

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

No. 14079
22 September 2009

Policy Rules of the Minister of Economic Affairs of 11 September 2009, no. WJZ/9150320, containing guidelines on the imposition of administrative fines under legislation the enforcement of which has been entrusted to the Board of the Netherlands Competition Authority [*Nederlandse Mededingingsautoriteit* (NMa)] (Policy Rules of the Minister of Economic Affairs on the Imposition of administrative fines by the NMa 2009)

The Minister of Economic Affairs,

Having regard to Section 5d of the Dutch Competition Act [*Mededingingswet*];

Hereby decides:

1. Definitions

Section 1

In these Policy Rules, the following terms shall have the following meaning:

- a) *other violations*: violations of provisions of the Dutch Competition Act other than Sections 6 and 24, of provisions of the Electricity Act 1998 [*Elektriciteitswet 1998*], the Gas Act [*Gaswet*], the Independent Grid Management Act [*Wet onafhankelijk netbeheer*]¹ and the Interim Media Concentrations Act [*Tijdelijke wet mediaconcentraties*] and of Section 5:20 of the General Administrative Law Act [*Algemene wet bestuursrecht*], for which the supervision of compliance has been entrusted to the Board and which are specified in the Annex to these Policy Rules, except for violations for which the Board can impose an administrative penalty on natural persons;
- b) *relevant turnover*: the revenue achieved by an offender for the total duration of a violation by supplying goods and services to which that violation relates, minus discounts and suchlike, and minus turnover tax;
- c) *annual turnover*: the net turnover of the offender, being the revenue from the supply of goods and services pertaining to the business of the offender, minus discounts and suchlike and minus turnover tax;
- d) *starting point for the fine*: an amount determined by taking a percentage of the relevant turnover or a permillage of the total annual turnover, or, if the offender is a natural person, an amount proportional to the seriousness of the violation and the offender's personal income and assets, which constitutes the basis for determining the level of an administrative fine that is to be imposed;
- e) *basic fine*: the amount that results when the starting point for the fine has been adjusted based on the seriousness of the violation and, where applicable, the basic fine increase or the importance of the offender, or, if the offender is a natural person, the amount of the starting point for the fine;
- f) *basic fine increase*: the amount by which the basic fine is increased in the event of a very serious violation of Sections 6 or 24 of the Dutch Competition Act or of Articles 81 or 82 of the Treaty.

¹ Act of 23 November 2006 amending the Electricity Act 1998 and the Gas Act in connection with further rules on independent grid management, Bulletin of Acts and Decrees [*Staatsblad*] 2006, 614.

2. General provisions

Section 2

An administrative fine shall be set at such a level as to discourage an offender from committing a subsequent violation (specific prevention) and to deter potential other offenders (general prevention).

Section 3

1. The Board shall set the level of the administrative fine on the basis of the starting point for the fine, which is determined case-by-case.
2. Having determined the starting point, the Board shall determine the basic fine by adjusting the starting point in accordance with the seriousness of the offence and, where applicable, in accordance with the basic fine increase and the importance of the offender. If the starting point for the fine is not adjusted in accordance with the seriousness of the offence, the basic fine increase or the importance of the offender, the basic fine shall be equal to the starting point for the fine.
3. In determining the administrative fine, the Board shall also take account of aggravating or mitigating circumstances and decide in all reasonableness to what extent such circumstances lead to an increase or reduction in the basic fine.

3. Violation of Sections 6 and 24 of the Dutch Competition Act and Articles 81 and 82 of the Treaty

Section 4

1. In the event of violation of Sections 6 and 24 of the Dutch Competition Act and Articles 81 and 82 of the Treaty, the Board shall determine the starting point for the fine based on the relevant turnover.
2. If the Board is unable to determine the relevant turnover on the basis of the information provided by the offender, the Board may estimate this turnover.
3. In the event of a prohibited tendering agreement, the Board may consider the relevant turnover for each participant to be the turnover – or a proportionate part thereof – that may be realised on the basis of the bid for which the contract was awarded.
4. If no relevant turnover can be determined, the amount considered as relevant turnover may be the offender's turnover on the protected market for the duration of the violation, with a minimum period of one year.
5. If the offender did not achieve any turnover on the protected market, the Board may consider the relevant turnover to be the turnover achieved by the offender concerned from the offender's own contribution to the restriction on competition.
6. If the violation was committed by an association of undertakings, the relevant turnover of the constituent undertakings may be taken into account.
7. In determining the relevant turnover, the Board shall apply values rounded off to the nearest whole euro.

Section 5

The Board shall apply a starting point for the fine of 10% of the offender's relevant turnover.

Section 6

1. The Board shall determine the basic fine by multiplying the starting point for the fine by a factor (S) to represent the seriousness of the violation.
2. The factor (S) representing the seriousness of the violation shall be determined by the gravity of the violation considered in combination with the economic context in which this violation occurred. In assessing the economic context, the Board shall take account of factors such as the nature of the products or services concerned, the size of the market, the size of the offending parties concerned and their market share – whether said market share is combined or otherwise – as well as the structure of the market and the applicable regulations. The Board shall also consider the damage – potential or otherwise – to the normal competition process and the general effect on the economy of the practice concerned.

3. In determining the factor (S), the Board shall distinguish three types of violation: very serious, serious and less serious violations. Far-reaching horizontal agreements shall in any event be classified as very grave violations.
4. Depending on the seriousness of the violation, the factor (S) shall be set at a value of no more than 5.

Section 7

1. In order to prevent undertakings from committing very grave violations – as referred to in Section 6(3) – of Sections 6 or 24 of the Dutch Competition Act or of Articles 81 or 82 of the Treaty, the Board shall apply a basic fine increase of no more than 25% of the relevant turnover of the last full year in which the undertaking took part in the violation.
2. In the context of specific prevention, the Board may adjust the basic fine for violation of Sections 6 and 24 of the Dutch Competition Act and of Articles 81 and 82 of the Treaty with a view to the importance of the offender, expressed as this offender's total annual turnover in the Netherlands in the financial year immediately preceding the decision to impose the fine.

4. Other violations

Section 8

1. For the other violations, the Board shall determine the starting point for the fine based on the offender's total annual turnover in the financial year immediately preceding the decision to impose the fine.
2. In determining the starting point, the Board shall use the annual turnover achieved in the Netherlands, unless the Board considers that this basis does not provide for an appropriate fine.
3. With regard to the geographical allocation of the turnover, the Board shall adhere to the principles set out by the European Commission in its Consolidated Jurisdictional Notice pursuant to Regulation (EC) No. 139/2004².
4. If the Board is unable to determine the total annual turnover based on the information provided by the offender, the Board may estimate this turnover.

Section 9

1. The Board shall apply a permillage of the offender's total annual turnover as the starting point for the fine.
2. The permillage shall be determined on the basis of six categories of increasing levels:

Category I	0.25‰ (per mil) of the total annual turnover, with a minimum administrative fine of € 2,500
Category II	0.75‰ (per mil) of the total annual turnover, with a minimum administrative fine of € 5,000
Category III	1.5‰ (per mil) of the total annual turnover, with a minimum administrative fine of € 10,000
Category IV	2.5‰ (per mil) of the total annual turnover, with a minimum administrative fine of € 15,000
Category V	7.5‰ (per mil) of the total annual turnover, with a minimum administrative fine of € 25,000
Category VI	15‰ (per mil) of the total annual turnover, with an administrative fine of € 50,000

3. The Annex specifies into which category the other violation concerned is classified.
4. If the classification in a particular category of fine as referred to in Subsection (2) does not provide for an appropriate fine in a specific case in the opinion of the Board, the next higher or lower category may be applied.
5. If the offender's total annual turnover exceeds €500,000,000, part rather than all of the annual turnover shall be taken into account. The turnover up to €500,000,000 shall be taken into account in full, while 10% of the turnover between €500,000,000 and €1,000,000,000 shall be taken into account and 1% of the turnover in excess of €1,000,000,000.

² OJEC 2008, C 95.

Section 10

1. The Board shall determine the basic fine by multiplying the starting point for the fine by a factor (S) representing the seriousness of the violation.
2. The factor (S) representing the seriousness of the violation shall depend on the degree to which the violation harms the interests which the provision infringed upon seeks to protect.
3. In determining the factor (S), the Board shall distinguish between three types of violation: very serious, serious and less serious violations.
4. Depending on the seriousness of the violation, the factor (S) shall be set at a value of no more than 5.

5. The imposition of administrative fines on natural persons

Section 11

1. The Board may impose an administrative fine on a natural person for infringing Section 5:20 of the General Administrative Law Act and for giving instructions or exercising de facto leadership with regard to an violation of Section 5:20 of the General Administrative Law Act, or for infringing the provisions of the Electricity Act 1998, the Gas Act, the Independent Grid Management Act, the Dutch Competition Act and the Interim Media Concentrations Act, as referred to in Subsection (4), or for infringing Articles 81 and 82 of the Treaty.
2. In the cases referred to in Subsection (1), the Board shall determine a starting point for the fine related to the seriousness of the violation and the offender's personal income and assets, in order to arrive at an administrative fine that has a sufficiently deterrent effect for the purposes of both general and specific prevention. In these cases, the starting point shall be the basic fine.
3. If the Board is unable to determine the offender's personal income and assets on the basis of the information provided by the offender, the Board may estimate the said income and assets.
4. The starting point for the fine shall be determined within the bandwidths set out below:
 - a. €10,000 to €200,000 for:
 - 1° violation of Section 5:20 of the General Administrative Law Act;
 - 2° giving instructions or exercising de facto leadership with regard to a violation of Section 5:20 of the General Administrative Law Act;
 - 3° giving instructions or exercising de facto leadership with regard to a violation of Sections 4a(3), 7(2), 11a(2), 11b(3), 12(1) or (2), 16(1)(g), (k) or (l), 16(2)(g), 16a, 16Aa(3) or (4), 17(4), 17a(3) or (4), 18(3), 19b, 19c, 19d, 19e, 24(2), 24a, 38(3), 39, 42(3), 68(2), 78(2), 95b(2) or (8), 95e, 95k or 95l of the Electricity Act 1998;
 - 4° giving instructions or exercising de facto leadership with regard to a violation of Sections 3c(3), 4(1) or (2), 7a(3) or (4), 10(2) or (3)(b), 10b(4), 10c(3) or (4), 10d(3), 17a, 18b(2) or (3), 18g(4), 34(2), 35b, 35c, 35d, 35e, 40(2), 42, 44(2) or (8), 52a(3), 56, 82(1) or (4), or 83 of the Gas Act;
 - 5° giving instructions or exercising de facto leadership with regard to a violation of Section IXb(1) to (3) and (5) or (6), of Section IXb(7) in conjunction with Section IXb(2), (3), (5) or (6), or of Section IXc(1) or (2) of the Independent Grid Management Act;
 - 6° giving instructions or exercising de facto leadership with regard to a violation of Sections 25b(1) or (2), 25e, first sentence, 35, 42, 43, 59a(3), 70b or 77a(3) of the Dutch Competition Act; or
 - 7° giving instructions or exercising de facto leadership with regard to a violation of Section 4 of the Interim Media Concentrations Act in conjunction with Section 73 of the Dutch Competition Act, of Section 5 of the Interim Media Concentrations Act in conjunction with Section 69 of the Dutch Competition Act in conjunction with Section 77a(3) of the Dutch Competition Act, or of Section 5 of the Interim Media Concentrations Act in conjunction with Section 70b of the Dutch Competition Act;
 - b. €50,000 to €400,000 for giving instructions or exercising de facto leadership with regard to a violation of:
 - 1° Sections 5(6), 10(2) or (3), 10a(1) or (2), 11(1), 11a(3), 11b(1) or (2), 16(1)(a) to (f) and (h) to (j), 16(2)(a) to (d) and (f), 16(4) or (6), 16Aa(1) or (2), 17(1) or (2), 17a(1) or (2), 18(1), 18a in conjunction with Sections 2 or 3 of the Grid Manager (Financial Management) Decree [*Besluit financieel beheer netbeheerder*], 19, 19a, 20(3), 21, 23, 24(1) or (3), 31(1), 31a(1) or (2), 31b, 36, 37, 43, 44, 45, 46, 47, 68(1), 79, 84, 86, 86d, 86e, 95a(1), 95b(1) or (5), 95f(2), or 95m of the Electricity Act 1998;

- 2° Sections 2(1) or (2), 3(1), 3b(1) or (2), 3c(1) or (2), 7, 7a(1) or (2), 8, 9a, 10(1), (3)(a) or (4), 10a(1), (2) or (3), 10b(1) or (2), 10c(1) or (2), 10d(1), 10e in conjunction with Sections 2 or 3 of the Grid Manager (Financial Management) Decree, 12a, 12b(1), 12e(1), 18a(2), 18b(1), 18g(1), (2) or (3), 32, 35a, 37, 39(2), 40(1), (3) or (4), 43(1), 44(1) or (5), 47(2), 51, 52b, 60(3), 63, 66a, 66b or 73(4) of the Gas Act;
- 3° Section IXa(1) and (2) of the Independent Grid Management Act;
- 4° Sections 6, 24, 34, 37(4), 39(2)(a) or (b), 40(2), 40(3)(a) or (b), 41(1) or (4), 46(2), (3) or (4), 49a(4), or 56(1)(c) of the Dutch Competition Act;
- 5° Section 6 of the Interim Media Concentrations Act in conjunction with Section 75a of the Dutch Competition Act; or
- 6° Articles 81 or 82 of the Treaty.

6. Aggravating and mitigating circumstances

Section 12

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

Section 13

1. Aggravating circumstances shall in any event include:
 - a. the circumstance that the NMa 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 the NMa 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 or enforcement methods with a view to maintaining the prohibited practice.
2. In the event of repeat offending as referred to in Subsection (1)(a), the Board shall increase the basic fine by 100%, unless the result would be manifestly unreasonable in view of the circumstances of the specific case.

Section 14

Mitigating circumstances shall in any event include:

- a. the circumstance that the offender, other than under the Leniency Guidelines [*Richtsnoeren Clementie*], provided the NMa with a degree of cooperation that went beyond the offender's statutory duty;
- b. the circumstance that the offender terminated the violation on the offender's own initiative. Greater weight shall therefore be attached to the termination of the violation on the offender's own initiative before the start of an NMa investigation than to termination in the course of the investigation;
- c. the circumstance that the offender – on the offender's own initiative – provided full compensation to the parties injured by the violation.

Section 15

When imposing an administrative fine on a natural person for giving orders with respect to or exercising de facto leadership with regard to a violation, the Board, in determining any aggravating or mitigating circumstances as referred to in Sections 13 and 14, may take account of the extent of the natural person's involvement in committing the violation and the natural person's position within the undertaking, association of undertakings or legal entity which employs or used to employ him or her.

7. Determination of the administrative fine

Section 16

1. The Board shall set the administrative fine with due observance of:
 - a. the statutory maximum fine;
 - b. the Board's commitments under the Policy Rules of the Minister of Economic Affairs on reducing administrative fines regarding cartels;
 - c. the present Policy Rules;
 - d. the general principles of sound administration.
2. The Board may deviate from these Policy Rules if the strict application thereof would result in manifestly inequitable treatment.

Section 17

1. If the Board finds that an offender committed multiple violations, the Board, rather than imposing a fine for each violation individually, may impose an administrative fine for these violations taken together.
2. In principle, one administrative fine shall be considered sufficient for practices that constitute a violation both of Sections 6 or 24 of the Dutch Competition Act and of Articles 81 or 82 of the Treaty.

Section 18

In derogation from the provisions of the preceding sections, the Board may impose a symbolic administrative fine if it judges this to be warranted by the special circumstances of the case.

Section 19

The administrative fine so determined shall be rounded down to a multiple of €1,000.

8. Amendment of the Electricity Act 1998 and the Gas Act with effect from 1 January 2011

Section 20

Section 11(4)(b) shall be amended as follows:

1. Under (1°), the following shall be inserted after '10a(1) or (2),': '10b(2) or (3),'.
2. Under (2°), the following shall be inserted after 'Sections 2(1) or (2),': '2c(2) or (3),'.

Section 21

The Annex shall be amended as follows:

1. In Part II(1)(b), the following two subsections shall be inserted in the table for Category VI, whereby Subsections (e) to (u) shall be re-lettered as Subsections (g) to (w):
 - e) Section 10b(2);
 - f) Section 10b(3);.
2. In Part II(2)(b), the following two subsections shall be inserted in the table for Category VI, whereby Subsections (c) to (u) shall be re-lettered as Subsections (e) to (w):
 - c) Section 2c(2);
 - d) Section 2c(3);.

9. Final provisions

Section 22

These Policy Rules shall enter into force on 1 October 2009, with the exception of Sections 20 and 21, which shall enter into force on 1 January 2011.

Section 23

These Policy Rules shall be cited as 'Policy Rules of the Minister of Economic Affairs on the imposition of administrative fines by the NMa 2009' [*'Beleidsregels van de Minister van Economische Zaken voor het opleggen van bestuurlijke boetes door de NMa 2009'*].

This Order shall be published in the Government Gazette [*Staatscourant*].

The Hague, 11 September 2009

*The Minister of Economic Affairs,
M.J.A. van der Hoeven*

ANNEX

I. Introduction

Section 9 of these Policy Rules provides that fines for other violations for which the Board may impose an administrative fine will be imposed on the basis of a permillage of the offender's total annual turnover. The permillage shall be determined on the basis of six categories of increasing levels. This Annex sets out the categories into which the aforesaid violations have been classified. The Annex shall be an integral part of the Policy Rules of the Minister of Economic Affairs on the imposition of administrative fines by the NMa 2009.

II. Classification into categories

1. *Electricity Act 1998*

- a. The violations referred to in Section 77i(1), opening words and under (a) of the Electricity Act 1998, for which an administrative fine may be imposed of up to €450,000 or 1% of the total annual turnover, whichever is greater, are classified in the following categories:

Category I	a. Section 12(1); b. Section 38(3); c. Section 42(3); d. Section 68(2).
Category II	a. Section 4a(3); b. Section 11a(2); c. Section 11b(3); d. Section 18(3); e. Section 39; f. Section 95k; g. Section 95l.
Category III	a. Section 7(2); b. Section 12(2); c. Section 16(1)(g); d. Section 16(1)(k); e. Section 16(1)(l); f. Section 16(2)(g); g. Section 16a; h. Section 16Aa(3); i. Section 16Aa(4); j. Section 17(4); k. Section 17a(3); l. Section 17a(4); m. Section 19b; n. Section 19c; o. Section 19d; p. Section 19e; q. Section 24(2); r. Section 24a; s. Section 78(2); t. Section 95b(2); u. Section 95b(8); v. Section 95e.

- b. The violations referred to in Section 77i(1), opening words and under (b) of the Electricity Act 1998, for which an administrative fine may be imposed of up to 10% of the total annual turnover, are classified in the following categories:

Category IV	a. Section 11b(1); b. Section 11b(2); c. Section 16(4); d. Section 18a in conjunction with Section 3 of the Grid Manager (Financial Management) Decree; e. Section 19a; f. Section 31a(1);
-------------	---

- g. Section 31a(2);
- h. Section 31b;
- i. Section 36 (non-compliance with the tariff structures and conditions set by the NMa (additional rule));
- j. Section 37 (non-compliance with the tariff structures and conditions set by the NMa (additional rule));
- k. Section 44;
- l. Section 47;
- m. Section 68(1);
- n. Section 86.

Category V

- a. Section 5(6);
- b. Section 16(6);
- c. Section 19;
- d. Section 20(3);
- e. Section 21;
- f. Section 23;
- g. Section 24(1);
- h. Section 24(3);
- i. Section 31(1);
- j. Section 36 (non-compliance with the tariff structures and conditions set by the NMa (key rule));
- k. Section 36 (non-amendment of proposal on tariff structure and conditions to be set by the NMa);
- l. Section 37 (non-compliance with the tariff structures and conditions set by the NMa (key rule));
- m. Section 37 (non-submission of a proposal on tariff structures and conditions to be set by the NMa);
- n. Section 46;
- o. Section 79;
- p. Section 84;
- q. Section 86d;
- r. Section 95a(1);
- s. Section 95b(1);
- t. Section 95f(2).

Category VI

- a. Section 10(2);
 - b. Section 10(3);
 - c. Section 10a(1);
 - d. Section 10a(2);
 - e. Section 11(1);
 - f. Section 11a(3);
 - g. Section 16(1)(a) to (f) and (h) to (j);
 - h. Section 16(2)(a) to (d) and (f);
 - i. Section 16Aa(1);
 - j. Section 16Aa(2);
 - k. Section 17(1);
 - l. Section 17(2);
 - m. Section 17a(1);
 - n. Section 17a(2);
 - o. Section 18(1);
 - p. Section 18a in conjunction with Section 2 of the Grid Manager (Financial Management) Decree;
 - q. Section 43;
 - r. Section 45;
 - s. Section 86e;
 - t. Section 95b(5);
 - u. Section 95m.
-

2. Gas Act

- a. The violations referred to in Section 60ad, opening words and under (a) of the Gas Act, for which an administrative fine may be imposed of up to € 450,000 or 1% of the total annual turnover, whichever is greater, are classified in the following categories:

Category I	a. Section 4(1); b. Section 40(2).
Category II	a. Section 3c(3); b. Section 10d(3); c. Section 18g(4); d. Section 52a(3); e. Section 83.
Category III	a. Section 4(2); b. Section 7a(3); c. Section 7a(4); d. Section 10(2); e. Section 10(3)(b); f. Section 10b(4); g. Section 10c(3); h. Section 10c(4); i. Section 17a; j. Section 18b(2); k. Section 18b(3); l. Section 34(2); m. Section 35b; n. Section 35c; o. Section 35d; p. Section 35e; q. Section 42; r. Section 44(2); s. Section 44(8); t. Section 56; u. Section 82(1); v. Section 82(4).

- b. The violations referred to in Section 60ad, opening words and under (b) of the Gas Act, for which an administrative fine may be imposed of up to 10% of the total annual turnover, are classified in the following categories:

Category IV	a. Section 3c(1); b. Section 3c(2); c. Section 7; d. Section 10e in conjunction with Section 3 of the Grid Manager (Financial Management) Decree; e. Section 18b(1); f. Section 18g(1); g. Section 18g(2); h. Section 35a; i. Section 40(1); j. Section 40(3); k. Section 40(4); l. Section 51.
Category V	a. Section 8; b. Section 9a; c. Section 10(4); d. Section 10a(2); e. Section 12a; f. Section 12b(1); g. Section 12e(1); h. Section 18a(2); i. Section 18g(3);

- j. Section 37;
- k. Section 39(2);
- l. Section 43(1);
- m. Section 44(1);
- n. Section 47(2);
- o. Section 60(3);
- p. Section 63;
- q. Section 66a;
- r. Section 73(4).

- | | |
|-------------|---|
| Category VI | <ul style="list-style-type: none"> a. Section 2(1); b. Section 2(2); c. Section 3(1); d. Section 3b(1); e. Section 3b(2); f. Section 7a(1); g. Section 7a(2); h. Section 10(1); i. Section 10(3)(a); j. Section 10a(1); k. Section 10a(3); l. Section 10b(1); m. Section 10b(2); n. Section 10c(1); o. Section 10c(2); p. Section 10d(1); q. Section 10e in conjunction with Section 2 of the Grid Manager (Financial Management) Decree; r. Section 32; s. Section 44(5); t. Section 52b; u. Section 66b. |
|-------------|---|

3. Independent Grid Management Act

- a. The violations referred to in Section IXc(4) of the Independent Grid Management Act, for which an administrative fine may be imposed of up to 10% of the offender's turnover in the financial year immediately preceding the decision, are classified in the following categories:

- | | |
|-------------|--|
| Category VI | <ul style="list-style-type: none"> a. Section IXa(1); b. Section IXa(2). |
|-------------|--|

- b. The violations referred to in Section IXc(5) of the Independent Grid Management Act, for which an administrative fine may be imposed of up to € 450,000 or 1% of the offender's turnover in the financial year immediately preceding the decision, whichever is greater, are classified in the following categories:

- | | |
|-------------|--|
| Category II | <ul style="list-style-type: none"> a. Section IXc(1); b. Section IXc(2). |
|-------------|--|

- | | |
|--------------|--|
| Category III | <ul style="list-style-type: none"> a. Section IXb(1); b. Section IXb(2); c. Section IXb(3); d. Section IXb(5); e. Section IXb(6); f. Section IXb(7) in conjunction with Section IXb(2); g. Section IXb(7) in conjunction with Section IXb(3); h. Section IXb(7) in conjunction with Section IXb(5); i. Section IXb(7) in conjunction with Section IXb(6). |
|--------------|--|
-

4. Dutch Competition Act

- a. The violations referred to in the Dutch Competition Act, for which an administrative fine may be imposed of up to € 450,000 or 1% of the total annual turnover, whichever is greater, are classified in the following categories:

- | | |
|-------------|--|
| Category II | <ul style="list-style-type: none"> a. Section 70a in conjunction with Section 25b(1); |
|-------------|--|

	<ul style="list-style-type: none"> a. Section 70a in conjunction with Section 25b(2); c. Section 70a in conjunction with Section 25e, first sentence; d. Section 72 in conjunction with Section 43.
Category III	<ul style="list-style-type: none"> a. Section 69 in conjunction with Section 59a(3); b. Section 69 in conjunction with Section 77a(3); c. Section 73 in conjunction with Section 35; d. Section 73 in conjunction with Section 42.
Category IV	Section 70b
b.	The violations referred to in the Dutch Competition Act, for which an administrative fine may be imposed of up to € 450,000 or 10% of the total annual turnover, whichever is greater, are classified in the following categories:
Category IV	<ul style="list-style-type: none"> a. Section 71 in conjunction with Section 40(2); b. Section 71 in conjunction with Section 46(2); c. Section 74 in conjunction with Section 34 (seller).
Category V	<ul style="list-style-type: none"> a. Section 56(5) in conjunction with Section 56(1)(c); b. Section 74 in conjunction with Section 34 (buyer); c. Section 74 in conjunction with Section 39(2)(a); d. Section 74 in conjunction with Section 39(2)(b); e. Section 74 in conjunction with Section 40(3)(a); f. Section 74 in conjunction with Section 40(3)(b); g. Section 74 in conjunction with Section 46(3); h. Section 74 in conjunction with Section 46(4); i. Section 76a in conjunction with Section 49a(4).
Category VI	<ul style="list-style-type: none"> a. Section 74 in conjunction with Section 41(1); b. Section 75 in conjunction with Section 37(4); c. Section 75 in conjunction with Section 41(4).

5. Interim Media Concentrations Act

- a. The violations referred to in the Interim Media Concentrations Act, for which an administrative fine may be imposed of up to € 450,000 or 1% of the total annual turnover, whichever is greater, are classified in the following categories:

Category III	<ul style="list-style-type: none"> a. Section 4 in conjunction with Section 73 of the Dutch Competition Act; b. Section 5 in conjunction with Section 69 of the Dutch Competition Act in conjunction with Section 77a(3) of the Dutch Competition Act.
Category IV	Section 5 in conjunction with Section 70b of the Dutch Competition Act
b.	The violation referred to in the Interim Media Concentrations Act, for which an administrative fine may be imposed of up to € 450,000 or 10% of the total annual turnover, whichever is greater, is classified in the following category:
Category VI	Section 6

6. General Administrative Law Act

The violations under the General Administrative Law Act referred to in Section 69 of the Dutch Competition Act, Section 77i(1), opening words and under (a) of the Electricity Act 1998, Section 60ad(1), opening words and under (a) of the Gas Act and Section 5 of the Interim Media Concentrations Act, for which an administrative fine may be imposed of up to € 450,000 or 1% of the total annual turnover, whichever is greater, are classified in the following categories:

Category IV	<ul style="list-style-type: none"> a. Section 5:20 in conjunction with Section 5:15; b. Section 5:20 in conjunction with Section 5:16; c. Section 5:20 in conjunction with Section 5:17; d. Section 5:20 in conjunction with Section 5:18; e. Section 5:20 in conjunction with Section 5:19.
Category V	Section 5:20 in conjunction with Sections 5:15 and 5:17

Explanatory notes

I. General notes

Purpose and occasion

Separation of policy and implementation

The Board of the NMa (hereinafter: 'the Board') is responsible for the enforcement of the Dutch Competition Act, the Electricity Act 1998, the Gas Act, the Independent Grid Management Act, the Railways Act [*Spoorwegwet*], the Aviation Act [*Wet Luchtvaart*], the Interim Media Concentrations Act, the Passenger Transport Act 2000 [*Wet personenvervoer 2000*] and the Pilotage Act [*Loodsenwet*], among others. These Acts grant the Board the authority to impose fines in the case of violations of various provisions laid down therein. This authority is an important tool in promoting compliance with these Acts.

The relevant Acts do not provide for a system to calculate the fine for violation in specific cases. Therefore, fines were calculated on the basis of guidelines determined by the NMa: the NMa Fining Code 2007 [*NMa Boetecode 2007*]¹. In my letters of 4 July 2008² and 21 October 2008³ to the Dutch House of Representatives, I announced my intention to replace the existing NMa implementing rules on fines with policy rules drawn up by the Minister of Economic Affairs. This is related to my intention to enhance the separation of policy and implementation. Policy rules of the Minister of Economic Affairs are one of the instruments that can be used to achieve that separation. Section 5d of the Dutch Competition Act grants the Minister of Economic Affairs the authority to adopt policy rules with regard to the exercising of particular powers vested in the Board. This means that the Minister can issue such policy rules to the Board not only in respect of the exercising of the latter's powers under the Dutch Competition Act, but also in respect of the powers vested in the Board by other Acts. These other Acts include the Electricity Act 1998, the Gas Act and the Independent Grid Management Act. This authority of the Minister of Economic Affairs ensues from the Minister's responsibility for competition policy and energy policy. In the relationship between the Minister and an independent administrative body such as the Board, policy rules are an important instrument to ensure that the Board's actions are in line with the policy course set out by the Minister. The present Policy Rules are designed to provide the Board with such guidance in exercising its authority to impose fines that the principles of the high-trust policy are reflected in the NMa's fining policy.

Please note that the Policy Rules are applied generally and that examples only serve as illustrations. It is up to the Board to decide in individual cases, with due observance of the Policy Rules. Therefore, the Policy Rules do not affect the Board's authority to make its own, independent assessment in individual cases. Furthermore, the Policy Rules contain guarantees to ensure that the Board can take the circumstances of the specific case into consideration.

High trust

The Coalition Agreement of 7 February 2007 signed by the Balkenende IV administration contained the high-trust policy objective. 'High trust' means that fewer resources are deployed to detect offences in cases involving limited risks, but that firmer action is taken if the law is broken nonetheless.

The high-trust policy thereby relies on the confidence that individual citizens and companies will observe the law. Based on this confidence, supervision is focused more on those areas where the risk of offences is considered high, and less on those areas where this risk is considered to be low. In order to ensure that the supervision continues to have a deterrent effect, it is necessary to be particularly strict if the confidence that the law will be observed is betrayed.

¹ Fining code of the Netherlands Competition Authority of 29 June 2007, as amended by a resolution of the Board of the Netherlands Competition Authority of 9 October 2007 (Government Gazette, 29 June 2007, no. 123; Government Gazette, 10 October 2007, no. 196).

² Parliamentary Papers II, 2007-2008, 24 036, no. 349.

³ Parliamentary Papers II, 2008-2009, 24 036, no. 360.

During the House committee meeting with members of the government on 8 November 2007⁴ I stated that I would examine the possibilities for doubling the fines that may be imposed by the NMa and the Dutch Independent Post and Telecommunications Authority (OPTA). Furthermore, I indicated during the parliamentary committee meeting of 14 May 2008⁵ that it would be good to extend the options for supervisors to impose higher fines in national policy on competition supervision. The measures contemplated included increasing the statutory maximum fines, tackling repeat offending and introducing an additional increase of the basic fine in order to prevent undertakings from committing the most serious offences.

After ample deliberation, I reached the conclusion that it was not desirable or necessary as yet to amend the statutory maximum amounts in order to achieve a doubling of the fines that would actually be imposed. The current statutory fine of no more than 10% of the annual turnover of the undertaking in question equals the maximum fine under European competition regulations.

Furthermore, doubling the statutory maximum fine does not appear to be necessary because the current statutory maximum fines still leave considerable scope for actually imposing higher fines than have been imposed to date. Until now, the current maximum fines have been imposed only in a handful of cases. The imposition of higher fines may be achieved through heavier punishment of repeat offending and the introduction of a basic fine increase in order to prevent undertakings from committing the most serious violations under the cartel prohibition and the ban on abusing a position of economic power. Therefore it is preferable to achieve the actual imposition of higher fines by adopting new policy rules. A decision as to whether a legislative amendment is still required may then be taken afterwards.

Differences compared to the NMa Fining Code 2007 in connection with high trust

In the context of the high-trust policy, the present Policy Rules contain the following changes compared to the NMa Fining Code 2007, which was previously used for determining the fines. For the purpose of high trust, an increase of the basic fine has been introduced for very serious violations of Sections 6 and 24 of the Dutch Competition Act or Articles 81 and 82 of the Treaty in order to prevent undertakings from committing such violations. This increase is up to 25% of the relevant turnover in the last full year of the undertaking's involvement in the violation. This follows on from the policy of the European Commission, which applies a so-called 'entry fee' in comparable cases.⁶ The scope of the factor (S), which reflects the seriousness of the violation and determines the level of the basic fine, has been adjusted as well. For the purpose of high trust with regard to violations of Sections 6 and 24 of the Dutch Competition Act and Articles 81 and 82 of the Treaty, the factor (S) has been increased to a maximum of 5, whereas previously the maximum for this factor was 3. These Policy Rules have also raised the factor (S) to a maximum of 5 for the purpose of the other violations, as opposed to the previously applicable maximum of 3.

Finally, it is made explicitly clear that, in the event of repeat offending, the basic fine is increased by 100%, unless this would be manifestly unreasonable in view of the circumstances of the case. Therefore repeat offending will in principle result in a doubling of the basic fine. The doubling of the basic fine in the case of repeat offending is in line with the system laid down in the Bill Amending the Fining Scheme in Financial Legislation [*Wetsvoorstel wijziging boetestelsel financiële wetgeving*] (Parliamentary Papers II, 2007-2008, 31 458, no. 2). Pursuant to amendment no. 10 of that Bill, the relevant financial legislation provides that, in the event of repeat offending, the amount of the administrative fine for an individual violation will be doubled.

System for setting fines

⁴ Parliamentary Papers II, 2007-2008, 31 055 and 24 036, no. 5.

⁵ Parliamentary Papers II, 2007-2008, 31 200 XIII and 24 036, no. 58.

⁶ See recital 25 of the Guidelines on the method of setting of fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No. 1/2003 (OJ 2006, C 210): 'Irrespective of the duration of the undertaking's participation in the violation, the Commission will include in the basic amount a sum of between 15% and 25% of the value of sales as defined in Section A above in order to deter undertakings from even entering in horizontal price-fixing, market-sharing and output-limitation agreements. The Commission may also apply such an additional amount in the case of other violations. For the purpose of deciding the proportion of the value of sales to be considered in a given case, the Commission will have regard to a number of factors, in particular those referred to in point 22.'

The legislation – the enforcement of which is entrusted to the Board – sets a maximum fine for violation of the various statutory provisions for which a fine can be imposed.⁷ This maximum fine is either a fixed amount or a percentage of the offender's total annual turnover in the financial year immediately preceding the decision on the fine⁸, irrespective of where in the world this turnover is realised. It is up to the Board to specify the factors that can be taken into account in determining the level of the fine. The General Administrative Law Act provides that the level of the fine must be geared to the seriousness of the violation and the degree to which the offender can be blamed for the violation. In the present Policy Rules, these circumstances have been factored into the system for setting fines. The Board may express the seriousness of the violation by multiplying the starting point for the fine by a factor (S) to take account of the seriousness of the violation. The Board may also apply a basic fine increase for very grave violations of Sections 6 and 24 of the Dutch Competition Act and of Articles 81 and 82 of the Treaty. Where applicable, the Board may express the degree of blame in the level of the fine, for example by taking account of the aggravating and mitigating circumstances. As the occasion arises, the Board may also take other circumstances into consideration, such as the duration of an violation. Where fines are imposed for violations of Sections 6 and 24 of the Dutch Competition Act and for violations of Articles 81 and 82 of the Treaty, the duration of the violation is already factored into the starting point for the fine.

II. Notes on individual sections

Section 1

The definition of 'annual turnover' in Section 1(c) is in line with the definition of 'net turnover' laid down in Section 2:377(6) of the Dutch Civil Code [*Burgerlijk Wetboek*].

Section 2

The fines imposed by the Board are designed to enforce the law by punishing violations. Accordingly, their objective is to ensure specific and generic prevention with regard to the rules supervised by the NMa, rather than to deprive the offender of benefit. A fine must be set at such a level as to prevent an offender from repeat offending (specific prevention) as well as to deter potential other offenders (general prevention). In order to have the intended preventative effect, the fine must act as a deterrent. This applies in any case in relation to the potential effect of the violation on the economy in general, or in relation to the other interests which the relevant statutory standard seeks to protect. When imposing fines, the Board must also take account of the offender's total size and the general principles of sound administration, including the principles of equality and proportionality.

Section 3

The fines are set on the basis of a particular starting point, which depends on the type of violation. In the case of violations of Sections 6 and 24 of the Dutch Competition Act and Articles 81 and 82 of the Treaty, the starting point for the fine is derived from the relevant turnover. This is the turnover achieved by an offender from the total duration of an violation by supplying goods and services to which that violation relates, minus turnover taxes and discounts and suchlike. By using the 'relevant turnover', the starting point for the fine will increase in accordance with the duration and the scope of the economic activities involved in the violation. In addition, the greater the relevant turnover, the greater the potential effect of the violation on the economy in general. The term 'effect on the economy' must be interpreted in the widest sense: this term comprises the loss of consumer surplus and other economic damage resulting from the violation, such as consequential damage in the industry value chain, loss of efficiency, restriction of (a stimulus for) innovation, less economic growth or even effects going beyond the sector that is directly involved. Furthermore, if the violation was committed by several offenders, the share of the individual offenders will be expressed in this (potential) effect on the economy. All of these considerations help to determine a proportionate fine with a deterrent effect.

⁷ See Sections 57, 69, 70a, 70b, 71 to 75a and 76a of the Dutch Competition Act, Section 77i of the Electricity Act 1998, Section 60ad of the Gas Act, Sections 5 and 6 of the Interim Media Concentrations Act and Section IXc of the Independent Grid Management Act.

⁸ If the violation was committed by an association of undertakings, the statutory maximum fine will be the total turnover of the constituent undertakings (Section 57(1) of the Dutch Competition Act).

With regard to the 'other' violations, the (potential) effect of the violation on the economy or the interests which the provision seeks to protect cannot usually be related easily to a particular turnover. Therefore the starting point for the fine for these violations is derived from the offender's total annual turnover. The total annual turnover is an indication of the offender's economic power and may therefore also indicate the potential effect of the violation on the economy if particular standards are breached. By taking this approach, the fine will also be proportionate to the offender's total size and it will consequently have a deterrent effect. When imposing fines on natural persons, the Board sets the starting point for the fine with due regard for the seriousness of the violation and the offender's personal income and assets in order to obtain a fine that has a sufficiently deterrent effect for the purposes of both general and specific prevention.

Within these fining systems, the fine is set in the following manner: the Board determines a starting point for the fine based on the aforesaid turnover or on the seriousness of the violation and the offender's personal income and assets. The Board then arrives at a basic fine by adjusting this starting point to allow for the seriousness of the violation and, where applicable, the basic fine increase and/or the offender's importance. If the starting point does not need adjusting in accordance with these factors, the basic fine will be the amount of the starting point. The manner in which the seriousness of the violation is taken into account differs in each of the three fining systems. In the fining system for violations of Sections 6 and 24 of the Dutch Competition Act and Articles 81 and 82 of the Treaty, the level of the seriousness factor is determined by considering the gravity of the violation in combination with the economic context in which the violation occurred. Essentially, the gravity of the violation is an abstract weighting of the practice that constitutes the violation, while the economic context might be described as the circumstances of the case which determine the seriousness of the violation in specific terms. In principle, the seriousness factor increases as the gravity of the violation increases.

In the fining system for other offences, the gravity of an violation is in principle already expressed in the classification in one of the six fining categories. This system uses the seriousness factor to adjust the amount of the fine determined based on the category classification where this adjustment is required by the circumstances of the case. In other words, the seriousness factor is set at 1 if the Board is of the opinion that, given the circumstances of the case, the seriousness of the violation is already sufficiently expressed in the category classification. A seriousness factor of between 0 and 5 can be used to give the circumstances of the case either an aggravating or a mitigating effect on the amount of the fine determined based on the category classification.

In setting fines for violations committed by natural persons, the seriousness of the violation is already taken into account when the starting point for the fine is determined. Therefore, the basic fine is the amount of the starting point in this system.

Subsequently, the basic fine can be adjusted for all three categories of violations in connection with mitigating and aggravating circumstances, such as repeat offending. Finally, the Board sets the definitive fine by checking the amount thus obtained against the statutory maximum fine, the Board's commitments for reasons of leniency and the general principles of sound administration.

Section 4

The following example serves to illustrate the system applied in Subsection (1): three undertakings – A, B and C – have concluded a price-fixing agreement with regard to product X. Undertaking A generates €30,000,000 per annum from the sale of X, undertaking B makes €20,000,000 and undertaking C achieves €10,000,000. When the price-fixing agreement between the parties has been in place for four years, it has generated relevant turnover of €120,000,000 for A, €80,000,000 for B and €40,000,000 for C. The circumstance of whether or not the price-fixing agreement was (successfully) performed in respect of (a part of) the sales of X is irrelevant in determining the size of the relevant turnover.

Subsection (3) prescribes what must be considered as relevant turnover for the participants in a prohibited tendering agreement who are not awarded the contract. After all, in a tendering process only one of the undertakings that submit tenders is finally awarded the contract. If, for example, five undertakings enter into a prohibited tendering agreement, only one of these undertakings will ultimately generate turnover from that agreement. The other undertakings that are party to the agreement will not have any relevant turnover. This problem is solved by regarding the bid because

of which the winning undertaking won the contract, or a proportional part thereof, as relevant turnover for those undertakings. In the above example, this could mean that one quarter of the winner's bid is regarded as relevant turnover for each of the other four undertakings involved in the agreement. If undertaking A wins with a bid of €100,000, therefore, the relevant turnover of undertaking A will be €100,000 and the relevant turnover of each of the undertakings B-E will be €25,000.

Subsection (4) states that if no relevant turnover as defined in Section 1(b) can be determined, the amount considered as relevant turnover may be the offender's turnover on the protected market for the duration of the violation, with a minimum period of one year. This situation may occur, for example, in the event of a practice aimed at protecting a (dominant) market position by not effecting certain transactions or by refusing to supply.

Subsection (5) concerns the situation in which the offender has not achieved any turnover on the protected market. This may be the case if the violation involved an undertaking that does not operate on the protected market but whose contribution consisted of supporting activities. The ruling of the Court of First Instance of 8 July 2008 in the case of AC-Treuhand AG versus the Commission (T-99/04) is an example of such a situation.

Section 6

Section 6 provides for the adjustment of the starting point for the fine in accordance with the seriousness of the violation. In Subsection (3), the term 'agreements' refers to agreements between undertakings, to concerted practices of undertakings and to decisions of associations of undertakings within the meaning of Sections 6 and 24 of the Dutch Competition Act and Articles 81 and 82 of the Treaty.

Examples of far-reaching horizontal agreements in abstract terms include (usually secret) horizontal price-fixing agreements and agreements that divide up markets or customers, agreements imposing limitations on output or sales, and agreements that create obstacles to interstate trading within the European Union. This category also includes tendering agreements that relate to issues such as subscription prices or the division of contracts or revenue ('bid rigging').

Forms of abuse which may have significant excluding effects – or are apparently designed to have such effects – owing to the nature and extent of the dominant position or the nature of the practices will generally be regarded as very grave violations.

Vertical agreements will generally be regarded as less grave violations. As a rule, decisions taken by associations of undertakings to restrict competition that do not directly relate to price and marketing opportunities will also be regarded as less grave violations. Under Subsection (4), the basic fine for a very grave violation, leaving aside any aggravating circumstances, may be as much as 50% of the relevant turnover. Previously, the maximum was 30%. This increase results from the adjustment of the factor (S) by which the starting point is multiplied in order to factor in the seriousness of the violation. The maximum factor (S) has been increased from 3 to 5 in the context of the high-trust policy in relation to the NMa Fining Code 2007.

Where a fine is imposed on an association of undertakings, there may be reason to adjust the factor with a view to proportionality. This may be the case if the Board imposes fines on individual members as well as on the association of undertakings, for example.

Section 7

This section enables the Board to adjust the basic fine upwards for the purposes of general prevention of very grave violations and for the purposes of specific prevention. Subsection (1) provides for an increase in the basic fine in order to prevent undertakings from committing very grave violations as referred to in Section 6(3). In line with the fining guidelines of the European Commission⁹, this increase equals up to 25% of the relevant turnover in the last full year in which the undertaking took part in the violation. Subsection (2) provides that the basic fine may be adjusted in accordance with the importance of the offender, as expressed by this offender's total

⁹ OJEU 2006, no. C210/2.

annual turnover in the Netherlands in the financial year immediately preceding the decision on the fine. The idea behind this provision is as follows. Situations are conceivable where the product or service to which the violation relates forms only a small part of the offender's activities. In such a situation, that offender's relevant turnover – obtained from the supply of the product or service in question – may be many times smaller than the offender's total annual turnover. In that case, a fine based on relevant turnover will have little specific preventative effect. For example, undertaking X primarily produces and supplies cars, but in addition produces and supplies a small number of bicycles as well. Undertaking X concludes price-fixing agreements with a number of bicycle producers over a period of two years, for which the Board wants to impose a fine. The turnover generated by X in those two years from the production and supply of bicycles is €100,000, which in this fictitious case results in a starting point for the fine of €10,000. As X's total annual turnover is €100,000,000, however, the fine will have little specific preventative effect in this case. In that situation the fine may be increased, for instance to €1,000,000.

Section 9

This Section provides that the Board must use a permillage of the offender's total annual turnover as the starting point for the fine. The permillage by which the total turnover is multiplied in order to find the starting point is determined using six categories of increasing levels. The 'other violations' have been classified in one of these categories. In classifying an violation in a particular category, the Minister of Economic Affairs looked at the interest protected by the statutory provision concerned, in relation to the Act of which that provision is part. The greater the weight that must be assigned to this interest in the opinion of the Minister of Economic Affairs, the greater the fine that will be justified if the statutory provision protecting this interest is breached. This means that the starting point is set higher when determining the final level of the fine. The statutory provision concerned was therefore classified in a higher category. The intervals between the permillages of the categories are such that they express the difference in weight between the interests protected by the statutory provisions in question. The classification in a particular category is set out in the Annex. In order to ensure a preventative effect, every category has a minimum fine so that the permillage cannot result in an inadequate fine if the total annual turnover is small.

Section 10

In the context of high trust, the maximum seriousness factor in relation to the NMa Fining Code 2007 has been increased from 3 to 5.

Section 11

Section 11 does not concern those cases where an violation of Sections 6 or 24 of the Dutch Competition Act or of Articles 81 or 82 of the Treaty is attributed to a natural person (e.g. in the case of a general partnership) within the meaning of Section 56 of the Dutch Competition Act. If a fine is imposed on this natural person in such a case, the level of this fine will be determined in accordance with the provisions of Sections 4 to 7.

The following example serves to illustrate this method. Mr X is a director of undertaking A, which has concluded a price-fixing and market-sharing agreement with undertakings B and C in respect of product Y. It has now been discovered that director X played an active role in negotiating the 'hardcore' agreement and in secretly continuing the agreement for a number of years. His taxable income for the year preceding the decision on the fine is €100,000 while his assets amount to €500,000. Taking account of the seriousness of the violation and the director's position with regard to personal income and assets, a starting point for the fine of €300,000 will satisfy the requirement of deterrence. Since the violation continued over a number of years, the Board sets the basic fine at €350,000. The Board rules out aggravating or mitigating circumstances that would warrant an adjustment of the basic fine. Consequently, the Board fixes the level of the fine at €350,000.

Section 12

This Section provides that the Board must take any aggravating or mitigating circumstances into consideration. Subsequently, it is up to the Board to determine the weight attached to these circumstances.

Section 13

Section 13(1)(b) provides that the Board may increase a basic fine on account of the circumstance that the offender hindered the NMa investigation. Such an increase is possible insofar as it does not affect the rights of defence accruing to an offender. Section 13(2) provides, in the context of the high-trust principle, that the Board must double the basic fine in the case of repeat offending as referred to in Subsection (1)(a), unless doubling the basic fine would be manifestly unreasonable in view of the circumstances of the specific case.

Section 16

For the purposes of Section 16(2), which provides that the Board may deviate from these Policy Rules if the strict application thereof would result in manifestly inequitable treatment, the offender's financial position is in principle irrelevant when determining the level of the fine, on the understanding that the imposition of a fine must not have the effect that an offender is likely to go bankrupt.¹⁰

Section 21

The Policy Rules will enter into force on 1 October 2009, with the exception of Sections 20 and 21, which will enter into force on 1 January 2011. Based on the principle of legality, these Policy Rules of the Minister of Economic Affairs may be applied only to offences which occurred after the Policy Rules entered into force.

The Minister of Economic Affairs,

M.J.A. van der Hoeven

¹⁰ Parliamentary Papers II, 1995/96, 24,707, no. 3, p. 88.