	268,351
• Aviation	3,320	11,800	394,765	406,565	189,321
Subtotal Transport	4,638	18,018	551,525	569,543	457,672
<i>Financial</i>					
• Payment system	1,286	-	152,893	152,893	-
Subtotal Financial	1,286	-	152,893	152,893	-
Total market organizations	134,915	903,204	16,043,598	16,946,802	16,902,238
<i>Central government</i>					
• State/treasury	381,020	7,776,385	45,309,569	53,085,954	49,213,407
Total	515,935	8,679,589	61,353,167	70,032,756	66,115,645

Please note: Due to rounding, some totals may not correspond with the sum of the separate figures.

This year, the Financial sector has been added to the table, with the item Payment system. This is due to the new regulatory task of ACM targeting debit and credit card transactions in the Netherlands.

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.

9.3 Annual account of ZBO ACM

This financial account of the Autonomous Administrative Authority ACM (ZBO ACM) concerns the entire calendar year of 2017. The ZBO ACM concerns the Board of ACM. The ZBO ACM used a cash-basis accounting system in the administrative system of the Ministry of Economic Affairs and Climate Policy (EZK).

9.3.1 Expenditures and income of ZBO ACM

The below table the expenditures and income as of December 31, 2016. Table 38 also lists the figures over 2017 and 2016.

Table 38: Total expenditures and income of ZBO ACM (in euros)

	2017	2016
<i>Personnel costs</i>		
Salary costs	605,313	523,667
Travel expenses (domestic)	2,876	53,017
Travel and accommodation expenses (abroad)	16,134	30,608
Various expenses	1,920	8,993
Employee training	9,934	18,301
<i>Total personnel</i>	<i>636,177</i>	<i>634,586</i>
<i>Material costs</i>		
Contributions and memberships	3,994	2,091
Social allowance	850	238
<i>Total material</i>	<i>4,844</i>	<i>2,329</i>
Total expenditures	641,021	636,915
Income	162,120	162,120
Total income	162,120	162,120

In 2017, the ZBO ACM comprised a fully staffed Board, whereas this was not the case for a large part of 2016. This explains the increase in salary costs.

The 2017 travel expenses abroad are lower than those in 2016 because two board members in 2017 were not charged travel expenses by the Ministry of the Interior and Kingdom Relations (BZK) through the Ministry of Economic Affairs and Climate Policy (EZK). Travel expenses in connection with domestic company travel of the two board members in 2016 and 2017 are no longer passed on to the ZBO ACM because these costs are included in the central funding by BZK.

In addition, there are travel expenses that are not apparent from the table: approximately EUR 5,000 on domestic travel expenses that have not yet been passed on to the ZBO ACM by EZK. Arrangements have been made with EZK to pass on those costs.

For reasons of clarity, domestic travel expenses and the travel and accommodation expenses abroad have been rearranged and slightly adjusted in terms of description. In previous years, these items were described as: 'domestic travel and accommodation expenses' and 'travel expenses abroad'. The reason for this change was that, in practice, it turns out that ZBO ACM only needs accommodation costs abroad should an overnight stay be necessary.

As of 31 December 2017, the ZBO ACM did not have any outstanding receivables.

9.3.2 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 2016, 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, no irregularities with regard to the accountable lawfulness of the expenditures of the ZBO ACM that have exceeded the relevant reporting tolerance thresholds have occurred.

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.