

Authority for  
Consumers & Markets



# 2019 ACM Annual Report



# In 2019, we achieved the following



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# Preface



## Dear reader,

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, Manon Leijten**

# Highlights of our work in 2019



### Confidence in the digital world among consumers

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.

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.

### Compliance with consumer protection rules

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.

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.



### Protection of energy consumers

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.

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.

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.

### Room for price arrangements between self-employed workers

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.

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.





### Launch of various antitrust investigations

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.

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.

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.



### Conditions regarding platform and data access attached to acquisition

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).

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.



### No license for acquisition of Sandd by PostNL

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.

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.



### Looking into various prescription drug markets

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.



### Investments in telecom infrastructure

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.

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.



### ACM saves Dutch society 755 million euros

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 Dutch society as a result of our interventions. For 2019, ACM has saved society 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.

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.

# Our oversight activities

- > Consumers
- > Competition
- > Health care
- > Energy
- > Telecommunications, Transport & Postal Services
- > ACM and the courts



*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.*

## Consumer empowerment

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.

## Consumer confidence in markets

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. By 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.

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.

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.

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.

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.

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.

## Enforcement actions against misleading practices in the energy sector

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.

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.

# Competition



*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.*

## Investigations into anticompetitive arrangements

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.

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.

## Acquisition of educational-materials distributor Iddink Group

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).

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

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.

## **‘Stop cartels. Avoid a fine’**

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.

## **Competition and innovation in the payment market**

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.

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.





*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.*

## Assessment of health care mergers

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.

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.

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.

## 'Right care in the Right Place'

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.

### **Investigations into the functioning of various prescription-drug markets**

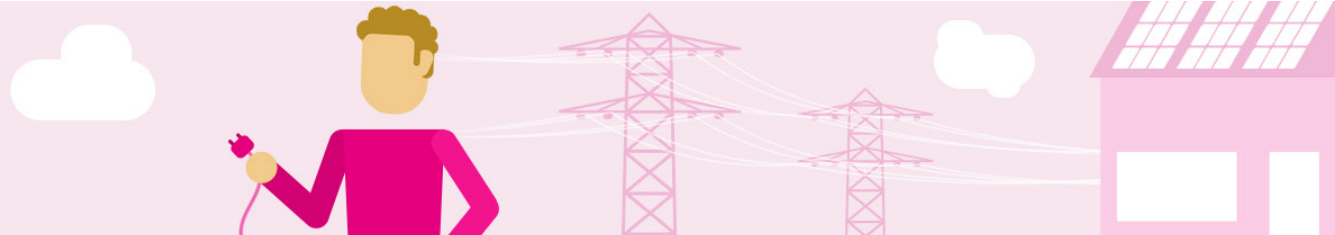
ACM launched an investigation into possibly excessive prices of a prescription drug against a rare disease. We also launched an investigation into the discount scheme of a hospital drug with a high market share. And ACM in 2019 published the findings of its sector inquiry into TNF alpha inhibitors. ACM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

### **Tackling barriers to switching GPs**

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.

### **Survey into switching behavior of health insurance customers**

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.



*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.*

## **Rights and obligations of system operators and users**

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.

## **Fine for connecting Fastned too late to the grid**

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.

## **Exemptions granted in order to realize the energy transition**

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.

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.

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

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.

## Protection of heat customers in case of interruptions

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.

## Investigation into insider trading on the energy market

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. 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.

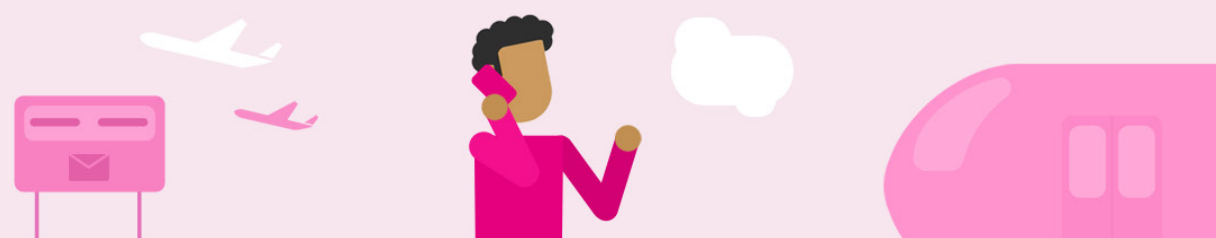
## Network company Alliander adjusts its anticompetitive activity

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.

## Limited increase of energy distribution tariffs

ACM has set 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.

# Telecommunications, Transport & Postal Services



*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.*

## High-quality networks and low tariffs on the telecom market

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.

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.

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.

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.

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.

### **Rail transport markets become increasingly busy**

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.

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.

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.

### **Well-functioning postal and parcel markets**

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.

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.





*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.*

## Enforcement strategy

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.

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

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.

## Market definitions

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.

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.

### Unequivocal interpretation of administrative-law concepts

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.

### Publication of ACM decisions

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.



# Facts & figures

- > Organization
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# Organization



## ACM and the academic world

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.

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.



## Diversity and inclusion

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.

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.

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.

## Complaints against ACM or ACM employees

If an individual feels that they are not treated properly by ACM or its staff, they have the opportunity to file a complaint. ACM handles complaints in accordance with its Complaints procedure. This procedure is based on the Dutch General Administrative Law Act (Awb). Our complaints officer handles the complaints, and gives the board advice about them. It is the board that has the final say.

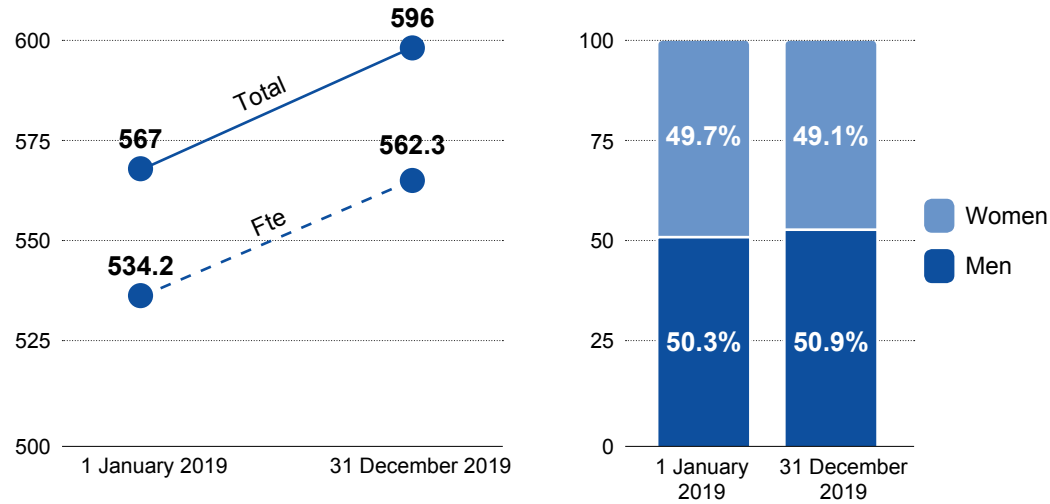
Complaints that are not handled mostly concern tip-offs and reports about companies that ACM oversees. In all of these cases, the complainants were satisfied with the complaint-handling processes. The complaints against ACM and ACM employees vary widely, ranging from payment of ACM invoices and the spam notification form to ACM's actions in a bankruptcy case involving an energy supplier. ACM issued one official decision involving one complaint.

Figure 1: Complaints against ACM or ACM employees

Total number of complaints	2019	2018
New complaints in 2019:	97	41
Complaints from 2018, completed in 2019	7	2
Complaints from 2019, to be completed in 2020:	4	7
Handled complaints		
Complaints not handled:	41	15
Complaints against ACM handled:	59	21
<i>Complaints resolved through information &amp; explanations:</i>	<b>49</b>	<b>16</b>
<i>Complaints dismissed because complainants did not respond:</i>	8	2
<i>Complaints retracted:</i>	1	1
<i>Decisions taken by Board of ACM</i>	1	2

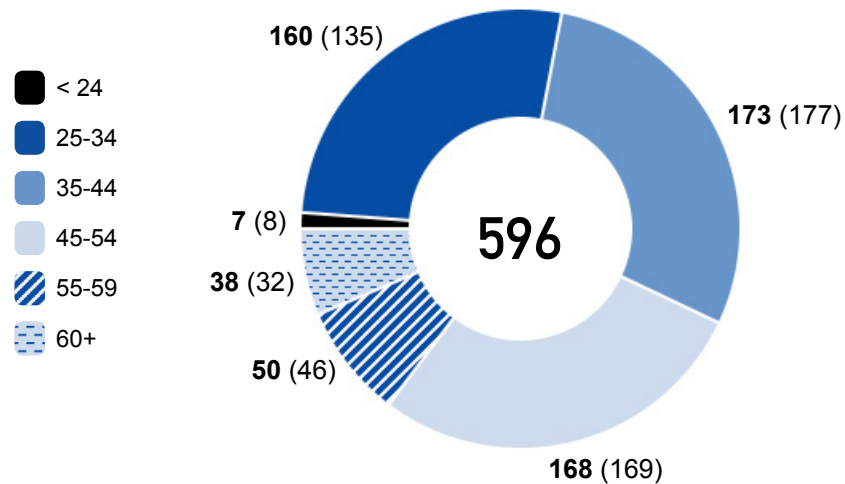
## ACM staff

**Figure 2: Employee utilization rate on 31 December 2019**



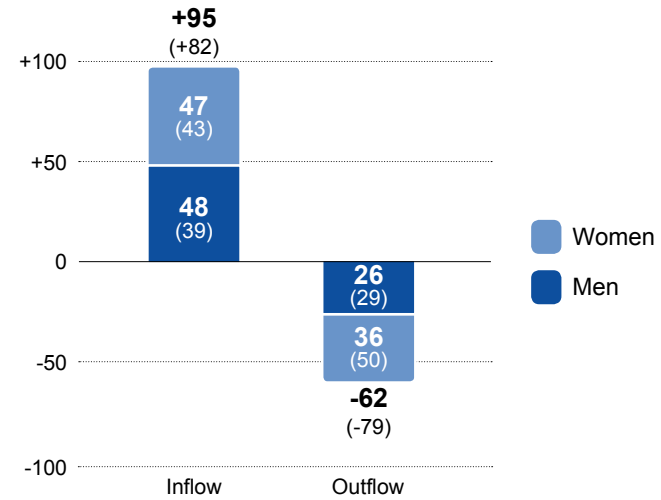
**Figure 3: Age structure of staff**

The figures in parentheses represent the 2018 figures.

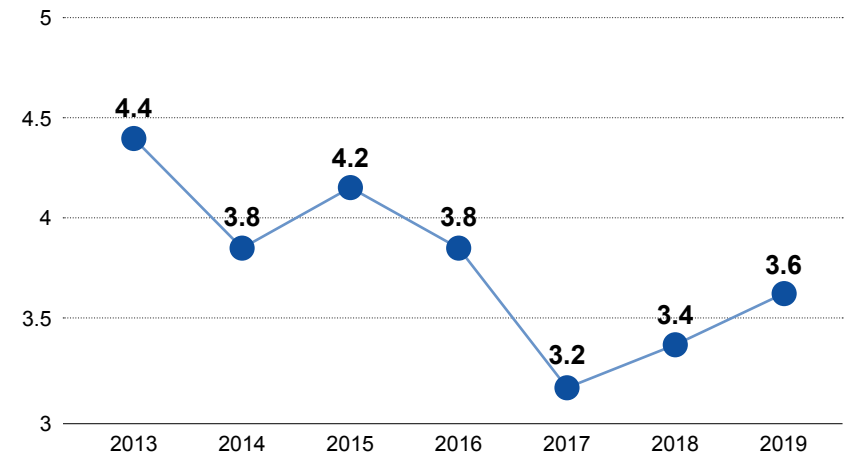


**Figure 4: Inflow and outflow of staff**

The figures in parentheses represent the 2018 figures.



**Figure 5: Absenteeism (in %)**



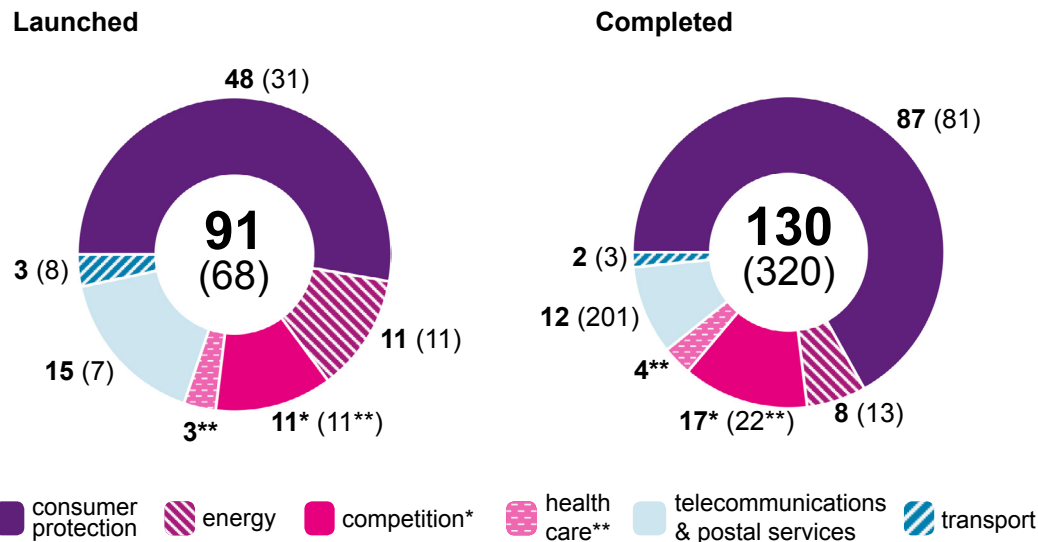
# Our oversight efforts in facts & figures

## Investigations

ACM carries out investigations on the basis of indications, reports, and ACM's own detection efforts. Our enforcement teams assess whether a violation has been committed. If that is the case, an enforcement team can use different instruments to end the violation. For some violations, enforcement teams draw up a statement of objections, which is handed over to the fining team. This team subsequently assesses whether a fine is imposed for the violation. Not all statements of objections result in fines. In addition, some of these assessments run into the next calendar year, which means the number of statements objections is not equal to the number of fines.

### Figure 6: Number of investigations

The figures in parentheses represent the 2018 figures.

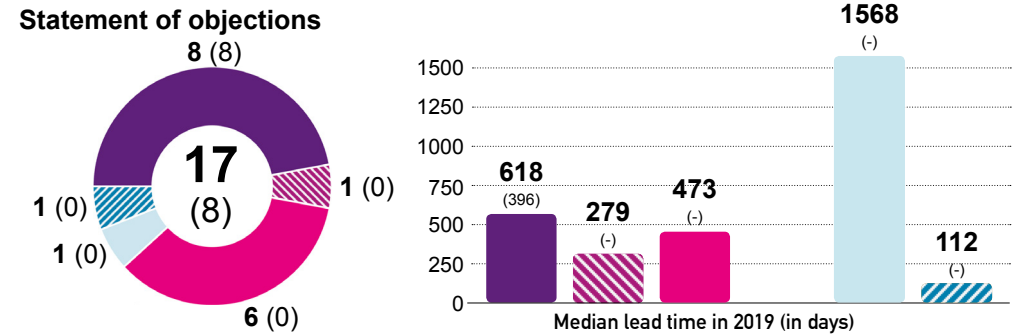


\*Includes the investigations under the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets.

\*\*Cases with regard to health care were grouped under competition in 2018.

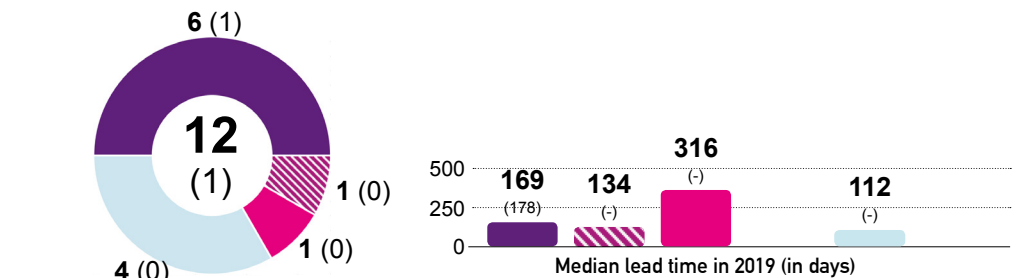
### Figure 7: Investigations completed per instrument

The figures in parentheses represent the 2018 figures. These figures also include four completed investigations under the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets. Three statements concern one and the same investigation.

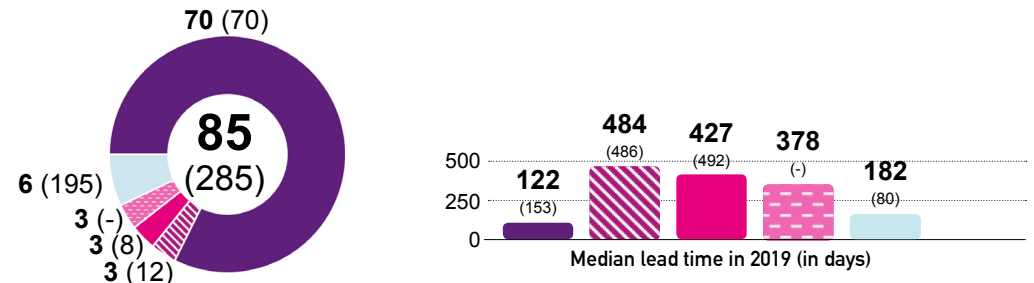


The statement of objections in the telecommunications and postal services sector is an investigation that was launched five years ago, and resulted in a statement last year. The high lead time is connected to the complexity of the case (Section 24 of the Dutch Competition Act) and the high number (thousands) of documents in the case file.

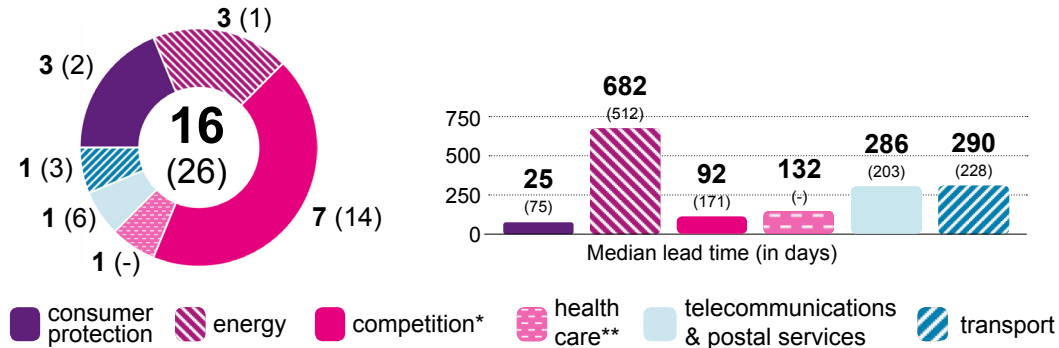
### Order subject to periodic penalty payments



### Another instrument



### Suspended without any intervention

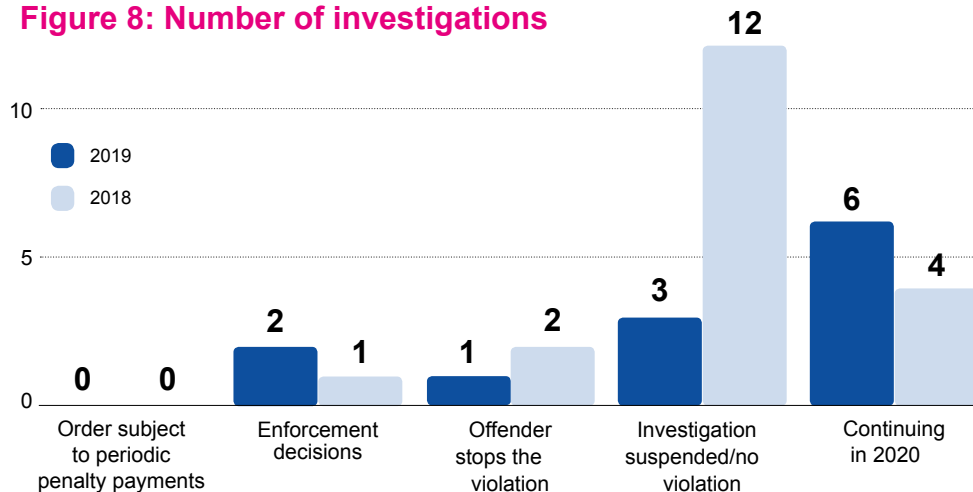


\*Includes the investigations under the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets.  
 \*\*Cases with regard to health care were grouped under competition in 2018.

### Investigations under the Dutch act on competitive neutrality

Government organizations (such as municipalities) are allowed to offer products and services on the market. If they do, they will have to play by the rules though in order to prevent unfair competition by government organizations. These rules have been laid down in the Dutch law on competitive neutrality, the Dutch Act on Government and Free Markets. This act is part of the Dutch Competition Act. In 2019, 12 such investigations were conducted.

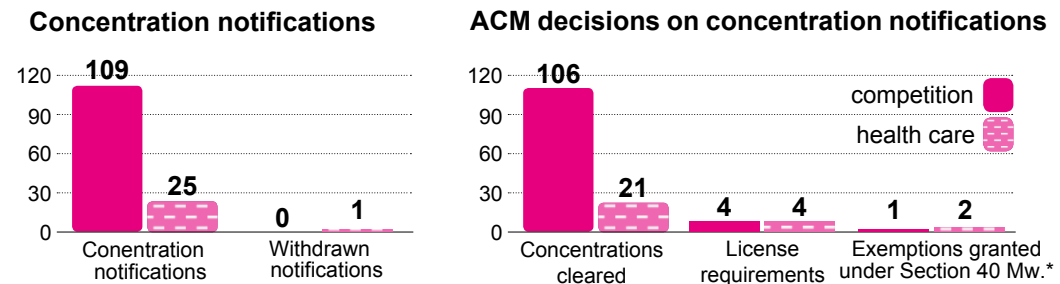
Figure 8: Number of investigations



### Concentrations

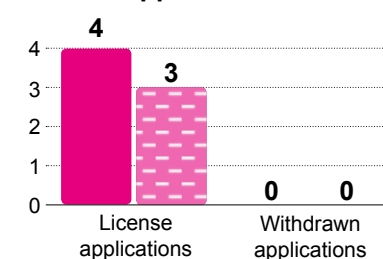
Businesses are required to notify ACM of their plans for mergers, acquisitions or joint ventures (these are all called concentrations). If ACM has been notified of a concentration, we will determine, in a so-called first phase, whether or not the concentration can go through or whether a further investigation is required. If ACM, after the first phase, has concerns about the effects on competition, the parties involved will have to apply for a license. ACM will then conduct a further investigation in the so-called second phase. As some cases run into the next calendar year, the number of notified concentrations is not equal to the number of decisions. 2019 has seen a huge increase in the number of concentration cases. Not only did the number of cases increase, so did the complexity thereof. Multiple cases had to be investigated thoroughly, and therefore required licenses.

Figure 9: concentrations

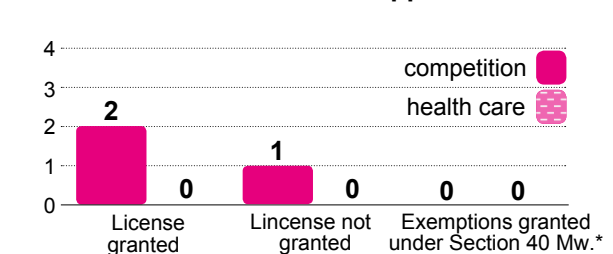


\* Large undertakings are, normally speaking, only allowed to merge after they have notified ACM of their planned concentration, and after ACM has completed its assessment thereof. In critical situations, ACM can grant an exemption in order to prevent irreparable damage inflicted on the undertakings involved if they had to wait for ACM's assessment.

### License applications



### Decision of ACM on license application



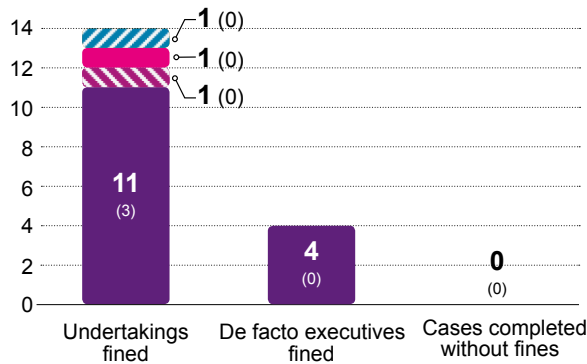
## Newly imposed fines

ACM can impose fines as a result of violations of the laws it enforces. It starts with an investigation in which a statement of objections is drawn up. Based on that statement of objections, a fine can be imposed. In 2019, ACM imposed 18 fines, of which four on de facto executives. ACM did not impose any fines in telecommunications and postal services.

**Figure 10: imposed fines and lead times**

The figures in parentheses represent the 2018 figures.

### Number of newly imposed fines

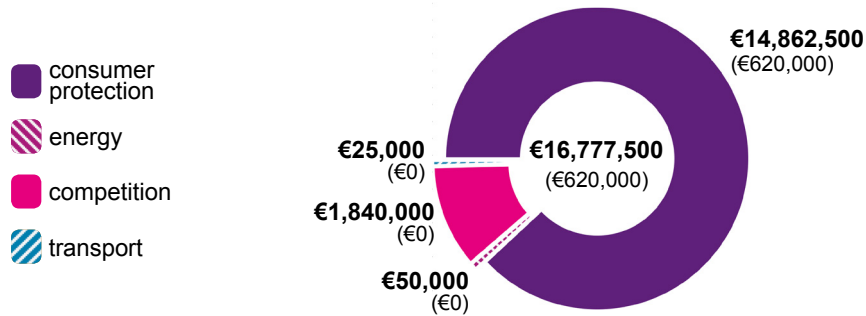


### Lead times of fines

Percentage of cases where statutory lead time was met (including cases of postponement)



### Newly imposed fines (in euros)



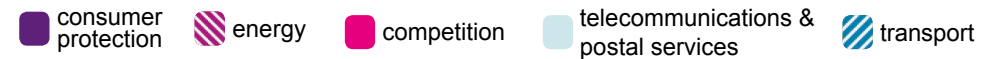
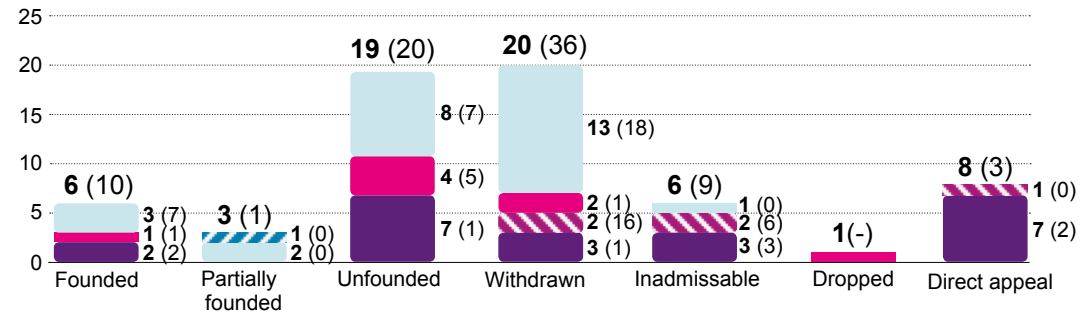
## Objections and appeals

If a party disagrees with an ACM decision, it can file an objection or an appeal. Each objection or appeal is counted separately. The handling of multiple appeals or objections is often joined together, which means multiple cases are completed in one go. The statutory lead time for objections is 42 days, and 84 days for postponements. With regard to all fields, ACM in 2019 handled a high percentage of the objections within the statutory lead time.

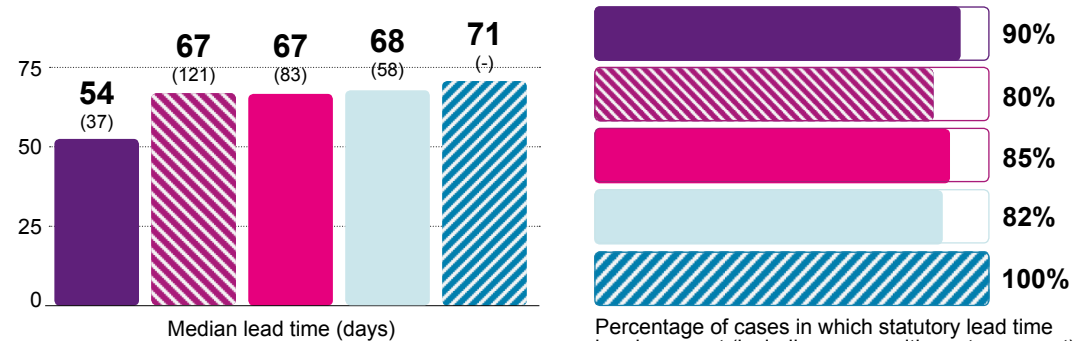
**Figure 11: Resolved objections**

The figures in parentheses represent the 2018 figures.

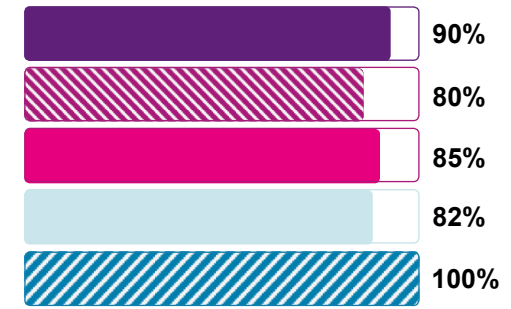
### Number of resolved objections



### Lead times of objections



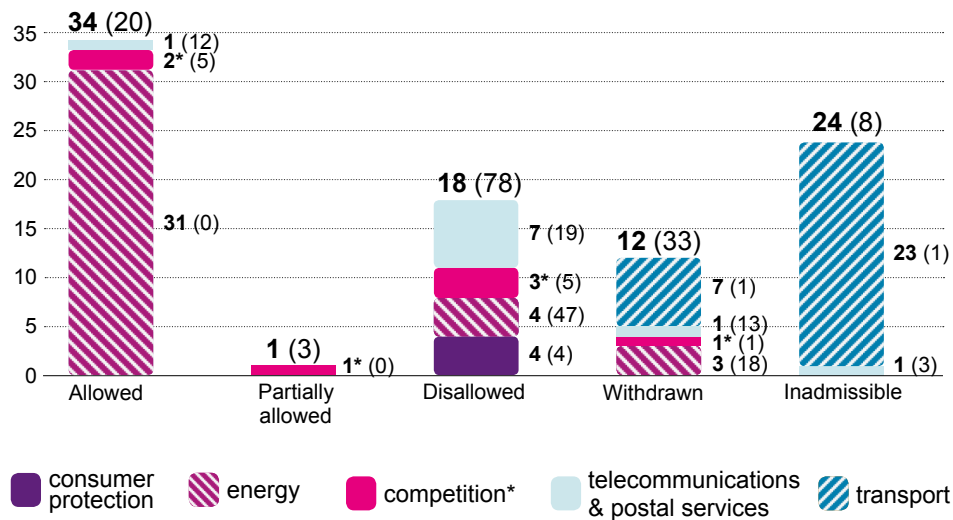
Percentage of cases in which statutory lead time has been met (including cases with postponement)





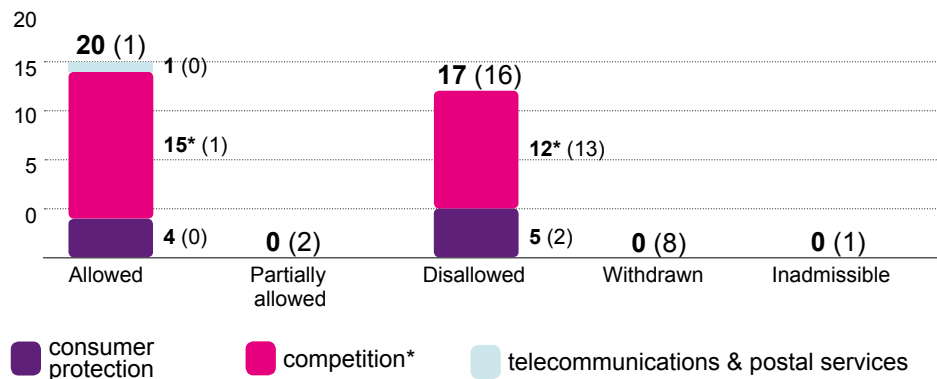
## Figure 12: Resolved appeals

The figures in parentheses represent the 2018 figures.



## Figure 13: Resolved appeals to a higher court\*\*

The figures in parentheses represent the 2018 figures.

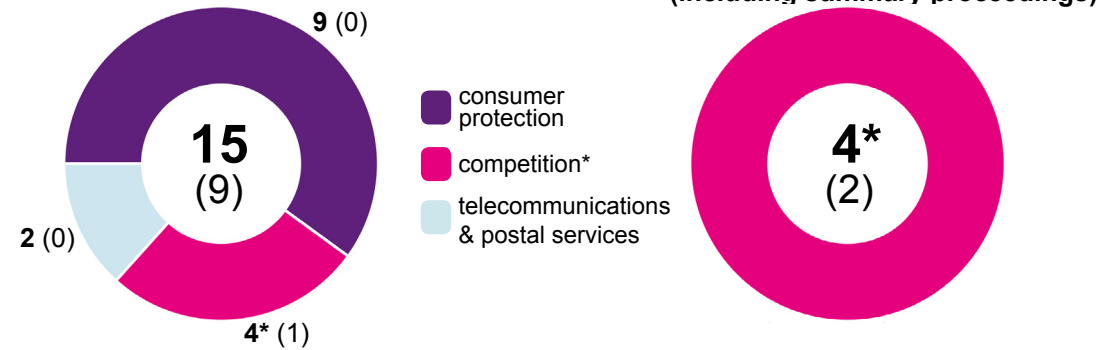


\* The figures for competition in figures 12, 13 and 14 also include procedures related to health care  
 \*\*These figures refer to whether or not an appeal against a decision of ACM has been allowed.

## Figure 14: Provisional injunctions\*\*\* and civil-law proceedings

Provisional injunctions

Civil-law proceedings (including summary proceedings)



\*\*\* These also include the provisional injunctions for which no hearings were held because they had been withdrawn.

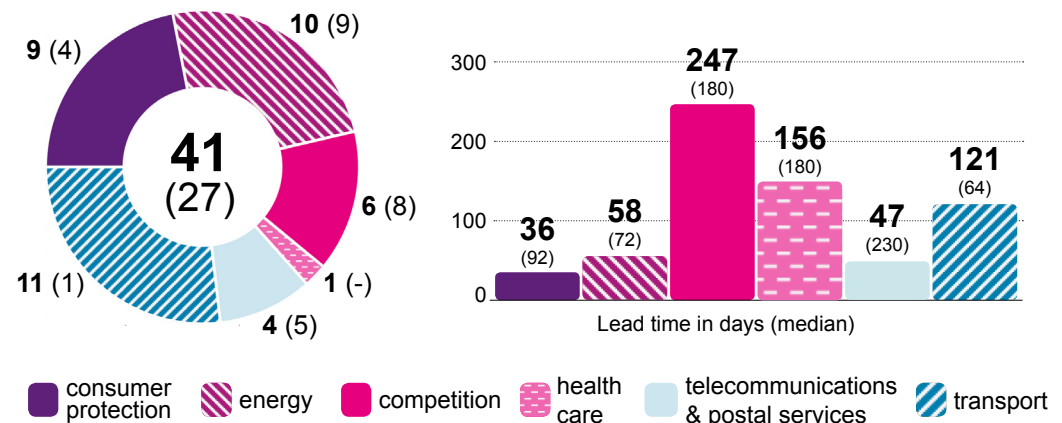
## Requests for enforcement

ACM receives many valuable tip-offs, indications, and complaints. If an official complaint is filed, it is considered a request for enforcement. ACM handles such requests with care. Other complaints, tip-offs, and indications are included in tables elsewhere in this annual report.

## Figure 15: Number of requests for enforcement

Number of requests

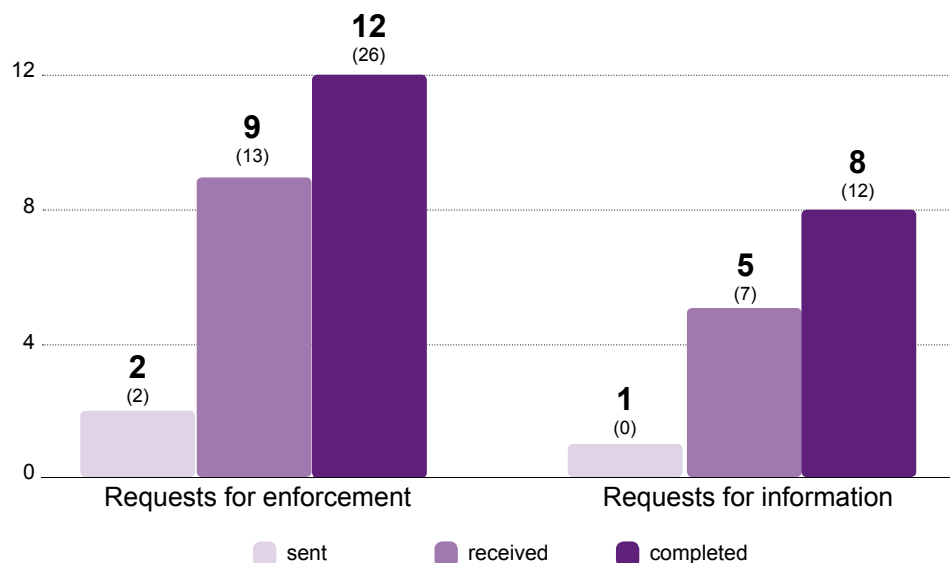
Lead times of requests





## Figure 16: European requests for information and assistance

The European consumer authorities work together within a network for consumer protection (Consumer Protection Cooperation, CPC). They can request each other's assistance when dealing with cross-border violations. The figures in parentheses represent the 2018 figures.

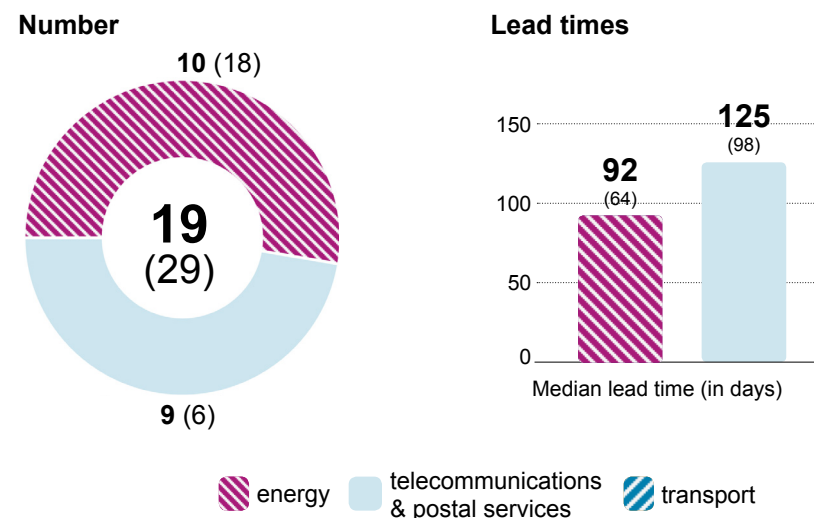


## Disputes in regulated sectors

Consumers and businesses do not always agree with the methods of operators or suppliers in the energy, telecommunications, postal services and transport sectors. In such situations, the disputes can be submitted to ACM. ACM seeks to resolve disputes to the satisfaction of both parties. If parties file an appeal against the dispute decision, the case will be brought to the Dutch Trade and Industry Appeal Tribunal (CBb). In 2019, this happened in 5 disputes. Both in the energy sector and in the telecommunications and postal services sector, the median lead time was higher than in 2018, which was primarily caused by the completion of several complex, multi-year cases in 2019, and the low number of completed disputes.

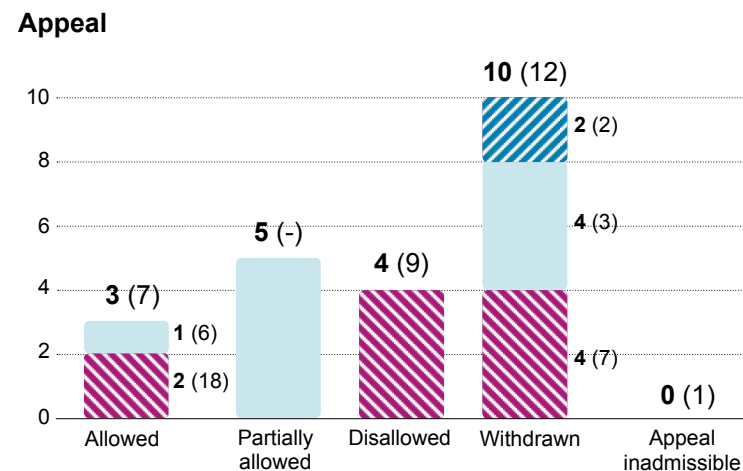
## Figure 17: Disputes in regulated sectors

The figures in parentheses represent the 2018 figures.



## Figure 18: Resolved disputes in regulated sectors

The figures in parentheses represent the 2018 figures.

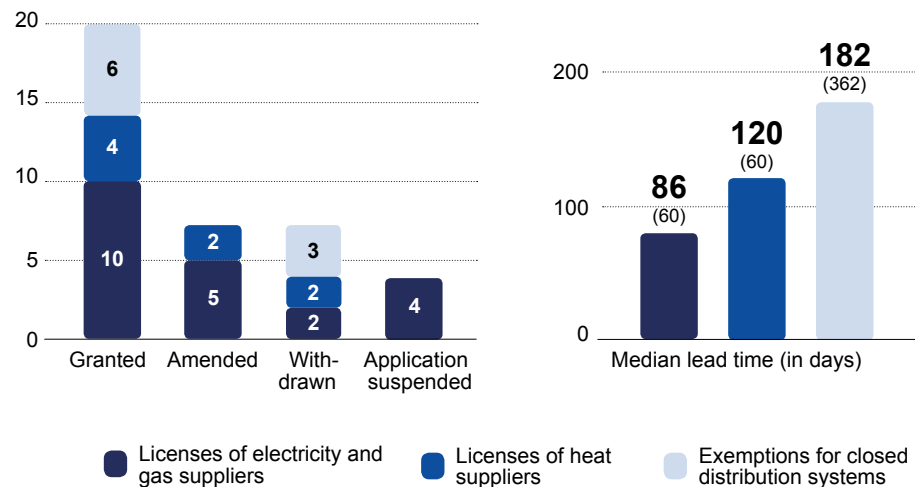


## Licenses and exemptions

ACM grants licenses and exemptions in the energy sector. For the supply of electricity and natural gas, suppliers need to have a license. All providers that supply heat to consumers and small-scale users, too, have a license requirement. This obligation does not apply to small heat providers and providers that own or rent out the building to which heat is supplied. Owners of grids or gas transmission networks must designate a system operator. Sometimes there may be circumstances in which it is unreasonable to designate a system operator. Owners can then apply for an exemption with ACM. In 2019, six exemptions were granted.

**Figure 19: Completed licenses and exemptions**

The figures in parentheses represent the 2018 figures.

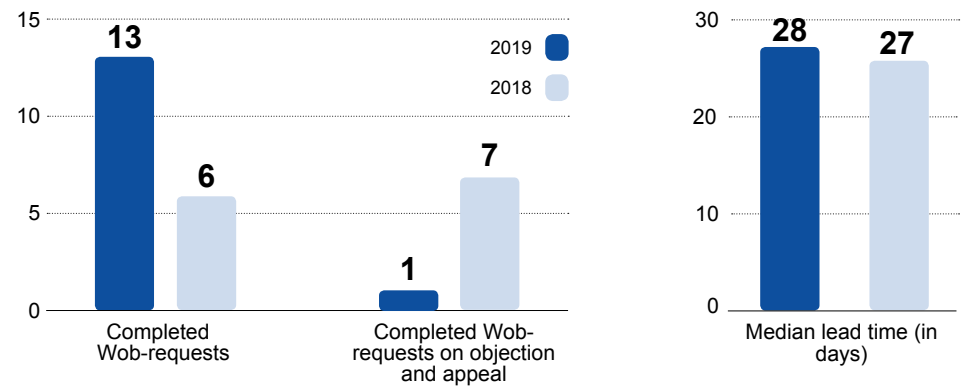


*Applications for exemptions from designation of a system operator are often complex cases. In practice, we see that we need the entire time limit (1 year in total) to process the applications. In consultation with the parties involved, and considering our desire to make careful preparations, ACM processes the applications as swiftly as possible. In 2019, 88% of applications were completed within the time limit.*

## Requests under Dutch Act on Public Access to Government Information

Consumers and businesses have the opportunity to request information regarding the government's actions. They can do so under the Dutch Act on Public Access to Government Information (Wob). After seeing a steady decline in the number of such requests over the past few years, 2019 marked an uptick in that number for the first time in years. With regard to six Wob-requests, the statutory term limit of 28 days was exceeded.

**Figure 20: Completed Wob-requests**

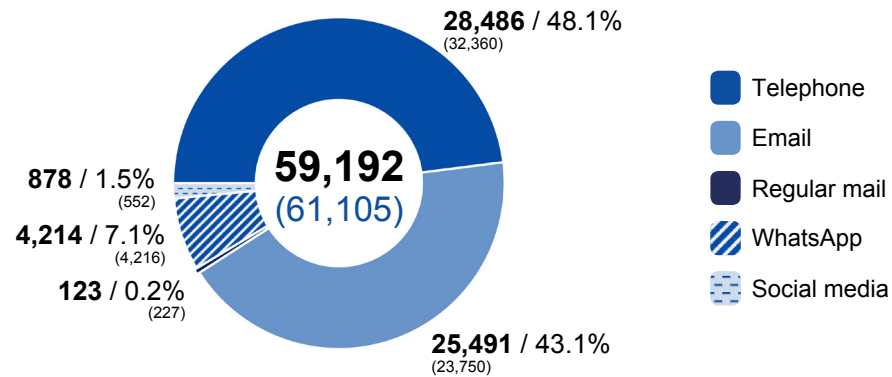


## Indications submitted by consumers

Consumers contact consumer information portal ACM ConsuWijzer for various reasons. They can ask questions, but also file complaints about a company. We refer to such questions and complaints as indications. ACM bases its oversight to a large extent on the number of indications it receives.

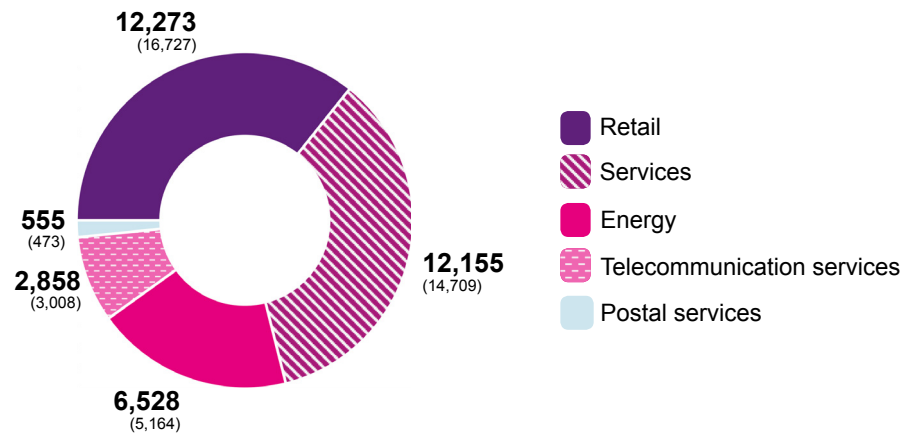
**Figure 21: Indications submitted to ACM ConsuWijzer**

The figures in parentheses represent the 2018 figures.



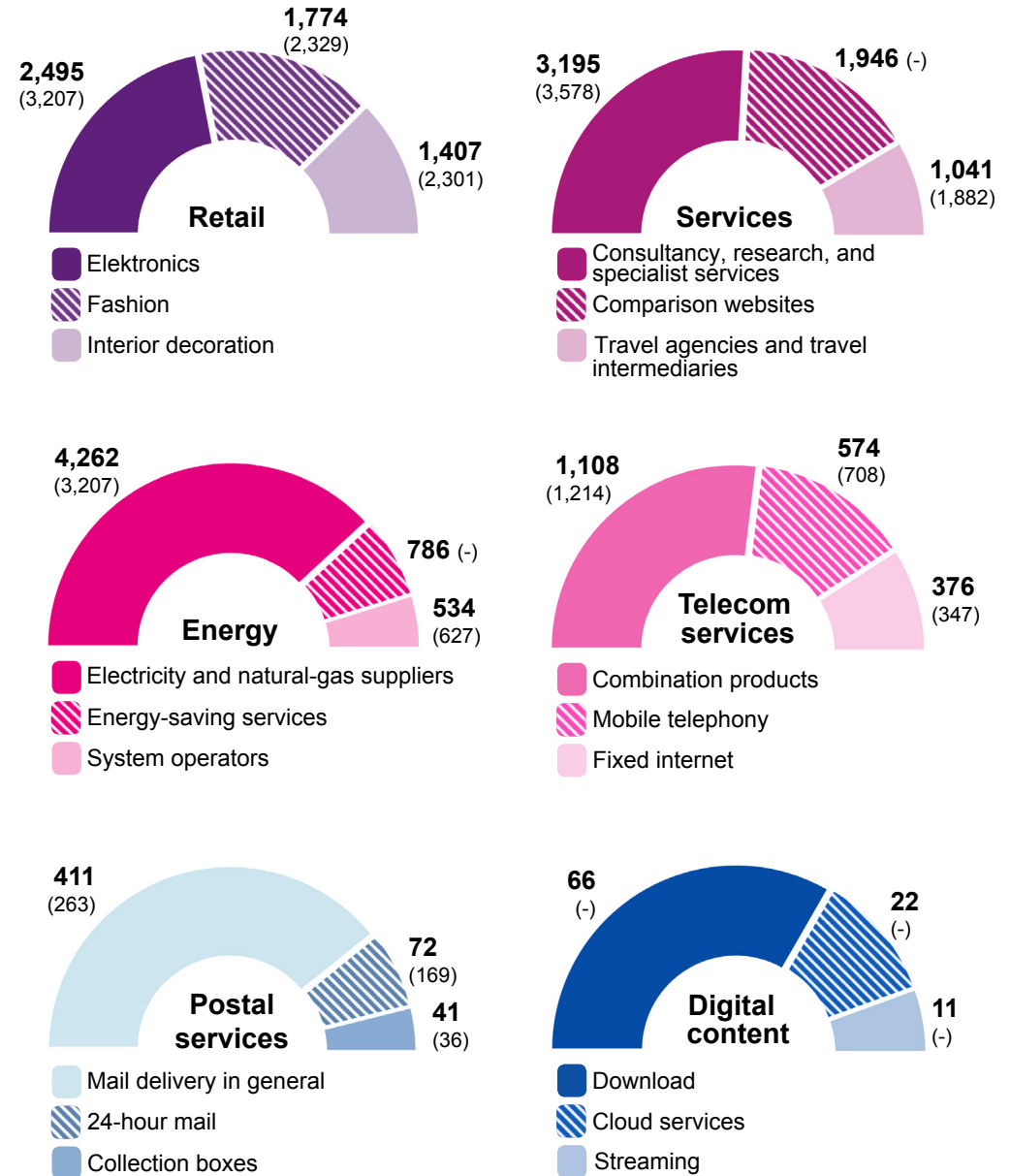
**Figure 22: Top 5 sectors among consumer indications**

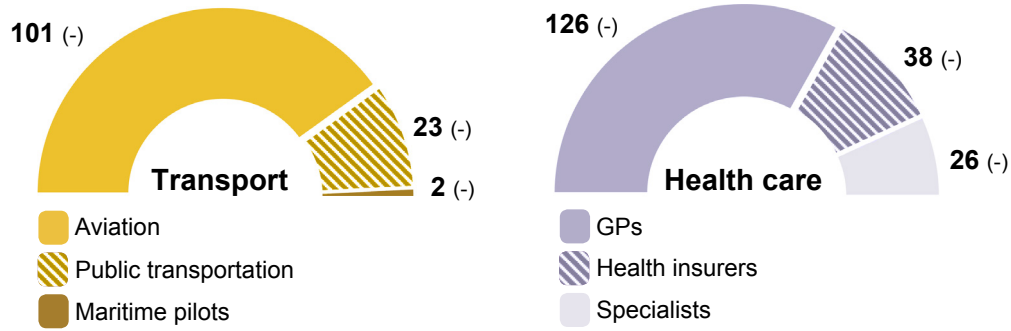
The figures in parentheses represent the 2018 figures.



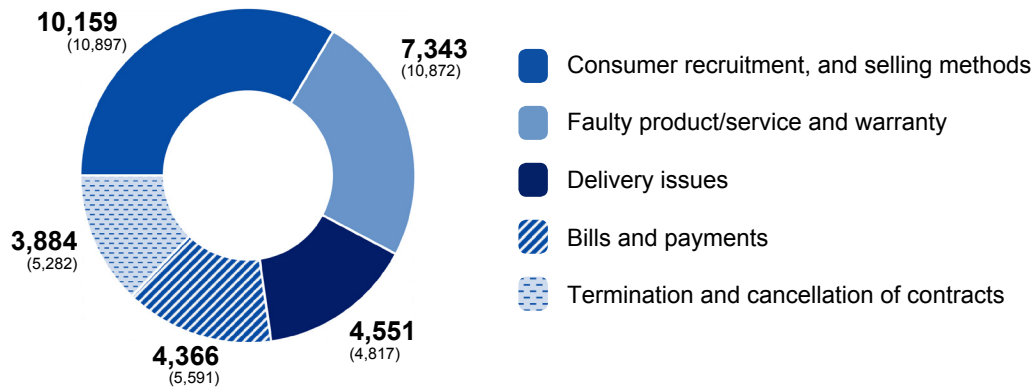
**Figure 23: top 3 categories of indications per sector**

The figures in parentheses represent the 2018 figures.

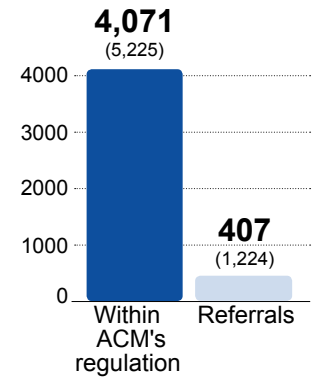




**Figure 24: Top 5 indications, nature of complaint**  
The figures in parentheses represent the 2018 figures.



**Figure 25: Number of indications submitted to ACM's business desk**  
The figures in parentheses represent the 2018 figures.



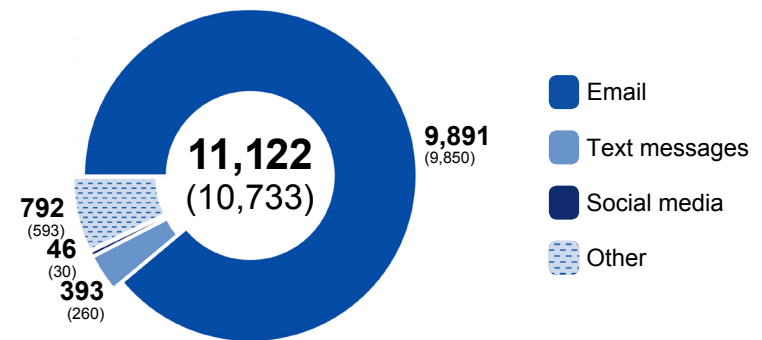
### Spam complaints board Spamklacht

ACM enforces compliance with spam regulations. Consumers receive spam through all kinds of channels, and have the opportunity to file their spam-related complaints with ACM. The 'other' category also includes indications submitted over the phone and fax.

**Figure 26: Indications submitted to spam complaints board**  
The figures in parentheses represent the 2018 figures.

### Indications submitted by businesses

Businesses, too, are able to contact ACM if they have questions or complaints, for example, if they are unsure whether they comply with the rules, or if they suspect competitors having concluded illegal agreements. In 2019, we received 4,478 indications from businesses, which is lower than 2018, when we received 6,449. Following enforcement actions by ACM, the number of indications about phone slamming dropped significantly. Furthermore, ACM ConsuWijzer now records the indications filed by independent contractors about wrongful energy contracts, thereby lowering the number of indications submitted to ACM's business desk.



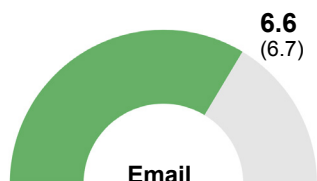
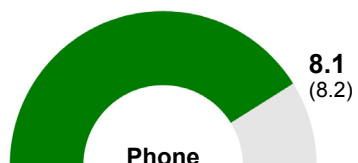
## Satisfaction with ACM and ACM ConsuWijzer

Since 2019, ACM uses a new method for measuring satisfaction among users of acm.nl and acmconsuwijzer.nl: website visitors are able to submit substantive feedback immediately. With this feedback, ACM is continuously able to improve both sites.

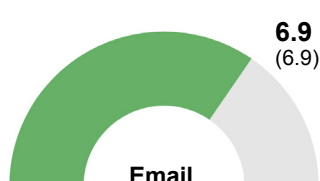
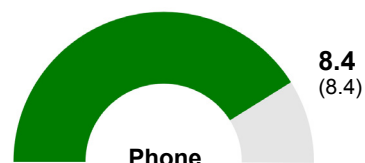
**Figure 27: satisfaction with ACM's and ACM ConsuWijzer's customer interaction (on a scale from 1 to 10)**

The figures in parentheses represent the 2018 figures.

### ACM ConsuWijzer



### ACM



## Registrations

All providers of electronic communication services and postal services in the Netherlands are required to register themselves with ACM. ACM enforces compliance with the rules.

**Figure 28: Overview of registrations of various market participants**

Registrations of providers of electronic communication	End of 2018	New registrations	Terminated registrations	End of 2019
Public electronic communication network	930	104	46	988
Public electronic communication service	1082	192	71	1,203
Related facilities	101	25	3	123
<b>Registrations of providers of postal services</b>				
Postal delivery services	129	8	11	126

**Figure 29: Number of registrations for electronic communication**

	2018	2019
Number of registrations for electronic communication (including termination)	313	399
Percentage of registrations within the statutory term limit	100%	100%

# 2019 Annual statement of accounts of ACM

## ACM's 2019 annual statement of accounts consists of 3 parts:

1. Annual statement of accounts of the ACM Organization
2. Breakdown of expenditures along market organizations
3. Annual statement of accounts of the Autonomous Administrative Authority ACM (ZBO ACM)
4. Corporate affairs of the Autonomous Administrative Authority ACM (ZBO ACM)

This annual statement of accounts concerns 2019 in its entirety. In the tables below, amounts are rounded up or down to the nearest euro. As a result, rounding errors may occur.

## 1. Annual statement of accounts of ACM Organization

From an administrative point of view, the ACM Organization is an integral part of the Ministry of Economic Affairs and Climate Policy (EZK) without any statutory obligation to publish an independent annual statement. The accounting check takes place at EZK level. In addition, the so-called [Authorization Directive](#) (EU Directive 2002/20/EC) applies to the ACM Organization. The ACM Organization uses a cash-basis accounting system in the administration of EZK. There is no balance sheet or profits-and-loss account.

## 1.1 Expenditures of ACM organization

The table below lists the cash expenditures for 2019 and 2018.

**Table 1: Cash expenditures of ACM organization (in euros)**

	2019	2018
<b>Personnel costs</b>		
Salary costs	48,338,542	44,008,588
Temporary employees	4,271,498	3,858,761
Travel expenses	1,443,390	1,267,629
Employee education and training	883,643	691,876
Other personnel costs	282,163	660,996
Government prosecutor	704,475	579,971
<b>Total personnel costs</b>	<b>55,923,712</b>	<b>51,067,822</b>
<b>Material costs</b>		
Housing	4,079,187	3,311,330
Research	3,874,059	2,805,315
IT	7,158,258	5,283,985
Catering/security/cleaning	1,060,632	543,647
Office furniture and supplies	649,076	467,050
Public education and events	126,053	116,916
Other material costs	101,129	86,485
Damages/compensation for loss of income	120,000	1,722,000
<b>Total material costs</b>	<b>17,168,392</b>	<b>14,336,727</b>
<b>Total expenditures</b>	<b>73,092,104</b>	<b>65,404,549</b>



## Explanatory notes to table 1

Salary costs have increased compared with 2018. This increase has multiple reasons. Per the new collective labor agreement for the central government (2018-2020), all employees received a one-off payment in January 2019. Since January 2019, the salaries of the pay scales laid down in the Civil Servants Pay Decree (BBRA) have been raised by 2%.

With ACM being understaffed, we focused heavily on recruiting new employees in late-2018. As a result thereof, the employee utilization rate in 2019 was in line with the staff requirements in terms of capacity. This higher average utilization rate had an effect on travel expenses and employee education and training.

The expenditures for temporary employees increased compared with 2018. In 2019, necessary investments were made in the IT infrastructure and in the further development of ACM's IT facilities, which required the help of additional specialist staff. These investments were also the reason for the increase in IT expenditures.

Compared with 2018, the other personnel costs decreased by 0.4 million euros. A peak occurred in 2018 because of the focus on recruitment. In addition, ACM in 2018 celebrated its 5-year anniversary by holding a one-day conference.

The increase in housing expenses was caused by subsequent bills for building-related service fees from the Central Government Real Estate Agency for 2016 and 2017.

In 2019, cleaning costs were paid for 2019 and a part of 2018. As a result thereof, the cleaning expenditures have increased.

In 2019, ACM replaced a small part of its old office furniture.

In addition, investments were made in waste separation systems for the different waste categories. These investments were made in response to the Central Government's objective to reduce waste.

In connection with liability claims following legal proceedings, ACM paid damages in 2019.

## Claims

ACM is handling 30 claims, 28 of which have a combined value of 39.9 million euros. The value of the other claims has not been determined yet.

## 1.2 Income of ACM organization

The tables on the following pages provide an overview of the income in 2019 and 2018. The levels of the income from market organizations are largely determined by the contribution scheme and the sanctions imposed. The levels of the contributions from the market organizations have been laid down in the [Regulation on the passing on of costs to regulated parties](#) (in Dutch).

**Table 2: Income of ACM organization (in euros)**

	2019	2018
<b>Telecom</b>		
Electronic communication	3,354,340	3,623,548
Numbers	2,101,366	2,395,519
Arbitration services	940,197	798,379
<b>Total Telecom</b>	<b>6,395,903</b>	<b>6,817,447</b>
<b>Postal services contributions</b>		
Universal Service Obligation	69,452	290,489
Non-Universal Service Obligation	1,286,107	1,566,646
<b>Total Postal Service</b>	<b>1,355,559</b>	<b>1,857,135</b>
<b>Energy</b>		
DSOs* electricity	789,470	583,753
DSOs* natural gas	431,020	1,017,285
TSO** electricity	4,186,967	3,248,644
TSO** natural gas	2,703,628	3,026,614
Heat license holders	483,355	259,914
<b>Total Energy</b>	<b>8,594,440</b>	<b>8,136,210</b>
Merger notifications	2,380,183	1,769,397
Licenses of energy providers	13,990	10,791
Receipts from Personnel / Materials	192,473	914,025
<b>Total income</b>	<b>18,932,548</b>	<b>19,505,005</b>

\* Distribution system operators  
 \*\*Transmission system operator

**Explanatory notes to table 2**

Income per market category may change from year to year. The reason is that, on the one hand, more or fewer economic and technical studies are needed for ACM's tasks. That, in turn, also affects the number of hours that is needed for ACM's tasks. The income in 2019 is largely based on the expenditures to the market category as calculated in 2018.

**Telecom:** the income from Electronic communication is in line with the Regulation on the passing on of costs to regulated parties. For the arbitration service for the deaf and hard of hearing, in 2019, the instruction for the period through September 30, 2018, as well as that for the period between October 1, 2018 through September 30, 2023, were in effect. In 2019, the relevant market organizations were charged both the fee for the final year of the previous instruction and the first year of the current instruction.

**Postal services:** the income from the Postal services market category is in line with the Regulation on the passing on of costs to regulated parties.

**Energy:** the income from the transmission system operator for Electricity has increased. This is the result of activities in 2018 in connection with the implementation of European codes. The income from the distribution system operators for natural gas has decreased. This has been the result of fewer activities in connection with code amendments for natural gas in 2018.

**Transport** (not included in the table because the balance was zero): In accordance with the Regulation on the passing on of costs to regulated parties, ACM in 2019 received 0.7 million euros for the maritime pilots and aviation for the Ministry of Infrastructure and Water Management. In 2019, this income was transferred to the Ministry of Infrastructure and Water Management.

**Financial** (not included in the table because the balance was zero): In accordance with the Regulation on the passing on of costs to regulated parties, ACM in 2019 received 0.1 million euros for the payment system for the Ministry of Finance. In 2019, the income was transferred to the Ministry of Finance.



**Table 3a: income from sanctions (in euros)**

	2019	2018
Sanctions (including statutory interest)	17,485,863	23,806,419
<b>Total income</b>	<b>17,485,863</b>	<b>23,806,419</b>

**Table 3b: repayments of sanctions (in euros)**

	2019	2018
Repaid sanctions (including statutory interest)	45,571,087	8,704,249
<b>Total repayments</b>	<b>45,571,087</b>	<b>8,704,249</b>

**Explanatory notes to tables 3a and 3b**

Sanctions that ACM has imposed under the former statutory regime only need to be paid by parties after the highest court has ruled on their cases. Therefore, the period between the imposition of the sanction and the actual payment therefore can take multiple years, because of the legal procedures. As a result, receipts from sanctions can greatly vary from year to year.

Under the Streamlining Act, ACM can demand payment of the sanctions within 6 or 24 weeks. In general, ACM receives payment of the fine on behalf of the Dutch State within these term limits, barring any ongoing legal proceedings. If the court hands down a ruling in a case and either lowers or reverses the fine, ACM will have to make repayments on behalf of the Dutch State. Such a situation can also occur years after the procedure, which means the Dutch State runs the risk of fluctuations to this part of its income.

In order to provide more insight, a distinction has been made between income and repayments.

**1.3 Outstanding receivables of ACM organization**

The table below lists the outstanding receivables as of December 31, 2019 and December 31, 2018.

**Table 4a: Outstanding receivables of ACM organization (in euros)**

	2019	2018
Telecom		
Electronic communication	8,555	70,176
Numbers	108,732	292,029
Arbitration services	769,366	40,229
<b>Total Telecom</b>	<b>886,654</b>	<b>402,434</b>
Postal services contributions		
Non-Universal Service Obligation	3,440	40,428
<b>Total Postal Service</b>	<b>3,440</b>	<b>40,428</b>
Energy		
Heat license holders	-	1,684
<b>Total Energy</b>	<b>-</b>	<b>1,684</b>
Merger notifications	331,570	244,328
Licenses of energy providers	-	500
Other receipts	388,956	538,480
<b>Total outstanding receivables</b>	<b>1,610,620</b>	<b>1,227,853</b>

**Table 4b: Outstanding receivables from sanctions (in euros)**

	2019	2018
Sanctions (including statutory interest)	23,828,674	23,502,127
<b>Total outstanding receivables</b>	<b>23,828,674</b>	<b>23,502,127</b>

**Explanatory notes to table 4b**

The amount of outstanding receivables for sanctions has increased by 0.3 million euros from 23.5 million euros in 2018 to 23.8 million euros on December 31, 2019. This change can be explained as follows: we received 17.5 million euros less in income, and 9.7 million euros less as a result of court rulings or sanctions that have been deemed irrevocable. And, as a result of a lower outstanding balance, the outstanding statutory interest is 0.3 million euros lower. In addition, the increase of 27.8 million euros is a combination of new sanctions and the statutory interest.

**2. Breakdown of expenditures along market organizations**

In the Decision on the method of passing on costs to regulated industries (in Dutch) and its amendment (in Dutch), it has been laid down how ACM can pass on costs to market organizations. According to this method, the income of the year in question is based on the actual expenditure of the previous year. The market categories and the formula have been explained in more detail in the explanatory notes to the Decision on the method of passing on costs to regulated industries of October 27, 2014, and December 10, 2014, respectively. Per sector, ACM calculates the expenditures to be passed on to the relevant categories. For each category, ACM has one or more timekeeping codes. This will ensure that ACM is able to allocate the costs to the right category. ACM calculates the amount to be passed on per category as follows:

1. Per category, the 'direct material costs' are determined, which are the costs that can be directly attributed to this category.
2. Next, the remaining amount is determined, consisting of the indirect material costs and all direct and personnel costs. These costs are allocated based on the actual hours spent on these categories.

The next table provides a breakdown of the cash expenditures for ACM Organization and for the Autonomous Administrative Authority ACM (ZBO ACM).

**Table 5: Total cash expenditures (in euros)**

	2019			2018
	ACM Organization	ZBO ACM	Total	Total
Direct material costs	5,790,364	-	5,790,364	4,910,505
<i>Remaining costs based on actual direct hours consisting of:</i>				
personnel costs	55,923,712	609,831	56,533,542	51,800,358
+ indirect material costs	11,378,028	4,153	11,382,182	9,430,280
<b>Total personnel and indirect material costs</b>	<b>67,301,740</b>	<b>613,984</b>	<b>67,915,724</b>	<b>61,230,638</b>
<b>Total expenditures</b>	<b>73,092,104</b>	<b>613,984</b>	<b>73,706,088</b>	<b>66,141,143</b>

**Explanatory notes to table 5**

The direct material costs in 2019 were higher than those in 2018 because ACM paid more on studies.

Table 6 gives a breakdown of the expenditures of ACM Organization and ZBO ACM to be passed on to market organizations on the basis of the Decision on the method of passing on costs to regulated industries. Please note: the amount in the column "Total share" is the amount to be passed on to the market organizations. It is not the total amount that has been spent on that sector. Example: sanction procedures in one of the regulated industries are not passed on to the market organizations but to the Dutch State.

**Table 6: Overview of the allocation of the expenditures of ACM to be passed on to market organizations (in hours and euros)**

	2019				2018
	Direct hours	Direct material expenditures	Personnel and indirect expenditures based on share of hours	Total share	Total share
	in hours	in euros	in euros	in euros	in euros
<b>Telecom</b>					
Public electronic communication services and networks, and related facilities	30,095	182,095	3,788,181	3,970,276	3,367,664
Numbers	20,489	100,099	2,578,969	2,679,067	2,044,253
<b>Subtotal Telecom</b>	<b>50,584</b>	<b>282,193</b>	<b>6,367,150</b>	<b>6,649,343</b>	<b>5,411,917</b>
<b>Postal Service</b>					
Universal Service Obligation	287	6,835	36,169	43,003	85,652
Non-Universal Service Obligation	6,098	84,461	767,547	852,009	1,221,455
Parcel regulation	482	-	60,641	60,641	-
<b>Subtotal Postal Service</b>	<b>6,867</b>	<b>91,296</b>	<b>864,357</b>	<b>955,653</b>	<b>1,307,107</b>
<b>Energy</b>					
Distribution system operation Electricity	7,768	31,386	977,724	1,009,110	789,470
Distribution system operation Natural gas	9,868	65,502	1,242,152	1,307,654	431,020
Transmission system operation Electricity	36,999	253,061	4,657,104	4,910,165	4,227,467
Transmission system operation Natural gas	14,922	92,692	1,878,301	1,970,993	2,744,128
Supply of heat	6,999	202,876	881,008	1,083,884	481,171
<b>Subtotal Energy</b>	<b>76,556</b>	<b>645,517</b>	<b>9,636,290</b>	<b>10,281,807</b>	<b>8,673,256</b>
<b>Transport</b>					
Registered maritime pilots	1,511	13,966	190,178	204,144	174,557
Aviation	3,987	-	501,895	501,895	487,075
<b>Subtotal Transport</b>	<b>5,498</b>	<b>13,966</b>	<b>692,073</b>	<b>706,040</b>	<b>661,632</b>
<b>Financial</b>					
Payment system	1,169	-	147,153	147,153	94,273
<b>Subtotal Financial</b>	<b>1,169</b>	<b>-</b>	<b>147,153</b>	<b>147,153</b>	<b>94,273</b>
<b>Total market organizations</b>	<b>140,674</b>	<b>1,032,972</b>	<b>17,707,024</b>	<b>18,739,996</b>	<b>16,148,185</b>
<b>Central government</b>					
State/treasury	398,886	4,757,392	50,208,700	54,966,092	49,992,958
<b>Total hours and expenditures passed on</b>	<b>539,560</b>	<b>5,790,364</b>	<b>67,915,724</b>	<b>73,706,088</b>	<b>66,141,143</b>

Please note: Due to rounding, some totals may not correspond with the sum of the separate figures.

### Explanatory notes to table 6

The amount per market category may fluctuate each year. This is because more or fewer economic and technical studies are needed for ACM's duties each year. This also affects the number of hours that is needed for ACM's duties. Those are the reasons behind any differences in the total share of costs per market category over the years.

## 3. Annual account of ZBO ACM

This financial account of the Autonomous Administrative Authority ACM (ZBO ACM) concerns the entire calendar year of 2019. The ZBO ACM concerns the Board of ACM. The ZBO ACM used a cash-basis accounting system in the administrative system of the Ministry of Economic Affairs and Climate Policy (EZK).

### 3.1 Expenditures and income of ZBO ACM

The below table is an overview of the expenditures and income over 2019 and 2018.

**Table 7: Total expenditures and income of ZBO ACM (in euros)**

	2019	2018
Personnel costs		
Salary costs	577,307	696,048
Travel expenses (domestic)	5,849	3,672
Travel & accommodation expenses (abroad)	23,697	18,198
Various expenses	210	350
Employee training	2,768	14,268
<b>Total personnel</b>	<b>609,831</b>	<b>732,536</b>
Material costs		
Contributions and memberships	4,153	3,715
Social allowance	-	343
<b>Total material</b>	<b>4,153</b>	<b>4,058</b>
<b>Total expenditures</b>	<b>613,984</b>	<b>736,594</b>
Income	162,000	162,040
<b>Total income</b>	<b>162,000</b>	<b>162,040</b>

### **Explanatory notes to table 7**

The increase in personnel costs is incidental, and is related to the change in the composition of the board. Expenses in 2019 were in line with previous years. The item 'income' concerns the receipts from market organizations, as laid down in the [Decision on the method of passing on costs to regulated industries](#) (in Dutch).

As of 31 December 2019, the ZBO ACM did not have any outstanding receivables.

## **4. Corporate services of ZBO ACM**

This section on corporate services lists all relevant points of attention in the operations of ZBO ACM. In accordance with the Government Accounts Act 2016, the corporate-services section is organized as an exception report. The information included in this section has been collected from the management control system of the ZBO ACM and from information coming from the audit of the Central Government Audit Service. The corporate-services section consists of four mandatory elements: lawfulness, establishment of policy information, financial and material management, and other aspects related to corporate services.

### **I Lawfulness**

Based on information at my disposal, no irregularities with regard to the accountable lawfulness of the expenditures of the ZBO ACM that have exceeded the relevant reporting tolerance thresholds have occurred.

### **II Establishment of policy information**

Based on information at my disposal, no shortcomings have occurred in the establishment of policy information.

### **III Financial and material management**

No irregularities have occurred.

### **IV Other aspects related to corporate services**

No irregularities have occurred.

### **Was signed**

**T.M. Snoep, LL.M.**  
**Chairman of the Board**