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InfoPAK[SM]

Merger Control in The Netherlands: Overview

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Merger Control in The Netherlands: Overview

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This InfoPAK[SM] gives a high level overview of merger control, regulatory framework and regulatory authorities, relevant triggering events and thresholds in The Netherlands. It also covers notification requirements, procedures and timetables, publicity and confidentiality, third party rights, substantive test, remedies, penalties, appeals, joint ventures and proposals for reform.

This Q&A is part of the global guide to competition and cartel leniency. For a full list of jurisdictional Merger Control Q&As visit www.practicallaw.com/mergercontrol-guide. For a full list of jurisdictional Restraints of Trade and Dominance Q&As visit www.practicallaw.com/restraintsoftrade-guide.

For a full list of jurisdictional Cartel Leniency Q&As, which provide a succinct overview of leniency and immunity, the applicable procedure and the regulatory authorities in multiple jurisdictions, visit www.practicallaw.com/leniency-guide.

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I. Regulatory Framework

A. What (if Any) Merger Control Rules Apply to Mergers and Acquisitions in Your Jurisdiction? What Is the Regulatory Authority?

1. Regulatory Framework

The Dutch Competition Act of 22 May 1997 (*Mededingingswet*) (Competition Act) entered into force on 1 January 1998 and was most recently amended as per 25 June 2014.

Regarding procedural law, the Dutch General Act on Administrative Law (*Algemene Wet Bestuursrecht*) is applicable. This Act regulates appeals and administrative review procedures as well as control and enforcement of the Competition Act.

2. Regulatory Authority

The ACM is the regulatory authority responsible for enforcement of the Competition Act, including merger control. In all merger control cases the ACM reviews both the notification phase (Phase I) and the application for a licence (Phase II). If the ACM refuses to grant a licence, the parties can request the Minister of Economic Affairs to grant the licence and essentially overrule the ACM. The Minister can do so if he believes that it is in the public interest that the concentration takes place and that the underlying public interest considerations outweigh the effects on completion. However, this has not happened to date and will not easily happen.

The ACM has competence to review cases in all sectors. However, in the health care sector there is a sector-specific regulator, the National Healthcare Authority *(Nederlandse Zorgautoriteit*) (see Section X.A). The ACM however remains the sole authority that is authorised to review merger notifications under the Competition Act.

See Section XVI.

II. Triggering Events/Thresholds

A. What Are the Relevant Jurisdictional Triggering Events/Thresholds?

1. Triggering Events

The merger control regime under the Competition Act applies where:

- Two or more previously independent undertakings merge.
- One or more undertakings acquires direct or indirect control of the whole or of parts of one or more other undertakings.
- A joint venture that performs on a lasting basis all the functions of an autonomous economic entity is established (see Section XI.A).

Like under the Regulation (EC) 139/2004 on the control of concentrations between undertakings (Merger Regulation), the concept of control is defined as the ability to exercise decisive influence on the activities of an undertaking, either on the basis of factual (*de facto*) or legal (*de jure*) circumstances. Minority shareholdings and other interests that give rise to "control" are also subject to the Competition Act. The control should relate to strategic matters rather than to day-to-day operational management tasks.

2. Thresholds

A concentration is subject to the merger control provisions of the Competition Act if, in the previous calendar year both:

- The aggregate worldwide turnover of the undertakings concerned exceeded EUR150 million.
- The individual turnover in The Netherlands of each of at least two of the undertakings concerned exceeded EUR30 million.

Undertakings concerned for these purposes are the same as those under the Merger Regulation.

Turnover refers to the net turnover of the undertaking concerned, as defined in the Dutch Civil Code (*Burgerlijk Wetboek*). Essentially, turnover comprises the income from the supply of goods and services from the business of the legal entity after the deduction of rebates (and the like), tax, intra-group turnover and a relevant proportion of turnover generated by any joint venture (allocated in proportion to the shareholding percentages of the various shareholders).

For credit and financial institutions the same thresholds apply. However, the turnover is calculated by taking the sum of interest income (and similar income), income from securities, commissions receivable, net profit on financial operations and other operating income, after deduction of VAT and other taxes directly related to these items.

For insurance companies, the turnover is replaced by the value of the gross premiums in the preceding financial year.

Healthcare sector specific thresholds apply if each of at least two of the undertakings concerned achieved turnover exceeding EUR5.5 million from the provision of health care in the preceding calendar year. In those circumstances, the concentration falls within the scope of the Competition Act if, in the previous calendar year both:

- The aggregate worldwide turnover of the undertakings exceeded EUR55 million.
- The individual turnover in The Netherlands of each of at least two of the undertakings concerned exceeded EUR10 million.

Concentrations that fall below these thresholds cannot be reviewed by the Authority for Consumers and Markets (ACM). However, the Minister of Economic Affairs can temporarily lower the thresholds (for a maximum of five years) for certain categories of undertakings, although this measure does not apply retrospectively. To date, this provision has only been used once, namely for healthcare providers in transition from a regulated system to a competitive system.

If there is any uncertainty as to whether a notification is required under the Competition Act, the ACM encourages pre-notification contacts to discuss the need for a notification.

Concentrations that fall within the scope of the Merger Regulation do fall under the Competition Act, except for those circumstances envisaged in the Merger Regulation itself.

As mentioned above, similar to under Regulation (EC) 139/2004 on the control of concentrations between undertakings (Merger Regulation), the concept of control is defined as the ability to exercise decisive influence on the activities of an undertaking, either on the basis of factual (*de facto*) or legal (*de jure*) circumstances. Minority shareholdings and other interests that give rise to "control" are also subject to the Competition Act. The control should relate to strategic matters rather than to day-to-day operational management tasks.

III. Notification

A. What Are the Notification Requirements for Mergers?

1. Mandatory or Voluntary

Notification to the Authority for Consumers and Markets (ACM) is mandatory if a concentration meets the thresholds set out in the Competition Act (see Section II.A.2).

2. Timing

Notification must occur pre-completion. There is no deadline within which the concentration must be notified. A concentration can be notified as soon as the parties are able to show a sufficiently concrete intention to pursue the concentration, for example by way of a letter of intent or sufficiently advanced draft of a share purchase agreement.

3. Pre-Notification Formal/Informal Guidance

Although the ACM indicates that pre-notification discussions can be useful, there is no formal requirement to have (extensive) pre-notification discussions with the ACM. In straightforward cases (without significant competition issues) it is not common to do so in practice (unlike proceedings with the European Commission). Pre-notification contacts do happen in complex cases with significant competition issues. As such, any guidance received by the ACM prior to notification should be considered informal.

4. Responsibility for Notification

The parties acquiring control and the target are responsible for notification of a concentration that falls within the scope of the Competition Act. However, if one of these parties submits the notification and obtains approval, all parties are entitled to complete the transaction. The highest administrative court in the Netherlands (Trade and Industry Appeals Tribunal) has ruled that a seller cannot be fined for failing to notify a concentration.

5. Relevant Authority

A concentration that falls within the scope of the Competition Act must be notified to the ACM.

6. Form of Notification

Notifications must be submitted by using the standard forms both for notifications (that is, Phase I) and for licence applications (that is, Phase II). These can be found on the ACM's website (in Dutch):

www.acm.nl/download/documenten/nma/formulier-melden-van-concentraties-en-aanvraag-vergunning.pdf.

There is no short form procedure available.

The notification form requests information, among other things, on the:

- Business activities of the undertakings concerned (including, where applicable, on the group).
- Sectors/industry in which they are active and financial information for the preceding financial year showing the worldwide turnover.
- Turnover in the EU and the turnover in The Netherlands.

In addition, the notification form requests a description of the transaction and supporting documentation (the latter could be in another language, but the ACM may ask for a translation), such as the:

- Most recent annual accounts/reports of the undertakings.
- Most recent relevant transaction documents and powers of attorney authorising the relevant law firm(s) to act on behalf of the notifying party/ies.

If there is an overlap of the parties' activities, they must submit market research reports (if available) and information on their major competitors, customers and trade organisations active in the sectors in which the parties' activities overlap.

If there are markets to be investigated, parties should provide both value and volume-based market share figures. Market(s) will be investigated where, on the basis of the relevant product and geographic market definition, there is a combined market share of 15% between the parties and/or there is a market share of vertically related markets of 20%.

Parties must indicate whether there are any ancillary restraints and whether the concentration has been or will be filed with any other competition authority in the EU.

7. Filing Fee

The notifying party or parties are responsible for paying the filing fee, which is:

- EUR17,450 for a decision in the notification phase (that is, Phase I).
- EUR34,900 for a decision in the licence phase (that is, Phase II).

The filing fees must also be paid when a notification or request for a licence is withdrawn.

8. Obligation to Suspend

Implementation of a concentration that meets the thresholds is prohibited in the following circumstances, and the transaction must be suspended (that is, closing cannot occur) pending the outcome of an investigation:

- Before notification to the ACM.
- Before a subsequent (approval) decision is issued.
- Before four weeks (excluding "stop-the-clock") have passed without a decision being adopted.

There are the following exceptions to this stand still obligation:

- **Exemption request.** The ACM may for serious reasons (in particular irreparable damage to the proposed concentration as a result of imminent insolvency of bankruptcy) grant an exemption from the stand still obligation at the request of the notifying party or parties. The ACM has shown it is able to take such an exemption decision within 24 to 72 hours. Implementation is at the parties' risk and could in theory, once the ACM has finalised its review, be subject to an order to unwind the implemented concentration.
- **Public bid.** The implementation of a public bid is not prohibited if the ACM is notified immediately and the acquirer does not exercise its voting rights pending review by the ACM.

If the ACM takes a decision that a more in-depth second phase review is required (through the application for a licence process, see Section IV.A), the implementation of the concentration will be further suspended for a 13-week period following the application for a licence. Also in these circumstances, the notifying party or parties may request an exemption to prevent serious damage.

In addition, the four-week and 13-week periods will be suspended from the day on which the ACM sends an information request to the undertakings concerned until the day on which that information is provided ("stop-the-clock" provision). It is often the case for transactions where competition overlaps arise that the ACM requests additional information and this obviously delays the procedure and the implementation of the concentration.

IV. Procedure and Timetable

A. What Are the Applicable Procedures and Timetable?

Merger control review under the Competition Act comprises a two-phase filing procedure, the notification phase (Phase I) and the application for a licence phase (Phase II).

Once the Authority for Consumers and Markets (ACM) receives the notification, it must take a decision within four weeks. This period starts running on the working day after receipt of the notification. If the ACM decides that no licence is required, the concentration is cleared.

If the ACM decides that a licence is required, the parties can apply for such a licence at their discretion and according to their own timetable. It is not obligatory to request a licence. However, if the licence is not applied for, the transaction cannot proceed. Phase II review starts when the ACM receives the application for a licence. The ACM must then take a decision within 13 weeks from initiation of the Phase II investigation. Parties can decide to postpone the moment of application, which can be helpful if extra time is required to prepare for the in-depth Phase II investigation.

The ACM can, and often does, request further information it requires to perform its review. These information requests temporarily suspend the four-week and 13-week periods until the requested information is provided to the ACM (stop-the-clock provision). Accordingly, both phases may take longer than the terms mentioned here. On average, a Phase II procedure including stop-the-clock interruptions typically takes five to six months.

The ACM may issue a short-form decision if it is clear that Dutch merger control is applicable, that the concentration does not raise any competition concerns and there are no objections from third parties. This happens in the majority of cases. In all other circumstances, the decision of the ACM will be more extensive.

For an overview of the notification process, see flowchart, The Netherlands: merger notifications at https://uk.practicallaw.thomsonreuters.com/1-573-8466?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default).

V. Publicity and Confidentiality

A. How Much Information Is Made Publicly Available Concerning Merger Inquiries? Is Any Information Made Automatically Confidential and Is Confidentiality Available on Request?

1. Publicity

When the Authority for Consumers and Markets (ACM) receives a notification, it publishes the following in the Official Gazette and on the ACM website:

- Names of the parties.
- A short description of the activities of the undertakings concerned.
- Type of concentration.
- Date of the notification.
- Case number.

This publication serves as an invitation to interested parties to submit their views on the concentration. A similar publication is made for the application of a licence.

2. Automatic Confidentiality

The submitted merger notification form of the parties, the progress of the review and the timetable for clearance are not published. In relation to the decision of the ACM there is no automatic confidentiality. However, the ACM will invite the parties to submit a reasoned submission requesting confidential treatment of parts of the decision that should be removed from the public version of the decision, which will be published on the ACM's website.

3. Confidentiality on Request

Before publishing its decision, the ACM invites the parties to submit a reasoned submission requesting confidential treatment of parts of the decision that should be removed from the public version of the decision. Short-form decisions, which are adopted in the majority of cases, do not contain any confidential information.

VI. Rights of Third Parties

A. What Rights (if Any) Do Third Parties Have to Make Representations, Access Documents or Be Heard During the Course of an Investigation?

1. Representations

Interested parties are invited to submit any comments they have on the proposed concentration within seven days from publication.

In addition, the Authority for Consumers and Markets (ACM) may contact third parties, such as customers, suppliers and competitors, for them to comment on the proposed concentration. In Phase II, the ACM may even, subject to penalties in case of refusal, require third parties to provide information that the ACM deems reasonably necessary to conduct its review of the licence application.

2. Document Access

On the basis of the Government Information Public Access Act (*Wet Openbaarheid Bestuur*), third parties may request information from the ACM relating to the concentration. However, confidential information will not be disclosed.

Confidential information includes (but is not limited to) data that gives direct or indirect information on commercial policy, company strategy and cost structure. A company's market figures can also be deemed confidential, as they play a role in defining the company strategy. No access to documents is granted if this would harm the monitoring of concentration or would disproportionately harm one party compared to other market participants.

During a Phase II procedure no access to any documents in relation to the investigation is granted, as disclosure of documents concerning this procedure would impede the investigation and harm the parties' interests.

3. Be Heard

There is no explicit right for third parties to be heard. However, if third parties have submitted their views on the concentration at the stage of the licence application proceedings (Phase II), the ACM may invite them to an oral hearing to express their views after the ACM has sent its statement of objections to the notifying parties.

VII. Substantive Test

A. What Is the Substantive Test?

The substantive test in Phase I is whether the Authority for Consumers and Markets (ACM) has reasons to be believe that the concentration may significantly impede effective competition in the Dutch market or on a part thereof, in particular as a result of the creation or strengthening of a dominant position. If the ACM is of the opinion that this could be the case, it will either require remedies to alleviate these concerns or require a licence under the licence procedure with the ACM (Phase II).

The substantive test in Phase II is whether the concentration will significantly impede effective competition in the Dutch market or on a part thereof, in particular as a result of the creation or strengthening of a dominant position. The ACM at this stage only grants a licence if this is not the case (for example, because the parties rebutted the proposed theory of harm, or where adequate remedies are offered by the parties and accepted by the ACM).

Given that the substantive test is similar to the test under the Merger Regulation, the ACM largely follows the practice and guidelines of the European Commission under the Merger Regulation.

B. What, if Any, Arguments Can Be Used to Counter Competition Issues (Efficiencies, Customer Benefits)?

The Authority for Consumers and Markets (ACM) reviews economic efficiency considerations submitted by the parties. However, similar to the European Commission, the ACM is not easily convinced of these economic efficiencies counterbalancing any perceived competition concerns.

C. Is It Possible for the Merging Parties to Raise a Failing/Exiting Firm Defence?

Although there is no reason to exclude the possibility of raising a failing firm defence, the Authority for Consumers and Markets (ACM) is generally as reluctant as the European Commission in accepting such a defence. The burden of proof in these circumstances lies with the parties. They must demonstrate that:

- The undertaking in question is in immediate financial difficulties.
- Absent the merger, the only plausible scenario is that the undertaking would exit the market.
- The competitive situation on the market would not be worse than it would have been in the absence of the transaction.

VIII. Remedies, Penalties and Appeal

A. What Remedies (Commitments or Undertakings) Can Be Imposed as Conditions of Clearance to Address Competition Concerns? At What Stage of the Procedure Can They Be Offered and Accepted?

The Authority for Consumers and Markets (ACM) issued remedy guidelines that are closely modelled on the European Commission's guidance and practice. It is up to the parties to initiate remedy discussions and both structural and behavioural remedies are possible, although the ACM has a clear preference for structural (that is, divestment) remedies.

The parties can propose remedies during pre-notification discussions, Phase I (ultimately one week before expiry of the four-week review period) and Phase II (ultimately three weeks before expiry of the 13-week review period). If the parties propose a remedy, it must be an adequate solution to remedy the perceived competition issues. The ACM normally market tests proposed remedies.

In a Phase I decision, the ACM may accept remedies that are both:

- Clear-cut and without any doubt remove the perceived competition issues.
- Fulfilled before the transaction is closed.

If remedies that must be implemented before closing are not fulfilled in time, the undertaking may face penalties (see Section VIII.B).

In a Phase II decision, the ACM may also accept less clear-cut remedies (such as behavioural remedies) to ensure that the competition concerns resulting from the concentration are removed.

If the parties opt for structural remedies by way of divestments, they must show that an independent purchaser with sufficient expertise and financial resources to guarantee the continuity of the business activities is ready to acquire the part being divested. In circumstances where it is not entirely clear that the remedy will succeed, the ACM preserves the right to approve a prospective purchaser. In many cases, the proposed remedies should include the appointment of a trustee that will oversee the parties' obligations under the remedy package. Before the divestment, the parties must ensure that the business remains intact, also in terms of continuity and position on the market. The appointed trustee is involved in this process. In addition, if the parties are not able to divest the business themselves within the fixed time frame (generally six months), the ACM may require that a trustee is appointed who will effectuate divestment itself.

B. What Are the Penalties for Failing to Comply with the Merger Control Rules?

1. Failure to Notify Correctly

Parties that fail to notify correctly in circumstances where that was required under the Competition Act may be subject to administrative fines and administrative orders to cease or reverse the infringement subject to periodic penalties. In addition, the transaction is void.

The administrative fines for not filing or not complying with remedies per undertaking can amount to EUR450,000 or (if higher) a maximum of 10% of the worldwide turnover of the undertaking. Individuals can also be fined up to EUR450,000. The Authority for Consumers and Markets (ACM) typically imposes fines of 7.5% of the turnover of the acquirer in the Netherlands for not filing and 15.5% of the turnover of the acquirer in the Netherlands for not complying with remedies. The ACM can also impose fines on individuals that have actually managed the infringement or instructed others to commit them.

The ACM has the authority to fine until five years after the infringement took place. Administrative fines are preceded by an investigation, after which the ACM has eight months to decide on the fine.

A bill has been passed, which increases the maximum fine for competition law infringements from a EUR450,000 limit to EUR900,000, or if higher, 10% of the annual turnover of the infringer. In case of a minor infringement, the amount of the fine should be capped at EUR900,000, or if higher, 1% of the annual turnover of the company.

This law is likely to come into force on 1 July 2016.

The ACM takes failures to notify correctly very seriously and has in the past imposed substantial fines. In 2013, one undertaking (and its subsidiaries) was fined for failure to notify, which resulted in administrative fines of EUR500,000 in total.

2. Implementation Before Approval or After Prohibition

The penalties for implementation before approval or after prohibition are the same as those for failure to notify correctly (see above, Failure to notify correctly).

3. Failure to Observe

The penalties for failure to observe a decision of the ACM are the same as those for failure to notify correctly (see above, Failure to notify correctly).

C. Is There a Right of Appeal Against the Regulator's Decision and What Is the Applicable Procedure? Are Rights of Appeal Available to Third Parties or Only the Parties to the Decision?

1. Rights of Appeal

The parties can appeal any formal decision by the Authority for Consumers and Markets (ACM) in relation to their merger control proceedings.

2. Procedure

The parties can appeal decisions by the ACM to the District Court of Rotterdam Chamber of Administrative Law (*Rechtbank Rotterdam sector bestuursrecht*). Any subsequent appeal must be lodged with the Trade and Industry Appeals Tribunal (*College van Beroep voor het bedrijfsleven*).

An appeal must be lodged within six weeks from the decision and can be unsubstantiated at that time. However, the parties can submit the grounds for the appeal at a later stage determined by the court.

Given that the timing of an appeal is subject to the court's agenda and workload, it is common that judicial review may take up to a year or even longer.

3. Third Party Rights of Appeal

Any person whose interests are directly affected by the decision of the ACM may appeal against that decision. The procedure and timing are the same as for the parties to the concentration (see above, Procedure).

IX. Automatic Clearance of Restrictive Provisions

A. If a Merger Is Cleared, Are Any Restrictive Provisions in the Agreements Automatically Cleared? If They Are Not Automatically Cleared, How Are They Regulated?

There is no automatic clearance of restrictive provisions. The parties must indicate whether there are any ancillary restraints as part of the proposed concentration. They may even ask the Authority for Consumers and Markets (ACM) to "clear" them by declaring them directly related to, and necessary for the implementation of the concentration. In that case, the ancillary restraints are explicitly dealt with in the decision.

X. Regulation of Specific Industries

A. What Industries (if Any) Are Specifically Regulated?

There are specific merger notification thresholds in relation to the healthcare sector (see Section II.A).

In relation to the financial sector, the Authority for Consumers and Markets (ACM) and the Dutch Central Bank have agreed on a protocol that deals with the co-operation between the two authorities in relation to concentrations in the financial sector in emergency situations (for example, due to possible insolvency) that necessitate quick action. The ACM however remains the sole authority to review merger notifications under the Competition Act.

B. Has the Regulatory Authority in Your Jurisdiction Issued Guidelines or Policy on Its Approach in Analysing Mergers in a Specific Industry?

The Authority for Consumers and Markets (ACM) issued specific competition law guidance (including in relation to merger control) for the healthcare sector. The ACM is solely authorised to review merger notifications under the Competition Act. However, it may ask the Dutch Healthcare Authority to provide its views on a healthcare concentration. The substantive test is the same as for all other sectors.

XI. Joint Ventures

A. How Are Joint Ventures Analysed under Competition Law?

Full function joint ventures are caught by the merger control provisions of the Competition Act (see Section I.A). The concept of full function joint ventures is the same as under the Merger Regulation, that is, a joint venture performing on a lasting basis all the functions of an autonomous economic entity. There is no special treatment of such joint ventures. Co-operative joint ventures (that is, not full function) are not subject to the merger control rules of the Competition Act, but they do fall under Article 6 of the Competition Act and/or Article 101 Treaty on the Functioning of the European Union (TFEU).

XII. Inter-Agency Co-Operation

A. Does the Regulatory Authority in Your Jurisdiction Co-Operate with Regulatory Authorities in Other Jurisdictions in Relation to Merger Investigations? If So, What Is the Legal Basis for and Extent of Co-Operation (in Particular, in Relation to the Exchange of Information, Remedies/Settlements)?

The Authority for Consumers and Markets (ACM) co-operates formally and informally with competition authorities in other jurisdictions. It is a member of the European Competition Network (ECN), the European Competition Authorities Association and the International Competition Network. These provide the legal basis for co-operation between the ACM and other competition authorities.

Contrary to the general rules on confidentiality, the ACM can provide information obtained in the course of an investigation to foreign competition authorities. However, this information can only be transferred by the ACM if the following conditions are met:

- The confidentiality of the information is sufficiently protected.
- Adequate assurances are given that the information will not be used for purposes other than the enforcement of foreign competition law.
- Providing this data is in the interests of the Dutch economy.

XIII. Recent Mergers

A. What Notable Recent Mergers or Proposed Mergers Have Been Reviewed by the Regulatory Authority in Your Jurisdiction and Why Is It Notable?

A recent notable merger was the merger between Staatsloterij (SENS) and De Lotto ('SNS'). Both companies are active in offering games of chance, which is a highly regulated sector. A

Phase II investigation was opened by the Authority for Consumers and Markets (ACM) as after the merger only one competitor would remain and the ACM feared that there would not be sufficient competition.

SENS was the holder of a licence for a monthly lottery and a weekly lottery. SNS was holder of a licence for instant lotteries. Data research by the ACM concluded that the different types of lottery only exercise a limited amount of competitive pressure toward each other. As there are licences required for the different forms of games of chance, competition in this market is mainly driven by the regulatory framework. A licence was granted by the ACM without restrictions.

XIV.Proposals for Reform

A. Are There Any Proposals for Reform Concerning Merger Control?

A bill has been passed, which increases the maximum fine for competition law infringements from a EUR450,000 limit to EUR900,000, or if higher, 10% of the annual turnover of the infringer. In case of a minor infringement, the amount fine should be capped at EUR900,000, or if higher, 1% of the annual turnover of the company.

This law is likely come into force on 1 July 2016.

XV.Online Resource

A. Authority for Consumers and Markets (ACM)

W www.acm.nl

Description. This is the official website of the ACM, which contains all published information from the ACM (including decisions, market studies as well as the law, regulations, official forms and guidance). The website is available both in Dutch and English, but very few documents are available in English and the search function of the website is sub-optimal.

XVI. The Regulatory Authority

A. Authority for Consumers and Markets

Head. Chris Fonteijn is the current chairman of the board.

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Outline structure. The ACM is (as its predecessor, the *Nederlandse Mededingingsautoriteit*, has been) an independent agency since 2005. ACM staff are officially employed by the Dutch Ministry of Economic Affairs. The Minister of Economic Affairs remains responsible for competition policy and may give the ACM general policy instructions, but may not instruct on specific cases. Accordingly, the board of the ACM is an autonomous administrative authority under Dutch law and consists of three members. The board has final say over all decisions issued by the ACM.

Responsibilities. The ACM enforces the Competition Act and as such can, among other things, initiate proceedings, order parties to cease behaviour that infringes the Competition Act and take administrative measures.

Procedure for obtaining documents. Documents in the public domain can be found on the ACM's website. Any other documents (not already in the public domain) may be accessible for third parties under the Government Information (Public Access) Act.

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