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Directorate for Financial and Enterprise Affairs
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Annual Report on Competition Policy Developments in the Netherlands

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10-12 June 2020

This report is submitted by the Netherlands to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 10-12 June 2020.

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Netherlands

1. Preface

Making sure that markets work well. That is the mission of ACM. Through effective oversight, we make a difference, and help boost confidence in markets. These were the objectives we had in mind in 2019. And looking back, we believe we have succeeded in realizing them. Money is not the only parameter, however, in monetary terms, we saved the Dutch society an estimated 755 million euros.

Staying connected with the public at large

ACM's regulatory activities are driven by real-world events and developments. We keep an ear to the ground, for example through our own channels such as consumer information portal ACM ConsuWijzer and our business desk. We also carry out our own investigations. And we receive indications from media, lawmakers, the government, and civil-society organizations. We see that some companies knowingly violate the rules. Other companies violate the rules because they did not know them. And some problems may have emerged because consumers had not been well informed. All of these aspects are taken into account when determining our strategy, which can have one of more objectives: education, prevention, compensation, and retaliation.

The digital economy and the energy transition

In 2019, we received many indications regarding the digital economy and the energy transition. And we paid special attention to vulnerable consumers. For example, we investigated misleading and aggressive selling methods with regard to energy contracts. In addition, we also made sure that the increase in the transport tariffs for electricity and natural gas was less than the inflation rate. Furthermore, we focused on online businesses that seek to steer consumer behavior using misleading and aggressive selling practices.

Three in four decisions are upheld by the courts

Throughout the years, the courts have upheld in approximately three in four cases our decisions either in full or at least their most important elements. We are satisfied with that result. Decisions are sometimes reversed because ACM had to apply laws to situations that the legislature did not anticipate at the time of writing those laws. We then look at the intention of the law. However, interpretations may differ. In general, ACM's decisions are often brought before the court anyway. Market participants usually have little to lose from such steps. It cannot get any worse, and the potential gains often outweigh the costs.

As people and businesses are online more and more often, ACM's regulatory efforts similarly become more and more data-driven. What remains constant though is that the effect of our actions continues to be central. We do not enforce for the sake of enforcement. In that way, we continue to help markets function well for people and businesses, now and in the future.

Martijn Snoep, Cateautje Hijmans van den Bergh, and Manon Leijten
Board of the Netherlands Authority for Consumers & Markets

2. Highlights of our work in 2019

2.1. Confidence in the digital world among consumers

1. In 2019, ACM targeted online businesses that increasingly seek to steer consumer behavior through misleading and aggressive commercial practices, whether or not with the help of algorithms. Through our efforts, we have helped create clear information, set fair conditions, and improve protection of online consumers. All of that is important to consumer confidence in the digital world.

2. In 2019, ACM held a public consultation of its [Guidelines on the protection of the online consumer](#). In these guidelines, ACM explains to what extent consumers can be influenced or steered by businesses in their decision-making processes. With the guidelines, we offer businesses guidance on how to design their online choice architectures in a fair and clear manner. In addition, we worked together with the Belgian and Luxembourgish authorities on the development of a new, statutory instrument for preventing anticompetitive concerns instead of repairing them afterwards.

2.2. Compliance with consumer protection rules

3. In 2019, we imposed 18 fines and 12 orders subjects to periodic penalty payments. Furthermore, we came into action 85 times, as result of which businesses voluntarily brought their practices in line with consumer protection rules.

4. At the end of 2019, ACM imposed fines on the four major telecom operators in the Netherlands, totaling 13.2 million euros, for violating consumer protection rules. ACM expects all businesses in the Netherlands to prioritize compliance with consumer protection rules.

2.3. Protection of energy consumers

5. Energy consumers are entitled to having correct information, reasonable rates and conditions, and trustworthy suppliers. That is why, in 2019, we took action against energy suppliers that offered self-employed workers and small-business owners, who consume energy at their home addresses, business energy contracts using misleading commercial practices.

6. In addition, in late-2019, we conducted a dawn raid at an energy company as part of the investigation into misleading and aggressive selling practices with regard to energy contracts to consumers. In addition, we made sure that the power content labels and the ‘guarantees of origin’ of energy suppliers (certifying that their energy is truly green) comply with the statutory requirements.

7. Finally, we set the distribution tariffs for electricity and natural gas. In 2020, they will increase, on average, by 5 euros per household per year. That is less than the inflation rate. The maximum tariffs that suppliers of individual-building heating and district heating are allowed to charge users in 2020 will decrease, on average, by 0.6 percent per year for an average household.

2.4. Room for price arrangements between self-employed workers

8. The Dutch economy has over a million self-employed workers. The Dutch Competition Act prohibits price-fixing agreements. And that applies to self-employed workers as well. However, several groups of self-employed workers have trouble keeping their heads above water because of low prices. That is why ACM in 2019 published its

[Guidelines on price arrangements between self-employed workers](#). In these guidelines, we describe four situations where self-employed workers are allowed to make arrangements about rates and prices.

9. For example, collective-bargaining agreements can be applied to self-employed workers who work “side-by-side” with employees. In addition, the cartel prohibition does not apply if self-employed workers have small turnovers or small market shares, or if anticompetitive arrangements produce larger benefits than costs. And finally, ACM will, in the period leading up to the introduction of a statutory minimum rate, not penalize any arrangements between self-employed workers that solely aim to realize the subsistence level.

2.5. Launch of various antitrust investigations

10. In 2019, ACM launched various investigations into possible violations of the Dutch Competition Act. For example, we opened an investigation into irregularities in tender processes in the civil-engineering sector in the city of Amsterdam, and another investigation into arrangements made among specialist firms in the construction industry. In addition, we conducted dawn raids at various large traders in the agricultural sector. We suspected them of making illegal arrangements about the purchasing prices that they paid to farmers.

11. ACM also launched an investigation into possible abuse of Apple’s dominant position in the App Store. And we started investigations into illegal resale price maintenance in the consumer goods sector.

12. Finally, ACM in 2019 imposed a fine of 1.84 million on a company that had obstructed an ACM investigation. Employees of that company had left WhatsApp groups and deleted chat threads during an ACM dawn raid. That is prohibited.

2.6. Conditions regarding platform and data access attached to acquisition

13. In 2019, ACM conditionally cleared the acquisition of Iddink Group, a distributor of educational materials, by publisher Sanoma Learning. Iddink Group also owns Magister, a learning management system (LMS) that many secondary schools in the Netherlands use. Sanoma Learning owns publisher Malmberg, a publisher of educational materials (including digital educational materials).

14. Under the conditions, Malmberg’s competitors must be granted access to Magister under equal conditions as Malmberg. Also, they have to be granted access to Magister’s data in the same way as Malmberg does. In that way, ACM has ensured that other publishers, too, are able to continue to improve their products and services.

2.7. No license for acquisition of Sandd by PostNL

15. Following an extensive investigation, ACM in 2019 decided not to grant a license for the acquisition of postal operator Sandd by rival PostNL. The acquisition would have created a monopolist on the postal delivery market, which would have been in a position to raise prices for business mail by 30 to 40 percent, according to ACM projections. People, businesses, and local governments would thus have paid more for sending mail.

16. However, State Secretary for Economic Affairs and Climate Policy Mona Keijzer cleared the acquisition several weeks later. Citing reasons of public interest, she believed that those outweighed the negative effects that ACM anticipated.

2.8. Looking into various prescription drug markets

17. ACM launched an investigation into possibly excessive prices of a prescription drug against a rare disease. We also launched an investigation into the discount scheme of a hospital drug with a high market share. And ACM in 2019 published the findings of its sector inquiry into TNF alpha inhibitors.

18. ACM has found that the expiration of patents have led to drops in the net purchasing prices, but that, in some cases, the generic varieties of these drugs (the so-called biosimilars) were only able to gain market shares to a limited extent. ACM therefore sees risks for the durability of price competition in the long run. It is the hospitals, health insurers, and the government's turn to make the next move, creating a level playing field.

2.9. Investments in telecom infrastructure

19. In 2019, ACM published a market study into fiber-optic. Fiber-optic connections offer consumers higher download speeds, more freedom of choice, and they are needed in order to meet the growing demand for fast broadband access, now and in the future. The number of fiber-optic connections is climbing steadily again, however the roll-out rate has suffered setbacks in some cases, especially in urban areas.

20. In addition, ACM in 2019 also published its recommendations about the upcoming spectrum auction. A balanced allocation of available frequencies is necessary in order to maintain sufficient competition on the Dutch mobile telephony market. In its recommendations, ACM believes it is necessary to impose maximum percentages (caps) on the number of frequencies that a single provider can own.

2.10. ACM saves consumers 755 million euros

21. 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. For 2019, ACM has saved consumers approximately 755 million euros. This outcome consists of approximately 88 million euros from activities that were completed in 2019, and of approximately 667 million euros from activities from previous years, which still had an impact in 2019.

22. The outcome calculation method is explained in the paper "Outcome of ACM – Calculation method of the outcome of ACM". ACM's calculation method has not changed in the last few years. The method had previously been reviewed by the CPB Netherlands Bureau for Economic Policy Analysis. For example, see the 2013 and 2014 ACM annual reports.

3. Our oversight activities

3.1. Consumers

23. ACM seeks to deal with the problems that impact consumers the most, with special attention to contemporary consumer problems such as online misleading practices and vulnerability in the energy transition.

3.1.1. Consumer empowerment

24. Through its consumer information portal ACM ConsuWijzer, ACM informs consumers about their rights, and ACM reminds businesses of their obligations through information on acm.nl. In that way, ACM wishes to empower consumers and to promote fair commercial practices. In 2019, we received 59,152 consumer reports and 3,494 reports from businesses. ACM's and ConsuWijzer's websites were visited 2,898,701 times. For the interactions with ACM, consumers gave a 7.8 (out of 10) and businesses a 7.7. In 2019, we brought the structure and design of ConsuWijzer more in line with those of ACM's. With the new name of ACM ConsuWijzer, we wanted to make the relationship between ACM as the regulatory body and its information portal ConsuWijzer clearer.

3.1.2. Consumer confidence in markets

25. ACM's efforts are aimed at having clear information, fair conditions, and increased freedom of choice for consumers. That is important for consumer confidence in markets. In 2019, we conducted an investigation into dating websites. As a result of ACM's actions, the company behind these websites, The Right Link B.V, has agreed that approximately 37,000 individuals who have been harmed on its dating websites will receive refunds. In early-2020, the company has already paid refunds totaling more than 2 million euros. In addition, these websites will inform their users more clearly about the use of fake profiles.

26. As in previous years, ACM took action against companies that provided their customers incorrect or incomplete information about their offerings. For example, we imposed fines on the four major telecom operators in the Netherlands (KPN, Tele2, T-Mobile, and Vodafone) for providing unclear information about the costs and contents of their mobile plans.

27. We also warned consumers against a network of aggressive debt collection agencies, which had put pressure on consumers to pay unjust bills. Following this intervention, we saw a significant drop in the number of consumer reports about these practices. In addition, we took action against tour operators offering packages without participating in travel guarantee funds as required by law. Consumers would risk losing their advance payments if those operators were to go bankrupt before the consumers have even made their trips. Also, we compelled several rental agencies to stop charging lessees with unlawful agency fees. We threatened to impose orders subject to periodic payments on those agencies.

28. We also imposed fines totaling 1 million on kitchen dealers Keukencentrum Mandemakers, Brugman Keukens, and Keukenconcurrent. These fines were imposed for using misleading practices vis-à-vis consumers. These three dealers had consumers sign forms, which wrongfully gave the impression that consumers were required to buy a kitchen. In addition, we dealt with various companies using rapid interventions. The aim of such interventions is to solve consumer problems as quickly as possible. In 2019, we carried out 41 such rapid interventions with regard to consumer protection.

29. On the international stage, ACM took the lead in a joint action of European consumer authorities aimed at getting a commitment from Booking.com. Booking.com will adjust its website to prevent making wrongful suggestions about scarcity and discounts on accommodation prices. In addition, ACM was in the lead in a joint effort of 26 consumer authorities worldwide calling on Apple and Google to adjust their app stores. These app stores offer app providers insufficient opportunities to inform consumers clearly about data processing in their apps.

30. ACM sees that businesses that offer their products and services online increasingly seek to steer the behavior of consumers. In our '[Guidelines on the protection of the online consumer](#)', we explain to what extent consumers can be influenced or nudged in their decision-making processes by businesses. With these guidelines, we offer businesses guidance, enabling them to design their online choice architectures in a fair and clear manner. In 2019, ACM held a public consultation for these guidelines.

3.1.3. Enforcement actions against misleading practices in the energy sector

31. Energy consumers are entitled to correct information, reasonable rates and conditions, and reliable suppliers. That is why, in 2019, we took action against energy suppliers that offered self-employed workers and small-business owners, who consume energy at their home addresses, business energy contracts using misleading commercial practices. We made clear to the sector that small-business owners who conclude energy contracts for their homes, and use this energy mostly for private purposes, are considered consumers, and are thus entitled to consumer protection. Total Gas and Power has made a commitment to ACM offering to stop the unwanted commercial practices.

32. We also made sure that the power content labels and the 'guarantees of origin' of energy suppliers (certifying that their energy is truly green) comply with the statutory requirements. Energy consumers should be able to rely on the fact that they will only switch suppliers if they consent to that switch. Also, it is important for the security of supply that energy suppliers that supply to consumers have a license. In 2019, ten licenses were granted to energy suppliers, and two were revoked. These two revoked licenses belonged to Robin Energie, which went bankrupt in early-2019. In that process, we made sure that its customers would continue to receive energy, and that they would be transferred to another energy supplier.

3.2. Competition

33. ACM takes action against cartels and against businesses that abuse their market positions. And we assess mergers and acquisitions in order to prevent businesses from obtaining too much market power so that they would be able to raise prices or reduce quality.

3.2.1. Investigations into anticompetitive arrangements

34. In 2019, ACM launched various investigations into possible violations of the Dutch Competition Act. For example, we have started an investigation into irregularities in tender processes for civil engineering in the city of Amsterdam, and into arrangements made between specialist firms in the construction sector. ACM also carried out dawn raids at multiple major traders in the agricultural sector. ACM suspects that these traders have made illegal arrangements about the buyer price that they pay farmers. ACM also launched an investigation into possible abuse of Apple's dominant position in the App Store. And ACM started investigations into illegal vertical-price maintenance in the consumer goods sector.

35. Furthermore, Dutch media company One Media Sales (OMS) promised to stop offering its so-called ‘budget-share discount’ from January 1, 2020, when selling radio advertising spots. OMS is the largest supplier of radio advertising spots in the Netherlands. Finally, ACM in 2019 imposed a fine of 1.84 million euros on a company for obstructing an ACM investigation. During a dawn raid, employees of the company under investigation for having concluded anticompetitive arrangements left several WhatsApp groups, and deleted chat conversations. That is prohibited.

3.2.2. Acquisition of educational-materials distributor Iddink Group

36. ACM has conditionally cleared the acquisition of Iddink Group, a distributor of educational materials by publisher Sanoma Learning. Iddink Group also owns Magister, a learning management system (LMS) that many secondary schools in the Netherlands use. Sanoma Learning owns publisher Malmberg, a publisher of educational materials (including digital educational materials).

3.2.3. No license for acquisition of Sandd by PostNL

37. Following an extensive investigation, ACM decided not to grant a license for the acquisition of postal operator Sandd by rival PostNL. The acquisition would have created a monopolist on the postal delivery market, which would have been in a position to raise prices for business mail by 30 to 40 percent, according to ACM projections. However, State Secretary for Economic Affairs and Climate Policy Mona Keijzer cleared the acquisition several weeks later. Citing reasons of public interest, she believed that those outweighed the negative effects that ACM anticipated.

3.2.4. We ensure that local governments compete fairly

38. Local governments cannot compete unfairly with commercial businesses. When engaging in commercial activities, local governments are subject to [special rules](#) (in Dutch). In 2019, ACM warned municipalities that they cannot make any arrangements among each other about land prices and the availability of business parks. In addition, a municipality commercially exploited a boat ramp of its own, thereby competing unfairly with a business owner who operated a nearby boat ramp. The municipality decided to close the municipal boat ramp until further notice.

3.2.5. ‘Stop cartels. Avoid a fine’

39. ACM launched a campaign called ‘[Stop cartels. Avoid a fine](#)’ (in Dutch). It appeared that many businesses knew too little about illegal cartel agreements. The campaign was primarily aimed at raising awareness among small and medium-sized businesses about the rules for fair competition between businesses.

3.2.6. Competition and innovation in the payment market

40. ACM started its enforcement of compliance with the competition rules in connection with the revised Payment Services Directive (PSD2). This is a European Directive, promoting more competition and innovation in the payment market. ACM is responsible for access to payment systems and bank account services of financial institutions such as banks. ACM also oversees the calculation of surcharges for the use of payment methods.

41. ACM launched a market study into the activities of major tech firms (so-called Big Techs) on the Dutch payments market. Well-known Big Techs include Apple, Google, Amazon, and Facebook. The market study will additionally examine Chinese Big Techs.

ACM will identify the opportunities for and risks to competition that are presented by the Big Techs' entry into the payment market. In mid-2020, ACM wishes to provide more insight into the current and future activities of the Big Techs on the Dutch payment market.

3.3. Health care

42. We enforce competition rules with regard to arrangements and dominant positions. In addition, we assess mergers and acquisitions to prevent new dominant positions from emerging. In that way, ACM contributes towards the affordability, accessibility, and quality of health care

3.3.1. *Assessment of health care mergers*

43. In 2019, ACM assessed 25 health care mergers. This was the first year in which we used our new procedure for health care merger notifications. Since 2019, hospitals and independent treatment centers that wish to merge have to indicate per patient group what options will remain for health insurers and insured. This is necessary because hospitals increasingly differentiate their range of health care services, thereby moving away from a situation where, for example, all of them offered complex care. With the new procedure, we are better able to assess the possible effects of a merger on patients and insurers for different types of health care.

44. In 2019, we cleared the acquisition of several parts of the bankrupt Slotervaart hospital by the OLVG hospital, both of which are located in Amsterdam. We also cleared the acquisition of the Lelystad location of hospital group MC IJsselmeerziekenhuizen by St Jansdal hospital. Owing to the emergency situation that arose in late-2018 because of the bankruptcy, ACM in early-2019 gave permission to proceed with the acquisition, pending a final decision by ACM. As a result, staff members were able to get new contracts, and health care could be continued. We did conduct an investigation into the effects of the mergers on patients in the long term. We came to the conclusion that these would be limited.

45. In 2019, we also assessed multiple geriatric-care mergers. That sector is characterized by relatively small local markets. Health care providers often easily gain a dominant position after a merger. In four cases, we said that the merger would have negative effects on the price of, quality of, and innovations in geriatric care. That is why we decided that, in those cases, further investigations were needed into the consequences of those mergers for seniors, their relatives, and for health buyers.

3.3.2. *'Right care in the Right Place'*

46. The health care market is currently undergoing a transition as part of the movement called 'the Right Care in the Right Place' (JZOJP). Market participants are challenged to come up with excellent and innovative solutions to complex health care problems. Some may require far-reaching collaborations. In order to prevent market participants from abandoning excellent initiatives out of hesitance about our oversight, we published [guidelines about arrangements as part of JZOJP](#). In those guidelines, we explained that we will not impose any fines if the collaboration meets five criteria. For example, the arrangements must be based on an analysis of the health care needs in a specific region, must be well substantiated, and must have verifiable objectives. And all stakeholders, including patient organizations, must be involved. If the arrangements violate the Dutch Competition Act, they will have to be adjusted, but ACM will not impose any fines.

3.3.3. Investigations into the functioning of various prescription-drug markets

47. ACM launched an investigation into possibly excessive prices of a prescription drug against a rare disease. We also launched an investigation into the discount scheme of a hospital drug with a high market share. And ACM in 2019 published the findings of its sector inquiry into TNF alpha inhibitors. ACM has found that the expiration of patents have led to drops in the net purchasing prices, but that, in some cases, the generic varieties of these drugs (the so-called biosimilars) were only able to gain market shares to a limited extent. ACM therefore sees risks for the durability of price competition in the long run. It is the hospitals, health insurers, and the government's turn to make the next move, creating a level playing field.

3.3.4. Tackling barriers to switching GPs

48. In 2019, ACM, together with the Dutch National Association of General Practitioners (LHV) and the Dutch Patient Federation (Patiëntenfederatie Nederland) tackled the barriers to switching GPs. ACM also improved its educational efforts vis-à-vis GPs and patients. ACM had conducted a survey among GPs, asking them how they deal with patients that want to switch doctors. The survey revealed that one in five GPs wrongfully refuses patients every now and then (in contravention of either their own rules or of competition rules). GPs that are not well aware of the rules are more likely to refuse patients.

3.3.5. Survey into switching behavior of health insurance customers

49. In 2019, we conducted our annual Health Care Monitor, a survey into the health insurance market. The survey revealed that individuals who need a lot of health care were considerably less likely to switch health insurers than individuals who indicate they do not need any health care. The people in this group are much more worried about being refused by another health insurer or that they will encounter hidden costs.

3.4. Energy

50. ACM promotes the security, affordability and sustainability of the supply of energy. The rapid rise of sustainable energy through wind and solar farms creates challenges for system operators with regard to network capacity. ACM makes sure that system operators make sufficient investments, which, at the same time, are also efficient. That will help towards more innovation and sustainability in the sector.

3.4.1. Rights and obligations of system operators and users

51. In 2019, ACM published several frequently asked questions and answers about the current problem of scarcity in transmission capacity on the Dutch grid. With these FAQs, ACM provides clarity about the rights and obligations of system operators and users. Energy initiatives often only gain access to the grid after considerable delays or even fail to gain access at all, since the necessary expansion of the grid usually takes longer than the construction of wind farms or solar parks. System operators must take sweeping measures to make electricity transmission possible, both through congestion management and making investments in additional capacity. That is important in order to be able to realize the energy transition.

3.4.2. Fine for connecting Fastned too late to the grid

52. In 2019, ACM imposed a fine of 50,000 euros on system operator Liander for having failed to connect a fast-charging station of Fastned to the grid within the statutory period of 18 weeks. Fastned had filed a request for enforcement with ACM about the issue. ACM requires system operators to comply with the statutory connection periods. Late connections may lead to delays, for example in construction projects or business expansion projects, and, by extension, may lead to financial damage for electricity users.

3.4.3. Exemptions granted in order to realize the energy transition

53. ACM gave TenneT, the Dutch transmission system operator for electricity, permission to connect the Wieringermeer wind farm located in the Dutch province of North Holland to its grid. This wind farm is projected to generate enough sustainable power for 370,000 households.

54. ACM has granted TenneT a temporary exemption from the rules, which means TenneT is only required to have one connection to a high-voltage station instead of two connections. The exemption applies to TenneT until the second connection becomes operational. Thanks to the exemption granted by ACM, the wind farm will become operational sooner.

3.4.4. Freedom to choose one's own energy supplier also on private networks

55. Electricity and natural gas customers on private networks or grids should also be able to choose their own energy suppliers. They are not limited to the supplier of the owner of the private network, formally called a closed distribution system (CDS). ACM in 2019 sent to stakeholders in the energy sector [a letter](#) (in Dutch) in which it explains the rules concerning private networks in greater detail. Examples of CDSs are the private networks of Amsterdam Airport Schiphol, Tata Steel, Shell, Akzo, Dow Chemical, University Medical Center Utrecht, Delft University of Technology, and Eindhoven University of Technology. Various companies that often use a lot of energy are connected to these private networks. These large-scale customers of electricity and gas on CDSs wish to be able to choose their own energy suppliers.

3.4.5. Protection of heat customers in case of interruptions

56. Heat suppliers must pay their customers compensation if their supply of heat is interrupted for a period of four hours or longer. Heat consumers that have heat pumps had questions about the applicability of the compensation rules. In 2019, ACM provided certainty in a binding line of conduct. In the line of conduct, ACM explains that, even if the customer uses a heat pump, the heat supplier has to pay compensation.

3.4.6. Investigation into insider trading on the energy market

57. In 2019, ACM conducted a dawn raid at a company that is active in the electricity sector. The reason for this dawn raid was to investigate whether the company published inside information correctly, so that all market participants had access to the same information at the same time.

58. ACM's dawn raid was part of its enforcement of compliance with the European Regulation on Wholesale Energy Market Integrity and Transparency (REMIT), which is one of ACM's duties. REMIT's objective is to detect and prevent market abuse on the wholesale energy market.

3.4.7. Network company Alliander adjusts its anticompetitive activity

59. In 2019, EXE's online transaction platform Entrnce stopped acting as balancing responsible party (BRP) for grid users. Like system operator Liander, EXE is part of network company Alliander. Alliander is making this adjustment at the insistence of ACM. The activity could have anticompetitive effects, and could carry risks that are undesirable for a network company.

3.4.8. Limited increase of energy distribution tariffs

60. ACM has the distribution tariffs for 2020. The tariffs for the distribution of electricity and natural gas will increase, on average, by 5 euros per household per year. The transmission tariffs for using the high-voltage grid will also increase. As these tariffs are paid in 2020 by distribution system operators, ACM expects the energy bill to increase further after 2020. Transmission system operator TenneT projects that this tariff increase will eventually result in an average Dutch household's energy bill to increase by approximately 13 euros per year. The maximum rates that individual-building heating and district heating suppliers are allowed to charge users will drop in 2020, on average, by 0.6% on an annual basis for an average household.

3.5. Telecommunications, Transport and Postal Services

61. ACM enforces special rules that apply to 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.

3.5.1. High-quality networks and low tariffs on the telecom market

62. There are three different types of fixed networks in the Netherlands: a fiber-optic network, a copper network, and a cable (or coax) network. Thanks to ACM, these networks are and continue to be accessible and affordable. In a 2019 market study, ACM devoted special attention to the roll-out of fiber-optic in the Netherlands. Fiber-optic connections offer consumers higher download speeds, more freedom of choice, and they are needed in order to meet the growing demand for fast broadband access, now and in the future. The number of fiber-optic connections is climbing steadily again, however the roll-out rate has suffered setbacks in some cases, especially in urban areas. In the market study, ACM therefore put forward several suggestions that could help accelerate the roll-out by taking more advantage of the opportunities that the fiber-optic market currently offers.

63. Another important development is the creation of the mobile 5G network. The Dutch Ministry of Economic Affairs and Climate Policy (EZK) will soon auction off mobile frequencies for this network. In its recommendations to the ministry, ACM believes it is necessary to impose maximum percentages (caps) on the number of frequencies that a single provider can own. In this way, the auction promotes a balanced allocation of available frequencies, and sufficient competition is maintained on the Dutch mobile telephony market.

64. In addition, ACM in 2019 started with the implementation of its 2018 Wholesale Fixed Access decision. With this decision, ACM ensured that providers without fixed networks of their own have access to the networks of KPN and VodafoneZiggo. Although the appeal proceeding against the WFA decision is still pending, telecom providers in 2019 started negotiations about access to the copper, fiber-optic, and cable networks. As these

negotiations have so far not yielded any results yet, ACM was asked to give its opinion about the offers that KPN and VodafoneZiggo gave to the market.

65. Also, ACM set maximum rates for call termination. KPN charged a number of other telecom providers surcharges for call termination, which is the routing of calls from one provider to an end-user of KPN. In 2019, we imposed an order subject to periodic penalty payments to ensure that KPN no longer charges these surcharges. KPN adjusted its conduct, so that other providers paid less. ACM also ruled in a dispute between Robin Mobile and KPN, forcing the latter to adjust its policy for dealing with unwanted anonymous phone calls.

66. Finally, ACM dealt with directory-assistance providers that used misleading practices in its advertisements. These ads gave the impression that the number that was advertised with was the direct number of, for example, a firm's customer service, whereas it was a premium-rate number for which the caller would have to pay extra. ACM imposed orders subject to periodic penalty payments on persistent offenders, withdrew numbers, and published [guidelines that directory-assistance providers have to comply with](#) (in Dutch). These guidelines offer providers guidance about how to prevent misleading practices.

3.5.2. Rail transport markets become increasingly busy

67. The Dutch rail network is Europe's busiest. And it will only become busier. This is revealed by the Rail Monitor, which the ACM published in 2019. Passenger transport has increased, and both passenger and freight transport are expected to increase over the next few years as well. That is why railway companies indicate that they are concerned about rail capacity.

68. With regard to freight transport, ACM received numerous complaints about the allocation of and tariffs for capacity by Dutch network infrastructure manager ProRail, for example regarding the use of the Kijfhoek shunting hill. ACM processed this complaint, and ruled that ProRail had taken the right decision in the allocation of rail capacity among freight rail undertakings, but that ProRail failed to follow the procedure in the right manner.

69. In addition, ACM clarified the assessment that we will have to perform, starting from the 2020/2021 timetable, if rail undertakings wish to offer new services (domestic or international) based on open access.

3.5.3. Well-functioning postal and parcel markets

70. The acquisition of Sandd by PostNL has changed the postal market dramatically. This acquisition has made obsolete the planned SMP decision that ACM prepared in 2018 and would have issued in 2019. Access to the postal network has now been regulated by the conditions that the Ministry of Economic Affairs and Climate Policy attached to the license it granted PostNL for the acquisition of Sandd. ACM will enforce compliance with these conditions.

71. The Postal and Parcel Markets Scan, published by ACM in 2019, confirmed that the postal market is evolving into a broad delivery market in which postal delivery and parcel delivery are merging. Most postal operators now also focus on parcel delivery. Compared with a year ago, more businesses offer services that start from the moment of ordering until the parcel has been delivered to the consumer (for example, inventory management and order processing). As a result, consumers are able to enjoy extended ordering hours and expedited shipping. Moreover, parcel shipping became cheaper.

4. ACM and the courts

72. Many of our decisions are brought to court. Huge interests are at stake, where our decisions often determine how markets evolve. The courts subsequently rule on ACM's actions. In 2019, approximately three in four rulings were in ACM's favor.

4.1. Enforcement strategy

73. ACM's enforcement capacity is limited. We are allowed to make choices with regard to the investigation of violations, and against what undertakings we take enforcement action. In these decision-making processes, according to the courts, we are free to set our own policy, provided that we are able to explain carefully our choices. For example, if we impose a fine on one market participant, but not on another one in similar circumstances, we will have to be able to explain why we treat these businesses differently. In such cases, the prohibition of arbitrariness or the principle of equality are not violated. In 2019, the courts have given more guidance with regard to this topic, to which ACM has conformed.

4.2. Dawn raids and ACM's procedure for the inspection of digital data

74. ACM is authorized to carry out unannounced dawn raids in order to collect information without any prior court authorization. The courts assess afterwards whether this choice of investigative approach is justified and proportional. In 2019, too, did our dawn raids pass this thorough assessment. The courts ruled that the procedure that we use for the inspection of digital data results in a proportional selection of data. ACM can thus inspect the data selected in this manner in order to be able to determine whether a violation has been committed. We do not have to give market participants unlimited access to all data that has been collected digitally. However, a market participant can request, supported by reasons, access to specific data in connection with the exercise of its rights of defense.

4.3. Market definitions

75. Following the European courts, the Dutch Trade and Industry Appeals Tribunal (CBb) confirmed that the definition of the relevant market is not a goal unto itself, but an instrument that needs to be assessed depending on the circumstances of the case in question. In 2019, the CBb ruled in the cartel cases brought to it that ACM's investigations painted a sufficiently concrete and unequivocal picture that the arrangements made in those cases had the object of restricting competition.

76. In the case involving Dutch Railways NS, the District Court of Rotterdam ruled that it had not been proven that NS had a dominant position on the main rail network. Therefore, NS could not have abused its dominant position in the tender process for the regional public-transport contract in the province of Limburg. ACM filed an appeal with the CBb because it believed that the assessment of the dominant position was not compatible with European law. The CBb's ruling is still pending.

4.4. Unequivocal interpretation of administrative-law concepts

77. The CBb not only watches over a consistent interpretation of European law. It must also ensure that the concepts found in the Dutch General Administrative Law Act (Awb) are applied uniformly without losing sight of the special features of market oversight. For example, the CBb ruled that ACM cannot impose fines of 0 euros, because the Awb does

not provide for such fines. However, the CBb does rule that ACM can decide not to impose any fine after a statement of objections has been drawn up. One example could be that a market participant is granted 100% leniency. If ACM in a decision does establish a violation but does not impose a fine, the market participant in question can bring the decision to court.

4.5. Publication of ACM decisions

78. ACM is required to publish fining decisions and orders subject to periodic penalty payments. Market participants often file for provisional injunctions in order to prevent publication of relevant decisions temporarily. The court in preliminary relief proceedings assesses these applications thoroughly. If the essentials of the decision are expected to be upheld, the court will turn down the application. For example, the level of the fine alone is not a reason to halt publication. In 2019, ACM was allowed by the court to publish five of seven decision brought forward.

5. Organization and resources

5.1. Organization

5.2. ACM and the academic world

79. ACM works together with academia and other regulators in order to bring in outside knowledge, and to exchange and expand knowledge. For example, we use behavioral insights more and more often. We also regularly publish papers in scientific journals. Several ACM employees are also part-time instructors. And we support the special chair ‘Innovation and Competition’ at Tilburg University.

80. In 2019, ACM organized a one-day international data workshop in The Hague. Among the attendees were several heads of competition authorities, but also other international colleagues and ACM employees who specifically work on data-related topics. Speakers from the German and British authorities, among other speakers, talked about their activities with regard to data, both on a substantive level as well as in terms of organization.

5.3. Diversity and inclusion

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

82. With the full support of the Board, the ACM Diversity and Inclusion Team was created in late-2018. In 2019, this team organized various initiatives, workshops, and events, such as the ‘Diversity Week’, a workshop on unbiased selection, and a week-long event where young employees ‘shadowed’ the Board. In addition, ACM paid attention to international events such as International Women’s Day, IDAHOT, and International Men’s Day. And we participated in the float of Dutch Government Pride during Amsterdam Pride 2019.

83. Furthermore, ACM in 2019 signed two nationwide charters: one about diversity and inclusion, and the other on promoting women in leadership positions. ACM will also take part in the Dutch inclusion monitor (NIM). All of these steps underline our ambitions and commitment to promoting diversity and inclusion in the workplace, and help us make targeted interventions in our strategy and in our day-to-day work in order to make ACM even more inclusive.

5.4. Resources

5.4.1. Annual budget

84. The 2019 budget from the Ministry of Economic Affairs was approximately EUR 73,1 million.

85. The competition-related budget was approximately: EUR 18,5 million.

5.4.2. Number of employees

86. On 31 December 2019, the number of employees amounted 596. There are 176 employees involved in competition enforcement. Of these, 96 work in the Competition Department, 34 in the Healthcare Department (since early-2018, ACM has a separate Healthcare department dealing with competition issues in healthcare-related industries), 30 in the Legal Department, 7 in the Office of the Chief Economist, 6 in the Strategy and Communication Department; and 3 Board members.

5.4.3. Board

87. The Board of ACM consists of Martijn Snoep as Chairman and two Board Members, Cateautje Hijmans van den Bergh and Manon Leijten (as of 1 March 2020 she succeeded Henk Don).