



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.

Establishment Act of the Authority for Consumers and Markets

Act of February 28, 2013, containing rules concerning the establishment of the Authority for Consumers and Markets (Establishment Act of the Netherlands Authority for Consumers and Markets)

We, Beatrix, by the grace of God, Queen of the Netherlands, Princess of Oranje-Nassau, etc. etc. etc.

A salute to all who will see this or hear it read!

We have thus taken into consideration that it is necessary to harmonize market oversight to improve oversight quality and the protection of consumer interests, and thus set rules that house oversight under a single, independent regulator as much as possible.

Therefore, having heard the Advisory Section of the Council of State, and in consultation with the States-General, we hereby approve and enact the following:

Chapter 1 Definitions

Section 1

In this Act and in the provisions based thereon, the following definitions are used:

- *Authority for Consumers and Markets*: the Netherlands Authority for Consumers and Markets, as referred to in Section 2, first paragraph;
- *binding instruction*: an independent order that is imposed because of a violation;
- *market organization*:
 - **1°**. a legal entity, a natural person or other entity, performing activities associated with practicing a profession or operating a business, including an undertaking within the meaning of Article 101 of the Treaty on the Functioning of the European Union;
 - **2°**. an organization in which are associated multiple legal entities, natural persons or other entities performing activities associated with practicing a profession or operating a business, included an association of undertakings within the meaning of Article 101 of the Treaty on the Functioning of the European Union;



- *Our Minister*: Our Minister of Economic Affairs;
- *independent order*: a single order to take certain actions, as referred to in Section 5:2, second paragraph, of the Dutch General Administrative Law Act, in order to ensure compliance with legal regulations.



Chapter 2 The Authority for Consumers and Markets

Section 2

1. There shall be an Authority for Consumers and Markets.
2. The Authority for Consumers and Markets is charged with the tasks assigned to it under or pursuant to the law.
3. The Authority for Consumers and Markets is also charged, as part of the tasks as referred to in the second paragraph, with informing the public on consumer rights and obligations. For the performance of this task, it shall use an information portal.
4. One of the tasks of the Authority for Consumers and Markets shall be to conduct market studies and to draw up reports of its own accord, if such, in its opinion, is beneficial to the execution of the tasks, as referred to in the second paragraph.
5. The objective of the activities of the Authority of Consumers and Markets shall be to ensure that markets function well, that market processes are orderly and transparent, and that consumers are treated with due care. To that end, it shall keep guard over, promote, and protect effective competition and a level playing field, and remove any impediments to these goals.
6. The application of the Framework Act on Autonomous Administrative Authorities also concerns the tasks that the Authority for Consumers and Markets performs in the 'public bodies' (under Dutch law) of Bonaire, St. Eustatius and Saba, which form the Caribbean Netherlands.

Section 3

1. The Authority for Consumers and Markets shall consist of three members, among whom the chairperson.
2. The appointments shall be based on the expertise that is required for carrying out the tasks of the Authority for Consumers and Markets, and on the knowledge of, and experience in, social questions and issues.
3. The chairperson shall be appointed for a seven-year term, and the other members for a five-year term. The chairperson and the other members may be reappointed once for a similar term.
4. If a seat is vacant, the remaining members shall, contrary to the provisions in the first paragraph, form the Authority for Consumers and Markets with the powers of the entire Authority for Consumers and Markets, for a period not exceeding nine months from the



moment when the seat has fallen vacant.

5. Without prejudice to Section 13, first paragraph, of the Framework Act on Autonomous Administrative Authorities, members shall not have any financial or other interests that could jeopardize their impartiality.
6. Without prejudice to Section 12 of the Framework Act on Autonomous Administrative Authorities, Our Minister shall announce a decision to dismiss a member by publishing a concise version of the decision in the Government Gazette. The reasons for the dismissal shall be made public through this decision if the member involved so requests.

Section 4

1. The Authority for Consumers and Markets shall draw up regulations of the board.
2. After the approval as referred to in Section 11 of the Framework Act on Autonomous Administrative Authorities, the Authority for Consumers and Markets shall publish the regulations of the board in the Government Gazette.

Section 5

1. Our Minister shall provide the Authority for Consumers and markets with staff for the execution of the tasks as referred to in Section 2, second paragraph.
2. The Authority for Consumers and Markets shall adopt a decision on mandate with regard to the staff's powers.
3. The decision on mandate shall be approved by Our Minister. Our Minister shall withhold his approval if, according to his opinion, the decision on mandate may impede the proper execution of tasks by the Authority for Consumers and Markets. After its approval, the decision on mandate shall be published in the Government Gazette by the Authority for Consumers and Markets.
4. If Our Minister is of the opinion that the decision on mandate impedes the proper execution of tasks, he can request the Authority for Consumers and Markets to amend the mandate.
5. If the Authority for Consumers and Markets has not complied within thirteen weeks with a request as referred to in paragraph 4, Our Minister may instruct the Authority for Consumers and Markets to amend the decision on mandate in a manner that he deems appropriate.

Section 6

1. Without prejudice to Section 18, first paragraph, of the Framework Act on Autonomous Administrative Authorities, the annual report shall contain a broad description of the trends in the markets of postal services and telecommunications.



2. When applying Section 18, second paragraph, of the Framework Act on Autonomous Administrative Authorities, the annual report shall be sent to Our Minister of Infrastructure and the Environment.
3. Our Minister shall send as soon as possible his findings about the annual report, as well as the findings of Our Minister of Infrastructure and the Environment, to both Houses of the States-General.

Section 6a [Will enter into force on January 1, 2015]

1. The costs of the Authority for Consumers and Markets that are associated with the execution of its tasks as referred to in Section 2, second paragraph, shall be charged to market organizations, unless stipulated otherwise by law.
2. The costs of the Authority for Consumers and Markets that are associated with conducting market studies and drawing up reports on its own accord, as referred to Section 2, fourth paragraph, with deciding on objections and appeals, with sanctioning violations, including taking and publishing decisions regarding the imposition of administrative sanctions and binding instructions, with activities that are conducted exclusively for other government organizations, and with giving expert advice to Our Minister or Our Minister of Infrastructure and the Environment shall not be charged to market organizations.
3. The costs of the Authority for Consumers and Markets that are associated with taking and publishing decisions, other than administrative decisions, and the enforcement of compliance with statutory provisions shall not be charged to market organizations if:
 - a. the activities in question are not aimed at realizing market regulation, or if there is no sufficiently defined group of market organizations that will benefit from the activities; or
 - b. the benefits are not expected to offset the costs that the Authority for Consumers and Markets will incur with passing on the costs, as referred to in the preamble, to market organizations.
4. By order-in-council, other costs may be identified that, contrary to the first paragraph, shall not be charged to market organizations.
5. The scheme according to which the costs are being defined and charged to the market organization shall mean that
 - a. the costs that shall be charged to market organizations shall not exceed the costs incurred by the Authority for Consumers and Markets;
 - b. both direct and indirect costs can be charged to market organizations;
 - c. the costs of the Authority for Consumers and Markets that are associated with the execution of a task for a specific sector can exclusively be charged to market



- organizations in that sector; and
- d. the costs associated with taking an administrative decision or to dealing with a request of a market organization to take an administrative decision shall be charged to the market organization at which the decision is aimed or the market organization that has made the request.
6. By order-in-council, more detailed rules shall be laid down about the scheme according to which the costs are defined and charged to the market organizations. In such an order, it may be laid down that, concerning certain categories of decisions of the Authority for Consumers and Markets that are to be defined by the decision, the average costs of the decision concerned shall be charged to a market organization.
 7. The amounts that the Authority for Consumers and Markets shall charge market organizations in order to cover the costs shall be laid down in a ministerial regulation.
 8. Under or pursuant to an order-in-council, it may be stipulated that, for the purpose of a gradual transition to the amounts that will be charged to market organizations on the basis of the previous paragraphs, other amounts will be charged for a period of no more than three years after this section comes into force. A differentiation according to market sector may be used.
 9. The Authority for Consumers or Markets may collect the amounts due from the market organizations by way of a writ of execution. Title 4.4, except for Sections 4:85 and 4:95, of the Dutch General Administrative Law Act applies *mutatis mutandis*, insofar such is not the case already.
 10. Insofar an amount charged by the Authority for Consumers and Markets mandates payment of an amount of money, this amount of money is due to the State of the Netherlands.

Section 6b

1. Anyone, if so requested, shall provide the Authority for Consumers and Markets with data and information, and, if so requested, shall allow perusal of data and documents that are reasonably considered necessary for the execution of the tasks as referred to in Section 2, second paragraph.
2. The Authority for Consumers and Markets may set a time limit within which the data, information or documents as referred to in the first paragraph shall be provided.
3. Those individuals that are under an obligation to observe confidentiality by virtue of their profession, office or statutory provision shall have the right to refuse to cooperate, insofar such refusal is the result of their obligation to observe confidentiality.



4. The Authority for Consumers and Markets shall ensure that it applies the first paragraph in such a way that the costs for market organizations arising from this application are as low as possible.

Section 7

1. Data or information that has been obtained in the course of an activity in relation to the execution of a task as meant in Section 2, second paragraph, may be used solely insofar such is necessary for the execution of that task, or any other task as referred to in Section 2, second paragraph.
2. The first paragraph shall not apply if the use of the obtained data or information is regulated by a statutory provision.
3. Contrary to the first paragraph, the Authority for Consumers and Markets is authorized to provide the following organizations or individuals with data or information:
 - a. an administrative body, service, regulator and any other person, charged with the investigation of criminal offences, or the enforcement of legal provisions, if by regulation of Our Minister it is stated that the provision is necessary for a proper execution of a task that has been attributed to this administrative body, service, regulator or other person,
 - b. a foreign institution, if the data or information involved are important or could be important for the execution of a task of this foreign institution, and this foreign institution is charged, by national legislation, with the application of rules in the same areas as those that are related to the tasks in Section 2, second paragraph, or
 - c. the person to whom the data or information relate, insofar these data or information have been provided by him or on his behalf.
4. Providing information to an administrative body, service, regulator or other person as referred to in the third paragraph, subparagraph a, or to a foreign institution as referred to in the third paragraph, subparagraph b, shall only take place if
 - a. confidentiality of the data or information is sufficiently guaranteed;
 - b. it is sufficiently guaranteed that the data or information will not be used for any other purpose than that for which the information was provided.

Section 8

Our Minister may issue more detailed rules about the provision of data or information, as referred to in Section 20 of the Framework Act on Autonomous Administrative Authorities, by the Authority for Consumers and Markets to Our Minister or to Our Minister of Infrastructure and the Environment, as well as more detailed rules about the provision of data or information by Our Minister or Our Minister of Infrastructure and the Environment to the Authority for Consumers and Markets.



Section 9

1. Our Minister and Our Minister of Infrastructure and the Environment shall refrain from giving instructions concerning individual cases.
2. The board members and the staff of the Authority for Consumers and Markets shall neither request nor accept instructions concerning individual cases.

Section 10

1. Contrary to Section 22, first paragraph, of the Framework Act on Autonomous Administrative Authorities, Our Minister or Our Minister of Infrastructure and the Environment may only overturn a decision of the Authority for Consumers and Markets if the decision concerned is an order of general application and if the decision concerned is overturned because the Authority for Consumers and Markets is not competent to take one.
2. Section 10:35 of the Dutch General Administrative Law Act shall not apply.
3. Our Minister or Our Minister of Infrastructure and the Environment cannot overturn decisions concerning energy, post, telecommunication and transport that are taken by the Authority for Consumers and Markets on the basis of provisions stated under or pursuant to an act that is valid for a specific market sector. Section 22, first paragraph, of the Framework Act on Autonomous Administrative Authorities does not apply to these decisions.
4. Our Minister or Our Minister of Infrastructure and the Environment shall send a copy of an annulment decision to both Houses of the States-General.

Section 11

If the Authority for Consumers and Markets seriously neglects its duties when carrying out activities in connection with the implementation of an act that falls under the responsibility of the Minister of Infrastructure and the Environment, Our Minister shall make arrangements as referred to in Section 23, first paragraph, of the Framework Act on Autonomous Administrative Authorities after consultation with Our Minister of Infrastructure and the Environment.

Section 12

Our Minister shall prepare the report as referred to in Section 39, first paragraph, of the Framework Act on Autonomous Administrative Authorities, after consultation with Our Minister of Infrastructure and the Environment.



Chapter 3 Enforcement and publication

§ 1. Oversight

Section 12a

1. The officials appointed by decision of the Authority for Consumers and Markets, which are public employees as referred to in Section 5, first paragraph, are entrusted with the enforcement of the compliance with the legal provisions that the Authority for Consumers and Markets has been charged with.
2. A decision as referred to in the first paragraph shall be published in the Dutch Government Gazette.

Section 12b

1. The officials as referred to in Section 12a, first paragraph, are authorized to seal off business premises and objects, insofar such is reasonably necessary for the exercise of the powers as referred to in Section 5:17 of the Dutch General Administrative Law Act.
2. The officials as referred to in the first paragraph shall, if necessary, exercise the powers assigned to them under Section 5:17 of the Dutch General Administrative Law Act with the assistance of the police.

Section 12c

1. The officials as referred to in Section 12a, first paragraph are authorized to enter a home without the resident's permission, insofar as such is, within reason, necessary for the purpose of exercising the powers assigned to them under Section 5:17 of the General Administrative Law Act.
2. The first paragraph is not applicable to the enforcement of the Authority for Consumers and Markets of the compliance with legal provisions under or pursuant to the Act on Financial Oversight.

Section 12d

1. Entering a home, as referred to in Section 12c, first paragraph, shall require a warrant in advance from the examining magistrate entrusted with the handling of criminal proceedings before the District Court of Rotterdam. Such a warrant may be requested as a precautionary measure. If possible, the warrant shall be presented.
2. Section 171 of the Dutch Code of Criminal Procedure shall apply *mutatis mutandis*. The examining judge may request the Dutch Public Prosecution Service's opinion before taking a decision.



3. Insofar the request for a warrant has not been granted, the Authority for Consumers and Markets can file an appeal with the District Court of Rotterdam against the decision of the examining magistrate within fourteen days.
4. Sections 2 and 3 of the Dutch General Act on the Entry into Dwellings shall not apply.

Section 12e

1. A warrant as referred to in Section 12d, first paragraph, shall state the reasons on which it is based, shall be signed, and shall state the following:
 - a. the name of the examining magistrate that has issued the warrant;
 - b. the name or the number and the capacity of the individual that has been granted the warrant;
 - c. the legal provisions on which the entry is based, and the purpose of the entry;
 - d. the date.
2. If the entry is of such an urgent nature that the warrant cannot be issued in writing in advance, the examining magistrate shall ensure that it is put down in writing as soon as possible.
3. The warrant shall remain valid for a period not exceeding three days after the day on which it was issued.
4. Section 6 of the Dutch General Act on the Entry of Dwellings shall not apply.

Section 12f

1. The official who has entered a home shall make a written report on the entry under oath of office or solemn affirmation.
2. In the report, the official shall state the following:
 - a. His/her name or number, and his/her capacity;
 - b. the date of the warrant and the name of the examining magistrate that has issued the warrant;
 - c. the legal provisions on which the warrant is based, and the purpose of the warrant;
 - d. the place entered and the name of the individual whose home was entered;
 - e. the manner of entry, and the times on which the home was entered and left;
 - f. the activities that were performed in the home and other incidents that occurred;
 - g. the names and the numbers and the capacities of the other individuals who entered the home.
3. The report shall be sent to the examining magistrate who issued the warrant within four days after the day on which the home was entered.



4. Within four days after the day on which the home was entered, a copy of the report shall be sent or issued to the individual whose home was entered. If the purpose for entering the home so requires, this dispatch or issuance may be postponed. In that case, the dispatch or issuance shall take place as soon as the interests of the purpose so allow. If it is not possible to send or issue the copy, the examining magistrate or the official who entered the house shall keep the copy available for six months for the individual whose home was entered.
5. Sections 10 and 11 of the Dutch General Act on the Entry of Dwellings shall not apply.

Section 12g

1. Section 5:17 of the Dutch General Administrative Law Act shall not apply to writings exchanged between market organizations and lawyers that are located at those market organizations, yet to which, if they had been located at those lawyers, Article 5:20, second paragraph of the Dutch General Administrative Law Act would apply.
2. The first paragraph applies *mutatis mutandis* to those, as referred to in Section 51, second paragraph, under 2°, of the Dutch Criminal Code.

§ 2. Commitment

Section 12h

1. Without prejudice to Section 5:45 of the Dutch General Administrative Law Act, the power of the Authority for Consumers and Markets to impose administrative fines or orders subject to periodic penalty payments shall expire if the Netherlands Authority for Consumers and Markets, at the request of the market organization, decides to declare binding a commitment made by that market organization.
2. The Authority for Consumers and Markets can take a decision as referred to in the first paragraph, if it deems the declaration of a commitment binding more efficient than the imposition of an administrative fine or an order subject to periodic penalty payments.
3. The market organization shall file a request for the issuance of a decision as referred to in the first paragraph before the Authority for Consumers and Markets has taken a decision on the imposition of an administrative fine or an order subject to periodic penalty payments.
4. The time limit, as referred to in Section 5:45, first paragraph of the Dutch General Administrative Law Act, shall be suspended starting the day on which the Authority for Consumers and Markets receives the request until the day on which the Authority for Consumers and Markets has taken a decision about the request. Section 5:45, third paragraph of the Dutch General Administrative Law Act applies *mutatis mutandis*.



5. The market organization shall act in accordance with the decision, as referred to in the first paragraph.
6. The Authority for Consumers and Markets shall determine the period in which the decision, as referred to in the first paragraph, is applicable, and can extend this period as many times as it wants.
7. The Authority for Consumers and Markets can amend or repeal a decision, as referred to in the first paragraph, or a decision for extension, as referred to in the sixth paragraph, if:
 - a. The facts on which the decision is based have changed substantially;
 - b. The decision is based on data, as provided by the market organization, that is incomplete, incorrect or misleading;
 - c. The market organization acts in violation of the fifth paragraph.

§ 3. Sanctioning

Section 12i

Section 5:10a of the Dutch General Administrative Law Act shall apply *mutatis mutandis* when interrogating a natural person who works for the market organization other than the one referred to in Section 5:10a.

Section 12j

If a legal provision is violated the compliance with which the Authority for Consumers and Markets is charged to enforce, it may impose a binding instruction on the offender.

Section 12k

1. The Authority for Consumers and Markets may extend the time limit, as referred to in Section 5:51, first paragraph, of the Dutch General Administrative Law Act, by up to 13 weeks, if it is statutorily laid down that, for the violation in question, an administrative fine can be imposed of up to 10 percent of the offender's turnover.
2. The offender shall be informed of such an extension.
3. Further rules with regard to the power to extend the time limit, as referred to in the first paragraph, may be drawn up by ministerial regulation.

Section 12l

1. With an eye to the determination of the level of the administrative fine to be imposed, the Authority for Consumers and Markets may inspect the market organization's books in order to be able to assess the financial data for imposition of the administrative fine. If so desired, it may be assisted by an independent financial expert.
2. The market organization shall cooperate with the inspection as referred to in the first paragraph.
3. The Authority for Consumers and Markets can impose an administrative fine of up to EUR



450,000 on the market organization that acts in violation of the second paragraph.

Section 12m

1. The Authority for Consumers and Markets can, in the following situations:
 - a. violation of Section 6b, first and second paragraphs;
 - b. violation of an independent order;
 - c. violation of Section 5:20, first paragraph of the Dutch General Administrative Law Act; or
 - d. breaking, removal or damage of a seal as referred to in Section 12b, first paragraph, or of the frustration, in any other way, of the closing-off as intended by the seal,

impose on the offender an administrative fine of up to EUR 450,000, or up to 1% of the market organization's turnover, whichever is greater, if a market organization is concerned within the meaning of Section 1, under 1°, or, if the violation has been committed by a market organization within the meaning of Section 1, under 2°, of the combined turnover of the associated market organizations.

2. If Section 12h, fifth paragraph is violated, the Authority for Consumers and Markets may impose on the offender an administrative fine of up to EUR 450,000 up to 10% of the market organization's turnover, whichever is greater, if a market organization is concerned within the meaning of Section 1, under 1°, or, if the violation has been committed by a market organization within the meaning of Section 1, under 2°, of the combined turnover of the associated market organizations.
3. If a violation is concerned as referred to in the first paragraph, under a or b, or if the violation as referred to in the first paragraph under c means a refusal to cooperate in the application of Section 5:17, first paragraph of the Dutch General Administrative Law Act, the Authority for Consumers and Markets may impose an order subject to periodic penalty payments ordering the offender to hand over the information the Authority for Consumers and Markets has asked for, to grant access to information, to comply with the independent order, or to grant access to the business information and documents identified in the order subject to periodic penalty payments.
4. Section 184 of the Dutch Criminal Code shall not apply to violations as referred to in the first paragraph, under c, and Section 199 of the Criminal Code shall not apply to violations as referred to in the first paragraph, under d.

Section 12n

If, under Section 5:1, third paragraph of the Dutch General Administrative Law Act, the Authority for Consumers and Markets implements Section 51, second paragraph, under 2° of the Dutch Criminal Code, the administrative fine on the offender as referred to therein shall be no higher than EUR 450,000.



Section 12o

1. If the Authority for Consumers and Markets can impose an administrative fine of no higher than a certain percentage of the turnover of the offender, the turnover of the offender shall be understood to be the net turnover, as referred to in Section 377, sixth paragraph of Book 2 of the Dutch Civil Code, which the offender achieved in the most recent financial year of which the annual accounts are available or should be available.
2. If the violation has been committed by a market organization within the meaning of Section 1, under 2°, and the Authority for Consumers and Markets can impose an administrative fine of no higher than a certain percentage of the combined turnover of the market organizations, as referred to in Section 1, under 1°, which are associated with the aforementioned market organization, the first paragraph shall apply *mutatis mutandis* to the calculation of the turnover of an associated market organization.
3. If, under the Dutch Postal Act 2009 or the Dutch Telecommunications Act, the Authority for Consumers and Markets can impose an administrative fine of no higher than a certain percentage of the turnover of the offender, the turnover of the offender shall be understood to be, contrary to the first paragraph, the net turnover, as referred to in Section 377, sixth paragraph of Book 2 of the Dutch Civil Code, which the offender achieved in the Netherlands in the most recent financial year of which the annual accounts are available or should be available.

Section 12p

1. Operation of a decision of the Authority for Consumers and Markets to impose an administrative fine shall be suspended until the time limit for filing an objection against such a decision has expired.
2. If an objection has been filed within the time limit as referred to in the first paragraph, the operation of the decision, contrary to the first paragraph, shall be suspended for 24 weeks, starting the day after the day on which the offender has been informed of the decision in the appropriate manner or, whichever is sooner, until the day after the day on which the offender has been informed of the decision on objection in the appropriate manner.

Section 12q

Without prejudice to Section 10:3, fourth paragraph of the Dutch General Administrative Law Act, the activities in connection with the imposition of an administrative fine shall not be carried out by the same individuals that have been involved in the drawing up of the statement of objections, as referred to in Section 5:48, first paragraph of the Dutch General Administrative Law Act, and in the preceding investigation.



Section 12r

1. To orders subject to periodic penalty payments, instructions may be attached concerning the provision of information to the Netherlands Authority for Consumers and Markets.
2. Orders subject to periodic penalty payments shall be valid for a period to be determined by the Authority for Consumers and Markets of no more than two years.
3. The power to impose orders subject to periodic penalty payments shall expire five years after the violation has been committed. Section 5:45, third paragraph of the Dutch General Administrative Law Act shall apply *mutatis mutandis*.

Section 12s

1. If an administrative fine has been imposed on a market organization within the meaning of Section 1, under 2°, the Authority for Consumers and Markets can, in the event of failure to pay within the time limit as referred to in Section 4:112, first paragraph of the Dutch General Administrative Law Act as a result of insolvency on the part of that market organization, demand payment of the administrative fine from any of the market organizations, within the meaning of the definition of Section 1, under 1°, that were represented in the decision-making body of the aforementioned market organization at the time of the decision to commit the violation.
2. If the administrative fine has not been fully paid after collection in accordance with the first paragraph, the Authority for Consumers and Markets can demand payment of the outstanding amount from any of the represented market organizations, as referred to in the first paragraph.
3. If the first and second paragraphs are applied, none of the represented market organizations can be demanded payment of an amount that is higher than 10 percent of the turnover achieved by the represented market organization in the most recent financial year of which the annual accounts are available or should be available.
4. A represented market organization from which payment of an administrative fine is demanded under the first or second paragraphs shall not be required to pay if it demonstrates that it did not implement the decision as referred to in the first paragraph, and that either it was not informed about that decision or that it had distanced itself from that decision before the investigation into the violation was launched.

Section 12t

If an order subject to periodic penalty payments or an administrative fine imposed by the Authority for Consumers and Markets requires payment of a sum of money, this amount is due to the State of the Netherlands.



§ 4. Publication

Section 12u

1. The Authority for Consumers and Markets shall publish decisions that it has taken to impose administrative sanctions or binding instructions (not being decisions within the meaning of Section 12v, first paragraph), provided that information that does not qualify for distribution under Section 10 of the Dutch Act on Public Access to Government Information shall not be published.
2. Publication of the decision shall not take place before ten working days have passed after the day on which the offender was informed of the decision, unless the offender has published the decision himself, has had it published, or has indicated that he has no objections against early publication.
3. If a preliminary injunction is requested within the meaning of Section 8:81 of the Dutch General Administrative Law Act, publication of the decision shall be suspended until the court in interlocutory proceedings has ruled on it, or the request has been withdrawn.
4. If the Authority for Consumers and Markets believes that publication of the decision violates or could violate the purpose of the compliance enforcement, which the Authority for Consumers and Markets has been charged with, publication shall not take place.
5. Paragraphs one through four shall also apply to decisions on objection taken by the Netherlands Authority for Consumers and Markets, imposing administrative sanctions or binding instructions.

Section 12v

1. The Authority for Consumers and Markets shall publish decisions that it has taken to impose administrative sanctions or binding instructions, provided that, with regard to the violations in question, it has been laid down in law that an administrative fine can be imposed of up to 10 percent of the turnover of the offender, and provided that:
 - a. information within the meaning of Section 10, first paragraph, under c of the Dutch Act on Public Access to Government Information are not published;
 - b. the names of natural persons involved are not published, if, according to the Netherlands Authority for Consumers and Markets, the interest of publication does not outweigh the interest as referred to in Section 10, second paragraph, under e or g of the Dutch Act on Public Access to Government Information.
 - c. the name of the offending market organization is always published, even if the name of a natural person is part of that name.
2. Section 12u, paragraphs two through four, shall apply.



3. The first paragraph shall also apply to decisions on objection taken by the Netherlands Authority for Consumers and Markets, imposing administrative sanctions or binding instructions. Section 12u, paragraphs two through four, shall apply.

Section 12w

1. The Authority for Consumers and Markets can publish other decisions it has taken than those imposing administrative sanctions or binding instructions, as well as other documents that have been drawn up by or have been had drawn up by the Authority for Consumers and Markets for the execution of the duties it has been charged with under or pursuant to the law.
2. Information that does not qualify for distribution under Section 10 of the Dutch Act on Public Access to Government Information shall not be published.
3. Section 12u, paragraphs two and three shall apply *mutatis mutandis* if the Authority for Consumers and Markets decides to publish the decision on the basis of the first paragraph.
4. Section 12u, fourth paragraph shall apply *mutatis mutandis*.
5. The first paragraph shall not apply, insofar a statutory provision regulates publication.



Chapter 3a Amendment of other acts

Section 13

[amends the Public Procurement Act 2012.]

Section 14

[amends the Public Procurement Act with regard to Defense and Security Matters.]

Section 15

[amends the Dutch General Administrative Law Act.]

Section 16

[amends Book 3 of the Civil Code.]

Section 17

[amends the Services Act.]

Section 18

[amends the Drinking Water Act.]

Section 19

[amends the Electricity Act 1998.]

Section 20

[amends the Gas Act.]

Section 21

[amends the Commercial Register Act 2007.]

Section 22

[amends the Pilotage Act.]

Section 23

[amends the Dutch Competition Act.]

Section 24

[amends the Postal Act 2009.]

Section 25

[amends the Shipping Traffic Act.]



Section 26

[amends the Dutch Railway Act.]

Section 27

[amends the Dutch Telecommunication Act.]

Section 28

[amends the Heat Act.]

Section 29

[amends the Code of Civil Procedure.]

Section 30

[amends the Dutch Act on Enforcement of Consumer Protection.]

Section 31

[amends the Act on the implementation of EU directives on energy efficiency.]

Section 32

[amends the Dutch Aviation Act.]

Section 33

[amends the Health Care Market Regulation Act.]

Section 34

[amends the Registered Pilots Market Oversight Act.]

Section 35

[amends the Act of 23 November 2006 amending the Electricity Act 1998 and the Gas Act in connection with detailed rules regarding independent grid administration.]

Section 36

[amends the Dutch Act on Financial Oversight.]

Section 37

[amends the Passenger Transport Act 2000.]

Section 38

[amends the Act on postal services in the Caribbean Netherlands.]

Section 39

[amends the Act on telecommunication facilities in the Caribbean Netherlands.]



Section 40

[amends the Collective Management Organizations (Copyright and Neighboring Rights) Oversight Act.]

Section 41

[amends the Act of 12 July 2012 amending the Dutch Electricity Act 1998 and the Dutch Gas Act (implementation of directives and regulations regarding electricity and natural gas).]



Chapter 4 Transitional and concurrence provisions

Section 42

1. Once Section 2 of this act comes into force, decisions of the Board of the Netherlands Competition Authority (NMa), those of the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) and those of the Netherlands Consumer Authority shall be designated as decisions of the Netherlands Authority for Consumers and Markets.
2. Once Section 2 of this act comes into force, applications and objections filed with the Netherlands Competition Authority (NMa), the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) or the Netherlands Consumer Authority, shall be designated as applications and objections filed with the Netherlands Authority for Consumers and Markets.
3. Once Section 2 of this act comes into force, the Authority for Consumers and Markets shall take the place of the Netherlands Competition Authority (NMa), the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) or the Netherlands Consumer Authority in administrative proceedings.
4. Once Section 2 of this act comes into force, the State of the Netherlands shall take the place of the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) in civil-law proceedings.
5. Once Section 2 of this act comes into force, the State of the Netherlands shall take the place of the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) in agreements.
6. Once Section 2 of this act comes into force, the Authority for Consumers and Markets shall take the place of the Netherlands Competition Authority (NMa), the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) or the Netherlands Consumer Authority in cooperation protocols.
7. In cases where, before Section 2 of this act comes into force, the National Ombudsman is asked to carry out an investigation into or the National Ombudsman has launched an investigation into a practice that can be attributed to the Netherlands Competition Authority (NMa), the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) or the Netherlands Consumer Authority, the Authority for Consumers and Markets shall take the place of the Netherlands Competition Authority (NMa), the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) or the Netherlands Consumer Authority at that time.



8. Archival records of the Netherlands Competition Authority (NMa), the Commission of the Netherlands Independent Post and Telecommunications Authority shall be transferred to the Netherlands Authority for Consumers and Markets, insofar they have not been transferred to an archival storage facility under the 1995 Dutch Public Records Act.

Section 43

1. The setting of a budget, within the meaning of Section 25 of the Framework Act on Autonomous Administrative Authorities, by the Authority for Consumers and Markets shall take place for the first time with regard to the calendar year after the year in which this act has been published in the Dutch Bulletin of Acts and Decrees.
2. Our Minister shall set a provisional regulation of the board for the Authority for Consumers and Markets. The provisional regulation shall remain in effect until the regulation of the board of the Authority for Consumers and Markets has been approved by Our Minister.
3. The setting of an annual report, within the meaning of Section 18 of the Framework Act on Autonomous Administrative Authorities, by the Authority for Consumers and Markets shall take place for the first time with regard to the calendar year after the year in which this act has been published in the Dutch Bulletin of Acts and Decrees, and shall concern in full or in part the execution of the duties of the Netherlands Competition Authority (NMa), the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) or the Netherlands Consumer Authority, respectively.

Section 44

1. Once Section 2 of this act comes into force, the staff of the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) shall be employed with the Dutch Central Government.
2. The transition of the employees as referred to in the first paragraph shall take place with a legal position that, as a whole, is at least equal to the one that each of them enjoyed while employed with the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA).
3. When Section 2 of this act comes into force, the assets of the Commission of the Netherlands Independent Post and Telecommunications Authority (OPTA) shall be transferred under universal title to the Dutch Central Government at a value to be determined by Our Minister in agreement with Our Minister of Finance.
4. If goods subject to registration are to be transferred pursuant to the third paragraph, Our Minister of Finance shall, without delay, register the transfer of the goods subject to registration in the public registers, as referred to in section 2 of title 1 of Book 3 of the Dutch Civil Code. Section 24, first paragraph of Book 3 of the Dutch Civil Code shall not apply.



Section 44a

The Dutch Act on Enforcement of Consumer Protection, as phrased immediately preceding the moment that Section 30 of this act comes into force, shall continue to apply to violations of the provisions under of pursuant to the Dutch Act on Enforcement of Consumer Protection for which, under the Dutch Act on Enforcement of Consumer Protection, as phrased immediately preceding said moment, administrative fines can be imposed, and which have been committed and ended before the moment Section 30 of this act comes into force.

Section 44b

A decision within the meaning of Section 49a, first paragraph of the Dutch Competition Act declaring a commitment binding, and the application for the issuance of such a decision shall, once Section 12h of this act comes into force, be designated as a decision or an application within the meaning of Section 12h, first paragraph of this act.

Section 44c

If the bill, submitted under Royal Decree of April 26, 2013, proposing the amendment of the Establishment Act of the Authority for Consumers and Markets and several other acts in connection with the streamlining of the market oversight activities of the Authority for Consumers and Markets (Parliamentary Papers 33 622) becomes law, and Section XI, part AA of that act comes into force, Section 62 of the Dutch Competition Act, as phrased immediately preceding the moment said Section XI, part AA has come into force, shall continue to apply or shall apply *mutatis mutandis* to decisions of the Authority for Consumers and Markets imposing administrative fines for violations in connection with which a report within the meaning of Section 5:48, first paragraph of the Dutch General Administrative Law Act has been drawn up before Section 12k of the Establishment Act of the Authority for Consumers and Markets has come into force.

Section 44d

If a violation of an independent order or of Section 5:20 of the Dutch General Administrative Law Act is committed and ended before Section 12m, first and third paragraphs of the Establishment Act of the Authority for Consumers and Markets have come into effect, Section 12m, first and third paragraphs shall not apply provided that the Authority for Consumers and Markets was not able to impose administrative fines for such violations immediately preceding the moment Section 12m, first and third paragraphs have come into force.

Section 44e

If a violation is committed and ended before Section 12n of the Establishment Act of the Authority for Consumers and Markets has come into effect, the laws and provisions as phrased immediately preceding the moment said Section 12n has come into force shall continue to apply to the level of the fines that can be imposed on offenders within the meaning of Section 51, second paragraph under 2° of the Dutch Criminal Code.



Section 44f

If the bill, submitted under Royal Decree of April 26, 2013, proposing the amendment of the Establishment Act of the Authority for Consumers and Markets and several other acts in connection with the streamlining of the market oversight activities of the Authority for Consumers and Markets (Parliamentary Papers 33 622) becomes law, and Sections XI, part Q, and XIV, part U, of that act come into force, Sections 63 of the Dutch Competition Act and Section 15.12 of the Dutch Telecommunication Act, as phrased immediately preceding the moment said Sections XI, part Q and XIV, part U have come into force, shall continue to apply or shall apply *mutatis mutandis* to decisions of the Authority for Consumers and Markets imposing administrative fines for violations in connection with which a report within the meaning of Section 5:48, first paragraph of the Dutch General Administrative Law Act has been drawn up before Section 12p of the Establishment Act of the Authority for Consumers and Markets has come into force.

Section 44g

If, before Section 12s of the Establishment Act of the Authority for Consumers and Markets has come into effect, a report within the meaning of Section 5:48, first paragraph of the Dutch General Administrative Law Act is drawn up in connection with a violation committed by a market organization within the meaning of Section 1, under 2° of the Establishment Act of the Netherlands Authority for Consumers and Markets, the laws and provisions as phrased immediately preceding the moment said Section 12s has come into force shall continue to apply to collection due to insolvency of that market organization.

Section 45

By regulation of Our Minister, rules shall be drawn up with regard to the implications of the coming into force of this act in cases not provided for in Sections 42 and 44. These rules shall apply no later than December 31 of the calendar year after the year in which they have come into force. When drawing up such rules, both houses of the States-General shall be informed thereof.

Section 45a

[amends the Electricity Act 1998.]

Section 45b

[amends the Gas Act.]

Section 45c

[amends the Implementation of Legal Protection Guidelines with regard to Public Procurement Act]

Section 45d

[amends the Dutch Railway Act.]

Section 45e

[amends the Dutch Railway Act.]



Section 45f

[amends the Dutch Railway Act.]

Section 45g

[amends the Dutch Telecommunication Act.]

Section 45h

[amends the Passenger Transport Act 2000.]

Section 45i

[repealed on August 1, 2014]



Chapter 5 Final provisions

Section 46

The Independent Post and Telecommunications Authority Act shall be repealed.

Section 47

This act shall enter into force at a time to be determined by Royal Decree, which may be set differently for the different sections or parts thereof.

Section 48

This act shall be cited as: Establishment Act of the Netherlands Authority for Consumers and Markets.

We hereby order and command that this Act shall be published in the Bulletin of Acts and Decrees, and that all ministries, authorities, bodies, and public employees whom it may concern shall diligently implement it.

Issued on

February 28, 2013, The Hague

Beatrix

The Minister of Economic Affairs

H.G.J. Kamp

The Minister for Housing and the Central Government Sector

S.A. Blok

Drawn up on March 21, 2013
The Minister of Security and Justice
I.W. Opstelten

26/26