

Please note that, although every effort has been made to ensure this translation is accurate and consistent, it is for informational purposes only. In case of any dispute or inconsistencies, the Dutch version is authentic.

Policy rule of the Minister of Economic Affairs of 4 July 2014, no. WJZ/14112617, on the imposition of administrative fines by the Netherlands Authority for Consumers and Markets (2014 ACM Fining Policy Rule)

The Minister of Economic Affairs,

Considering Section 21 of the Framework Act on Autonomous Administrative Authorities, Section 4.21, paragraph 1 of the Public Procurement Act 2012, Section 3.8, paragraph 1 of the Public Procurement Act with regard to Defense and Security Matters, Section 77i of the Dutch Electricity Act 1998, Section 60ad of the Dutch Gas Act, Sections 12l, paragraph 3, and 12m, paragraphs 1 and 2 of the Establishment Act of the Netherlands Authority for Consumers and Markets (ACM), Sections 57, 70a, preamble and part a, 71, 73, 74, preamble and parts 1 through 5, under a, and 75, preamble and part a, of the Dutch Competition Act, Section 49, paragraphs 1 and 2 of the Postal Act 2009, Section 15.4, paragraphs 1 through 3 of the Dutch Telecommunications Act, Section 18, paragraph 6 of the Dutch Heat Act, Section 2.9, paragraph 1, part b in conjunction with Section 2.15 of the Dutch Act on Enforcement of Consumer Protection, Section 22 of the Act on the implementation of EU directives on energy efficiency, and Section IXC, paragraph 4, preamble and part a, and paragraph 5, preamble and part a of the Act of 23 November 2006 amending the Electricity Act 1998 and the Gas Act in connection with detailed rules regarding independent grid administration (Dutch Bulletin of Acts and Decrees 2006, 614);

Decides:

CHAPTER 1 DEFINITIONS

Article 1.1

1. In this policy rule, the following definitions apply:
 - I. *ACM*: the Netherlands Authority for Consumers and Markets, as referred to in Section 2 of the Establishment Act of the Netherlands Authority for Consumers and Markets;
 - II. *Basic fine*: the amount that serves as the basis for determining the level of an administrative fine that is to be imposed, based on:
 - a. A percentage of the relevant turnover, or
 - b. An amount within the range of the fine category linked to a violation;
 - III. *relevant turnover*:

- a. the revenues that an offender has earned with the supply of goods and services that are directly or indirectly related to a violation, minus discounts and suchlike, and minus turnover tax, or
 - b. If no revenues within the meaning of part a can be determined, the revenues that the offender has earned on the market (or a part thereof) to be protected, or
 - c. If the offender has not earned any revenues on the market to be protected, the turnover that the offender has earned through its own contribution to the violation,
- in all situations, in the last full year in which the offender committed the violation, multiplied by a factor of 1/12 for each month that the violation lasted, where a period shorter than one month will be rounded up to one month;
- IV. *annual turnover*: the turnover of the offender as referred to in Section 12o of the Establishment Act of the Netherlands Authority for Consumers and Markets;
 - V. *TFEU*: Treaty on the Functioning of the European Union.
2. If a violation lasted shorter than one year, the entire period that the violation lasted will be taken into account when determining the relevant turnover.

Article 1.2

- 1. The relevant turnover will be rounded off to the nearest EUR 1,000.
- 2. The administrative fine that has been set will be rounded down to the nearest EUR 500.

CHAPTER 2 CONSUMERS, ENERGY, COMPETITION, POSTAL SERVICES AND TELECOMMUNICATIONS

§ 2.1 General

Article 2.1

1. If ACM establishes that an offender has committed multiple violations, it may, rather than imposing a fine for each individual violation, impose an administrative fine for these violations combined.
2. In derogation of the first paragraph, ACM shall impose, in principle, a single administrative fine on practices that constitute a violation of both Section 6, paragraph 1 or Section 24, paragraph 1 of the Dutch Competition Act and of Articles 101 or 102 of the TFEU.

Article 2.2

The level of the basic fine will, insofar applicable, in any case be based on:

- a) The seriousness of the violation;
- b) The circumstances in which the violation was committed; and
- c) The duration of the violation.

§ 2.2 Violations with a basic fine based on a percentage of the relevant turnover

Article 2.3

1. In the event of violation of Section 6, paragraph 1 and Section 24, paragraph 1 of the Dutch Competition Act, Articles 101 and 102 of the TFEU, and in situations where ACM is authorized to impose an administrative fine under Section 49, paragraphs 1 and 2 of the Postal Act 2009, and Section 15.4, paragraph 2 of the Dutch Telecommunications Act, ACM shall determine a basic fine based on the relevant turnover.
2. If ACM is unable to determine the relevant turnover based on the information provided by the offender, ACM may estimate this turnover.
3. In the event of an illegal agreement in connection with a tender process (bid-rigging), ACM may consider, for each participant involved in such an agreement, as relevant turnover the turnover or a proportionate part thereof that can be realized based on the bid for which the contract was awarded.
4. If the violation was committed by an association of undertakings, the relevant turnover of the constituent undertakings may be taken into account.
5. If ACM deduces from information at its disposal that the relevant turnover

insufficiently reflects the actual economic value of the practice that is to be sanctioned, ACM may adjust the relevant turnover that is to be taken into account for said information.

6. As part of specific prevention, ACM may, in view of the offender's weight as expressed by the offender's total annual turnover in the financial year preceding the fining decision, raise the relevant turnover that is to be taken into account.

Article 2.4

ACM shall set a basic fine between 0 and 50 percent of the offender's relevant turnover.

§ 2.3 Violations with a basic fine based on a permillage of the total annual turnover

Article 2.5

1. If Article 2.3, paragraph 1 is not applicable, ACM shall determine the basic fine within the ranges of the following fining categories, if, according to a statutory provision, a maximum fine based on a percentage of the turnover can be imposed on an offender:

Category I	Fining range between EUR 2,500 and 1.25‰ (permillage) of the turnover
Category II	Fining range between EUR 5,000 and 3.75‰ (permillage) of the turnover
Category III	Fining range between EUR 10,000 and 7.5‰ (permillage) of the turnover
Category IV	Fining range between EUR 15,000 and 12.5‰ (permillage) of the turnover
Category V	Fining range between EUR 25,000 and 37.5‰ (permillage) of the turnover
Category VI	Fining range between EUR 50,000 and 75‰ (permillage) of the turnover

2. In Annex 1, the provisions with regard to which an administrative fine can be imposed if they are violated have each been classified into one or more of these fining categories.
3. If, according to ACM, the classification into a particular fining category as referred to in paragraph 2 does not provide for an appropriate fine in an individual case, the higher or lower adjacent category may be applied.
4. The turnover that is taken into account for setting the maximum basic fine is determined as follows:
 - a. 100 (one hundred) percent of the annual turnover up to EUR 500,000,000 (500 million) shall be taken into account;
 - b. 10 (ten) percent of the annual turnover between EUR 500,000,000 (500 million) and EUR 1,000,000,000 (one billion) shall be taken into account; and
 - c. 1 (one) percent of the annual turnover over EUR 1,000,000,000 (one billion) shall be taken into account.

Article 2.6

1. When applying Article 2.5, paragraph 4, ACM shall use as basis the turnover generated in the Netherlands.
2. In derogation of paragraph 1, ACM shall use as basis the global turnover if, according to ACM, using the turnover generated in the Netherlands does not allow setting an appropriate fine.
3. Paragraph 2 does not apply to violations of the Postal Act 2009 or the Dutch Telecommunications Act.
4. With regard to the geographical allocation of the turnover, ACM shall adhere to the principles set out by the European Commission in its Consolidated version of the Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ 2008, C 95).
5. If, according to ACM, the turnover insufficiently reflects the actual economic power of the offender, ACM may set the level of the basic fine in accordance with that economic power.
6. If ACM is unable to determine the relevant turnover on the basis of the information provided by the offender, ACM may estimate this turnover.
7. In the event of a violation of Section 34, paragraph 1 of the Dutch Competition Act, the turnover shall be determined by adding up the annual turnovers of each of the undertakings, or the parts thereof, involved in the concentration, if the concentration had not been realized yet in the year preceding the decision to impose the administrative fine.

§ 2.4 *Violations with a statutory maximum fine of EUR 450,000*

Article 2.7

1. ACM shall determine the basic fine within the ranges of the following fining categories, if, according to a statutory provision, a maximum fine of EUR 450,000 can be imposed on an offender:

Category I	Fining range between EUR 0 and EUR 50,000
Category II	Fining range between EUR 40,000 and EUR 150,000
Category III	Fining range between EUR 100,000 and EUR 300,000
Category IV	Fining range between EUR 150,000 and EUR 450,000

2. In Annex 2, the provisions with regard to which an administrative fine can be imposed if they are violated have each been classified into one or more of these fining categories.
3. If, according to ACM, the classification into a particular fining category as referred to in paragraph 2 and 3 *[sic]* does not provide for an appropriate fine in a specific case, the higher or lower adjacent category may be applied.

§ 2.5 Aggravating and mitigating circumstances

Article 2.8

1. When setting the administrative fine, ACM shall take into consideration any aggravating or mitigating circumstances.
2. ACM shall, in all reasonableness, determine the degree to which the circumstance in question results in an increase or decrease in the basic fine.

Article 2.9

1. Aggravating circumstances shall, in any event, include:
 - a. the circumstance that ACM or another competent authority, including the European Commission or a judicial body, has previously established irrevocably that the offender committed the same or a similar violation;
 - b. the circumstance that the offender hindered ACM's investigation;
 - c. the circumstance that the offender instigated or played a leading role in the committing of the violation;
 - d. the circumstance that the offender used or made provision for control methods or coercive methods for the continuation of the practice to be sanctioned.
2. In the event of a repeat offense as referred to in paragraph 1 under a, ACM shall increase the basic fine by 100%, unless the result would be unreasonable in view of the circumstances of the specific case.

Article 2.10

Mitigating circumstances shall, in any event, include:

- a) the circumstance that the offender, other than under the Leniency Policy Rule, provided ACM with a degree of cooperation that went beyond the offender's statutory obligation;
- b) the circumstance that the offender, of his own accord, provided full compensation to the parties injured by the violation.

Article 2.11

When imposing an administrative fine on a natural person for giving instructions with regard to or exercising *de facto* leadership over a violation, ACM may, when determining any aggravating or mitigating circumstances as referred to in Articles 2.12 *[sic]* and 2.13 *[sic]*, may take into account the extent of the natural person's involvement in the committing of the violation, and the natural person's position within the market organization that employs or used to employ him or her.

§ 2.6 Setting the administrative fine in exceptional circumstances

Article 2.12

In derogation of the previous articles, ACM may impose a symbolic administrative fine if it believes such is warranted by the special circumstances of the case.

CHAPTER 3 PUBLIC PROCUREMENT

Article 3.1

1. This chapter shall apply to violations for which ACM, under Section 4.21, paragraph 1 of the Public Procurement Act 2012, or Section 3.8, paragraph 1 of the Public Procurement Act with regard to Defense and Security Matters, is authorized to impose administrative fines.
2. Chapter 2 shall not apply to violations as referred to in the first paragraph.

Article 3.2

1. In this chapter, the following definitions apply:
 - I. *Suspension period*: the period, as referred to in Section 2.217, paragraph 1 or Section 2.131 of the Public Procurement Act 2012, or the term, as referred to in Section 2.118, paragraph 1 or Section 2.12 of the Public Procurement Act with regard to Defense and Security Matters, respectively.
 - II. *Agreement*: an agreement to which Section 4.15, paragraph 1 of the Public Procurement Act 2012, or Section 3.1, paragraph 1 of the Public Procurement Act with regard to Defense and Security Matters applies.

Article 3.3

1. The level of an administrative fine shall amount to that part of the agreement that has not been rescinded, multiplied by the fining percentage.
2. The following shall be understood as 'not rescinded':
 - a. That part of the agreement that has not been rescinded;
 - b. That part of the agreement that has been rescinded, but the rescission of which has been rendered inoperative.
3. If the value of the agreement is higher than the value of the contract as previously estimated by the contracting authority or the special-industry company, that estimated value, when applying the first paragraph, shall be used for that part of the agreement that has not been rendered inoperative as a result of the rescission of the agreement.

Article 3.4

1. The value of the agreement shall be determined based on the following criteria:
 - a. The value of the agreement has been determined in a final ruling by a court;
 - b. If part a cannot be applied, the value of the agreement shall be calculated based on a final ruling by a court;
 - c. If part b cannot be applied, the value of the bid or of similar bids is an indication of the value of the agreement;

- d. If part c cannot be applied, the documents in possession of the contracting authority or the special-industry company relating to the tender process that is or was the basis for the agreement are an indication of the value of the agreement;
 - e. If part d cannot be applied, the value of the agreement shall be determined on the basis of past use or usage of similar contracts by the contracting authority or the special-industry company;
 - f. If part e cannot be applied, the value of the agreement shall be determined on the basis of statements of undertakings that usually carry out similar assignments.
2. The value of that part of the agreement that has not been rescinded shall be determined in the manner as described in paragraph 1.

Article 3.5

1. If the contracting authority or the special-industry company wrongfully failed to announce in advance the assignment, the fining percentage shall be 15 percent.
2. If the circumstances of a specific case so dictate, ACM may, in derogation of the first paragraph, set a lower fining percentage.
3. The fining percentage, as referred to in the first paragraph, shall, in any case, be set if a final ruling by a court reveals there are mitigating circumstances with regard to the absence of said advance announcement.
4. If a partial rescission of an agreement is based on Section 4.15, paragraph 1, under c of the Public Procurement Act 2012, or Section 3.2, paragraph 1, under c of the Public Procurement Act with regard to Defense and Security Matters, paragraphs 1 and 2 shall apply *mutatis mutandis* to the setting of the fining percentage.

Article 3.6

1. If the contracting authority or the special-industry company has concluded the agreement during the suspension period, the fining percentage shall be 10 percent.
2. If the circumstances of a specific case so dictate, ACM may, in derogation of the first paragraph, set a lower or higher fining percentage.
3. The fining percentage, as referred to in the first paragraph, shall, in any case, be increased, if a final ruling by a court reveals there are aggravating circumstances with regard to the failure to observe the suspension period.
4. The fining percentage, as referred to in the first paragraph, shall, in any case, be

reduced, if a final ruling by a court reveals there are mitigating circumstances with regard to the failure to observe the suspension period.

CHAPTER 4 TRANSITIONAL AND FINAL PROVISIONS

Article 4.1

To violations with regard to which a statement of objections had been drawn up before this policy rule came into effect, the Policy Rules of the Minister of Economic Affairs on the imposition of administrative fines by ACM shall continue to apply, as they were applicable immediately preceding that date.

Article 4.2

The Policy Rules of the Minister of Economic Affairs on the imposition of administrative fines by the Netherlands Authority for Consumers and Markets [*of April 24, 2013*] shall be repealed.

Article 4.3

This Policy Rule shall enter into force on August 1, 2014.

Article 4.4

This policy rule shall be referred to as: 2014 ACM Fining Policy Rule (*Boetebeleidsregel ACM 2014*).

This policy rule shall be published in the Dutch Government Gazette with its explanatory notes.

The Minister of Economic Affairs,
H.G.J. Kamp

**ANNEX 1, BELONGING TO SECTION 2.5, PARAGRAPH 2 OF THE 2014 ACM POLICY
RULE**

Section of the law	Category
Dutch Electricity Act 1998	
Section 4a, paragraph 3	II
Section 9h	III
Section 10, paragraph 6	III
Section 10, paragraph 7	III
Section 10a, paragraph 1	VI
Section 10a, paragraph 2	VI
Section 10b, paragraph 2	VI
Section 10b, paragraph 3	VI
Section 10b, paragraph 4	VI
Section 10b, paragraph 5	VI
Section 11, paragraph 1	VI
Section 11a, paragraph 2	III
Section 11a, paragraph 3	VI
Section 11b, paragraph 1	IV
Section 11b, paragraph 2	IV
Section 11b, paragraph 3	II
Section 12, paragraph 1	I
Section 12, paragraph 2	III
Section 15, paragraph 8	III
Section 16, paragraph 1, part g	III
Section 16, paragraph 1, part k	III
Section 16, paragraph 1, part l	III
Section 16, paragraph 1, part a	VI
Section 16, paragraph 1, part b	VI
Section 16, paragraph 1, part c	VI
Section 16, paragraph 1, part d	VI
Section 16, paragraph 1, part e	VI
Section 16, paragraph 1, part f	VI
Section 16, paragraph 1, part h	VI
Section 16, paragraph 1, part i	VI
Section 16, paragraph 1, part j	VI
Section 16, paragraph 1, part n	VI
Section 16, paragraph 1, part o	VI
Section 16, paragraph 1, part p	VI

Section of the law	Category
Dutch Electricity Act 1998	
Section 16, paragraph 2, part a	VI
Section 16, paragraph 2, part b	VI
Section 16, paragraph 2, part c	VI
Section 16, paragraph 2, part d	VI
Section 16, paragraph 2, part e	VI
Section 16, paragraph 2, part f	VI
Section 16, paragraph 4	IV
Section 16, paragraph 6	VI
Section 16Aa, paragraph 1	VI
Section 16Aa, paragraph 2	V, VI
Section 16Aa, paragraph 3	III
Section 16Aa, paragraph 4	III
Section 16a	III
Section 17, paragraph 1	VI
Section 17, paragraph 2	VI
Section 17, paragraph 4	III
Section 17a, paragraph 1	VI
Section 17a, paragraph 2	VI
Section 17a, paragraph 3	III
Section 17a, paragraph 4	III
Section 18, paragraph 1	VI
Section 18, paragraph 3	II
Section 18a, and Section 3 of Independent Grid Administration Act	IV, VI
Section 19a	IV
Section 19b	III
Section 19c	III
Section 19d	III
Section 19e	III
Section 20, paragraph 3	V
Section 21	V
Section 21, paragraph 9, second sentence	III
Section 23	V
Section 24, paragraph 1	V
Section 24, paragraph 2	III
Section 24, paragraph 3	V
Section 24a	III
Section 26ab	V

Section of the law	Category
Dutch Electricity Act 1998	
Section 26ac	V
Section 26ad, paragraph 1	V
Section 26ad, paragraph 2	V
Section 26ad, paragraph 3	V
Section 26ad, paragraph 4	V
Section 26ae, paragraph 1	V
Section 26ae, paragraph 2	V
Section 26ae, paragraph 3	V
Section 26ae, paragraph 4	V
Section 26ae, paragraph 5	V
Section 26ae, paragraph 6	V
Section 26ae, paragraph 7	V
Section 26ae, paragraph 9	V
Section 26ae, paragraph 12	III
Section 31, paragraph 1	V
Section 31b	IV
Section 36	IV, V
Section 37	IV, V
Section 38, paragraph 3	I
Section 39	III
Section 42, paragraph 3	I
Section 43	VI
Section 55	V
Section 56, paragraph 2	V
Section 57, paragraph 3	V
Section 57, paragraph 4	V
Section 68, paragraph 1	IV
Section 68, paragraph 2	II
Section 78, paragraph 2	III
Section 79	V
Section 84	V
Section 86, paragraph 1	IV
Section 86, paragraph 2	IV
Section 86, paragraph 4	IV
Section 86d	V
Section 86e	VI
Section 95a, paragraph 1	V

Section of the law	Category
Dutch Electricity Act 1998	
Section 95b, paragraph 1	V
Section 95b, paragraph 2	III
Section 95b, paragraph 5	VI
Section 95b, paragraph 8	III
Section 95ca	V
Section 95cb, paragraph 1	V
Section 95cb, paragraph 2	IV
Section 95cb, paragraph 5	V
Section 95cb, paragraph 6	V
Section 95e	III
Section 95f, paragraph 2	V
Section 95k	III
Section 95l	II
Section 95m	VI
Section 95o	III
Dutch Gas Act	
Section 1h	III
Section 2, paragraph 5	III
Section 2, paragraph 6	III
Section 2a, paragraph 8	III
Section 2c, paragraph 2	VI
Section 2c, paragraph 3	VI
Section 3	VI
Section 3b, paragraph 1	VI
Section 3b, paragraph 2	VI
Section 3c, paragraph 1	IV
Section 3c, paragraph 2	IV
Section 3c, paragraph 3	II
Section 4, paragraph 1	I
Section 4, paragraph 2	III
Section 7	IV
Section 7a, paragraph 1	VI
Section 7a, paragraph 2	V
Section 7a, paragraph 3	III
Section 7a, paragraph 4	III
Section 8	V
Section 9a	V

Section of the law	Category
Dutch Gas Act	
Section 9b	IV
Section 10, paragraph 1	VI
Section 10, paragraph 2	III
Section 10, paragraph 3, part a	VI
Section 10, paragraph 3, part b	III
Section 10, paragraph 4	V
Section 10, paragraph 5	V
Section 10, paragraph 6	V
Section 10a, paragraph 1	VI
Section 10a, paragraph 2	V
Section 10a, paragraph 3	VI
Section 10b, paragraph 1	VI
Section 10b, paragraph 2	VI
Section 10b, paragraph 4	III
Section 10c, paragraph 1	VI
Section 10c, paragraph 2	VI
Section 10c, paragraph 3	III
Section 10c, paragraph 4	III
Section 10d, paragraph 1	VI
Section 10d, paragraph 3	II
Section 10e and Section 2 of Independent Grid Administration Act	IV, VI
Section 12a	V
Section 12b	V
Section 12e, paragraph 1	V
Section 12f	IV/V
Section 12g	IV/V
Section 12i, paragraph 3	I
Section 13b	V
Section 13c	V
Section 13d, paragraph 1	V
Section 13d, paragraph 2	V
Section 13d, paragraph 3	V
Section 13d, paragraph 4	V
Section 13e, paragraph 1	V
Section 13e, paragraph 2	V
Section 13e, paragraph 3	V

Section of the law	Category
Dutch Gas Act	
Section 13e, paragraph 4	V
Section 13e, paragraph 6	V
Section 13e, paragraph 7	V
Section 13e, paragraph 9	V
Section 13e, paragraph 12	III
Section 17a	III
Section 18g, paragraph 1	IV
Section 18g, paragraph 3	V
Section 18g, paragraph 5	III
Section 23	V
Section 24, paragraph 2	V
Section 25, paragraph 3	V
Section 25, paragraph 4	V
Section 32	VI
Section 35a	IV
Section 35b	III
Section 35c	III
Section 35d	III
Section 35e	III
Section 37	V
Section 39, paragraph 2	V
Section 39h, paragraph 1	III
Section 40, paragraph 1	IV
Section 40, paragraph 2	I
Section 40, paragraph 3	IV
Section 40, paragraph 4	IV
Section 42	III
Section 43, paragraph 1	V
Section 44, paragraph 1	V
Section 44, paragraph 2	III
Section 44, paragraph 5	VI
Section 44, paragraph 8	III
Section 44a	V
Section 44b, paragraph 1	V
Section 44b, paragraph 2	IV
Section 44b, paragraph 5	V
Section 44b, paragraph 6	V

Section of the law	Category
Dutch Gas Act	
Section 47, paragraph 2	V
Section 51	IV
Section 52a, paragraph 3	II
Section 52b	VI
Section 52d	III
Section 56	III
Section 63	V
Section 66a	V
Section 66b	VI
Section 66c	V
Section 66d, paragraph 1	III
Section 66d, paragraph 3	III
Section 72	IV
Section 73, paragraph 4	V
Section 82, paragraph 1	III
Section 82, paragraph 3	III
Establishment Act of ACM	
Section 12m, paragraph 1, part a	III
Section 12m, paragraph 1, part b	V
Section 12m, paragraph 1, part c (Section 5:20 in conjunction with 5:15 Awb)	V
Section 12m, paragraph 1, part c (Section 5:20 in conjunction with 5:16 Awb)	VI
Section 12m, paragraph 1, part c (Section 5:20 in conjunction with 5:17 Awb)	V
Section 12m, paragraph 1, part c (Section 5:20 in conjunction with 5:18 Awb)	IV
Section 12m, paragraph 1, part c (Section 5:20 in conjunction with 5:19 Awb)	IV
Section 12m, paragraph 1, part c (Section 5:20 in conjunction with 5:15 and 5:17 Awb)	IV
Section 12m, paragraph 1, part d	IV
Dutch Competition Act	
Section 25b, paragraph 1	II
Section 25b, paragraph 2	II
Section 25e, first full sentence	II
Section 34, paragraph 1	IV, V

Section of the law	Category
Dutch Competition Act	
Section 35, paragraph 1	III
Section 39, paragraph 2, part a	V
Section 39, paragraph 2, part b	V
Section 40, paragraph 2	IV
Section 40, paragraph 3, part a	V
Section 40, paragraph 3, part b	V
Section 41, paragraph 1	V
Section 42, paragraph 2	III
Section 46, paragraph 2	IV
Section 46, paragraph 3	V
Section 46, paragraph 4	V
Section 75, first full sentence and part a	VI
Postal Act 2009	
Section 4	IV
Section 5	II
Section 8	IV
Section 9, paragraph 1	VI
Section 9, paragraph 2	VI
Section 9, paragraph 3	V
Section 9, paragraph 4	V
Section 10, paragraph 1	IV
Section 10, paragraph 2	III
Section 12, paragraph 1	III
Section 12, paragraph 2	II
Section 12, paragraph 3	III
Section 13	VI
Section 13b	VI
Section 13c	VI
Section 13d	VI
Section 13e	VI
Section 13f	VI
Section 13g	VI
Section 13h	VI
Section 13i	VI
Section 13j	VI
Section 13k	VI
Section 16, paragraph 5	VI

Section of the law	Category
Postal Act 2009	
Section 16, paragraph 6	VI
Section 16, paragraph 7	VI
Section 16, paragraph 8	VI
Section 16, paragraph 9	III
Section 18	VI
Section 19, paragraph 1	I
Section 22, paragraph 1	VI
Section 22, paragraph 2	VI
Section 23, paragraph 1	III
Section 23, paragraph 2	III
Section 24, paragraph 1	V/VI
Section 24, paragraph 2	V/VI
Section 24, paragraph 3	V/VI
Section 26	III
Section 27, paragraph 1	III
Section 27, paragraph 2	III
Section 28, paragraph 2	I
Section 31, paragraph 4	I
Section 32, paragraph 1	III
Section 32, paragraph 3	III
Section 36, paragraph 1	II
Section 36, paragraph 2	IV
Section 39, paragraph 2	III
Section 41	I
Section 61	V
Dutch Heat Act	
Section 2	V
Section 5, paragraph 1	VI
Section 5, paragraph 4	VI
Section 9, paragraph 1	V
Section 13	III
Section 14	III
Section 17	V
Section 40	IV

Section of the law	Category
Act of 23 November 2006 amending the Electricity Act 1998 and the Gas Act in connection with detailed rules regarding independent grid administration (Dutch Bulletin of Acts and Decrees 2006, 614)	
Section IXa, paragraph 1	V
Section IXb, paragraph	VI
Section IXc, paragraph 1	III
Section IXc, paragraph 2	III

ANNEX 2, BELONGING TO SECTION 2.7, PARAGRAPH 2 OF THE 2014 ACM POLICY RULE

Section of the law	Category
Book 3 of the Dutch Civil Code	
Section 15a	III
Section 15b	III
Section 15d, paragraph 1	II
Section 15d, paragraph 1, under a	III
Section 15d, paragraph 1, under b	II ¹
Section 15d, paragraph 1, under c	I ²
Section 15d, paragraph 1, under d	I ³
Section 15d, paragraph 1, under e	II ⁴
Section 15d, paragraph 1, under f	I ⁵
Section 15d, paragraph 2	III
Section 15e, paragraph 1, under a	III ⁶
Section 15e, paragraph 1, under b	III
Section 15e, paragraph 1, under c	III
Section 15e, paragraph 1, under d	III ⁷
Book 6 of the Dutch Civil Code	
Section 193a	
Section 193b, paragraph 1	III or IV (for the appropriate category, see the following provisions)
Section 193b, paragraph 2	III
Section 193b, paragraph 3	See hereafter: Sections 193c through i
Section 193c, paragraph 1	III
Section 193c, paragraph 2	III
Section 193d, paragraph 2	III
Section 193d, paragraph 3	III
Section 193e, preamble, and under a	III

¹ See in the event of violation of this provision in the context of unfair commercial practices, this Annex under Section 6.193f preamble and under a of the Dutch Civil Code.

² See in the event of violation of this provision in the context of unfair commercial practices, this Annex under Section 6.193f preamble and under a of the Dutch Civil Code.

³ See in the event of violation of this provision in the context of unfair commercial practices, this Annex under Section 6.193f preamble and under a of the Dutch Civil Code.

⁴ See in the event of violation of this provision in the context of unfair commercial practices, this Annex under Section 6.193f preamble and under a of the Dutch Civil Code.

⁵ See in the event of violation of this provision in the context of unfair commercial practices, this Annex under Section 6.193f preamble and under a of the Dutch Civil Code.

⁶ See in the event of violation of this provision in the context of unfair commercial practices, this Annex under Section 6.193f preamble and under a of the Dutch Civil Code.

⁷ See in the event of violation of this provision in the context of unfair commercial practices, this Annex under Section 6.193f preamble and under a of the Dutch Civil Code.

Section of the law	Category
Book 6 of the Dutch Civil Code	
Section 193e, preamble, and under b	III
Section 193e, preamble, and under c	III
Section 193e, preamble, and under d	III
Section 193e, preamble, and under e	III
Section 193f	III
Section 193g, preamble, and under a	IV
Section 193g, preamble, and under b	IV
Section 193g, preamble, and under c	IV
Section 193g, preamble, and under d	IV
Section 193g, preamble, and under e	IV
Section 193g, preamble, and under f	IV
Section 193g, preamble, and under g	IV
Section 193g, preamble, and under h	IV
Section 193g, preamble, and under i	IV
Section 193g, preamble, and under k	IV
Section 193g, preamble, and under l	IV
Section 193g, preamble, and under m	IV
Section 193g, preamble, and under n	IV
Section 193g, preamble, and under o	IV
Section 193g, preamble, and under p	IV
Section 193g, preamble, and under q	IV
Section 193g, preamble, and under r	IV
Section 193g, preamble, and under s	IV
Section 193g, preamble, and under t	IV
Section 193g, preamble, and under u	IV
Section 193g, preamble, and under v	IV
Section 193g, preamble, and under w	IV
Section 193h, paragraph 1	IV
Section 193h, paragraph 2	IV
Section 193i, preamble, and under a	IV
Section 193i, preamble, and under b	IV
Section 193i, preamble, and under c	IV
Section 193i, preamble, and under d	IV
Section 193i, preamble, and under e	IV
Section 193i, preamble, and under f	IV
Section 193i, preamble, and under g	IV
Section 193i, preamble, and under h	IV

Section of the law	Category
Book 6 of the Dutch Civil Code	
Section 227a, paragraph 1	III
Section 227a, paragraph 2	III
Section 227a, paragraph 3	III
Section 227b, paragraph 1, under a	II
Section 227b, paragraph 1, under b	I
Section 227b, paragraph 1, under c	III
Section 227b, paragraph 1, under d	I
Section 227b, paragraph 1, under e	II
Section 227b, paragraph 2	II
Section 227c, paragraph 1	III
Section 227c, paragraph 2	II
Section 227c, paragraph 3	II
Section 227c, paragraph 5	III
Section 230b, preamble and under 1	III
Section 230b, preamble and under 2	I
Section 230b, preamble and under 3	I
Section 230b, preamble and under 4	I
Section 230b, preamble and under 5	II
Section 230b, preamble and under 6	II
Section 230b, preamble and under 7	II
Section 230b, preamble and under 8	II
Section 230b, preamble and under 9	III
Section 230b, preamble and under 10	III
Section 230b, preamble and under 11	I
Section 230b, preamble and under 12	II
Section 230b, preamble and under 13	II
Section 230c, under 1	II
Section 230c, under 2	II
Section 230c, under 3	II
Section 230c, under 4	II
Section 230d, preamble	
Section 230d, under 1	III
Section 230d, under 2	II
Section 230d, under 3	II
Section 230d, under 4	II
Section 230e	II
Section 230j	III

Section of the law	Category
Book 6 of the Dutch Civil Code	
Section 230k, paragraph 1	II
Section 230l, preamble and under a	III
Section 230l, preamble and under b	III
Section 230l, preamble and under c	III
Section 230l, preamble and under d	III
Section 230l, preamble and under e	III
Section 230l, preamble and under f	II
Section 230l, preamble and under g	III
Section 230l, preamble and under h	III
Section 230m, paragraph 1, preamble and under a	III
Section 230m, paragraph 1, preamble and under b	III
Section 230m, paragraph 1, preamble and under c	III
Section 230m, paragraph 1, preamble and under d	III
Section 230m, paragraph 1, preamble and under e	III
Section 230m, preamble and under f	II
Section 230m, paragraph 1, preamble and under g	III
Section 230m, paragraph 1, preamble and under h	III
Section 230m, paragraph 1, preamble and under i	II
Section 230m, paragraph 1, preamble and under j	II
Section 230m, paragraph 1, preamble and under k	II
Section 230m, paragraph 1, preamble and under l	III
Section 230m, paragraph 1, preamble and under m	II
Section 230m, paragraph 1, preamble and under n	II
Section 230m, paragraph 1, preamble and under o	II

Section of the law	Category
Book 6 of the Dutch Civil Code	
Section 230m, paragraph 1, preamble and under p	II
Section 230m, paragraph 1, preamble and under q	II
Section 230m, paragraph 1, preamble and under r	III
Section 230, preamble and under s	III
Section 230, preamble and under t	II
Section 230n, paragraph 2	II (information an integral part of the agreement and II (changing information)
Section 230n, paragraph 3	III (under e) and II (under i)
Section 230o, paragraph 1	III
Section 230o, paragraph 2	III
Section 230o, paragraph 4	II
Section 230q, paragraph 2	III
Section 230r, paragraph 1	III
Section 230r, paragraph 2	II
Section 230s, paragraph 2	II
Section 230s, paragraph 5, preamble and under a, part 1	II
Section 230s, paragraph 5, preamble and under a, part 2	II
Section 230s, paragraph 5, preamble and under b, part 1	II
Section 230s, paragraph 5, preamble and under b, part 2	II
Section 230s, paragraph 5, preamble and under b, part 3	II
Section 230s, paragraph 6	III
Section 230t, paragraph 1	II
Section 230t, paragraph 2	II
Section 230t, paragraph 3	II
Section 230t, paragraph 4	III
Section 230t, paragraph 5	III
Section 230u	III
Section 230v, paragraph 1	II
Section 230v, paragraph 2	II
Section 230v, paragraph 3	II

Section of the law	Category
Book 6 of the Dutch Civil Code	
Section 230v, paragraph 4	II
Section 230v, paragraph 5, first sentence	III
Section 230v, paragraph 5, second sentence	II
Section 230v, paragraph 6, first sentence	III
Section 230v, paragraph 6, second and third sentence	III
Section 230v, paragraph 7, under a	II
Section 230v, paragraph 7, under b	II
Section 230v, paragraph 8	III
Section 233, under a	II
Section 233, under b	II
Section 236, preamble and under a	II
Section 236, preamble and under b	II
Section 236, preamble and under c	II
Section 236, preamble and under d	II
Section 236, preamble and under e	II
Section 236, preamble and under f	II
Section 236, preamble and under g	II
Section 236, preamble and under h	II
Section 236, preamble and under i	II
Section 236, preamble and under j	II
Section 236, preamble and under k	II
Section 236, preamble and under l	II
Section 236, preamble and under m	II
Section 236, preamble and under n	II
Section 236, preamble and under o	II
Section 236, preamble and under p	II
Section 236, preamble and under q	II
Section 236, preamble and under r	II
Section 236, preamble and under s	II
Section 234	II
Section 237, preamble, under a	II
Section 237, preamble, under b	II
Section 237, preamble, under c	II
Section 237, preamble, under d	II
Section 237, preamble, under e	II
Section 237, preamble, under f	II

Section of the law	Category
Book 6 of the Dutch Civil Code	
Section 237, preamble, under g	II
Section 237, preamble, under h	II
Section 237, preamble, under i	II
Section 237, preamble, under j	II
Section 237, preamble, under k	II
Section 237, preamble, under l	II
Section 237, preamble, under m	II
Section 237, preamble, under n	II
Section 237, preamble, under o	II
Section 238, paragraph 1	II
Section 238, paragraph 2	II
Section 243	III
Section 246	II
Book 7 of the Dutch Civil Code	
Section 6a, paragraph 1	III
Section 6a, paragraph 2	II
Section 6a, paragraph 3	II
Section 6a, paragraph 4	III
Section 7, paragraph 2	IV
Section 7, paragraph 4	IV
Section 9, paragraph 4	II
Section 11, paragraph 1	II
Section 11, paragraph 2	II
Section 17	III
Section 18	III
Section 19	III
Section 19a, paragraph 3	II
Section 21	III
Section 22	II
Section 50b, paragraph 1	III
Section 50b, paragraph 2	III
Section 50b, paragraph 3	III
Section 50b, paragraph 4	III
Section 50b, paragraph 5	III
Section 50b, paragraph 6	III
Section 50c, paragraph 1	II
Section 50c, paragraph 2	II

Section of the law	Category
Book 7 of the Dutch Civil Code	
Section 50c, paragraph 3	If absence of under a: III, if absence under b: II, if absence under a and b: III
Section 50c, paragraph 4	II
Section 50c, paragraph 5	II
Section 50c, paragraph 6	II
Section 50c, paragraph 7	III
Section 50c, paragraph 8	II
Section 50d, paragraph 1	III
Section 50d, paragraph 2	III
Section 50d, paragraph 3	III
Section 50e	III
Section 50f, paragraph 1	III
Section 50f, paragraph 2	II
Section 50g, paragraph 1	II or III, depending on the classification of the relevant section
Section 50g, paragraph 2	II
Section 50g, paragraph 3	II
Section 50g, paragraph 4	II
Section 50h	II or III, depending on the classification of the relevant section
Section 133, preamble and under a	III
Section 133, preamble and under b	III
Section 134, paragraph 1, first sentence	II
Section 134, paragraph 1, second sentence	II
Section 134, paragraph 2, preamble and under a	III
Section 134, paragraph 2, preamble and under b	III
Section 134, paragraph 2, preamble and under c	III
Section 134, paragraph 2, preamble and under d	III
Section 134, paragraph 2, preamble and under e	II
Section 134, paragraph 2, preamble and under f	III
Section 134, paragraph 2, preamble and under g	II

Section of the law	Category
Book 7 of the Dutch Civil Code	
Section 134, paragraph 2, preamble and under h	II
Section 134, paragraph 2, preamble and under i	II
Section 134, paragraph 2, preamble and under j	II
Section 135, paragraph 1	III
Section 135, paragraph 2	II
Section 136	II
Section 137	III
Section 138	II
Section 139	II
Section 501	III (for not stating the trip price); for the applicable fining category in case of failure to state the other information mandated by Order in Council, see Articles 1 through 4 of the Decision on information of organized tours, hereafter
Section 503	III
Article 1, preamble and under a of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	III
Article 1, preamble and under b of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Article 1, preamble and under c of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Article 1, preamble and under d of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Article 1, preamble and under e of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Article 2, preamble and under a of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	II

Section of the law	Category
Book 7 of the Dutch Civil Code	
Article 2, preamble and under b of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	II
Article 2, preamble and under v of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	II
Article 2, preamble and under f of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Article 3, preamble and under a of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Article 3, preamble and under b of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Article 4, preamble and under a of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Article 4, preamble and under B of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Article 4, preamble and under C of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Article 4, preamble and under D of the Decision on information of organized tours (Dutch Bulletin of Acts and Decrees, 1993, 43)	I
Section 501, paragraph 2	III (for not stating the trip price); for the applicable fining category in case of failure to state the other information mandated by Order in Council, see Articles 1 through 4 of the Decision on information of organized tours, above
Section 502, paragraph 1	III
Section 502, paragraph 3	III
Section 503	III
Section 504	III
Section 505	III

Section of the law	Category
Book 7 of the Dutch Civil Code	
Section 506, paragraph 1	II
Section 507	III
Section 508, paragraph 1	III
Section 509	III
Section 510	III
Section 512, paragraph 1	IV
Section 512, paragraph 2	II
Establishment Act of the Netherlands Authority for Consumers and Markets	
Section 12l, paragraph 2	III
Prices Act	
Section 2b	II or III (see for the applicable fining category, hereafter: Decision on pricing of products) ⁸
Section 3, insofar in connection with Section 2b	II ⁹
Decision on pricing of products	
Sections 2 through 5	II: in case of violation of Section 2, 3, 4, paragraph 1, Section 5, paragraph 1 in conjunction with Section 3, and Section 5, paragraph 2 III: in case of violation of Section 4, paragraph 2, and Section 5, paragraph 1 in conjunction with Section 4, paragraph 2
Regulation 1008/2008 establishing common rules for the operation of air services in the Community (OC L 293)	
Article 23, paragraph 1	III
Article 23, paragraph 2	III
Dutch Telecommunications Act	
Section 2.1, paragraph 1	II
Section 2.1, paragraph 5	IV
Section 2.3, paragraph 5	I
Section 3.24, paragraph 1	IV
Section 3.24, paragraph 2	IV

⁸ See in the event of violation of this provision in the context of unfair commercial practices, this Annex under Section 6.193f preamble and under g of the Dutch Civil Code.

⁹ See in the event of violation of this provision in the context of unfair commercial practices, this Annex under Section 6.193f preamble and under g of the Dutch Civil Code.

Section of the law	Category
Dutch Telecommunications Act	
Section 3.24, paragraph 3	IV
Section 3.24, paragraph 4	IV
Section 4.1, paragraph 4	III
Section 4.2, paragraph 11	III
Section 4.2a, paragraph 2	I
Section 4.2b	II
Section 4.9, paragraph 1	III
Section 4.9, paragraph 2	III
Section 4.9, paragraph 3, under a	III
Section 4.9, paragraph 3, under b	III
Section 4.10, paragraph 1	III
Section 4.10, paragraph 2	III
Section 4.10, paragraph 5	I
Section 4.10, paragraph 6	I
Section 4.10, paragraph 7	III
Section 5.2, paragraph 1	III
Section 5.2, paragraph 2	II
Section 5.2, paragraph 3	II
Section 5.2, paragraph 4	II
Section 5.2, paragraph 5	III
Section 5.2, paragraph 6	III
Section 5.2, paragraph 7	II
Section 5.2, paragraph 8	IV
Section 5.2, paragraph 9	IV
Section 5.3, paragraph 1	III
Section 5.3, paragraph 2	III
Section 5.3, paragraph 5	III
Section 5.3, paragraph 6	III
Section 5.6, paragraph 1	I
Section 5.8, paragraph 1	II
Section 5.8, paragraph 2	II
Section 5.8, paragraph 3	II
Section 5.8, paragraph 4	II
Section 5.8, paragraph 5	II
Section 5.8, paragraph 6	IV
Section 5.10	III
Section 5.11, paragraph 1	III

Section of the law	Category
Dutch Telecommunications Act	
Section 5.11, paragraph 2	III
Section 5.11, paragraph 3	III
Section 5.12, paragraph 1	IV
Section 5.12, paragraph 2	IV
Section 5.12, paragraph 3	IV
Section 5.12, paragraph 4	IV
Section 6.1, paragraph 1	IV
Section 6.1, paragraph 2	IV
Section 6.1, paragraph 3	II
Section 6.5, paragraph 1	IV
Section 6.6	IV
Section 7.1, paragraph 1	II
Section 7.1, paragraph 2	II
Section 7.1, paragraph 4	II
Section 7.1, paragraph 5	II
Section 7.2, paragraph 1	III
Section 7.2, paragraph 2	III
Section 7.2, paragraph 3	III
Section 7.2a, paragraph 1, under 1-4	II
Section 7.2a, paragraph 2	II
Section 7.2a, paragraph 3	II
Section 7.2a, paragraph 4	II
Section 7.3a, paragraph 1	II
Section 7.3a, paragraph 2	II
Section 7.3b, paragraph 1	III
Section 7.3b, paragraph 2	III
Section 7.3c, paragraph 2	II
Section 7.3c, paragraph 3	II
Section 7.4, paragraph 1	III
Section 7.4, paragraph 2	III
Section 7.4, paragraph 3	III
Section 7.4a, paragraph 1	IV
Section 7.4a, paragraph 2	I
Section 7.4a, paragraph 3	IV
Section 7.6, paragraph 1	II
Section 7.6, paragraph 2	II
Section 7.6a, paragraph 1	II

Section of the law	Category
Dutch Telecommunications Act	
Section 7.6a, paragraph 2	II
Section 7.7	III
Section 8.5, paragraph 1	III
Section 8.5, paragraph 2	III
Section 8.5, paragraph 3	III
Section 8.7	IV
Section 9.1, paragraph 1	IV
Section 9.1, paragraph 2	IV
Section 9.1, paragraph 3	IV
Section 9.1, paragraph 4	IV
Section 9.2, paragraph 2	IV
Section 9.4, paragraph 5	II
Section 9.5, paragraph 1	II
Section 9.5, paragraph 2	II
Section 11.2a, paragraph 1	IV
Section 11.2a, paragraph 2	III
Section 11.2a, paragraph 3	II
Section 11.2a, paragraph 4	III
Section 11.2	IV
Section 11.3, paragraph 1	IV
Section 11.3, paragraph 2	IV
Section 11.3, paragraph 3	III
Section 11.3a, paragraph 1	II
Section 11.3a, paragraph 2	III
Section 11.3a, paragraph 3	II
Section 11.3a, paragraph 6	III
Section 11.4, paragraph 1	II
Section 11.4, paragraph 1	II
Section 11.4, paragraph 1	II
Section 11.5b, paragraph 1	I
Section 11.5b, paragraph 2	I
Section 11.6, paragraph 1	II
Section 11.6, paragraph 2	II
Section 11.6, paragraph 3	II
Section 11.6, paragraph 4	II
Section 11.7, paragraph 1	II
Section 11.7, paragraph 3	II

Section of the law	Category
Dutch Telecommunications Act	
Section 11.7, paragraph 4	II
Section 11.7, paragraph 5	III
Section 11.7, paragraph 9	III
Section 11.7, paragraph 10	III
Section 11.7, paragraph 12	III
Section 11.7a, paragraph 1	III
Section 11.9, paragraph 1	II
Section 11.9, paragraph 2	II
Section 11.10, paragraph 1	II
Section 11.10, paragraph 2	II
Section 11.10, paragraph 3	II
Section 11.10, paragraph 4	II
Section 11.10, paragraph 5	II
Section 11.10, paragraph 6	II
Section 11.10, paragraph 7	II
Section 11.11, paragraph 4	II
Section 11.11, paragraph 5	II
Section 12.1, paragraph 1	II
Section 12.1, paragraph 2	II
Section 12.2, paragraph 7	II
Section 12.4, paragraph 1	IV
Section 12.6	IV
Section 12.9, paragraph 2	I
Section 12.9, paragraph 3	II
Section 18.2	II
Section 18.4, paragraph 1	II
Section 18.4, paragraph 2	II
Section 18.6, paragraph 1	II
Section 18.10	II
Section 18.11, paragraph 1	II
Section 18.12, paragraph 1	II
Section 18.13, paragraph 2	II
Section 18.15, paragraph 1	I-IV
Section 18.15, paragraph 2	I-III
Section 18.15, paragraph 3	III
Section 18.18	IV
Section 18.21, paragraph 1	I-IV

Section of the law	Category
Dutch Telecommunications Act	
Section 18.21, paragraph 3	I
Act on the implementation of EU directives on energy efficiency	
Section 2	IV
Section 4	IV
Section 5	IV
Section 6	IV
Section 7, paragraph 3	II

EXPLANATORY NOTES

1. General

Introduction and purpose

On 1 April 2013, The Netherlands Competition Authority (NMa), the Netherlands Consumer Authority (CA) and the Netherlands Independent Post and Telecommunications Authority (OPTA) merged into the Netherlands Authority for Consumers and Markets (ACM). This merger has been laid down in the Establishment Act of the Netherlands Authority for Consumers and Markets. In that process, ACM assumed the statutory duties and powers of the three former authorities virtually without modifications. One of these powers is the power to impose administrative fines in the event of a violation of statutory provision. This power is included in most of the acts on compliance enforced by ACM. Furthermore, these acts determine, amongst other things, the maximum fine level that ACM is authorized to impose for a particular violation.

The Policy Rules of the Minister of Economic Affairs on the imposition of administrative fines by ACM (hereinafter referred to as 2013 Fining Policy Rules) provide detailed rules on the manner in which ACM – within the boundaries of the law – may exercise its power to impose administrative fines. The 2013 Fining Policy Rules relate to the imposition of fines by ACM on the basis of legislation that falls under the responsibility of the Minister of Economic Affairs. The power of the Minister to set a policy rule with regard to ACM follows from Section 21 of the Framework Act on Autonomous Administrative Authorities.

The Establishment Act of the Netherlands Authority for Consumers and Markets did not provide for the harmonization of all current rules regarding the imposition of administrative fines. Most of the provisions have remained unchanged. For this reason, in the 2013 Fining Policy Rules, the decision was made at the time to include the provisions that were previously applicable regarding the NMa, CA and OPTA – save for some general provisions that apply to ACM as a whole – in individual chapters, with individual definitions and outlines of the principles for each.

The act of 25 June 2014 amending the Establishment Act of the Netherlands Authority for Consumers and Markets and some other acts in connection with the streamlining of ACM's regulation (Dutch Bulletin of Acts and Decrees 2014, 247), hereinafter referred to as ACM Streamlining Act, does – unlike the Establishment Act of the Netherlands Authority for Consumers and Markets – provide for simplification and harmonization of powers, enforcement instruments, and procedures. In that context framework, some of the provisions that apply to ACM as a whole with regard to the imposition of fines have been included in the Establishment Act for the Netherlands Authority for Consumers and Markets. This concerns in particular:

1. The time limit as referred to in Section 5:51 of the Dutch General Administrative Law Act within which ACM is to make a fining decision,
2. The power to investigate the offender's accounting with the purpose of determining the level of the fine,
3. The statutory maximum fine for a violation of the obligation to inform, an individual order, the obligation to cooperate, a commitment decision or a breach of a seal,
4. The statutory maximum fine for violations by natural persons,
5. The definition of turnover, and
6. The arrangements concerning the suspensive effect of appeal.

This simplification and harmonization in the ACM Streamlining Act is a reason to simplify and harmonize the detailed rules with regard to the imposition of fines by ACM from the 2013 Fining Policy Rules as well. This is realized in this policy rule, and does not lead to any significant material consequences compared with the 2013 Fining Policy Rules. After all, the general objective is the same for all fields, namely that the level of the fine is proportional to the committed violation and has a sufficiently deterrent effect on both the offender (specific prevention) and other potential offenders (generic prevention). However, wherever possible and desirable, definitions and basic principles are harmonized and fining systems simplified. Unnecessary differences between fields of regulation or sectors, which existed in the 2013 Fining Policy Rule, are removed. Instead of distinguishing fields of regulation and sectors, this policy rule distinguishes three fining systems, depending on the nature of the violation and the statutory maximum fine set for that particular violation. These systems will be further explained in the next section. The provisions with regard to the imposition of fines pursuant to the Public Procurement Act 2012 and the Public Procurement Act with regard to defense and security matters, as in the 2013 Fining Policy Rules, continue to be covered in a separate chapter. They each have their own system. Finally, the scope of the policy rule is broadened to all fines the ACM is authorized to impose pursuant to legislation that falls under the responsibility of the Minister of Economic Affairs. Unlike the 2013 Fining Policy Rules, this policy rule also applies to fines ACM is authorized to impose pursuant to the Postal Act 2009. The policy rule does not apply to fines ACM imposes pursuant to legislation that falls under the responsibility of other ministers. The policy rule is therefore applicable to the following legislation:

- The Public Procurement Act 2012;
- The Public Procurement Act on defense and security matters;
- The Electricity Act 1998;
- The Gas Act;
- The Establishment Act of the Netherlands Authority for Consumers and Markets;
- The Dutch Competition Act;
- The Postal Act 2009;
- The Dutch Telecommunications Act;
- The Heating Supply Act;
- The Consumer Protection Act ;

- The Act on the implementation of EU directives on energy efficiency
- The Act of 23 November 2006 amending the Electricity Act 1998 and the Gas Act in connection with detailed rules regarding independent grid administration

The rules with regard to the granting of leniency (immunity from fines or a reduction of a fine) by ACM to cartel participants who have submitted evidence of a cartel violation to ACM, which had been included in the 2013 Fining Policy Rules, shall henceforth be laid down in a separate Policy Rule of the Minister of Economic Affairs on the reduction of fines in connection with cartels. The leniency instrument may be applicable exclusively to fines imposed by ACM for a violation of the cartel prohibition set out in Section 6 of the Dutch Competition Act or Article 101 of the Treaty on the Functioning of the European Union (TFEU), not to fines imposed by ACM for a violation of any other statutory regulation. Because of the limited scope and the fact that this policy rule no longer distinguishes on the basis of field of regulation or sector, the leniency instrument is included in a separate policy rule, as had been the case preceding the establishment of ACM (Policy Rules of the Minister of Economic Affairs on the reduction of administrative fines in connection with cartels). Moreover, this is in line with the provisions regarding the leniency instrument of the European Commission and several other European Member States. The division of these policy rules into two will have no material consequences.

In two letters to the Dutch House of Representatives (Parliamentary Papers II 33 622, nos. 9 and 19), several measures were announced regarding the statutory maximum fines. These measures result in a stronger deterrent effect of the fines ACM is authorized to impose and thus in more effective market oversight by ACM. These measures have not been included in the ACM Streamlining Act, but will be detailed in a separate bill. Therefore, this policy rule shall not take the measures announced in the two letters into account. The separate proposal will, in due course, result in an amendment of the policy rule.

Fining systems

As noted above, the same objective applies to all fields and sectors regulated by ACM, namely that the level of the fine is proportional to the violation and sufficiently dissuasive to both the offender (specific prevention) and other potential offenders (generic prevention). This objective is reflected in several general principles which are included in paragraph 2.1 of this policy rule and which require ACM to take them into account when setting the level of an administrative fine, regardless of the material law on which this is based.

The system ACM is to apply in the calculation of the level of the fine depends on the nature of the violation and the statutory maximum fine set for that particular violation. The policy rule distinguishes three systems:

1. a system for violations with a basic fine set at a percentage of the relevant turnover (section 2.2),
2. a system for violations with a basic fine set at a permillage of the total turnover

- (section 2.3),
3. a system for violations with a statutory maximum fine of EUR 450,000 (section 2.4).

The first two systems are applicable to violations to which a combined statutory maximum fine is applicable, namely EUR 450,000, or – if that is higher – a percentage of the offender’s annual turnover. Both systems have been simplified compared with the 2013 Fining Policy Rules. This policy rule determines which system applies to which violation. The third system is applicable to violations for which only an absolute maximum fine of EUR 450,000 is set.

Regardless of the applicable system, ACM first sets a basic fine. ACM sets the level of this basic fine so that it is appropriate to the factors referred to in Article 2.2. Subsequently, ACM may take into account aggravating or mitigating circumstances with regard to this basic fine, which enables ACM to take into account specific circumstances regarding the *offender* (section 2.5). In the event of cartel violations, the Leniency Policy Rule may be applicable, which may result in a reduction or a cancellation of the fine.

Basic fine

In each system, the basic fine is determined in a different manner.

Violations with a basic fine set at a percentage of the relevant turnover

This system is applied to the determination of the fine for violations of the cartel prohibition set out in Section 6 of the Dutch Competition Act or Article 101 of the TFEU, violations of the prohibition of abuse of a dominant economic position set out in Section 24 of the Dutch Competition Act or Article 102 of the TFEU, violations of obligations by undertakings with significant market power in the telecommunications sector (Section 15.4, paragraph 2 of the Dutch Telecommunications Act) and the postal sector (Section 49, paragraphs 1 and 2 of the Postal Act 2009).

When determining the basic fine, ACM takes into account the factors referred to in Article 2.2. ACM sets the basic fine at a percentage (within the range of 0 to 50 percent) of the relevant turnover. The duration of the violation is reflected in these violations in the definition of relevant turnover (Article 1.1 of this policy rule): the revenues that the violator has earned, during the last full year in which he committed the violation, with the supply of goods and provision of services that are directly or indirectly connected to the concerned violation, after deduction of discounts and such, as well as taxes levied on the turnover, multiplied by a factor 1/12 for each month of the duration of the violation, in which a period shorter than one month is rounded up to a whole month. This definition also reflects the scope and duration of the economic activities related to the concerned violation and the impact the violation may generally have on the economy. Furthermore, it reflects, in the event that the violation was committed by multiple offenders, the parts of the individual offenders in this impact (or

potential impact) on the economy. All this contributes to the intended prevention and/or dissuasive effect. The “impact on the economy” is to be interpreted in the broadest sense of the word and includes the loss of consumer surplus and other economic damage as a result of the violation, such as consequential loss in the industry, extra costs for competitors or end-users, loss of efficiency, limitation of innovation (or a limitation of the incentive to innovate), reduction of economic growth or possible effects spilling over to other sectors than the directly concerned sector.

The determination of the percentage has been simplified compared with the 2013 Fining Policy Rules, but does not entail any material changes. In the previous system, the basic fine was calculated by first taking 10 percent of the relevant turnover and subsequently multiplying it by a so-called “seriousness factor” (E) or “seriousness of the violation.” The seriousness factor would have a value within the range of 0 to 5. Thus, the amount of the basic fine based on the 2013 Policy Fining Rules was within the range of 0 to 50 percent of the relevant turnover as well. Such a separate consideration of abstract and concrete seriousness of the conduct liable to fines (a theoretical distinction between the “severity” and “seriousness” of the violation) in practice had little added value, and was therefore not included in this policy rule. Both aspects may be considered in the determination of the percentage of the relevant turnover at which the basic fine is set, without mentioning them separately. The seriousness and circumstances under which the violation was committed are reflected in the percentage by virtue of the ACM giving weight to:

- the nature of the violation; this includes the extent to which the interests which the violated provisions seek to protect are or may be harmed;
- The scope and special characteristics of the market in which the violation was committed;
- The degree of market power of the offender or offenders;
- The nature of the products or services concerned;
- The extent to which the violation gave rise to any advantage and/or the extent of the impact on the economy the violation might potentially have or has actually had.

Violations with a basic fine based on a permillage of the total annual turnover

This system is applied to all other violations to which a combined statutory maximum fine is applicable. In this category of violations, the impact on the economy or the interests to be protected by these provisions are generally not easily relatable to a particular turnover. The basic fine for these violations is derived from the total annual turnover of the offender. This, too, bears a certain relation – albeit less directly than the relevant turnover – to the impact the violation may have on the economy, as the annual turnover is an indication of the economic power of the offender. The relation to the total scope of the offender also contributes to an appropriate dissuasive effect.

This system has been simplified compared to the 2013 Fining Policy Rules as well. The permillage and the “seriousness factor” (E) which existed in the previous policy, have been

combined and this policy does not entail any material changes compared with the previous policy either. In the previous policy, there were fining categories which were established on the basis of a permillage of the total annual turnover. The basic fine was set by multiplying the amount established by taking a permillage of the total annual turnover by the “seriousness factor” (E), with a maximum of 5. The fining categories in this policy rule are established on the basis of the minimum fine set out in the previous policy and the fine which could be established in the previous policy by multiplication by a factor of 5. These are thus the two extremes of the range within which, in a particular fining category, the fine is to be set. The permillage of the total annual turnover at which the basic fine is to be set is determined by ACM with due regard for the factors referred to in Article 2.2 of this policy rule.

In Annex 1 to this policy rule, the violations have been divided into categories I through VI. If, in ACM’s view, this classification does not enable ACM to fine appropriately, ACM may apply the nearest higher or lower category. When the category has been determined, ACM is to set an amount within the range applicable to this category. This is the basic fine. When doing so, ACM must always explain, on the basis of the factors referred to in Article 2.2 of this policy rule, its choice for a particular amount within the applicable range.

Violations with a statutory maximum fine of EUR 450,000

For certain violations, for example violations of the provisions in sub-paragraph a of the Annex to the Dutch Act on Enforcement of Consumer Protection, the Energy Efficiency (Implementation of EC Directives) Act, and violations by de facto executives or natural persons, only a maximum fine is applied. This maximum fine has been set at EUR 450,000 in the Establishment Act of the Authority for Consumers and Markets. These statutory norms have been divided into four fining categories in Annex 2. For these violations, too, ACM may impose a fine from the nearest higher or lower category, if this classification does not, in ACM’s view, enable ACM to fine appropriately. A fining range has been set for each fining category. Within the range of the applicable fining category, ACM, with due regard for the factors referred to in Article 2.2 of this policy rule, sets the basic fine.

Aggravating and mitigating circumstances and symbolic fines

Once ACM has determined a basic fine based on one of the three systems, it assesses whether there are any aggravating or mitigating circumstances, and, if necessary, adjusts the fine accordingly. These circumstances have been set out in section 2.5 In addition, ACM may, if, in its view, exceptional circumstances so require, consider it sufficient to impose a symbolic fine (section 2.6). Experience shows that this option is rarely used.

Finally, under Section 5:46, paragraph 2 of the Dutch General Administrative Law Act, in which it has been laid down that, when determining the level of an administrative fine, an administrative body, if so needed, must take into account the circumstances in which a violation was committed, ACM may also take into consideration an undertaking’s financial strength when determining the administrative fine.

Administrative fines regarding public procurement

The Public Procurement Act 2012 contains in Chapter 4.3 provisions setting out legal protection in tender processes after the phase of the conclusion of a contract for the performance of a public assignment or a special-industry assignment. The Public Procurement Act 2012 provides that a contract may be rescinded by legal process if the tender has erroneously not been announced, if the suspension period has not been respected or if provisions regarding competition arrangements for future contracts of framework contracts and dynamic purchasing systems have not been observed. If the civil court does not or not entirely rescind the contract, or entirely or partially renders the rescission inoperative, ACM imposes an administrative fine on the concerning contracting authority or the special-industry company (Section 4.21 of the Public Procurement Act 2012). The Public Procurement Act on defense and security matters contains provisions on the voidability of a contract by legal process. The sections of the law regarding this matter are included in Chapter 3.2 of that Act. As under the Public Procurement Act 2012, ACM can impose administrative fines (Section 3.8). Chapter 3 sets out the detailed provisions with regard to the manner in which ACM determines the level of the fine. Considered in connection with a possible reduction of the duration of the contract, a fine is dissuasive, proportionate and effective. When determining the level of the fine, ACM takes into account the relevant circumstances of the case, such as the seriousness of the violation.

Feasibility test and internet consultation

A draft of this policy rule was submitted to ACM for a feasibility test. ACM deems the policy rule feasible. No further comments were made. Considering the nature of the policy rule, the enforceability of the policy rule has not been assessed.

In addition, a draft of this policy rule has been publicly consulted. There have been three responses: from the *N.V. Nederlandse Gasunie*, T-Mobile Netherlands B.V. and Netbeheer Nederland. Two respondents pointed out that ACM's discretionary scope is very high, and that this leads to legal uncertainty. This is caused, amongst other things, by the very wide ranges within which ACM may set the fine. This is, however, all the discretionary scope ACM has. The setting of the fine has been simplified compared with the 2013 Fining Policy Rules, but this does not entail any material changes. In the previous system, first the basic fine was determined and subsequently multiplied by a "seriousness factor" (E), with a value within the range of 0 to 5). Such a separate consideration of abstract and concrete severity of the conduct liable to fines (a theoretical distinction between the "severity" and "seriousness" of the violation) in practice had little value, and was therefore not included in this policy rule (Articles 2.4, 2.5 and 2.7). Both aspects may be considered when determining the percentage of the relevant fine at which the basic fine is set, without mentioning them separately. There is, however, not a widening of ACM's discretionary scope in this matter.

In response to the comments these two respondents made about the discretion the proposed Article 2.8 grants ACM in the question of whether or not it takes note of aggravating or mitigating circumstances, Article 2.8, paragraph 1 has been modified. ACM is in any case required to consider whether there are any such circumstances. It is for ACM to decide, within reason, to what extent these circumstances lead to an increase or a reduction of the basic fine. ACM is required to duly explain the manner in which it does so. Moreover, the decision of ACM can be objected to and appealed against to the courts.

Finally, one respondent pointed out that Articles 3.5 and 3.6 insufficiently set out the duties of ACM as provided in the Public Procurement Act 2012, as the relevant circumstances of the case cannot be taken into account. This is, however, an incorrect interpretation of the provisions. In both articles, a specific percentage is the starting point for the determination of the fine, and ACM may – within the limits of the law – set a higher or lower fining percentage if the circumstances of the case so require.

2. Articles

Article 1.1

The relevant turnover is initially determined on the basis of the revenues the offender has earned with the supply of goods and provision of services that are directly or indirectly connected to this violation (sub-paragraph a). This may entail the revenues earned in the Netherlands as well as in other Member States of the European Union. If these revenues cannot be determined, the offender's turnover on the market requiring protection or a part thereof are taken as a basis (sub-paragraph b). This situation may occur, for example, when there is a conduct, aimed towards protection of a position or a dominant position on a market, consisting of the non-performance of carrying out certain transactions or the refusal to supply. In a situation in which the offender has not earned any revenue on the market requiring protection, the relevant turnover is determined based on the revenues the offender has earned with his own contribution to the violation (sub-paragraph c). This situation may occur when an undertaking which is not active in the market requiring protection, but whose contribution consisted of the carrying out of supporting activities, has participated in the violation. Such a situation is the subject of the ruling of the Court of First Instance in the case of *AC-Treuhaud AG v Commission* (ECJ 8 July 2008 (*AC-Treuhaud*, T-99/04), European Court Reports 2008, pp. II-01501). In all three cases, the relevant turnover is calculated on the basis of taking the revenue to which the violation gave rise during the last full year in which it took place, and multiplying this revenue by a factor of 1/12 for each month that the violation lasted. If the violation lasted for less than a year, the relevant turnover is calculated on the basis of taking the revenue to which the violation gave rise during the period in which the violation took place (paragraph 2).

Article 2.1

If ACM establishes that an offender has committed multiple violations, it may choose to

impose a fine for these violations combined (paragraph 1). In the event that there is a violation of Sections 6 and 24 of the Dutch Competition Act and Articles 101 and 102 of the TFEU, in principle one administrative fine is to be imposed, considering the similar nature of these provisions.

Article 2.2

At least the factors summarized in this article are taken into account when setting the basic fine. These factors can always be invoked when the setting the basic fine, regardless of the fining system in which the violation is classified.

Article 2.3

An example illustrating the system used in paragraph 1: three undertakings – A, B and C – have made price-fixing agreements with regard to product X. In the last full year in which the illegal agreements are in force, undertaking A generates EUR 30,000,000 with the sale of X, undertaking B generates EUR 20,000,000 and undertaking C generates EUR 10,000,000. If the price agreements between the parties lasted for four years, this results in a relevant turnover of EUR 120,000,000 for A, a relevant turnover of EUR 80,000,000 for B and a relevant turnover of 40,000,000 for C. The circumstance of whether or not the price agreement has been carried out (be it successfully or not) with regard to the sale of X (or a part thereof) is irrelevant in the determination of the scope of the relevant turnover.

Paragraph 3 of this article defines what should be considered relevant turnover for the participants of an illegal bid-rigging agreement who are not awarded the contract. In a tender process, only one of the tendering undertakings is awarded the contract in the end. If, for example, five undertakings conclude an illegal agreement in a tender process, one of these undertakings will earn turnover deriving from this agreement. The other undertakings involved in this agreement will have no relevant turnover. This problem is solved by counting the bid at which the winning undertaking was awarded the contract, or a proportionate part thereof, as relevant turnover. If undertaking A wins with a bid at EUR 100,000, the relevant turnover of undertaking A is thus EUR 100,000 and the relevant turnover of undertakings B through E is EUR 25,000 for each.

It is provided in paragraph 4 that in the event of a violation committed by an association of undertakings, the relevant turnover of the undertakings belonging to this association may be taken into account. In terms of proportionality, the fact that besides the association, ACM fines individual members as well, may be taken into account when selecting the percentage at which to set the basic fine (Article 2.4).

ACM bases the determination of the relevant turnover in principle on the turnover as evident from the accounting of the offender. Paragraph 5 sets out that ACM may, in exceptional circumstances, if the relevant turnover evident from the accounting insufficiently reflects the actual economic value of the offender's conduct liable to fines, base the setting of the basic

fine on other data. This may be relevant if the offender's turnover consists of commission fees or if in the event of loans, financial services, insurance or pensions.

Paragraph 6 provides that the basic fine may be adjusted in connection with the weight of the offender, in terms of total annual turnover of the offender in the Netherlands in the financial year preceding the decision to impose a fine. The background to this is the following. There may be situations in which an offender whose activities only partly consist of the supply of the product or provision of the service which the violation is concerning is involved in the violation. In such a situation, the relevant turnover – earned with the supply of the product concerned or the provision of the service concerned – may be much less than his total annual turnover. In such a case, a fine based on the relevant turnover would have little specific dissuasive effect. For example, undertaking X principally produces and supplies cars, but in addition produces and supplies a small number of bicycles. For two years, undertaking X makes price-fixing arrangements with some bicycle producers, for which ACM wants to impose a fine. The turnover which X earned in those two years with the production and supply of bicycles totals EUR 100,000, which in this fictitious case leads to a basic fine within the range of EUR 0 to EUR 50,000. The total annual turnover of X, however, totals EUR 100,000,000, therefore the fine has little specific dissuasive effect. In this case, the fine may be adjusted, for example to EUR 1,000,000.

Article 2.4

When determining the level of the basic fine, ACM takes in any case, wherever applicable, note of the factors referred to in Article 2.2.

Article 2.5

This article sets out that ACM may set the maximum basic fine for violations with a statutory maximum of EUR 450,000 or a percentage of the turnover if this is higher at a permillage of the offender's turnover. What violations are fined according this system is detailed in Annex 1. Moreover, this annex sets out in which categories these violations are classified. The permillage by which the turnover is at most multiplied, is determined according to six categories increasing in level. The classification in a particular category has been linked to the interest protected by the concerned legal provisions, in relation to the law of which it is part. As more weight is to be attributed to this interest, a higher fine for violations of the legal provisions protecting this interest is justified.

For the purposes of dissuasive effect, each category has a minimum fine in order to prevent a permillage resulting from a lower total annual turnover leading to a fine that is too low.

When determining the level of the basic fine within the range of the applicable fining category, ACM takes note, in any case, wherever applicable, of the factors referred to in Article 2.2.

Article 2.6

Sub-paragraph 5 provides that ACM may set the basic fine at a higher amount if the turnover

insufficiently reflects the actual economic power of the offender. This may be the case for insurance companies, joint ventures and offenders who are part of a larger business group where the business group is not also the offender.

Sub-paragraph 7 ensures that in the fining of violations of Section 34 of the Dutch Competition Act, the basic fine is always derived from the total annual turnover of the newly established entity, even if this new entity did not exist in the year preceding the decision to impose a fine; in the latter event, the total annual turnovers of the separate entities in the year preceding the decision to impose a fine are to be added up.

Article 2.7

This article provides that ACM must set the basic fine for violations with a maximum fine of EUR 450,000 at an amount within the range of the category applicable to a violation. What violations are fined according to this system is detailed in Annex 2. Moreover, this annex sets out in which categories the violations are classified. These notes may include provisions that may also be found in Annex 2 (for example violations of the Electricity Act 1998), but to which, in this case, a maximum fine of EUR 450,000 is connected. This is the case when ACM intends to fine someone who ordered the violation or exercised de facto leadership over the illegal conduct (see Section 12n of the Establishment Act of the Netherlands Authority for Consumers and Markets). The classification in a particular category has been linked to the interest protected by the concerned legal provisions, in relation to the law of which it is part. As more weight is to be attributed to this interest, a higher fine for violations of the legal provisions protecting this interest is justified, ACM takes note, in any case, wherever applicable, of the factors referred to in Article 2.2.

Article 2.9

This section sets out those circumstances which are in any case to be considered aggravating circumstances. It is for ACM to decide, pursuant to Article 2.8, paragraph 2, whether or not it wishes to take these circumstances into account when setting the fine.

It is provided in Article 2.9, paragraph 1, sub-paragraph b that ACM may increase a basic fine owing to the circumstance that the offender has hindered the investigation of ACM. This is possible so long as it does not affect the rights of defence to which the offender is entitled.

Paragraph 2 provides, within the framework of the “high-trust” approach to regulation, that ACM doubles the fine in the event of a repeated violation within the meaning of paragraph 1, sub-paragraph a, unless the result would be unreasonable in view of the circumstances of the particular case.

An increase of a fine may naturally not result in a fine exceeding the statutory maximum fine.

Article 2.10

This article sets out those circumstances which are, in any case, considered mitigating. As is the case with the aggravating circumstances referred to in Article 2.9, ACM may decide, pursuant to Article 2.8, paragraph 2, whether or not it takes these circumstances into account.

Article 3.1

This chapter is applicable to a violation of Section 4.21, paragraph 1 of the Public Procurement Act 2012 and of Section 3.8, paragraph 1 of the Public Procurement Act on defense and security matters. Paragraph 2 includes specifically that chapter 2 of this policy rule is not applicable to this chapter because in particular section 2.1, titled "General", might cause confusion.

Article 3.2

This chapter concerns the application of a number of sections from the Public Procurement Act 2012 and the Public Procurement Act on defense and security matters with regard to legal protection. It concerns the legal protection which is applicable concerning an agreement which was concluded as the result of a decision awarding a contract. The term "agreement" is defined in this article by referring to the relevant legal provisions of the Public Procurement Act 2012 and the Public Procurement Act on defense and security matters respectively. Such an agreement may have been concluded before the expiration of the suspension period within the meaning of these acts. This circumstance is relevant to the determination of the level of the fine and therefore this term is explained in this article as well.

Article 3.3

The level of the fine is calculated using the calculation formula as defined in paragraph 1. Only the part of the agreement that has not been rescinded, or the part which has been rescinded, but the rescission of which has been rendered inoperative is included in this calculation. Competition arrangements will still be made (in a proper manner) for the effectively rescinded part of the agreement. This part is disregarded in the calculation of the fine. However, the value of the part of the agreement which has not or not effectively been rescinded is an important factor in the calculation of the level of the fine, in which the value is taken which follows from the actually concluded agreement as opposed to the initially estimated value of the contract. There is one exception to this. In the event that the value of the relevant part of the agreement is higher than the value initially estimated during the tender process, the initially estimated value is to be taken as the starting point for the calculation of the fine. This is to guarantee that the fine does not exceed the maximum of fifteen percent of the estimated value of the contract as set out in Section 4.21, paragraph 4 of the Public Procurement Act 2012 and Section 3.8, paragraph 4 of the Public Procurement Act on defense and security matters respectively. Subsequently, the determined value is to be multiplied by a fining percentage for which this policy rule provides rules as well. The outcome of this is the

calculated level of the fine.

Article 3.4

This article sets out the manner in which ACM determines the value of the agreement. ACM determines, in the first place, the value of the agreement on the basis of sub-paragraph a), if this is not possible, then on the basis of sub-paragraph b), and so on. An irrevocable ruling by the court must be taken into consideration in the first place. The court may have determined the value (sub-paragraph a) or the value may be calculated based on the ruling of the court (sub-paragraph b). If there have been multiple bids, the value may, in second instance, be derived from those (sub-paragraph c). If there have been no bids, and the court has not determined the value, the value may be reflected in documents published by the contracting authority or the special-industry company or documents in its possession. If that does not give a solution either, the value of similar past agreements concluded by the contracting authority or the special-industry company are a guideline in the determination of the value (sub-paragraph e). Finally, it is possible that ACM determines the value on the basis of statements of undertakings that usually carry out similar contracts (sub-paragraph f). In that case, the value of the contract is estimated on the basis of information from third parties. Article 3.4 is without prejudice to the legal competence of ACM to carry out investigations, if appropriate, into the agreement in order to determine financial data relevant to the setting of the fine (Section 4.33 of the Public Procurement Act 2012 and Section 3.10 of the Public Procurement Act on defense and security matters).

Articles 3.5 and 3.6

In addition to the value of the part of the agreement which has not been in effect rescinded, the level of the fining percentage determines the setting of the amount of the fine. As the violation is more serious, the fining percentage will be higher. The nature of the violations may vary. These violations are, in short, failing to tender or a failure to make an announcement of the tender in advance and secondly, concluding an agreement during the mandatory suspension period (also known as the “Alcatel period” or standstill period). Similar violations may also take place in the decision to award future contracts within a framework agreement or a dynamic purchasing system. Article 3.5 sets the fining percentage for the failure to make an announcement of the tender at 15%. This is considered a very serious violation of the public procurement rules (see for comparison recital 13 of the Directive 2007/66/EC on the illegal direct award of contracts). Breach of the suspension period is considered a serious violation. The fining percentage for this is set at 10% in Article 3.6, paragraph 1. When determining the level of the fine, ACM must take into account the relevant circumstances of the case, amongst which is the seriousness of the violation (Section 4.21, paragraph 4 of the Public Procurement Act 2012 and Section 3.8, paragraph 4 of the Public Procurement Act on defense and security matters). Considering this, ACM may have to set the fine at a lower percentage. Mitigating circumstances may be, for example, reasonable doubts whether an announcement in advance had been necessary. In the breach of the suspension period, there may be a mitigating

circumstance, for example if the court has found that the suspension period has not begun, exclusively because the explanation had failed. The failure of explanation may not be of a serious nature. A breach of the suspension period may, pursuant to Article 3.6, paragraph 3, call for ACM to set the fine at a percentage higher than 10%. It would seem reasonable that the percentage should not exceed 15%.

Article 4.1

Pursuant to this article the, the 2013 Fining Policy Rules continue to be applied for violations with regard to which a report had been drawn up preceding the date this policy rule entered into force. Thus, an easily determinable date has been determined.

*The Minister of Economic Affairs,
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