

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in the Netherlands****-- 2018 --****5-7 June 2019**

This report is submitted by the Netherlands to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

**JT03447159**

## *Contents*

<b>Netherlands .....</b>	<b>4</b>
<b>1. Highlights of our work in 2018.....</b>	<b>4</b>
1.1. Looking out for digital consumers .....	4
1.2. ACM facilitates the energy transition .....	4
1.3. Paying attention to prescription drug prices .....	4
1.4. Increased competition thanks to online lawyer platforms.....	5
1.5. Consumer awareness campaign ‘Online store or fake store’? .....	5
1.6. Competition on VodafoneZiggo’s and KPN’s networks .....	5
1.7. Fine and warnings in the debt collection sector .....	5
1.8. ACM saves consumers 880 million euros .....	6
<b>2. Our oversight activities .....</b>	<b>6</b>
2.1. Consumers .....	6
2.1.1. We protect consumers in the digital economy .....	6
2.1.2. We protect energy consumers .....	7
2.1.3. We deal with aggressive and misleading practices .....	7
2.1.4. We promote price transparency.....	7
2.2. Competition .....	8
2.2.1. We investigate possible violations .....	8
2.2.2. We assess mergers and acquisitions.....	8
2.2.3. We ensure that local governments compete fairly .....	9
2.2.4. Enforcement priorities.....	9
2.3. Health care .....	9
2.3.1. We assessed 13 health care mergers.....	9
2.3.2. We focus on awareness, knowledge, and compliance.....	10
2.3.3. We monitor trends and developments in our Health Care Monitor .....	10
2.4. Energy .....	10
2.4.1. We promote European market integration and the energy transition.....	11
2.4.2. We increase transparency of energy transmission tariffs .....	11
2.4.3. We help realize affordable energy transmission tariffs .....	11
2.4.4. We maintain fair competition on the energy market .....	12
2.4.5. We protect grid safety .....	12
2.5. Telecommunications, Transport and Postal Services .....	12
2.5.1. We protect well-functioning telecom markets .....	12
2.5.2. We oversee tariffs in the transport markets.....	13
2.5.3. We make sure postal markets function well.....	13
<b>3. ACM and the courts .....</b>	<b>14</b>
3.1. Competitive neutrality .....	14
3.2. Market definitions.....	14
3.3. ACM procedure for the inspection of digital data .....	14
3.4. Adjustment of the level of the fine .....	14
<b>4. Organization and resources.....</b>	<b>14</b>
4.1. Organization.....	14

---

4.1.1. ACM and the academic world.....	14
4.1.2. Data-driven oversight.....	15
4.1.3. Diversity and inclusion.....	15
4.2. Resources.....	15
4.2.1. Annual budget.....	15
4.2.2. Number of employees.....	15
4.2.3. Board.....	16

## *Netherlands*

### **1. Highlights of our work in 2018**

#### **1.1. Looking out for digital consumers**

1. Digitalization offers many benefits and options for consumers and businesses. But it also carries risks for abuse. In [InSight 2018](#), ACM called on lawmakers to think about new frameworks for the digital economy. In an opinion piece on choice architecture on websites and apps, we argued that taking advantage of well-known decision-making processes needs to stop, and that the industry must take the lead in this effort.
2. In addition, we launched specific investigations into the digital economy. For example, we looked into the terms and conditions of app stores, and we presented a study into the opportunities and risks of the introduction of 5G to the market. With regard to net neutrality, we have managed what providers are now transparent about their download speeds that they actually offer to consumers.

#### **1.2. ACM facilitates the energy transition**

3. International trade in electricity is vital to a successful energy transition and to a secure supply of energy. ACM's contribution to these efforts has been the expansion of the rules for international trade in electricity. It has made possible the import of wind power from Denmark using a submarine connection. In addition, ACM agreed to the establishment of a European trading platform, enabling the trade of short-term electricity: the European Cross Border Intraday trading platform (XBID). As we increasingly use solar and wind power, the ability to exchange electricity in a fast and flexible manner becomes ever more necessary.
4. In addition, we facilitate sustainable energy initiatives. For example, we granted distribution system operator Westland permission to experiment with the so-called Smart Grid Westland-model (SGW), which allows the available capacity in the Westland grid to be used more efficiently. Another experiment that we wish to make possible is the creation of the first direct-current network in the Netherlands by distribution system operator Liander, thereby rendering the conversion of sustainably generated direct current into alternating current no longer necessary.

#### **1.3. Paying attention to prescription drug prices**

5. Controlling the costs of prescription drugs is one part of a much larger public debate. In that context, ACM's oversight is one of the many links in the chain. In 2018, we launched a sector inquiry into TNF inhibitors, which are anti-rheumatic drugs. The costs of these drugs have a significant impact on health care costs. We expect to publish the results of this inquiry in 2019.
6. In addition, ACM gives education about its role when it comes to dealing with excessive prices in the pharmaceutical sector. Various ACM experts helped in that educational effort by publishing articles (including in academic journals). The central message in one of these publications was that competition law fully applies to patented

drugs. In another article, it was argued that lower drug prices do not always stifle innovation in the sector, but, in fact, sometimes even promote it. Finally, we launched an investigation into a drug manufacturer following a complaint about allegedly excessive prices of a drug against a rare metabolic disease.

#### **1.4. Increased competition thanks to online lawyer platforms**

7. Following a complaint from a price-comparison site for lawyers, ACM launched a study into the code of conduct for lawyers. Urged by ACM, the Dutch Bar (NOvA) adjusted its code of conduct, clarifying that lawyers are allowed to pay any reasonable amount to price-comparison websites for getting them a job.

8. On price-comparison websites, lawyers are able to present themselves to individuals and businesses that seek legal assistance. Such websites are able to promote competition, as they make it easier for visitors to compare lawyers in terms of price, expertise, and location.

#### **1.5. Consumer awareness campaign ‘Online store or fake store?’**

9. Consumers buy more and more online, and do so more and more often. Companies try to tempt consumers into making impulse purchases on social media as well. When purchasing products on social media, it is often unclear who the seller of the product is. Sometimes, you might have made a purchase from a fake store, and you will not receive your product at all. By running its consumer awareness campaign ‘Online store or fake store?’, ACM warned consumers for purchases made on social media, and informed them about their rights. It is essential that consumers know what they should be looking out for in order to be able to protect themselves when making online purchases.

10. To gauge the campaign’s impact, we had a social-science study carried out. Individuals between the ages of 18 and 45 make purchases over social media more often (34% compared with 27.5% in 2017). After seeing the campaign, individuals intend to do more checks in the future when making purchases on social media. Before making a purchase online, the majority of consumers (73%) searches for reviews or complaints about the provider.

#### **1.6. Competition on VodafoneZiggo’s and KPN’s networks**

11. ACM has decided that telecom providers VodafoneZiggo and KPN must open up their fixed networks to other telecom providers. That is how we ensure there is sufficient competition. Previously, competitors only had access to KPN’s network. Now they have the opportunity to offer broadband access, television services, and fixed telephony to consumers and businesses over VodafoneZiggo’s network as well.

12. It is expected that this will lead to more competitive prices, improved service, and more innovation. Both KPN and VodafoneZiggo have filed appeals against ACM’s decision, but they did start with the implementation of the decision. Various businesses have already expressed interest in access to the cable network.

#### **1.7. Fine and warnings in the debt collection sector**

13. ACM wants the debt collection sector to adjust its behavior in a structural manner. Debt collection abuses often involve vulnerable consumers. We take action against debt

collection agencies that do not comply with the rules. That is how we wish to reduce the problems consumers have with debt collection agencies. Based on a behavioral analysis, ACM decided on target groups and a strategy. We imposed a fine of 415,000 euros on debt collection agency Credit Invest because it exerted pressure on consumers to pay unjust bills.

14. In addition, ACM warned consumers against the practices of Pay Care, while debt-collection agency Intrum Justitia committed to providing more accurate information and using a more personalized approach. Furthermore, our educational efforts have empowered consumers more, we have given debt counsellors additional tools, and we have called on companies that hire debt collection firms to face up to their responsibility.

## 1.8. ACM saves consumers 880 million euros

15. We want to be an effective and efficient authority. ACM takes action in those areas where it can truly make a difference for consumers and markets. That is why ACM each year estimates how much it saves consumers as a result of our interventions. This outcome consists of 290 million euros from activities that were completed in 2018, and of 590 million euros from activities from previous years, which still had an impact in 2018.

16. The outcome calculation method is explained in the paper “Outcome of ACM – Calculation method of the outcome of ACM”. When calculating the outcome, ACM primarily looks at effects on price, quality, and choice. ACM uses conservative assumptions in the outcome calculation in order to prevent an overestimation of the effects.

## 2. Our oversight activities

### 2.1. Consumers

17. ACM takes action against businesses that harm consumers and competitors because they do not play by the rules. Through its consumer information portal ConsuWijzer and Business desk, ACM informs consumers and small businesses about their rights and obligations, and stimulates them to exercise their rights. In 2018, 61,105 consumers and 6,449 businesses contacted ACM. The total number of visitors of ConsuWijzer’s website increased by 7.7% to 3,274,768.

#### 2.1.1. *We protect consumers in the digital economy*

18. ACM took action whenever online stores provided incorrect or incomplete information, or made mistakes. One such example was Bralex’s websites, which displayed incorrect information about the features and prices of products. In addition, clothing brand BALR was reprimanded because the company had told several of its consumers that they could not return (within 14 days) their purchases made in its online store, because they had used a promo code.

19. At an international level, together with several European consumer authorities, we succeeded in calling on Google+, Facebook and Twitter to adjust their general terms and conditions. These platforms adjusted their general terms and conditions with regard to, for example, the right to cancel purchases, going to a local court rather than a US court, and expanded liability in favor of consumers. With the help of social-science research, we

explore the possibilities to improve the online choice architecture and the provision of information.

20. In addition, we conducted dawn raids at companies running dating sites, which were possibly misleading consumers with incorrect and misleading information about the profiles on these dating sites.

### *2.1.2. We protect energy consumers*

21. In 2018, ACM dealt with energy suppliers that displayed their prices not clearly. ACM reprimanded Easy Energy because it was unclear to customers in advance that the fixed supply costs had to be paid separately for natural gas and electricity. In addition, we completed a process in which we sought to improve the clarity of energy bills of 40 companies. Of these companies, 21 had to make improvements before February 2, 2018. In two cases, the situation was so serious that orders subject to periodic penalty payments had to be imposed. By now, all of the 40 energy suppliers send out clear energy bills to their customers.

22. In 2018, 5 energy suppliers were granted licenses, and three licenses were revoked. EnergieFlex's license was revoked because it no longer complied with the requirements set out in the supply license. ACM made sure that all of EnergieFlex's customers were transferred to another supplier so that they would continue to be supplied with electricity and natural gas.

23. In addition, we identify the trends and developments on the Dutch energy market in our Energy Monitor. In 2018, the majority of Dutch consumers know that switching energy providers pays off. 52% say they know they can save a lot of money by switching. It forces energy providers to improve their services and to lower their prices. Also, 91% of the consumers that have switched are satisfied with the process of switching to their new energy provider.

### *2.1.3. We deal with aggressive and misleading practices*

24. In 2018, we took action against aggressive and misleading practices. ACM used various enforcement instruments after assessing the problem, and deciding on the most effective approach. This can be a fine, like the one in the debt-collection sector, but it can also be a rapid intervention in the form of a serious talk, public warning, or an order subject to periodic penalty payments. Furthermore, we dealt with numerous other companies that were misleading consumers about what they offered. These included VakantieGarant, De Reisplanner, Splendid Club, and Klussersteam.

### *2.1.4. We promote price transparency*

25. We imposed fines on Belvilla and Seats&Sofas for advertising misleading prices. Also, Bo-Rent, a Dutch rental company for equipment, tools, and cars, had to display its prices with VAT included. In addition, ACM educated car tire dealers about clear pricing, and it checked whether they had clear prices. We also sat down with second-hand car dealers, because there is often a lot of uncertainty about the prices in the advertisements, and about what consumers exactly get for the advertised price. We found that, following the check, the information about prices and consumers' rights regarding warranty improved tremendously.

## 2.2. Competition

26. ACM makes sure that businesses comply with the competition rules, and compete fairly. ACM takes action against cartels and abuses of dominant positions. And we assess mergers and acquisitions in order to prevent new dominant positions from emerging.

### *2.2.1. We investigate possible violations*

27. Because of the importance of the Dutch ports to the economy, we paid extra attention to the ports in 2018. An investigation revealed that, when planning the loading and unloading of barges, Europe Container Terminals (ECT) sometimes may not have treated similar situations equally. In addition, it appeared that, for some barge operators, it was not clear what requirements they must meet in order to be given priority in ECT's planning system. ACM did not establish a violation, but it did identify anticompetitive risks. ECT made a commitment about its planning process for barges that transport containers between ECT's deep sea terminals in the port of Rotterdam and its hinterland, thereby taking away those risks.

28. Furthermore, we promoted competition between auto repair shops. We reminded auto repair shops that they are completely free to set their own prices for car maintenance, and that they are allowed to deviate from the recommended retail prices suggested by car importers. RAI Vereniging (association for the Dutch mobility sector) and BOVAG (trade association of car dealers in the Netherlands) support ACM's call, which means that competition between auto repair shops may increase.

29. In addition, we launched an investigation into the procurement market for projects involving the renovation and maintenance of roofs. We also launched an investigation into price-fixing agreements between consumer-goods manufacturers and retailers. And we established that the commitments in the ready-mix concrete sector have been effective, and we have stopped our anticartel investigation in the bunker sector. Prompted by the investigation, trade investigation NOVE will devote attention to compliance on a permanent basis.

30. In 2018, ACM did not impose any fines for violations of the competition rules. On the other hand, various investigations were still underway, and we launched several new ones into possible violations. In addition, we invested tremendously in our detection methods, for example in data analysis, and we will be launching a campaign about leniency in 2019. In this campaign, we want to remind undertakings or individuals involved of the fact that notification of violations may produce a discount on any fine. In 2019, we will complete several of these ongoing and new investigations with fines, orders to subject to periodic penalty payments or other instruments.

### *2.2.2. We assess mergers and acquisitions*

31. In 2018, ACM issued 80 decisions on planned concentrations. ACM cleared the acquisition of 130 locations of Dutch supermarket chain Emté by rival chains Jumbo and Coop on the condition that Jumbo must sell locations to a competitor in three towns. That is why ACM cleared the acquisition of these three locations by Dutch supermarket chain Jan Linders. In that way, consumers will continue to have sufficient, competitive options in their neighborhoods. In early-2018, Belgian flour product Dossche Mills was allowed to acquire its rival Meneba. ACM found that sufficient competition will remain in the flour sector.

### *2.2.3. We ensure that local governments compete fairly*

32. ACM ensures that local governments compete fairly with commercial businesses when engaging in commercial activities. Under the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets, local governments are not allowed to use any public funds for these commercial activities, and they must include all costs when engaging in commercial activities. We also received reports and complaints from businesses about local governments competing unfairly. ACM allowed the Social Insurance Bank (SVB), which implements national insurance schemes in the Netherlands, to continue managing the salary administrations for recipients of personal budgets (PGB). That is one of the SVB's public duties. We did take action against the municipality of Harlingen, which violated the law by offering the use of a boat ramp for free, thereby competing unfairly with commercial companies that offer similar services.

### *2.2.4. Enforcement priorities*

33. ACM issued new guidelines on horizontal and vertical agreements. In the new guidelines on horizontal agreements, ACM gives additional guidance to companies on signalling and buyer cartels (including wage cartels and non-poaching agreements).

34. In its vertical guidelines, ACM gives particular attention to resale price maintenance in the digital economy and restrictions on online sales following the European Commission's guidelines.

## **2.3. Health care**

35. The Dutch health care system is characterized by a combination of market-based principles and regulation. Health providers and health insurers compete with each other. But they also work together in many different ways in order to improve quality, efficiency, and innovation in health care. Some types of collaborations impede competition. These types are only allowed if patients are allowed a fair share of the benefits of such collaborations. ACM takes action against types of collaborations that do not comply with this principle. In addition, we assess whether health providers, as a result of mergers or acquisitions, do not become so large that competition is impeded. Besides our attention to prescription drug prices, we also achieved several concrete results in 2018.

### *2.3.1. We assessed 13 health care mergers*

36. We cleared the acquisition of health care provider Warmande by its rival ZorgSaam on the basis of a failing firm defense. This acquisition prevents Warmande from going bankrupt. The providers involved were sufficiently able to demonstrate that, after the concentration, the competitive landscape would not be worse off than if the concentration were not to take place.

37. In the merger assessment of NL Healthcare Clinics and Bergman Clinics, which are two independent treatment centers, focusing on specialist medical care, we looked into the merger's consequences for the options of patients and health insurers. We found that the merger would not have any negative effect on the options of patients: they will continue to have sufficient alternatives. Health insurers will not see any changes in their ability to purchase health care for their clients at the best possible price-quality ratio. That is why we cleared this merger.

38. We have intensified our attention for anticompetitive risks of hospital mergers because of potential negative effects. That is why we published in late-2018 a revised procedure for merger notifications. From now on, the merging providers have to indicate per patient group what options will remain for health insurers and insured. In that way, ACM is better able to assess the merger's effects on various types of health care services for patients and insurers.

39. At the request of the Ministry of Health, Welfare and Sport (VWS), we put forward several policy recommendations for tightening merger control in health care. The minister of Health, Welfare and Sport informed the Dutch House of Representatives that he would flesh out two of our recommendations, together with ACM, the Dutch Healthcare Authority (NZA), and the Dutch Health and Youth Care Inspectorate (IGJ).

### *2.3.2. We focus on awareness, knowledge, and compliance*

40. We wish to prevent anticompetitive collaborations. That is why we focus on awareness of, knowledge of, and compliance with competition rules among health care buyers and providers. By giving presentations, writing articles for journals, and having discussions with health care buyers and providers, we have been able to prevent harmful collaborations.

41. In addition, we showed that there is a lot of room when it comes to collaborations in the interest of patients. As a result of seismic activity in the northern Dutch province of Groningen, regional long-term care needs to be jointly strengthened and reorganized. In 2018, ACM took part in those discussions with regard to competition issues. We did so at the request of the Health Care Steering Group of the National Coordinator for Groningen (NCG).

42. We also carried out interventions in order to eliminate concrete anticompetitive risks. Midwives, postpartum nurses, obstetricians/gynecologists, and hospitals will work together even more closely in an effort to improve the quality of maternity care. But the admission criteria for these maternity care collaborations were unclear to other providers. Our intervention resulted in an adjustment of those criteria. In addition, ACM published [guidelines for the assessment of admission criteria when collaborating in maternity care](#) (in Dutch).

### *2.3.3. We monitor trends and developments in our Health Care Monitor*

43. In 2018, we once again studied the choice behavior of insured, and published these results in the Health Care Monitor. This study revealed that consumers have the impression that the policies that health insurers offer differ from each other less and less, and that they do not know whether switching would be beneficial to them. Together with the NZa, we also published [a study into the differences between basic health insurance packages](#) (in Dutch). It turns out that it is difficult for consumers to compare basic health insurance packages, thereby making it hard for them to choose one. ACM and NZa therefore call on health insurers and policymakers to make it easier for consumers to compare and choose health insurance packages.

## **2.4. Energy**

44. ACM promotes the security and affordability of the supply of energy. Energy market regulation helps promote innovation, sustainability, and leads to the lowest possible tariffs for the transmission of electricity and natural gas.

### *2.4.1. We promote European market integration and the energy transition*

45. Next to our activities with regard to the energy transition, we put out the draft decision ‘Consolidation of the Network Code and System Code for electricity’ (in Dutch: *Samenvoeging Netcode en Systeemcode elektriciteit*) for public consultation in order to have the European electricity market integrate further, and to make it more sustainable. The decision will ensure that the rules for electricity producers in the Netherlands and in the rest of Europe will converge. As a consequence, it will be easier for these producers to build wind farms and solar panels anywhere in Europe. The decision therefore helps realize a more sustainable energy generation, increase security of supply, and lower prices.

46. In addition, we have made arrangements with energy regulators in five other EU countries. For example, we mandate system operators to reserve at least 20% of the capacity on the high-voltage grids for cross-border electricity. As a result, electricity trade has increased, which may help lower prices. Also, this arrangement helps realize the energy transition as solar and wind power can be exchanged more easily between countries.

47. ACM also helps implement the energy transition by giving advice about rules and regulations, for example, with regard to investment plans and quality control systems, the reduction of natural-gas production in Groningen, the introduction of green gas, and to the regulations related to the Dutch Heat Act. Our contribution was one of the key drivers behind the improvement in the feasibility and enforceability of these rules and regulations.

48. Since July 1, 2018, new rules with regard to the gas connection requirement in the Netherlands came into force. Gas connections used to be the norm, but, today, the ambition is to be connected to more sustainable heat sources. For example, new housing development projects do not have any gas connections, unless municipalities rule that gas connections are in the public interest. ACM are informed of such decisions, which we will include in a public register.

### *2.4.2. We increase transparency of energy transmission tariffs*

49. We have determined the calculation method for the national transmission tariffs for natural gas. This is an implementation of European rules, which ensure that the tariff calculations within Europe become more transparent and easier to compare. We decided to introduce a postage stamp method, which means that, across the Netherlands, everyone pays the same transmission tariff, irrespective of geographical location.

50. As a result thereof, gas traders and gas buyers will have more certainty about the tariffs they will be faced with. This will make natural-gas transmission within Europe easier for them, thereby strengthening security of supply. The new tariff structures and conditions have been established following intensive discussions with buyers and various interest groups. Moreover, this agreement results in the withdrawal of objections and appeals in current legal proceedings concerning these topics, and it prevents new proceedings.

### *2.4.3. We help realize affordable energy transmission tariffs*

51. Revenues for the Dutch transmission system operator for natural gas Gasunie Transport Services (GTS) will fall by over EUR 8 million in 2019 as a result of an efficiency-stimulating tariff cut. Nevertheless, the cost-oriented tariffs charged by GTS will increase by around 2%, because GTS will be expected to sell less transmission capacity. The tariffs for the transmission of electricity and natural gas in 2019 will increase by EUR 1.50 per household per year.

#### *2.4.4. We maintain fair competition on the energy market*

52. ACM enforces compliance with the European regulation called REMIT (Regulation on wholesale energy market integrity and transparency) among market participants on the wholesale markets for electricity. REMIT helps combat market abuse, and increase transparency of the wholesale energy markets. In 2018, we actively focused on compliance of these rules, and approached market participants regarding missing registrations, missing reports or in the case of problems with reporting inside information. By now, we have seen improvements.

53. Liandon and Alliander DGO have new names and logos following commitments to ACM. They have rebranded themselves as Qirion and Firan, respectively, separating themselves from distribution system operator (DSO) Liander, with whom they are connected in the Alliander group. For consumers and businesses, it will become clear with whom they are dealing: with the DSO, which performs its statutory duties such as the transmission of electricity and natural gas, or with a commercial business, which carries out thereto-related activities. Behavioral studies commissioned by ACM have revealed that the name and logo changes help towards creating a clear and organized market.

#### *2.4.5. We protect grid safety*

54. In a decision, ACM laid down what safety standards new low-voltage grids must comply with. With the decision, stricter safety standards than collectively proposed by the system operators are introduced for parks, playgrounds, and recreational areas, for example. These are locations where people often walk barefoot. They are particularly vulnerable if they touch or step on live objects.

### **2.5. Telecommunications, Transport and Postal Services**

55. ACM regulates the telecommunications, transport and postal services markets. These are markets with few providers, and, in some cases, even a monopolist. With its sector-specific regulation, ACM aims to offer consumers more options, and to ensure that they are able to get services at a good price-quality ratio.

#### *2.5.1. We protect well-functioning telecom markets*

56. In addition to our regulatory activities regarding access to KPN's and VodafoneZiggo's networks, we help realize well-functioning telecom markets in many other ways. For example, we assessed numerous roaming offers of telecom providers in light of the Roaming Regulation ('roam like at home'), in which lower maximum tariffs for wholesale data roaming have been laid down, which came into force on January 1, 2018. In some cases, this led to adjustments to the offers to the benefit of consumers.

57. Also, we made sure that the use of phone numbers matched their intended purposes more closely. For example, we encouraged telecom companies to return unused numbers starting with the prefix 06 (in the Netherlands, mobile phones are assigned 06-numbers), so that these can be reissued. This will relieve some of the pressure on the number of available 06-numbers. In addition, we took stricter action against abuse of premium-rate numbers (usually 0900 and 18xy numbers) in order to prevent high phone bills and confusion among consumers.

58. One of ACM's statutory duties is to monitor trends and developments in the telecommunications sector. In 2018, we published [the 2017 Telecom Monitor](#) and [the 2017 Number Issuance Monitor](#).

### *2.5.2. We oversee tariffs in the transport markets*

59. In 2018, ACM assessed the cost allocation systems for the Dutch maritime pilots, Dutch network infrastructure manager ProRail, and Amsterdam airport Schiphol. Since 2018, oversight of Eindhoven Airport, next to Schiphol, has been part of our work. This means that we now also regulate aviation-related fees that Eindhoven Airport charges. We have already started handling the first complaints about this.

60. Following our approval of ProRail's cost allocation system, ProRail was able to publish in December its network statement, containing the conditions for access to the rail network for 2020 and beyond, as well as cost-based tariffs. From 2020, ProRail will charge railway undertakings an extra fee, as well. ACM approved the calculation method for that fee. In that context, ProRail must take into account the financial strengths of the market segments, when applying the extra fee.

61. In addition, we published a guide on rail-related services and service facilities, such as stabling yards, port terminals, and train maintenance workshops. According to European rules, owners of such services and service facilities, from mid-2019, must observe transparency with regard to the access conditions for railway undertakings. With the increase in rail traffic, it is crucial that, where reasonable, such facilities can be used by a wide range of undertakings. With this guide, we explain what the European conditions exactly mean, and how we will enforce compliance therewith.

62. Finally, we gave advice about the market for mobility service payments. According to ACM, regulation would help create equal opportunities for providers, for example, because they get equal access to the national public-transport card system and the underlying data. This promotes the development of innovative mobility services for travelers.

### *2.5.3. We make sure postal markets function well*

63. In early-2018, ACM published the Market analysis decision for 24-hour business mail, with obligations on Dutch postal operator PostNL. After the summer, the Dutch Trade and Industry Appeals Tribunal (CBb) reversed this decision as ACM had insufficiently shown that digital communication is not part of the market for 24-hour business mail. In response to this ruling, ACM made a new analysis, concluding that digital communication is indeed not part of the market for 24-hour business mail. Based on that analysis, we published in late-2018 a new draft Market analysis decision.

64. In addition, we established that Dutch postal operator PostNL had an additional room of 14.2% to raise the tariffs of the basic set of postal services. The primary reason is that mail volumes have declined, while a share of the costs is not able to decline in a similar fashion. We found that PostNL's proposal to raise the stamp price from 83 cents to 87 cents would not overstep that room.

65. Finally, it is also our duty to identify the trends and developments on the postal market, as well as the effects of liberalization. In September 2018, we published [the 2017 Postal and Parcel Markets Scan](#).

### 3. ACM and the courts

66. Many of our decisions are brought to court by market participants. The courts subsequently rule on ACM's actions. With their rulings, the courts also provide guidance for future cases. In 2018, approximately three in four rulings were in ACM's favor. In 2018, 16 fines in legal proceedings became final. These included 3 competition cases, 1 telecom case, and three consumer cases, totaling EUR 18 million.

#### 3.1. Competitive neutrality

67. The rulings in cases involving the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets, are new. In these rulings, the courts clarified the line between pure government duties and economic activities that governments carry out in competition with commercial undertakings. In the latter situation, the rules on competitive neutrality apply.

#### 3.2. Market definitions

68. A recurring subject in the court rulings are market definitions. Defining the relevant market is not a goal unto itself, but an instrument that needs to be applied, depending on the nature of the case.

Although the court rulings make ACM's duties clearer, questions about market definitions will continue to pop up in the future, especially now when markets change more rapidly than ever in the digital economy.

#### 3.3. ACM procedure for the inspection of digital data

69. Digital questions are also discussed when it comes to the use of ACM's powers. In 2018, the courts looked into the way ACM conducts digital investigations into companies it suspects to have committed violations. The court in interlocutory proceedings ruled that our procedure results in a sufficiently targeted and proportional selection of data that ACM is subsequently allowed to inspect in order to be able to determine whether a violation was committed.

#### 3.4. Adjustment of the level of the fine

70. If a violation has been committed, we are able to impose a fine. The court also assesses the level of the fine. In 2018, too, did the court substantially lower the fines in several cases, for example, in a case involving construction companies in the south of the Netherlands. Such rulings offer ACM guidance for its fining policies.

## 4. Organization and resources

### 4.1. Organization

#### 4.1.1. ACM and the academic world

71. ACM believes it is important to bring in outside knowledge. It works together with academia and other regulators in order to exchange and expand knowledge. For example, we use behavioral insights more and more often.

72. We also regularly publish papers in scientific journals. Several ACM members of staff are also part-time instructors. And we support the special chair ‘Innovation and Competition’ at Tilburg University.

73. On May 22, ACM organized a one-day conference where scholars (national and international) discussed their most recent insights with regard to cartels, fines and consumers harm. We also organized the very first Thesis Day in order to strengthen our ties with the academic world, and to make students excited about our work.

#### *4.1.2. Data-driven oversight*

74. Data is becoming more and more important in society. The volume of data that consumers and businesses generate and use increases by the day. ACM currently already works with data in different ways, and data is expected to play an even larger role in our oversight over the next few years.

75. In order to be an effective regulator that solves relevant problems for consumers and businesses, we invest in the development of new technologies, skills, and competences. We have concluded several cooperation protocols with other government agencies about the exchange of data.

76. In addition, ACM, together with the Dutch Healthcare Authority (NZa) and the Dutch Authority for the Financial Markets (AFM), set up a data-science traineeship program, where six data-science trainees rotate among ACM, NZa and AFM.

#### *4.1.3. Diversity and inclusion*

77. ACM aims to have a diverse workforce. Diversity helps us detect and understand problems in the market from a broader perspective, and it subsequently helps us select the best solutions to those problems. ACM aims to create a workplace environment where everyone feels welcome and included, regardless of their individual background.

78. We promote diversity and inclusion at the organizational level but also in smaller settings such as our LGBTI employee network and our network for young ACM employees. In 2018, ACM once again took part in the ‘Diversity Week’, a week-long awareness campaign at the Ministry of Economic Affairs and Climate Policy (EZK) and its affiliated agencies, including ACM. And we also participated in the float of Dutch Government Pride during Amsterdam Pride 2018 to show that diversity is important to us. In 2018, we took many steps with regard to diversity and inclusion, and, over the next few years, we will take our efforts to the next level.

## **4.2. Resources**

### *4.2.1. Annual budget*

79. The 2018 budget from the Ministry of Economic Affairs was approximately EUR 65,4 million.

80. The competition-related budget was approximately: EUR 17 million, (excluding a share in overhead/general expenses).

### *4.2.2. Number of employees*

81. On 31 december 2018, the number of employees amounted 567. There are 195 employees involved in competition enforcement. Of these, 103 work in the Competition

Department, 31 in the Healthcare Department (since early-2018, ACM has a separate Healthcare department dealing with competition issues in healthcare-related industries), 38 in the Legal Department, 9 in the Office of the Chief Economist, 11 in the Strategy and Communication Department; and 3 Board members. Not all people work full-time on competition enforcement. For example, employees of the Strategy and Communications Department, and the Board-members do not spend all of their time on competition issues. Of the 195 employees working on competition enforcement, 172 are actively involved in competition enforcement.

#### **4.2.3. Board**

82. Since September 1, 2018, Martijn Snoep has been the new Chairman of ACM. He succeeded Chris Fonteijn, who left office on May 1, 2018. Prior to being appointed as chairman of the ACM, Martijn Snoep worked as a competition lawyer at De Brauw Blackstone Westbroek for 28 years.

83. Currently the Board of ACM consists of Martijn Snoep as Chairman, and two Board Members, Henk Don and Cateautje Hijmans van den Bergh.