

ACM: a lean and mean streamlined machine as of 1 August

September 10, 2014

A new act has come into force streamlining the rules that originally applied individually to each of the competition, consumer and telecommunications regulators. The powers of the three regulators are now streamlined as a result of the act and exercised by one Authority for Consumers & Markets. With regards to competition law, the act has a number of changes on (i) merger control, (ii) employees' right to remain silent, and (iii) fines. As a result of these changes, companies may no longer have to notify the ACM of certain mergers. In addition, former employees will need to carefully consider in which capacity they are questioned by the ACM.

(i) Merger control

The [Streamlining Act](#) increases the upper worldwide merger control threshold from EUR 113.45 million to EUR 150 million. As of 1 August 2014, companies will therefore have to notify the ACM of a transaction if it triggers the following thresholds:

- the companies concerned have a combined worldwide turnover in the previous calendar year in excess of EUR 150 million, and
- the turnover in the Netherlands of each of at least two of the companies concerned was at least EUR 30 million.

These merger control thresholds also apply to insurance companies in determining whether they need to notify the ACM about a transaction. The Streamlining Act deletes the distinct lower merger threshold of EUR 4.54 million as expressed in gross premiums received from Dutch residents

(ii) Right to remain silent

The Streamlining Act provides that only a company and its current employees have a right to remain silent. Contrary to an earlier [ruling](#) by the Trade and Industry Appeals Tribunal, former employees can no longer invoke the right to remain silent when questioned by the ACM in connection with an investigation against their former employer. The tribunal considered that excluding former employees from the right to remain silent would deprive a company of effective protection during investigations.

As a result of the Streamlining Act, former employees will now need to carefully consider in which capacity they are questioned by the ACM. If they are questioned as individuals suspected of a competition law violation, they will have an individual right to remain silent. In all other cases, they will have a legal obligation to cooperate and cannot invoke the right to remain silent for the benefit of their former employer.

(iii) Fines

The Streamlining Act limits the suspensory effect of an appeal

against a decision to impose a fine to 24 weeks. As a result, companies can no longer postpone the payment of a fine until a ruling on the appeal has been handed down, but will need to pay the fine within 24 weeks, irrespective of whether they have lodged an appeal.