



Authority for Consumers and Markets
National Report on energy regulation in 2012

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1. Foreword

A new authority

The Netherlands Authority for Consumers & Markets (ACM) is the new market authority that is created through the consolidation of the Netherlands Consumer Authority (CA), the Netherlands Independent Post and Telecommunication Authority (OPTA) and the Netherlands Competition Authority (NMa). ACM was established April 1, 2013. This merger results in a single authority for consumer protection and market oversight and lays the foundation for effective and efficient oversight on well-functioning markets for the purpose of optimizing consumer welfare.

ACM: creating opportunities and options for businesses and consumers

ACM is the national regulatory authority for energy and creates opportunities and options for businesses and consumers alike: opportunities through innovation, new products, services and businesses, and consumer options because therein lies the key to having well-functioning markets. To that end, we aim to establish the European internal energy market, create a stable investment climate, foster reliable energy supply, and protect and empower consumers enabling them to make well-informed choices.

Our approach

Enforcement is one of ACM's core tasks. However, ACM does not want to enforce just for the sake of enforcement. The impact of our actions is central. That is why ACM looks at the broader context when carrying out its statutory tasks. The objective is to prevent or solve market and consumer problems.

From detection to finding solutions to market and consumer problems, oversight effectiveness is greatly influenced by the quality and intensity of our relationship with the rest of society. That is why we want to firmly embed external orientation into our organization and operations. In that regard, the consumer information desk Consuwijzer plays a crucial part, too. Consuwijzer provides ACM with real-time information about the markets that we oversee. In addition, we wish to engage in a dialogue with stakeholders by sitting down with them on a regular basis, discussing critical topics. Above all, the concept of 'looking from the outside in' is a guiding principle for our employees in all areas we operate in. Since market problems usually do not follow neatly the organization of their oversight, ACM seeks to cooperate, where needed, with other Dutch and international regulators.

With this report ACM accounts for its regulatory tasks in energy and provides an insight into the Dutch energy market for both electricity and gas in 2012.

2. Main developments in the gas and electricity markets

Electricity

Trading volumes and liquidity in the wholesale electricity vary from year to year. In 2012, the trade volume increased significantly after the dip of 2011. The liquidity in spot contracts, however, diminished because of congestion on the transport connections with foreign countries.

The efficient use of interconnection capacity is critical for the completion and efficient functioning of the internal market. As a result of previous investments, and improved calculation and coordination methods by the TSO's and in the course of investigations by both ACM and the Belgian regulator an additional 300MW of interconnection capacity between Belgium and the Netherlands became available to the market.

Whereas each market timeframe has continued to develop further, the most significant results have been achieved for the intraday timeframe.

Both direct current interconnectors, (one connecting the Dutch price zone with Norway and another with Great Britain) have successfully implemented new allocation methods for intraday trading. Intraday trading provides a pivotal role in facilitating the increase of volatile renewable production.

Despite successful market coupling projects with years of increasing price convergence in the Central Western Region, 2012 saw a decline. Non market based fees for renewable electricity and subsidies for coal-fired energy production in other member states render Dutch gas fired plants relatively expensive. With the interconnection capacity completely used for import, the price spread between price zones is increasing.

The introduction of a capacity remuneration mechanism in neighbouring countries to maintain the availability of power plants and facilitate the integration of renewable energy can lead to further market distortions. ACM sees the harmonization of sustainable energy policy therefore as an important precondition for successful integration of energy markets in Europe.

Gas

Trading volumes and liquidity in the wholesale gas continued to increase in 2012. More trading volume and liquidity in products with a duration of less than one year is a positive trend, because it enables energy consumers and suppliers to buy on the Title Transfer Facility (TTF) exactly the consumption profile they need. At the same time increased volume and liquidity in spot contracts mean that energy suppliers are able to rely more on the spot market if they have to balance their positions in the short-run. Both trends promote competition on the Dutch gas market. For more liquidity in the wholesale gas market, ACM focuses on further market integration with neighbouring countries.¹

¹ ACM published a separate report on Dutch wholesale market liquidity for both electricity and



In anticipation of the pan-European introduction of auctions for cross-border capacity, GTS and their German affiliate Gasunie Deutschland launched a pilot project on an interconnector with Germany. Auctioning will improve the market functioning, since all market participants are able to get access to scarce transmission under equal conditions. ACM has approved these developments, and granted the pilot project the necessary exemptions in 2012.

Retail

In 2012 ACM initiated a ConsuWijzer publicity campaign, which contained a step-by-step guide explaining to consumers how to switch energy suppliers. ACM concluded in its bi-annual trend report on Competition and Consumer Confidence in the Energy Market for the first half of 2012, that consumers could save up to € 488 by switching supplier. The switching guide starts with understanding how to read energy bills. This is necessary for calculating the tariff that is offered on, for example, an energy supplier's website or a price comparison website. It is important to note that the so-called dual fuel contracts (natural gas and electricity) often yield the highest savings. The publicity campaign invigorated by market conditions resulted in increased switching rates of 12.6% in 2012 among electricity consumers. With this switching rate Dutch consumers are in top three of active consumers in Europe.

At the end of 2012, ACM revoked the licenses of two suppliers of electricity and natural gas to consumers and small and medium-sized businesses (SMBs) due to near bankruptcy. Revoking a license sets in motion a special mechanism which ensures that consumers and SMBs continue to receive electricity and gas, thereby safeguarding security of supply for customers. Small-scale users of one supplier were transferred to various other suppliers, while a large share of the small-scale users of the other supplier were transferred to a single competitor.

3. The electricity market

3.1. Network regulation

3.1.1 Unbundling

With regard to the unbundling of TSOs and DSOs, some important developments took place in 2012. For the TSOs the implementation of the unbundling rules of the Third Package into national law was completed on 20 July 2012. With regard to the unbundling of DSOs progress was made with the ruling about the national unbundling rules for DSOs.

TSOs

The Netherlands has only one national TSO for electricity: TenneT B.V. With regard to the implementation of the Third Package into national law, Member States were free to opt for one of three unbundling models. The Dutch legislature chose to implement the model of 'ownership unbundling', the most far-reaching of the three models. This model entails the appointment of the network owner as the transmission system operator and ensures its independence from any energy supply or production interests. To ensure compliance with the unbundling rules, a certification procedure is statutorily required. Certification is a condition for an undertaking to get appointed as a TSO by the Dutch Ministry of Economic Affairs.

TenneT B.V. requested ACM, in September 2012 to start the certification procedure. TenneT supported its request by providing the necessary information. The assessment of the information by ACM continued in 2013, and led to the notification of the preliminary decision² (positive) on the certification of TenneT B.V. to the European Commission in May 2013, the final decision is pending.

Furthermore, BritNed Development Ltd. commercially exploits an electricity link/interconnector between the Isle of Grain (UK) and Maasvlakte that started operations in April 2011. BritNed Development Ltd. is partly exempted in accordance with Article 17 of Regulation (EC) no. 714/2009. BritNed is co-owned by National Grid and TenneT Holding B.V. This undertaking also requested ACM in September 2012 to start certification, and ACM is currently in the process of assessing the application.

DSOs

Eight DSOs distribute natural gas and electricity and one DSO distributes only natural gas. According to Dutch law DSOs must be fully ownership unbundled from the vertically integrated company. Following a 2010 court decision, part of the law on full-ownership unbundling cannot be applied. As a result, the two vertically integrated companies that have not yet been unbundled, announced to postpone their unbundling activities. The Ministry of Economic Affairs

² <https://www.acm.nl/nl/publicaties/publicatie/11451/Certificering-TenneT-TSO-BV/>



filed an appeal with the Supreme Court of the Netherlands. Early 2012 the Supreme Court of the Netherlands postponed the trial pending a preliminary ruling by the Court of Justice in Luxembourg in reply to questions of the Supreme Court. In April 2013 the Court of Justice was advised by the attorney-general to rule that Dutch law does not contravene with EU law.

3.1.2 Technical Functioning

Balancing services

Since its introduction in 2001, the Dutch balancing mechanism is fully market-based. The combination of program responsibility for all consumers (including RES), imbalance settlement with marginal pricing for energy and limited reserve provision has resulted in low average costs for balancing and strong incentives for market participants to balance their production and demand.

There is also demand participation, a tender process for longer term contracts for reserve provision, and an obligation to bid in any surplus of every production unit larger than 60 MW. Furthermore, the Dutch imbalance settlement is open for “passive contributions” enabling non-contracted parties to help TenneT reduce imbalances. This possibility was introduced in 2005.

In March 2012 TenneT finalized a one-year pilot for contribution to module one of the International Grid Control Cooperation (IGCC). This module prevents counter activation of balancing energy, in line with the requirement of the Framework guideline on balancing. The participation is to be continued, and a formal decision via a grid code amendment is due in 2013.

Security and reliability standards and safeguard measures

ACM does not have a direct role in investments and the granting of licenses for new generation facilities. There are no implicit or explicit mechanisms to promote construction of new production capacity. The TSO reports to the Minister of Economic Affairs with regard to the development of security of supply. If necessary, the Minister may decide to invoke an additional capacity mechanism, the so-called safety net. A safety net entails that the TSO may contract additional power for a number of years to create an incentive for investment. This safety net has never been activated, not in years with enough domestic generation capacity as in 2012, nor in the years prior to 2008, when the Netherlands strongly depended on generation in other parts of (Central Western) Europe.

According to the Dutch TSO (TenneT), almost 8 GW more generation capacity than needed to serve domestic demand is currently available in the Netherlands. Combined with interconnection capacity, this generation capacity is used in the internal energy market and contributes to internal energy market generation adequacy.



Availability is currently declining since generation plants are suffering from low margins on the wholesale markets. This was foreseen for the older plants, but even new high-yield gas-fired plants have limited operational hours and are being considered to be taken offline. This development is taking place against the backdrop of a various other member states developing a capacity mechanism which may hamper the functioning of the internal market.

The TSO is increasing capacity of the transmission network by means of three main projects. The „Randstad 380 kV project“ strengthens and expands the 380 kV grid in the west of the Netherlands. This project is of specific importance for increased consumption in the region as well as the connection of the aforementioned large amount of planned new generation facilities. For the same reasons, the TSO is planning an expansion of the 380 kV grid in the north western and south western part of the Netherlands (North-West 380 kV project & South-West 380kV). These projects are planned to be completed in 2016.

Furthermore, a fourth AC interconnection with Germany – between Doetinchem and Wesel - is in the preparatory phase. In response to a request of the TSO, ACM published an informal opinion stating that the foreseen interconnector could adhere to the purpose described under Article 16(6) of regulation 714/2009. Upon formal approval this means the TSO can subtract these costs of the congestion income. Furthermore research is underway for the COBRA cable, an HVDC interconnection between the Netherlands and Denmark, with an option to connect offshore generation. The investment decision is planned for 2013.

The Netherlands has a connect and manage scheme, providing access to the grid for all consumers and producers. In case of national (internal) congestion, the TSO may propose a congestion management area in which all producers may bid to decrease their output. Renewable producers do not bid, and have access to the grid at all times.

3.1.3 Network tariffs for connection and access

TenneT is the only national grid company for the transmission of electricity in the Netherlands, and is regulated by ACM. To do so, ACM uses a system of turnover regulation (revenue cap) for the transmission tariffs with a yardstick that is partially based on an international benchmark (best practice), combined with a frontier shift based on productivity growth of other foreign TSO. The yardstick objective is set for the final year of a 3 to 5 year period. The current period will expire at the end of 2013. The allowed revenue of the company is adjusted annually by $(1 + \text{CPI} - X)^3$, in which CPI is the Consumer Price Index and X is the efficiency incentive. The quality is regulated through quality standards (laid down in codes) and not with financial incentives. For costs for energy (i.e. net losses) and power (i.e. balancing power) a bonus-malus is applied to

³ See E-wet art. 41b, noted.

http://wetten.overheid.nl/BWBR0009755/Hoofdstuk3/6/Artikel41b/geldigheidsdatum_26-08-2013

the difference between expected efficient costs and actual costs. This means that since 2011, TenneT faces a risk (or opportunity) of 25% of the first 20% difference (symmetric).

Costs are determined in accordance with a standardized method. Annually, ACM collects actual OPEX, investments and depreciation (based on regulatory accounting rules) and volumes charged to customers. To guarantee security of supply in the Netherlands, a separate system is used for assessing expansion investments. ACM will assess to what extent investments have been performed efficiently. Also, the usefulness and necessity of these investments must be assessed. If the investment is useful and necessary, the revenue cap and tariffs will be corrected, but only for the amount of the investment that has been found to be efficient. Based on the revenue cap, TenneT will draft (on a yearly basis) a tariff proposal for all tariff components (given expected volumes). This proposal is assessed and approved by ACM. Customers can find the tariffs on the website of ACM or TenneT. The tariff structure is laid down in a so called „Tariff code“ and can be adjusted by ACM. The adjustments are usually proposed by) of Dutch grid companies (or a majority thereof).

3.1.4 Cross-border issues

Congestion management methods

The interconnector capacity on the borders of the Netherlands is allocated to market participants by means of different systems. Methods for four different timeframes are in place: the year-ahead timeframe (capacity for an entire year), the month-ahead timeframe (capacity for an entire month), the day-ahead timeframe (capacity for every hour of the next day) and the intraday timeframe (capacity for a particular clock hour for the next or current day). Several auction methods are used for different timeframes on the Dutch borders. Table 1 outlines these different methods used in 2012.

Border Timeframe	Germany	Belgium	Norway	Great Britain
Year	Explicit	Explicit	Not available	Explicit
Month	Explicit	Explicit	Not available	Explicit
Day-ahead	Implicit	Implicit	Implicit	Implicit
Intraday	FCFS-OU ⁴	Implicit	Implicit	Explicit

Table 1: Allocation method per timeframe

⁴ The intraday mechanism on the German border is a first-come-first-serve obligatory use system.



Intraday

In 2012, the Netherlands reaped the benefits of several years of preparatory work on intraday allocation. Both DC interconnectors NorNed and BritNed successfully implemented new allocation methods for Intraday. Intraday trading provides a pivotal role in facilitating the increase of volatile renewable production.

NorNed, the interconnector between Norway and the Netherlands was first with its launch on 14 March 2012. This provided an implicit link between the Dutch-Belgian intraday market operated by APX-ENDEX and Belpex and the intraday market operated by Nord Pool Spot in Denmark, Norway, Sweden, Finland, Estonia and Germany. As a result, market participants can trade across the whole region, as much as the available cross-border capacity allows.

BritNed soon followed with their launch on 29 May 2012. BritNed is a merchant interconnector between Great Britain and the Netherlands, operated by a joint venture company of National Grid and TenneT.

By providing an intraday allocation, product traders have the option of acquiring capacity closer to real time. The Intraday auctions are split into two explicit auctions (one for the first 16 hours of the day and the second for the final 8 hours of the day) with 6 nomination gates, 3 for each interval commencing at 00:00hrs (CET). The gate closure for these nominations is 4 hours before delivery, which is to enable the processes of the connecting TSOs (National Grid in Great Britain and TenneT in the Netherlands) to be aligned.

Day ahead allocation

Since 2010, the Central West European (CWE) region⁵ has implicit allocation (price coupling) on all internal borders. The CWE price coupling algorithm is linked to the Nordic market through an interim tight volume coupling over two interconnectors between Germany and Denmark and Norway and the Netherlands.

Because of the highly meshed networks within the CWE-region, this market coupling mechanism requires a capacity calculation system, which takes into account the discrepancies between physical and commercial flows. CWE power exchanges and TSO have started working on the development of flow-based market coupling. In 2012, an internal parallel run of the flow-based system was performed. In this internal run the project group was able to test the system with actual data. During the internal run, research and development continued, providing the intuitiveness report in October 2012.

Intuitiveness concerns the possibility that physical flows may go from high-price zones to low-price zones to create a higher overall welfare. An algorithm was developed to remove these flows (the “intuitive patch”) so that two versions of flow-based market coupling could be compared. The decision as to which version will be implemented will be made in 2013.

⁵ Central west consists of Belgium, France, Germany, Luxembourg and the Netherlands.



The internal run will be followed by an external parallel run, in which market participants can familiarize themselves with the new allocation method, and use this experience for their input of the consultation in 2013. The introduction of flow based market coupling in CWE is planned after the start of the other cross-regional market coupling project at the end of 2013.

The Netherlands is also contributing to the cross-regional initiative on day-ahead market coupling. The cross-regional project will establish a price coupling between the CWE and Nordic regions and extend this to Great Britain, the Baltic countries and the interconnector between Sweden and Poland. This cross regional project is named North-West Europe market coupling (NWE). Coupling with the South-Western Region (Portugal and Spain are expected soon after). The implementation for NWE market coupling is expected for the end of 2013.

Yearly and Monthly allocation

For the Dutch borders CASC.EU which is a subsidiary of all the participating CWE, Central South Europe (CSE) and Swiss TSOs, carries out the explicit auctions. Market parties bid for both import and export capacity. If there is sufficient capacity to meet demand in full, the price for this capacity (the clearing price) is EUR 0. In the event of scarcity, that is if demand for capacity exceeds supply of capacity, the clearing price is equal to the lowest offer accepted. Since the beginning of 2010 these auctions have been performed under a harmonized set of rules for all the explicit auctions on the internal borders of the CWE-region.

All CWE NRAs have to coordinate the approval of these rules. Expansion of these harmonized auction rules took place in 2011, with the inclusion of CSE and Switzerland. Per 2012, there is a single set of auction rules for CWE, CSE and Switzerland. They are valid for physical transmission rights with a delivery date starting from the 1st of January 2012.

Revenues

The congestion income from cross border infrastructure is administered to a separate account of TenneT. These revenues flows may be used for guaranteeing the actual availability of the allocated capacity; and/or maintaining or increasing interconnection capacity through network investments, in particular in new interconnectors. Only if these revenues cannot be efficiently used for these purposes and subject to NRA, they may be used, as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs and/or fixing network tariffs.

In 2012 the revenues for NorNed and the AC interconnections amounted to EUR 102,5 million. In line with the established spending purposes, a limited part of the net revenues was used to cover the preparation cost of the Cobra cable, the planned interconnector between the Netherlands and Denmark with the option to connect offshore wind, of which the investment decision is to follow. The congestion revenue report is published on ACMs website.⁶

⁶ <https://www.acm.nl/nl/publicaties/publicatie/11593/Verslag-veilingopbrengsten-TenneT-2011-2012/>



Other Cross border cooperation

During 2012, ACM and CREG, the Belgian regulator conducted an investigation into the calculation and use of cross-border capacity on the Dutch-Belgian border, including the impact of loop flows. This following a previous separate investigation by both NRAs and previous investments in infrastructure in this region by the TSOs, which did not lead to an increase in available capacity.

The investigation was conducted against the backdrop of low levels of system security in Belgium, due to the unavailability of two nuclear plants and increasing price spreads. The joint approach renewed the discussion between TSOs on this topic, which provided improved coordinated forecasting and grid safety analyses and enabled the agreement between TSO's to increase the available cross border capacity by in total 300 MW.⁷ In the first stage, a 50 MW increase in the day-ahead time frame and a 100 MW increase in the Intraday time frame by December 2012.

This first step was followed by another similar step in January 2013. The NTC value on the Dutch-Belgian border will consequently be increased from 1401 MW to a maximum of 1701 MW, if grid safety allows. Transfer capacity on the other borders did not change.

Both regulators welcomed this increase and remain vigilant on the capacity calculation and the use of cross-border capacity, both by allocated flows and ever increasing loop flows.

Monitoring technical co-operation between Community and third-country TSOs

In 2012, ACM and the Norwegian regulator (NVE) commissioned a joint study for an in-depth assessment of the requirements for long-term cross-border hedging of trade via NorNed, the electricity interconnector between Norway and the Netherlands. To date, different options for cross-border hedging have evolved in different European markets. For example, market participants in Nord Pool, the Nordic electricity market, purchase Contracts for Difference (CfD) to hedge against basis risk between different regions, whereas Physical Transmission Rights for interconnection capacity between traded hubs are available on some boundaries in North West Europe.

Ensuring access to cross-border hedging options, and the associated efficient use of interconnector capacity, are key tenets of the EU Target Model, which is designed to enable the transition to an internal energy market allowing the free flow of energy across Europe. Whilst the European Target Model is clear that liquid options must be available to market participants, and that the provision of Financial Transmission Rights (FTRs) by Transmission System

⁷ The agreement of the TSO's was reached in consultation with their CWE counterparts.



Operators (TSOs) is one means to achieve this, it is not prescriptive, leaving key decisions to the national regulators.

For this study Redpoint Energy was asked by the Norwegian and Dutch regulators to collect a wide range of stakeholder views, and to define and evaluate different regulatory options, including the possible introduction of FTRs for NorNed, or CfDs between the two markets.

The study was finalized in the spring of 2013 and will be used as a basis for their exchange of ideas on how to proceed with the implementation of the joint discussions on how to proceed with the implementation of the EU Target Model for NorNed.

Monitor TSO investment plans in view of TYNDP art 37(1)(g)

The planning criteria for the design of the TSO grids, grids from 110kV including the connections with the downstream grids, are set out in the Grid Codes that have to be approved by ACM. The TSO assesses how these criteria can be met based on various scenarios and a market consultation. The TSO publishes the results in a biannual Quality and Capacity Plan. The scenarios are based on the scenarios and market models used in the Ten Year Network Development Plan (TYNDP) of ENTSO-E.

The above-mentioned planning process with the Quality and Capacity Plan also applies to the DSOs.

3.1.5 Compliance

ACM has the authority to carry out investigations, to impose measures to enforce compliance and to promote competition, as well as the authority to ask relevant information from network operators and market participants. For effective execution of these powers, ACM has an Investigation and Detection Unit that supported the other Units by investigating possible violations of the Dutch Electricity Act 1998 and Gas Act, and applicable EU regulations. Regarding the certification of TSOs, based on the Dutch Electricity ACM can withdraw or amend its certification decisions in case of changed circumstances or by request of the European Commission.

ACM has not been confronted by a specific binding decision of ACER or the European Commission. Compliance issues that received special attention in 2012 regarded transparency requirements and conditions in exemption decisions, accounting arrangements, and operational costs.



Our problem-oriented approach is illustrated clearly in our compliance oversight. ACM asks questions wherever relevant and in specific areas. We therefore mandate network operators to publish annual reports with regards to compliance, safety and other quality parameters. In 2012, this led to a few cases in which we had to impose a fine or take certain stringent measures, besides the more regular discussions / regular meeting in which we push firms to improve in certain areas.

Preparations were started for “integrated market surveillance”, a new approach to compliance oversight in which all aspects concerning specific DSOs and TSOs come together.

ACM is keen on a risk-based approach for quality, for which we invite TSOs and DSO to provide us with an overview of their internal risk management systems.

More specifically in 2012 we finished the following projects:

- Four inspections on whether certain market participants were overcharging consumers;
- One inspection on whether a specific market participant complied with certain rules about administrative conduct;
- An investigation into the unbundling of a formerly fully integrated market participant
- An inquiry with the TSO for electricity into its compliance with procedures governing asset management (NTA 1820);
- Creation of procedures and codes along which we can determine whether the TSO for natural gas complies with the transparency rules (regulation 715/2009).

The investigation to unbundling led to ACM issuing a fine of EUR 3.32 million on a regional network operator, and a fine of EUR 208,000 on a subsidiary of an energy supplier, for having inadequately protected customer data. That situation created the possibility for the energy supplier to use that information for its own marketing purposes. All parties filed objections against the sanction decisions, and requested to file a direct appeal with the District Court of Rotterdam. The ACM granted this request, and is currently awaiting a date for the hearing.

In the near future ACM will also investigate compliance with European Network Codes. ACM can do this on her own initiative or based on signals received from the market. Regarding the certification of TSOs, based on the Dutch energy law ACM can withdraw or amend its certification decisions in case of changed circumstances or by request of the European Commission.

3.2 Promoting Competition

3.2.1 Wholesale Markets

3.2.1.1 *Monitoring the level of prices, the level of transparency, the level and effectiveness of market opening and competition*

The Dutch wholesale market can be subdivided into the following marketplaces where supply and demand meet:

- The trade in bilateral contracts, or the bilateral market, which accounts for approximately 20% of total trade;
- The OTC (over-the-counter) market which accounts for roughly 60% of total trade;
- The power exchange (APX-ENDEX), which accounts for 20% of total trade and practically all day-ahead trade in the Netherlands;
- The balancing market or the market for control and reserve power.

Volumes

APX-ENDEX provides a representative day-ahead price. In addition to a day-ahead market, APX-ENDEX also operates an intraday, a strips market and a marketplace for trading standardized forward contracts (week, month, quarter and year). In the table below, the current numbers of traders and volumes traded are presented.

	APX ENDEX 2012	
	Spot	Futures
Number of traders	54	39
Volumes traded	50.1 TWh	34.2 TWh

Table 2: number of traders and volumes traded on the power exchange in 2012

The next two graphs show the trend in volumes at APX-ENDEX.

In 2012, spot volumes on the exchange increased with 25%. Growth of traded volume is mainly driven by market coupling. In 2012 it was often cheaper to import electricity generated by coal, wind and solar (Germany) and/or hydro (Norway) compared with the cost of gas fired power generation in the Netherlands. These volumes are at the day-ahead stage channelled through the coupled power exchange resulting in higher APX volumes.

In 2012 futures volumes on the exchange climbed back to levels recorded a few years back. During 2012 the import capacity of the Netherlands was often fully utilized. If no further supply of electricity from abroad can reach the Netherlands, prices will start to diverge compared with surrounding countries. If this is the case, then futures traded on foreign exchanges like EEX no longer represent a good proxy to hedge positions in the Netherlands. Whereas in 2011,



electricity prices in the Netherlands and Germany were most of the time identical, and as a consequence trading in futures moved to the most liquid exchange, being EEX. In 2012 prices diverged more, which resulted in the return of futures volumes to the Netherlands exchange ENDEX.

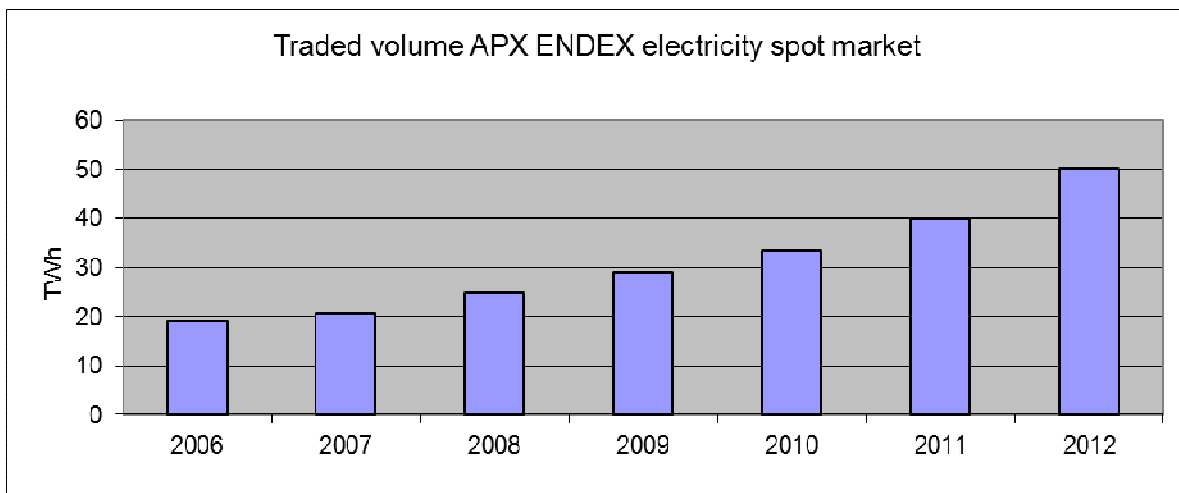


Figure 1: APX ENDEX day ahead (and intraday) volumes in TWh 2006-2012

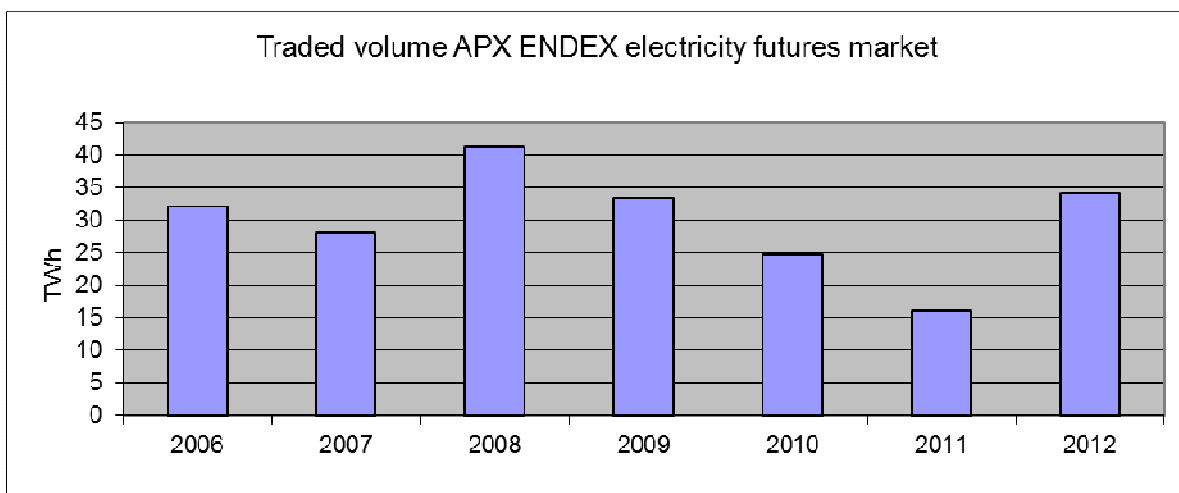


Figure 2: APX ENDEX futures volumes (all contracts) 2006-2012

The market for control and reserve power

TenneT annually contracts a certain quantity of control and emergency power. The costs of contracting power are charged to all consumers through TenneT's system services tariff. TenneT calls for bids for control power if an imbalance arises. The costs of the required energy are recovered from the party responsible for this imbalance (through the system of program responsibility). The market for control and reserve power is a special market used by TenneT to restore balance in real-time. Emergency power is used when the Dutch system is disrupted.

Prices



The wholesale electricity price for futures contracts in the Netherlands hovered in 2012 around 50 Euro/MWh. Figures 3 and 4 show the development of electricity prices for the period 2009-2012. The first one gives future prices traded on the APX ENDEX exchange for month-head, quarter-head and year-ahead contracts. The second gives month-ahead prices for the Netherlands, Germany, France and the UK.

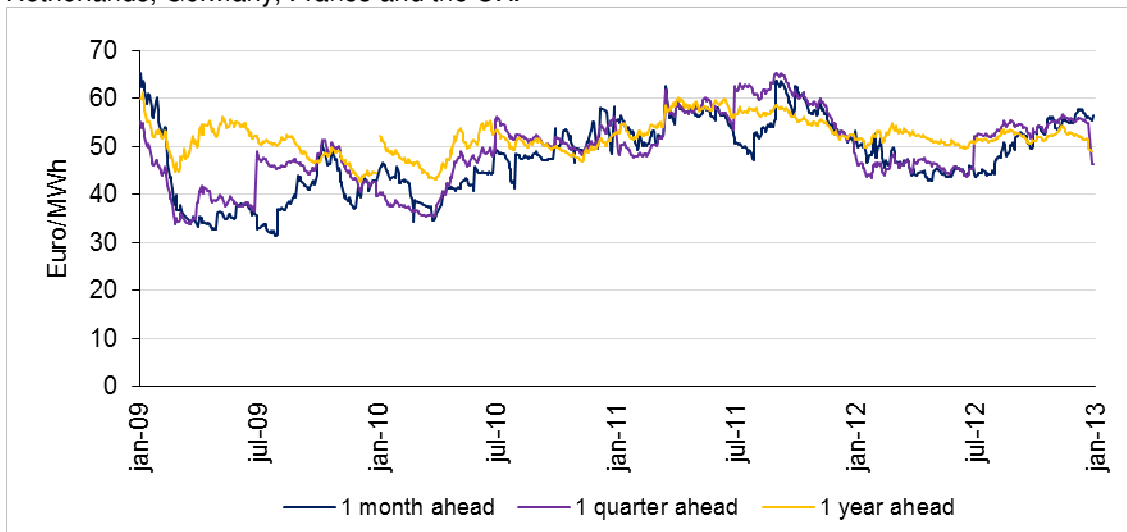


Figure 3: electricity futures prices on APX ENDEX exchange 2009-2012

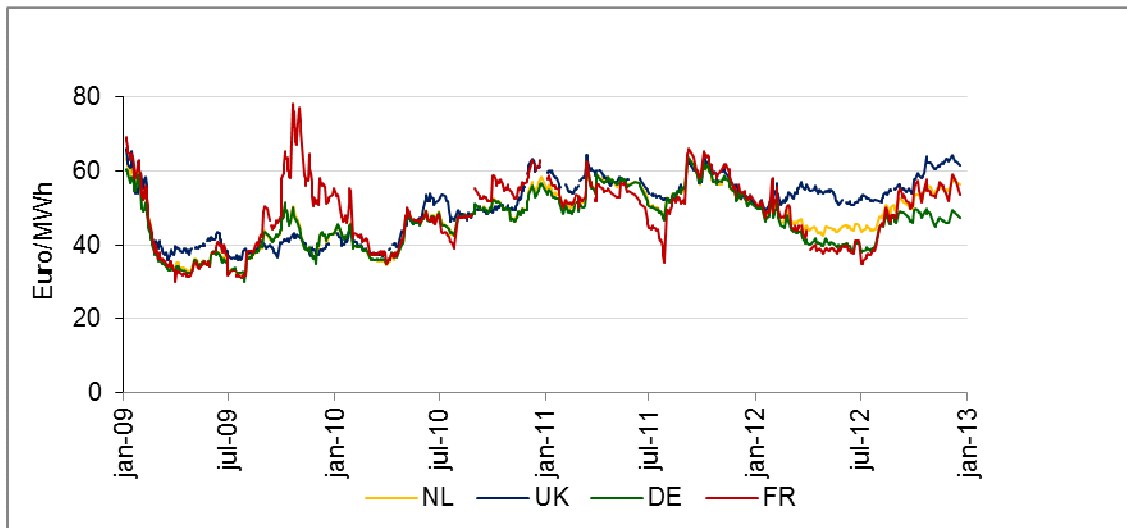


Figure 4: electricity prices month ahead in the Netherlands, Germany, France and UK

Transparency

In mid-2011, ACM started assessing the compliance of TenneT's transparency website with the transparency provisions of the Congestion Management Guidelines. Later in 2012 TenneT significantly improved its transparency platform. ACM is investigating whether the new platform, complies with the Congestion Management Guidelines.

Transparency of prices on the exchanges APX (spot contracts) and ENDEX (futures contracts)

in the Netherlands is generally regarded by market participants as sufficient. The next graph shows the opinion on transparency on the spot and futures exchange and on the OTC market. Due to its nature it is not surprising that the OTC market scores lower in terms of transparency.

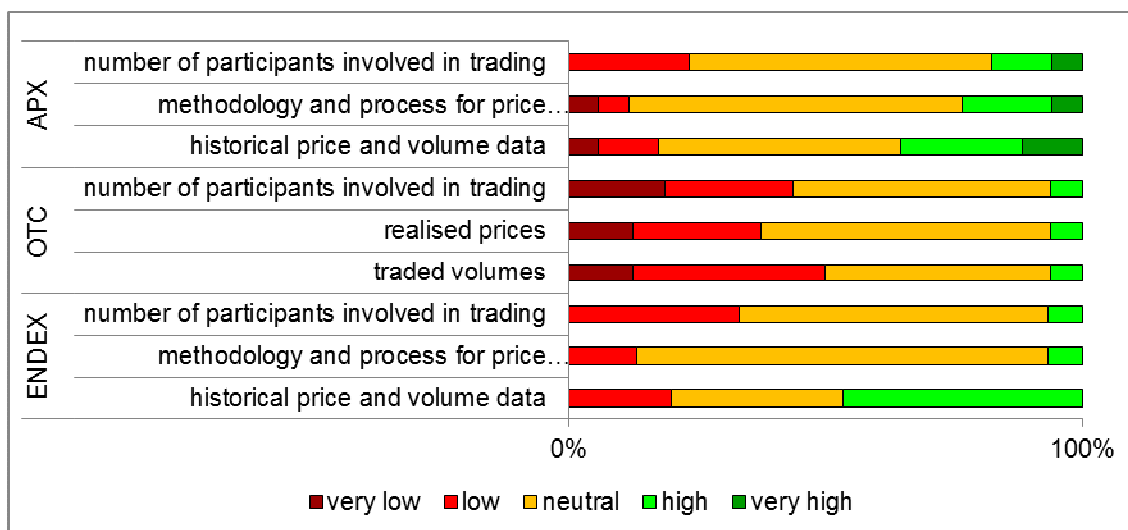


Figure 5: opinion of traders on transparency of market places

3.2.2 Retail market

3.2.2.1 Monitoring the level of prices, the level of transparency, the level and effectiveness of market opening and competition

Price monitoring

The figures below show the trend of electricity prices for permanent contracts with variable tariffs, and fixed-term contracts with fixed tariffs, expressed as costs per year for an average household⁸. The annual costs in these figures reflect the supply tariff minus taxes.

⁸ Based on average household consumption in 2011: 3312 kWh electricity and 1484 m³ gas. (Source: Energy trends 2012, ECN, Energie-Nederland, Netbeheer Nederland)

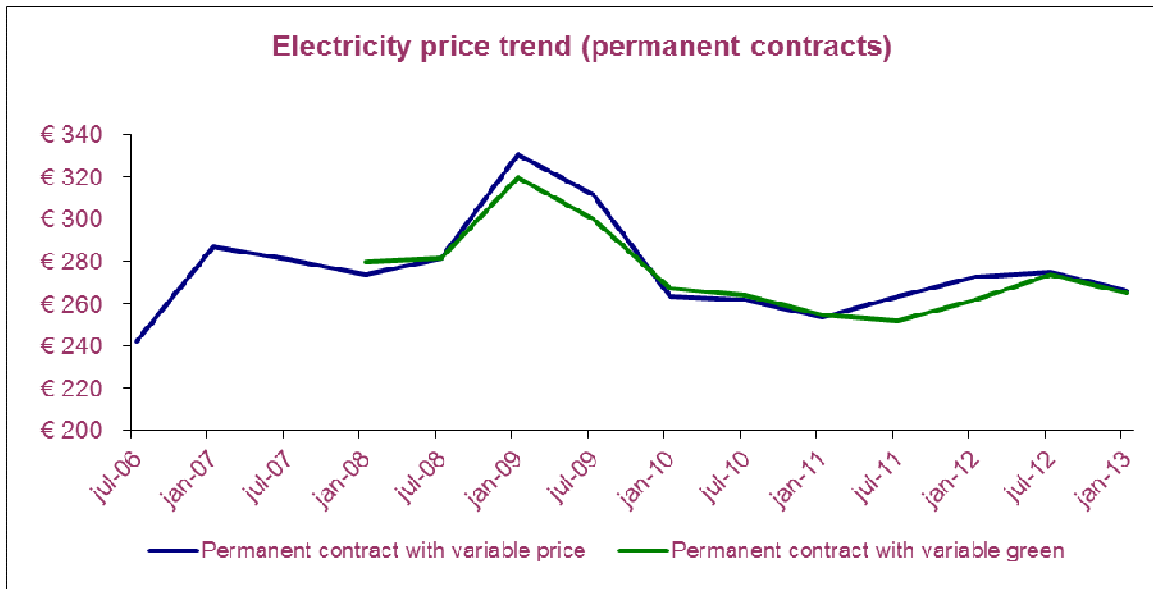


Figure 6: price trend for permanent contracts

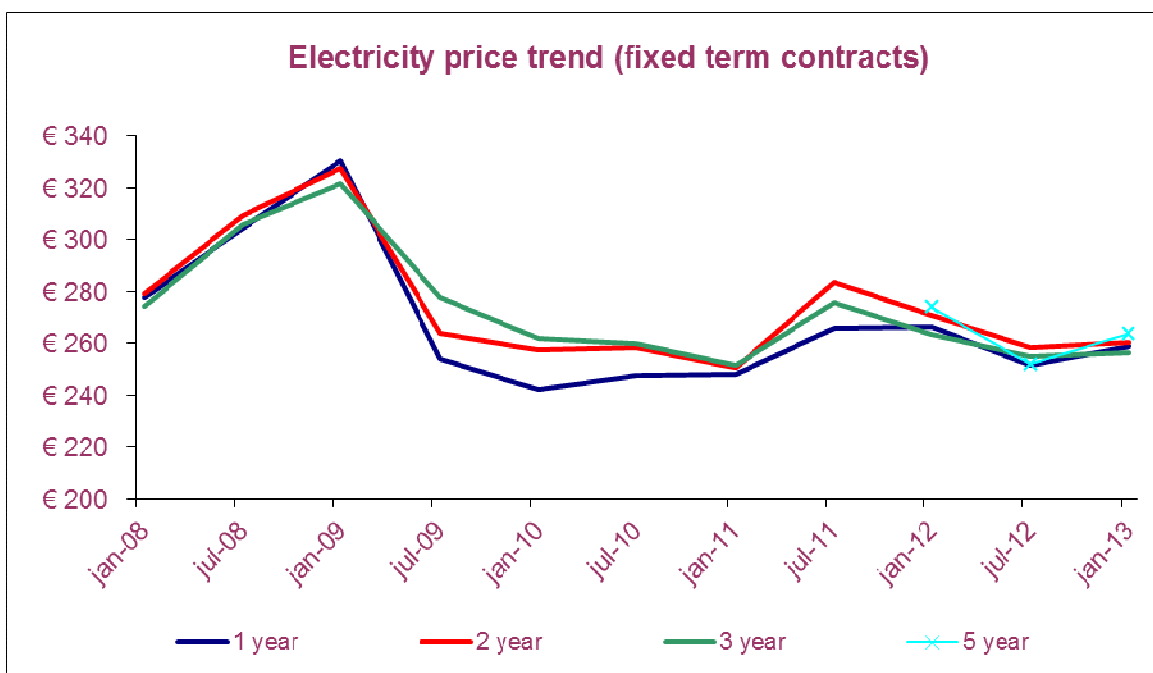


Figure 7: price trend for fixed term contracts

The electricity price for permanent contracts with variable tariffs decreased slightly in 2012 compared with 2011 from €272 to €266. Contracts for the supply of green (renewable) power were on average slightly cheaper in 2011, but in 2012 the difference between prices of grey and green electricity has disappeared.



The fixed-term contracts offer a similar picture. On December 31st, 2012, annual costs for 1-year, 2-year, 3-year, and 5-year contracts were slightly lower in comparison with 2011. Contracts for 2 years and 5 years showed the largest decrease of €10.

Price differences

Figure 8 shows the annualized price difference in costs between the most expensive and the cheapest contract, and the difference between the average and the cheapest contract, respectively, for an average supplier. The figure is based on an average household's annual consumption. These results are therefore an approximation of actual price differences.

The permanent contracts have the biggest price difference of €48. This differs from 2011 when the 3-year contracts had the biggest price difference.

The price differences for so-called 'mono-fuel' contracts are typically smaller than the price differences for dual fuel contracts (see next paragraph). An explanation could be that the market for dual fuel contracts is much more competitive, because most households in The Netherlands have contracts for both electricity and gas.

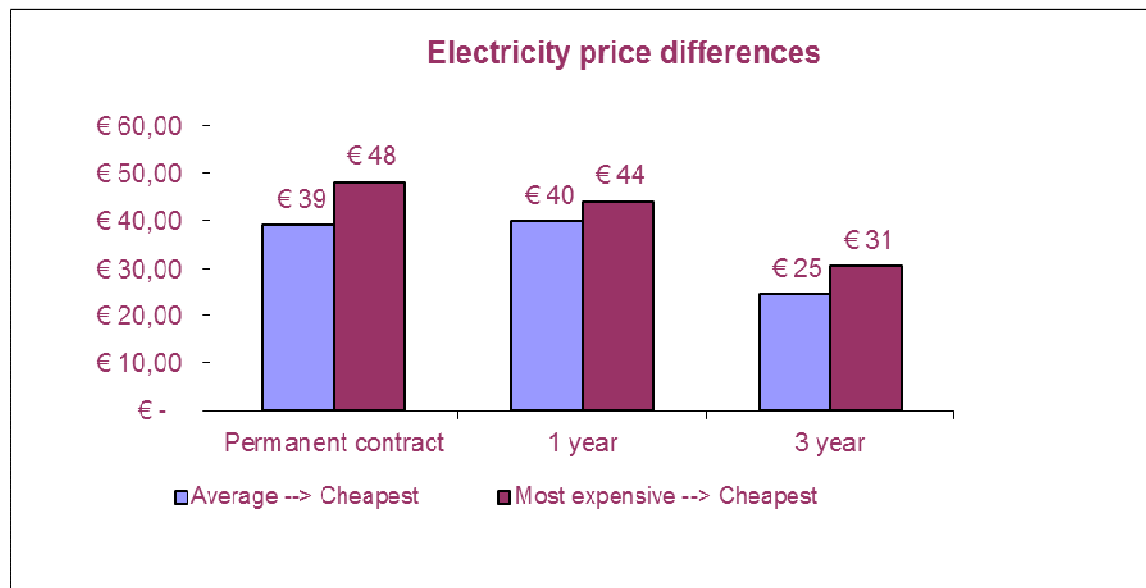


Figure 8: electricity price differences

Price differences on price comparison websites

The biggest price differences on price comparison websites have been observed with contracts that combine electricity and natural gas (dual fuel). This observation is reflected by figure 9 and is based on a snapshot of prices taken from two random price comparison websites. These too are an approximation of actual price differences. Another trend is that fixed-term contracts are increasingly offered with month-based terms rather than year-based terms. That is part of the reason why the term categories in the figure underneath differs from the previous figures. The

biggest price difference is observed within permanent contracts. An average customer could find a difference of up to €401 between the cheapest and the most expensive contract.

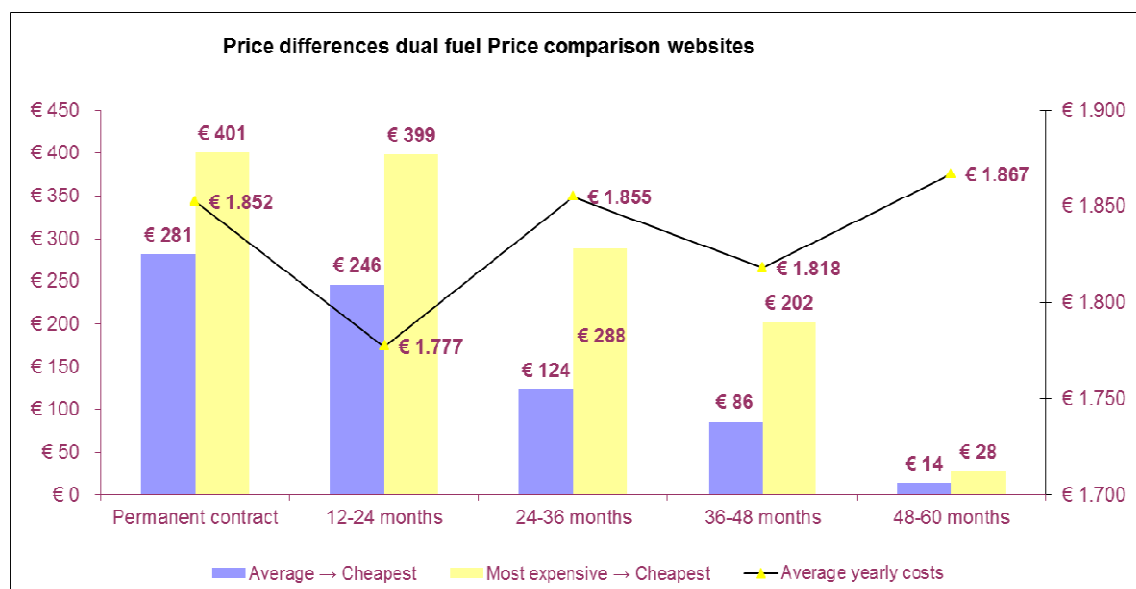


Figure 9: dual fuel price differences

Breakdown of total energy costs

Per December 31st, 2012, households paid on average €1,835 per year for electricity and natural gas, 44% of which are supply costs, 20% network costs and meter rent, and 36% Energy tax and VAT. These shares have not changed since a year ago. Average annual costs have declined though, since these were still €1.881 on December 31st, 2011. Electricity and gas consumption have remained reasonably stable in recent years. Figure 10 shows the breakdown of a total energy bill in 2012.

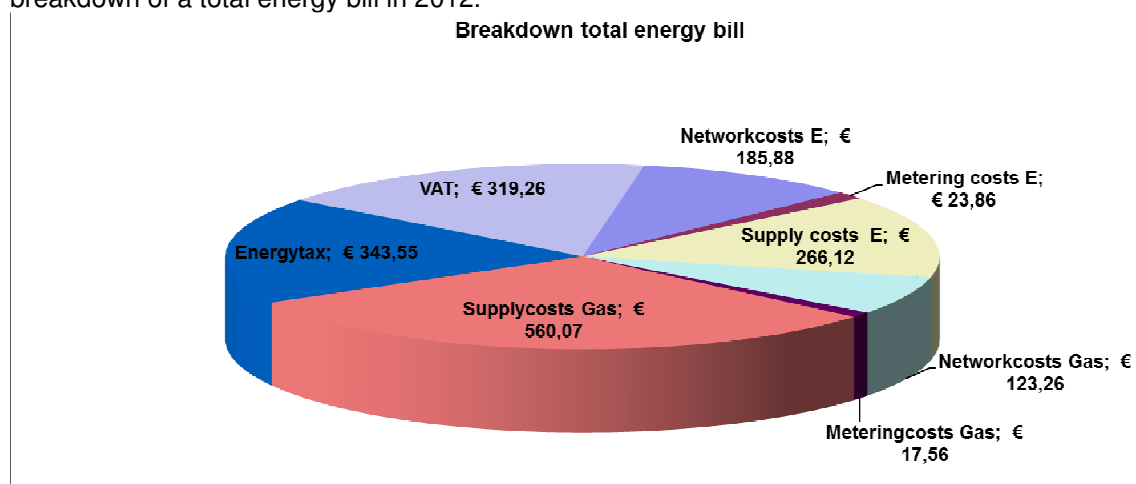


Figure 10: breakdown total energy bill households



Concentration

In 2012, the C3 and the HHI⁹ indices decreased slightly compared with 2011. The C3 index on December 31st, 2012 was 83% for electricity and 81% for natural gas, while the HHI index was 2,338 for electricity and 2,258 for natural gas.

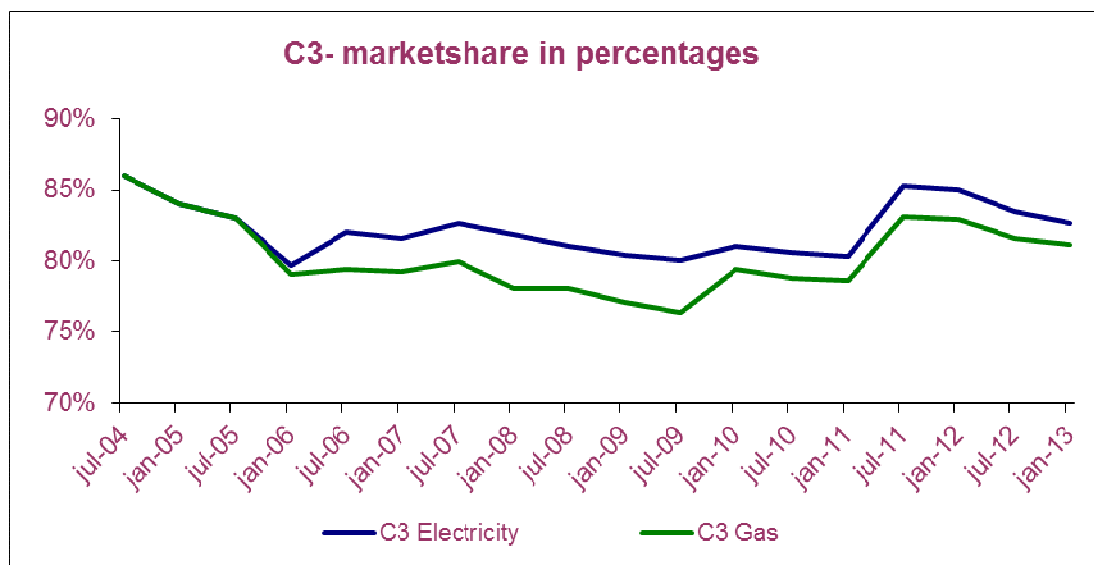


Figure 11: retail market concentration C3-marketshare

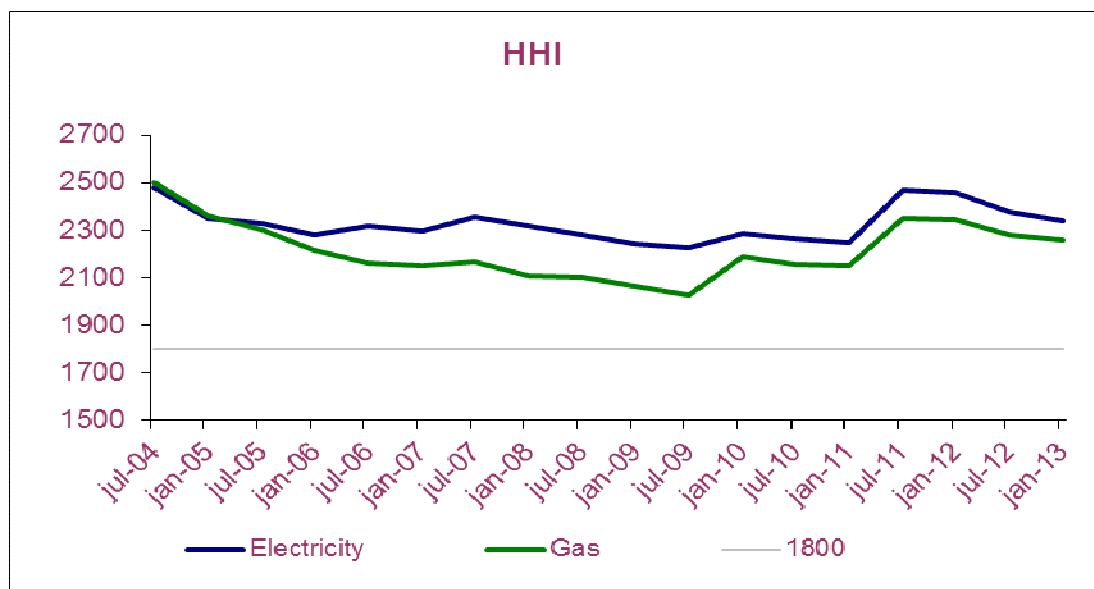


Figure 12: retail market concentration Herfindahl-Hirschman index

⁹ The Herfindahl-Hirschman index is equal to the sum of the squares of the market shares in percentages. An increase in the HHI may indicate a decrease in competition, whereas a decrease in the HHI may indicate increased competition. For the calculation of the indices on the small-scale user market for electricity and natural gas, the market shares of the parent companies were used. Suppliers that fall under the same parent company have been grouped into the same parent company.

Switching

In 2012, the switching rate increased compared with 2011. From January 1 through December 31, 2012, 12.6% of all small-scale electricity users switched, and 12.3% of small-scale gas users did so. The switching rate is one of the highest in Europe.¹⁰ The trend of annual switching rate is shown in figure 13 below.

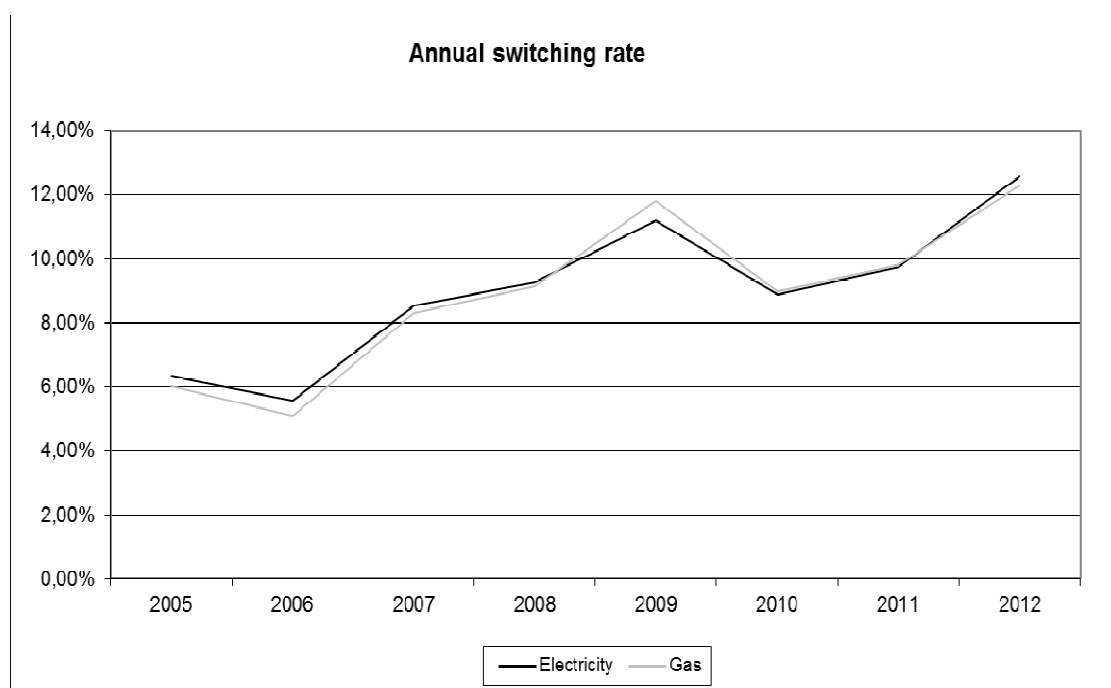


Figure 13: annual switching rate

3.2.2.2. Recommendations on supply prices, investigations and measures to promote effective competition

Supply tariffs are not regulated in the Netherlands. There is however, a form of tariff oversight with regard to the retail energy market. ACM checks the reasonableness of tariff proposals, since suppliers to the retail energy market are bound by law to submit all prices to ACM. It is worth noting that this system allows enough room for differentiation, and up until 2013 ACM did not use this power to force suppliers to lower their tariffs.

¹⁰ Source: Utility Customer Switching Research Project, HEPI, Energie Control Austria and VaasaETT, 2012



3.3 Security of supply (if and insofar as NRA is competent authority)

It should be noted that the Ministry of Economic Affairs is the competent authority.

3.3.1 Monitoring balance of supply and demand

The TSO report on the Security of Supply¹¹ concludes that the Netherlands can be assured of a consistently high level of security of electricity supply in the next few years, as sufficient production capacity will be available in the Netherlands to meet domestic demand for electricity. The Netherlands no longer depends on supply from abroad but has a surplus in capacity which continues to grow. The growth of the capacity surplus is largely caused by plans for new production capacity. In addition, it has increased as a result of lower electricity demand due to the economic crisis. Current construction projects have not been put on hold, however projects under development have not made any significant progress towards an investment decision. Other signs of uncertainty with negative effects are that options for plots of land for energy production have expired without having been renewed.

Looking further ahead to the year 2026 there is in principle sufficient supply to meet domestic demand for electricity, although there is a large degree of uncertainty regarding the intentions of producers to construct new plants and put others out of operation.

3.3.2 Monitoring investment in generation capacities in relation to SoS

Generation

ACM does not have a direct role in investments and the granting of licenses for new generation facilities. There are no implicit or explicit mechanisms to promote construction of new production capacity. The TSO does contract control power and emergency power as ancillary service for balancing purposes. This is therefore a source of revenue for primarily generators. The TSO reports to the Minister of Economic Affairs with regard to the development of security of supply. If necessary, the Minister may decide to invoke an additional capacity mechanism, the so-called safety net. A safety net entails that the TSO may contract additional power for a number of years to create an incentive for investment. This safety net has never been used, not in years with sufficient domestic generation capacity as in 2012, nor in the years prior to 2008, when the Netherlands strongly depended on the generation in other parts of (Central Western) Europe.

According to the Dutch TSO (TenneT) there is currently almost 8 GW more available generation capacity in the Netherlands than is needed for serving domestic demand. Combined with interconnection capacity, this generation capacity is used in the internal energy market and contributes to internal energy market generation adequacy.

¹¹ See http://www.tennet.eu/nl/fileadmin/downloads/News/Rapport_Monitoring_2012-2028.pdf.



Availability is currently declining since generation plants are suffering from low margins on the wholesale markets. This was foreseen for the older plants, but even new high-yield gas-fired plants have limited operational hours and are considered to be taken offline. This development is taking place against the backdrop of various other member states developing capacity mechanisms, which may impede the functioning of the internal market.

Network

The framework for the construction of transmission infrastructure is as follows: ACM regulates the tariffs of all network operators, both TSO and DSOs. In so far as DSOs are concerned, ACM monitors the output of network quality. The frequency and duration of interruptions are monitored and used to influence network tariffs.

Network operators are required to maintain the networks and finance normal expansion of the transmission networks with these tariff revenues. The network operators are free to decide on the construction of infrastructure. If a special expansion of the transmission networks is planned, a special tariff increase can be requested. Such requests must be submitted to and assessed by ACM.

On the other hand, the TSO must finance replacement investments from turnover generated from tariffs (turnover regulation). A tariff increase or use of the proceeds of the cross-border capacity auctions may be requested for investments within the constraints of European and national legislation. The planning criteria for the design of the TSO grids, grids from 110kV, including the connections with the downstream grids, are set out in the Net Codes that have to be approved by ACM. The TSO assesses how these criteria can be met in various growth scenarios. The TSO publishes the results in a Quality and Capacity Plan. This plan has to meet the Ministerial Regulations in Relation to Quality Aspects of Electricity Grid and Gas Network Management and must be assessed by ACM. The above mentioned planning process with the Quality and Capacity Plan also applies to the DSOs.

Infrastructure projects (network)

The most important infrastructure projects are the following:

Strengthening and expanding the 380 kV grid in the West of the Netherlands has been under development since 2002. This project (the so-called "Randstad 380 kV project") connects the Maasvlakte - Bleiswijk and Diemen–Zaandam–Beverwijk sections of the grid. This project is of specific importance for increased consumption in the region as well as the connection of the large amount of new generation facilities and the BritNed interconnector as discussed above. Construction for these connections is well underway.

Next to the expansion in the west, and for the same reasons, the TSO is planning an expansion of the 380 kV grid in the north of the Netherlands (the North-West 380 kV project). This project is split up into two sections: South ring¹² and North ring¹³. The South ring was completed in late

¹² See: <http://www.randstad380kv-zuidring.nl/>

summer of 2013. The construction of the North ring started in 2012. The entire project is expected to be completed in 2016. The new grid with a length of 220 kilometres will connect the Eemshaven in the north with Diemen in the west.

The fourth AC interconnection with Germany Doetinchem-Wesel, is planned for 2016, as a result of which the capacity on the Dutch-German border can be increased by 1.5 GW. A further expansion of interconnection capacity between the Netherlands and Germany is still to be assessed. Furthermore, research is underway for the COBRA cable, and HVDC interconnection between the Netherlands and Denmark, with an option to connect offshore generation. For an overview of interconnections see table 3.

	Bel/Ger	NorNed	BritNed	Cobra	Total (nominal)	Total (after reductions)
2012	3,9	0,7	1,0	0,0	5,0	5,2
2014	4,2	0,7	1,0	0,0	5,9	5,5
2020	6,4	0,7	1,0	0,7	8,8	8,1

Table 3: available interconnection capacity for the Netherlands in GW

	Operational capacity	Interconnection capacity	Demand
2012	27,3	5,2	115,1
2014	29,9	5,5	115,7
2020	42,1	8,1	124,7

Table 4: available production and interconnection capacity (GW) and demand levels (TWh)

3.3.3 Measures to cover peak demand or shortfalls of suppliers

The TSO contracts control power and emergency power for balancing. See paragraph 3.3.2 for further details.

¹³ See: <http://www.randstad380kv-noordring.nl/>

4 The gas market

4.1 Network regulation

4.1.1 Unbundling

With regard to the unbundling of TSOs and DSOs, some important developments have taken place in 2012. For the TSOs the implementation of the unbundling rules of the Third Package into national law was completed on 20 July 2012. Regarding the unbundling of DSOs progress was made with the ruling of the national unbundling rules for DSOs.

TSOs

Just as is the case for electricity, there is only one national TSO for natural gas in the Netherlands: Gasunie Transport Services B.V. (GTS). Regarding the implementation of the Third Package into national laws, Member States were free to opt for one of three unbundling models. The Dutch legislature chose to implement the model of 'ownership unbundling', the most far-reaching of the three models. This model entails the appointment of the network owner as the transmission system operator and it ensures independence from any energy supply or energy production interests. To ensure compliance with the unbundling rules, a certification procedure is statutorily required. Certification is a condition for an undertaking to be able to get appointed as a TSO by the Dutch Ministry of Economic Affairs. GTS requested ACM, in September 2012 to start the certification procedure. GTS supported its request by providing the necessary information. The assessment of the information by ACM continued in 2013 and led to the notification of the preliminary decision¹⁴ (positive) on the certification of GTS to the European Commission in May 2013.

Furthermore, BBL Company V.O.F. (BBLC) commercially exploits a gas pipeline/interconnector between the Bacton (UK) and Balgzand that started operations in December 2006. A large part of the capacity of BBLC is exempted in accordance with Article 36 of Directive 2009/73/EC. BBLC is co-owned by Gasunie BBL B.V., Fluxys BBL B.V. and E.ON Ruhrgas BBL B.V. In September 2012 this undertaking also applied for certification by ACM. The assessment by ACM of the application led to the preliminary (positive) decision,¹⁵ (positive) which was notified to the European Commission in January 2013.

DSOs

Eight DSOs distribute natural gas and electricity and one DSO distributes only natural gas. According to Dutch law DSOs must be fully ownership unbundled from the vertically integrated company. Following a 2010 court decision, part of the law on full-ownership unbundling cannot

¹⁴ <https://www.acm.nl/nl/publicaties/publicatie/11448/Certificering-Gasunie-Transport-Services-BV/>.

¹⁵ <https://www.acm.nl/nl/publicaties/publicatie/11450/Certificering-BBL-Company-VOF/>.



be applied. As a result, the two vertically integrated companies that have not yet been unbundled, announced to postpone their unbundling activities. The Ministry of Economic Affairs filed an appeal with the Supreme Court of The Netherlands. Early 2012 the Supreme Court of The Netherlands postponed the trial pending a preliminary ruling by the Court of Justice in Luxembourg in reply to questions of the Supreme Court. In April 2013 the Court of Justice was advised by the attorney-general to rule that Dutch law does not contravene with EU law.

4.1.2 Technical functioning

Balancing services

Bid price ladder

Balancing in the Netherlands is done by a market based system which incentivizes grid users to help the TSO in balancing the system. In case of an imbalance of the Transmission Grid, a Bid Price Ladder (BPL) is called to alleviate the imbalance. This BPL is operated by the TSO. The BPL is a market based system because only market parties (grid users) can offer gas on the BPL. Also, in case the BPL is called, only the grid users who have caused the imbalance will be charged for the imbalance cost of the BPL.

Additional balancing service (Nomination Flex)

The TSO is obliged to offer an extra balancing service to grid users. Grid users can contract this service from the TSO. With this balancing service grid users are able to balance their portfolio during the day. The TSO contracts the needed flexibility for this service on a yearly basis in advance by subscribing a tender procedure.

Provision of Balancing Information

The TSO provides within-day balancing information to grid users

With this information grid users are able to balance their portfolios and prevent imbalance charges in case the BPL is used.

TSO provides to each grid user on an hourly basis the following information:

- System Balance Information of the Transmission Grid of the previous hour.
- Portfolio Imbalance Information about the position of the Grid User of the previous hour.

Security and reliability standards, quality of service and supply

Network operators are obliged to compose a biannual Quality- and Capacity Report. This plan has to meet the Ministerial Regulations in Relation to Quality Aspects of Electricity Grid and Gas Network Management and must be assessed by ACM.



Monitoring time taken to connect and repair

The repair time is monitored and each year the amount of repairs and the time needed to repair planned and unplanned interruptions is reported to the NRA by the TSO. The time taken to connect to the grid is not monitored, but complaints about this topic will be reported to the ACM. For DSOs ACM monitors the output of network quality. The frequency and duration of interruptions, is monitored and used to influence network tariffs via a quality incentive.

Correct application of criteria that determine model of access to storage

In 2012, the Dutch Gas act did not list criteria that need to be used to determine whether storage facilities should offer negotiated third party access (nTPA) and/or regulated Third Party Access (rTPA). As a consequence, ACM has no explicit monitoring task.

Access to storage

In 2012, the rules with regard to access in the Dutch Gas Act have changed. Currently, only a nTPA regime is in place. In this regime, customers have to negotiate with a [Storage System Operator \(SSO\)](#) for access to storage and related services (ancillary services). An SSO only needs to do so if there is a technical or economic necessity to do so. In this matter, the Dutch Gas Act states that the Minister has the possibility to set rules about the technical or economic necessity to offer TPA (so far these rules do not exist). The tariffs and conditions that are applied by an SSO for access to storage and ancillary services must be objective, transparent and non-discriminatory. Each year (no later than 1 October), an SSO must publish his indicative tariffs and conditions that it envisions to apply in the next year (both for access to storage and ancillary services). Before publishing the indicative tariffs and conditions, an SSO must first discuss these with representative organizations.

4.1.3 Network and LNG tariffs for connection and access

In 2011, ACM established new methods of regulation for the periods from 2006-2009 and 2010-2013 after the previous method decisions had been annulled by the Dutch Trade and Industry Appeals Tribunal. With these methods of regulation, ACM calculates the efficiency factors for the statutory tasks of the TSO concerning transport and transport related services, the performing of balancing services and the quality conversion service. These methods lead to efficiency factors and to tariffs for 2012 and 2013. Based on these new method decisions, Gasunie Transport Services is to return, through the 2012 and 2013 tariffs, approximately EUR 400 million in excess revenues to its network users.

It is worth mentioning that the new method decisions have been upheld by the Dutch Trade and Industry Appeals Tribunal in its ruling on the appeal by Gasunie Transport Services and organisations representing customers.

Tariffs are set for each entry- and exit-point on the basis of cost reflection. It is the regulator who approves the tariffs. Apart from the methodology, which takes into account all the legal

requirements that tariffs have to adhere to, the TSO has a legal obligation to submit a tariff proposal annually for all the tariffs.

Income can be generated by tariffs, which are approved by ACM. Since the TSO has the incentive to keep its costs below its income, there is an incentive for the TSO to work in an efficient manner. Each legal task that is assigned to the TSO is regulated. In determining the efficiency factor, costs are estimated for operational expenditure (including labour and energy costs) and capital expenditure (RAB, WACC and depreciation).

When setting individual tariffs, assumptions are made concerning volume. It is the TSO that carries the burden of the so-called 'volume risk'. This means that when it sells more than expected, it is allowed to keep the extra income. This gives an incentive to use the network as efficiently as possible whilst offering a good quality of services.

The first LNG terminal in the Netherlands has been operational since September 2011. Due to an exemption as provided by the Ministry of Economic Affairs, Gate Terminal B.V. does not need to have its tariff methodology or conditions approved by the regulator.

4.1.4 Cross-border issues

The Netherlands imports high calorific gas at border points with Germany and Belgium, for which GTS makes firm transmission capacity of more than 38 GW available to the market. Export of high calorific gas takes place at border points with Germany, Belgium and the United Kingdom. For this purpose, GTS makes firm capacity of more than 66 GW available to the market. For exports of low calorific gas at border points with Germany and Belgium, more than 87 GW is available. GTS allocates the capacity on a First come First Serve (FCFS) basis. Bookings are made on a firm basis as long as the capacity permits. Thereafter, bookings are registered on an interruptible basis.



Figure 14: gas network in 2012

In anticipation of the pan-European introduction of auctions for cross-border capacity, GTS and their German affiliate Gasunie Deutschland launched a pilot project on the interconnectors with Germany. Auctioning will lead to fairer access to scarce transmission capacity, since all market participants are able to take part under equal conditions.

The aim of this pilot was to gain experience with certain rules as listed in the network code on Capacity Allocation Mechanism (NC CAM). The effects and lessons learned will be known in 2013 and used by GTS when fully implementing the NC CAM.

In addition, GTS together with fifteen other European gas regulators launched an initiative to



create a single European platform where interconnector transmission capacity is auctioned. In late-2012, this initiative was given the name Prisma. ACM together with regulators in other Member States taking part in the project was closely involved in the launch. The platform became operational in April 2013. ACM has approved these developments, and granted the pilot project the necessary exemptions in 2012

Given the fact that GTS is fully ownership unbundled, it has no obligation to draft national investment plans as meant in the third energy package. However, based upon the Dutch Gas Act GTS is obliged to publish every two years a Quality Capacity document. In this document, GTS has to show that it has sufficient transport capacity in place to transport gas from the source to end users. Also, it must show that the procedures to maintain the quality of the grid are robust and fit for purpose. ACM checks whether the Quality Capacity document meets the requirements as set in the Dutch Gas act.

4.1.5 Compliance

See paragraph 3.1.4. on Compliance

4.2 Promoting Competition

4.2.1 Wholesale markets

4.2.1.1 Monitoring the level of prices, the level of transparency, the level and effectiveness of market opening and competition

The Dutch wholesale market can be subdivided into the following marketplaces where supply and demand meet:

- The trade in bilateral contracts, or the bilateral market, which accounts for approximately 10% of total trade;
- The OTC (over-the-counter) market which accounts for roughly 85% of total trade;
- The gas exchange (APX-ENDEX), which accounts for 5% of total trade.

Liberalization and competition have resulted in a surge in trading activities on the Dutch gas hub TTF in recent years.



Volumes

APX-ENDEX operates a day-ahead and a within-day market for spot contracts and is a marketplace for trading standardised forward contracts (month, quarter, season and year). In table 5, the current numbers of traders and volumes traded are presented.

	APX ENDEX 2012	
	Spot	Futures
Number of traders	42	39
Volumes traded	13,7 TWh	322,3 TWh

Table 5: number of traders and volumes traded on the gas exchanges in 2012

The next two graphs show the development of spot market trade at APX-ENDEX.

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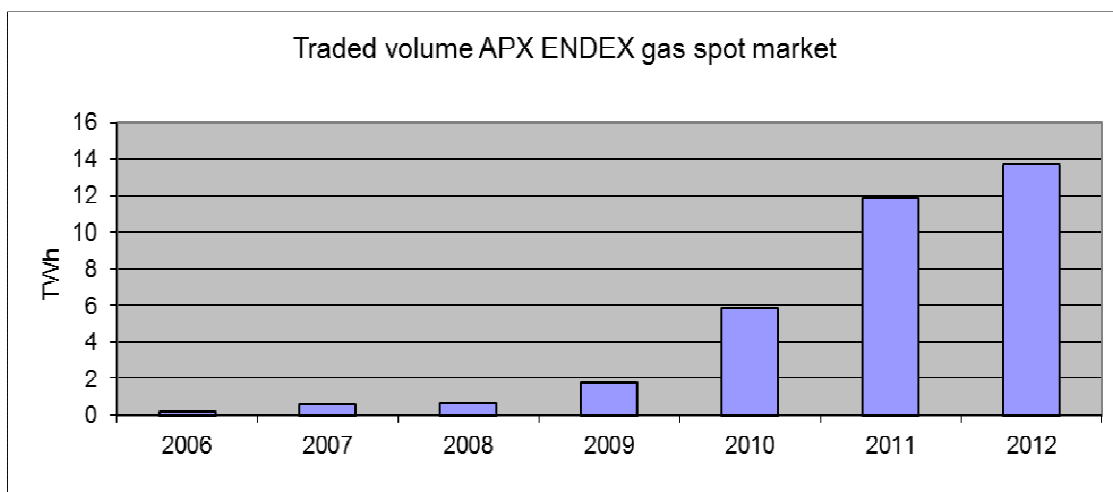


Figure 15: APX ENDEX day ahead (and within day) volumes in TWh 2006-2012

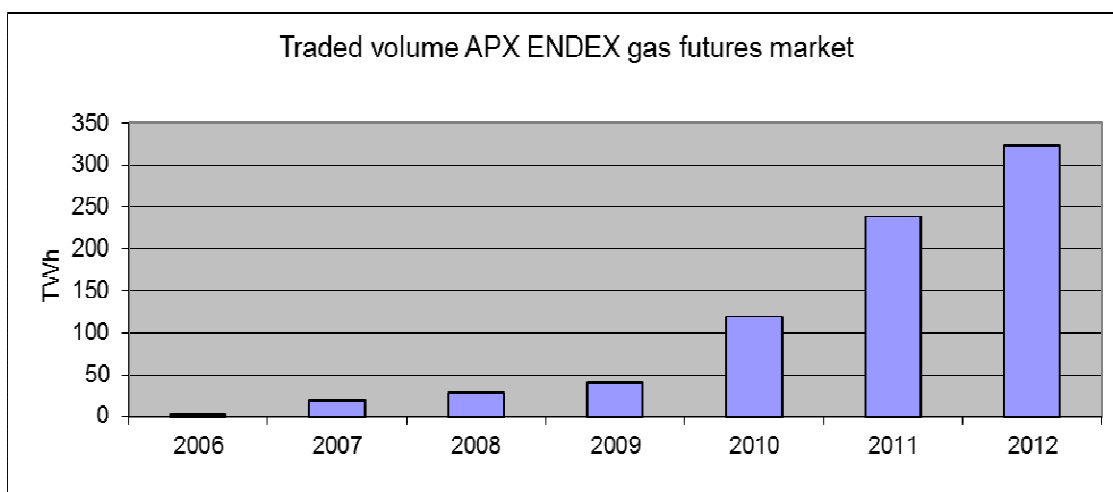


Figure 16: APX ENDEX futures volumes (all contracts) 2006-2012



Prices

The wholesale gas price for futures contracts in the Netherlands move between 20 and 30 Euro/MWh in 2012. The following figures show the trend of gas prices over the period 2009-2012. Figure 17 shows future prices traded on the APX ENDEX exchange for month-, quarter-, season and year-ahead prices. Figure 18 shows spot prices for day-ahead contracts on the Dutch TTF hub compared to neighbouring hubs NetConnect Germany (NCG) and National Balancing Point of the UK (NBP).

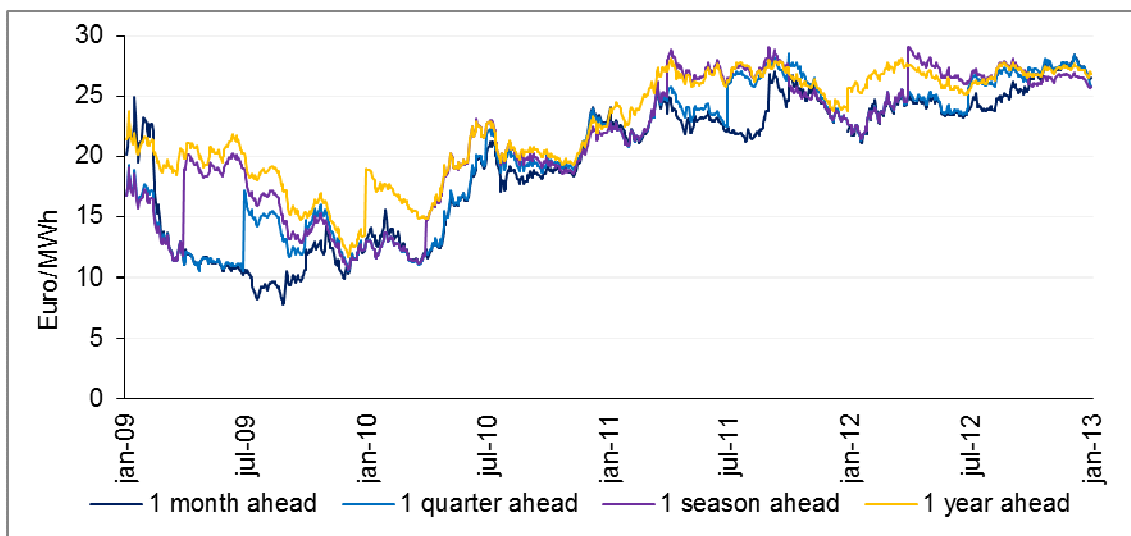


Figure 17: gas future prices on APX ENDEX exchange 2009 - 2012

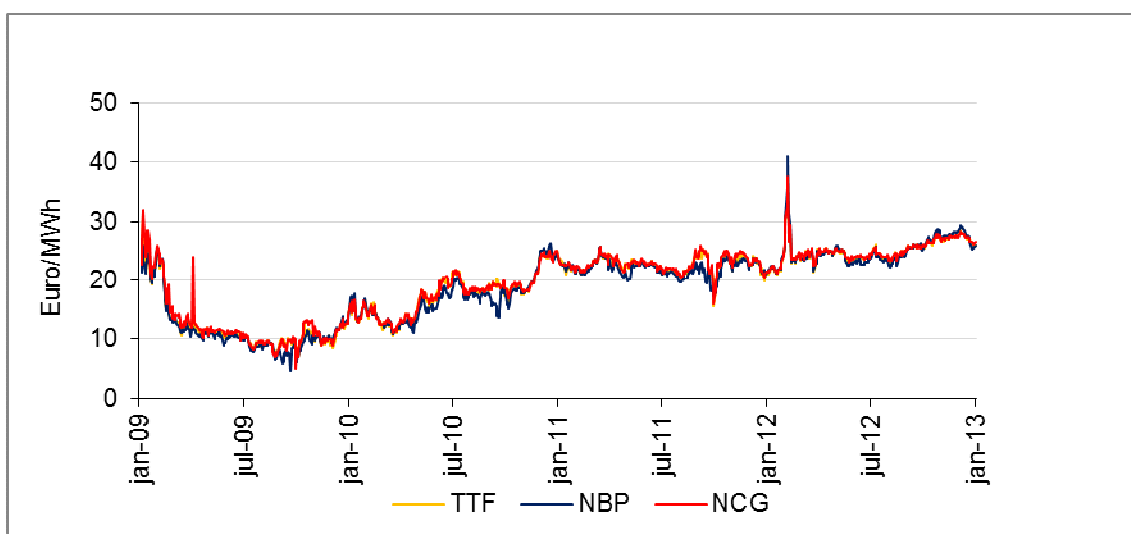


Figure 18: gas spot prices on Northwest European gas hubs 2009 - 2012

Transparency

Transparency of market places in the Netherlands is generally regarded by market participants as good. The next graph shows (high) satisfaction with transparency on the spot and futures exchange and on the OTC market. Because of its nature it is not surprising that the bilateral market scores less in terms of transparency.

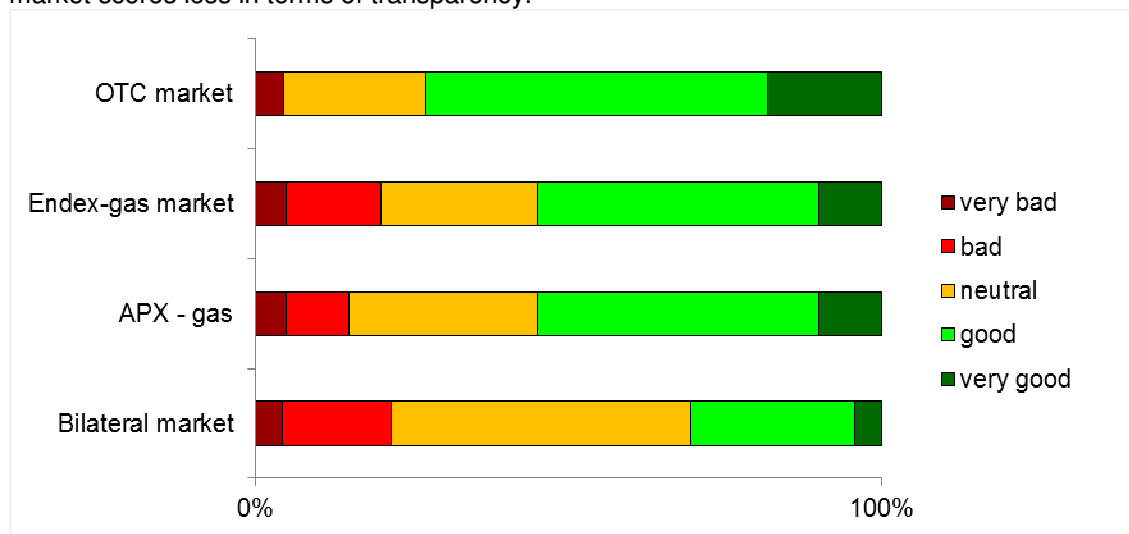


Figure 19: opinion of traders on transparency of market places

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4.2.2 Retail market

In 2012 ACM initiated a ConsuWijzer publicity campaign, which contained a step-by-step guide explaining to consumers how to switch energy suppliers. ACM concluded in its bi-annual trend report on Competition and Consumer Confidence in the Energy Market for the first half of 2012, that consumers could save up to €488 by switching suppliers. The switching guide starts with explaining how to read energy bills. This is necessary for calculating the tariff that is offered on, e.g. an energy supplier's or a price comparison website. It is important to note that the so-called dual fuel contracts (natural gas and electricity) often yield the highest savings.

ACM also approved the model contract for energy. It allows consumers to easily compare contracts of various energy suppliers, and find the best deal. The model contract is a clear and easy-to-read contract, which all suppliers must offer next to any other contracts. The only thing that is different is the price, while all other contract conditions remain the same.

Finally, In December 2011, ACM imposed a fine of EUR 7.2 million on a Dutch energy supplier for sending its final bills too late, or even failing to send any final bills at all, to customers that had cancelled their contracts and who were entitled to overpayment refunds. In connection therewith, ACM in 2012 imposed personal fines on two former executives of the energy supplier for being in charge of said violation. The level of each of these fines matches the maximum amount ACM is allowed to set, which is EUR 450,000 per individual.

4.2.2.1 Monitoring the level of prices, the level of transparency, the level and effectiveness of market opening and competition

Gas prices

Gas prices for permanent contracts with variable tariffs remained stable with a price of € 557 on December 31st, 2011 and € 560 on December 31st, 2012. Gas prices for fixed-term contracts with fixed tariffs increased, except for the 2-year contracts for gas. The 3-year contracts had the largest increase in price; on December 31st 2011 the average 3-year contract was € 555, while on December 31st 2012 the price was € 597.



Figure 20: gas price trend – permanent contracts

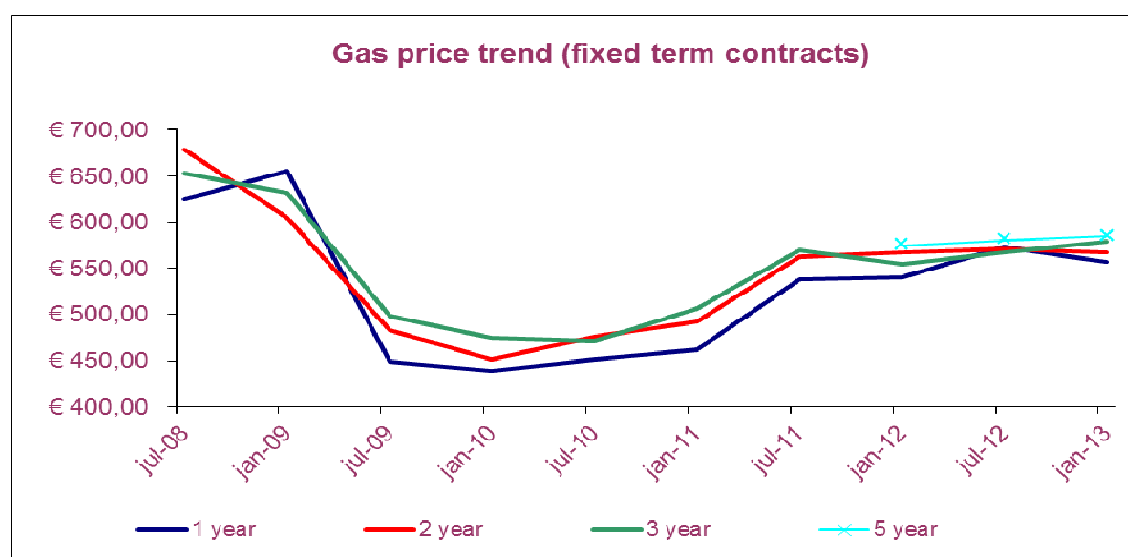


Figure 21: gas price trend – fixed term contracts

Figure 22 shows that for natural gas, the difference between the most expensive and the cheapest contract is largest for a 1-year contract, which is €172. Compared with 2011, the price



differences between the most expensive and the cheapest contract (for all types) have increased.

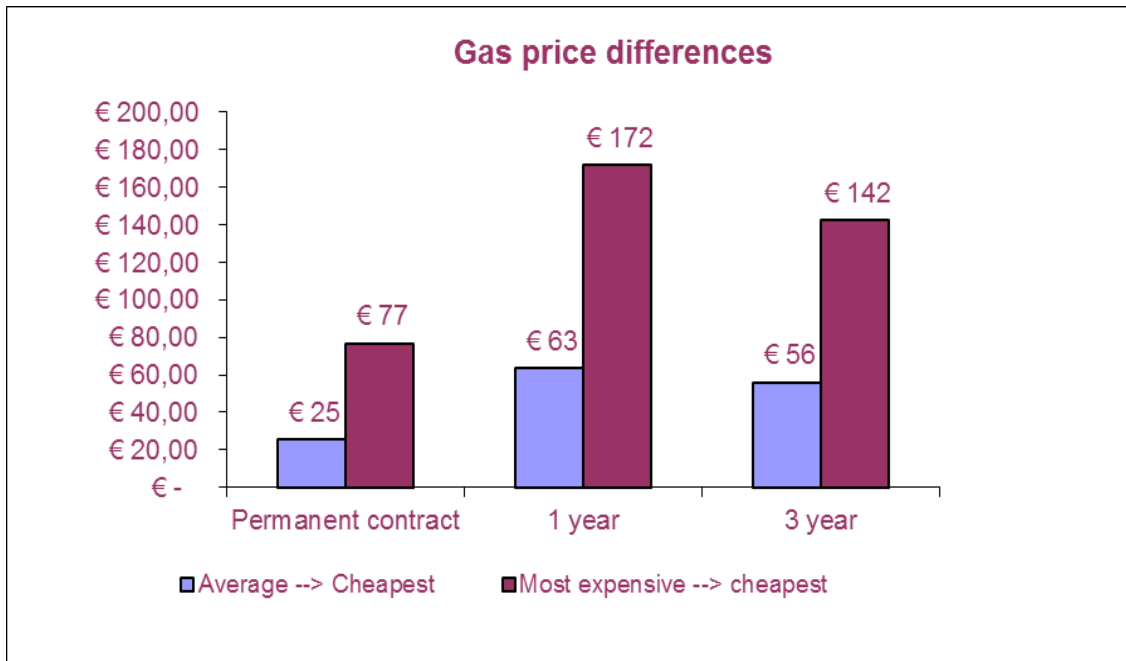


Figure 22: gas price differences

4.2.3 Recommendations on supply prices, investigations and measures to promote effective competition

Supply tariffs are not regulated in the Netherlands. There is, however a form of tariff oversight with regard to the retail energy market. ACM checks the reasonableness of tariff proposals, since suppliers to the retail energy market are bound by law to submit all prices to ACM. It is worth noting that, in this system, allows enough room for differentiation and, up until 2013, ACM had not used this power to force suppliers to lower their tariffs.

4.3 Security of supply

4.3.1. Monitoring balance of supply and demand

The TSO report on Security of Supply in the Netherlands concludes that for the next few years sufficient gas will be available to meet demand in the Netherlands. GTS findings are based on a survey of shippers who are asked to report on contracted and not yet contracted volumes (domestic production and sales, imports and exports, transit). After 2020, total volumes reported by shippers to GTS were behind the gas demand projection for the Netherlands. Supplementary volumes need still to be contracted to cover Dutch gas demand but as GTS also signals the ever increasing liquidity on gas hubs may lead parties to contract volumes closer to actual delivery moment and not so long in advance any more.

4.3.2 Expected future demand and available supplies as well as envisaged additional capacity

Dutch gas demand is around 45 bcm and is expected to be stable for the next few years with a projected growth to 50 bcm in 20 years. Dutch gas production has reached levels of more than 80 bcm in recent years. Domestic production however is expected to decline in the future to a level of 50 bcm in 10 years and 20 bcm in 20 years from now. Table 6 shows an overview.

	Demand	Production
2014	45,4	77,0
2018	46,5	68,0
2023	48,0	49,0
2028	47,7	31,0
2033	50,1	20,0

Table 6: Dutch gas demand and production in the period 2014-2033 in bcm

It is the policy of the Dutch government to ensure the security of the gas supply in the future by diversifying supply sources (LNG, countries of origin). The first Dutch LNG Terminal became operational in September 2011. Moreover, the Dutch small-fields' policy ensures an efficient depletion of domestic resources by allowing production from small fields to take precedence over production from the Groningen field. Flexibility in the Netherlands is largely supplied by the Groningen field. In the future more investments in other sources of flexibility will be needed and storage capacity is one of them. In the near future several new activities in storage for peak supply (salt caverns) are planned, also just across the Dutch border in Germany. One project for seasonal storage is already at an advanced stage and is set to become operational in 2014.

Entry capacity into the Netherlands in 2012 is 7.9 million m³/h firm with some capacity still



available. Exit capacity from the Netherlands in 2012 is 17 million m³/h firm with most border points being fully booked.

Table 7 shows firm entry and exit capacity on Dutch border points. Borders at Emden Oude Statenzijl and Zelzate are bi-directional. Other borders are solely exit points, although there may be a possibility for (interruptible) backhaul. Where capacity is not contracted for 100%, there is still capacity available for booking with the TSO.

<i>Border</i>	<i>Entry</i>		<i>Exit</i>	
	<i>Firm</i>	<i>Contracted</i>	<i>Firm</i>	<i>Contracted</i>
Emden OSZ H	6,8	92%	2,5	90%
Oude Statenzijl L			1,5	99%
Winterswijk/Zevenaar L			4,2	100%
Zuid Limburg H			3	100%
Hilvarenbeek L			2,9	100%
Zelzate H	1,1	86%	0,7	100%
Julianadorp H			1,6	100%
Other			0,6	97%

Table 7: entry and exit capacity on the Netherlands borders in millions m³/h

In general, the trigger for extra investments in cross-border capacity is the Open Season procedure. In total, three Open Season procedures have taken place so far, the results of which have led to investments that reinforce the transmission network and make it able to accommodate future cross-border flows. Cross-border entry capacity into the Netherlands is currently at almost 8 mcm/h firm and will reach 10 mcm/h firm in the next few years. Up till now, investments are not ex-ante approved by the regulator. In July 2011 a new regime was introduced in which the Ministry of Economic Affairs decides on the necessity of an investment (taking into account the recommendations of the regulator) and the regulator decides ex post on its efficiency. There is an on-going transitory period for all projects, which have been under development before this date.

4.3.3 Measures to cover peak demand or shortfalls of suppliers

Directive 2004/67/EC obliged Member States to protect the supply of gas to domestic consumers, for instance in the event of extremely cold weather conditions. In the Netherlands, the Decision in Relation to Security of Supply Pursuant to the Gas Act was drawn up for this purpose. With the entry into force of the Security of Supply Regulation (EU) 994/2010 the Dutch Gas Act is amended at several points. The Ministry of Economic Affairs is the competent authority.



The aforementioned national decision however will stay in place since the supply standard laid down in that decision is stricter than the Regulation. To prevent situations that leave small consumers in the cold, due to a shortage of production and transmission capacity, this decision stipulates that the TSO (instead of the regular supplier or „license holder“) is responsible for reserving volume and capacity for the additional demand from small consumers if the effective temperature during the day falls below -9°C . A total capacity of 2.44 million m^3/h and a volume of 101 million m^3 are currently contracted for this peak supply of gas . ". The licence holder obtains this volume and capacity on an obligatory basis through the TSO. Together with the freely contractible basic supply for -9°C and warmer, the licence holder can therefore fully supply small consumers up to and including -17°C ¹⁶. The TSO is required to charge tariffs that are in line with the European market for the supply of natural gas, during peak demand. This ensures that the TSO, as the sole supplier of gas to meet peak demand will not be abused. Also, overseen by the regulator the TSO is obliged to obtain the necessary supplies as cost-efficiently as possible. Furthermore, the Decision states the obligations and appropriate actions for the TSO if the license of a gas supplier on the domestic consumer market is withdrawn, making sure that the gas supply to the customers (consumers) of this gas supplier will be continued. This emergency supply procedure requires the TSO to take measures to guarantee temporary supply to domestic consumers as long as they have failed to find an alternative supplier.

¹⁶ An average effective daily temperature of -17°C occurs once every 50 years

5 Consumer protection and dispute settlement in electricity and gas

The energy market for residential customers and small businesses („small consumers“) has been fully liberalised since 2004. This in addition to the phased liberalisation of large consumers at an earlier stage.

The role of ACM is to monitor (and ultimately enforce) compliance with the rules for the protection of small consumers and to ensure that through competition and empowerment of consumers the operation of market forces reaches an adequate level. The protection of small consumers and their empowerment to make informed decisions is therefore one of ACM's core tasks. This has been implemented in various ways.

Transparency

An important theme is promoting a transparent market in which consumers can make informed decisions based on clear and comparable information. ACM has taken facilitative measures to improve the transparency of the market and, by doing so, also to improve competition on the retail market (and to prevent the abuse of market dominance). For instance, ACM investigates the correctness and completeness of data published on websites of energy companies and websites that make price comparisons. Also there is a Policy Rule on information requirements. This Policy Rule is applicable to all communication channels. ACM actively uses this new Policy Rule to enforce these information requirements. ACM also started a comparison site for energy suppliers where all other service aspects besides prices are compared. This comparison site is called “Energiewijzer” (this can be translated to “Energy Guide”). The Energiewijzer is part of the consumer information portal Consuwijzer.nl. This website informs and gives guidance to household consumers with regards to their rights.

Supply License

A supplier for small consumers is obliged to have a supply licence. These licenses are issued by ACM on behalf of the Minister of Economic Affairs. When a supplier applies for a license, ACM assesses whether the supplier has the necessary organisational, financial and technical qualities to carry out its task properly. Also, it has to prove that, within reason, it is able to comply with the obligations applicable to suppliers under the Dutch Gas Act and the Dutch Electricity Act. In addition to this, ACM assesses whether a supplier uses clear offers and terms of agreements. Furthermore, ACM assesses whether the supplier has a transparent and fair payment scheme, and a transparent and fair scheme for cancelling and dissolving agreements. A supplier also has to show that it is able to process complaints and disputes adequately. In this regard, most energy companies make use of an independent alternative dispute resolution body, which adjudicates disputes between small consumers and energy companies. Further conditions may be included in specific supply licences by ACM, which ensure further protection of small consumers such as rules relating to telephone canvassing and the supplier's obligation to notify small consumers of changes in supply tariffs.



Tariff fairness

Although the supply tariffs for small consumers are not regulated by ACM, the various supply tariffs charged to small consumers are assessed by ACM with regard to their fairness and reasonableness. If ACM deems certain supply tariffs unreasonable, a maximum tariff can be set by means of a public decision. This ensures the protection of small consumers from excessive tariffs in an otherwise concentrated market, should this be necessary. On average each year ACM requires several suppliers to provide an explanation about the level of their supply tariffs. The suppliers in question will have to explain the level of the tariffs set. A possible explanation may be that the superior quality of the product offered justifies a higher price. If the explanation is not adequate, the supplier must adjust the tariffs. Every year, a small number of suppliers adjust their tariffs in order to be considered fair and reasonable after informal intervention by ACM. To this day however, ACM has not enforced a maximum tariff on a supplier by means of a public decision. ACM envisages that, in the foreseeable future, this safety net mechanism can be phased out provided that consumers are provided with sufficient clear and comparable information to make a truly informed choice.

ACM still receives questions and complaints about the way (potential) customers are approached and recruited, although the number of complaints has decreased compared to previous years. This relates mainly to complaints about telephone canvassing and supply contracts entered into by door-to-door sales. In consultation with ACM, the energy sector has drawn up a code of conduct. This code of conduct has been signed by almost all energy suppliers that are active on the market. The code of conduct functions also as a 'quality stamp' of proper customer-recruitment practices. If ACM receives reports that a company has infringed the code of conduct, it will intensify its oversight and conduct an investigation.

A Ministerial Decree on disconnections is in place for vulnerable consumers: those customers for whom discontinuing distribution or supply of electricity or gas would have serious health risks, for them or their household. The decree also limits disconnection during the winter period (October 1st to April 1st). It prevents network operators and suppliers from disconnecting a consumer if the consumer is in the process of debt recovery with a recognised body. Only if a consumer refuses to enter debt recovery or if the consumer cannot enter a debt recovery programme, then the network company/supplier can disconnect the consumer.

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