

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Switzerland

March 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)

| | |
|--|--|
| A. Notification provisions | Federal Law on Cartels and other Restrictions of Competition (Cartel Act; LCart) of 6 October 1995 (position as at 23 March 2004); Merger Control Regulation of June 17, 1996 (SR 251.4). |
| B. Notification forms or information requirements | There is a form headed 'Notification of Concentration of Undertakings' on the competition authority's website at www.wettbewerbskommission.ch which lists all information needed to notify a concentration. |
| C. Substantive merger review provisions | Federal Law on Cartels and other Restrictions of Competition (Cartel Act; LCart) of 6 October 1995 (position as at 23 March 2004). |
| D. Implementing regulations | Merger Control Regulation of June 17, 1996 (position as at 23 March 2004). |
| E. Interpretive guidelines and notices | See the above-mentioned 'Notification of Concentration of Undertakings' form on the competition authority's website at http://www.weko.admin.ch/kontakt/00253/index.html?lang=de for further explanations. |

2. Authority or authorities responsible for merger enforcement.

| | |
|--|--|
| A. Name of authority. If there is more than one authority, please describe allocation of responsibilities. | Swiss Competition Commission. |
| B. Address, telephone and fax (including country code), e-mail, website address and languages available. | Swiss Competition Commission (Wettbewerbskommission - Commission de la Concurrence - Commissione della concorrenza) Address: Monbijoustrasse 43 Mail: 3003 Bern Tel.: +41 31 322 20 40 Fax: +41 31 322 20 53 E-mail: weko@weko.admin.ch Website: www.weko.admin.ch (in German, French, Italian and English) |
| 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, the Secretariat of the Competition Commission is available for pre-notification consultation. Please contact: Cases regarding products: Mr. Patrick Krauskopf (direct line: +41 31 323 53 40) Cases regarding services: Mr. Olivier Schaller (direct line: +41 31 322 21 23) Cases regarding infrastructure: Mr. Patrik Ducrey (direct line: +41 31 324 96 78) |

3. Covered transactions

| | |
|---|--|
| A. Definitions of potentially covered transactions (i.e., concentration or merger) | Transactions subject to merger control are: <ul style="list-style-type: none"> - statutory mergers of previously independent enterprises; - transactions as a result of which one or more enterprises directly or indirectly gain control over one or more previously independent enterprises or parts thereof, including through the acquisition of equity interests or the conclusion of agreements. |
| B. If change of control is a determining factor, how is control defined? | The Competition Law defines control as the ability to exercise a decisive influence on the activity of another enterprise by acquiring its shares or in any other manner. Control is assumed if major aspects of a company's business activity (the production, the prices, the investments, the supply, the sales or the distribution of the profits) or its general business policy may be decisively influenced. It is not important whether control is actually exercised or whether control is vested directly or indirectly. |
| C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? | As change of control as described above is a determining factor, partial stock acquisitions and minority shareholdings are covered, if the acquisition grants the acquiring undertaking a position of control over the other undertaking. |

| | |
|---|---|
| At what levels? | |
| D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)? | Corporate joint ventures are subject to merger control if the joint venture company exercises the functions of an independent business entity on a permanent basis. If a joint venture company is newly formed by two or more enterprises, it is subject to merger control if in addition to the above criterion the business activities of at least one of the controlling shareholders are concentrated in it. Joint control for a very limited period of up to three years does not, however, trigger a merger filing requirement. |

4. Thresholds for notification

| | |
|---|---|
| A. What are the general thresholds for notification? | <p>The Competition Commission must be notified of concentrations of enterprises before they are carried out when, in the last accounting period prior to the concentration:</p> <p>a) the enterprises concerned reported joint turnover of at least 2 billion Swiss francs or turnover in Switzerland of at least 500 million Swiss francs, and</p> <p>b) at least two of the enterprises concerned reported individual turnover in Switzerland of at least 100 million Swiss francs.</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? | Merger notification thresholds apply to any undertaking involved in a merger or in the acquisition of control (i.e. to the controlling and the controlled undertaking). |
| C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently. | No. The thresholds are not automatically subject to adjustment. The Federal Assembly may, by way of a decree not subject to referendum adjust the amounts set forth above according to changed circumstances. |
| 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)? | The thresholds relate to the last business year prior to the merger. |

| | |
|---|--|
| <p>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?</p> | <p>For the calculation of the turnover, all reductions on earnings such as discounts, rebates, value added tax and other use taxes as well as other taxes directly allocated on the turnover shall be deducted from the proceeds earned by the enterprises involved through their ordinary business activity for goods and services during the last business year. Business years which do not extend to a full twelve months period shall be brought forward to a full twelve month period by taking the average of the turnover of the months available.</p> <p>The methodology for identifying and calculating the value of the transaction and for the relevant assets are not applicable.</p> |
| <p>F. Describe methodology for calculating exchange rates.</p> | <p>Turnover in foreign currencies are converted into Swiss francs in accordance with generally accepted accounting principles of Switzerland.</p> |
| <p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p> | <p>Thresholds apply to both worldwide sale and sales within the jurisdiction as described in the answer to question A.</p> |
| <p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p> | <p>No. All undertakings involved have to trigger the notification threshold.</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>The present law applies to restrictive practices whose effects are felt in Switzerland, even if they originate in another country. This is normally the case when the second condition mentioned is fulfilled, i.e. at least two of the enterprises concerned reported individual turnover in Switzerland of at least 100 million Swiss francs.</p> |
| <p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p> | <p>To determine the relevant turnover, the location of customers is considered.</p> |
| <p>K. If market share tests are</p> | <p>Not applicable.</p> |

| | |
|---|---|
| used, are there guidelines for calculating market shares? | |
| L. Are there special threshold calculations for particular sectors (e.g., banking, airlines) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)? | In the case of insurance companies, the gross annual insurance premiums are taken into account for the purposes of determining the relevant thresholds. For banks, the relevant thresholds are calculated on balance sheet total instead of turnover, divided by a factor of 10. In addition, once the Competition Commission has established that a specific enterprise holds a dominant market position, every merger transaction involving that enterprise in the market in which it holds a dominant position is subject to the notification requirement, irrespective of any thresholds. |
| M. Are any sectors excluded from notification requirements? If so, which sectors? | No sectors are excluded from notification requirements. |
| N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign? | No special rules apply for foreign undertakings with respect to the application of jurisdictional thresholds. |
| O. Does the agency have the authority to review transactions that fall below the thresholds? | Yes. Notification is mandatory when, on termination of a procedure initiated pursuant to the present law, a legally enforceable decision establishes that a participating undertaking occupies a dominant position in a market in Switzerland, and when the concentration concerns either that market or an adjacent market or a market upstream or downstream |

5. Notification requirements and timing of notification

| | |
|--|--|
| A. Is notification mandatory pre-merger? | Yes, if the thresholds are reached. |
| B. Is notification mandatory post-merger? | All mergers where the thresholds are reached must be notified pre-merger. A notification which would have been mandatory pre-merger and which is only notified post-merger will lead to sanctions. |
| C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when? | No. |

| | |
|---|---|
| <p>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?)?</p> | <p>A transaction can be notified at any given time prior to the execution of a merger or concentration, as long as the notification contains all information and documents mandatory according to the Ordinance. However, in accordance to the RP a letter of intent is accepted by the Swiss authority.</p> |
| <p>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?</p> | <p>There is no triggering event. As mentioned above a letter of intent is sufficient for the filing of a notification.</p> <p>In the case of a public bid for the acquisition of an enterprise, the notification is to be made immediately after the publication of the offer, and in any case before its implementation.</p> |

6. Simplified procedures

| | |
|---|---|
| <p>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.).</p> | <p>Parties may submit a simplified notification in cases that do not raise any 'prima facie' Competition problems, this is particularly helpful in the case of international mergers with limited effect on the Swiss market, when the Competition Commission is already familiar with the affected markets following a previous decision or when an undertaking is founded in order to enter a new market in development. In such cases, the Commission and the merging parties can agree on the information required for submission. After confirmation that the notification is complete, the parties remain under a duty to disclose to the authority additional information and documents as may be relevant for the examination of the merger plan - even in the first phase.</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>Along with the notification undertakings are obliged to submit the following documents:</p> <ul style="list-style-type: none"> - copies of the most recent annual reports and accounts - copies of the agreements, through which the merger is achieved or that are otherwise connected with the merger, insofar as their relevant contents are not already contained - in the case of a public offer, copies of the offer documentation - copies of the reports, analyses and business plans made with |
|---|--|

| | |
|--|---|
| | regard to the merger insofar as they contain relevant information for the assessment of the merger, insofar as the information is not already contained in the notification itself. |
| B. Are there any document legalization requirements (e.g., notarization or apostille)? | No. |
| 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? | <p>A notification submitted to a foreign authority may in principle also be used for notification purposes to the Competition Commission. A notification in one of the languages accepted (German, French or Italian) and containing all information required will be considered complete. The parts of the notification where relevant information for Switzerland are to be found must be indicated.</p> <p>Certain notions (for example control, joint venture, participating enterprise) contained in foreign regulations, are not identical to those of the LCart and the Merger Control Regulation. It is therefore recommended that the enterprises clarify with the Secretariat whether such a notification can be considered as complete in Switzerland. The Secretariat can inform the notifying enterprise which information must be completed.</p> <p>Form CO of the EU: sections 1 to 12 of Form CO relating to the notification of a concentration pursuant to regulation (EEC) No 4064/89 contain all information required by the Competition Commission, as long as corresponding data are given for Switzerland.</p> <p>Common Form of Notification of France, Germany and the United Kingdom: the common Form of Notification of Operations of Concentration of France, Germany and the United Kingdom contains most of the information required. If it is filed, some additional information is necessary for a complete notification in Switzerland. Please compare the information with the requirements set out in the Merger Control Regulation.</p> |

8. Translation

| | |
|--|--|
| A. In what language(s) can the notification forms be submitted? | The notification itself must be in one of Switzerland's official languages (French, German or Italian). However, the supporting documents (appendices) are also accepted in English. |
| B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the | The language of the notification will thereafter be the language of the proceeding, except otherwise agreed. |

