Trends in Dutch Public M&A 2024

At a *glance*

KEY TRENDS

1 Low deal volume and small tickets

2 Controlling shareholders delist companies, but do not buy-out minorities

3 Increasing variation in duration of non-financial covenants

4 ESG taking a more prominent role in public M&A

NOTICEABLE EVENTS

1 EU Mobility Directive in practice

2 Improved debt financing landscape

3 Favourable tax conditions persist in listed company space

4 Merger Control, FDI and FSR remain key for success

We are delighted to present you the key trends and noticeable events in the Dutch public M&A market from 1 January 2023 to 12 November 2024.

Olivier Valk
Partner, Amsterdam

Christiaan de Brauw
Partner, Amsterdam

Outlook

The outlook for public M&A in the Netherlands is moderately optimistic. On the one hand, the high share prices reflected in the AEX-index, the geopolitical uncertainty and (perceived) valuation gap continue to complicate deal-making. Another key challenge will be the (perceived) gap between the undisturbed share price, fundamental valuation and bidder and shareholder expectation regarding price. There may be a need and room for creative deal structuring, within the boundaries of equal treatment of shareholders and the best price rule. For example, with differentiated offer consideration structures, as with Hydratec and Allego this year[1]. On the other hand, interest rates are on a downward trajectory and inflation is coming increasingly under control. In addition, U.S. public deal activism is materially increasing, including for large ticket transactions, which often bodes well for ensuing deal activity in Europe and the Netherlands. Specific pockets and drivers for public M&A are expected to include:

STRATEGIC COMBINATIONS

Now might be the time to initiate combinations with a strong strategic rationale, as decision-makers get comfortable with the turmoil of recent years. These can be structured as stock-for-stock public offers or mergers in line with the new EU Mobility Directive. Potentially, there may be more appetite to start in a more powerful manner and not necessarily friendly from the outset, like in the UniCredit–Commerzbank situation, with material stakebuilding in order to get a foot in the door.

OPPORTUNITIES AT SMALL AND MID-CAP COMPANIES

While the indices are around record levels, these are to a large extent driven by specific sectors such as technology and semiconductors (ASMI, ASML, BESI), and there are also companies whose share prices are lagging. Small and mid-cap companies may realise that the pros and cons of being listed are on balance negative, and seek delisting, as was done over the last couple of years, and which we continued to see as a key driver for the deals that did materialise this year.

[1] *The Hydratec offer was not declared unconditional due to insufficient shareholder acceptances.*

Key stats

EUR5.2 billion

AGGREGATE DEAL VALUE

(EUR522 million on average deal value)

10

TRANSACTIONS

7 deals
3 deals
2023
2024

BIDDER TYPE

50%
50%
Strategic
Financial/PE

AVERAGE NON-FINANCIAL COVENANT DURATION (in months)

2023/2024 32 months
2018/2022 23 months

88.6%

AVERAGE SHAREHOLDERS' ACCEPTANCE IN INITIAL ACCEPTANCE PERIOD
(87.8% on average in period Jan. 2018-Dec. 2022)

51.1%

AVERAGE SHAREHOLDER SUPPORT/BIDDER SHARES AT ANNOUNCEMENT
(32.4% on average in period Jan. 2018-Dec. 2022)

10.1%

AVERAGE THRESHOLD FOR ACCEPTING COMPETING OFFER
(8.7% on average in period Jan. 2018-Dec. 2022)

Key *trends*

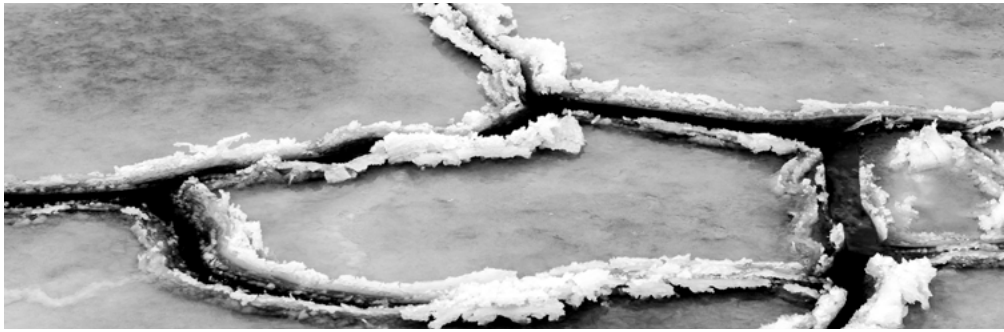
1. LOW DEAL VOLUME AND SMALL TICKETS

- Since October 2023, only three public offers have been announced.[2]
- Mid- and small-cap funds, and their controlling shareholders, continued to re-evaluate the benefits of their listing, resulting in offers for Allego, Hydratec, PB Holding and the delisting of GeoJunxion.
- PE funds continued to face challenging market conditions (e.g. high interest rates), and were focused on exits from existing investments.
- We observe an increasing difficulty for bidders and targets to agree on offer prices due to valuation discrepancies.

2. CONTROLLING SHAREHOLDERS DELIST COMPANIES, BUT DO NOT BUY-OUT MINORITIES

- Bidders usually seek to acquire 100% ownership and delist the target, to enable full integration of the target in the bidder's group and eliminate minority shareholders.
- But two out of the three deals in 2024 (Allego and Hydratec) focussed only on delisting and allowed minority shareholders to remain invested in some form. While the Allego offer succeeded in this, the Hydratec offer was not declared unconditional due to insufficient shareholder acceptances.
- In Allego and Hydratec, minority shareholders had two options:
  - exit their investment with immediate liquidity by selling their shares to the bidder; or
  - retain their investment to benefit from future upsides by: (a) keeping their shares in the delisted target (Allego), or (b) exchanging their target shares for shares in the bidder (Hydratec).

[2] *Click here to access our previous insights into the Dutch Public M&A market, published on 6 November 2023.*



3. INCREASING VARIATION IN DURATION OF NON-FINANCIAL COVENANTS[3]

- Non-financial covenants (NFCs) are a distinctive feature of the Dutch stakeholder model, which requires target boards to focus on the best strategic options for the sustainable success of the business while considering the interests of all stakeholders. This has resulted in a practice where, for a period after completion of the offer, certain stakeholder commitments must be observed by the offeror.
- Until 2023, NFCs typically had a duration of two or three years. Recently, there has been a shift towards more tailored NFCs with varied timeframes. For example, the Lucas Bols offer had three types of NFCs:
  - Long-term covenants (indefinite period) to protect the target's identity and brand name.
  - Mid-term covenants (five years) focused on the target's other core brands, organisation and operations.
  - Short-term covenants (three years) for prevalent topics, e.g. strategy, financing, governance and employees.

Key *trends*

4. ESG TAKING A MORE PROMINENT ROLE IN PUBLIC M&A

- ESG considerations are increasingly prevalent in public offers. In five of the seven transactions in our review period[4], support for ESG strategy was included as an NFC, indicating a lasting trend.
- ESG targets may increasingly drive deals and valuations and are an important part of the overall target strategy, enticing divestments of 'non-green' assets and acquisitions of 'green' companies. Target boards may become more inclined to weigh ESG-related factors in their support of a public offer.
- Shareholder climate activism remains relevant, with activists disrupting general meetings of companies like Shell, Ahold and ING. The impact on extraordinary general meetings related to public offers remains to be seen.

[3] The so-called non-financial covenants (NFCs) have been a consistent feature of Dutch public M&A. NFCs are contractual arrangements between the bidder and the target that often cover (a range of) topics, including future strategy, employees, governance, financing, M&A policy and the protection of minority shareholders. The NFCs apply for a certain period after the transaction.

[4] For the purpose of this trend, we have excluded the Meltwater/MW Investment transaction and Majorel/Teleperformance transaction, because no NFCs were included in the relevant offer documents. We have also excluded the PB Holding / Nafimij transaction, since the offer document including the exact scope of the non-financial covenants has not yet been published at the date of this report.

Noticeable *events*

1. EU MOBILITY DIRECTIVE IN PRACTICE

- The Dutch implementation of the EU Mobility Directive took effect on 1 September 2023. Although it has gained considerable attention, its application in public M&A has been limited and focused on relocations.[5]
- In cash deals, public offers will remain the preferred structure. In a share-for-share deal, the EU Mobility Directive can be attractive[6], because:
  - Legal mergers imply equivalence between the merging entities, rather than requiring a target and an acquiror.
  - Shareholder approval for legal mergers requires a two-thirds majority, compared to the typical 80%-95% thresholds in public offers.
  - Legal mergers can be implemented directly after the EGM vote, resulting in a shorter exposure to market risk compared to the long offer period in a public offer.
  - No buy-out proceedings or second-step.

2. IMPROVED DEBT FINANCING LANDSCAPE

- With inflationary risk subsiding and base rates continuing to decrease, 2024 has also seen debt financing options available to principal parties on more attractive terms than the last couple of years.
- The momentum in the broadly syndicated market continued to gather pace, giving borrowers the option as to whether to pursue a public financing solution or whether to tap available liquidity provided by the private credit funds. Those funds have responded to the competition of the public markets by offering lower pricing on their debt than seen in recent years (as the wave of re-pricings in the market evidences).

[5] *The EU Mobility Directive was used for the restructuring of Vastned's shareholding structure through the cross-border legal merger between Vastned Retail N.V. and Vastned Belgium NV, expected to be completed in January 2025.*
[6] *It also brings certain challenges to the table, such as the cash-out exit right for opposing minority shareholders and dealing with a lengthy and complex employee consultation process.*

Noticeable *events*

3. FAVOURABLE TAX CONDITIONS PERSIST IN LISTED COMPANY SPACE

- Share buybacks by Dutch listed companies continue to be tax facilitated based on the Dutch Tax Plan 2025[7], despite initial plans for abolition.
- The deductibility of interest expenses is set to be increased to 25% of tax adjusted EBITDA (currently: 20%) lowering effective corporate tax rates.
- The 15% minimum corporate tax (Pillar 2 tax)[8] imposed on large multinationals should be taken into account adequately in the context of public M&A, e.g. as historic financial models may prove to be outdated and purchasers may seek additional tax warranty protection.

4. MERGER CONTROL, FDI AND FSR REMAIN KEY FOR SUCCESS

Early consideration of these regulatory hurdles enables dealmakers to foresee potential obstacles and facilitate a more seamless transaction process. Below is the latest and greatest.

Merger Control[9]

- Authorities are increasingly stringent in merger control, leading to more deal prohibitions and abandonments. In 2023, 20 deals worldwide were prohibited and 18 were abandoned due to antitrust concerns, marking a 54% rise in prohibitions and a 15% increase in interventions compared to 2022. Complex deals will continue to face longer review periods.
- In September 2024, the European Court of Justice ruled that the European Commission cannot review transactions referred to it by national authorities that fall below national and EU merger control thresholds. Consequently, the Commission and Member States need to come up with alternative solutions if they wish to address concerns related to "killer acquisitions", where turnover figures do not adequately represent competitive potential (e.g. acquisitions involving certain start-ups or biotech companies).

Investment Screening

- The Dutch Act on Security Screening of Investments, Mergers and Acquisitions (Vifo Act) came into effect on 1 June 2023. The screening regime notably applies to investments in a number of critical infrastructure suppliers and critical technologies. While public information is scarce, past practice and public information indicates that the semiconductor sector has been a key focus area. Further expansion of the Dutch regime is expected in the near future.
- The European Commission has proposed revising the existing EU FDI Screening Regulation to introduce a mandatory screening obligation in various sectors and for investments involving so-called projects and programmes of Union interest.

Foreign Subsidies Regulation

- The FSR aims to regulate subsidies granted by non-EU countries to ensure that they do not distort competition in the EU. The European Commission has not yet prohibited any transactions based on the Foreign Subsidies Regulation, but did launch one in-depth investigation which was eventually cleared.

[7] *For a more in-depth insight, click here to access our publication "Dutch Tax Plan 2025".*
[8] *Click here to access our previous insights into Pillar Two.*
[9] *For a more in-depth insight, click here to access our report "Global trends in merger control enforcement 2024".*

PUBLIC DEALS ANNOUNCED BETWEEN 1 JANUARY 2023 AND 1 OCTOBER 2024

The table below includes transactions involving targets listed on Euronext Amsterdam and Dutch entities listed on foreign stock exchanges.[10]

Year	Transaction	Shareholder support/bidder shares at announcement	Acceptance level condition	Acceptance (end initial acceptance period/end post-acceptance period)	Pre-wired acceptance level	Threshold competing offer/revised competing offer	Break-up fee/reverse break-up fee (% of equity value)
2024	PB Holding/Nafimij (November)	45%	50%	Pending/Pending	N/A	10%/N/A	3.75%/N/A
	Allego/Meridiam Fund (June)	73%	N/A	86.6%/N/A	N/A	N/A	N/A
	Hydratec Industries/Ten Cate Investeringsmaatschappij (January)[11]	77%	95%	80.03%/80.4%	90%	10%/10%	N/A
2023	Koninklijke Brill/Walter de Gruyter (October)	60%	95%	96.12%/98.84%	80%	10%/5%	Approx. 1.94%/Approx. 1.75%
	Lucas Bols/Nolet Holding (October)	35%	70%	71.70%/75.80%	80%	12.5%/12.5%	Approx. 0.8%/N/A
	Beter Bed/Torqx Capital Partners (July)	44%	80%	95.14%/98.44%	80%	10%/10%	Approx. 1.5%/Approx. 1.5%
	RoodMicrotec/Microtest (June)	31%	95%	87.19%/95.09%	80%	Approx. 11%/Approx. 6%	Approx. 2%/Approx. 3.5%
	Majorel/Teleperformance (April)	79%	N/A	98.45%/99.91%	N/A	N/A	N/A
	Ordina/Sopra Steria (March)	26%	95%	92.73%/98.01%	80%	10%/5%	Approx. 1%/Approx. 3%
	Meltwater/MW Investment (January)	41%	95%	89%/NA	80%	7.5%/N/A	Approx. 0.5%/Approx. 1.5%
	Average	*51.10%*	*84.38%*	*88.6%/94.4%*	*81.4%*	*10.1%/8.1%*	*1.6%/2.3%*

[10] Other noticeable transactions not covered in this table include (a) the sale of all assets and liabilities by GeoJunxion N.V. to its controlling shareholders (acting via bid company Road Runner B.V.), avoiding the public takeover regime and (b) the public takeover for Marel by John Bean Technologies Europe, which is expected to close by the end of 2024. Marel's shares are admitted to trading on Nasdaq Iceland and partially on Euronext Amsterdam, but the Icelandic financial authority supervised the offer and the Dutch offer rules did not apply.

[11] The Hydratec offer was not declared unconditional due to insufficient shareholder acceptances. The pre-wired acceptance level of 90% (which could be waived down to 85%) was not met.

Christiaan de Brauw
Partner, Amsterdam

Tel +31 20 674 1298
christiaan.debrauw@aoshearman.com

Olivier Valk
Partner, Amsterdam

Tel +31 20 674 1445
olivier.valk@aoshearman.com

Tim Stevens
Partner, Amsterdam

Tel +31 20 674 1408
tim.stevens@aoshearman.com

Charles Honée
Partner, Amsterdam

Tel +31 20 674 1227
charles.honee@aoshearman.com

Amsterdam Public M&A team

A&O Shearman is an international legal practice with nearly 4,000 lawyers, including some 800 partners, working in 29 countries worldwide. A current list of A&O Shearman offices is available at aoshearman.com/en/global-coverage. A&O Shearman means Allen Overy Shearman Sterling LLP and/or its affiliated undertakings. Allen Overy Shearman Sterling LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen Overy Shearman Sterling LLP (SRA number 401323) is authorised and regulated by the Solicitors Regulation Authority of England and Wales. The term partner is used to refer to a member of Allen Overy Shearman Sterling LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen Overy Shearman Sterling LLP's affiliated undertakings. A list of the members of Allen Overy Shearman Sterling LLP and of the non-members who are designated as partners, and a list of the directors of Allen Overy Shearman Sterling (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD. A&O Shearman was formed on 1 May, 2024 by the combination of Shearman & Sterling LLP and Allen & Overy LLP and their respective affiliates (the legacy firms). This content may include or reflect material generated and matters undertaken by one or more of the legacy firms rather than A&O Shearman. © Allen Overy Shearman Sterling LLP 2024. This document is for general information purposes only and is not intended to provide legal or other professional advice. aoshearman.com ROW

CDD-0824-011491-ADD-1124-028422