

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## MEXICO

APRIL 2008

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**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.

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

#### A. Notification provisions

Federal Law on Economic Competition ("LFCE")

LFCE, article 16 (definition of concentration);  
article 20 (thresholds)  
article 21-bis (simplified procedure)

Regulations of the Law ("RLFCE").

RLFCE, art. 20 (measurement of thresholds),  
art. 26 (exempted transactions),

The law and regulations can be found at:

<http://www.cfc.gob.mx>

The page is available in Spanish and part of it in English

The material corresponding to concentrations can be found at:

[http://www.cfc.gob.mx/index.php?option=com\\_content&task=view&id=1053&Itemid=117](http://www.cfc.gob.mx/index.php?option=com_content&task=view&id=1053&Itemid=117)

As to the above,

Article 16 of the LFCE defines a concentration as:

"The term concentration shall, for purposes of this Law, mean the merger, acquisition of control, or any other action whereby

corporations, associations, stock holdings, equity interests, trusts, or assets in general are concentrated, and which are undertaken between or among competitors, suppliers, customers or any other economic agents. Any concentrations whose aim or effect is to reduce, injure or prevent competition and free market access of products and services that are equal, similar or substantially related, are prohibited.”

Take note that a transaction has to be notified prior to closing as long as any one of three established thresholds is met. The Commission has the power to issue an order not to execute the concentration until it is cleared by the Commission.

Article 20 of the LFCE establishes:

“Prior to their completion, the following concentrations shall be notified to the Commission:

I. When the transaction or series of transactions giving rise to the concentration, regardless of the place where they take place, have a value in Mexico, directly or indirectly, exceeding the equivalent of 18 million times the general minimum wage in effect for the Federal District;

II. When the transaction or series of transactions giving rise to the concentration involve the accumulation of 35 per cent or more of the assets or shares of stock of an economic agent, whose assets or annual sales in Mexico exceed the equivalent of 18 million times the general minimum wage in effect for the Federal District; or

III. When the transaction or series of transactions giving rise to the concentration involve the accumulation in Mexico of assets or capital stock in excess of the equivalent of 8.4 million times the general minimum wage in effect for the Federal District and two or more economic agents take part in the concentration whose assets or volume of annual sales, jointly or individually, exceed an amount equivalent to 48 million times the general minimum wage in effect for the Federal District. ”

Article 21 of the LFCE indicates : [Data requirements for filing]

“The following provisions shall apply in connection with the previous article:

I. The notification to the Commission shall be made in writing and accompanied by the draft of the legal transactions giving rise to the concentration, including the name and corporate name of the economic agents involved, their financial statements for the latest fiscal year, their market participation, and any other data and documents that allow an evaluation of the proposed transaction.

II. The Commission may request additional data or documents within the fifteen days following the formal admission of the notification. Interested parties shall provide the requested information and documentation within the following fifteen day period, which, upon request, may be extended when duly justified;

III. To issue its ruling, the Commission shall have thirty-five days calculated from the date of formal admission of the notification for processing or, from the date of the formal admission of additional information and documentation requested. Should the Commission fail to issue a ruling within this period, it shall be understood that the Commission has no objection;

IV. For unusually complex cases, the President of the Commission, under his or her responsibility, may extend the period referred to in sections II and III for up to forty additional days;

V. The Commission's ruling shall be duly founded and motivated; and

VI. A favorable ruling may not be considered a prejudgment on other monopolistic practices prohibited by this Law, and so does not relieve the economic agents involved from other responsibilities.”

According to article 21-bis of the LFCE, if the economic agents can demonstrate that it is notorious that the merger is not going to affect or reduce competition, the Commission shall issue its resolution within 15 legal days, beginning on the day the notification is formally received.

Article 20 of the RLFCE indicates: [Minimum wage and exchange rate]

“For the effects of Article 20 of the Law, the Commission shall consider the general daily minimum wage in effect in the Federal District on the day preceding the formal notification and, in operations contracted in foreign currency, the exchange rate used will be that determined and published by the Central Bank of Mexico (Banco de México), and which results in the lowest exchange rate over the preceding five days prior to the concentration.

Failure to notify a concentration will result in the opening of an ex officio proceeding, and shall consider the daily general minimum wage in effect on the day prior to the closing of the transaction and the lowest exchange rate, published by Banco de México, over the preceding five days prior to the closing of the transaction.

Article 26 of the RLFCE indicates: [Exemptions]

	<p>“ It shall not be necessary to notify pursuant to Articles 20 and 21 of the Law when the transaction involves any of the following situations:</p> <p>I. Legal acts regarding shares in stocks or capital stocks of foreign corporations, when the economic agents involved in said acts do not acquire control over Mexican corporations, or accumulate in the national territory shares, shares in capital stock, shares in trusts or assets in general, in addition to those which they possessed prior to the transaction, either directly or indirectly, and</p> <p>II. The transactions whereby an economic agent has had direct or indirect property or possession for at least the last three years or since its creation, 98% of the shares or capital stock of the economic agents involved in the transaction.</p> <p>In this case, the economic agent shall give notice to the Commission within the fifteen days following the closing of the transaction through a written document which shall contain:</p> <p>a) Name, corporate or business name of the economic agents participating directly or indirectly in the transaction;</p> <p>b) Name of the legal representative, documents identifying this person’s legal capacity and address to hear or receive notifications;</p> <p>c) Description of the structure of the capital stock of the economic agents participating in the concentration, whether they be Mexican or foreign corporations; also identifying the holdings of each direct or indirect shareholder, before and after the concentration, and of the persons that have and will have control, and</p> <p>d) Succinct description of the transaction and its reasons.”</p>
<p><b>B. Notification forms or information requirements</b></p>	<p>Notification form (questionnaire) is only available at <a href="http://www.cfc.gob.mx">http://www.cfc.gob.mx</a>, or at <a href="http://www.cfc.gob.mx/index.php?option=com_content&amp;task=view&amp;id=1053&amp;Itemid=117">http://www.cfc.gob.mx/index.php?option=com_content&amp;task=view&amp;id=1053&amp;Itemid=117</a></p> <p>See: LFCE, articles 21 and 21-bis (data requirements and time table); RLFCE, articles 21 and 25 (detailed data needed).</p>
<p><b>C. Substantive merger review provisions</b></p>	<p>LFCE, art. 12 (determination of relevant market), LFCE, art. 13 (to determine substantial power by an agent), LFCE, arts. 17 and 18 (conditions to block a merger), LFCE, art. 19 (types of conditions the CFC may impose on the transaction).</p> <p>RLFCE, art. 11 and 14 (Elements to measure market shares of the agents and reference evaluation of the Herfindahl Index &amp; Dominance Index. See: Official Federation Gazette, July 24th, 1998);</p>

	<p>RLFCE, art., 16 (Efficiencies) and RLFCE, art. 17 (Remedies).</p> <p>Summarized versions of the resolutions adopted by the Commission can be found at:</p> <p><a href="http://www.cfc.gob.mx/index.php?option=com_content&amp;task=view&amp;id=1052&amp;Itemid=360">http://www.cfc.gob.mx/index.php?option=com_content&amp;task=view&amp;id=1052&amp;Itemid=360</a></p>
<b>D. Implementing regulations</b>	<p>RLFCE, art. 12 (how to apply LFCE, art. 12), RLFCE, arts. 11-14 (how to apply LFCE, art. 13), RLFCE, arts. 16 (how to apply LFCE, art 18), RLFCE, arts. 17 (how to apply LFCE, art. 19).</p>
<b>E. Interpretive guidelines and notices</b>	<p>Concentration indexes criteria. See <a href="http://www.cfc.gob.mx/index.php?option=com_content&amp;task=view&amp;id=1053&amp;Itemid=117">http://www.cfc.gob.mx/index.php?option=com_content&amp;task=view&amp;id=1053&amp;Itemid=117</a></p>

## 2. Authority or authorities responsible for merger enforcement.

<b>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</b>	<p>Comisión Federal de Competencia (CFC).</p>
<b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b>	<p>Av. Santa Fe 505 Col. Cruz Manca, Del. Cuajimalpa, México, D.F., 05349</p> <p>Telephone/fax: +52 (55) 2789-6517 / +52 (55) 2789-6525 (General Director of Concentrations)</p> <p>correo@cfc.gob.mx</p> <p>Also, javiern@cfc.gob.mx</p> <p><a href="http://www.cfc.gob.mx">http://www.cfc.gob.mx</a> .</p>
<b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b>	<p>Yes.</p> <p>General Director of Concentrations (GDC) and Deputy General Director of Concentrations (DGDC)</p> <p>(GDC) Javier Nuñez: javiern@cfc.gob.mx; Tel. +52 (55) 2789-6517</p> <p>(DGDC) Paolo Benedetti: pbenedetti@cfc.gob.mx; Tel. +52 (55) 2789-6520</p> <p>Fax +52 (55) 2789-6525.</p>

### 3. Covered transactions

<b>A. Definitions of potentially covered transactions (i.e., concentration or merger)</b>	<p>Any transaction whereby an economic agent acquires assets or stock of another economic agent may fall within the definition of concentration.</p> <p>Thus the Law applies to practically all economic sectors and activities, either public or private.</p> <p>Please, see LFCE, art. 16.</p>
<b>B. If change of control is a determining factor, how is control defined?</b>	<p>Control is not a determining factor.</p>
<b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b>	<p>Yes, if the transaction surpasses any of the thresholds. LFCE, art. 20.</p>
<b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b>	<p>Yes.</p> <p>There is not a distinction in the law.</p>

### 4. Thresholds for notification

<b>A. What are the general thresholds for notification?</b>	<p>LFCE, article 20, provides for three alternative reporting thresholds.</p> <p>A pre-closing filing is required if any of the following three thresholds is met:</p> <ol style="list-style-type: none"><li>1) The value of the transaction, or series of transactions, is equal to or higher than 18 million times the general minimum wage in effect for the Federal District ("mw"). The value is limited to firms, subsidiaries, affiliates, or assets located in Mexico.</li><li>2) If a transaction or a series of transactions implies the accumulation of 35 per cent or more of the assets or shares of an economic agent which assets or sales amount to more than 18 million times the general minimum wage in effect in the Federal</li></ol>
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	<p>District.</p> <p>That is,</p> <p>(i) the acquisition relates to at least 35% of the Mexican target economic agent's shares or assets, and</p> <p>(ii) the value of the assets or sales of the Mexican target economic agent exceeds the threshold.</p> <p>The concept of "economic agent" does not require an incorporated entity in Mexico and the test could be met by the acquisition of a Mexican production plant (even if the corporation owning the plant is not acquired). In that case the value of the assets of the plant and sales attributable to the plant are used for threshold calculation purposes.</p> <p>3) If (a) two or more economic agents participate in the transaction, and their worldwide assets or annual volume of sales, jointly or separately add up to more than 48 million times the mw and</p> <p>(b) the transaction implies an additional accumulation of assets located in Mexico or capital stock of a Mexican economic agent in excess of 8.4 million times the mw.</p> <p>It is not necessary that the control be acquired over the Mexican economic agent.</p> <p>A notification could be triggered if the thresholds are met even if the transaction involves only the acquisition of non-voting shares.</p>
<p><b>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?</b></p>	<p>1) According to the first and second thresholds, the entities included are the acquired firms, subsidiaries, affiliates, sales or assets located in Mexico.</p> <p>2) The third threshold considers the accumulation of assets or capital stock in Mexico, of acquired firms, subsidiaries and affiliates and considers the assets or volume of sales of the entities that participate in the concentration (acquiring and acquired parties) worldwide.</p>
<p><b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</b></p>	<p>The minimum wage is determined by the Federal Government. This is usually (not always) done once a year by the end of December. It is published in the Official Federation Gazette.</p> <p>The exact moment in which the mw is changed depends upon negotiations between unions, employers and the government. For 2008 the mw was fixed at \$52.59 pesos per day.</p> <p>The exchange rate varies on a daily basis, due to the floating exchange rate regime prevailing in Mexico.</p>

<p><b>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)?</b></p>	<p>The period considered should be the 12 preceding months immediately preceding the filing date.</p> <p>The values of assets, capital stock, sales are those reported in the financial statements corresponding to the aforementioned period.</p>
<p><b>E. Describe the 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?</b></p>	<p>Value of the transaction:</p> <p>As reported in the letter of intent, contract or similar document signed by the parties.</p> <p>Relevant sales or turnover:</p> <p>The figure taken is the one reported as Net Sales in financial income statements.</p> <p>Relevant assets:</p> <p>The figure taken is the one reported as Total Assets at the bottom of the financial general balance statement.</p> <p>The figure generally accepted is the one reported in the last audited financials yet if not available then pro forma figures are accepted. Sometimes it is also accepted the figure reported in internal –non audited- financials for the closest preceding month to the filing date.</p> <p>For this purpose the CFC is aware that audited financials are usually available for a full year ending December of each year and they are reported by February-March of the following year. Thus as long as the audited financials are not available other sources (eg. internal or proforma statements) may be used. Likewise if a transaction is going to take place from April onwards, it is recommended to present both the last audited and the more up to date figures even though in this last case the available figures usually come from non-audited internal statements.</p>
<p><b>F. Describe methodology for calculating exchange rates.</b></p>	<p>Whenever the data is in US dollars, the conversion rate taken is that published by Banco de Mexico [Central Bank], the day before the filing is made. (RLFCE., art. 20).</p> <p>If the data is reported in another foreign currency, first it is converted to USD based on a publicly available conversion rate (e.g. Pacific Exchange Rate Service).</p>
<p><b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b></p>	<p>As stated in article 20 of the LFCE, the threshold applies only to the allocated value, if any, to Mexican subsidiaries, affiliates or assets.</p> <p>For foreign acquisitions, that value is usually not available, thus the Commission tries either one of the alternative thresholds</p>

	referred to in LFCE, article 20.  Please see answer to question 1.A. above.
<b>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</b>	Yes, in the case of sales or assets. Market share is not considered as a criterion to determine if a notification is required. See LFCE, article 20.
<b>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?</b>	Whenever there is a transaction between a seller and a buyer both located abroad, as long as the "seller" has interests (assets, stock or sales) in Mexico which are targeted, the transaction has to be reviewed –even though the "purchaser" has no prior interests in Mexico-.
<b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b>	Location of seller.
<b>K. If market share tests are used, are there guidelines for calculating market shares?</b>	Not applicable.  See LFCE, art. 20.
<b>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)?</b>	No.
<b>M. Are any sectors excluded from notification requirements? If so,</b>	Yes.  Excluded activities are those identified by the Constitution, art. 28. That is, activities carried out exclusively by the State (e.g. oil

<b>which sectors?</b>	<p>exploration, electricity).</p> <p>Other activities excluded are some related to intellectual property, labor unions, and cooperatives. See LFCE, arts. 4°, 5° and 6°.</p> <p>It is worth mentioning that there are no special provisions or exemptions for transactions which claim to fulfill a "public interest" objective.</p>
<b>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</b>	No.
<b>O. Does the agency have the authority to review transactions that fall below the thresholds?</b>	Yes. It is possible to challenge concentrations that do not require prior notification, in a period of a year after they were carried out. See LFCE, article 22.

## 5. Notification requirements and timing of notification

<b>A. Is notification mandatory pre-merger?</b>	Yes.
<b>B. Is notification mandatory post-merger?</b>	A filing still has to be made if for some reason it was not made timely. Usually an ex-post notification is subject to economic sanctions.
<b>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</b>	Yes. It is a decision of the parties.
<b>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?)?</b>	There is not a specific provision in this regard. The parties can notify a concentration even if they do not have a definitive agreement. They just need to present an intended consent.
<b>E. Must notification be made within a specified period</b>	No. The economic agents only have to notify before the transaction is carried out.

<p><b>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?</b></p>	<p>There are not special rules for public takeover bids.</p>
<p><b>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.</b></p>	<p>No. The law does not consider such a mechanism.</p>

## 6. Simplified procedures

<p><b>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</b></p>	<p>Parties may submit a brief filing if they can demonstrate that the transaction does not raise competition concerns. This procedure allows the parties to omit market data from the standard form. If the parties can show that it is notorious that the transaction is not going to affect competition, they can ask the Commission to follow a simplified procedure according to the article 21-bis of the Law. In this case, the Commission issues a resolution within the next 15 legal days the notification is accepted.</p> <p>The cases the Commission considers that are notorious are: a) corporate re-organizations; b) when the acquiring party has the control of the acquired party; c) when the buyer does not participate in the same activities that are carried out by the acquired party.</p> <p>Exemptions.</p> <p>A post-closing (notice-only) filing must be made within 15 days of closing in cases of corporate re-organization, where the same ultimate parent agent, directly or indirectly, owned 98% or more of the shares of the parties involved in the transaction in the preceding 3 years (or less if they are newly formed), provided that the parties have a Mexican subsidiary and the Mexican subsidiary meets any of the sales/assets/capital stock thresholds for pre-closing filing.</p> <p>This is a special filing known as notice of restructuring. The</p>
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	<p>parties do not pay any filing fee and do not complete the standard form. The notice of restructuring is a written application which must be presented by a legal representative of the involved parties.</p> <p>See RLFCE, art. 26 Section II.</p>
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## 7. Documents to be submitted

<p><b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</b></p>	<p>RLFCE, art. 20, pursuant to Article 21, Section I of the LFCE, the notification of the concentration shall include:</p> <ul style="list-style-type: none"> <li>I. Identity, company or business name of the economic agents notifying the concentration and of those participating in it directly or indirectly;</li> <li>II. If appropriate, the name of the legal representative and the documents which accredit the said representative's legal capacity, address for service of notifications and persons authorized for such effects, as well as data permitting their rapid localization, and name of common representative;</li> <li>III. The constitutional charters and reforms thereof, or attested copies of the bylaws of the economic agents involved;</li> <li>IV. The financial statements of the immediately preceding fiscal year, or the statement of earnings of the economic agents involved;</li> <li>V. Description of the structure of the capital stock of the economic agents participating, both before and after the concentration, distinguishing shareholdings of each direct or indirect shareholder, before and after the concentration, and of the people that have and will have the control, and</li> <li>VI. Description of the transaction, its objectives, kind of transaction and non-compete clauses,</li> <li>VII. Mention if the economic agents involved in the transaction participate in other agents that produce or sell similar or substantially related goods to those supplied by the parties.</li> <li>VIII. Description of the goods and services supplied by the parties, and information about their use in the relevant market. A list of similar goods or services provided by the main economic agents that participate in the market.</li> <li>IX. Information about market shares of the parties and their competitors in the relevant markets.</li> <li>X. Information about placement of factories and distribution centers owned by the parties.</li> </ul>
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	XI. Another elements that could be helpful for the analysis of the transaction.
<b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b>	Regarding RLFCE, 21, II, as cited above, a person "legally empowered" may be an officer of the firm as its statutes provide.
<b>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 parties are foreign?</b>	No.

## 8. Translation

<b>A. In what language(s) can the notification forms be submitted?</b>	Spanish.
<b>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.</b>	<p>The following documents must be translated:</p> <ul style="list-style-type: none"> <li>*Main activities of the parties according to their Bylaws.</li> <li>*Relevant sections (Transaction, Put- Call Options, Price, Closing conditions, Non Compete Clauses) of the "purchasing agreement" or similar.</li> </ul> <p>Usually the above mentioned sections of the corresponding documents are enough for the CFC purposes. In any case, the Commission has the power to ask for translation of some other documents.</p>

## 9. Review periods

<p><b>A. Describe any applicable review periods following notification.</b></p>	<p>The Commission is required to provide an answer (resolution) within 35 legal days upon a fully integrated filing. A filing is fully integrated once the parties submit all requested information. The Commission can request information as follows: within 5 legal days after the submission, to request “basic data”; within 15 calendar days either after the filing or after the parties have handed in the “basic data”, “additional data”.</p> <p>In complex cases the Commission may extend twice the deadline up to 40 legal days each. If the Commission remains silent, it is understood that the transactions has been legally approved. The parties are responsible to file prior to closing. See LFCE, art. 20 first paragraph in question 1 above.</p> <p>Parties can not close the transaction once they notify. They have to wait at least 10 legal days, which is the period the Commission has to issue a stop order. After this period, and if the Commission did not issue a stop order, the parties can close under their risk. Please see LFCE, art. 21 and RLFCE, art. 22 in question 1 above.</p>
<p><b>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</b></p>	<p>No.</p>
<p><b>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?</b></p>	<p>There is a statutory maximum for extensions. The agency can extend the review period under the responsibility of the President of the Commission for 40 legal days in the case of exceptionally complicated cases. It is not necessary to have the parties’ consent.</p> <p>See LFCE, article 21.</p>
<p><b>D. What are the procedures for accelerated review of non-problematic transactions, if any?</b></p>	<p>In the case of concentrations regarding foreign companies, when the economic agents involved in the acts do not thereby acquire the control of Mexican companies, nor accumulate in the national territory shares, partners’ capital contributions, shares in trusts or assets in general, additional to those which, directly or indirectly, they possess prior to the transaction, it is not necessary to notify nor to present a written declaration.</p> <p>See RLFCE, Art. 26, I.</p> <p>In the case of restructuring concentrations, it is possible to present only a written declaration, within 15 legal days following</p>

	<p>the day on which the transaction is carried out.</p> <p>See RLFCE, Art. 26, II</p> <p>In the case of notifications under article 21-bis, concentrations that notoriously do not affect competition, the economic agents shall present exclusively basic information, when they prove before the Commission that it is plainly manifest that the transaction will not have as its object or effect an increase in substantial power in the relevant market or diminish, impair or prevent entry or competition.</p> <p>See RLFCE, Art. 25.</p>
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## 10. Waiting periods / suspension obligations

<p><b>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.</b></p>	<p>The economic agents have the obligation to notify the concentration before it is carried out, and have the obligation to wait at least 10 legal days which is the period the Commission has to issue a stop order. If the order is not issued, the parties can close under their risk.</p>
<p><b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b></p>	<p>No.</p>
<p><b>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</b></p>	<p>A foreign transaction may close at any time so long as it has not had legal or material effects in Mexico.</p> <p>See RLFCE, art.18.</p>

<p>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><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<p>The Commission has no objections if the time period to issue its resolution expires and the Commission has not issued a resolution.</p> <p>See LFCE, article 21, III and 21-bis, second paragraph.</p>
<p><b>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</b></p>	<p>In complex cases the Commission can extend the study period up to 40 legal days. See LFCE, art. 21.</p>
<p><b>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b></p>	<p>Not applicable.</p>
<p><b>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</b></p>	<p>See 11A. and C. above.</p>

measures" are taken).	
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## 11. Responsibility for notification / representation

<b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</b>	All the involved parties have to present a joint notification. In justified cases and in cases notified under the article 21-bis of the Law, the parties are exempted from joint notification. See RLFCE, art.19.
<b>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</b>	No.
<b>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)?</b>	No.
<b>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?</b>	Power of attorney (apostille also in Mexico).  There are no special rules for foreign representatives or firms.

## 12. Filing fees

<b>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</b>	Yes.  Approximately \$11,300 USD for fees services. The actual figure can be consulted at  <a href="http://www.cfc.gob.mx/index.php?option=com_content&amp;task=view">http://www.cfc.gob.mx/index.php?option=com_content&amp;task=view</a>
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<b>fees based on complexity, tiered fees based on size of transaction)?</b>	<a href="#">&amp;id=1062&amp;Itemid=136</a> Please take note that the amount is decided by fiscal law and it usually varies every 6 months.
<b>B. Who is responsible for payment?</b>	Any one of the parties as they decide it.
<b>C. When is payment required?</b>	The paid fiscal form should accompany the notification; otherwise the Commission does not accept the filing. See 13.D. below.
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	There is a fiscal form issued by the Treasury. (In most stationary stores is known as "forma F-5 SAT, Declaración General de Pago de Derechos" which translates as SAT form, General Statement of Duties Payment)  Parties must complete the form and make the payment through a bank. The original form, with the seal showing that the fee has been paid, must be provided with the notification.

## 13. Confidentiality

<b>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?</b>	Such information is not public.
<b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</b>	Yes.  Anytime once the procedure has started.  The file contains all information provided by the involved parties and also information gathered by the CFC as long as the data has been used to evaluate the corresponding transaction.
<b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b>	Third parties or government agencies can not obtain access.
<b>D. Are procedures available to request confidential</b>	Yes, under the article 31-bis of the Law.

<p><b>treatment of the fact of notification and/or notification materials? If so, please describe.</b></p>	
<p><b>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?</b></p>	<p>Mexico-USA-Canada (free trade agreement)</p> <p>Mexico-USA (cooperation agreement)</p> <p>Mexico-European Union (under a free trade agreement)</p> <p>Mexico-Israel (under a free trade agreement)</p> <p>They are available at the Commission's web page (Spanish section)</p> <p><a href="http://www.cfc.gob.mx/index.php?option=com_content&amp;task=view&amp;id=1063&amp;Itemid=366">http://www.cfc.gob.mx/index.php?option=com_content&amp;task=view&amp;id=1063&amp;Itemid=366</a></p>
<p><b>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?</b></p>	<p>Authorities can exchange information of criteria according to bilateral cooperation.</p> <p>In order to exchange documents among competition authorities it is necessary to sign a Waiver.</p>

## 14. Transparency

<p><b>A. Does the agency publish an annual report? Please provide the web address if available.</b></p>	<p>Annual reports for 1993 onwards are available at</p> <p><a href="http://www.cfc.gob.mx/index.php?option=com_content&amp;task=blogsection&amp;id=25&amp;Itemid=231">http://www.cfc.gob.mx/index.php?option=com_content&amp;task=blogsection&amp;id=25&amp;Itemid=231</a></p>
<p><b>B. Does the agency publish press releases related to merger policy or investigations?</b></p>	<p>Only after the merger analysis is concluded and in some cases of particular interest.</p>
<p><b>C. Does the agency publish decisions on why it cleared / blocked a transaction?</b></p>	<p>The agency publishes public versions of all of its decisions in its web page.</p> <p>RLFCE art. 2.</p>

## 15. Sanctions/penalties

<b>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</b>	<p>For failure to file prior to closing, the parties are required to file a post-closing filing and may be subject to sanctions.</p> <p>The amount of the sanction depends on the circumstances of the particular case (e.g. the filing was voluntary or mandated, former sanctions applied to the involved parties, adverse effects on relevant markets).</p> <p>The maximum fine established is 400,000 times the minimum wage of the Federal District. There is no minimum fine indicated.</p> <p>See LFCE, art. 35, section VII.</p>
<b>B. Which party/ies are potentially liable?</b>	<p>All the parties involved.</p>
<b>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.</b>	<p>Administrative sanctions can be imposed directly by the agency, but they can be reviewed by the judicial authority if the agents open an amparo suit through the judiciary [An amparo is a proceeding established in Articles 103 and 107 of the Mexican Constitution to provide all persons with protection against unconstitutional acts by the government. It is available to any party who can raise a claim that he is being subjected to an unconstitutional law or that his due process rights are being infringed. Article 16 of the Mexican Constitution requires that agency orders articulate the “legal basis and justification for the action taken”.]. The reviewing process can last more than a year.</p>

## 16. Judicial review

<b>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</b>	<p>Once the parties receive an “adverse” resolution they have up to 30 legal days to submit an appeal (Recurso de Reconsideración) before the Commission.</p> <p>The Commission has up to 60 legal days to issue a new resolution.</p> <p>If the answer to the appeal remains “adverse” to the parties, they may start a judicial review before a federal judge. The procedure may have several steps and may take years for a final decision.</p>
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## 17. Additional filings

**Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?**

Yes. It depends on the case (securities, transportation, energy and telecommunications regulators are examples).

## 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?**

A Commission resolution is valid for up to three months. If the transaction has not been closed during the three month period, the parties may apply for an extended period. Usually the CFC grants the extension for as long as the parties require for closing.

## 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?**

The agency can reopen an investigation only in the case the transaction was cleared over the basis of false information.

See LFCE, Art. 22.