

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

THE NETHERLANDS

Updated: April 8, 2015

Website: <https://www.acm.nl/nl/onderwerpen/concurrentie-en-marktwerking/fusies-en-overnames/toezicht-op-fusies-en-overnames/>

IMPORTANT NOTE: This template is intended to provide background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

[PART 1: LEGISLATION, GUIDELINES AND JURISDICTION \(Questions 1 – 4\)](#)

[PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION \(Questions 5 – 14\)](#)

[PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY MERGER COOPERATION \(Questions 15 – 17\)](#)

[PART 4: SANCTIONS \(Question 18\)](#)

[PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW \(Questions 19 – 23\)](#)

QUICK LOOK SUMMARY	
Mandatory or voluntary regime?	<input checked="" type="checkbox"/> Mandatory <input type="checkbox"/> Voluntary
Power to review non-notifiable transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
What are the time limits for review?	<div>Initial review / Phase I 4 weeks</div> <div>Extended review / Phase II 13 weeks</div>
Substantive merger test?	<div><input type="checkbox"/> Dominance</div> <div><input checked="" type="checkbox"/> Significant impediment to effective competition</div> <div><input type="checkbox"/> Substantial lessening of competition</div> <div><input type="checkbox"/> Other</div>

PART 1: LEGISLATION, GUIDELINES AND JURISDICTION

1. Legal authority and guidance: Merger notification and review

(please provide title(s), popular name(s), effective date and citation(s)/web address)

Statutory law	
A. Notification provisions	<p>Merger Control provisions can be found in the <i>Dutch Competition Act</i> (Mededingingswet, hereafter Mw), Chapter 5, Sections 26 to 49 Mw</p> <p>Merger notification provisions can be found:</p> <ul style="list-style-type: none"> - notification phase: Sections 34 to 40 Mw; - licensing phase: Sections 41 to 49 Mw.
B. Substantive merger review provisions	<p>Substantive provisions can be found in Sections 37(2) and 41(2) Mw.</p>
C. Implementing regulations	<p>The following regulations apply for merger control:</p> <ul style="list-style-type: none"> - <i>2008 ACM Implementation Rule on Issuance of Short-Form Decisions</i> (ACM Uitvoeringsregel verkorte afdoening 2008, Dutch Bulletin of Acts and Decisions 2008, 172, amended by Decision of March 28th, 2013, Dutch Bulletin of Acts and Decisions 2013, 8686). See also reply to question 6 below; - <i>Decision of July 5th, 2013, concerning merger control on undertakings that provide health care and health care insurance companies</i> (Beleidsregel van 5 juli 2013, houdende bijzondere regels betreffende concentraties van zorgaanbieders en zorgverzekeraars, Dutch Bulletin of Acts and Decisions 2013, 19570); - <i>Decision on the temporary expansion of merger control on undertakings that provide health care</i> (Besluit tijdelijke verruiming toepassingsbereik concentratietoezicht op ondernemingen die zorg verlenen); and - <i>The Regulation Provision of Information Competition Act</i> (Regeling gegevensverstrekking Mededingingswet) specifies which information needs to be given in connection with a license application. Dutch Bulletin of Acts and Decisions 2014, 19743, as amended by a Decision of July 4th, 2014). <p>When the Mw does not provide for express provisions, the relevant provisions of the <i>Dutch General Administrative Law Act</i> (Algemene wet bestuursrecht, hereafter Awb) and the <i>Dutch Public Access to Government Information Act</i> (Wet openbaarheid van bestuur, hereafter Wob) will apply.</p>
D. Notification forms or	<p>First phase investigation (notification phase)</p> <p>The Mw stipulates that a notification needs to include all of</p>

<p>information requirements</p>	<p>the required information as stipulated by the <i>Regulation Provision of Information Competition Act</i> (Regeling Gegevensverstrekking Mededingingswet), Dutch Bulletin of Acts and Decisions 2014, 19743, as amended by a Decision of July 4th, 2014).</p> <p>Concentrations will be notified by completing the 'Notification of a Concentration' Form (Notification form). See annex 1 of the <i>Decision Forms for the Competition Act 2007</i> (Besluit vaststelling formulieren Mededingingswet 2007, Dutch Bulletin of Acts and Decisions, 2007, no. 187). See also the <i>ACM Form Notification of a concentration</i> (Formulier Melding Concentratie).</p> <p>In the Notification form, the information requested is mainly information on the companies concerned. This concerns information about business activities, a financial outline and information about the turnover to see if the concentration meets the thresholds. In addition, a brief description of the transaction and the affected markets and the relevant market shares of the companies concerned are requested.</p> <p>The notification phase is intended as a first assessment. If, based on the notification phase, it is deemed that the concentration could significantly impede effective competition, the Board of the ACM (hereafter, the Board) will decide that a license is required for the concentration.</p> <p>Given the strict and short time period within which a decision needs to be taken in the notification phase, the ACM encourages parties to consult with the ACM prior to the notification of the planned concentration. This pre-notification is an informal preparatory step prior to the actual notification of the planned concentration in which the undertakings involved and the ACM will discuss the concentration itself as well as the subsequent procedure with the ACM.</p> <p>Second phase investigation (Licensing phase) If ACM believes that a concentration could create a significant impediment to effective competition, the ACM will open a licensing phase, similar to Phase II of the EU Commission.</p> <p>The <i>Regulation Provision of Information Competition Act</i> (Besluit gegevensverstrekking Mededingingswet) also specifies what information needs to be given in connection with a license application.</p> <p>A licence application needs to be filed by completing the Application of a Licence Form (Licence application form). See annex 2 of the <i>Decision Forms for the Competition Act 2007</i> (Besluit vaststelling formulieren Mededingingswet 2007).</p> <p>This form requires more information than the notification form, particularly regarding the characteristics and the functioning of the affected markets.</p> <p>Both the notification of a concentration and the licence application need to be filed in Dutch. Annexes to the notification or licence application may be submitted in other language(s) other than Dutch. The ACM may, however, request a Dutch summary or translation of those annexes. In</p>
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	<p>practice, the ACM does usually not request translations if the annexes are written in English.</p> <p>The 'Regulation passing on costs ACM' (Regeling doorberekening kosten ACM) lists all the fees payable when requesting the ACM to issue a decision.</p>
Agency guidance	
E. Guidance on merger notification process (e.g., regarding the calculation of thresholds, etc.)	Guidance on the merger notification is provided by the ACM <i>Explanatory Statement concerning Form Notification of a Concentration</i> (Toelichting Formulier Melding Concentratie).
F. Guidance on substantive assessment in merger review	Guidance on the substantive assessment is provided by the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings and the Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings .
G. Guidance on merger remedies	Guidance on merger remedies is provided by the <i>Guidance on Remedies 2007</i> (Richtsnoeren Remedies 2007).
H. Guidance on the submission of information, especially regarding economic evidence or data, or electronic information	Guidance on the merger notification is provided by the ACM <i>Explanatory Statement concerning Form Notification of a Concentration</i> (Toelichting Formulier Melding Concentratie).
I. Guidance on statements regarding the treatment of confidential information and/or domestic laws/regulations on third-party or public access to information provided during the review process (e.g., transparency regulations or freedom of information provisions)	Guidance on statements regarding the threatment of confidential information is provided by the ACM <i>Explanatory Statement concerning Form Notification of a Concentration</i> (Toelichting Formulier Melding Concentratie) and Section 10 of the Wob .
J. Guidance on pre-notification consultations	Guidance on pre-notification consultations is provided by chapter 3 of the ACM <i>Rules concerning concentrations</i> (Spelregels bij concentratiezaken).
K. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the	There are different rules in the case of concentrations in the healthcare sector. Guidance is provided by <i>Guidance for the healthcare sector</i> (Richtsnoeren voor de zorgsector) and the <i>Decision of July 5th, 2013, concerning merger control on undertakings that provide health care and health care</i>

agency's decision-making process	<i>insurance companies</i> (<u>Beleidsregel van 5 juli 2013, houdende bijzondere regels betreffende concentraties van zorgaanbieders en zorgverzekeraars</u>).
L. If available, please provide a link to statistics on annual notifications received, clearances, prohibitions etc.	Some statistics concerning concentrations can be found on page 95 of <i>ACM Annual Report 2014</i> (<u>ACM Jaarverslag 2014</u>).

2. Agency or agencies responsible for merger enforcement

A. Name of agency. If there is more than one agency, please describe allocation of responsibilities.	The Netherlands Authority for Consumers and Markets (Autoriteit Consument en Markt, hereafter ACM).
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	<p>Correspondence address: The Netherlands Authority for Consumers and Markets P.O. Box 16326 2500 BH The Hague The Netherlands</p> <p>Visiting address of the ACM: Muzenstraat 81 2511 WB The Hague The Netherlands</p> <p>Tel: +31-70-72 22 000 Fax: +31-70-72 22 355</p> <p>Website: <u>www.acm.nl</u> (in Dutch and English) E-mail: <u>info@acm.nl</u></p>
C. Agency contact information for jurisdiction/filing guidance (including possible pre-notification consultations).	<p>Prior to a possible pre-notification or notification, parties have the opportunity to request an informal opinion regarding, among other things, whether or not it is required to notify the ACM of a transaction. Requests for an informal opinion often concern jurisdictional questions, such as on the calculation of turnover, the concept of concentration, the nature of control, and whether the transaction involves the creation of a joint venture that needs to be notified.</p> <p>Contact for jurisdiction/filing guidance and pre-notification consultations: Tel: +31-70-72 22 000 Fax: +31-70-72 22 355 E-mail: <u>werkregisseurdm@acm.nl</u></p>

3. Jurisdiction: Covered transactions

<p>A. Definitions of potentially covered transactions (i.e., share acquisitions, asset acquisitions, mergers, de-mergers and combinations such as consolidations, amalgamations and joint ventures)</p>	<p>Provisions regarding potentially covered transactions can be found in Sections 26 and 27 Mw. The Mw states that a concentration is:</p> <ol style="list-style-type: none"> 1. the merger of two or more previously mutually independent undertakings; 2. the acquisition of direct or indirect control by: <ul style="list-style-type: none"> - one or more natural persons who or legal entities which already control at least one undertaking; - one or more undertakings of the whole or parts of one or more other undertakings, through the acquisition of a participating interest in the capital or assets, pursuant to an agreement, or by any other means; 3. the creation of a joint undertaking, which performs all the functions of an autonomous economic entity on a lasting basis. <p>In the case of the acquisition of control, the concept of control as defined in the Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ 2008 C95, hereafter <i>Consolidated Jurisdictional Notice</i>) is applied. Pursuant to the Notice, asset acquisitions can only be considered a concentration if those assets constitute the whole or a part of an undertaking. This means that they have to constitute a business with a market presence, to which a market turnover can be clearly attributed.</p>
<p>B. If change of control is a determining factor, how is control defined and interpreted in practice?</p>	<p>Yes, change of control is a decisive factor to determine whether a transaction constitutes a concentration. Section 26 Mw states that the term 'control' refers to the possibility of exercising decisive influence on the activities of an undertaking on the basis of actual or legal circumstances.</p> <p>In defining 'control', the ACM applies the concept of control as defined in the Consolidated Jurisdictional Notice.</p>
<p>C. Are partial (less than 100%) interests/minority shareholdings covered? At what levels?</p>	<p>The determining factor is whether the transaction brings about a lasting change in the control of the undertaking(s) concerned and therefore whether control (solely or jointly) has been acquired. For further guidance see the Consolidated Jurisdictional Notice mentioned in reply to question 3.A.</p>
<p>D. If the notification requirements cover joint ventures, what types of joint venture are covered (e.g., production joint ventures)?</p>	<p>The notification requirements do cover joint ventures, see reply to question 3.A. and 3.C. Merger control only applies to full-function joint ventures. For further guidance on the concept of full-functionality see the Consolidated Jurisdictional Notice mentioned in reply to question 3.A.</p>

4. Jurisdiction: Thresholds for notification

Key threshold information

<p>A. What are the thresholds for notification? If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)</p>	<p>Pursuant to Section 29 Mw, parties must notify a concentration when the combined (worldwide) turnover of the undertakings concerned exceeded EUR 150 million in the preceding calendar year and at least two of the undertakings concerned each realized a turnover of at least EUR 30 million in The Netherlands in that same year. Turnover must be based on the most recent audited financial records. For further guidance see the Consolidated Jurisdictional Notice. For credit institutions, insurance companies and pension funds, special provisions for calculating the turnover exist (Section 31 Mw).</p> <p>As of 1 January 2008 there is an exception regarding the applicable thresholds for certain concentrations in the health care sector (See <i>Decision of December 6, 2007, providing for temporary expansion of the application scope of merger control on undertakings that provide health care</i> (Besluit van 6 december 2007, houdende tijdelijke verruiming van het toepassingsbereik van het concentratietoezicht op ondernemingen die zorg verlenen)). When at least two of the undertakings concerned realized a care-related turnover above EUR 5.5 million, notification of a concentration is required when the combined turnover of all undertakings concerned exceeded EUR 55 million in the preceding calendar year and at least two of the undertakings concerned each realized a turnover of at least EUR 10 million in The Netherlands in that same year.</p> <p>Adjustment</p> <p>The thresholds may be increased by Order-in-Council (see Section 29(2) Mw). The worldwide turnover threshold has recently (2014) been increased from 113.5 million to 150 million.</p> <p>The thresholds may be lowered for specific categories of undertakings for periods of up to five years. Any such periods may be renewed by Order-in-Council (see Section 29(3) Mw). As mentioned in reply to question 4.A, only one exception has been made regarding the applicable thresholds for certain concentrations in the health care sector.</p>
<p>B. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)?</p> <p>If based on an “effects doctrine,” please describe how this is applied in practice.</p>	<p>One of the turnover thresholds of Section 29 Mw concerns the turnover realized in The Netherlands. See reply to question 4.A.</p>
<p>C. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</p>	<p>No. See reply to question 4.A.</p>
<p>D. Are any sectors excluded from notification requirements? If so,</p>	<p>No.</p>

which sectors?	
E. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)?	No.
F. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so what is the procedure to initiate a review?	No.
Calculation guidance and related issues	
G. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required: (i) the value of the transaction (ii) the relevant sales or turnover (iii) the relevant assets (iv) market shares (v) other (please describe)	<p>The turnover shall be calculated in accordance with the provisions of Section 2:377(6) of the Dutch Civil Code (Burgerlijk Wetboek) in respect of net turnover (see Section 30(1) Mw).</p> <p>Net turnover is the income from the supply of goods and/or services from the business of the company after deduction of rebates and ad valorem taxes.</p> <p>The ACM follows the principles of geographical allocation of turnover as laid down in the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L24, hereafter EC Merger Regulation). For further guidance, view the Consolidated Jurisdictional Notice mentioned in reply to question 3.B.</p>
H. Which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined for notification purposes?	<p>Section 30 Mw and the Consolidated Jurisdictional Notice provide guidance on which entities are included in determining relevant undertakings for threshold purposes and on how control is determined.</p> <p>Pursuant to Section 30 Mw, the turnover of the following entities will be added up:</p> <ul style="list-style-type: none"> a) the entity concerned; b) the entities in which the entities concerned, directly or indirectly; <ul style="list-style-type: none"> - owns more than half the capital or business assets, or

	<ul style="list-style-type: none"> - has the power to exercise more than half of the voting rights, or - has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the entities, or - has the right to manage the entities' affairs; <p>c) those entities which have in the entity concerned the rights or powers listed in (b);</p> <p>d) those entities in which an entity as referred to in (c) has the rights or powers listed in (b);</p> <p>e) those entities in which two or more entities as referred to in (a) to (d) jointly have the rights or powers listed in (b).</p> <p>Control is defined by Section 3(2) of the Merger Regulation as the possibility of exercising decisive influence on an undertaking.</p> <p>More detailed guidance can be found in the Consolidated Jurisdictional Notice.</p>
I. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?	<p>Yes, there are special rules for the calculation of turnover for credit institutions, financial institutions and insurance companies:</p> <ul style="list-style-type: none"> - With respect to credit institutions and financial institutions, the turnover shall be replaced by the sum of the components mentioned in Section 31(1) Mw included in the profit and loss account for the previous financial year, in accordance with the rules laid down in Section 2:417 of the <i>Dutch Civil Code</i> (Section 31(1) Mw). - With respect to insurance companies and pension funds, the turnover shall be substituted by the value of the gross premium contributions written in the preceding financial year, of which at least EUR 4.54 million are received from Dutch residents (Section 31(2) and 31(3) Mw).
J. Describe the methodology for calculating exchange rates.	<p>When converting turnover figures into Euro, the ACM applies recital 204 and 205 of the Commission Consolidated Jurisdictional Notice under <i>Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings</i> (2008/C 95/01), Consolidated Jurisdictional Notice.</p>

PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION

5. Pre-notification

A. If applicable, please describe the pre-notification procedure (e.g., time limits, type of guidance given etc.)	<p>The pre-notification procedure provides parties with the opportunity to discuss planned transactions before the formal notification phase. There is no strict time limit, but it is important parties have sufficient clarity concerning the planned transaction. More information can be found in the ACM <i>Rules concerning concentrations</i> (Spelregels bij concentratiezaken).</p>
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B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	Parties have to provide a written explanation at least three days prior to the pre-notification meeting. This explanation should contain a description of the transaction and the relevant markets, and questions concerning the review. It may be helpful to include a draft version of the notification form.
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6. Notification requirements and timing of notification

A. Is notification...	<input checked="" type="checkbox"/> Mandatory pre-merger <input type="checkbox"/> Mandatory post-merger <input type="checkbox"/> Voluntary
B. If parties can make a voluntary merger filing when may they do so?	N/A
C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?	From the moment that there is a sufficiently firm and specified intention to merge, and the transaction is detailed enough to determine whether there is a change of control, the concentration can be notified. For example, a non-binding letter of intent may be sufficient proof of the intention to merge, as long as it shows that the parties' intentions are firm and provides enough specific information to allow the parties to file a notification form.
D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	<p>Notification has to be done before the change in control. Parties have to take into account the 4 week review period in the case that only notification is required and the 13 week review period in the case that a license is required. There is no mandatory triggering event under the Mw.</p> <p>In the case of a public acquisition or exchange bid aimed at the acquisition of a share in the capital of an undertaking, however, the triggering event is the bid. In this case the parties need to notify the concentration as soon as possible after the bid has been placed and the acquirer does not exercise the acquired voting rights.</p>
E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.	N/A
F. Are parties allowed to submit information beyond what is required	Yes.

in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?	
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7. Simplified procedures

A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	<p>In the 2008 ACM <i>Implementation Rule on Issuance of Short-Form Decisions</i> (ACM Uitvoeringsregel verkorte afdoening, amended by Decision of March 28th, 2013, Netherlands Government Gazette 2013, 8686), the Dutch Competition Authority stated its policy rules on the issuance of short-form decisions in certain, less complicated cases.</p> <p>ACM may issue a short-form decision for transactions:</p> <ol style="list-style-type: none"> 1. following an investigation which concludes that a license is not required; and 2. in which other Dutch sectoral regulatory agencies (such as the Dutch Healthcare Authority) have not submitted an opposing view; and 3. in which there are no objections from third parties.
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8. Information and documents to be submitted with a notification

A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).	<p>As stated in the <i>Explanatory Statement concerning Form Notification of a Concentration</i> (Toelichting Formulier Melding Concentratie), the following documents need to be submitted along with the notification form:</p> <ol style="list-style-type: none"> 1. the most recent annual reports of all the undertakings concerned, and 2. dated copies of the most recent documents pursuant to which the concentration will be effectuated, and 3. when the transaction leads to certain horizontal overlaps or vertical relations, where available, copies of relevant market studies, and 4. where an attorney represents the parties; a written power of attorney for the person representing the notifying parties. <p>The completed notification form together with all annexes needs to be filed in hard copy in quadruple. The completed licence application form together with all annexes needs to be filed in hard copy in five fold.</p>
B. Is there a procedure for obtaining information from target companies in the case of hostile/unsolicited bids?	<p>Yes, pursuant to Section 6b <i>ACM Establishment Act</i> (Instellingswet ACM), parties are obliged to provide ACM with all information necessary.</p>
C. Are there any document	No.

legalization requirements (e.g., notarization or apostille)? What documents must be legalised?	
D. What is the agency's practice regarding exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?	N/A
E. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?	<p>Pursuant to Section 6b <i>ACM Establishment Act</i> (Instellingswet ACM), ACM can require third parties to submit information during the review process.</p> <p>Third parties are allowed to voluntarily submit information and their opinion regarding a concentration. Further explanation regarding third party involvement can be found in the <i>ACM Rules concerning concentrations</i> (Spelregels bij concentratiezaken).</p>

9. Translation

A. In what language(s) can the notification forms be submitted?	The notification form as well as the license application must be submitted in Dutch.
<p>B. Describe any requirements to submit translations of documents:</p> <p>(i) with the initial notification; and</p> <p>(ii) later in response to requests for information.</p> <p>In addition:</p> <p>(iii) what are the categories or types of documents for which translation is required;</p> <p>(iv) what are the</p>	<p>When annexes to the notification, such as market studies or annual reports, are submitted in other language(s) than Dutch, the ACM may require a translation of those annexes. In practice, the ACM does not usually request translations if the enclosed documents are in English.</p> <p>Requirements for certification of translations and the acceptance of summaries will depend on the nature and the importance of the documents for the assessment. This is decided on a case by case basis.</p>

<p>requirements for certification of the translation;</p> <p>(v) which language(s) is/are accepted; and</p> <p>(vi) are summaries or excerpts are allowed in lieu of complete translations and in which languages are summaries accepted?</p>	
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10. Review periods

A. Describe any applicable review periods following notification.	<p>Following notification, ACM has four weeks to decide whether the notified concentration will require a license (Section 37(1) Mw).</p> <p>If a license is required and subsequently requested, by filing the license application form, ACM has thirteen weeks to decide whether the license will be granted or not (Section 44(1) Mw).</p>
B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?	No.
C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?	<p>If not all information required by the <i>Regulation Provision of Information Competition Act</i> (Regeling gegevensverstrekking Mededingingswet) and annex 1 of the <i>Decision Forms for the Competition Act 2007</i> (Besluit vaststelling formulieren Mededingingswet 2007) is included in the notification, the ACM may, within five working days after the day of receipt of the notification, require the notifying parties to submit the missing information or documents. The term of four weeks shall then commence on the day on which that information or those documents are provided (Section 38(1) Mw).</p> <p>Moreover, the review period of the notification phase can be suspended by requests for additional information to the notifying parties (Section 35(2) and 38(2) Mw and Section 4:5 Awb). The ACM will give the parties a deadline for submitting the requested information. The suspension will end as soon as the parties have submitted all the additional requested information. If the notifying parties do not provide the ACM with the requested information within six months following the date on which the last request for further information has been made, the notification is deemed not to have been made (Section 38(4) Mw).</p> <p>There is a difference between the notification phase and the licensing phase when the suspension will begin and end as a result of a request for additional information by the ACM. In the</p>

	notification phase, the review period will be suspended until the next workday if the review period ends in the weekend or in a holiday. In the licensing phase, the review period will end on the workday prior to the weekend or holiday. For more detailed information see the ACM <i>Rules concerning concentrations</i> (Spelregels bij concentratiezaken).
D. Is there a statutory or other maximum duration for extensions?	No.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	<p>The review period of the licensing phase can be suspended by requests for additional information to the notifying parties (Section 4:5 Awb). The ACM will give parties a deadline for submitting the requested information. The suspension will end as soon as the parties have submitted all the additional requested information or the deadline has passed.</p> <p>The agency does not have other options to suspend review periods. Suspension has to be requested by the notifying parties.</p>
F. What are the time periods for accelerated review of non-problematic transactions, if any?	The are no different time periods for accelerated review of non-problematic transactions.
G. What is the procedure for offering and assessing remedies and how does this impact the timing of the review?	<p>Parties can propose remedies during the notification and the licensing phases. These remedies have to be suitable and effective to remedy the identified significant impediment of effective competition.</p> <p>This does not extend the statutory deadline.</p>

11. Waiting periods / suspension obligations

A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.	<p>Section 34 Mw prohibits implementing a concentration which meets the thresholds until the moment the concentration has been notified to the ACM and a period of four weeks has expired subsequently.</p> <p>When, following the investigation in the notification phase the ACM issued a decision that a licence is required and the licence application is submitted by the notifying parties, Section 41(1) Mw prohibits implementing the concentration until a period of thirteen weeks has expired subsequently.</p> <p>However, the four-week waiting period of Section 34 Mw shall not apply in the case of a public acquisition or exchange bid aimed at the acquisition of a share in the capital of an undertaking (Section 39 Mw), insofar the acquirer does not exercise control.</p> <p>Also the Board may, at the request of the notifying parties, on important grounds, grant an exemption from the prohibition of Section 34 Mw (Section 40 Mw), meaning that parties may close</p>
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	before the merger review is complete. See question 11B.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	In certain exceptional circumstances, an exemption from the suspension obligation can be granted upon request in order to prevent serious damage (Sections 40 and 46 Mw). An exemption is only granted when observation of the suspension would cause considerable and irreparable damage to the concentration, e.g. in the case of a rescue takeover.
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the jurisdiction prior to clearance (e.g., derogation from suspension, hold separate arrangements)?	Yes.
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Pursuant to Sections 37(5) and 44(1) Mw , if no decision is taken within the statutory period, the transaction is considered to be approved and the notifying parties will be permitted to implement the transaction.
E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	<p>The waiting periods may be extended if the notification is incomplete or if the ACM deems it necessary to request further information from the notifying parties during the notification phase as well as the licensing phase (see answer to question 9.C).</p> <p>The notifying parties can also request an extension of the waiting period during the notification phase (Section 38(3) Mw). This will only be allowed once during the process and when the suspension will serve the handling of the notification.</p> <p>There are no provisions or procedures available to third parties to extend the waiting period or suspension obligation.</p>
F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant	<p>See reply to question 11.B for the exemption from the suspension obligation (Sections 40 and 46 Mw).</p> <p>The ACM has no obligation to shorten the review periods. In practice, however, the review period of the notification phase tends to be shorter for transactions for which the ACM may issue a short-form decision (see reply to question 6).</p>

early termination.	
G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).	<p>In the case of a public acquisition or exchange bid, parties are allowed to close at their own risk before the waiting period is expired. If the ACM, however, gives notice that a license is required for the concentration, the concentration:</p> <ul style="list-style-type: none"> – shall be reversed within thirteen weeks, if an application for a license is not submitted within four weeks after the aforementioned notice is given, or if a license is refused; – shall be brought into compliance with any such restrictions or conditions, if a license is issued subject to restrictions or conditions, within thirteen weeks after the said license is granted. <p>(Section 39(2) Mw).</p>

12. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?	<p>In the case of a merger, the merging parties will be responsible.</p> <p>In the case of an acquisition, the acquiring party(ies) will be responsible. The responsibility of the selling party to notify has been contested before the Court of Appeal for Trade and Industry. The Court ruled in the Pacton-Nooteboom case that only the acquiring party is responsible.</p> <p>In the case of a new joint venture, the establishing parent companies will be responsible. In the case of a joint venture being acquired, the acquiring parent company(ies) will be responsible.</p> <p>The parties do not have to submit separate filings; one single notification is sufficient.</p>
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	<p>In the case of public tenders or open market stock purchases, only the acquiring party is responsible.</p>
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	<p>There are no specific rules concerning who can represent the parties as long as representation is certified by a written power of attorney.</p>
D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney	<p>See reply to question 12C.</p>

be notarized, legalized or apostilled?	
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13. Filing fees

A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?	ACM charges a fixed filing fee, unless the decision concludes that the transaction falls outside of the jurisdiction. The <i>Regulation passing on costs ACM</i> (Regeling doorberekening kosten ACM) lists all the fees payable when requesting the ACM to issue a decision. The fee for having ACM issue a decision is €17,450 in the notification phase and €34,900 in the licensing phase.
B. Who is responsible for payment?	The notifying parties.
C. When is payment required?	Payment is required after the decision is issued by the ACM, or when parties cancel their filing.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Only payment by wire transfer is accepted.

14. Process for substantive analysis and decisions

A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	The key procedural steps are the notification phase and the licensing phase. They both typically include the consultation of the parties involved and stakeholders. The licensing phase may include an investigation by an external party and a hearing. In general, an external party is a market research institute which possesses specific knowledge required for the analysis.
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	Significant Impediment of Effective Competition test ("SIEC").

C. What theories of harm does the agency consider in practice?	<p>In the case of a horizontal concentration, ACM considers two types of harm;</p> <ul style="list-style-type: none"> - Unilateral effects: firms may raise prices and lower outputs - Coordinated effects: increasing degree of concentration in a market might make collusion more likely <p>In the case of a vertical concentration, ACM considers two types of possible foreclosure effects;</p> <ul style="list-style-type: none"> - Input foreclosure - Customer foreclosure <p>A concentration can also have conglomerate effects.</p>
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	<ul style="list-style-type: none"> - Defining the relevant market - Market shares and concentration levels - Possible anticompetitive effects (defining theory of harm) - Countervailing buyer power - Entry conditions - Efficiencies - Failing firm defence
E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?	<p>No.</p>
F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?	<p>Unconditional clearance, conditional clearance, or prohibition.</p>
G. What types of remedies does the agency accept in practice? How is the process initiated and conducted in practice?	<p>ACM imposes both structural and behavioural remedies. Parties themselves can propose the remedies. They can do so during the notification phase and the licensing phase. The proposed remedies have to be suitable and effective. These remedies can be market tested.</p> <p>In many cases, parties have to bring forward an independent trustee, when proposing remedies. This trustee will have to be appointed by the ACM.</p>

PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY MERGER COOPERATION

15. Confidentiality

<p>A. To what extent, if any, does the agency make public the fact that a pre-merger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</p>	<p>The ACM has to announce all merger notifications received in the Dutch Bulletin of Acts and Decisions (Staatscourant) at the earliest opportunity (Section 36 Mw). The same obligation applies for licence applications received (Section 42(5) Mw). The announcement consists of a short notice which i) contains no confidential information; ii) mentions the names of the notifying parties and their business activities; iii) defines the type of transaction. In this notice the ACM also requests third parties to submit comments and/or objections.</p>
<p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p>	<p>According to Section 4:7 Awb the ACM gives access to the investigative file to the notifying parties when issuing a statement of objections in a second phase investigation. In this way, notifying parties are given the opportunity to express their views i) on information about facts and interests concerning the applicant, such as sector inquiries conducted by the ACM in the specific case, and ii) which information differs from information the applicant has himself supplied on the matter.</p> <p>The information presented by third parties, as well as the information presented by the undertakings involved in the case of a hostile take-over, will be cleared of confidential information. Only information covered by Section 10 Wob is or may be considered confidential information. Examples of information which is covered are company information which has been provided in confidence and information which may harm state security.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)?</p> <p>If so, under what circumstances?</p>	<p>In principle, third parties have no access to the file and therefore have no access to notification materials. However, when market-testing remedies, the ACM will send a non-confidential version of the proposed remedies to third parties in order to give them the opportunity to submit their views on the proposed remedies.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>When submitting information to the ACM, the companies have to indicate which information is confidential in their view. In order to decide whether the claims of the notifying parties can be accepted, the ACM will apply Section 10 Wob. Confidential information submitted by the notifying parties and third parties which is used in the final decision will be deleted in the non-confidential version of the decision which will be made publicly available. For market shares, the ACM uses ranges.</p>
<p>E. Can the agency deny a party's claim that certain</p>	<p>If the ACM and the parties disagree about whether or not certain information is confidential, the ACM will not make this information</p>

<p>information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>public until one week has passed after the announcement of a decision to this effect (Sections 35 and 42(3) Mw). This gives parties the opportunity to commence legal proceedings requesting an injunction against publication to the competent court.</p> <p>A party whose claim has been denied can file a letter of objection and appeal to the Rotterdam District Court to request for a measure in which the disclosure is suspended.</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>Yes, Section 12(u) <i>ACM Establishment Act</i> (Instellingswet ACM) provides an overview of which types of decisions are published. Pursuant to Section 12(u)(2) decisions are not published until ten working days have passed, from the day the decision has been notified to the parties concerned.</p> <p>Pursuant to Section 12(u)(3), where parties request injunctive relief with the court, within the meaning of 8:81 Awb, the publication of information will be postponed until the court has decided.</p>

16. Transparency

<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p>Yes, <i>ACM Annual Report 2014</i> (ACM Jaarverslag 2014).</p>
<p>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</p>	<p>Yes. ACM only publishes a press release when major competition problems have arisen in a case. A press release may be published when a second phase investigation is required and after the final decision is issued. An English translation of the press releases can generally be found on the ACM website: www.acm.nl.</p> <p>Moreover, ACM may publish press releases when it is publishing merger assessment policies.</p>
<p>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of</p>	<p>Pursuant to Section 12u <i>ACM Establishment Act</i> (Instellingswet ACM), ACM is obliged to publish all decisions. The reasoning is given in all decisions, with the exception of short-form decisions (see reply to question 6).</p>

decisions.

17. Interagency Merger Cooperation

A. Is the agency able to exchange information or documents with foreign competition authorities?	<p>Yes, on the basis of Section 7(3)(b) of the ACM Establishment Act, the agency may exchange information with foreign competition authorities under specific conditions.</p> <p>ACM, as a member of the European Competition Network (ECN), may also exchange information with other competition authorities within the EU. The EU Merger Working Group believes that cooperation between National Competition Authorities (hereafter: NCAs) is beneficial for the NCAs, the merging parties themselves and third parties. It has provided best practices as a non-binding reference; Best Practices on Cooperation between EU National Competition Authorities in Merger Review.</p>
B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	<p>The ACM has an agreement with the members of the European Competition Authorities Network (ECA) to notify each other of merger notifications which have to be notified in more than one ECA member state. This notice only contains the names of the notifying parties, their business activities and the type of transaction.</p>
C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.	<p>ACM may exchange information on the basis of Section 7(3)(b) of the ACM Establishment Act with foreign competition authorities under specific conditions, without the consent of the parties. Depending on the facts of the case, ACM may make use of the ICN model waiver of confidentiality. ACM would also have regard to the Recommendation of the OECD Council concerning international co-operation on competition investigations and proceedings</p>

PART 4: SANCTIONS

18. Sanctions/penalties

<p>A. What are the sanctions/penalties for:</p> <p>(i) failure to file a notification</p> <p>(ii) incorrect/misleading information in a notification</p> <p>(iii) failure to observe a waiting period/suspension obligation</p> <p>(iv) failure to observe or delay in implementation of remedies</p> <p>(v) implementation of transaction despite the prohibition from the agency?</p>	<p>Pursuant to Section 74 Mw, an administrative fine not exceeding EUR 450,000 or 10% of the (combined) global yearly turnover can be imposed in the case of A(i), (iii), (iv) and (v).</p> <p>Pursuant to Section 73 Mw, an administrative fine not exceeding EUR 450,000 or 1% of the (combined) global yearly turnover can be imposed when undertakings file incorrect/misleading information in a notification (ii).</p> <p>In addition, the transaction can be declared null and void in a civil court (Section 3:40(2) of the <i>Dutch Civil Code</i>).</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(v)?</p>	<p>The undertakings responsible for notifying the transaction (see reply to question 12.A) are potentially liable for the violations in the sense of A(i)-(v), above.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>The ACM can impose administrative fines and periodic penalty payments directly, taking into account the relevant procedures as laid down in the Mw.</p>
<p>D. Are there any recent or significant fining decisions?</p>	<p>All fining decisions are published at https://www.acm.nl/en/publications/ and https://www.acm.nl/nl/publicaties/.</p>

PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW

19. Ministerial intervention

<p>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</p>	<p>Yes, pursuant to Section 47(1) Mw, the Minister of Economic Affairs can be requested to clear a transaction which has been prohibited by the ACM. The Minister has never done so. The Minister cannot prohibit a transaction which has been cleared by the ACM.</p>
<p>B. What are the grounds for such ministerial intervention? Other policy goals? Are they defined? What guidance is available regarding such grounds?</p>	<p>Pursuant to Section 47(1) Mw, for the Minister to intervene there has to be serious public interest issues that prevail above competition issues.</p>
<p>C. Describe the main elements of the ministerial intervention process and procedures, and indicate any guidance available</p>	<p>Pursuant to Section 47(2) Mw, parties have to request ministerial intervention within four weeks after the expiry of the time period to appeal for judicial review . Pursuant to Section 49(1) Mw, the Minister will, in consultation with the Council of Ministers, respond within twelve weeks from the date the request has been lodged.</p> <p>Both the decision issued by ACM and the Minister's decision will be published.</p>

20. Administrative and judicial processes/review

<p>A. Describe the timetable for judicial and administrative review related to merger transactions.</p>	<p>Parties whose interests are directly affected by the decision can appeal to the Rotterdam District Court (Chamber of Administrative Law) (Section 1:2(1) Awb). Notifying parties are interested parties within the meaning of the Awb. Third parties can also be considered as interested parties.</p> <p>The ACM and interested parties can further appeal the judgments of the Rotterdam District Court to the Court of Appeal for Trade and Industry in The Hague (<i>College van Beroep voor het Bedrijfsleven</i>).</p>
<p>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</p>	<p>The ACM is responsible for protecting, and deciding about, confidentiality until the court becomes involved. From there on it is up to the court to strike the balance.</p>
<p>C. Are there any limitations on the time during which</p>	<p>Yes, an appeal has to be filed within 6 weeks from the moment the decision has been notified (Section 6:7 and 6:8 Awb).</p>

an appeal may be filed?	
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21. Additional filings

A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	<p>Yes, there is additional clearance required from the Dutch Healthcare Authority for concentrations in the healthcare sector. Guidance is provided by <i>Guidance for the healthcare sector</i> (Richtsnoeren voor de zorgsector). See response to question 1.K.</p> <p>Sector-specific filings, i.e. to obtain licenses for the merged entity, may be required from other regulators.</p>
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22. Closing deadlines

A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	<p>The law does not contain explicit provisions in this respect. The opinion of ACM is that after a certain period, the assessment of the merger may be outdated and a new filing may be required.</p>
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23. Post merger review of transactions

A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	<p>Pursuant to Section 45 Mw, the ACM can revoke a license if the information provided is inaccurate to the extent that a different decision would have been made in respect of the license if the correct information had been known.</p> <p>Non-notifiable transactions are not subject to review.</p>
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