

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## Portugal

January 2006

**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)

<b>A. Notification provisions</b>	Chapter I, Section III and Chapter III, Section III of the Law n.º 18/2003 approving the Legal Framework of Competition  <a href="http://www.autoridadedaconcorrenca.pt/index.aspx">http://www.autoridadedaconcorrenca.pt/index.aspx</a>  under Legislation
<b>B. Notification forms or information requirements</b>	Regulation n.º 2/E/2003 Relating to the Notification Form (under Article 31 (3) of the Law n.º 18/2003) <a href="http://www.autoridadedaconcorrenca.pt/index.aspx">http://www.autoridadedaconcorrenca.pt/index.aspx</a> , under notifications and fees (also, <a href="http://www.autoridadedaconcorrenca.pt/Aconcorrenca_prd.aspx?prd=A000000000002077&amp;Idmenu=">http://www.autoridadedaconcorrenca.pt/Aconcorrenca_prd.aspx?prd=A000000000002077&amp;Idmenu=</a> )
<b>C. Substantive merger review provisions</b>	Chapter I, Section III of the Law n.º 18/2003 approving the Legal Framework of Competition
<b>D. Implementing regulations</b>	Regulation n.º 1/E/2003 on Fees Payable for the assessment of concentrations and Regulation n.º 2/E/2003 Relating to the Notification Form
<b>E. Interpretive guidelines and notices</b>	General instructions and clarifications regarding the notification are provided in the Notification form



	<p>constitute a concentration between undertakings, within the meaning of subparagraph b) of the paragraph above, in as much as the joint undertaking fulfils the functions of an independent economic entity on a lasting basis.</p> <p>According to the paragraph 4 of the same article, the following are <b>not</b> held to constitute a concentration between undertakings:</p> <ol style="list-style-type: none"> <li>a. The acquisition of shareholdings or assets under the terms of a special process of corporate rescue or bankruptcy;</li> <li>b. The acquisition of a shareholding merely as a guarantee;</li> <li>c. The acquisition by credit institutions of shareholdings in nonfinancial undertakings, when such acquisition is not covered by the prohibition in Article 101 of the General Regulations for Credit Institutions and Financial Institutions approved by Decree-Law n.º 298/92 of 31 December.</li> </ol> <p>(English translation available on the site of the Authority)</p>
<p><b>B. If change of control is a determining factor, how is control defined?</b></p>	<p>According to paragraph 3 of the same article, control shall be constituted by any act, irrespective of the form which it takes, which, separately or jointly and having regard to the circumstances of fact or law involved, implies the ability to exercise a determining influence on an undertaking's activity, in particular:</p> <ol style="list-style-type: none"> <li>a. Acquisition of all or part of the share capital;</li> <li>b. Acquisition of rights of ownership, use or enjoyment of all or part of an undertaking's assets;</li> <li>c. Acquisition of rights or the signing of contracts which grant a decisive influence over the composition or decision-making of an undertaking's corporate bodies.</li> </ol>
<p><b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b></p>	<p>Yes: when they confer to the acquiring company the ability to exercise a determining influence on an undertaking's activity</p>
<p><b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b></p>	<p>Yes: when the establishment or acquisition of a joint undertaking constitute a concentration between undertakings, inasmuch as the joint undertaking fulfils the functions of an independent economic entity on a lasting basis.</p>





























