

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

## **Procedure of the Minister of Economic Affairs of 15 March 2013, no. WJZ/12351247, containing rules on the exchange of information between the Netherlands Authority for Consumers and Markets and the Minister of Economic Affairs and the Minister of Infrastructure and the Environment (Procedure on the Exchange of Information between ACM and Ministers)**

The Minister of Economic Affairs;

Considering Section 8 of the Establishment Act of the Netherlands Authority for Consumers and Markets;

Decides;

### **§ 1. General provisions**

#### **Article 1**

In this decision, the following definitions shall apply:

- a. *ACM*: the Netherlands Authority for Consumers and Markets;
- b. *Minister*: the Minister of Economic Affairs.

#### **Article 2**

1. ACM shall provide on its own initiative or upon request by the Minister or the Minister of Infrastructure and the Environment as quickly as possible the information that is necessary for the relevant minister to perform his/her duties, or which ACM may reasonably assume to be necessary for the relevant minister to perform his/her duties.
2. The Minister or the Minister of Infrastructure and the Environment shall provide on his/her own initiative or upon request by ACM as quickly as possible the information that is necessary for ACM to perform its duties, or which he/she may reasonably assume to be necessary for ACM to perform its duties.
3. ACM and the Minister or the Minister of Infrastructure and the Environment shall inform one another in a timely manner about subjects that may attract publicity and which may reasonably

be assumed to be relevant for the other to be informed about.

### **Article 3**

1. ACM shall report to the Minister or the Minister of Infrastructure and the Environment in writing upon request or on its own initiative on its findings of the duties carried out if ACM or the relevant minister is of the opinion that this information is necessary in the preparations for decisions of general application.
2. The Minister or the Minister of Infrastructure and the Environment shall respond to the information provided by ACM within four weeks. In his/her response, the relevant minister shall specify in what manner the information provided by ACM has been or will be taken into account in his/her decision-making.

## **§ 2. Activities in an international context**

### **Article 4**

1. ACM and the Minister or the Minister of Infrastructure and the Environment shall inform one another as quickly as possible, insofar as relevant for the performance of the other's duties, of invitations to participate in meetings of relevant international organizations. They shall provide each other with the agendas for these meetings.
2. ACM and the relevant minister shall send one another as quickly as possible a copy of the reports of the meetings within the meaning of paragraph 1. In the event of a meeting of an advisory committee within the meaning of Section 5b, paragraph 2 of the Dutch Competition Act, ACM shall also report on the manner in which the instructions of the Minister have been implemented.
3. Paragraphs 1 and 2 shall not apply to meetings or parts thereof in which individual cases are discussed.

### **Article 5**

The Minister or the Minister of Infrastructure and the Environment shall send cases pending before the Court of Justice of the European Union which relate to the domains of ACM to ACM for information. The relevant minister may request ACM to provide written comments.

## **§ 3. Feasibility test and report on the effects on competition**

### **Article 6**

1. The Minister or the Minister of Infrastructure and the Environment shall present to ACM intended decisions of general application which, after entry into force, influence or may influence the performance of duties with which ACM is entrusted for a feasibility test. In the event that the intended decision of general application does not emanate from the Minister or the Minister of

Infrastructure and the Environment, the Minister shall ask the relevant minister to request ACM to carry out the feasibility test.

2. The relevant minister shall make the request for a feasibility test within a certain amount of time so that the test may influence the decision-making.
3. In the event that paragraph 2 is not applied, ACM may carry out a feasibility test on its own initiative. In this case, ACM shall inform the relevant minister of its intention to do so.
4. ACM shall carry out the feasibility test within four weeks following the request. In exceptional circumstances, the relevant minister and ACM may, by mutual consent, set a different time limit.
5. In a feasibility test, ACM shall, in any case, consider the proposed decision of general application with regard to:
  - a. feasibility and enforceability;
  - b. consequences for ACM in terms of staff, organization and finances
  - c. opportunities to enhance the effectiveness and suitability of the proposed decision of general application.
6. ACM shall send the result of the feasibility test to the relevant minister. In the explanatory notes to the concerned decision of general application, it shall be stated in which manner the feasibility test is taken into account in the decision-making.
7. ACM shall publish the feasibility test after the concerned decision of general application has been published by the relevant minister, unless agreed otherwise by the minister and ACM.

#### **Article 7**

1. For an order to the ACM to publish a report within the meaning of Section 5c of the Dutch Competition Act, the Minister shall set a time period of thirteen weeks within which this report is due. Should ACM foresee that it will be unable to publish the report within the set time period, it shall notify the Minister of this fact with a statement of reasons no later than four weeks before the expiration of this time period.
2. If ACM intends to publish a report on its own initiative with regard to the effects on competition of the intended or applicable legislation or decisions in or outside of the domain of the Minister, it shall notify the Minister in a timely manner.
3. ACM shall send a report to the Minister. The Minister shall respond to the report within four weeks. He or she shall state with the findings in which manner the report has been or will be taken into account in the decision-making and when the report will be published.

4. If another minister requests a report from ACM, ACM shall inform the Minister of this fact as quickly as possible.

#### **§ 4. Policy rules**

##### **Article 8**

1. ACM shall send the draft of the policy rules to the Minister or the Minister of Infrastructure and the Environment for information no later than four weeks before the adoption of said policy rules.
2. If the relevant minister intends to respond to the draft, he or she shall inform ACM of this fact within two weeks after he has received the draft.
3. The first and second paragraphs shall not apply to policy rules to which Section 5a of the Dutch Competition Act or Section 2.4 of the Dutch Act on Enforcement of Consumer Protection are applicable.

##### **Article 9**

ACM shall send a copy of a decision that deviates from a policy rule adopted by the relevant minister to the Minister or the Minister of Infrastructure and the Environment as quickly as possible.

#### **§ 5. Internal organization of ACM**

##### **Article 10**

ACM shall put the draft before the Minister no later than four weeks before adopting the regulations of the Board of ACM in accordance with Section 4, paragraph 1 of the Establishment Act of the Netherlands Authority for Consumers and Markets in view of the approval required in accordance with Section 11, paragraph 1 of the Framework Act on Autonomous Administrative Authorities.

##### **Article 11**

ACM shall put the draft before the Minister at least four weeks before it adopts the decision on mandate, authority and authorization in accordance with Section 5, paragraph 2 of the Establishment Act of the Netherlands Authority for Consumers and Markets in view of the approval required in accordance with Section 5, paragraph 3 of the Establishment Act of the Netherlands Authority for Consumers and Markets.

##### **Article 12**

The Minister shall inform ACM about relevant developments and orders with regard to the operations of the central government.

## **§ 6. Tariff proposal**

### **Article 13**

1. ACM shall send to the Minister annually before 1 November for the following calendar year a proposal for the tariffs on the basis of the Dutch Telecommunications Act and the Postal Act 2009 that are to be passed on to companies.
2. The proposal referred to in paragraph 1 is accompanied by an explanation further addressing:
  - a. The proposed tariffs for the following year against the backdrop of a trend projection of the tariffs over several years;
  - b. The reasons for the proposed tariffs;
  - c. The degree of cost-effectiveness and the cost trends
  - d. Any potential sensitive aspects related to the proposal.

## **§ 7. Annual report and *ConsuWijzer* reports**

### **Article 14**

1. ACM shall provide the Minister with the opportunity to take note of the draft annual report at least four weeks before the annual report under Section 18, paragraph 2 of the Framework Act on Autonomous Administrative Authorities is sent to the Minister. The Minister shall forward the draft annual report to the Minister of Infrastructure and the Environment.
2. The Minister shall provide ACM with the opportunity to take note of his or her draft findings and the draft findings of the Minister of Infrastructure and the Environment with regard to the annual report of ACM at least two weeks before he or she sends his or her findings with regard to the annual report to both houses of Parliament.

### **Article 15**

Twice a year, ACM shall send the Minister an overview and specification of the reports received through *ConsuWijzer*. This overview shall be accompanied by explanatory notes.

## **§ 8. Concentrations**

### **Article 16**

1. ACM shall inform the Minister as quickly as possible about a referral request within the meaning of Article 4, sections 4 and 5, of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24 of 29.1.2004).
2. ACM shall inform the Minister of the intention to give notice to the European Commission within the meaning of Article 9, section 2 of the Regulation. The notification to the Minister shall be made no later than five working days before the time limit expires within which the notification must be made to the European Commission.

3. ACM shall inform the Minister of the intention to make a request or the intention to join a request to the European Commission within the meaning of Article 22, Section 1, respectively Section 2, paragraph 2 of the Regulation. The notification to the Minister shall be made no later than five working days before the time limit expires within which the request or the announcement to join a request must be made to the European Commission.
4. In the event that the Minister wishes to give instructions within the meaning of Section 10:6, paragraph 1 of the Dutch General Administrative Law Act, with regard to a referral request within the meaning of paragraph 1 or an intention within the meaning of paragraphs 2 or 3, he or she shall give these instructions within three working days after receiving the notification from ACM. In the event that an assessment of the request or the intention is not feasible, the Minister shall inform ACM of this fact.

#### **Article 17**

1. ACM shall inform the Minister as quickly as possible about a refusal of an authorization to establish a concentration under Section 41, paragraph 2 of the Dutch Competition Act.
2. The Minister shall notify ACM of this fact within a week after receiving a request under Section 47 of the Dutch Competition Act.
3. Prior to addressing the draft decision to a request under Section 47 of the Dutch Competition Act in the Cabinet, the Minister shall provide ACM with the opportunity to submit its comments in writing within one week.

#### **§ 9. Exchange of information in relation to other bodies**

##### **Article 18**

1. ACM shall notify the Minister of the draft arrangements made with other governmental bodies with regard to the coordination of the work or with regard to cooperation. To this end, ACM shall send the text of the intended arrangements to the Minister no later than four weeks before the implementation of the arrangements.
2. The Minister shall notify ACM within two weeks of his/her intention to submit comments on the draft arrangements. He/she shall submit his/her comments within two weeks after this notification.

#### **§ 10. Final provisions**

##### **Article 19**

The Regulation on the exchange of information between NM and EZ shall be repealed.

**Article 20**

This regulation shall enter into force on 1 April 2013.

**Article 21**

This regulation shall be cited as: Regulation on the exchange of information between ACM and ministers.

This regulation shall be published with explanatory notes in the Dutch Government Gazette.

The Hague, 15 March 2013

The Minister of Economic Affairs,

H.G.J. Kamp