

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

Belgian Competition Authority, Belgium

The following template is submitted by The Belgian Competition Authority, pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Belgian Competition Authority is an independent administrative authority that contributes to the definition and implementation of competition policy in Belgium, by pursuing anticompetitive practices and reviewing the main merger operations. The BCA collaborates with the competition authorities of the other Member States of the European Union and with the European Commission within the framework of the European Competition Network (ECN).

<https://www.belgiancompetition.be/en/about-us>

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The Belgian Competition Act applies to conduct that affects competition on the Belgian market or parts thereof. The place where the undertakings involved are established, is irrelevant.

All persons and companies concerned are treated in the same way.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

- i.* The Competition Law and regulations are available via the official Government Gazette, which we quote when necessary in all our correspondence. See for relevant laws and regulations the following links:
[Wetboek Economisch Recht \(hereafter “WER”\)](#)
[Overview Belgian legislation](#)
[European Laws and Regulation](#)
- ii.* The BCA publishes all Procedural Rules on its website and is bound by these rules. See: <https://www.mededinging.be/nl/over-ons/publicaties?tid=52>
- iii.* See above.
- iv.* The BCA follows those Procedural Rules. Compliance is enforceable in appeal proceedings.
- v.* The BCA produces different guidelines and information documents, which can be found on our website: <https://www.bma-abc.be/nl/over-ons/publicaties>

Each year, an overview of our activities is available in our [annual report](#).

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide*

reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.

i, and ii. The BCA will notify the involved Person(s) as soon as possible, if this does not interfere with the ongoing procedure.

The BCA will provide the involved Person(s) information about when this Person can file objections against our decision, in accordance with Chapter 3 WER.

When the BCA conducts interviews during its Investigation (orally or in writing) with the aim of imposing a fine, the BCA informs the Persons involved of their rights.

The procedures in the Investigation are also governed by the General Principles of Good Governance. One of these Principles is the Principle of due diligence: a proper, substantiated decision must be reached.

iii. Information requests from our Authority are subject to the abovementioned General Principles of Good governance. Among these principles are principles of diligence, subsidiarity and proportionality, which ensure that the BCA receives the information that it needs, with as low as possible a burden on the Persons involved.

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

In antitrust, including cartels, there are no specific time limits on the length of the proceedings in Belgium. The length varies significantly depending on the complexity of the case and of the priority of the case. The period between a statement of objections regarding a violation and a decision about a possible fine is regulated in WER art IV.48 – IV.54. (extensions and appeal are possible). In order to concluding antitrust proceedings more effectively and within a reasonable time, in appropriate cases BCA may make use of a settlement procedure (WER Art. IV.55-IV.62).

In situations where there exists a risk of serious and irreparable harm, the BCA may also make use of Interim measures based on Article 71-73 WER.

Each merger starts with a pre-notification period which enables the merging parties and the BCA to discuss the intended concentration informally in confidence and to discuss jurisdictional and other legal issues. It also enables the parties to frame the scope of the required information so that the BCA is able to consider a notification complete. There is no defined limit in law for this pre-notification period. Once the notification is complete, the concentration can be notified.

Following the rules set out in WER (art. IV.63-69), the standard legal deadline is 40 workings days following the receipt of the notification to adopt a decision. The BCA can conclude that (i) the notified concentration does not fall within the scope of the regulation, or (ii) the notified transaction does not raise serious doubts as to its compatibility with the common market, or (iii) the notified concentration raises serious doubts as to its

compatibility with the common market, initiating an in-depth investigation. The standard legal deadline is increased to 55 working days if remedies were submitted by the parties.

To make merger control more focused and effective, the BCA can apply a [simplified procedure](#) for certain concentrations that normally do not raise competition concerns. As the notice on simplified procedure explains, the BCA can adopt a short-form decision within 15 working days from the notification date.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

In its investigations the BCA is required to make sure and seeks to ensure that any confidential information obtained by the BCA during investigations is not disclosed publicly. For each confidential document parties have to give a non-confidential version and an explanation why something is confidential.

The BCA weights the interests of the persons involved against the importance of effective application of the WER. Appeal against these decisions is possible. The specific rules to follow are set out in the WER (Art. IV.41, art. IV.44, art. IV. 49, art. IV. 65, art. IV. 67, art. IV. 72, art. IV.90).

Following article IV.32 WER all the members of the BCA are bound by way of professional secrecy.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Article IV.35 WER prescribes that the members of the BCA may have no direct or indirect interests (financial or otherwise) that may influence the performance of their duties or that may jeopardize their impartiality.

Some exceptions are foreseen e.g. the function of professor, lecturer or assistant in higher education institutions, in so far as these functions are not exercised for more than two half-days per week.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

During the investigation, it is possible that the BCA notifies the parties involved by sending them a request of information but this is not an obligation.

However before taking a decision, involved parties first get an opportunity to have access to the file and to present their views on the statement of objections of the auditor (Article IV.46 WER).

Afterwards, the auditor will sent his proposal for decision to the parties. Access to the file and the possibility to be heard is foreseen in article IV.49. WER.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

All parties have the right to a legal representation throughout the entire investigation before the BCA.

Certain communications between lawyer and client may, subject to conditions, be protected by Legal Professional Privilege ("LPP") and thus be confidential as regards to the BCA, as an exception to the latter's powers of investigation and examination of documents.

LPP covers communication of a client with its external independent lawyer for the purposes of the client's rights of defense in competition investigations and communication with in-house lawyers if they prove their membership to the Institute of in-house lawyers.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

All decisions of the *BCA* relating to the application of competition law are in writing. They set out the findings of fact and provisions of law on which they are based.

A non-confidential version of the decisions is published on the website of the *BCA* (Article IV.75 WER).

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

Decisions of the Competition College can be appealed to the Market court.

The Market Court will adjudicate in accordance with the procedure as in interlocutory proceedings in law and in fact on the case as submitted by the parties.

The Court shall adjudicate with full jurisdiction including the power to substitute its own decision for the challenged decision.

The rules for appeal are set out in article IV.90 WER.