

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Republic of Armenia

IMPORTANT NOTE: This template is intended to provide introductory material. Reading the template is not a substitute for consulting the referenced statutes and regulations. If you are analyzing a particular transaction, this template should be a starting point only.

1. Merger notification and review materials (please provide title(s), popular name(s) and citation(s))

A. Notification provisions	Given by Chapter 4 of the RA law "On Economic Competition Protection"
B. Notification forms or information requirements	--
C. Substantive merger control provisions	--
D. Implementing regulations	--
E. Interpretive guidelines and notices	--
F. Annual report	--

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	State Commission for the Protection of Economic Competition
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	14 Koryun str., Yerevan - 375 009, Armenia Tel. / Fax: (374 1) 545 637 E-mail: sspec_am@yahoo.com
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	Yes, although there is no special provision in the legislation.

3. Notification requirements

A. Is notification mandatory pre-merger?	Yes.
B. Is notification mandatory post-merger?	No.
C. Can parties make a voluntary pre- or post-merger filing even if filing is not mandatory?	Yes.

4. Covered transactions

<p>A. Definitions of potentially covered transactions</p>	<p>The following shall be deemed as concentration on the same commodity market :</p> <p>a) merger of economic entities;</p> <p>b) acquisition by an economic entity of at least 35 % of the assets of another economic entity;</p> <p>c) assumption of control by one or several economic entities of at least 35% of another economic entity;</p> <p>d) acquisition of the shares of another economic entity if the shares, either separately or together with other shares already held by the economic entity, make:</p> <ul style="list-style-type: none"> - 50 % of the authorized stock, - 20 % of the voting stock. <p>The shares held by the economic entity include also shares, which were acquired on account of the given economic entity and other shares belonging to other economic entities and, if the given economic entity is a sole proprietor, also other shares belonging to the given sole proprietor. If several economic entities simultaneously or successively acquire shares in another economic entity in the amounts mentioned above, this shall be deemed to also constitute a concentration on the commodity market where the given economic entity operates.</p> <p>e) Any other unification of economic entities enabling one economic entity to directly or indirectly influence the competitiveness of another economic entity.</p> <p>Any unification of the economic entities shall not be deemed as concentration unless it has resulted in the correlation between the economic entities (hereinafter referred to as "participants") which constitute parties to the concentration.</p>
<p>B. If change of control is a determining factor, how is control defined?</p>	<p>Control over an economic entity shall mean:</p> <ul style="list-style-type: none"> - acquisition of ownership or user rights over at least 30% of the assets, - the right to affect the decisions of the given economic entity.
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>See question 4.A, point b) and d).</p>
<p>D. Do the notification requirements cover production joint ventures or any other type of joint venture?</p>	<p>See point 4.A.e).</p>

E. Are any sectors excluded from notification requirements? If so, which sectors?	No.
F. Are transactions that do not meet merger notification thresholds subject to substantive merger control?	No.

5. Thresholds for notification

A. What are the general thresholds? Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.	<p>The concentration shall be subject to declaration if the total gross income of the parties to the concentration has made more than USD 4 million's equivalent in AMD in the year preceding the creation of the concentration, or if at least one of the parties to the concentration is entered on the register of economic entities with dominant position on the given commodity market.</p> <p>The thresholds are not subject to adjustments.</p>
B. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?	See question 5.A.
C. Describe methodology for identifying and calculating any values necessary to determine if	There is no appropriate methodology developed by the Commission . The required methodology are determined by the other legislations.

notification is required, including:	
i. The methodology for identifying and calculating the value of the transaction, if applicable.	---
ii. The methodology for identifying and calculating relevant sales or turnover, if applicable.	--
iii. The methodology for identifying and calculating the value of relevant assets, if applicable.	--
iv. Methodology for calculating exchange rates.	--
D. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?	Thresholds apply to the sum of the companies' gross incomes earned within the territory of Armenia
E. How is the nexus to the jurisdiction determined? If based on an "effects doctrine," please describe how this is applied.	Now there is no specific point in the legislation.
F. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	Geografic allocation of sales is determined as a territory within which it's economically feasible and expedient for the customer to buy commodity.
G. If there are market share tests, are there guidelines for calculating market shares?	Yes, the Commission developed special guidelines for calculating market shares of companies -market participants for identifying dominance. Besides, see question 5.A

shares?	
H. If there are market share tests, do they apply even if there is no horizontal overlap in the parties' activities, either in the jurisdiction or worldwide?	In connection with dominance, yes (see question 5.A).
I. Describe the methodology for determining relevant undertakings/firms for threshold purposes (e.g., group-wide? only the acquired entity? If based on control, how is control determined?).	See 4.A and 5.A
J. Are there special threshold calculations for joint ventures?	No special calculations.
K. Are there special threshold calculations for particular sectors (e.g., banking, airlines) or particular types of transactions (e.g. partnerships, financial investments)?	No special calculations .

6. Transactions in which the acquiring and acquired parties are foreign Are there special rules or exemptions

A. With respect to application of	No.
--	-----

jurisdictional thresholds?	
B. With respect to information required (e.g. information submitted or document legalization)?	No.
C. With respect to waiting periods?	No.

:

7. Simplified procedures

Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, waivers, etc.).	See 4.A.
--	----------

8. Timing of notification

A. What is the earliest that a	No special legislative provision.
---------------------------------------	-----------------------------------

<p>transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?</p>	
<p>B. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event.</p>	<p>No special legislative provision.</p>

9. Documents to be submitted

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies transaction documents).</p>	<p>The declaration on concentration shall contain information on the legal status of the concentration. Apart from this, for each participant to the concentration, the following data shall be included in the declaration:</p> <ul style="list-style-type: none"> a) the annual gross income; b) the annual gross income in the given commodity market; c) name, business and registration address; d) main type of business; e) the list of the goods; f) information on the non-resident participant's representative, registered in Republic of Armenia.
<p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p>	<p>No.</p>

10. Translation

<p>Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification, language(s) accepted, and whether selected excerpts are accepted in lieu of complete documents.</p>	<p>As Armenian is the state language, all the documentation addressed to a state authority must be in Armenian. It means that translations must be submitted.</p>
--	---

11. Review and waiting periods/Suspensive effects

<p>A. Describe any applicable review and/or waiting periods following notification, including whether closing is suspended during any initial review or waiting period and/or further review periods (i.e., second-phase proceedings).</p>	<p>If no decision has been made within a period of two months starting from the date of notification submission, the concentration shall be deemed as permitted.</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. Are the applicable waiting periods limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of</p>	<p>No special legislative provision.</p>

<p>local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance. (e.g. request for a derogation from the bar on closing, commitment to hold separate the local business operations.)</p>	
<p>D. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period. Is there a statutory maximum for extensions of the review period by the authority.</p>	<p>No special legislative provision.</p>
<p>E. Describe any procedures for obtaining early termination of the applicable waiting period, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>No special legislative provision.</p>
<p>F. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>No special legislative provision.</p>

12. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both?	Any of the prospective parties.
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	No.
C. Are the parties required to appoint a joint representative?	Yes
D. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	No special legislative provision.
E. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?	No special legislative provision.

13. Filing fees

A. Are any filing fees assessed for notification? If so, in what amount and how is the amount	No special legislative provision.
--	-----------------------------------

determined?	
B. Who is responsible for payment?	No special legislative provision.
C. When is payment required?	No special legislative provision.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	No special legislative provision.

14. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	According to the present Law, data deemed as a commercial secret and obtained by the Commission at the time of exercising its powers shall remain under the protection of the law and shall not be subject to publication. The staff of the Commission shall not be entitled to publish or disseminate, or use for personal interests the confidential information and commercial secrets obtained during the performance of their official duties. In case of publication of the data deemed as a commercial secret, the damages caused to an economic entity shall be covered from the funds of the state budget in compliance with a procedure establishes by the RA legislation.
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	No
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	No

<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>Only upon the Court decision</p>
<p>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>The Commission can provide possessed information excluding that attributed to commercial secrets. Concerning co-operation with foreign partners the agreement on Conducting co-ordinated antimonopoly policy with CIS countries was signed in January 25, 2000 (article 6).</p>

15. Sanctions/penalties

<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods?</p>	<p>The prohibited concentration which has been put into effect, shall be subject to liquidation.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>No special legislative provision.</p>

16. Judicial review

<p>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency</p>	<p>The decision of the Commission shall be valid from the date of its promulgation and may be appealed in court within 30 days</p>
--	--

decisions on merger notification and review.	
---	--

17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., foreign investment or regulated sectors?	No.
--	-----

18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?	Determined by the Commission
---	------------------------------