

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

CROATIAN COMPETITION AGENCY

January 2008

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

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

A. Notification provisions	Competition Act (Official Gazette of the Republic of Croatia, No. 122/2003); Articles 22, 45; http://www.aztn.hr/eng/trzisno_n.htm
B. Notification forms or information requirements	Regulation on Notification and Assessment of Concentrations, Article 11-14. http://www.aztn.hr/eng/trzisno_n.htm
C. Substantive merger review provisions	Competition Act ; Articles 18, 19, 22, 25,26; http://www.aztn.hr/eng/trzisno_n.htm
D. Implementing regulations	Regulation on Notification and Assessment of Concentrations. Regulation on the Definition of Relevant Market. http://www.aztn.hr/eng/trzisno_n.htm
E. Interpretive guidelines and notices	Guidelines on the assessment of compatibility of concentrations between undertakings; Guidelines on the assessment of compatibility of

	<p>concentrations between undertakings in the electronic media market; Guidelines on the assessment of horizontal mergers (available only in Croatian language on: http://www.aztn.hr/uredbe_vlade.htm)</p>
--	--

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	<p>Croatian Competition Agency for all the sectors except banking sector, for mergers in banking sector National Bank of Croatia is responsible.</p>
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	<p>The Republic of Croatia Croatian Competition Agency Savska 41/VII 10000 Zagreb Croatia Phone: +385 1 617 64 48 ; Fax: +385 1 617 64 50 http://www.aztn.hr (in Croatian and English) e-mail: agencija.ztn@aztn.hr</p>
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	<p>The agency staff is available for pre-notification by telephone, fax or e-mail. The merger notification and assessment of the mergers is handled in the Competition Division of the Competition Agency.</p>

3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)	<p>Article 19 of the Competition Act provides: A concentration of undertakings shall be deemed to arise by means of:</p> <ol style="list-style-type: none"> 1. merger association of undertakings; 2. by acquiring control or prevailing influence of one or more undertakings over another undertaking, i.e. of more
---	--

	<p>undertakings or a part of an undertaking, or parts of other undertakings, in particular by:</p> <ul style="list-style-type: none"> - acquisition of the majority of shares or share capital, or - obtaining the majority of voting rights, or - in any other way in compliance with the provisions of the Company Law and other regulations. <p>The creation of a joint venture having the nature of a permanent independent economic unit shall constitute a concentration.</p>
<p>B. If change of control is a determining factor, how is control defined?</p>	<p>Article 5 (2) of the Competition Act provides: An undertaking is deemed to be controlled by another undertaking if that undertaking, directly or indirectly holds more than half of share capital or half of shares, or may exercise more than half of voting rights, or has the right to appoint more than half of the members of the management board or supervisory committee or similar administrative or managing body, or in any other way exercises a decisive influence on the right to manage business operations of the undertaking.</p>
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Partial stock acquisitions/ minority shareholdings are covered only if the conditions regarding total turnover are simultaneously met.</p>
<p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</p>	<p>Article 19 (2, 5) covers joint ventures defining when does it constitute a concentration, para 2.</p> <p>Joint ventures created with the nature of a permanent independent economic unit will constitute concentration.</p> <p>On the other hand, according to the para 5. The creation of a joint venture with the objective to coordinate competition among the undertakings that remain independent does not constitute a concentration and shall be assessed as an agreement.</p> <p>The Article 19 does not specify the types of joint ventures with regard to the sectors/markets on which they will perform its activities.</p>

4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>Article 22 (4) of the Competition Act: The parties of the merger are obliged to notify it if the following conditions are met:</p> <ol style="list-style-type: none"> 1. the total turnover of all the undertakings – parties of the merger, realized by the sale of goods and/or services in the global market, amounts to at least 1 billion Kuna in the financial year preceeding the merger, and 2. the total turnover of each of at least two parties of the merger realized by the sale of goods and/or services in the domestic market, amounts to at least 100,000,000.00 Kuna in the financial year preceeding the merger. <p>The thresholds are not subject to adjustment.</p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>Group-wide undertakings are included.</p> <p>For threshold purposes, determining group-wide undertakings is based on control. An undertaking is deemed to be controlled by another undertaking if that undertaking, directly or indirectly holds more than half of share capital or half of shares, or may exercise more than half of voting rights, or has the right to appoint more than half of the members of the management board or supervisory committee or similar administrative or managing body, or in any other way exercises a decisive influence on the right to manage business operations of the undertaking.</p> <p>(Article 5, para.2 of the Competition Act)</p>
<p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>The thresholds are not subject to adjustment.</p>
<p>D. 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)?</p>	<p>The thresholds relate to the calendar year preceding the merger .</p>
<p>E. Describe the</p>	<p>Calculation for the value of transaction is based on the</p>

<p>methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p>	<p>documentation that parties submit to the Agency.</p> <p>Calculation of the relevant turnover is based on annual financial reports of parties to the merger.</p> <p>Calculation of the value of relevant assets is based on the documentation that parties submit to the Agency.</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>Calculation is based on the official average annual middle exchange rate of the Croatian National Bank.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>Thresholds apply to both.</p>
<p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>No.</p>
<p>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an "effects" test?</p>	<p>Article 22 (4) of the Competition Act: The nexus to the jurisdiction is determined with the thresholds. The thresholds refer to the Croatian market but also to all undertakings - parties of the procedure and their realized sale of goods or services in the global market.</p>
<p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	<p>National sales are determined by the location of the seller.</p>
<p>K. If market share tests are used, are there guidelines for calculating market</p>	<p>The main guidelines for calculating market shares are contained in the provisions of the Regulation on the Definition of Relevant Market.</p>

shares?	The Guidelines for the assessment of compatibility of concentrations between undertakings and Guidelines on the assessment of horizontal mergers provide additional useful tool in determining relevant market shares.
L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?	Articles 23 and 24 of the Competition Act: Special threshold calculations are applied when banks and other financial institutions as parties to mergers are involved. In that case the total turnover calculated on the basis of the total turnover from their regular business operations in the financial year preceeding the merger. In the matters of control of mergers including insurance companies as parties to merger, the total turnover is calculated on the basis of the total gross premiums of the parties to the merger in the financial year preceding the merger.
M. Are any sectors excluded from notification requirements? If so, which sectors?	No.
N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?	No.
O. Does the agency have the authority to review transactions that fall below the thresholds?	No.

5. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	Yes, if the requirement of the thresholds is reached (Article 22, paragraph 1 of the Competition Act).
B. Is notification mandatory post-merger?	As provided for in the Article 22 (2) of the Competition Act: Notification is mandatory at the latest within 8 days following the day of the publication of the public bid or the

	day of the conclusion of the contract through which the control or prevailing influence of an undertaking is acquired.
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	Yes. The parties are free to voluntarily notify the Agency about the merger but if the thresholds are not met the Agency will inform the parties that this merger will not be subject of assessment.
D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?	A concentration can be notified prior to the conclusion of an agreement, a definitive agreement is not required.
E. 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. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	Article 22 (2) of the Competition Act: Notification must be made at the latest within 8 days following the day of the publication of the public bid or the day of the conclusion of the contract through which the control or prevailing influence of an undertaking is acquired.
F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.	No.

6. Simplified procedures

Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form,	There is no special procedure for such transactions. Article 26 (1) of the Competition Act provides: If the Agency, on the basis of valid evidence submitted together with the notification of concentration and on the
---	---

<p>simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</p>	<p>evidence basis of the available information and findings, establishes beyond dispute that it is reasonable to suppose that the implementation of the proposed concentration is not prohibited, and if the notifying party is not given notice, within 30 days following the receipt of the complete notification of concentration about the decision procedural order on the initiation of the assessment proceedings of the concentration, the concentration concerned shall be deemed to be compatible.</p> <p>*There is a proposal to introduce short notification form without all obligatory content. This proposal is still under revision with all other amendments of the Competition Act that are being drafted at the moment.</p>
--	--

7. 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>Relevant Articles: Article 45 (1) of the Competition Act and Articles 11 and 13 of the Regulation on notification and assessment of concentrations.</p> <p>The notification of the proposed concentration needs to be accompanied by the original or a certified copy of the document, or a certified translation, if the original official text has not been written in Croatian, proving the legal grounds for the concentration; annual financial reports for the parties to the concentration for the financial year preceding the concentration; other data as required by the provisions of the Regulation on Notification and Assessment on Concentrations.</p>
<p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p>	<p>Yes, the document proving the legal grounds for the concentration has to be a original or a certified copy of the document.</p>
<p>C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired</p>	<p>No.</p>

parties are foreign?	
-----------------------------	--

8. Translation

A. In what language(s) can the notification forms be submitted?	Article 7 of the Regulation on notification and assessment of concentrations: The notification, supporting documentation and entire documentation should be submitted in Croatian language.
B. 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 of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	Article 7 of the Regulation on notification and assessment of concentrations: If the original notification, the supporting documentation or other documentation is submitted in a foreign language, they are to be translated into Croatian by a certified translator. The notifying party shall deliver the certified translation enclosed to the original copy or a certified photocopy of the original document (in the original language).

9. Review periods

A. Describe any applicable review periods following notification.	After receiving all necessary documentation in relation to notification, the Agency will make the resolution on instituting the proceedings ex officio, or upon the submitted request. Notification prohibits the implementation of the merger for all the parties as long as the Agency is taking its final decision authorising it, or until the expiry period of 30 days after notification if parties have not been given notice about the procedural order on the initiation of the assessment proceedings of the merger. In this case, the merger is deemed to be compatible.
B. Are there different rules for public tenders (e.g. open market stock	No.

<p>purchases or hostile bids)?</p>	
<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	<p>Article 26 (3) of the Competition Act Where the Agency considers that the implementation of the concentration concerned could have as its effect a significant prevention, restriction or distortion of competition in the relevant market, it shall order the initiation of the proceedings for the purpose of evaluating the compatibility of the concentration concerned, and within three months following the day of the procedural order on instituting the proceedings, render its decision:</p> <ol style="list-style-type: none"> 1. by which the concentration concerned is evaluated as compatible, or 2. by which the concentration concerned is evaluated as incompatible, or 3. by which the concentration concerned is evaluated as conditionally compatible, provided that certain measures are observed and conditions met, within the time limits set by the Agency.
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>There is no formal legal provision for expedited reviews. However, in practice if the merger is non-problematic, the review is done quickly in the First Phase without conducting the formal proceeding.</p>

10. Waiting periods / suspension obligations

<p>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</p>	<p>Article 22 paragraph 3 of the Competition Act prohibits the implementation of the merger for all the parties to the merger after the notification as long as the Agency adopts its final decision authorizing this merger, or until the expiry of 30 days following the receipt of the complete notification of concentration, or until expiry of 3 months after initiating the proceedings for the purpose of evaluating compatibility of the transaction.</p>
--	--

<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>No.</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of 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 suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	<p>The waiting periods are limited to the transactions that have an impact within the jurisdiction.</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>After the expiration of 30 days after notification and following the receipt of the complete notification, if the parties have not been given notice about procedural order or on the initiation of the assessment proceedings of the merger. In this case, the merger is deemed to be compatible (Article 26, paragraph 1 of the Competition Act).</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>The Article 56 of the Competition Act sets out the dead- line for the decisions in merger cases to 3 months with the possibility to extend this dead- line to additional 3 months.</p> <p>There is no legal basis to extend the time limit set for the First Phase of the review.</p>
<p>F. Describe any procedures for obtaining early</p>	<p>There is no formal legal provision for expedited reviews.</p>

<p>termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>However, in practice if the merger is non-problematic, reviews without any competition concerns, the review is done quickly in the First Phase without conducting the formal proceeding.</p>
<p>G. 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>None.</p>

11. Responsibility for notification / representation

<p>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</p>	<p>Articles 2 and 3 of the Regulation on Notification and Assessment of Concentrations:</p> <p>The obligation to notify the Agency on the proposed concentration shall depending on its legal form fall on:</p> <ul style="list-style-type: none"> a) the acquiring undertaking or newly established undertaking, in the case of merger association of undertakings; b) the acquirer of the majority of shares or share capital or voting rights, in the case of acquisition of the majority of shares, share capital or voting rights; c) the controlling undertaking or undertaking with decisive influence, in the case of acquiring control or decisive influence; d) all undertakings - participants in the joint venture, whereby they may notify jointly or appoint the undertaking from the joint venture as their joint representative, in the case of creation of joint venture; e) the bidder, in the case of acquiring control or decisive influence on the basis of a public bid (particularly in the case of acquisition of the majority of shares, or share capital, or voting rights). <p>In other cases, the obligation to notify shall fall on all undertakings - parties to the concentration submitting a joint notification, or by their commonly appointed representative - party to the concentration.</p>
--	--

B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	No.
C. 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)?	Any person who has full contractual capacity can represent the notifying party.
D. 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?	The validity of the representation needs to be attested in writing, by the power of attorney which must be confirmed by notary. There are no special rules for foreign representatives or firms.

12. Filing fees

A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?	For the notification of concentration filing fees are 10.000 HRK when the thresholds are reached and 5.000 HRK when notification is made for the evaluation of concentration under special regulation.
B. Who is responsible for payment?	The notifying party.
C. When is payment required?	The obligation for payment arises at the time of the notification.
D. What are the procedures for making payments (e.g., accepted forms of	The payment is made to the State Budget domestic or foreign currency account, by a special bank transfer. The copy of the transfer receipt is to be submitted to the Agency

payment, proof of payment required, wire transfer instructions)?	within the 8 days of the payment.
--	-----------------------------------

13. Confidentiality

<p>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?</p>	<p>Article 51, paragraphs 1 and 2 (points 1, 2, 3, 4) of the Competition Act</p> <p>Under the term official secret is considered all that undertakings, or persons have defined as business or official secret. However, data and documents which have been made accessible to the general public in any way, or decisions of managing or administrative bodies of the undertakings published to be available to the general public pursuant to particular regulations, shall not be considered official secret.</p>
<p>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</p>	<p>Yes, according to the Article 50 of the Competition Act, parties to the proceedings have the right of access to case files and are allowed by the Agency to make a photocopy of the file or of single documents at their own expense. Drafts of the decisions of the Agency, official statements and protocols from the sessions of the Committee, internal instructions and notes on the case, correspondence and information exchanged with the European Commission or other authorities of the European Communities, as well as other documents considered official secret may neither be inspected nor photocopied.</p> <p>The request for access to the file shall be submitted to the Agency in writing.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>Third parties or government agencies can obtain access to the notification materials only if they have and show justified legal interest. However, they cannot obtain access to the materials defined as confidential by notifying parties.</p> <p>General Administrative Procedure Act, Article 80. (Official Gazette of the Republic of Croatia, No. 53/91, 103/96)</p> <p>The Act on the right to access the information (Official Gazette of the Republic of Croatia, No. 177/03) also</p>

	provides the possibility for third parties to access the information. However, the same limitations regarding the business secrets apply here. The Competition Agency holds a special catalogue of information to which parties have been granted access.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	According to the Croatian Competition Act everything that notifying parties define as business or confidential secret will be considered as such.
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?	The Agency cooperates with foreign competition authorities and there are three bilateral agreements on cooperation with competition authorities of Bosnia and Herzegovina, Macedonia and Romania. Among other provisions the exchange of information is included but with the same obligation to exclude confidential business secrets. The mentioned agreements will be soon publicly available on the official web site of the Competition Agency.
F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?	The Agency can exchange non-confidential information with other reviewing agencies. For the confidential information the consent of the parties should be sought. So far, in practice, the confidential information have not been exchanged with other competition authorities.

14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	Yes. The Agency issues annual reports on its web site. Annual Report 2005 Annual Report 2004 Annual Report 2003 Annual Report April 2001 - February 2002 Annual Report April 2000 - April 2001 Annual Report March 1999 - April 2000 Annual Report March 1998 - April 1999 http://www.aztn.hr/eng/izvjesce_o_r.htm
--	--

B. Does the agency publish press releases related to merger policy or investigations?	Yes. http://www.aztn.hr/eng/press.asap
C. Does the agency publish decisions on why it cleared / blocked a transaction?	Yes. http://www.aztn.hr/eng/odluke.asp

15. Sanctions/penalties

A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?	As provided for in the Article 62 (1.2, 2) of the Competition Act for failure to file a notification the undertaking - legal or natural person will be fined at the most with 1% of the value of its total annual turnover in the financial year preceding the year when the infringement was committed. Also, the responsible person of the undertaking - legal person concerned shall be also fined an amount ranging from 15,000.00 to 50,000.00 HRK.
B. Which party/ies are potentially liable?	Parties that participate in the proceedings before the Agency, but also persons that are not parties to the proceedings if they fail to act upon the request of the Agency.
C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	The Agency is required to bring judicial action against the infringing party by submitting the claim to the misdemeanour court to start the minor offence proceedings against the undertaking concerned and the responsible person of the respective undertaking (Article 60 of the Competition Act). The length of the procedure at court is determined on the case by case basis and it can take from 2 months up to 2 years.

16. Judicial review

Describe the provisions and timetable for judicial	Against the decisions or procedural orders of the Agency no appeal is allowed, but the injured party which is not
---	---

review or other rights of appeal/review of agency decisions on merger notification and review.	satisfied may file an administrative dispute before the Administrative Court of the Republic of Croatia. The administrative dispute may be filed within 30 days from delivery of the decision to the injured party.
---	---

17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?	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?	No.
---	-----

19. Post merger review of transactions

Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	No. In the case that the Agency determines possible negative effect on the market from the merger already cleared it can only open up a new case and start the investigation.
--	---