

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

THE NETHERLANDS

[15 April 2011]

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

1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)	
A. Notification provisions	<p>Merger Control provisions can be found in the Dutch Competition Act (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 42 to 46 Mw.
B. Notification forms or information requirements	<p>Notification phase</p> <p>The Mw stipulates that a notification needs to include all of the required information as stipulated by the <i>Decision Provision of Information Competition Act (Besluit gegevensverstrekking Mededingingswet</i>, Dutch Bulletin of Acts and Decisions 1997, 485, as amended by a Decision of April 27th, 2000, Dutch Bulletin of Acts and Decisions, 2000, 222).</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 (Besluit vaststelling formulieren Mededingingswet 2007</i>, Netherlands Government Gazette, 2007, no. 187). See also the NMa Form <i>Notification of a concentration and application of a licence (Melden concentratie en aanvragen vergunning)</i>.</p> <p>In the Notification form the information requested is mainly information on the companies concerned (business activity and financial outline), a brief description of the transaction and the affected markets and the relevant market shares of the companies concerned.</p> <p>The notification phase is intended as a first and more or less general assessment. If, based on the notification phase, there are reasons to believe that competition concerns may occur, the Board of the NMa (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 NMa encourages parties to consult with the NMa 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 NMa will discuss the concentration itself as well as the subsequent procedure with the NMa.</p> <p>Licensing phase</p>

	<p>The <i>Decision 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 need 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) than Dutch. The NMa may, however, request a translation of those annexes. In practice, the NMa does not usually request translations if the annexes are in English.</p> <p>The parties also need to specify to which of the parties the decision's invoice can be sent to (see reply to question 12.A). The <i>Decision on Fees when dealing with the NMa</i> (Besluit kostenverhaal NMa, Bulletin on Decisions and Acts 2006, 717) lists all the fees when requesting the NMa to issue a decision.</p>
C. Substantive merger review provisions	Substantive provisions can be found in Sections 37(2) and 41(2) Mw.
D. Implementing regulations	<p>The following regulations apply for merger control:</p> <ul style="list-style-type: none"> - 2008 NMa Implementation Rule on Issuance of Short-Form Decisions (<i>NMa Uitvoeringsregel verkorte afdoening 2008</i>, Netherlands Government Gazette 2008, 172). See also reply to question 6 below; - <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, Bulletin on Decisions and Acts 2007, 518); - The <i>Decision Provision of Information Competition Act</i> (Besluit gegevensverstrekking Mededingingswet) specifies what information needs to be given in connection with a license application. <p>When the Mw does not provide for express provisions, the relevant provisions of the Dutch General Administrative Law Act (<i>Algemene wet bestuursrecht</i>, hereafter Awb) and the <i>Dutch Public Access to Government Information Act</i> (Wet openbaarheid van bestuur, hereafter Wob) will apply.</p>
E. Interpretive guidelines and notices	<p>The NMa published the following interpretative guidelines regarding merger control:</p> <ul style="list-style-type: none"> - NMa policy rule on assessments of horizontal concentrations (Beleidsregel NMa beoordeling horizontale concentraties),

	<p>Netherlands Government Gazette 2007, 173;</p> <ul style="list-style-type: none"> - Best Practices on the Conduct of Concentration Control Proceedings (Spelregels bij concentratiezaken), Netherlands Government Gazette 2009, 11, amended on 31 March 2009, Netherlands Government Gazette 2009, 65; and - Guidelines on Remedies (Richtsnoeren Remedies), Netherlands Government Gazette 2007, 187.
2. Authority or authorities responsible for merger enforcement.	
A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	The Netherlands Competition Authority (<i>Nederlandse Mededingingsautoriteit</i> , hereafter NMa)
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	<p>Correspondence address: The Netherlands Competition Authority P.O. Box 16326 2500 BH The Hague The Netherlands</p> <p>Visiting address of the NMa: Muzenstraat 81 2511 WB The Hague The Netherlands</p> <p>Tel: +31-70-330 33 30 Fax: +31-70-330 33 70</p> <p>Website: www.nmanet.nl (in Dutch and English) E-mail: info@nmanet.nl</p>
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	<p>Yes. The pre-notification phase is an opportunity for the undertakings involved to consult the NMa about a planned concentration prior to the formal notification. A pre-notification is an informal preparatory step prior to the actual notification of the planned concentration. For that purpose, the undertakings involved and NMa officials will discuss the concentration itself as well as the subsequent procedure with the NMa. Given the strict and short time period within which a decision needs to be taken in the notification phase, the NMa encourages parties to consult with the NMa prior to the notification of the planned concentration, especially when the parties are unfamiliar with NMa procedures or when multi-jurisdictional filings need to be done.</p> <p>Contact for pre-notification consultations: Tel: +31-70-330 13 84 or +31-70-330 13 21 Fax: +31-70-330 33 70</p> <p>Prior to a possible pre-notification or notification, parties have the opportunity to request an informal opinion regarding whether or not it is required to notify the NMa of a transaction. Requests for an informal opinion often concern jurisdictional questions, such as the calculation of turnover, the concept of a concentration, the nature of control, and whether the transaction involves the creation of a joint venture that needs to be notified.</p>

	<p>General questions are perfectly suited to be submitted to the NMa Information Line, which can be reached by phone at 0800-0231 885 (from The Netherlands) or +31-70-330 13 06 (from abroad). Mail: info@nmanet.nl</p>
3. Covered transactions	
A. Definitions of potentially covered transactions (<i>i.e.</i> , concentration or merger)	<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.
B. If change of control is a determining factor, how is control defined?	<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 NMa applies 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>).</p>
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	<p>Yes. There is no fixed level.</p> <p>The determining factor is if 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.B.</p>
D. Do the notification requirements cover joint ventures? If so, what types (<i>e.g.</i> , production joint ventures)?	<p>Yes. See reply to question 3.A. 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.B.</p>
4. Thresholds for notification	
A. What are the general thresholds for notification?	<p>Pursuant to Section 29 Mw, parties must notify a concentration when the combined (worldwide) turnover of the undertakings concerned exceeded EUR 113.45 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.</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</i></p>

	<p><i>the application scope of merger control on undertakings that provide health care (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.</i></p>
<p>B. To which entities do the merger notification thresholds apply, <i>i.e.</i>, which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>The merger notification thresholds apply to the ‘undertakings concerned’. The NMA applies the notion ‘undertakings concerned’ as defined in the Consolidated Jurisdictional Notice mentioned in reply to question 3.B.</p> <ul style="list-style-type: none"> - In a merger the ‘undertakings concerned’ are each of the merging entities. - In an acquisition case the acquiring company(ies) and the targets are the ‘undertakings concerned’. A target can also be part of an undertaking. In this case only that part is the ‘undertaking concerned’. - In the situation of a newly created joint venture the parent companies acquiring (joint) control are the ‘undertakings concerned’.
<p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>The thresholds may be increased by Order-in-Council (see Section 29(2) Mw). To date, the thresholds have only been increased once (in 2001), when the Dutch threshold increased to EUR 30 million (from approximately EUR 15 million beforehand; the new threshold was expressed in euro, the former one in Dutch guilders).</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>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>The general rule is to look at the calendar year preceding the notification (Section 29(1) Mw). For financial and insurance companies the previous fiscal year needs to be taken into account (Section 31 Mw).</p>
<p>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p>	<p>The turnover shall be calculated in accordance with the provisions of Section 2:377(6) of the <i>Dutch Civil Code (Burgerlijk Wetboek)</i> 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 taxes. For further guidance view the Consolidated Jurisdictional Notice mentioned in reply to question 3.B.</p> <p>The turnover of credit institutions, financial institutions and insurance companies is calculated differently (Section 31 Mw). See also reply to</p>

	question 4.L.
F. Describe methodology for calculating exchange rates.	When converting turnover figures into Euro, the NMa applies recital 204 and 205 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01). Consolidated Jurisdictional Notice
G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?	Both. See reply to question 4.A.
H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	No. See reply to question 4.A.
I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an "effects" test?	One of the turnover thresholds of Section 29 Mw concerns the turnover in The Netherlands. See reply to question 4.A.
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	The NMa 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 <i>EC Merger Regulation</i>). For detailed guidance see the Consolidated Jurisdictional Notice .
K. If market share tests are used, are there guidelines for calculating market shares?	Not applicable.
L. 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)?	Yes, there are special rules for the calculation of turnover for credit institutions, financial institutions and insurance companies: <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 the turnover shall be substituted by the value of the gross premium contributions written in de preceding financial year, of which at least EUR 4.54 million are received from Dutch residents (Section 31(2) Mw).
M. Are any sectors excluded from notification requirements? If so, which sectors?	No.

<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>No.</p>
<p>O. Does the agency have the authority to review transactions that fall below the thresholds?</p>	<p>No, insofar as these transactions qualify as concentrations.</p>
<p>5. Notification requirements and timing of notification</p>	
<p>A. Is notification mandatory pre-merger?</p>	<p>Yes. Section 34 Mw prohibits implementing a concentration which meets the thresholds until the moment the concentration has been notified to the NMa and a period of four weeks has expired subsequently.</p> <p>When, following the investigation in the notification phase the NMa issued a decision that a licence is required and the licence application is submitted by the notifying parties, Section 41(1) Mw prohibits implementing a concentration until a period of thirteen weeks has expired subsequently.</p> <p>However, the '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). Also the Board may, at the request of the notifying parties, on important grounds, grant an exemption from the obligatory 'waiting period' of Section 34 Mw (Section 40 Mw). See reply to question 5.B.</p>
<p>B. Is notification mandatory post-merger?</p>	<p>In general all concentrations need to be notified before implementing the concentration. In the specific case of a public acquisition or exchange bid aimed at the acquisition of a share in the capital of an undertaking the Board may be notified without delay after the bid, provided that the acquiring party does not exercise the voting rights attached to the said share in the capital (Section 39 Mw).</p> <p>Moreover the Board may grant an exemption from the 'waiting period' of section 34 Mw at the request of the notifying party (Section 40 Mw). Such an exemption is only granted when observation of the waiting period would result in considerable and irreparable damage to the concentration, e.g. in case of a rescue takeover.</p>
<p>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</p>	<p>Not applicable.</p>
<p>D. 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?)?</p>	<p>From the moment there is a sufficiently firm and specified intention to merge, the concentration can be notified. For example, a 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 sufficiently specific information to allow the parties to file a notification form.</p>

<p>E. Must notification be made within a specified period following a triggering event? If so, 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>	<p>No, in general there is no mandatory triggering event under the Mw. As long as notification is done before implementing the transaction, it is for the parties to decide whether they are ready to notify (see also reply to question 5.D).</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 immediately after the bid. See answer question 5.B.</p>
<p>F. 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.</p>	<p>Not applicable.</p>
<h2>6. Simplified procedures</h2>	
<p>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 responses, etc.).</p>	<p>In its 2008 NMa Implementation Rule on Issuance of Short-Form Decisions the NMa stated its policy rules on the issuance of short-form decisions in certain, less complicated cases.</p> <p>The NMa may issue a short-form decision for transactions:</p> <ol style="list-style-type: none"> 1. following an investigation which concludes that a licence 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.
<h2>7. Documents to be submitted</h2>	
<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</p>	<p>As stated in the NMa brochure <i>Notification of a concentration and application of a licence</i> (Melden concentratie en aanvragen vergunning), 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. a written power of attorney for the person representing the notifying parties, and 4. when the transaction leads to certain horizontal overlaps or vertical relations, where available, copies of relevant market studies. <p>The completed notification form together with all annexes needs to be filed in hard copy in quadruple.</p> <p>The completed licence application form together with all annexes needs to be filed in hard copy in five fold.</p>
<p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p>	<p>No.</p>

<p>C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?</p>	<p>No.</p>
<h2>8. Translation</h2>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>The notification form as well as the licence application form must be submitted in Dutch.</p>
<p>B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.</p>	<p>When annexes to the notification, such as market studies or annual reports, are submitted in other language(s) than Dutch, the NMa may, however, require a translation of those annexes. In practice, the NMa 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 case by case.</p>
<h2>9. Review periods</h2>	
<p>A. Describe any applicable review periods following notification.</p>	<p>Following notification, the NMa 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, the NMa has thirteen weeks to decide whether the license will be granted or not (Section 44(1) Mw).</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	<p>If not all information required by the <i>Decision Provision of Information Competition Act</i> (Besluit 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 NMa may, within five working days after the day of receipt of the notification, require 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 suspension will end as</p>

	<p>soon as the parties have submitted all the additional requested information. When the notifying parties did not provide the NMa with the requested information within six months following the date on which the last request for further information was made, the notification is deemed not to have been made (Section 38(4) Mw).</p> <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 NMa 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>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 NMa. For more detailed information check the Best Practices on the Conduct of Concentration Control Proceedings.</p>
D. What are the procedures for accelerated review of non-problematic transactions, if any?	See reply to question 6.
10. Waiting periods / suspension obligations	
A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), 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 NMa and a period of four weeks has expired subsequently.</p> <p>When, following the investigation in the notification phase the NMa 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 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).</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). See reply to question 5.B.</p>
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 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.,	Not applicable.

<p>acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>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.</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>The waiting periods may be extended by requesting if the notification is incomplete or if the NMa deems it necessary to request further information of the notifying parties during the notification phase as well as the licensing phase (see reply 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>
<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 early termination.</p>	<p>See reply to question 10.B for the exemption from the suspension obligation (Sections 40 and 46 Mw).</p> <p>The NMa 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 NMa may issue a short-form decision (see reply to question 6).</p>
<p>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>	<p>In the case of a public acquisition or exchange bid (see reply to question 5.B) parties are allowed to close at their own risk before the waiting period is expired. If the NMa, however, gives notice that a license is required for this 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>

	<p>Also after granting an exemption for the waiting period (see reply to question 5.B and 10.B) parties are allowed to close at their own risk before the waiting period is expired. If the NMa, however, gives notice that a license is required and the concentration has been implemented before such notice has been given, 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 such notice is given, or the application for a license is withdrawn, 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.
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11. Responsibility for notification / representation

<p>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>	<p>The parties bringing about the transaction are responsible for timely notification.</p> <p>In the situation of a merger, the merging parties will be responsible. In an acquisition case, the acquiring party(ies) as well as the selling party(ies)¹ will be responsible.</p> <p>In case of the establishment of a joint venture, the acquiring parent company(ies) as well as the (possible) selling parent company(ies) will be responsible.</p> <p>The parties do not have to submit separate own filings; one single notification is sufficient.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>In case of public tenders or open market stock purchases only the acquiring party is responsible.</p>
<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>	<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>
<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 be notarized, legalized or apostilled?</p>	<p>See reply to question 11.C.</p>

12. Filing fees

¹ The responsibility of the selling party to notify has been contested in a court procedure. At this moment (April 2011) the final outcome is not yet clear, because the matter will be brought before the Court of Appeal for Trade and Industry (see 16).

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)?	The NMa does not charge filing fees, but charges a fee when a decision is issued. The Decision on Fees when dealing with the NMa (Besluit kostenverhaal NMa) lists all the fees when requesting the NMa to issue a decision. The fee for having the NMa issue a decision in the notification phase is € 15,000 and in the licensing phase is € 30,000.
B. Who is responsible for payment?	The notifying parties need to specify in the notification form which of the parties is responsible for payment.
C. When is payment required?	Payment is required after the decision is issued by the NMa.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Only payment by credit transfer is accepted.
13. Confidentiality	
A. To what extent, if any, does your agency make public the fact that a premerger notification filing was made or the contents of the notification?	The NMa has to announce all merger notifications received in the Netherlands Government Gazette (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 NMa also requests third parties to submit comments and/or objections.
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	<p>According to Section 4:7 Awb the NMa gives access to 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 NMa 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 from confidential information. Only information covered by Section 10 Wob is or may be considered confidential information.</p>
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	<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 NMa will send a non-confidential version of the proposed remedies to third parties that have been closely involved in the investigation in order to give them the opportunity to submit their views on the proposed remedies.</p> <p>Section 91(2) Mw states that the NMa can provide an administrative body which is responsible for duties relating to the application of competition rules, with information or data such as notification materials. The administrative body has to keep the information confidential and will only use it for the purpose for which it was</p>

	<p>requested. For example, in healthcare mergers, the NMa will provide the Netherlands Healthcare Authority with the merger notification, when applicable the licence application and other relevant information needed to submit its formal opinion on the merger case.</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 NMa, 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 NMa 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 NMa uses ranges.</p> <p>If the NMa and the parties disagree about whether or not certain information is confidential, the NMa shall not make this information 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>E. 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>	<p>The NMa will exchange information with the Commission on referral requests on the basis of Article 22 of Regulation 139/2004.</p> <p>Furthermore, the NMa 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>
<p>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</p>	<p>Pursuant to Section 91(1) Mw, the NMa can exchange information with other foreign competition authorities in so far as such information or data are, or could be, of significance for the performance of the duties of that foreign competition authority and the provision of such information or data is in the interests of the Dutch economy, provided that:</p> <ul style="list-style-type: none"> (i) the confidentiality of the information is sufficiently protected, and (ii) sufficient assurances are given that the information or data will not be used for any purpose other than applying competition rules. <p>In order to exchange this kind of information, the NMa does not need consent of the parties.</p>
<h2>14. Transparency</h2>	
<p>A. Does the agency publish an annual report? Please provide the web address if available.</p>	<p>Yes, annual reports are published yearly. An English translation can be found on the NMa website: www.nmanet.nl.</p>
<p>B. Does the agency publish press releases related to merger policy or investigations?</p>	<p>Yes. The NMa 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 NMa website: www.nmanet.nl.</p> <p>Moreover the NMa may publish press releases when it is publishing merger assessment policies.</p>

<p>C. Does the agency publish decisions on why it cleared / blocked a transaction?</p>	<p>Pursuant to Section 44(3) Mw, the NMa is only obliged to give access to the second phase decision. However, the NMa publishes all of its first and second phase merger decisions in a non-confidential version on its website.</p> <p>With the exception of short-form decisions (see reply to question 6) all decisions are motivated.</p>
<p>15. Sanctions/penalties</p>	
<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</p>	<p>Pursuant to Section 74 Mw an administrative fine not exceeding EUR 450,000 or 10% of the (combined) yearly turnover can be imposed when undertakings fail to notify a concentration. The NMa can also impose an order subject to periodic penalty payments. The administrative fine or periodic penalty payments is imposed on the undertakings responsible for notifying the transaction (see reply to question 11.A). Furthermore the notification must still be filed to the NMa.</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 are potentially liable?</p>	<p>The undertakings responsible for notifying the transaction (see reply to question 11.A) are potentially liable.</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 NMa can impose administrative fines and periodic penalty payments directly, taking into account the relevant procedures as laid down in the Mw.</p>
<p>16. Judicial review</p>	
<p>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</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 NMa 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>17. Additional filings</p>	
<p>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities</p>	<p>No.</p>
<p>18. Closing deadlines</p>	

<p>When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?</p>	<p>The law does not contain explicit provisions in this respect. The opinion of the NMa 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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19. Post merger review of transactions

<p>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>	<p>Pursuant to Section 45 Mw, the NMa can revoke a licence if the information provided is inaccurate to the extent that a different decision would have been made in respect of the licence if the correct information had been known.</p>
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