

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

United States of America

LAST UPDATED MAY 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	Hart-Scott-Rodino Act, ("HSR Act" or "Act"), Section 7A of the Clayton Act, 15 U.S.C. 18a, http://www.ftc.gov/bc/docs/statute.pdf
B. Notification forms or information requirements	Premerger Notification and Report Form, (the "Form"); 16 C.F.R Part 803 App., www.ftc.gov/bc/hsr/hsrform.htm
C. Substantive merger review provisions	Federal Trade Commission Act, Section 5(a); 15 U.S.C. § 45(a) http://www4.law.cornell.edu/uscode/15/41.html ; Clayton Act, Section 7, 15 U.S.C. § 18; Sherman Act, Section 1, 15 U.S.C. § 1; http://www.usdoj.gov/atr/foia/divisionmanual/ch2.htm
D. Implementing regulations	Rules, Regulations, Statements and Interpretations Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976; ("HSR Rules"); 16 C.F.R. Parts 801, 802 and 803; www.ftc.gov/bc/hsr/hsrrules010701.pdf
E. Interpretive guidelines and notices	Formal Interpretations, Guides and other helpful materials regarding premerger notification can be found at www.ftc.gov/hsr/hsr . See also: Horizontal Merger Guidelines http://www.usdoj.gov/atr/public/guidelines/hmg.htm ; Antitrust Guidelines for Collaborations Among Competitors http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf ; Non-horizontal Merger Guidelines http://www.usdoj.gov/atr/public/guidelines/2614.htm Commentary on the Horizontal Merger Guidelines http://www.usdoj.gov/atr/public/guidelines/215247.htm

2. Authority or authorities responsible for merger enforcement.

<p>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</p>	<p>The Federal Trade Commission and the Department of Justice share antitrust enforcement responsibility for mergers and acquisitions. Transactions triggering a premerger notification filing are required to be notified to both agencies. However, the two agencies have developed a clearance process between themselves to allocate responsibility for reviewing each proposed transaction. Allocation is generally made on the basis of expertise. Only one agency will issue a request for additional information or documentary materials. The FTC administers the premerger program; the DOJ has criminal jurisdiction. The states attorneys general also have jurisdiction over antitrust matters affecting their individual states.</p>
<p>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</p>	<p>Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington D.C. 20580; ; www.ftc.gov . (English) U.S. Department of Justice, Antitrust Division, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001; www.usdoj.gov/antitrust. (English)Inquiries: Premerger Notification Office, 202-326-3100, fax: 202-326-2624</p>
<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>	<p>Yes. Premerger Notification Office, Bureau of Competition, Federal Trade Commission 202/326-3100 (phone), 202/326-2624 (fax); see staff contact list at http://www.ftc.gov/bc/hsr/staffphone.htm</p>

3. Covered transactions

<p>A. Definitions of potentially covered transactions (i.e., concentration or merger)</p>	<p>In general, the HSR Act covers acquisitions of voting securities or assets if as a result of the acquisition, the acquiring person will hold in excess of \$50 million (as adjusted) in assets or voting securities of the acquired person. If the acquisition is valued between \$50 million (as adjusted) and \$200 million (as adjusted), then a size-of-person test must also be met where one party has sales or assets of \$100 million (as adjusted) or more and another party has sales or assets of \$10 million (as adjusted) or more. HSR Act, 7A(a)(2). Reportable acquisitions may include acquisitions of exclusive licenses and patents, minority or majority voting securities interests, and joint venture or partnership interests. Important note: Since 2005, the jurisdictional thresholds are adjusted annually. These changes are published in the Federal Register and on the FTC's Hart-Scott-Rodino web page. To reference the current thresholds, see http://www.ftc.gov/bc/hsr/hsr.htm</p>
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<p>B. If change of control is a determining factor, how is control defined?</p>	<p>Change of control of an entity is often not a factor in determining whether a transaction must be reported, but it is a key factor in determining when an acquisition of an interest in an unincorporated entity must be reported. The concept of control also is relevant to determining what entities are included in the acquiring and acquired persons when calculating whether the statutory size-of-person test is met; it also is relevant in determining whether the Rule 802.30 exemption for intraperson transactions applies. . Control is defined in Section 801.1(b) of the HSR rules. For corporate entities, control is defined as either holding 50% or more of the outstanding voting securities of an issuer or, having the contractual power presently to designate 50% or more of the directors of a corporation. In the case of an entity that has no voting securities (e.g., a partnership), having the right to 50% or more of the profits of an entity, or having the right in the event of dissolution to 50% or more of the assets of the entity.</p>
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Yes. Acquisitions of minority interests in voting securities may be reportable if they result in an acquiring person holding greater than \$50 million (as adjusted) in voting securities. The HSR rules provide for notification thresholds at \$50 million (as adjusted), \$100 million (as adjusted) , \$500 million, (as adjusted) and 25% of voting securities if valued at \$1 billion (as adjusted) or more, or at 50 percent of voting securities. HSR Rule 801.1(h). Under HSR Act Section 7A(c)(9), and Rule 802.9, acquisitions of 10% or less of an issuer’s voting securities are exempt if held solely for the purposes of investment.</p>
<p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</p>	<p>Yes. Premerger reporting may be required for the formation of certain types of joint ventures. See Rule 801.40 regarding corporate joint ventures. See Rule 801.50 regarding non-corporate joint ventures. The National Cooperative Research and Production Act of 1993, Public Law No. 103-42 (NCRPA), permits parties participating in joint research and development or production joint ventures to limit their possible antitrust damage exposure to actual – as opposed to treble – damages if they file notifications with the Attorney General and the Federal Trade Commission . [See Department of Justice Press Release, June 28, 1993.] Note, however, that the NCRPA does not limit antitrust review by the agencies – joint ventures may be challenged under the Clayton Act and the Sherman Act.</p>

4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>The general jurisdictional thresholds are: 1) The acquiring or acquired person is engaged in U.S. commerce or in any activity affecting U.S. commerce; 2) the amount of voting securities or assets held as a result of the acquisition is over \$50 million (as adjusted) (the size-of-transaction test) and 3) if a transaction is valued at \$200 million (as adjusted) or less, one person has sales or assets of \$100 million (as adjusted) or more and the other has sales or assets of \$10 million (as adjusted) or more (the size-of-person test) . See HSR Act Section 7A(a)(2).</p>
<p>B. To which entities do the</p>	<p>The size-of-person and the size-of-transaction thresholds are dependent on two concepts. “Control” and “hold” as those terms</p>

<p>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>are defined in the HSR Rules. These concepts are used in determining what entities are relevant when deciding the size of the acquiring or acquired person, or in determining what is held as a result of the acquisition. The filing person must include all entities that it controls when determining whether it meets the size of person threshold. (See 4.B. for a description of the definition of "control.") To determine the size-of-transaction, the acquiring person must determine what it will hold as a result of the acquisition. "Hold" is defined as beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means. Rule 801.1(c) describes the concept in more detail.</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>Yes. Adjusted annually, beginning in 2005, for changes in the gross national product.</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 sales or assets of a person are determined by the annual net sales and total assets stated on its last regularly prepared balance sheet and annual statement of income. See Rule 801.11.</p>
<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>The size of the transaction is determined by valuing the assets or voting securities to be held as a result of the acquisition. This is calculated by using the acquisition price, fair market value, or market price (for voting securities) as required under the HSR rules. See Rule 801.10, read in conjunction with Rules 801.13, 801.14 and 801.15. For determining the size-of-person, Rule 801.11(c) provides "the annual net sales of a person shall be as stated on the last regularly prepared annual statement of income and expense of that person. . . total assets of a person shall be as stated on the last regularly prepared balance sheet" For calculating the value of assets to be held as a result of the transaction, the relevant concepts are acquisition price or fair market value, whichever is greater. See Rule 801.10</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>Daily average interbank exchange rate on the day the calculation must be made.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>Statutory thresholds apply worldwide. However, exemptions under the Rules for certain acquisitions of foreign assets and voting securities of foreign issuers are based on nexus to U.S. commerce. See Rules 802.50 and 802.51.</p>
<p>H. Can a single party trigger the notification threshold</p>	<p>Yes. If the voting securities or assets held as a result of the acquisition are valued in excess of \$200 million (as adjusted) or more.</p>

(e.g., one party's sales, assets, or market share)?	
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?	Generally, by over \$50 million (as adjusted) of assets located in the U.S. or aggregate sales in or into the U.S. over \$50 million (as adjusted). See Rules 802.50 and 802.51.
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	For determining sales in or into the U.S for purposes of the exemptions in Rules 802.50 and 802.51, the Premerger Notification Office considers where the risk of loss and legal title passes, and may also consider other factors as well such as where services are provided, and/or location of the buyer or seller. Parties should contact the Premerger Notification Office for advice on any situations in which there is a question as to where to allocate sales.
K. If market share tests are used, are there guidelines for calculating market shares?	Not applicable.
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)?	Not usually, but see response to 4M below. For joint ventures, Rule 801.40, covering formations of joint ventures or other corporations, has a special size of person test. In joint ventures, all contributors are deemed acquiring persons and the joint venture is deemed the acquired person. Either (1) the acquiring person has annual net sales or total assets of \$100 million (as adjusted), the joint venture will have total assets of \$10 million (as adjusted) or more, and at least one other acquiring person will have annual net sales or total assets of \$10 million (as adjusted) or more, or (2) the acquiring person has annual net sales or total assets of \$10 million (as adjusted) or more, the joint venture will have total assets of \$100 million (as adjusted) or more, and at least one other acquiring person has annual net sales or total assets of \$10 million (as adjusted) or more. Under Rule 801.50, which covers formations of non-corporate entities (requiring reporting only in instances in which control is acquired), the size of person test is satisfied if either 1) the acquiring person has \$100 million (as adjusted) or more in assets or annual net sales and the new entity has \$10 million (as adjusted) or more in assets OR 2) the acquiring person has \$10 million (as adjusted) or more in assets or annual net sales and the new entity has \$100 million (as adjusted) or more in assets.

<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>Part 802 of the HSR Rules provides exemptions for various types of acquisitions. For example, acquisitions of carbon-based mineral reserves are reportable if more than \$500 million (Rule 802.3). Sections 7A(c)(6) , (c)(7) and (c)(8) of the HSR Act, exempt transactions from the HSR requirements if they are subject to certain U.S. Federal regulatory agency review and approval. In some instances, parties must file a copy of the information and documentary material filed with such agency contemporaneously with the FTC and the DOJ. Note that mergers in some sectors, such as banking, also are reviewed by other federal agencies under other statutory standards.</p>
<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>Yes, see Rules 802.50 and 802.51 which generally require a nexus of aggregate sales or assets in or into the U.S. of \$50 million (as adjusted) to be reportable.</p>
<p>O. Does the agency have the authority to review transactions that fall below the thresholds?</p>	<p>Yes, Section 7 of the Clayton Act prohibits mergers and acquisitions which may substantially lessen competition or tend to create a monopoly</p>

5. Notification requirements and timing of notification

<p>A. Is notification mandatory pre-merger?</p>	<p>Yes, if statutory notification threshold requirements are met. See 4.B. below</p>
<p>B. Is notification mandatory post-merger?</p>	<p>No, unless the parties failed to file in a timely manner. Civil penalties may be sought for failure to observe the notification requirements</p>
<p>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</p>	<p>No, but parties can voluntarily alert the Antitrust agencies about a planned transaction any time</p>
<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>In consensual transactions, the parties can notify the agencies based on a signed letter of intent. The rules require parties to attest in an affidavit to a good faith intention to complete the acquisition. See HSR Rule 803.5.</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>No, however parties cannot close on a transaction until the waiting period requirements have been observed.</p>
<p>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.</p>	<p>No.</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>Not applicable.</p>
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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,</p>	<p>In addition to the affidavit required by Rule 803.5, and a copy of the agreement between the parties, Item 4 of the Form requires parties to attach certain documents filed with the Securities and Exchange Commission, most recent annual reports and most recent annual audit reports. These Item 4 documents may be provided via internet links in lieu of paper copies. Item 4c requires attachment of all studies, surveys and analyses which were prepared by or for any officer or director, or by individuals</p>
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transaction documents).	exercising similar functions, for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets. Parties may also voluntarily submit additional information.
B. Are there any document legalization requirements (e.g., notarization or apostille)?	Yes. The notification form must be notarized. If signed in jurisdictions without a notary public, persons may sign the form using the following statement “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date)” See 28 U.S.C. § 1746.
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?	In the Notification Form, foreign filers must provide a U.S. contact for purposes of receiving a request for additional information and documentary material issued pursuant to HSR Act 7A(e) and Rule 803.20). Item 1(h) of the Form. In lieu of a notary’s jurat when certifying the form, persons may sign the form using the following statement “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).” See 28 U.S.C. § 1746.

8. Translation

A. In what language(s) can the notification forms be submitted?	English
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.	If at the time of filing an English language outline, summary, extract or verbatim translation exists, it must be supplied along with the foreign language information or materials. Rule 803.8(a). Translations are required at the second request stage. Rule 803.8(b). This applies to all documents required to be submitted. In practice, however, this requirement may be modified to reduce the number of translations to be produced

9. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>Filing persons must wait 30 days (15 days in the case of a cash tender offer or bankruptcy filing made pursuant to Section 363(b) of the U.S. Bankruptcy Code) generally measured from the date a complete filing is received by all parties required to file. Should a second request be issued, the waiting period is extended an additional 30 days measured from the date the parties substantially comply with the second request (10 days in the case of a cash tender offer or bankruptcy). HSR Rule 803.10</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>Cash tender offers are subject to a shortened waiting period (see above). In all tender offers, or acquisitions from third parties (persons other than the issuer or ultimate parent entity of the issuer), the waiting period begins to run from the date the acquiring person files a complete Form. HSR Rule 803.10. The acquired person must file within 15 days (10 days in the instance of a cash tender offer or bankruptcy filing). Rule 801.30. For all tender offers and bankruptcy transactions, a second request issued to the acquiring person (but not the acquired person) extends the waiting period. 15. U.S.C. § 18a(e)(2).</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>See answers to 9A and 9B above, regarding second requests.</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>Filing parties can request early termination of the waiting period by checking the appropriate item on the Form. Only one filing person need request early termination. Early termination can be granted at any time after filing. The majority of early terminations occur within 2 weeks from date of filing.</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</p>	<p>The waiting period is described in 9A. The acquiring person cannot acquire voting securities or assets prior to the expiration of the waiting period if as a result of the acquisition it would "hold" a reportable amount. "Hold" is deferred in terms of "beneficial ownership". The FTC and DOJ have sued for civil penalties when parties have transferred operational control of the seller's business to the buyer prior to expiration of the waiting period, on the grounds that this transferred beneficial ownership.</p>
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<p>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>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>Filing parties can request early termination of the waiting period by checking the appropriate item on the Form. Only one filing person need request early termination. Early termination can be granted at any time after filing. The majority of early terminations occur within 2 weeks from date of filing.</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>No. The waiting period applies to the transaction as described in the notification and report form. However, if the foreign portion of a transaction is exempt from the HSR filing requirements, the parties may proceed to acquire the exempt assets or voting securities depending on the structure of the transaction. The transaction would have to be the direct acquisition of voting securities of an exempt foreign sub or exempt foreign assets. If acquiring voting securities of a holding company that is a reportable acquisition, the acquiring person cannot acquire any portion of the issuer, even if has a foreign component that has no nexus with the U.S.</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes, if the agencies do not file an action to stop the acquisition, parties can close after expiration of the waiting period.</p>
<p>E. Describe any provisions or procedures available to the enforcement</p>	<p>Aside from the second request procedure, there is no provision in the statute for extension of the waiting period. However, in limited circumstances, several practices effectively extend the time for premerger review. During the initial waiting period, parties have been permitted to withdraw their filing and re-certify</p>

<p>authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>the filing within two business days in order to start another 30-day waiting period without having to pay another filing fee. With second requests, the waiting period is suspended until substantial compliance is certified by the parties. Parties can delay certification of their submission until they are ready to proceed. By letter agreement, the parties can agree not to close the transaction or certify substantial compliance until notice is given, or a specified time period passes.</p>
<p>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.</p>	<p>Filing parties can request early termination of the waiting period by checking the appropriate item on the Form. Only one filing person need request early termination. Early termination can be granted at any time after filing. The majority of early terminations occur within 2 weeks from date of filing.</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>Parties have been allowed to close in escrow provided that 1) both the voting securities to be acquired and the consideration are placed in escrow and 2) the escrow agreement insulates the acquiring person from receiving beneficial ownership and 3) the escrow agreement contains an unwind provision.</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>In most transactions, both must file separately. HSR Rule 803.1. In joint venture formations, only the acquiring person must file.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>In public tenders (hostile or non-hostile), as well as in acquisitions of voting securities from third parties, the waiting period begins to run from the time a complete filing is received from the acquiring person. See HSR Rules 801.30, 803.10. The acquired person must file within specified time periods. See 9B above.</p>
<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties</p>	<p>No</p>

<p>be a member of a local bar)?</p>	
<p>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?</p>	<p>The form (Item 1(g)) requires that a person be designated as a contact regarding the Form. The contents of the form are then certified to be true and correct by a company representative. Rule 803.6 specifies who may certify: Partnership – a general partner; a corporation – any officer or director; if person does not have officers or directors – by any individual having similar functions; a natural person – the natural person or his or her legal representative; an estate of a deceased natural person – by any duly authorized legal representative of such estate. Foreign filing persons must provide a name and title, firm name, address, telephone number, fax number, and e-mail address of an individual located in the U.S. for the limited purpose of receiving notice of the issuance of a second request . Item 1(h).</p>

12. Filing fees

<p>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)?</p>	<p>Yes. The fees for notification are tiered fees based on the size of transaction. Current fees and thresholds can be found at http://www.ftc.gov/bc/hsr/filing2.htm See also Rule 803.9</p>
<p>B. Who is responsible for payment?</p>	<p>Rule 803.9(a) requires that each acquiring person shall pay the filing fee required by the HSR Act. In practice, any party may pay the fee on behalf of the acquiring person.</p>
<p>C. When is payment required?</p>	<p>At the time of filing notification.</p>
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	<p>Payment by bank cashier's check, certified check, or electronic wire transfer is accepted. Electronic wire transfer is the preferred method of payment. See HSR Rule 803.9; http://www.ftc.gov/bc/hsr/filing2.htm</p>

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>Generally, neither the fact that a filing has been made, nor the contents of a filing is public information except as may be relevant to any administrative or judicial action or proceeding involving the FTC or the DOJ. If requested, disclosure can be made to U.S. Congress. See 7A(h) of the HSR Act. However, if one of the filing persons requests early termination, grants of early termination of the waiting period are published pursuant to 7A(b)(2) of the HSR Act. The fact of early termination is available in the Federal Register, on the FTC web page, and is available by phone at 202/326-3100.</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>No</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>Disclosure to other governmental agencies (e.g., state attorneys general, foreign antitrust authorities) can only be made if parties expressly waive confidentiality and specifically request that certain third parties and other government agencies be allowed access to the materials.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>Not necessary; see above.</p>
<p>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>The United States Government is party to eight bilateral cooperation agreements that contemplate the exchange of non-confidential information between the competition authorities within the limits allowed by domestic law: Germany (1976), Australia (1982), Canada (1995), the European Communities (1991), Israel (1999), Japan (1999), Brazil (1999), and Mexico (2000). The HSR Act does not permit the U.S. agencies to share information provided by the parties pursuant to the HSR Act with foreign enforcement authorities under these agreements. The United States has also entered a Mutual Antitrust Enforcement Assistance Agreement with Australia (1999) that permits the sharing of otherwise non-disclosable information, excluding information obtained pursuant to the HSR Act, under certain circumstances. These agreements are contained in publicly-available documents that may be obtained on the world wide web at: http://www.usdoj.gov/atr/public/international/int_arrangements.htm.</p>
<p>F. Can the agency exchange documents or information with other reviewing</p>	<p>See response to C, above.</p>

agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?	
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14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	For FY2004, http://www.ftc.gov/os/2004/09/040903hsrrpt03.pdf
B. Does the agency publish press releases related to merger policy or investigations?	The DOJ and FTC file a press release whenever a transaction is challenged. On appropriate occasions, the agencies may issue a public statement describing the reasons for closing an antitrust investigation. The notice describing the Issuance of Public Statements Upon Closing of Investigations may be found at http://www.usdoj.gov/atr/public/guidelines/201888.htm
C. Does the agency publish decisions on why it cleared / blocked a transaction?	See response to 14.B., above.

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?	Parties may be assessed a civil penalty of \$11,000 per day of violation for failure to observe the requirements of the HSR Act. See 7A(g) of the HSR Act.
B. Which party/ies are potentially liable?	Any acquiring or acquired person, or any officer, director, or partner of the acquiring or acquired person
C. Can the agency impose/order these sanctions/penalties directly, or is it required	The agency cannot impose penalties directly. "Such penalty may be recovered in a civil action brought by the United States." To date, all such civil penalty cases have settled without trial, and most have settled simultaneously with filing of the complaint.

to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	
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16. Judicial review

Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.	From the time parties substantially comply with the issuance of a second request, the agencies have 30 days (15 days in the case of a case tender offer or U.S. Bankruptcy proceeding) to file a motion for a temporary restraining order (often stipulated) and preliminary injunction in federal district court. The court sets the timing for the preliminary injunction hearing, on average it is 2-4 months. Hearings last 1-2 weeks on average. Most judgments are not appealed, but if either the parties or agencies wish to appeal, a notice of appeal must be filed with the court of appeals within 60 days. Timing at the court of appeals depends upon the court's docket – 1-4 months on average.
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17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?	Filings/clearances may be required with some sectoral regulators, such as in banking
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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?	Notification remains valid for one year from the expiration or grant of early termination of the waiting period. HSR Rule 803.7(a).
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19. Post merger review of transactions

<p>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?</p>	<p>The Act (15 U.S.C. 18a(i)(1)) provides that any action taken by the agencies, or failure to take action, shall not bar any future action by the agencies with the respect to the acquisition.</p>
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