THE MERGER CONTROL REVIEW

Twelfth Edition

Editor
Ilene Knable Gotts

THE LAWREVIEWS

THE MERGER CONTROL REVIEW

TWELFTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in August 2021
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Ilene Knable Gotts

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADERS
Jack Bagnall, Joel Woods

BUSINESS DEVELOPMENT MANAGERS
Katie Hodgetts, Rebecca Mogridge

BUSINESS DEVELOPMENT EXECUTIVE
Olivia Budd

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Gavin Jordan

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Katrina McKenzie

SUBEDITOR
Claire Ancell

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-803-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ALTIUS

ANDERSON MŌRI & TOMOTSUNE

ASHURST

BAKER MCKENZIE

BERNITSAS LAW

BLAKE, CASSELS & GRAYDON LLP

BOWMANS

CAIAZZO DONNINI PAPPALARDO & ASSOCIATI – CDP STUDIO LEGALE

CALLOL, COCA & ASOCIADOS

CLEARY GOTTLIEB STEEN & HAMILTON LLP

CMS

CRAVATH, SWAINE & MOORE LLP

DEBEVOISE & PLIMPTON LLP

DLF ATTORNEYS-AT-LAW

EGOROV PUGINSKY AFANASIEV & PARTNERS

ELIG GÜRKAYNAK ATTORNEYS-AT-LAW

HOUTHOFF

LCS & PARTNERS

MAYER BROWN

MILBANK LLP

PÉREZ BUSTAMANTE & PONCE

RAHMAT LIM & PARTNERS

SHARDUL AMARCHAND MANGALDAS & CO

SLAUGHTER AND MAY

UGGC AVOCATS

VALDÉS ABASCAL ABOGADOS SC

VEIRANO ADVOGADOS

WACHTELL, LIPTON, ROSEN & KATZ

WILLKIE FARR & GALLAGHER LLP

WILMER CUTLER PICKERING HALE AND DORR LLP

ZHONG LUN LAW FIRM

CONTENTS

PREFACE

Pre-merger competition review has advanced significantly since its creation in 1976 in the United States. As this book evidences, today almost all competition authorities have a notification process in place – with most requiring pre-merger notification for transactions that meet certain prescribed minimum thresholds. Additional jurisdictions, such as Malaysia, are currently considering imposing mandatory pre-notification regimes, and in the meantime can assert some jurisdiction to review certain transactions under their conduct laws and for specific sectors (e.g., aviation, communications). Also, the book includes chapters devoted to such 'hot' M&A sectors as pharmaceuticals and media, as well as a chapter on merger remedies, to provide a more in-depth discussion of recent developments. The intended readership of this book comprises both in-house and outside counsel who may be involved in the competition review of cross-border transactions.

Given the ability of most competition agencies with pre-merger notification laws to delay, and even block, a transaction, it is imperative to take each jurisdiction – small or large, new or mature – seriously. For instance, in 2009, China blocked the Coca-Cola Company's proposed acquisition of China Huiyuan Juice Group Limited and imposed conditions on four mergers involving non-China-domiciled firms. In *Phonak/ReSound* (a merger between a Swiss undertaking and a Danish undertaking, each with a German subsidiary), the German Federal Cartel Office blocked the entire merger, even though less than 10 per cent of each of the undertakings was attributable to Germany. In the United Kingdom, the Competition and Markets Authority (CMA) has effectively blocked transactions in which the parties question its authority. It is, therefore, imperative that counsel develop a comprehensive plan before, or immediately upon, execution of an agreement concerning where and when to file notification with competition authorities regarding such a transaction. To this end, this book provides an overview of the process in 28 jurisdictions, as well as a discussion of recent decisions, strategic considerations and likely upcoming developments.

Some common threads in institutional design underlie most of the merger review mandates, although there are some outliers as well as nuances that necessitate careful consideration when advising a client on a particular transaction. Almost all jurisdictions vest exclusive authority to review transactions in one agency. The United States is now the major exception in this regard since China consolidated its three antitrust agencies into one agency in 2018. Most jurisdictions provide for objective monetary size thresholds (e.g., the turnover of the parties, the size of the transaction) to determine whether a filing is required. Germany has amended its law to ensure that it has the opportunity to review transactions in which the parties' turnovers do not reach the threshold, but the value of the transaction is significant (e.g., social media, new economy, internet transactions). The focus on 'killer acquisitions' (i.e., acquisitions by a dominant company of a nascent competitor),

particularly involving digital or platform offerings, has been a driver in the expansion of jurisdiction and focus of investigations. Newly adopted laws have tried to vest jurisdiction on these transactions by focusing on the 'value of the consideration' rather than turnover for acquisitions of nascent firms, particularly in the digital economy (e.g., in Austria and Germany). Some jurisdictions have also adopted a process to 'call in' transactions that fall below the thresholds, but where the transaction may be of competitive significance. For instance, the Japan Federal Trade Commission (JFTC) has the ability of reviewing and taking action in non-reportable transactions (see discussion of *Google/Fitbit* in the Japan chapter), and has developed guidelines for voluntary filings. Note that the actual monetary threshold levels can vary in specific jurisdictions over time. To provide the ability to review acquisitions of nascent but potentially important rivals, the European Commission (EC) has recently adopted the potentially most significant change in its rules: to use the referral process from Member States to vest jurisdiction in transactions that fall below its thresholds but that could have Community-wide significance. Two recent referrals should provide significant guidance regarding the impact of this new referral process.

There are some jurisdictions that still use 'market share' indicia (e.g., Bosnia and Herzegovina, Colombia, Lithuania, Portugal, Spain, Ukraine and the United Kingdom). Most jurisdictions require that both parties have some turnover or nexus to their jurisdiction. However, there are some jurisdictions that take a more expansive view. For instance, in Poland, a notification may be required even though only one of the parties is present and, therefore, there may not be an impact on competition in Poland. Turkey recently issued a decision finding that a joint venture (JV) that produced no effect on Turkish markets was reportable because the JV's products 'could be' imported into Turkey. In Serbia, there is similarly no 'local' effect required. Germany also takes an expansive view by adopting as one of its thresholds a transaction of 'competitively significant influence'. Although a few merger notification jurisdictions remain 'voluntary' (e.g., Australia, Singapore, the United Kingdom and Venezuela), the vast majority impose mandatory notification requirements. Moreover, in Singapore, the transaction parties are to undertake a 'self-assessment' of whether the transaction will meet certain levels, and, if so, should notify the agency to avoid potential challenge by the agency.

Although in most jurisdictions the focus of the competition agency is on competition issues, some jurisdictions have a broader mandate. For instance, the 'public interest' approach in South Africa expressly provides for consideration of employment matters, local enterprises and procurement, and for economic empowerment of the black population and its participation in the company. Many of the remedies imposed in South Africa have been in connection with these considerations. Although a number of jurisdictions have separate regulations and processes for addressing foreign entity acquisitions when national security or specific industrial sectors are involved, in Romania, for example, competition law provides that the government can prohibit a merger if it determines that such merger could have a potential impact on national security.

Covid-19 and the current economic environment have provided new challenges to companies and enforcement agencies. Many jurisdictions have extended the review times to account for covid-19 disruptions at the agencies. At the same time, some of the transactions are distress situations, in which timing is key to avoid the exit of the operations and termination of employees. Regardless of the speed at which the economic recovery occurs, it is very likely that for the next couple of years the agencies will be faced with reviews of companies in financial distress, if not at the point of failure. Some jurisdictions exempt from

notification (e.g., Ecuador) or have special rules for the timing of bankrupt firms (e.g., Brazil, Switzerland and the Netherlands where firms can implement before clearance if a waiver is obtained; Austria, India, Russia and the United States have shorter time frames). Also, in some jurisdictions, the law and precedent expressly recognise the consideration of the financial condition of the target and the failing firm doctrine (e.g., Canada, China and the United States). In Canada, for instance, the Competition Bureau explicitly permitted the *AIM/TMR* transaction to proceed on the basis of the failing company defence. Similarly, the Netherlands has recently recognised the defence in a couple of hospital mergers. In a major matter in the United Kingdom, *Amazon/Deliveroo*, the CMA provisionally allowed the transaction to proceed due to the target being a failing firm. This topic is likely to be an area to watch in other jurisdictions, particularly in some of the newer merger regimes.

The potential consequences for failing to file in jurisdictions with mandatory requirements vary. Almost all jurisdictions require that the notification process be concluded before completion (e.g., pre-merger, suspensory regimes), rather than permitting the transaction to close as long as notification is made before closing. Many of these jurisdictions can impose a significant fine for failure to notify before closing, even where the transaction raises no competition concerns (e.g., Austria, Cyprus, India, the Netherlands, Romania, Spain and Turkey). In France, for instance, the competition authority imposed a €4 million fine on Castel Frères for failure to notify its acquisition of part of the Patriache group. In Ukraine and Romania, the competition authorities have focused their efforts on discovering consummated transactions that had not been notified, and imposing fines on the parties. Chile's antitrust enforcer recommended a fine of US$3.8 million against two meat-packing companies, even though the parties had carved the Chilean business out of the closing.

Some jurisdictions impose strict time frames within which the parties must file their notification. For instance, Cyprus requires filing within one week of signing of the relevant documents and agreements; Serbia provides for 15 days after signing of the agreement; and Hungary, Ireland and Romania have a 30-calendar-day time limit for filing the notification that commences with entering into the agreement. Some jurisdictions that mandate filings within specified periods after execution of the agreement also have the authority to impose fines for 'late' notifications (e.g., Bosnia and Herzegovina, Indonesia and Serbia). Most jurisdictions also have the ability to impose significant fines for failure to notify or for closing before the end of the waiting period, or both (e.g., Austria, Canada, China, Greece, Portugal, Ukraine and the United States). In Macedonia, the failure to file can result in a misdemeanour and a monetary fine of up to 10 per cent of the worldwide turnover. In Belgium, the competition authority fined a party for late submission of information.

The United States and the EC both have a long history of focusing on interim conduct of the transaction parties, which is commonly referred to as 'gun-jumping', even fining companies that are found to be in violation. For example, the EC imposed the largest gun-jumping fine ever of €124.5 million against Altice. Other jurisdictions have more recently been aggressive. Brazil, for instance, issued its first gun-jumping fine in 2014 and recently issued guidelines on gun-jumping violations. Since then, Brazil has continued to be very active in investigating and imposing fines for gun-jumping activities. In addition, the sharing of competitively sensitive information before approval appears to be considered an element of gun-jumping. Also, for the first time, France imposed a fine of €20 million on the notifying party for failure to implement commitments fully within the time frame imposed by the authority.

In most jurisdictions, a transaction that does not meet the pre-merger notification thresholds is not subject to review or challenge by the competition authority. In Canada – like the United States – however, the Competition Bureau can challenge mergers that were not required to be notified under the pre-merger statute, as well as challenge notified transactions within the first year of closing. In Korea, Microsoft initially filed a notification with the Korea Fair Trade Commission (KFTC), but when it faced difficulties and delays in Korea, the parties restructured the acquisition to render the transaction non-reportable in Korea and consummated the transaction. The KFTC, however, continued its investigation as a post-consummation merger investigation and eventually obtained a consent order. In addition, the EC has fined companies on the basis that the information provided at the outset was misleading (for instance, the EC fined Facebook €110 million for providing incorrect or misleading information during the *Facebook/WhatsApp* acquisition).

In almost all jurisdictions, very few transactions undergo a full investigation, although some require that the notification provide detailed information regarding the markets, competitors, competition, suppliers, customers and entry conditions. Most jurisdictions that have filing fees specify a flat fee or state in advance a schedule of fees based upon the size of the transaction; some jurisdictions, however, determine the fee after filing or provide different fees based on the complexity of the transaction. For instance, Cyprus is now considering charging a higher fee for acquisitions that are subjected to a full Phase II investigation.

Most jurisdictions more closely resemble the EC model than the United States model. In these jurisdictions, pre-filing consultations are more common (and even encouraged); parties can offer undertakings during the initial stage to resolve competitive concerns; and there is a set period during the second phase for providing additional information and for the agency to reach a decision. In Japan, however, the JFTC announced in June 2011 that it would abolish the prior consultation procedure option. When combined with the inability to 'stop the clock' on the review periods, counsel may find it more challenging in transactions involving multiple filings to avoid the potential for the entry of conflicting remedies or even a prohibition decision at the end of a JFTC review. Some jurisdictions, such as Croatia, are still aligning their threshold criteria and processes with the EC model. Even within the EC, there remain some jurisdictions that differ procedurally from the EC model. For instance, in Austria, the obligation to file can be triggered if only one of the involved undertakings has sales in Austria, as long as both parties satisfy a minimum global turnover and have a sizeable combined turnover in Austria.

The role of third parties also varies across jurisdictions. In some jurisdictions (e.g., Japan), there is no explicit right of intervention by third parties, but the authorities can choose to allow it on a case-by-case basis. In contrast, in South Africa, registered trade unions or representatives of employees must be provided with a redacted copy of the merger notification from the outset and have the right to participate in merger hearings before the Competition Tribunal: the Tribunal will typically also permit other third parties to participate. Bulgaria has announced a process by which transaction parties even consent to disclosure of their confidential information to third parties. In some jurisdictions (e.g., Australia, the EC and Germany), third parties may file an objection to a clearance decision. In some jurisdictions (including Canada, the EC and the United States), third parties (e.g., competitors) are required to provide information and data if requested by the antitrust authority. In Israel, a third party that did not comply with such a request was recently fined by the antitrust authority.

In almost all jurisdictions, once the authority approves the transaction, it cannot later challenge the transaction's legality. The United States is one significant outlier with no bar for

subsequent challenge, even decades following the closing, if the transaction is later believed to have substantially lessened competition. Canada, in contrast, provides a more limited time period of one year for challenging a notified transaction (see the recent *CSC/Complete* transaction). Norway is a bit unusual, where the authority has the ability to mandate notification of a transaction for a period of up to three months following the transaction's consummation. In 'voluntary' jurisdictions, such as Australia and Singapore, the competition agency can investigate and challenge unnotified transactions.

It is becoming the norm, in large cross-border transactions raising competition concerns, for the US, Canadian, Mexican and EC authorities to work closely together during the investigative stages, and even in determining remedies, minimising the potential of arriving at diverging outcomes. The KFTC has stated that it will engage in even greater cooperation with foreign competition authorities, particularly those of China and Japan, which are similar to Korea in their industrial structure. Regional cooperation among some of the newer agencies has also become more common; for example, the Argentinian authority has worked with Brazil's competition authority, which, in turn, has worked with the Chilean authority. Competition authorities in Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Serbia, Slovenia and Turkey similarly maintain close ties and cooperate on transactions. Taiwan is part of the Asia-Pacific Economic Cooperation forum, which shares a database. In transactions not requiring filings in multiple European jurisdictions, Member States often keep each other informed during the course of an investigation. In addition, transactions not meeting the EC threshold can nevertheless be referred to the EC in appropriate circumstances. The United States has signed cooperation agreements with a number of jurisdictions, including, most recently, Peru and India. China has 'consulted' with the United States and the EC on some mergers and entered into a cooperation agreement with the United States authorities in 2011.

The impact of such multi-jurisdictional cooperation is very evident. For instance, the transaction parties in *Applied Materials/Tokyo Electron* ultimately abandoned the transaction following the combined objections of several jurisdictions, including the United States, Europe and Korea. In *Office Depot/Staples*, the US Federal Trade Commission and the Canadian Competition Bureau cooperated and both jurisdictions brought suits to block the transaction (although the EC had also cooperated on this transaction, it ultimately accepted the undertakings offered by the parties). In the *GE/Alstom* transaction, the United States and the EC coordinated throughout, including at the remedies stage. Additionally, in the *Halliburton/Baker Hughes* transaction, the United States and the EC coordinated their investigations, with the United States suing to block the transaction while the EC's investigation continued. Also, in *Holcim/Lafarge*, the cooperation between the United States and Canada continued at the remedies stage, where both consents included assets in the other jurisdiction's territory. The United States, Canada and Mexico coordinated closely in the review of the *Continental/Veyance* transaction. In fact, coordination among the jurisdictions in multinational transactions that raise competition issues is becoming the norm.

Although some jurisdictions have recently raised the size threshold at which filings are mandated, others have broadened the scope of their legislation to include, for instance, partial ownership interests. Some jurisdictions continue to have as their threshold test for pre-merger notification whether there is an 'acquisition of control'. Many of these jurisdictions, however, will include, as a reportable situation, the creation of 'joint control', 'negative (e.g., veto) control' rights to the extent that they may give rise to *de jure* or *de facto* control (e.g., Turkey), or a change from 'joint control' to 'sole control' (e.g., the EC and Lithuania). Minority

holdings and concerns over 'creeping acquisitions', in which an industry may consolidate before the agencies become fully aware, have become the focus of many jurisdictions. Some jurisdictions will consider as reviewable acquisitions in which only a 10 per cent or less interest is being acquired (e.g., Serbia for certain financial and insurance mergers), although most jurisdictions have somewhat higher thresholds (e.g., Korea sets the threshold at 15 per cent of a public company and otherwise at 20 per cent of a target; and Japan and Russia at any amount exceeding 20 per cent of the target). Others use, as the benchmark, the impact that the partial shareholding has on competition; Norway, for instance, can challenge a minority shareholding that creates or strengthens a significant restriction on competition. The United Kingdom also focuses on whether the minority shareholder has 'material influence' (i.e., the ability to make or influence commercial policy) over the entity. Several agencies during the past few years have analysed partial ownership acquisitions on a stand-alone basis as well as in connection with JVs (e.g., Canada, China, Cyprus, Finland and Switzerland). Vertical mergers were also a subject of review (and even resulted in some enforcement actions) in a number of jurisdictions (e.g., Belgium, Canada, China, Sweden and Taiwan). Portugal even viewed as an 'acquisition' subject to notification the non-binding transfer of a customer base.

For transactions that raise competition issues, the need to plan and to coordinate among counsel has become particularly acute. Multi-jurisdictional cooperation facilitates the development of cross-border remedies packages that effectively address competitive concerns while permitting the transaction to proceed. The consents adopted by the United States and Canada in the *Holcim/Lafarge* merger exemplify such a cross-border package. As discussed in the 'International Merger Remedies' chapter, it is no longer prudent to focus merely on the larger mature authorities, with the expectation that other jurisdictions will follow their lead or defer to their review. In the current enforcement environment, obtaining the approval of jurisdictions such as Brazil and China can be as important as the approval of the EC or the United States. Moreover, the need to coordinate is particularly acute, to the extent that multiple agencies decide to impose conditions on the transaction. Although most jurisdictions indicate that 'structural' remedies are preferable to 'behavioural' conditions, a number of jurisdictions in the past few years have imposed a variety of such behavioural remedies (e.g., China, the EC, France, Japan, the Netherlands, Norway, South Africa, Ukraine, Vietnam and the United States). This is particularly the case when non-compete or exclusive dealing relationships raise concerns (e.g., in Mexico and the United States). Some recent decisions have included as behavioural remedies pricing, sales tariffs and terms of sale conditions (e.g., Korea, Ukraine and Serbia), employee retrenchment (South Africa) and restrictions on bringing anti-dumping suits (e.g., Mexico). Many recent decisions have imposed behavioural remedies to strengthen the effectiveness of divestitures (e.g., Canada's decision in the *Loblaw/Shoppers* transaction, China's MOFCOM remedy in *Glencore/Xstrata* and France's decision in the *Numericable/SFR* transaction).

We are at a potentially transformational point in competition policy enforcement. This book should, however, provide a useful starting point in navigating cross-border transactions in the current enforcement environment.

Ilene Knable Gotts
Wachtell, Lipton, Rosen & Katz
New York
July 2021

Part II

Jurisdictions

Chapter 22

NETHERLANDS

Gerrit Oosterhuis and Weijer VerLoren van Themaat[1]

I INTRODUCTION

Dutch merger control is similar to European merger control, certainly as regards the substantive rules. Thus, the Dutch concept of a concentration is similar to the definition of a concentration as laid down in the EU Merger Regulation (EUMR). It includes the acquisition of control and the possibility to influence strategic decisions of the target. Furthermore, the concept of undertakings concerned and the methodology of allocating turnover to the undertakings concerned are identical. Moreover, the European Commission's decision practice and the Commission's Consolidated Jurisdictional Notice are closely followed by the Dutch Authority for Consumers and Markets[2] (ACM) when it comes to, for example, the full functionality of a joint venture[3] or the geographical allocation of turnover.[4]

Mergers meeting the jurisdictional thresholds as laid down in the Dutch Competition Act (DCA) must be notified to the ACM. In general, a concentration must be notified to the ACM if the combined worldwide turnover of all undertakings concerned is more than €150 million in the calendar year preceding the concentration, and at least two of the undertakings concerned each achieved at least a €30 million turnover in the Netherlands. Various sector-specific thresholds are discussed in Section III.

Concentrations meeting the thresholds must be notified prior to completion and may not be implemented during the review period. Failure to notify may result in large fines.

1 Gerrit Oosterhuis and Weijer VerLoren van Themaat are partners at Houthoff.

2 The ACM is the result of the merger between the Dutch Competition Authority (NMa), the Dutch Consumer Authority and the telecoms authority OPTA. The merger was effectuated on 1 April 2013. Some of the case names – prior to 1 April 2013 – still refer to the NMa.

3 Decision NMa 7 September 2010 (*Transdev/Veolia*) Case 6957.

4 Decision NMa 3 May 2010 (*Amlin/Dutch State*) Case 6843. For a discussion of the EUMR, the Consolidated Jurisdictional Notice and the decision practice of the European Commission, see the European Union chapter.

II YEAR IN REVIEW

i Workload

The ACM received 89 notifications and reached 90 decisions in Phase I in 2020, which is significantly less than the workload in 2019 (134 notifications and 127 decisions in Phase I decisions).[5] The majority of notifications resulted in one-page short decisions. Only nine Phase I decisions were substantiated (with reasons, the same amount as in 2019). In addition, the ACM received four requests for decisions in Phase II and issued six decisions in Phase II, compared with one of each in 2019.

The workload of the ACM reflects that during the first lockdown many transactions involving small and medium-sized enterprises and private equity were put on hold, whereas larger strategic deals continued. Moreover, it shows that the ACM is increasingly investigating cases in Phase II.

The ACM issued no prohibition decisions, but in five cases remedies were required.[6] The ACM granted one exemption from the standstill period in the healthcare sector.[7] The ACM did not impose any fines for a failure to notify a concentration in 2020.

ii Infringements of formal obligations and legal proceedings

One of the few judgments regarding merger control in 2020 concerned the ruling of the Trade and Industry Appeals Tribunal (CBb) of 10 November.[8] The case can be traced back to 2016 when the ACM approved the acquisition of the Staatsloterij and the Lotto. The ACM held that a strict scrutiny of the anticompetitive effects of a concentration is only necessary in markets with free competition and homogenous products. This was not the situation in the case at hand. This is because the law on gambling imposes that only one party can be licensed per type of game of chance.

In the appeal before the Rotterdam District Court, competitors argued, inter alia, that the ACM did not sufficiently take into account the acquisition's possible anticompetitive effects on the (future) market of online gambling. The Court rejected this appeal, stating that the parties faced international competitors with important digital platforms.

In appeal, the CBb confirmed the verdict of the Rotterdam District Court. The ACM had used a regression analysis to determine how strongly the sales of different types of games of chance of one party would react to that party's own price and the price of alternative games of chance. The CBb held that the regression analysis showed that the Staatsloterij and the Lotto formed limited competitive constraints on each other, and that the merger would not lead to a significant decrease of competition.

Another case concerns the appeals against the ministerial approval of PostNL's acquisition of its only competitor, Sandd. In September 2019, the ACM had blocked the

5 Statistics from the ACM Annual Report 2020 (Dutch version) at page 33 (www.acm.nl/sites/default/files/documents/jaarverslag-acm-2020.pdf) and the ACM Annual Report 2019 (Dutch version) at page 30 (www.acm.nl/sites/default/files/documents/2020-03/jaarverslag-acm-2019.pdf).

6 Decision ACM 5 August 2020 (*Omring/Vrijwaard/Hulp Thuis Vrijwaard*) Case ACM/19/037144; Decision ACM 3 November 2020 (*Thebe Wijkverpleging/Careyn*) Case ACM/20/040077; Decision ACM 20 May 2020 (*NS/Pon*) Case ACM/20/038614; Decision ACM 9 July 2020 (*GVB/HTM/NS/RET*) Case ACM/20/039644; Decision ACM 30 November 2020 (*Mediahuis/NDC Group*) Case ACM/20/042189.

7 Decision ACM 30 January 2020 (*Korian/BPG*) Case ACM/20/038750.

8 Trade and Industry Appeals Tribunal, 8 October 2019 (*Lottovate B.V. and Stichting Speel Verantwoord/ACM*) ECLI:NL:CBB:2020:799.

transaction based on competition concerns in the markets for business and individual mail delivery. Three weeks later, the prohibition by the ACM was overruled by the Secretary of State for Economic Affairs and Climate based on public interest grounds.[9] Subsequently, by a judgment of 11 June 2020, the Rotterdam District Court annulled the Secretary of State's decision and referred it back to the Secretary of State.[10] The Court found that the third parties had not been granted enough time to present their views and that the decision of the Secretary of State was therefore not sufficiently substantiated. The Court concluded that the Secretary of State should have assessed the competitive effects on the adjacent market of package delivery. Moreover, it ruled that the Secretary of State should have provided better reasoning for the overriding public interest, including how the decision was essential to guarantee PostNL's universal postal service obligation and how it would contribute to the protection of employment.

iii Phase I decisions

The ACM approved the acquisition by Audax Group BV, a distributor and retailer of magazines, international newspapers and books, of Bruna, a competitor in the retail sector.[11] The ACM concluded that the horizontal overlap would remain below 25 per cent. The ACM also assessed vertical foreclosure effects on the market for the distribution of magazines, as only two players were active on this market, including Audax. Based on Audax's limited market share of 30 per cent, the ACM ruled out vertical foreclosure.

The ACM approved the acquisition by Digital Realty Trust, a US data centre colocation services provider, of its Dutch counterpart, InterXion.[12] Colocation services providers supply data centre space and equipment for third parties. The ACM concluded that the acquisition would not significantly reduce competition for the supply of colocation services by data centres in the metropolitan region of Amsterdam as the combined market share would remain below 30 per cent. The ACM also found that the foreclosure of downstream competitors on the market for the supply of internet hubs was improbable because of this limited market share.

The ACM approved the acquisition of Sanoma Media (free online news and magazines) by DPG Media (several national newspapers, online news and radio).[13] Regarding the segment of free online news, the ACM concluded that there were sufficient alternative providers such as NOS, RTL and websites of national newspapers. Regarding the sale of advertising space, the ACM found that this market is characterised by exponential growth and powerful competitors such as Facebook and Google. Also, the ACM found that both parties use freelance journalists to a very limited extent and consequently the transaction only has a small effect on the purchase of (freelance) journalistic services.

The ACM approved a joint venture (JV) between the national rail incumbent and the public transport undertakings of Amsterdam, Rotterdam and The Hague.[14] The JV would create a wholesale 'mobility as a service' (MaaS) platform, connecting mobility

9 Article 47, Dutch Competition Act.

10 Rotterdam District Court 11 June 2020 (*Eiseres 1 & 2 v. Secretary of State for Economic Affairs and Climate*) ECLI:NL:RBROT:2020:5122.

11 Decision ACM 13 January 2020 (*Audax/Bruna*) Case ACM/19/037542.

12 Decision ACM 7 February 2020 (*Digital Realty/InterXion*) Case ACM/19/038019.

13 Decision ACM 10 April 2020 (*DPG Media/Sanoma*) Case ACM/19/038207.

14 Decision ACM 9 July 2020 (*GVB/HTM/NS/RET*) Case ACM/20/039644.

providers and MaaS providers by providing technical interconnection services to MaaS providers and mobility providers. The ACM found four threats to competition but accepted behavioural remedies.

Threat to competition	Behavioural remedy accepted by the ACM
Bundling access to participating transport services with platform services	Unbundled access to the transport services
Discriminatory pricing towards competing MaaS providers	No exclusive purchasing
Discriminatory pricing towards competing mobility providers	Fair, reasonable and non-discriminatory conditions
Access to commercially sensitive information, giving the participants an advantage over their competitors	Firewall for sensitive information

The ACM conditionally cleared a JV between Pon Netherlands BV and Dutch rail incumbent NS.[15] The JV would combine their respective MaaS platforms to link rail services with Pon's bikes, e-bikes and cars. To resolve vertical foreclosure risks, the ACM imposed behavioural remedies, including the commitment by NS to provide equal access to its services, notably through access to its application programming interfaces.

The acquisition of regional publisher of daily newspapers NDC by its national competitor Mediahuis was not deemed problematic in the markets for readers or advertisers.[16] However, NDC's network for the delivery of morning newspapers in the north of the Netherlands is used by all newspaper publishers, including Mediahuis' biggest competitor, DPG. As a remedy, Mediahuis committed to grant access to publishers without their own distribution network and to maintain the level of quality and prices.

Hutchison Ports Netherlands – owner of the ECT container terminal – was allowed to acquire the container terminal APMT-R from Maersk in the port of Rotterdam.[17] The ACM found that the increase in market share was limited, as much of its volume was captive from Maersk shipping, and that shippers have strong bargaining positions. No risk was found in the market for transit traffic in the Hamburg–Le Havre range, nor in the market for hinterland traffic in the (at the minimum) Antwerp–Rotterdam range.

The concentration between educational institutions LOI and NCOI is discussed in Section II.iv.[18]

iv Phase II cases

Corendon and Sunweb, two travel agencies, would have a significant combined market share in the national market for sun holidays to long-haul and medium-haul destinations.[19] Equally large competitor TUI, as well as many smaller parties, would maintain competitive pressure. The ACM ruled out coordination between the new entity and TUI as this would be difficult due to the substitutability of the destinations and by the influence of geopolitical events on the travel movements of consumers. In a twist, Sunweb pulled out of the deal as the coronavirus crisis had changed market dynamics. Corendon demanded execution of the transaction, but this was denied by the court in preliminary proceedings.

15 Decision ACM 20 May 2020 (*NS/Pon*) Case ACM/20/038614.

16 Decision ACM 30 November 2020 (*Mediahuis/NDC Group*) Case ACM/20/042189.

17 Decision ACM 15 October 2020 (*Hutchison Ports/APM Terminals Rotterdam*) Case ACM/20/040727.

18 Decision ACM 20 May 2020 (*NCOI/TIO*) Case ACM/20/039041.

19 Decision ACM 26 October 2020 (*Sunweb/Corendon*) Case ACM/20/041207.

The ACM granted a licence for the takeover of LOI by NCOI.[20] The parties are both private educational institutions that offer (mainly part-time) courses at accredited higher professional education level and accredited secondary professional education level, as well as various non-accredited courses. Extensive market research in Phase II pointed to separate markets for part-time and full-time accredited education. The activities of the parties overlapped in the part-time segment only, where sufficient competition would remain, notably due to competition by public institutions. In the market of non-accredited courses, a sufficient number of other providers with a broad range of options were active alongside niche players with specialised offerings.

The ACM approved a full function JV to which building companies BAM and Heijmans transferred 10 asphalt plants.[21] The ACM investigated whether the JV could lead to the foreclosure of road construction companies from the supply of asphalt or to higher asphalt prices. The ACM concluded that sufficient alternatives existed, even in the local markets. Important factors preventing foreclosure were ease of switching, low transport costs of asphalt and lasting overcapacity in the asphalt market to the effect that BAM and Heijmans will remain dependent on supplies to third parties.

The ACM granted a licence for the merger of three elderly care homes, including de Schakelring.[22] The market research showed that patients had a strong preference for a provider in their immediate vicinity, to the effect that the parties were not usually alternatives for each other. In addition, larger competitors remained present. In the care procurement markets the parties obtained relatively low market shares of 20 per cent to 30 per cent at the most, in the narrowest market. Finally, none of the health insurers expected negative consequences of the merger.

The ACM approved the acquisition by Stichting Omring of Stichting Vrijwaard with conditions.[23] The parties are both elderly care institutions with a diverse range of care services, including somatic and psychogeriatric nursing home care. The ACM concluded that the acquisition would lead to a significant impediment of competition in the markets for somatic and psychogeriatric nursing home care, due to very high market shares of up to 90 per cent in the local markets. Consequently, Omring had to sell some of its locations to a third party.

The ACM approved the acquisition of parts of Careyn by Thebe with conditions.[24] The ACM found that, as a result of the proposed acquisition, competition would be significantly impeded in the market for district nursing and home care in a number of communities in the south of the Netherlands. The ACM accepted the parties' remedy proposals to divest certain local teams and clients.

20 Decision ACM 13 August 2020 (*NCOI/LOI*) Case ACM/20/039040.

21 Decision ACM 13 February 2020 (*BAM/Heijmans*) Case ACM/19/036914.

22 Decision ACM 21 February 2020 (*Schakelring/De Riethorst Stromenland/Volckaert*) Case ACM/19/037511.

23 Decision ACM 5 August 2020 (*Omring/Vrijwaard/Hulp Thuis Vrijwaard*) Case ACM/19/037144.

24 Decision ACM 3 November 2020 (*Thebe Wijkverpleging/Careyn*) Case ACM/20/040077.

v Reports and position papers

In 2019, the ACM, for the first time, outlined its ideas on an *ex ante* enforcement instrument for addressing possible competition problems in relation to digital platforms with gatekeeper positions.[25] In 2020, the ACM affirmed its view on the desirability of an *ex ante* enforcement instrument.

The ACM supported the European Commission's initiative for a new competition tool (NCT) in its contribution to the consultation in the context of the Digital Services Act Package. According to the ACM, the NCT 'should be complementary to the existing competition instruments (article 101, 102 TFEU and the Merger Regulation) and be able to address structural competition problems that cannot be tackled effectively by the existing competition instruments'.[26] In its contribution, the ACM, inter alia, elaborates on: (1) 'the potential structural competition problems which may not be addressed effectively or sufficiently efficient with the existing competition instruments'; (2) the potential scope of application of the NCT; (3) the desirable threshold for intervention; and (4) the proportionality of possible remedies.[27] The ACM also emphasised the need for an additional *ex ante* enforcement instrument in its report of 16 November 2020 on big tech firms in the payment industry.[28]

III THE MERGER CONTROL REGIME

i Merger control thresholds

Article 29 of the DCA provides that a concentration must be notified if:

a the combined turnover of all undertakings concerned exceeds €150 million in the calendar year preceding the concentration; and

b of this turnover, at least two concerned undertakings each achieved at least €30 million in the Netherlands.

Alternative jurisdictional thresholds exist for the following undertakings.[29]

Healthcare undertakings

All concentrations involving at least one healthcare undertaking must be notified to the Dutch Healthcare Authority (NZa). For the purpose of the healthcare-specific test carried out by the NZa, a healthcare undertaking is defined as an undertaking employing or contracting more

25 See joint memorandum of the Belgian, Dutch and Luxembourg competition authorities on challenges faced by competition authorities in a digital world, 2 October 2019, and ACM: 'Extension of enforcement toolkit to increase effectiveness in dealing with competition problems in the digital economy'.

26 See Annex 2 to the response of the ACM. See www.acm.nl/sites/default/files/documents/2020-09/bijlage-2-acm-response-nct.pdf.

27 id.

28 'Big Techs in het betalingsverkeer', 16 November 2020, www.acm.nl/sites/default/files/documents/big-techs-in-het-betalingsverkeer.pdf.

29 Since the Act for the streamlining of market surveillance by the ACM of 24 June 2014 entered into force on 1 August 2014, concentrations between insurance companies are subject to the regular thresholds. Previously, a complicated lower threshold applied.

than 50 healthcare providers (persons).[30] The NZa evaluates, inter alia, the accessibility and quality of services and their integration plans. If the NZa advises positively, the transaction must be notified to the ACM if it meets the relevant thresholds.

For the purpose of the control by the ACM, a healthcare undertaking is an undertaking that achieves at least €5.5 million turnover through healthcare services. A concentration between two or more healthcare undertakings must be notified to the ACM if:

a the combined turnover of all undertakings concerned exceeds €55 million in the calendar year preceding the concentration; and

b of this turnover, at least two of the undertakings concerned each achieved at least €10 million in the Netherlands.[31]

Credit and financial institutions

For credit and financial institutions within the meaning of the Act on Financial Supervision, Article 31(1) of the DCA states that instead of turnover, income items must be used (analogous to those defined in Article 5(3)(a) of the EUMR).

Pension funds

Any type of pension fund will be regarded as an undertaking for competition law purposes. New thresholds have applied since 1 July 2016: concentrations involving pension funds are subject to prior notification if the joint worldwide premiums written by the parties concerned in the preceding calendar year amounted to €500 million and at least two parties achieved €100 million premiums written by Dutch citizens.[32]

ii Investigation phases

Notification phase

The Dutch procedure consists of two phases. In Phase I, the ACM will investigate upon notification whether there are reasons to assume that the concentration may impede effective competition in certain markets (notification phase). If there are no such reasons, the ACM will clear the concentration, after which the concentration may be completed. Once the decision on the notification is issued, a filing fee of €17,450 is imposed, regardless of the outcome of the decision.

Licence phase

If the ACM has reason to assume that competition may be impeded, it decides that the concentration requires a licence, which will be granted only after a further investigation in Phase II (licence phase).

In contrast with the European procedure, in the Netherlands Phase II only starts if and when the parties involved request a licence. Such request requires a new notification in which more detailed information is provided to the authority about the parties and the relevant markets. Upon this request, the ACM will conduct an additional investigation and

30 The relevant amendment to the Health Care (Market Regulation) Act was voted on on 26 November 2013 and is applicable as of 1 January 2014.

31 These thresholds will continue to apply until at least 1 January 2023.

32 The Law of 23 December 2015 changed a number of laws in the Ministry of Economic Affairs' domain, including raising the maximum fines applicable to the ACM (proposal 34,190).

either clear or prohibit the relevant concentration. Before prohibiting a concentration, the authority will provide the parties (and sometimes third parties) with an overview of the relevant competition concerns (points of consideration) and will provide the parties (and sometimes third parties) with the opportunity to give their reactions on these points. Once the decision on the licence request is issued, a filing fee of €34,900 is payable, regardless of the outcome of the decision.

Both the notification for Phase I and the request for a licence must be submitted in Dutch. Annexes, such as letters of intent or share purchase agreements, or annual reports, may be submitted in English.

Clearance by the Minister of Economic Affairs

In the Netherlands, if a concentration is prohibited, there is a possibility of requesting the Minister of Economic Affairs to grant a licence for serious reasons of general interest. In 2019, the Minister did so for the first time.[33]

iii Duration procedure and waiting period (standstill obligation)

Phase I is a 28-day review period, whereas Phase II has a maximum duration of 13 weeks. However, these periods may be suspended if the ACM asks formal questions requiring additional information on the concentration. Because of this possibility of suspension, the review period can be very lengthy. As an extreme example, the 28-day period (Phase I) was suspended for 261 days in the *Coöperatie Vlietland/Vlietland Ziekenhuis* case.[34] There are no requirements for pre-notification.

Exemption waiting period

As previously indicated, the concentration may not be completed during the review period. Some exceptions apply, which are similar to those under the EUMR. In the event of a public bid, the prohibition does not apply, provided that the bid is immediately notified to the ACM and the acquirer does not exercise the voting rights attached to the relevant share capital (the latter condition may be waived).

The ACM can also grant an exemption from the standstill obligation if quick clearance by the authority is not possible and suspension of completion of the concentration would seriously jeopardise the concentration. Such exemption can be granted within several working days. Once the exemption is granted, the concentration may be completed before the authority clears it. If the intended concentration does not pose any problems, the ACM may prefer to take a final clearance decision within a couple of days instead of granting an exemption.

In the case of exemptions, the concentration must be unwound if it is subsequently prohibited by the authority.

33 See Section II.ii.

34 Decision NMa 18 February 2010 (*Coöperatie Vlietland/Vlietland Ziekenhuis*) Case No. 6669.

iv Other procedural aspects

Third parties

The notification of a transaction is always published in the Government Gazette. In this communication, third parties are invited to comment on the contemplated concentration. Although third parties are requested to respond within seven days, information provided later may also be used in the procedure. The ACM also actively gathers information by sending out questionnaires or by interviewing third parties. The ACM is aware that competitors may have strategic reasons to be critical of a contemplated concentration, but it attaches more weight to the comments of customers – especially the comments of health insurers in cases concerning healthcare suppliers.

Information received from third parties will generally be communicated to the parties concerned to provide them with the opportunity to respond. Generally, the authority will reveal the third party's identity.[35]

Remedies

Under the Dutch merger control rules, parties can propose remedies in both the notification phase and the licence phase. The conditions and type of remedies are, in principle, similar in both instances and are laid down in guidelines.[36] The general preconditions are that the parties to the concentration must take the initiative and the remedies proposed must be suitable and effective for eliminating the relevant competition concerns. The authority generally prefers structural remedies, but behavioural or quasi-structural remedies (not structural but nevertheless on a permanent basis, such as an exclusive licence agreement) are also possible. The authority does not have a specific form,[37] but does require, inter alia:

a the proposal to be in writing;
b a detailed description of the nature and size of the remedy;
c a note on how all indicated competition concerns will be eliminated;
d if applicable, the steps required to divest a part of the undertaking and the timeline for this;
e a non-confidential version of the proposal; and
f a timely filing of the proposal.

Nevertheless, there are some differences between the procedures in the two phases. First, in the notification phase the remedy proposal should be handed in a week before the deadline of the ACM decision, whereas this is three weeks in the licence phase. In addition, whereas a concentration cleared under conditions in the notification phase may not be completed until the remedy is effectuated – effectively creating a 'fix it first' obligation, this limitation does not apply to remedies accepted in the licence phase. In both cases, however, effectuation of the remedies must be within the time frame stipulated in the proposal. If the parties fail to meet this deadline, the concentration will require a licence (remedies in the notification phase) or

35 The ACM has published 'rules of the game for merger control procedures' providing detailed information on its approach in merger control cases, available at www.acm.nl/nl/download/publicatie/?id=11348 (in Dutch).

36 Remedies guidelines 2007. This section is based on these guidelines.

37 In its guidelines, the authority does refer to model texts from the European Commission.

the concentration will be deemed to have been completed without a licence (remedies in the licence phase). In general, any failure to comply with remedies once the concentration has been completed is punishable by heavy fines.[38]

Fines for late notification

As previously indicated, failure to notify a concentration (in a timely manner) will usually lead to a fine upon discovery by the authority. Fines for late notification may run up to 10 per cent of the worldwide turnover in the year preceding the year of the fine, but this ceiling can be doubled in the case of recidivism. On the basis of Articles 2.5 and 2.6 of the 2014 ACM Fining Policy Rule,[39] the ACM sets the fine at €400,000 to €700,000 or 5 per cent of the total Dutch turnover in the preceding financial year for the buyer – whichever is higher. However, the ACM has substantial leeway to increase the resulting amount of the fine if it deems it to be too low. This fine may be doubled in the case of recidivism.

v Appeals and judicial review

Merger control decisions

Each phase ends with a decision, which can be appealed before the District Court of Rotterdam by any party directly affected by the decision, including the parties involved in the concentration, and usually also competitors, customers and possibly suppliers. Further appeal against a judgment of the Rotterdam District Court can be lodged with the CBb.

Third parties directly affected by the decision do not have access to the authority's file, but they can request information from the authority on the basis of the Government Information (Public Access) Act when the merger control procedure has been completed. Information that is generally not provided to third parties under this Act includes confidential business information and internal memos of the authority.

Sanction decisions

Before imposing a fine, the ACM draws up a statement of objections on which parties may comment (in writing or orally). After this, the ACM will take a decision against which a notice of objection can be filed with the ACM. An appeal can be lodged against the ACM's decision (on administrative appeal) to the District Court of Rotterdam. An appeal can be lodged with the CBb against the District Court's decision.

IV OTHER STRATEGIC CONSIDERATIONS

As previously indicated, the ACM is stringent in its interpretation of its jurisdiction, gun-jumping issues, late notifications and failure to comply with remedies, and has a track record of imposing heavy fines in cases of non-compliance. If it is unclear whether a concentration must be notified, the parties can seek informal guidance from the ACM. The ACM is required to react to such queries, and does so within two weeks (often within days).

38 For example, the €2 million fine imposed on Wegener; for more information, see the Netherlands chapter in the fourth edition of *The Merger Control Review*.

39 Policy rule of the Minister of Economic Affairs of 4 July 2014, No. WJZ/14112617, on the imposition of administrative fines by the Netherlands Authority for Consumers and Markets (www.acm.nl/en/download/attachment/?id=12098).

V OUTLOOK AND CONCLUSIONS

The ACM generally remains quite realistic in its merger control analyses. In 2019, it accepted a behavioural remedy after a long period during which it only accepted structural remedies.[40] In 2020, the ACM accepted at least three behavioural remedies.[41] Consistent with enforcement trends in the EU, the ACM is very keen to investigate all aspects of the digital economy, particularly where platforms are involved. This was especially clear in the cases concerning MaaS, in which the ACM imposed behavioural remedies in both cases.[42] It also ties in with the efforts of the ACM to keep alleged gatekeepers in check through supporting the EU Digital Markets Act or in other ways.

Unfortunately, the ACM's continuing policy of issuing only a limited number of reasoned decisions results in a lack of guidance on market definitions, jurisdictional issues, economic analyses and theories of harm. This can render the notification process unpredictable.

The ACM is increasingly scrutinising mergers in the healthcare sector – assessing the effects of merger and available competitors per type of treatment in rather narrow geographical areas. The ACM has a separate department tasked with healthcare sector market regulation, including merger review. The ACM tends to start Phase II reviews willingly. In 2020, three of the six Phase II merger cases were in the healthcare sector; these reviews included detailed assessments of local effects for patients and healthcare insurers.[43]

The general EU trend to be more cautious about foreign direct investment continued in 2020. The legislative debates on additional legal mechanisms to protect companies from hostile takeovers led to the adoption of an act introducing a statutory cooling-off period of 250 days for Dutch-listed companies, allowing the management board of a listed company more time to draw up a statement of affairs and weigh up the interest of the company and its stakeholders.[44] Additionally, an act providing for a foreign direct investment filing obligation for mergers in the telecoms sector has been adopted.[45]

A further development concerns the publishing for consultation of a bill setting up a general *ex ante* screening mechanism for investments in vital process or sensitive technology companies (the Economy and National security Review Bill).[46] The bill will provide for a suspensory filing obligation for any acquisition of relevant targets. Additionally, the Dutch Minister of Defence is currently preparing a bill regarding the protection of the Dutch defence technological and industrial base. The bill will introduce a sector-specific test to complement the Economy and National Security Review Bill.

40 Decision ACM 28 August 2019 (*Sanoma/Iddink*) Case ACM/19/035555.

41 Decision ACM 20 May 2020 (*NS/Pon*) Case ACM/20/038614; Decision ACM 9 July 2020 (*GVB/HTM/NS/RET*) Case ACM/20/039644; Decision ACM 30 November 2020 (*Mediahuis/NDC Group*) Case ACM/20/042189.

42 Decision ACM 9 July 2020 (*GVB/HTM/NS/RET*) Case ACM/20/039644; Decision ACM 20 May 2020 (*NS/Pon*) Case ACM/20/038614.

43 Decision ACM 21 February 2020 (*Schakelring/De Riethorst Stromenland/Volckaert*) Case ACM/19/037511; Decision ACM 5 August 2020 (*Omring/Vrijwaard/Hulp Thuis Vrijwaard*) Case ACM/19/037144; Decision ACM 3 November 2020 (*Thebe Wijkverpleging/Careyn*) Case ACM/20/040077.

44 Article 2:114b, Dutch Civil Code.

45 Chapter 14a, Dutch Telecommunication Act.

46 www.internetconsultatie.nl/investeringstoets.

A trend is that third parties are appealing merger cases more often. This has led to a greater scrutiny by the ACM of cases in which it anticipates that its decision will be appealed, which has, in turn, led to more Phase II cases. In addition, it seems that the ACM is more readily sending cases to Phase II as this gives it greater scope to conduct market surveys. This development is not all bad, as Phase I decisions may have previously dragged on for too long. The 'second generation' Phase II cases can be wound up relatively quickly upon completion of the ACM's surveys, to the effect that they do not necessarily drag on as some of the older Phase II cases did.

Appendix 1

ABOUT THE AUTHORS

GERRIT OOSTERHUIS

Houthoff

Gerrit Oosterhuis is a partner at Houthoff and heads the Brussels office of the firm. He focuses on merger control work, cartel defence litigation and abuse of dominance procedures. In the field of merger control, he regularly acts for private equity funds as well as strategic buyers, acting in recent joint ventures such as *Varo/Argos DSE/Vitol/Carlyle/Reggeborgh*, *DEME/Oceanflore* and *Parcom/Pon/Imtech Marine*, concentrations in the food sector, such as *FrieslandCampina/Zijerveld*, and major Dutch cases such as *NCOI/LOI*, *Shanks/Van Gansewinkel* and *Kidsfoundation/Partou*. Mr Oosterhuis has been involved in defence work in major Dutch cartel cases. He has a substantial behavioural practice, advising clients such as SHV Energy, Hasbro Europe and Royal Bunge.

Mr Oosterhuis joined Houthoff in 1999. He works from Houthoff's Brussels and Amsterdam offices. He was recommended in *Chambers Europe* 2021 and *Chambers Global* 2021 in which clients praise his 'practical approach, his analyses, which are easy to read and understand, and his ability to provide answers quickly'.

WEIJER VERLOREN VAN THEMAAT

Houthoff

Weijer VerLoren van Themaat has been assisting international clients for over 25 years in the most challenging and complex cases related to merger control and cartel defence litigation, and leads Houthoff's competition practice group. In the field of merger control, he has acted, inter alia, in European cases such as *TomTom/TeleAtlas*. He has a substantial healthcare practice. He was involved in almost all Dutch Phase II hospital mergers and has received assignments for litigating merger fines from, inter alia, Singapore Airlines.

He was resident partner at Houthoff's Brussels office from 1997 to 2005, after which he returned to Amsterdam. He is chair emeritus of Lex Mundi's Antitrust Competition and Trade Group and a non-governmental adviser to the Dutch Authority for Consumers and Markets. He publishes and speaks regularly on competition law-related subjects. Mr VerLoren van Themaat is recommended in, inter alia, *Chambers Europe* 2019, *The Legal 500* 2015, *Who's Who Legal* 2014 and *Best Lawyers* 2014. He is described as 'smart and strategic' (*The Legal 500: EMEA* (EU and Competition) 2017). Interviewees highlight his strengths, saying: 'He is practical and has so much experience he is on top of the subject. He always approaches difficult topics in a positive manner and we have very open communication with each other.' (*Chambers Europe* 2019).

HOUTHOFF

Boulevard Bischoffsheim 15 – 8.1
1000 Brussels
Belgium
Tel: +32 2 507 98 13
g.oosterhuis@houthoff.com

Gustav Mahlerplein 50
1082 MA Amsterdam
Netherlands
Tel: +31 20 605 61 83
w.verloren@houthoff.com

www.houthoff.com

an LBR business

ISBN 978-1-83862-803-1