

The materials have been compiled during the Summer of 2002 by members of the International Bar Association, with inputs from a number of ICN members. In the process of collecting the information for the appendix, the IBA also used "Merger Control 2002", published by Law Business Research, 2001, with permission and Rowley & Baker: International Mergers - The Antitrust Process, Third Edition.

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Country

- 1 Country name?

Statutory Standards

- 1 Where are the legislation and the rules located?

Enforcement Agencies

- 1 Name(s) of authorities
- 2 Administrative/Ministerial (Investigation and decision making)?
- 3 Independent or Autonomous Competition Authority (Investigative only)?
- 4 Adjudicative Body (Decision making only - investigation occurs elsewhere)?
- 5 Other (describe)

Notification Requirements

- 1 Mandatory Notification?
- 2 Voluntary Notification?
- 3 Timing of Notification a) pre-merger notification, b) post-merger notification?
- 4 Waiting Period?

Substantive Test / Assessment Criteria

- 1 Dominance test?
- 2 Restriction of Competition (eg. substantial lessening of competition)?
- 3 Public Interest (describe)?
- 4 Other (describe)?
- 5 Efficiency / Defence (what consideration is given to efficiencies)?

Private Enforcement

- 1 May third parties institute proceedings?

- 2 Remedies available to third parties (merger review/prohibition/damages)?
- 3 Rights of intervention in competition authority's instituting proceedings?

Decision Making

Regarding the decision maker. Who has the power to reject or prohibit a merger?

- 1 Administrative / Ministerial Body (Ministerial Decision)
- 2 Independent or Autonomous Competition Authority (Role)
- 3 Judicial Body
- 4 Shared decision making (two or more competition agencies / bodies)

Final Orders / Sanctions

- 1 Nature of sanctions available (prohibitions orders-divestitures, damages, others)
- 2 Who are subjected to sanctions (eg. Corporate enterprises, individuals, and in what circumstances?)

Appeal / Judicial Review

- 1 Appeal / Judicial Review?
- 2 Appellate body?
- 3 Grounds for appeal?
- 4 Time limit/Time frame?

Sectoral Regulation / Other Regulatory Approval

(eg. Specific rules governing mergers involving banking, defence, media, water or other industries)

- 1 Sectors with specific rules
- 2 Relevant Legislation / Regulation

Country	Statutory Standards	Enforcement Agencies	Notification Requirements	Substantive Test / Assessment Criteria	Private Enforcement	Decision Making	Final Orders / Sanctions	Appeal / Judicial Review	Sectoral Regulation / Other Regulatory Approval
ARGENTINA	The Competition Act, 25,156 ('the Act'), as regulated by Decree 89/2001 ('the Regulation') and amended by Decree 396/01 ('the Decree').	2- The Comisión Nacional de Defensa de la Competencia (the National Commission for the Defence of Competition, or CNDC) is the current enforcement agency until the Tribunal Nacional de Defensa de la Competencia (the National Tribunal for the Defence of Competition, or TNDC) is in place, which is not likely to happen at least for the next few months. The CNDC reports to the Secretaria de la Competencia, la Desregulacion y la Defensa del Consumidor (Secretariat for Competition, Deregulation and the Defence of the Consumer, or SCDDC), which in turn is under the Ministry for the Economy.	1- Mandatory Notification. 3- a) Pre-merger notification or within a week from the date of conclusion of the merger agreement, publication of the purchase or exchange offer or the acquisition of a controlling participation, whichever happens first. 4- Waiting period. The implementation of the transaction must be suspended prior to clearance because the Law states that the transaction has no effects vis-à-vis the notifying parties or third parties until it has been approved. The notifying parties can elect to make either a 'short-form' (Form	2- Restriction of Competition. (Section 7) In order to determine whether or not a concentration limits competition, the relevant (product or service) market must be defined. Next, the companies participating in the relevant market are identified, and their market share calculated. Based on the foregoing, the level of concentration created by the transaction will be calculated, and the CNDC will determine whether the concentration allows the parties to exercise market power in the relevant market. For that purpose it will take into account, inter alia, the characteristics of other competitors in the relevant market, whether the concentration threatens the elimination of a particularly vigorous and, the flow of information in the relevant market, the existing barriers to entry and the potential	1- The Law provides that any person injured by practices prohibited thereunder may file suit for damages with a court of competent jurisdiction, founded upon standard civil law principles. In addition, actions before the CNDC may be commenced ex officio or by way of a complaint filed by any individual or private or public entity. 2- If the CNDC decides to pursue the investigation, it is empowered to issue cease-and-desist orders, or implement any provisional remedy that it may deem appropriate. 3- The CNDC may also conduct public hearings in which not only the affected companies but also consumer and industry groups may put their case.	1- The Comisión Nacional de Defensa de la Competencia (the National Commission for the Defence of Competition, or CNDC)	1- The CNDC may order market investigations, issue cease-and-desist orders, summon technical experts, impose penalties, file court actions, enter company premises with a court order, etc. 2- These monetary sanctions may also be imposed on board members, legal representatives and/or attorneys-in-fact of the notifying parties, jointly and severally.	1- The parties to a transaction have a right to judicial review of decisions blocking the transaction or imposing sanctions. As is the case with all regulatory agencies in Argentina, the judicial review is unrestricted in scope. The available sanctions are potentially draconian. Monetary penalties range from US\$10,000 to US\$150 million, depending on the damage caused, the benefits obtained by the infringers and the value of the assets involved. In addition, the SCDDC may impose certain conditions in order to neutralise the detrimental effects on competition of the concentration, or ask the courts to order the dissolution, winding-up, deconcentration or	1- There are no restricted or sensitive areas, and no governmental approval or registration of foreign capital are necessary.

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			<p>F1) or 'long-form' (Forms F1 and F2) filing. In those cases the CNDC and the SCDDC have respectively 15 or 35 working days from initial filing to issue its recommendation and final resolution respectively, unless before the expiry of any of these periods the CNDC elects to require the filing of the next form (Form F2 or F3 respectively, this last form extending the reviewing period from 35 to 45 working days). The transaction is considered cleared if the CNDC and SCDDC do not pass a resolution within the 45 working day period. The periods mentioned above are suspended as of the date the</p>	<p>competition from imported products.</p> <p>5 -Efficiency gains generated by the concentration through a better use of existing assets will be analysed. The effects of the concentration will be assessed and those transactions which may produce efficiency gains which clearly outweigh the potential damage to competition will not be opposed.</p>				<p>spin-off of companies which have violated the Law.</p> <p>2- These monetary sanctions may also be imposed on board members, legal representatives and/or attorneys-in-fact of the notifying parties, jointly and severally.</p>	

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			<p>authorities:</p> <ul style="list-style-type: none"> - request filing of Form F2 or F3, or information missing from any notification form, until such information is provided; - request an opinion from the appropriate regulatory agency where the affected companies undertake activities in regulated industries (such as telecommunications, insurance, banking, etc) until the opinion is received from such agency or a period of a maximum of 15 business days elapses; or -so decide, for justifiable reasons. 						
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ARMENIA	The Republic of Armenia Law "On Protection of Economic Competition"	2- State Commission for the Protection of Economic Competition" (the Commission) Independent state authority	1-Mandatory Notification. 3- a) Pre-merger Notification. 4- Waiting Period - two months.	1- Dominance Test	No special legislative provision	1- The Commission reviews mergers and makes decisions on either approval or prohibition	1- The prohibited concentration, which has been put into effect, shall be subject to liquidation. Any concentration leading to a dominant position shall be prohibited except when the concentration fosters the development of competition on the given commodity market. 2- Any economic entities are subjected to sanctions in the framework of the legislation currently in effect.	1- Appeal. The decision of the Commission shall be valid from the date of its promulgation. 4- The decision of the Commission may be appealed in court within thirty subsequent days.	1- No Specific Rules for Sectors
AUSTRALIA	Trade Practices Act 1974 (TPA) And Trade Practices Regulations 1974	3- The TPA is enforced by the Australian Competition and Consumer Commission (ACCC) an independent statutory authority. 4- The relevant adjudicative bodies are the Federal Court of Australia and the	2. Voluntary, Notification. There is no formal requirement that parties to a proposed merger advise the ACCC prior to entering into an	2- Substantial lessening of competition in the relevant market. The first issue to be addressed is to define the relevant markets, by product, geographic area, functional level and the time dimension affected by the merger.	1-Private individuals or competitors are able to take action against anti-competitive mergers under the TPA, but only for damages, declarations or divestitures. 2- Damages, injunctions, divestiture or one of the ancillary orders available	2- ACCC (on authorisation matters) 3- Federal Court of Australia (on section 50 matters) 4- Despite any objection voiced by the ACCC, parties may still go ahead with their	1. In addition to injunctions to restrain anti-competitive mergers, the ACCC may seek pecuniary penalties of up to A\$10 million for corporations and A\$500,000 for	1- Mergers considered under section 50 are appealable to the full bench of the Federal Court and subsequently to the High Court of Australia on issues of law. Judicial review only	1- The ACCC does not assess mergers or asset sales on an industry or sector basis. However, there are several government policies regarding ownership laws. - <i>Financial sector:</i>

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		Australian Competition Tribunal.	agreement to effect an acquisition (unless the parties seek to formally apply to the ACCC for authorisation). It is common practice in Australia, however, to notify the ACCC on an informal basis as soon as there is a real likelihood that a merger with competition implications may proceed. Parties may seek to formally apply to the ACCC under Section 90 of the TPA for authorisation of the merger on public benefit grounds. Authorisation is the process of granting immunity, on public benefit grounds, for mergers and acquisitions that would or might otherwise	3- Public Interest. Merger authorisation applications are evaluated according to a public benefit test. The test is found in section 90(9) of the TPA and states that the ACCC shall grant authorisation only if it is satisfied in all the circumstances that the acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place. Public benefit is not defined by the TPA, except to the extent that it requires that significant increases in exports or import replacement be considered as public benefits and that the ACCC take account of all relevant matters relating to international competitiveness, in addition to general competition issues.	under section 87; and divestiture in relation to a merger (Section 81(1)) 3- No	merger. In order to block a merger under section 50 the ACCC must seek an injunction through the Federal Court of Australia. The ACCC can grant authorisations in relation to mergers that would otherwise substantially lessen competition if there is significant public benefit. Divestures. If the ACCC is of the view that a completed acquisition has substantially lessened competition in a substantial market it may apply to the Federal Court for an order pursuant to s.81 of the TPA that the acquirer dispose of the shares or assets acquired in contravention of the act	individuals, orders for declarations, divestiture of shares or assets and damages. Private individuals (including competitors) may also bring actions for damages and divestiture. 1. Under Section 76 of the TPA, monetary penalties of up to A\$10M for companies and up to \$500,000 for individuals apply. Under Section 80, injunctions can apply to natural persons and companies. Under section 82, proceedings for damages can be brought against natural persons and companies. Divestiture of shares under section 81 applies to companies.	arises indirectly where parties threaten to complete acquisitions despite ACCC opposition and are then forced to defend ACCC injunction proceedings in the Federal Court. Where formal authorisation has been applied for and rejected by the ACCC, the decision can be reviewed by an appeal to the Australian Competition Tribunal which conducts a full rehearing on the merits of the authorisation. This process applies to issues of fact and the authorisation decision itself (Part IX TPA), The Tribunal is a body constituted by a Presidential Member, who is a Federal Court judge, and other members with substantial experience in or knowledge of industry, commerce, economics, law or	The Australian Government has placed a ban on mergers between the four major banks in Australia until it is satisfied that there is improved competition from new and established financial industry participants. Additionally, financial sector companies are subject to a 15% shareholding limit, and the Treasurer may approve a higher percentage limit on national interest grounds. - <i>Media:</i> There are limits placed on media ownership in local areas, nationally and for foreign ownership limits. Proposed takeovers of assets valued at more than A\$5M must be notified to the Treasurer in advance. The Treasurer may prohibit proposed transactions in the national interest or order divestiture. - <i>Foreign Investment:</i> Requires the approval of

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			<p>contravene sections 50 or 50A (the merger provisions) of the TPA. Authorisation applications must be made before the acquisition takes place.</p> <p>4- Under the TPA. Although there is no requirement for the parties to suspend the transaction when seeking informal clearance of a merger, parties generally do not proceed with mergers until they obtain clearance from the ACCC. Where formal authorisation of a proposed merger is sought on public benefit grounds, the parties suspend completion of the transaction pending the ACCC's determination.</p>					<p>public administration (section 31 TPA). From there, appeals can be made to the Federal Court on questions of law only.</p> <p>2. The Full Bench of the Federal Court (on section 50 matters) and the Australian Competition Tribunal (on authorisation matters).</p> <p>3. An application for review may be made by the applicant for authorisation or by any person the Tribunal is satisfied has a sufficient interest in the matter.</p> <p>4. The application for review of an authorisation matter must be lodged with 21 days of the ACCC's determination or within such shorter time as the Tribunal directs. The Tribunal has a period of 60 days to conduct a review, which may be extended if the</p>	<p>the Commonwealth Treasurer to acquire a Substantial shareholder in an Australian corporation. A substantial shareholder is defined as: a person in a position to control not less than 15% of the voting power in the corporation or holds interests in not less than 15% of the issued shares in the corporation; and two or more persons shall be taken to hold an aggregate substantial interest in a corporation if they, together with any associate or associates of any of them, are in a position to control not less than 40% of the voting power in the corporation or hold interests in not less than 40% of the issued shares in the corporation.</p> <p>2- <i>Financial Sector (Shareholdings) Act 1998</i> –administered primarily by the Australian Prudential Regulation Authority.</p>

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			Parties to a proposed merger cannot seek authorisation for an acquisition that has already occurred and, except in certain circumstances, this may apply from the date upon which they enter into a contract for the acquisition.					Tribunal considers that the matter cannot be dealt with properly in that period because of the complexity of the matter or other special circumstances. For injunctions granted by the Federal Court, the appellant has 30 days in which to appeal. An application to vary the terms of the injunction can be made at any time within the injunction period.	<i>Broadcasting Services Act 1992</i> –administered primarily by the Australian Broadcasting Authority. <i>Foreign Acquisitions and Takeovers Act 1975</i> –administered by the Treasury and the Foreign Investment Review Board.
BELGIUM	The Law of August 5, 1991 on the Protection of Economic Competition ('the Competition Law') as amended by the laws of April 26, 1999	1 - The Corps des Rapporteurs ('the Reporters'); The Competition Service ('the Service') both of which are departments within the Ministry of Economic Affairs, and The Competition Council ('the Council'), an administrative court. 3 - The Reporters and the Service (Investigative only) 4 - The Council (decision making only)	1 - Mandatory Notification. 3- a) Pre-merger Notification. Notification must be completed within 1 month of the earliest of: the conclusion of the agreement; the announcement of a public bid; or acquisition of a controlling interest.	1 - Dominance test. 4 - Must be taken into account the effectiveness of actual or potential competition (whether at a national or international level) as well as barriers to entry, the bargaining power of customers and suppliers, the maturity of the market, the economic and technical level and alternative sources of supply.	1- Any individual or legal entity showing 'sufficient interest' can intervene during the investigation	The Competition Council	1 - The Council may, where it blocks a transaction, order divestment as well as the cessation of joint control or any other appropriate measure. 2 - The merger parties concerned including corporate enterprises.	1- Appeal 2 - The Brussels Court of Appeal (a judgement by the Court of Appeal can itself be reviewed on points of law and procedure only by the Cour de Cassation (Supreme Court). The Council of Ministers may clear a concentration by the Council on general interest grounds. A decision of this kind can itself	No specific rules for sectors. However, in cases involving substantial foreign acquisitions, there is a requirement to provide certain kinds of information to the government

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								<p>be appealed before the State Council</p> <p>3- Points of law</p>	
BRAZIL	<p>The relevant legislation is the Antitrust law of June 11, 1994 Law No. 8.884, the law. (Lei de Defesa da Concorrência, Lei No. 8.884/94)</p>	<p>1- CADE (the Administrative Council for Economic Defence), an independent federal authority.</p> <p>2- Before CADE decides whether or not to clear a merger, the SEAE (Economic Policy Secretariat), a Department of the Ministry of Finance, and the SDE (Economic Law Office), a Department of the Ministry of Justice, analyse the market and conduct investigations before issuing (non-binding opinions)</p>	<p>1- Mandatory Notification.</p> <p>3- The notification deadline is 15 business days after the execution of the transaction. b) Post merger control system. However, CADES's Resolution No. 15/98 sparked a fierce controversy regarding the definition of the starting date of the 15-working day deadline. The Resolution states that the moment of execution of the transaction for purposes of the filing deadline shall be deemed the time of the</p>	<p>5- According to the law transactions that damage or limit competition will only be cleared if they result in efficiencies as benefit the consumers.</p>	<p>1- Customers and Competitors may file a complaint stating their reasons for objecting to the merger, and may follow all the proceedings except those which are considered confidential.</p> <p>3- Competitors, suppliers, and customers can have a substantial influence on the final decision. Customers and competitors may become involved through comments about the merger that they are required to provide to the authorities</p>	<p>1- CADE may impose restrictions and conditions on mergers in order to prevent anti-competitive effects on the market. It may object to a merger and order it to be reversed and enforce such decisions with penalties, which have to be authorised by the courts. Such proceeding provide a chance to argue a case in court.</p> <p>2- Companies and managers.</p>	1- CADE	<p>1- Appeal. CADE's decisions are subject to full judicial review under article 5 of the Brazilian Constitution.</p>	<p>1- Telecommunications electricity, gas, civil aviation, banking and other sectors.</p>

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			<p>execution by the parties of the first binding document, except where it is demonstrated that considerable alterations in the competitive relationship between them, resulting in effects on the market, have occurred at a different time. The predominant understanding is that almost any document signed by the parties may be a binding document.</p> <p>4- As the law does not require pre-merger notification, there are no waiting periods and transactions do not have to be suspended prior to clearance.</p>						

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CANADA	Sections 91 to 103 of the Competition Act (R.S. 1985, c. C-34)	<p>3- The Commissioner and, by extension, the Bureau, have broad powers to investigate and evaluate a merger.</p> <p>4- Should the Commissioner not be able to resolve perceived difficulties with a merger with the parties, he can refer the matter to the Competition Tribunal ('the Tribunal') for adjudication.</p>	<p>1- Mandatory Notification.</p> <p>2- Parties occasionally notify voluntarily where there is significant concern about the competitive impact of a transaction. Doing so allows the parties to confirm that the Commissioner will not challenge the merger. However, the significant filing fees required on notification make formal voluntary filings relatively rare.</p> <p>4- Waiting Period. 14 and 42 calendar days from the day the filing is certified complete (usually, the same day as filing occurs) in the case of the short-form and long-form notifications respectively.</p>	<p>2- Restriction of Competition.</p> <p>5- ("Gains in efficiency will be greater than, and will offset, the effects of any prevention or lessening of competition". See section 96 of the Competition Act)</p>	<p>1- A private party has no ability to challenge a merger.</p> <p>1- No applicable.</p> <p>3- The Competition Tribunal Rules also provide that, if the Commissioner brings an application to the Tribunal, any party affected by the merger may seek leave to intervene in the proceedings and thus complainants may have a voice in proceedings.</p>	The Competition Tribunal on application by The Commissioner. Administrative Tribunal	<p>1- Prohibition, Divestures, any other prohibition that will remedy the substantial lessening of competition</p> <p>2- Any "person"</p>	<p>1- Appeal</p> <p>2- Federal Court of Appeal.</p> <p>3- Under the Act an appeal on questions of law and of mixed fact and law. An appeal from a decision of the Federal Court of Appeal lies, with leave, to the Supreme Court of Canada.</p>	<p>1- Banking, Trust and Loans, Insurance, Transportation.</p> <p>2- Section 94 of the Competition Act</p>

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CHILE	Decree Law No. 211	<p>2- The National Economic Prosecutor (FNE) (Fiscalia Nacional Economica) does the investigation and the Antitrust Commission is the decision maker.</p> <p>3- The FNE is an independent authority, but it is only an investigative body.</p> <p>4- The Antitrust Commission is the Adjudicative Body.</p>	<p>1- No special legislative provision.</p> <p>2- No special legislative provision, although parties may consult some operations.</p> <p>3-No special legislative provision.</p> <p>4- No special legislative provision.</p>	<p>1- Dominance Test</p> <p>2-Restriction of Competition.</p> <p>3-No applicable</p> <p>5- Efficiencies. The efficiency/defence must be proved.</p>	No special Legislative Provision.	No special Legislative Provision.	<p>1- Remedies or measures. Chile does not have a mandatory merger control regime. However, any person who undertakes, whether individually or collectively, an action with the aim of lessening free competition in Chile in connection with any economic activity, commits a crime punishable by imprisonment for a period up to five years.</p> <p>2- Corporate Enterprises and individuals.</p>	<p>1- Judicial Review</p> <p>2- Antitrust Commission</p> <p>4- 5 or 10 days</p>	<p>1- Where the transaction involves the acquisition of a Chilean Company by a foreign investor, the parties must notify the Chilean Securities Commission, provided that the Chilean Company has offered a public offering of some of its shares publicly, or the Chilean enterprise has more than 500 shareholders. A number of economic sectors, e.g., banking, insurance, pension funds and broadcasting are subject to regulations by independent public regulators. Acquisitions of companies in those sectors are subject to regulatory approval.</p>
COSTA RICA	Law No. 7472	2- Ministry of Economy, Industry and Commerce (Ministerio de Economía, Industria y Comercio). (MEIC)	3- b) Post-merger Notification.	No special legislative provision	No special legislative provision	1- Ministry of Economy, Industry and Commerce (Ministerio de Economía, Industria y Comercio).	<p>1- The Authority shall allow the concentration; shall prohibit the concentration. It can also impose fines. See Art 25 of the Law No. 7472.</p> <p>2- Corporate enterprises and</p>	1- Appeal	

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							individuals		
CROATIA	Law on Protection of Market Competition 1995 ('the LPMC', amended in 1997 and 1998) and The By-law on Methods of Keeping the Register on Concentrations 1997 ('the By-law')	3- Agency for Protection of Market Competition ('the Agency'). The Agency is an independent body responsible to the Croatian Parliament for the application and enforcement of the LPMC. The Agency is advised by an advisory body, the Council for Protection of Market Competition ('the Council').	1- Mandatory Notification. 3- a) Pre-merger notification. There are no specific deadlines for pre-merger notification. However, since mergers subject to prior merger control may not be completed before clearance, pre-merger notification must be submitted well in advance. It is possible to file a pre-merger notification prior to signing the acquisition (or merger) agreement. It is even advisable to do so since the LPMC requires	1- Dominance test. 4- Other factors are also considered: The structure of the market for goods and services of all enterprises concerned; the existing and potential future competitive power in the market of enterprises concerned; the interests of consumers; the aims and effects of the intended concentration (such as expanding in the international market, reducing the prices of goods and services, shortening distribution channels, reducing transport and distribution costs, improving operations regarding purchases and procurement of raw materials, specialisation of production, and generally achieving	1- Professional and business associations of enterprises, consumer associations, legal entities or natural persons having a legal interest, the Croatian government and other administrative authorities may submit a request to start proceedings to establish the existence of an infringement of free market competition, or the violation of provisions of the LPMC. Such requests may be also submitted by the Director of the Agency. In practice, the complaints will mainly come from enterprises whose legal or economic interests are affected by the merger (primarily competitors).	- If the conditions for prohibition provided in the LPMC are fulfilled, the Agency must prohibit the merger. In case of establishing that the provisions of the LPMC have been violated by an already completed concentration, the Director of the Agency shall issue a decision imposing measures and a time limit for eliminating damaging impacts to market competition made by the concentration	1- In case of establishing that the provisions of the LPMC have been violated by an already completed concentration, the Director of the Agency shall issue a decision imposing measures and a time limit for eliminating damaging impacts to market competition made by the concentration.	1- Decisions of the Director of the Agency prohibiting implementation of a concentration or prohibiting actions taken by already existing concentration are not subject to appeal. However, dissatisfied parties may initiate a court procedure before the 2- Administrative Court, where it will enjoy full judicial protection. 3- Decisions of the Administrative Court are subject to further review by the Supreme Court on points of law only.	1- Banking, insurance telecommunications sectors 2- The acquisition or sale of banks requires the prior approval of the Croatian National Bank if 10 per cent or more of the voting rights are being acquired. However, approval must be requested in the first instance from the Agency. In the event of a refusal, the CNB is not competent to change the Agency's decision. However, if the Agency gives its approval, the CNB still has the power to block the concentration. The acquisition or sale of insurance companies requires the prior approval of the Directorate for Supervision of

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			<p>notification of the 'intended implementation' of a concentration.</p> <p>4- Merger shall be deemed to be unauthorised and therefore legally void if implemented before the Agency's approval is given. Approval is issued in the form of a written decision not later than 90 days from the date of receipt of the completed notification (the Agency's practice shows that the waiting period will be longer if all required documents are not submitted ontime</p>	<p>other benefits which are directly related to the activities of enterprises concerned).</p> <p>5- Efficiencies. The need to protect and develop efficient market competition</p>					<p>Insurance Companies if 15 per cent or more of the shares is being acquired. However, approval has to be requested in the first instance from the Agency (as per the previous paragraph). In the telecommunications sector, the only competent authority is the Institute for Telecommunications. There are efforts to establish decision-making by the Institute and the Agency jointly.</p>

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CYPRUS	The Control of Concentrations Between Enterprises Law of 1999	2- Competition and Consumer Protection Division, Ministry of Commerce, Industry and Tourism	<p>1- Mandatory Notification. The Acts of Concentrations shall be notified to the service in writing within one week at the latest.</p> <p>3- a) Pre-merger Notification.</p> <p>4- One month from the date of receipt of the notification from the Service or, as the case may be, from the date on which service receives the additional information which is necessary for securing compliance of the notification</p>	<p>1- Dominance Test. A concentration which creates or strengthens a dominant position in the affected markets in the Republic shall be declared incompatible with the requirements of the competitive market.</p> <p>4- The Commission shall declare a concentration as compatible or incompatible with the requirements of the competitive market after taking into account: (a) the structure of the affected markets; (b) the market position of the participating enterprises; (c) their economic power; (d) the alternative sources of supply of the products and services which are traded in the affected markets and of their substitutes; (e) the supply and demand trends for all above mentioned products and services; (f) any barriers to entry to the affected markets; (g) the interest of the intermediate and final consumers of the products and services</p>	<p>3- In the case of a concentration for which a full investigation is carried out, the Service shall provide, following an application by persons having a legitimate interest but who do not participate in the concentration, a suitable opportunity to submit their views regarding the concentration in such a manner and at such time as not to violate the time-limit.</p>	<p>1- The Commission for the Protection of Competition examine the report of the Service (the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism) and then declare the concentration in question as compatible or incompatible with the requirements of the competitive market. In certain circumstances the Minister may make an Order or the Council of Ministers</p>	<p>1- The Commission may order the dissolution or partial dissolution of a concentration, in order to secure the restoration of the competitive market (42 Art.). The Commission may impose the administrative penalties to the participants of the concentration or to persons violating or failing to comply with the provisions of the Law.</p>		

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CZECH REPUBLIC	Protection against interference with economic competition is provided for by Act No. 144/2001 Coll. on the Protection of Economic Competition ('the Act'). The Act has replaced the previously valid Act No. 63/1991 Coll., with effect from July 1, 2001.	3- The Office for the Protection of Economic Competition ('the Office').	1- Mandatory Notification. 3- a) Pre-Merger Notification 4- As a rule, the Office renders its decision within 30 days. However, this time limit may be extended. If it finds that there are serious fears that economic competition might be substantially reduced, the Office may continue the proceedings even after the expiration of said time limit, but in this event the	5- The Office is obligated to particularly bear in mind the fact that it is necessary to maintain efficient economic competition, to assess the structure of all the markets affected by the concentration, the market share of the competitors to be concentrated, their economic and financial strength, legal and other obstacles preventing other competitors from entering the markets affected by the concentration, the possibility for other entities to act as suppliers or customers of the competitors to be concentrated, the	1- Consumers and competitors may seek protection of their rights by bringing private actions before the courts. Customers and competitors have the first opportunity to raise objections to a contemplated merger upon publication by the Office of the application for approval in the Commercial Bulletin. Customers and 3- Competitors may also become parties to the merger proceedings before the Office if their rights or duties could be substantially curtailed or affected by the decision and if they file with the Office a petition requesting to be granted the status of a party to the proceedings at any time	2- The Office for the Protection of Economic Competition ('the Office').	1- The Office may impose conditions in the interests of protecting competition. The Act is not specific about such measures. In practice the conditions imposed by the office may include undertaking to modify or terminate agreements which might interfere with competition or to be detrimental to consumers, to refrain from increasing prices, to inform of consumers of any	1- The Office's decisions on concentrations are reviewable by courts within special judicial proceedings. 3- The plaintiff may be a natural person or a legal entity (particularly one which is a party to the concentration) claiming that as a party to administrative proceedings before the Office his or her or its rights have been infringed. An action can also be filed by a natural person or legal entity that was not a party to administrative	1- In the case of certain sectors, such as insurance, industry-specific laws impose limitations (life insurance business can be carried on in the Czech Republic only by Czech legal entities).

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			<p>Office is obligated to notify the competitors thereof. The Act also fixes the time limits within which the Office must render its decision if it continues the proceedings after the expiry of the first 30-day period. A decision must be rendered no later than five months from the date of opening of the proceedings, except when the concentration occurs on the basis of a tender offer in which case the time limit for rendering a decision is only two months from the date of opening of the proceedings. If the Office fails to decide on a filed petition within the above time limits, after the expiration of the time limits the concentration is deemed to be</p>	<p>development of supply and the demand on the affected markets, the needs and interests of the consumers and research and development the results of which are for the benefit of the consumers and do not prevent efficient competition.</p>	<p>before the proceedings are completed.</p>		<p>intention to restructure production and to maintain for a specified period of time staff levels within the enterprise concerned at the same level as on the date of approval of the concentration.</p>	<p>proceedings, although he or she or it should have had involvement of some kind (a consumer for example).</p>	

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			permitted.						
DENMARK	In the Danish Competition Act, Part 4 (consolidated Competition Act No. 539 of 28 June 2002).	<p>1- The Danish Competition Authority (DCA) or the Competition Council. <u>The DCA</u> functions as a secretariat for the <u>Competition Council</u>. However, the DCA is the decision-making authority in cases where precedent from the Competition Council is sufficiently normative.</p> <p>2- The Danish Competition Authority (investigation and decision making). The Competition Council (decision making on the basis of the DCA's investigation).</p> <p>3- The Danish Competition Authority.</p> <p>4- The Competition Council.</p>	<p>1- Mandatory Notification.</p> <p>3- a) Pre merger notification. Section 12 b 1. 4- No more than one week. Section 12 b 1</p>	<p>1-Dominance test. Section 12 c (2) 2-Restriction of Competition.</p> <p>5- The Danish Competition Authority has not (yet) dealt with a case where efficiency benefits have been taken into account in the appraisal process. However, The Danish Competition Authority (DCA) will use the same assessment criteria as the European Commission when applying the dominance test, including the assessment of efficiency benefits.</p>	<p>1- No</p> <p>2- None</p> <p>3- None</p>	<p>1- The DCA or the Competition Council. The Danish Ministry of Economic and Business Affairs has no legal power in this relation.</p> <p>3- The Competition Council and the DCA are independent of the ministry in the decision-making process.</p>	<p>1- The Competition Council may attach to its approval <u>conditions and obligations</u> intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Competition Council with a view to eliminating the detrimental effects of the merger, cf. section 12 e (1).</p> <p>The Competition Council may <u>prohibit a merger</u>, where it creates or strengthens a</p>	<p>1- Appeal. The merging parties (not third parts) can appeal, cf. section 19 (1).</p> <p>2- The Competition Appeals Tribunal</p> <p>3- Prohibition of a merger. Conditions or obligations attached to the approval of a merger.</p> <p>4- Within four weeks after the decision having been communicated to the parties concerned, cf. section 20 (2).</p>	<p>1- Besides the approval from the DCA (or Competition Council), undertakings operating within the financial sector (banking and insurance companies) have to get merger approval from the Danish Financial Supervisory Authority (Finanstilsynet), cf. Financial Business Act Act No. 501 of 7 June 2001 (Lov om finansiel virksomhed).</p>

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							<p>dominant position as a result of which effective competition would be significantly impeded, cf. section 12 c (2).</p> <p>The Competition Council may <u>revoke its approval</u> of a merger, where it is based on incorrect information, provided by the parties, or where the participating parties fail to comply with a condition attached to the approval of the merger, cf. section 12 f.</p> <p>Furthermore, if a merger has already been implemented, the Competition Council may require the undertakings or assets brought together to <u>be separated</u> or the cessation of joint control or any</p>		

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							<p>other action that may be appropriate in order to restore conditions of effective competition, cf. section 12 g.</p> <p>The courts can impose <u>fin</u>es on the parties for failing to notify within the time limit, for failing to provide information, and for implementing a merger before having an approval from the DCA or the Competition Council.</p> <p>The Competition Act contains no provisions regarding <u>damages</u>.</p> <p>2- Corporate enterprises are the principal subject to sanctions.</p>		

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ESTONIA	Competition Act, Regulations of Minister of Finance (submission of notification of concentration and calculation of turnover of parties to concentration)	2- Estonian Competition Board (ECB) (Administrative – both investigation and decision making)	<p>1- Mandatory Notification.</p> <p>3- a) Pre-merger Notification must be submitted within one week from concluding binding agreement that forms bases to concentration.</p> <p>4- Waiting Period. From the date of receipt of a complete notification, the ECB has 30 calendar days in which to take a decision either: (i) to permit concentration; (ii) to initiate a special investigation of the concentration in order to find out whether the concentration may create or strengthen a dominant position which significantly impairs competition in the market, and to</p>	1- Dominance Test	3- Third parties may submit their opinion to Estonian Competition Board concerning particular notified concentration. Any interested party may challenge the decision of the Competition Board in Administrative Court.	1- The Competition Board decides independently whether to give permission or to prohibit a particular concentration (administrative body).	<p>1- A fine in amount of up to 10 per cent of the annual turnover of the offender shall be imposed for failure to give notice of a concentration within specified term and for violation of a prohibition on concentration or the conditions of a permission to concentrate. The precept can be issued by the Competition Board to a legal person. Court decides upon sanctions.</p> <p>2- Upon existence of certain conditions criminal procedure is applicable and sanctions are imposed to natural persons (fine or up to 3 years imprisonment). If sufficient evidence has been collected the</p>	<p>1- Appeal. Any interested person can challenge all the decisions made by the Competition Board.</p> <p>2- Administrative Court</p> <p>4- Within one month.</p>	1- General merger control rules cover all the sectors of economy with no exception.

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			decide whether to allow the concentration or not (the ECB has four months for such an investigation); or (iii) to inform the applicant that there are no grounds for action.				Competition Board submits such cases to the Economic Crime Department of the National Police Board for initiating proceeding.		
EUROPEAN UNION	Council Regulation (EEC) No 4064/89 of 21 December 1989 on the Control of the Concentrations Between Undertakings (OJ 1990, No. L257/13) (the "Merger Regulation") as amended by Council Regulation (EC) No 1310/97 (OJ 1997, No. L180/1). Article 81 EC Treaty for concentrations not seen as full function joint ventures.	The European Commission, Directorate General Competition, Merger Task Force branch. (An independent authority with both investigative and decision-making powers.)	1- Mandatory Notification. 3- a) Pre- Merger Notification. When the threshold tests are satisfied, a concentration must be notified not more than one week after the earlier of the conclusion of the agreement; the announcement of a public bid; or the acquisition of a controlling interest. The investigation is divided into two stages. The first stage is 1 month from the date of notification, or 6 weeks from notification where	1- Dominance test. 5- There is no clear efficiency defence available for the parties. Although some appraisal criteria are to be taken into consideration while investigating the concentration, the test is focused on competition issues. It has been suggested that the appraisal criteria in Article 2(1)(b) of the Merger Regulation, "the development of technical or economic progress", could be seen as an efficiency defence. However, the Article stipulates that this should only be considered "provided that it [the technical or economic progress] is to	1- Third parties have the right to comment on a notification up to approximately 10 days after the date of the notification. During the investigation of the concentration third parties have a right to be heard only if they have so requested and can show that they have sufficient interest in the matter. According to Article 9 of the Merger Regulation a notified merger may be referred to a Member State provided that the concentration threatens to create or to strengthen a dominant position as a result of which effective competition will be significantly impeded on a market within that Member State, or if the concentration affects competition on a market within that Member State, which presents all the	Each merger case is assigned to a Case Officer who is responsible for the handling of the case, and acts as a contact person for the involved parties. Decisions taken by the European Commission are administrative in nature. Following the end of the Phase I investigation, the Merger Task Force makes an initial decision either to clear the concentration (with or without commitments) or to initiate Phase II proceedings. The latter would result in a final decision taken by the full College of Commissioners on the recommendation of the	1- Notifiable transactions cannot close without prior approval and are void and prohibited prior to clearance, subject to limited derogations. By exception, parties may implement public bids prior to clearance provided the acquirer does not exercise voting rights attached to the shares without prior Commission approval. The Commission has the power to order divestures of mergers should they close prior to approval.	1- Any natural or legal person may institute proceedings against a decision addressed to that person or against a decision which, although addressed to another person, is of direct and individual concern to the former. 2- Appeals are generally heard in front of the Court of First Instance. If appeals are made by Member States, the appeal is heard by the European Court of Justice. The Legal Service represents the Commission in appeal cases. The European Court of Justice also has	1- According to Article 21(3) of the Merger Regulation, Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by the Regulation, even though the concentration has Community dimension and the Commission alone should investigate. Legitimate interests include e.g. public security, pluralism of the media and prudential rules. Should the concentration not be considered a full function joint venture, it must be considered under the rules of Article 81 of the EC Treaty (on anti-competitive

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			<p>the parties have submitted undertakings intended to form the basis of a clearance decision. The second stage can extend to four additional months.</p> <p>4- The general rule is that a transaction may not be put into effect before notification and until the final decision is adopted, unless a derogation is granted by the Commission. The scope for granting derogations has been extended since March 1, 1998 to enable the Commission to take into account, inter alia, the effects of the suspension on the parties or a third party but weighing this against the threat to competition posed by the</p>	<p>consumers' advantage and does not form an obstacle to competition". This seems to suggest that if competition would be affected at all, efficiency can not be used as a defence. The Commission has yet to form its opinion.</p>	<p>characteristics of a distinct market and which does not constitute a substantial part of the common market. The Commission may, following a request from a Member State pursuant to Article 22 of the Merger Regulation, take a decision regarding a concentration that does not meet the notification thresholds as laid down in Article 1 of the Merger Regulation.</p>	<p>Director General at the end of that period. During Phase II, the parties and interested third parties with sufficient interest are afforded an opportunity to express their views at an oral hearing in front of the Hearing Officer. Hearings are often attended by the Director of the Merger Task Force, officials from other interested Directorates (e.g. Directorate General Enterprise), the Legal Service and the Member States' Advisory Committee on Concentrations. DG Enterprise is consulted in most merger cases and has a veto right on Phase I clearance decisions if the market share is above 25%. Furthermore, DG Economics & Finance is consulted in all Phase II cases. The Merger Regulation provides the Commission with extensive powers to investigate a</p>	<p>Fines of up to €50,000 may be imposed for failure to notify. Fines of up to €25,000/day may be imposed for failure to comply with any Commission investigation. Fines of up to 10% of the parties' combined turnover can be ordered for implementing a concentration prior to clearance or in breach of a Commission decision. The Commission may accept structural or behavioural commitments and/or remedies in order to clear a concentration. 2- Undertakings</p>	<p>the power to assess the legality of any decision taken by the European Commission. There is no specified time frame for the handling of appeals processes.</p> <p>3- Appeals must be made within two months of the decision.</p>	<p>agreements) instead of the Merger Regulation</p>

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			<p>transaction. Even after this change, it is still difficult to obtain a derogation. Public takeover bids are not subject to the full suspension obligation.</p>			<p>concentration. These powers include request for information and on-site investigations on company premises. During the investigation, the Commission will act in close and constant liaison with the competent Member State authorities. This is enforced by the obligation upon the Commission to consult the Advisory Committee on Concentrations prior to taking certain decisions, which is comprised of representatives of each Member State authority.</p>			

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FINLAND	Act on Competition Restrictions Chapter 3a (303/1998)	3- The Finnish Competition Authority (FCA) (Kilpailuvirasto). Market Court is the decision making body when a merger is to be prohibited.	1- Mandatory Notification. 3- a) Pre-merger notification; 1 st phase investigation 1 month; 2 nd phase investigation 3 months; Market Court must clear/prohibit a concentration within 3 months from receiving a prohibition request by the FCA. 4- Waiting period until a final decision is made by the FCA or the Court.	1- Dominance test (special rules; Market share test for electricity sector)	1- Third parties may not institute proceedings.	2- FCA may grant (conditional) clearance; Market Court may prohibit a concentration upon the request by the FCA.	1- Prohibition clearance with 2- Only corporate enterprises subject to sanctions.	1- Appeal within 30 days from FCA's decision to Market Court; Appeal within 30 days from Market Court's decision to Supreme Administrative Court	1- Insurance sector: before notifying to the FCA, an approval must be obtained from the Insurance Supervision Authority. 2- (Act on Competition Restrictions, Article 11c)
FRANCE	The New Economic Regulation Act. The Code of Commercial Law has also provided with inter partes proceedings for mergers	1- Ministry of Economy 2- Administrative and Ministerial 3- Competition Council /Opinion and investigation	1- Mandatory Notification 3- a) Pre-merger Notification. b) Post merger control (anytime after implementation) 4- Filing has a suspensive effect:	2- Restriction of Competition 4- The following factors must be taken into account: the national and international context of a market. The competitiveness of the undertakings in question with respect to international competition, the	1- Third parties, such as complainants, are not directly involved in the merger control process; they do not have access to the notification file. 2- Although third parties may approach the Ministry to request a review, the decision to initiate a review is taken by the Ministry at its own discretion.	1- Ministry of Economy . After having received the decision of the Competition Council, the Minister of Economy and Finance has sole decision making power (The Council's decision is merely advisory and does not limit the discretionary power of the Minister	1- The Ministry may, by means of an injunction, restore the parties to their pre-merger position by ordering divestiture or altering the transaction. Failure to observe an injunction is punishable by	1- Council decisions may be subject to Appeal. 2- The Paris Court of Appeal. 3- The Appeals Court decision may be subject to an Appeal on points of law before the Supreme Court within one	1- Press and audio visual sector

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			<p>a concentration may not be completed before obtaining the approval of the Ministry of the Economy and, where applicable, the Ministry of the relevant economic sector (or during the Competition Council's review, if applicable).</p>	<p>possibility that imports may affect the competitive situation on the internal market. The Competition Council must determine whether the proposed merger makes sufficient contribution to economic progress to compensate for restrictions on competition</p>	<p>3- Third parties may, however, challenge the ministry's decision before the administrative courts.</p>		<p>2- Corporate entities, individuals</p> <p>finer. The Ministry may also: a) retract the decision authorising the operation. In such a case, and save where the situation that existed prior to the concentration is restored, the parties will be bound to notify the transaction a second time within one month of the retraction of the decision; b) require the parties to comply with, within a time limit fixed by the Ministry, the orders, injunctions or undertakings, under penalty of incurring a daily fine.</p>	<p>month of its notification. If the council has received an application for interim measures, its decision may be subject to an appeal within a maximum of ten days following its notification. The Paris Court of Appeals must be given a rule within month</p>	

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GERMANY	Act Against Restrain of Competition (ARC). Merger Control was introduced with the second revision of the ARC in 1973.	<p>3- The Bundeskartellamt (Federal Cartel Office) The Federal Cartel Office is responsible for exclusively examining a merger under a competition law. Any political grounds for its justification can only be taken into consideration in the second stage in the form of a ministerial authorisation.</p> <p>5- In exceptional cases the Federal Ministry of Economics and Technology also acts as a competition authority: if in individual cases restrains of competition are outweighed by advantages to the economy as a whole, or are justified by an overriding public interest, they can be given exceptional approval by the Federal Ministry of Economics and Technology</p>	<p>1- Mandatory Notification. See Section 39 ARC Concentrations shall be notified to the Federal Cartel Office</p> <p>3- a) Pre-merger notification. Section 39 ARC Prohibition to put the concentration into effect until the Bundeskartellamt has given a decision or the time limit for examination has expired. See section 39 ARC.</p> <p>4- Waiting Periods. Mergers which are subject to merger control may not be completed before either the FCO has cleared the transaction or the relevant waiting periods of one month (first stage) or four months (first and second stage together) after submission of a complete</p>	<p>1- Dominance Test</p> <p>3- Public Interest. In examining mergers the Bundeskartellamt applies solely competitive criteria. After a merger has been prohibited by the Bundeskartellamt any consideration of public interest in it can only be made by the Federal Minister of Economics in the form of a Ministerial Authorisation</p> <p>5- Efficiency. The Bundeskartellamt is of the option that, at least in cases of clear market dominance, mergers cannot be cleared solely on the basis of efficiency gains. However, like public interest, the criterion is applied as a competition unrelated criterion in the ministerial authorisation</p>	<p>1- No private action may be brought parallel to the merger control proceedings of the FCO, as merger control in Germany is a purely administrative matter.</p> <p>2- Third parties admitted, as intervening parties are able to challenge formal decisions, which are rendered in the course of second-stage proceedings. However, informal clearance decisions which are rendered within the initial first-stage investigation are not subject to appeal by intervening parties.</p>	<p>2- Independent or Autonomous Competition Authority The Bundeskartellamt (Federal Cartel Office)</p>	<p>1- Administrative decisions on planned concentrations within the framework of merger control do not constitute sanctions. The Bundeskartellamt has three options: 1) Clearance, 2) Clearance subject to obligations and/or conditions 3) Prohibition</p>	<p>1- There is a right of appeal to</p> <p>2- The Higher Regional Court in Dusseldorf</p> <p>3- against decisions of the Bundeskartellamt. Appeals of points of law can be lodged with the Federal Supreme Court against decisions of the Higher Regional Court.</p> <p>3- The appeal may be based also upon new facts and evidence. An appeal may also be made if the cartel authority fails to make a decision requested in an application and the applicant claims to be entitled to demand such a decision requested</p> <p>4- The appeal shall be filled in writing within one month with the cartel authority whose decision is being appeal</p>	<p>1- Credit Institutions, Insurance: special thresholds.</p> <p>2- The Bundeskartellamt has exclusive competence for merger control in all sectors</p>

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			notification have expired without the FCO having prohibited the transaction.						
GREECE	The statutory basis for the examination of concentrations is the Act 703/1977 on the control of monopolies and oligopolies and the protection of free competition, as amended by Acts 1934/1991, 2000/1991, 2296/1995, 2741/1999 and 2837/2000 and 2941/2001	1- The Hellenic Competition Commission is exclusively competent for the control of concentrations, according to the provisions of Act 703/77, as in force. 3- According to Art. 8, Act 703/77, the Competition Commission is an Independent Authority. Its members enjoy personal and functional independence and are bound solely by the Act 703/77 and their conscience during the exercise of their duties. The Competition Commission is administratively and financially independent. 3. According to Art. 8a, Act 703/77 : "1. The Competition Commission is the competent authority for the observance of the provisions of the present Act.	1- Mandatory Notification 3- a) Pre-merger notification is mandatory according to the provisions of article 4b para.1, Act 703/77: "Every concentration between undertakings shall be notified to the Competition Committee within ten (10) working days as from the conclusion of the agreement, or the announcement of the public bid to buy or exchange, or the acquisition of a controlling interest. 2. According to art. 4d, Act 703/77 :	1- Dominance test 2- Restriction of Competition 3- A concentration that has been prohibited by the Competition Commission, pursuant to paragraph 1, may be approved by a specifically justified decision of the Ministers of National Economy and Development as particularly provided in Article 4d (7), where the concentration in question presents advantages of general economic nature that counterbalance the resulting restriction of competition, or it is regarded as being indispensable for the public interest, especially where it contributes to the	1- Third parties have no right to institute proceedings before the Competition Commission, concerning merger cases. Nevertheless, according to art.18 of the joint ministerial decision 963/2001 concerning the Regulation of Internal Operation and Administration of the Competition Commission "any third party, either natural person or legal entity, may submit a memorandum to any case introduced before the Competition Commission. The President, the Plenary Session or a Section of the Commission, may subpoena any third party at the hearing of the case, if the third party's participation contributes to the examination of the case..... " 2- The only remedy available to a third party, having a legitimate interest, is the right	1- The Hellenic Competition Commission is exclusively responsible to prohibit a merger. The Ministers of National Economy and Development may approve a concentration that has been prohibited by the Competition Commission, by a specifically justified decision, in case the concentration in question presents advantages of general economic nature, or it is regarded as being indispensable for the public interest.	1- The Commission may order divestment, cessation of joint control or any other measure it deems appropriate in order to remedy restrictions on competition. The Ministers of National Economy and Development may, upon application by the notifying parties, allow by a joint decision a concentration which has been blocked by the Commission. 2- As well as Greek companies, foreign companies involved in	1- Appeal. According to art. 14, act 703/77 :” The decisions of the Competition Commission; as well as, the decisions of the Ministers of National Economy and Development which are issued pursuant to Articles 4c(3) of the present Act, may be challenged on appeal to the Athens Administrative Court of Appeal within 60 days as from their notification. 2- The Administrative Appeal Court of Athens Then to the Appeal Court, an appeal against the Appeal Court’s decision may be filed before the supreme	1- The sectors of Telecommunications, Post Services, Energy Radio & TV, Maritime Transport have specific rules and are regulated by separate Authorities. There is no clear borderline between the competences of the Competition Commission and the specific Regulators. Such conflicts are not to be excluded. However, according to the provisions of Art. 8e, act 703/77 the Competition Commission has the sole competence for the application of act 703/77. More specifically, : “The Competition Commission co-operates with authorities which regulate and monitor the functioning of specific sectors of

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			<p>“1. The Competition Commission shall examine the concentration as soon as the relevant notification is submitted. Where it is found that the concentration notified falls within the scope of Article 4b (1), the case in question shall be introduced to the Competition Commission within one (1) month as from its notification and the persons or undertakings that submitted the notification will be accordingly informed. Where the Competition Commission finds that the notified concentration, following modifications made by the undertakings</p>	<p>modernization and rationalization of production and economy, the attraction of investments, the strengthening of competitiveness in the European and International market and the creation of new employment positions.</p> <p>4- Other criteria are also taken into account: i.e. actual or potential competition, barriers to entry, the economic strength of participation undertakings, the supply and demand trends relating to the products or services involved, the structure of the market and the bargaining power of suppliers or customers.</p> <p>5- There is no Efficiency/Defence, but increase of the efficiency of the undertakings concerned may be taken into account during the assessment of the merger.</p>	<p>to appeal before the Athens Administrative Court of Appeal, according to art. 14, para.3, d., act 703/77.</p>		<p>foreign-to-foreign mergers have been punished with fines, both for failure to file and for early implementation of the transaction.</p>	<p>administrative court, the “Conseil d’Etat”, on points of law and procedure. 4- within 60 days</p>	<p>economy, such as the National Telecommunications Authority and Post Services and the Regulatory Authority of Energy. The Competition Commission delivers opinions for competition policy issues in these sectors and decides for cases that have been referred to it as having the sole competence for the application of the present Act”</p>

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			<p>concerned if necessary, can not lead to a significant restriction of competition, it shall issue a relevant decision within two (2) months as from the introduction of the case to it.</p> <p>Where the Competition Commission finds that the concentration, can lead to a significant restriction of competition, it shall issue within two (2) months as from the introduction of the case a decision prohibiting its realisation. The decision shall be served to the undertakings concerned within ten (10) days as from its issuance.</p> <p>Where it is found that the concentration notified does not</p>						

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			<p>fall within the scope of Article 4b (1), the President of the Competition Commission shall record that finding by means of a relevant decision issued within one (1) month as from its notification and which will be served to the persons or undertakings that submitted the notification. The time limits provided for in paragraphs 2, 3, 4, 6 and 7 of the present Article can be extended under certain circumstances.</p>						
HUNGARY	<p>Act No. LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices See Internet-homepage of the Office of Economic Competition : www.gvh.hu</p>	<p>1- Gazdasági Versenyhivatal (Office of Economic Competition) 2- The Office of Economic Competition (OEC) is an independent administrative authority. But in many aspects it is part of the public administration, for example</p>	<p>1- Mandatory Notification. 3- a) Pre-merger notification. 4- An application for authorization shall be submitted within thirty days of the date of the</p>	1- Dominance test	<p>1- Neither the parties to the transaction nor third parties can institute proceedings before courts. Third parties cannot institute proceedings before the OEC, however if the parties to a concentration fail to notify their transaction, they can make complaints about it. In these cases the OEC can open an</p>	<p>1- The decision on the merits is taken by the Competition Council, which forms integral part of the Office of Economic Competition.</p>	<p>1- The OEC may prohibit mergers, or attach to its decision pre- or post-conditions and obligations, inter alia it may demand a divestiture. In the case of late notifications the</p>	<p>1- Decisions of the OEC can be appealed before the Metropolitan Court (first instance court, the decision of the Metropolitan court can be further appealed before the Supreme Court).</p>	<p>1- In energy, financial, insurance, media sectors the sector specific supervisory authority has to approve the mergers as well. Some of them applies competition policy criteria, others not. In this way sometimes the failing approval of the</p>

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		the OEC's proceedings are governed by the Act on Public Administrative Proceedings, or the decision of the OEC can be challenged in an administrative lawsuit. The OEC makes investigations and decisions as well. The functioning of the Office is financed from the state budget.	publication of the invitation to tender, the conclusion of the contract or the acquisition of the controlling rights, whichever of them is the earliest.		investigation ex officio. 2- Concerning the decisions in the merits of the case by the OEC (authorization, prohibition), interested third parties can appeal against the decision of the OEC to the court. In the event of a successful appeal to the court by interested third parties against a decision of the OEC to permit a concentration transaction, under the Hungarian Civil Code the parties would be able to bring an action for damages resulting from the concentration. 3- Third parties have no rights in this respect. However, interested third parties have the right to be heard in the process of the investigation of the transaction.		OEC may impose fines of procedural nature on the undertakings. 2- Only corporate enterprises can be subject to sanctions (e.g. in the case of late notifications, or, if they fail to supply information in due time, or, if they supply false information)	2- Appellate body is the Metropolitan Court at Budapest (first instance), and the Supreme Court (second instance). 3- The revision of the decision on the merits of the case can be requested, including its completion and amendment affecting the operative part. 4- The claim for appeal must be submitted within 30 days of serving the decision on the merits of the case.	sector specific supervisory authority hinders the merger. 2- Act No. CXII of 1996 on credit institutions and financial enterprises Act No. I of 1996 on radio and television broadcasting Act No. XCVI of 1995 on insurance institutions and the insurance business Act No. CX of 2001 on Electricity
INDONESIA	Law No. 1 of 1995 on Limited Liability Companies ("the Company Law") in conjunction with Government Regulation No. 27 of 1998 on the Merger, Consolidation and Acquisition of Limited Liability Companies ("GR 27/1998") Law No. 8 of 1995 on Capital Markets ("the Capital	1- Commission for the Supervision of Business Competition (KPPU)	2- Notification with KPPU is not compulsory and there is no specific regulatory procedure for pre-merger notification or clearance.	3- Whether the acquisition leads to "monopolistic practices" or "unfair business competition" which harms the public interest.	1- Any person may file a report with KPPU alleging breach of the Competition Law.	1- KPPU, BAPEPAM. 3- Courts (the Company law)	KPPU has power to order cancellation of agreements, cancellation of mergers (which presumably means the reversal of share transfers), termination of	1- Appeal 2- The District Court (decision by BAPEPAM to the Supreme Court of Indonesia)	

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	Markets Law”) and related implementing regulations and Rules (“BAPEPAM Rules”) issued by the Capital Market Supervisory Agency (BAPEPAM) The Foreign Investment Law (Laws Nos. 1/1967 and 11/1970). Law No.5 of 1999 on the Prohibition against Monopolistic Practices and Unfair Business Competition (“the Competition Law”)						business activities, and fines and imprisonment for up to five years. BAPEPAM has general authority to impose administrative sanctions (fines, licence revocations etc).		
IRELAND	The Irish Legislation on mergers is currently contained in the Mergers, Takeovers and Monopolies (Control) Act, 1978, as amended by the Competition Act, 1991, and the Competition (Amendment) Act, 1996. However, as from 1 January 2003, this will change, when Part 3 of the Competition Act, 2002, comes into force. The new Act will replace all earlier legislation in the field of merger review and control. The two essential elements of the reform are that, in almost all cases (a) merger review will in future be based solely on competition criteria (the test being a Substantial Lessening of Competition, and (b) responsibility for merger review, investigation	The Competition Authority, an independent public body, will be the agency with responsibility for Review, Investigation, and Adjudication in relation to mergers	1 - Mandatory Notification. Section 18(1) of the Act (but see also Section 18(1)(b) and (5) are power of the Minister for Enterprise, Trade and Employment to make Statutory Orders. 2 - Voluntary Notification. Section 18(3) of the Act. 3 - Notification must be made within 1 month after the conclusion of the merger agreement or the	2- Substantial Lessening of Competition – Sections 21(2)(a) and 22(3) of the Act 4-On 8 August 2002 the Authority published on its Website, www.tca.ie , a set of Guidelines for Merger Analysis for public consultation. These set out guidance on the economic criteria the Authority intends to use in the merger review process. 5- No final position as yet in relation to efficiencies test. The recently-published draft Merger Guidelines deal with this issue.	1 - Any person may apply to the High Court to enforce compliance with the terms of a commitment, a determination (by the Authority) or an order, for the time being in force - Section 26(2) of the Act. Aggrieved third parties also have a general right of action before the Circuit Court or High Court for breaches of Section 4 (anti-competitive agreements) or Section 5 (abuses of dominance) – Section 14 of the Act. 2- None provided for in the Act, but an aggrieved third party could take High Court judicial review proceedings against a determination by the Authority on the basis, inter alia, that the Authority used unfair procedures. But the Act does not provide for	2 - Competition Authority – Section 22(3)(b)	1-The Competition Authority shall determine that a merger may be put into effect, may not be put into effect (“prohibition”), or may be put into effect subject to specified conditions (“conditional determination”) – Section 22(3) of the Act. The Act is not specific as regards remedies which may be imposed, but both behavioural and structural conditions are possible.	1 Appeals may be made only by a merging party against a negative or conditional determination by the Authority, made under Section 22(3)(b) or (c) – Section 24 of the Act. Judicial review of the Authority’s decision may be made by third parties who can show locus standi 2-The Irish High Court 3-Any issue of fact or law – Section 24(4) of the Act. However the High Court, on the hearing of an appeal, may not receive evidence by way of testimony and	1-Media, Banking 2 Authority clears a media merger in Phase I, it must notify the Minister for Enterprise, Trade and Employment who may require the Authority to carry out a full Phase II investigation. Following such an investigation, if the Authority nevertheless clears the merger, or does so subject to conditions, it must again notify the Minister. The Minister may then clear the merger, do so subject to conditions, or prohibit the merger. In the case of <u>Banking</u> mergers, all the provisions of the Act apply fully. However, i

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	<p>and determination will vest exclusively in an independent Competition Authority. So that this response can be most useful for the purposes of the Questionnaire, the remainder of these replies focus exclusively on the new situation from 1 January 2003.</p>		<p>making of a public bid – Section 18(1) of the Act.</p> <p>4 - The Authority must, within 1 month of receipt of the notification, determine that (a) the merger may be put into effect, or (b) that a full Phase II investigation is required – Section 21(2). A Phase II investigation must be completed, and the determination put in writing, within 4 months of its notification (unless supplementary information was sought – Section 22(4).</p>		<p><u>direct appeal</u> to the Courts by third parties against either Authority determinations, or directly against the merging parties.</p>		<p>The Authority may apply to the High Court to enforce compliance with the terms of a commitment made to it, a determination by it or an order, for the time being in force - Section 26(2) of the Act. Criminal sanctions for contraventions of commitments, determinations or orders are set out in Section 26(4) of the Act.</p> <p>2-Both corporate enterprises and individuals. Also individuals (e.g. senior management, directors etc.) who consent to, or connive at, corporate criminal offences. For corporations, criminal sanctions comprise fines; for individuals, they comprise fines, or terms of imprisonment, or both. Provision is</p>	<p>shall presume, unless it considers it unreasonable to do so, that matters found to be fact by the Authority were correctly so found.</p> <p>4-Within one month of the Authority's determination – Section 24(1)</p>	<p>parallel, the merger is also subject to banking legislation. Under draft amending legislation recently published, it is proposed that the Central Bank will be able to refuse approval to a bank merger if it is satisfied that it would not be "in the interests of the orderly and proper regulation of banking". Subject to these two exceptions, the Act applies to mergers of undertakings in all other sectors. "Undertaking" is defined in the Act as meaning –"a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision a service".</p>

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							also made for Continuing Offences. See Section 26 of the Act. Section 18(9) of the Act allows for fines against the person in control of an undertaking (defined in Section 18(11)) for any contravention of the notification procedures set out in Sections 18(1) and Section 20(2).		
ISRAEL	The Restrictive Trade Practices Law 5748-1988 ("the Law")	1- The Antitrust Commissioner ('the Commissioner') The Antitrust Tribunal ('the Tribunal')	1- Mandatory Notification. 3- There is no specified deadline. However, the Notices must 'clear' the Authority before the first act of merger (ie any act of transfer of ownership, control or assets, but not the mere signing of the agreement itself). 4- 30 days after	3- Public Interest 4- Whether the proposed merger will tend to create a new 'monopoly' (or benefit the merged entity with new market power) or enhance the power of an existing monopoly (or reinforce the already existing market power of either or both of the merging companies)	1-Third parties may bring civil actions and class actions. The Commissioner typically solicits the responses of third parties, including competitors and customers. 2- Third parties may appeal to the Tribunal from the Commissioner's decision within 30 days of its publication, and from decisions of the Tribunal to the Supreme Court (eg ruling on applications for approvals of agreements in restraint of trade).	The Commissioner must consult with advisory committee before approving proposed mergers 3- The Tribunal	1- Imprisonment, fines, divestiture, private civil and individual class actions.	1- Appeal 2- The Tribunal from the Commissioner's determination/ the Supreme Court 4- To the Tribunal within 30 days of publication of the Commissioner's decision in the newspaper; to the Supreme Court within 45 days of receiving notice of the decision.	1- Telecommunications media, banking, credit, cable and insurance

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			filing the Notices before closing the merger.						
ITALY	<p>Law No.287 of October 10, 1990 ("the Act"), in particular Sections 5, 6, 7, 16, 17, 18, 19.</p> <p>Presidential Decree No. 217of April 30, 1998, contains some procedural and enforcement rules.</p>	<p>Autorità Garante della Concorrenza e del Mercato ("the Authority"). Independent body (both investigative and decision making).</p> <p>The Banca d'Italia (the Bank of Italy) enforces the Act relating to mergers and acquisitions which involve banks and affect typical banking activities; it is required to request the Authority's not binding opinion.</p>	<p>1- Mandatory notification whenever the turnover thresholds of the Act are met. The pre-merger notification form specifies in what instances there is no obligation to submit notification: in addition to the operations referred to in Section 5 of the Act (transitional acquisitions by banks or financial institutions of shares in firms; cooperative joint-ventures), and to the "infra-group" mergers (operations carried out by undertakings</p>	<p>1- Dominance test.</p>	<p>1-, 2- According to Section 33(2) of the Act, third parties who claim to have been harmed by the infringement of the merger control provisions may bring an action for annulment proceedings and claims for damages before the relevant Court of Appeal.</p> <p>3- According to Section 7 of the Presidential Decree No. 217/1998, the following may participate in the Authority's instituting proceedings: (a) the persons on whom notice of the commencement of the investigation has been served; (b) persons representing public or private interests, and associations representing consumers that might be directly, immediately and presently damaged by any infringement forming the subject matter of the</p>	<p>The Authority</p>	<p>1- The Authority may block a transaction or clear it subject to modifications; may order all measures, including divestment, which are necessary to remove the competition concerns resulting from the transaction; may impose fines in case the parties do not comply with the undertakings conditional to which the transaction was cleared. Notwithstanding clearance by the Authority, according to Section 25(2) of</p>	<p>1- Double level of judicial review.</p> <p>2- In the first instance, the Regional Administrative Tribunal of Lazio; appeal before the Council of State</p> <p>3- Grounds: lack of competence, violation of the law, abuse or misuse of powers.</p> <p>4- Within 60 days from the date of notification of the decision</p>	<p>1- Cinema: mergers shall be notified in advance to the Authority if they involve direct or indirect control of a market share exceeding 25% in at least one of the main 12 cities.</p> <p>2- Section 13 of Law No. 153 of March 1st, 1994. Furthermore, in the field of telecoms and media, as well as in the insurance sectors, the Regulatory Agencies give a not binding opinion to the Authority</p>

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			<p>controlled by a single firm), a concentration has not to be notified when one of the parties involved does not carry out an economic activity. Furthermore, mergers that, with well-founded certainty, do not affect national markets – notably when the target company does not generate a turnover in Italy and will continue not to do so -, are not subject to the filing requirement.</p> <p>3- a) Pre-merger Notification. A concentration must be notified prior to its implementation, that is, when a definitive agreement has been signed, but before the purchaser has acquired the ability to exercise a decisive</p>		<p>investigation or by any measures adopted as a result of it, within 10 days of the date of publication of the notice of commencement of the investigation. [Note: It must be clear that Section 7 of the Presidential Decree identifies the categories of persons who are entitled to participate to the proceedings before the Competition Authority]</p>		<p>the Act, the Prime Minister, acting on a resolution of the Council of Ministers proposed by the Ministry of Industry and Trade, may prohibit an acquisition of an Italian company if, in the country of origin of the buyer, Italian companies are subject to discrimination, in particular in relation to their ability to acquire local companies.</p> <p>2- All undertakings, be they legal entities or natural persons.</p>		

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			<p>influence over the behaviour of the target undertaking. 4- The notification does not prevent parties from implementing the merger (at their own risk). The Authority has 30 days from the notification to decide whether or not to open an in-depth investigation. If the investigation is initiated, a final decision has to be adopted within 45 days. This deadline may exceptional be extended by 30 more days.</p>						
JAMAICA	No merger control yet in force	1- Fair Trading Commission and Financial Services Commission 4- Administrative/Quasi Judicial Body	No Special Legislative Provision.	No Special Legislative Provision.	No Special Legislative Provision.	No Special Legislative Provision.	No Special Legislative Provision.	No Special Legislative Provision.	No specific rules for sectors.

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JAPAN	1 Section 10, 13, 14, 15, 15-2 and 16 of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (AMA)	1 The Fair Trade Commission of Japan (JFTC) 2- Administrative 3- Independent Authority (Investigation and Decision making) 4- The JFTC	1- Exists 2- Does not exist 3- a) Pre-merger notification: Section 15 (merger), 15-2 (division) and 16 (acquisition of business) of the AMA b) Post-merger Notification: Section 10 (stockholding) of the AMA 4- During 30 days from the date of acceptance of notification	1 The JFTC do not use the "dominance test". According to the AMA, it prohibits M&As where "the effect may be substantially to restrain competition in any particular field of trade". "Substantially to restrain competition" means to bring about a state in which a specific firm or a group of firms can control the market by determining price, equality, volume, and various other conditions with some latitude at its or their own volition. "The effect may be" does not mean that substantial restraint of competition will inevitably result from the M&A. Rather it means that it is probable that conditions which could easily lead to substantial restraint of competition are furthered by the M&A. 2- The effect may be substantial to restriction of competition 3- Nothing is provided about it in the AMA. 4- Market share, Rank,	1- No 2- None 3- None	1- Administrative body (The JFTC) 2- Independent competition authority 3- Judicial body can not make a decision to reject or prohibit a merger. 4 Only the JFTC can make a decision.	1- Prohibitions orders 2- Corporate enterprises	1- The party who is dissatisfied with administrative deposition by the JFTC may appeal to the court for the cancellation of it. 2- The Tokyo High Court 3- The Administrative Case Litigation Law 4- A suit to quash a decision of the JFTC shall be filed within 30 days from the date on which the decision became effective.	1- Banking, Insurance 2- Banking Law, Insurance business Law

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				<p>existing competitive conditions between the companies, number of competitors and degree of concentration, entry, importation, foreclosure or exclusively based on the trading relationship, over all business capabilities, competitive pressure from related markets, efficiency.</p> <p>5- Economies of scale, integration of production facilities, specialization of factories, reduction in transportation costs, efficiency in research and development, and other improvements of efficiency caused by the M&A are examined in their impact on competition. When improvement of efficiency. When improvement efficiency is deemed likely to stimulate competition, these positive impacts are considered.</p>					

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KENYA	The legislation is the Restrictive Trade Practices, Monopolies and Price Control Act, Chapter 504, Laws of Kenya. This is an Act of Parliament to encourage competition in the economy by prohibiting restrictive trade practices, controlling monopolies, concentrations of economic power and prices and for connected purposes	The enforcement Agency is the Monopolies and Prices Commission. This is a department of the Ministry of Finance and Planning and therefore is not an autonomous institution. All investigations and are conducted by the Commissioner who makes recommendations to the Minister.	1- Mandatory Notification. 3- a) Pre-merger/acquisition notification in a prescribed form is mandatory. 4- The parties involved notify the Commission immediately they intend to consummate a merger/acquisition. The Commission then analyses the application and respond within a reasonable period of time. Waiting time is not legislated but the Commission finalises an application within reasonable time.	1- Dominance Test, 2- Restriction of competition 3- Public interest, increases exports and efficiency as a defence are considered in pre-merger/acquisition analysis	1- No; third parties may not institute proceedings. 3- Interested parties are always consulted during investigations.	1- The final decision is made by the Minister of Finance.	1- Divestitures and imprisonment are some of the remedies. 2- All business entities (corporate enterprises) are subject to sanctions except where protected by an Act of Parliament.	1- Appeal. 2- Parties involved in a merger/takeover aggrieved by an order of the Minister can appeal to the Restrictive Trade Practices Tribunal (RTPT). Parties not satisfied with the ruling of the RTPT can appeal to the High Court within a certain limited period of time. The decision of the High Court is final.	1- Some sectors of the economy have specific rules. These include: Banking, Media and Telecommunications among others. At some stage of implementing their rules they consult the Commission, especially on matters that might raise competition concerns. 2- They have their own rules which are acts of Parliament and are therefore not subservient to the Competition Act.
KOREA	The Monopoly Regulation and Fair Trade Act (MRFTA)	1- The Fair Trade Commission (FTC) 2- Administrative Body	1- Mandatory Notification. 3- Within a period of 30 days from the date on which the date on which the underlying transactions take place (the FTC, at	4- Whether a proposed merger/acquisition has an anti-competitive effect on the market. Market share is an important factor in determining whether such an effect is present.	1- Depending upon the case and the circumstances. In particular, in cases where conditions in a market may be affected by a merger, the FTC may ask competitors or customers to provide data or information to enable it to determine whether there is any direct impact on the	1- The Fair Trade Commission (FTC)	1- The FTC has the powers: to issue various corrective orders; to invalidate the voting rights attached to certain shares obtained in violation of the	1- Judicial Review 2- a) By other division of the FTC; b) by the Seoul High Court. 4- A complaint must be filed with the FTC within 30 days of	1- Special provisions relating to concentration of chaebol (conglomerates) and to financial institutions)

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			<p>its discretion, may however, request the period by up to 60 days)</p> <p>4- A 30-days waiting period after the notification before the proposed merger/acquisition may be completed (the waiting period may either be shortened or extended by up to 60 days where the FTC deems necessary)</p>		market which specifically relates to competition.		<p>MRFTA; to impose a fine. The FTC may file an action with the court to nullify a merger or incorporation.</p> <p>2- Applicants violating the MRFTA</p>	<p>receipt of the decision which is being challenged. An application to the courts for judicial review must be filed within 30 days of receipt of the FTC's original decision or the decision on appeal.</p>	
LATVIA	The Republic of Latvia Competition Act ('the Competition Act'). The scope of the Latvian merger control regime has been significantly broadened in 2002.	The Republic of Latvia Competition Council ('the Competition Council')	<p>1 - Mandatory Notification.</p> <p>3- a) Pre-merger notification. The notification must be made within one week following a resolution to undertake the merger.</p> <p>4- Not applicable</p>	2 – Restriction of Competition	The Competition Council has a right to issue enquiry letters to other market participants, competitors and customers who may have a legitimate interest in the outcome of the merger.	The Competition Council.	<p>1 - The Competition Council may resolve to split the joint capital of the merger participants or to divest joint control or any other joint activity in order to restore the conditions for effective competition. Substantial fines may be imposed for failure to notify.</p>	<p>1 - Appeal</p> <p>2 - General court system according to the laws of civil procedure</p>	No specific rules for sectors.

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							2 - The Parties		
LITHUANIA	<p>The primary source of the competition law rules shall be the 23 March 1999 Law No. VIII-1099 of the Republic of Lithuania "On Competition" (hereinafter – the Law on Competition). The secondary legislation based on the Law on Competition is enacted by the Competition Council of the Republic of Lithuania. These secondary enactments of the Competition Council may be divided into two types: resolutions of the Competition Council which are normative enactments implementing provisions of the Law on Competition and resolutions (notices) of the Competition Council which provide for the guidelines and explanation on the implementation of the normative provisions (e.g., explanation on definition of the relevant market). Certain provisions regulating competition matters are entrenched in international treaties of the Republic of Lithuania, such as e.g. European Agreement Establishing an Association</p>	<p>1- The Competition Council of the Republic of Lithuania (hereinafter – the Competition Council).</p> <p>2- The Competition Council of the Republic of Lithuania is administrative body having a power of investigation and decision-making authority.</p> <p>3- The Competition Council is an independent competition authority. Members of the Competition Council are nominated by the Prime Minister and appointed by the President of the Republic of Lithuania for the period of six years (the Chairman of the Competition Council is appointed for the period of five years). Members and Chairman of the Competition Council may be removed from the office only in cases established by the Law on Competition. The Competition Council is entitled to adopt its procedural rules. Decisions of the Competition Council</p>	<p>1. Mandatory Notification.</p> <p>3- a) pre-merger notification. Concentration shall be notified to the CC not later than within 7 days from the submission of proposal to conclude the agreement or to acquire shares or assets, authorisation to conclude the agreement, conclusion of the agreement, acquisition of the right of ownership or the right to dispose of certain assets. The term shall begin when the first of those events occurs.</p> <p>4. 4 months from the receipt of the notification of concentration which complies</p>	<p>1- Dominance test.</p> <p>2- Restriction of competition</p> <p>5- Although the Law on Competition provides forth no other tests than the one specified above; however, in practice the competition authorities take into account the overall effect of the concentration. Therefore, it is advisable for the parties to concentration to emphasize the positive effects of the concentration, such as the benefit for the consumers, operational efficiencies, effective allocation of the resources and etc.</p>	<p>The interested third parties may submit a reasoned opinion about the intended concentration within two weeks after the Competition Council publishes a notice in Valstybės žinios (the Official Gazette), specifying the nature of concentration and identifying the parties concerned. The third party, which objects to the concentration, may be invited to and be heard in the sitting of the Competition Council. Besides, the undertakings affected by restrictive practices such as performance of a concentration without notifying or without getting a permit from the Competition Council or performance of concentration on the basis of misleading information provided to the Competition Council as well as state and municipal authorities, associations and unions representing the interests of undertakings and consumers are entitled to request to start the investigation of restrictive practices. Upon establishing that</p>	<p>1, 2- The Competition Council is the only body competent to adopt the decision to permit or prohibit a concentration. However, decisions of the Competition Council may be appealed to the court.</p> <p>3- In case of appeal the court may revoke or amend the resolution of the Competition Council.</p>	<p>1-The Competition Council is entitled to apply the following sanctions:</p> <p>1) to oblige the undertakings or controlling persons, who have made concentration resulting in the establishment or strengthening of a dominant position and subsequent considerable reduction of competition in a relevant market without giving a notice to the Competition Council or obtaining permission from the Competition Council, to carry out actions to restore the previous situation or remove the consequences of</p>	<p>1- Undertakings and other interested persons that believe that their rights have been violated by a resolution of the Competition Council have the right to appeal such resolution</p> <p>2- Vilnius District Administrative Court is the appellate body for the Competition Council's resolutions. Furthermore, decisions of this court are subject to a review by the Chief Administrative Court of Lithuania.</p> <p>3- Infringement of rights protected by the Law on Competition.</p> <p>4- The appeal must be filed not later than within 20 days after the date of delivery of the resolution or, if the resolution has not been delivered,</p>	<p>1- The Law on Competition, the 27 April 2000 Resolution No. 45 of the Competition Council of the Republic of Lithuania "On Approval of the Procedure for Submission and Examination of Notifications on Concentration and of Calculation of Aggregate Turnover" and the 24 February 2000 Resolution No. 17 of the Competition Council of the Republic of Lithuania "On Explanation of the Competition Council of the Definition of the Relevant Market" establish a uniform legal framework for merger regulation in all economic sectors. However, merger-related issues in some sectors of economy were addressed by the Competition Council specifically. These sectors are: transport, insurance, agriculture,</p>

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	<p>between the European Communities and their Member States and the Republic of Lithuania (effective from 1 February 1998). Pursuant to the European Agreement, Lithuania is obliged to make its rules on competition compatible with those of the EC. Therefore, provisions of the EC competition law as well as the relevant case law might be considered as persuasive authority.</p>	<p>may be appealed only to the court.</p> <p>4- The Competition Council is investigation and decision-making body.</p>	<p>with the established requirements. The CC must within a month after the receipt of the notice meeting the established requirements adopt a resolution to permit the concentration notified or a resolution to permit the implementation of concentration attaching to its decision conditions and obligations in order to prevent creation or strengthening of a dominant position or a resolution to proceed with further examination of the notification of concentration</p>		<p>undertakings concerned failed to comply with applicable legal requirements when performing the concentration, the Competition Council has the right to obligate the undertakings or controlling persons that have effected the concentration to carry out actions to restore the previous situation or to remove the consequences of concentration (these actions may include selling all or a part of the enterprise, all or part of the assets of the undertaking or all or part of its shares, reorganizing the enterprise and terminating or amending contracts, or establishing any other terms and conditions necessary to meet the obligations). Third parties affected by illegal concentration are entitled to claim compensation of damages. Besides, in the course of investigation the Competition Council is entitled to apply interim measures.</p> <p>3- Undertakings whose interests are directly related to the case under investigation, state and municipal authorities may intervene into the</p>		<p>concentration, including the obligation to sell all or part of the enterprise, all or part of the assets of the undertaking, all or part of its shares, reorganise the enterprise, terminate or change contracts, as well as establish other terms and conditions to meet the above obligations;</p> <p>2) to impose fines on undertakings (ranging from LTL 1,000 to LTL 100,000 (app. EUR 290 – 29,000, or more, but not exceeding 10% of the aggregate annual income in cases of extremely severe infringements). With the permission of Vilnius District Administrative Court, the Competition</p>	<p>since its publication in Valstybės pinios (the Official Gazette).</p>	<p>banking, and financial investments.</p> <p>2- Specific sectoral rule are established by the the 18 January 2001 Resolution No. 11 of th Competition Council of the Republic of Lithuania “On Granting of Block Exemptions to Certain Groups of Agreements Between Transport Undertakings within Certain Transpor Sectors in Accordance with Articles 5, 6 and 7 of the Law on Competition of the Republic of Lithuania”, the 19 December 2001 Resolution No. 151 “Regarding explanation of the Competition Council on granting of individual exemptions t certain categories of th agreements in the insurance sector in accordance with Article 5, 6 and 8 of the Law o Competition of the Republic of Lithuania”, the 27 December 2001 Resolution No. 127 “Regarding granting of the block exemption to certain categories of agreements concluded</p>

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					proceedings instituted by the Competition Council.		Council may impose the following restrictions on the economic activities of undertakings that fail to comply with the sanctions of the Council: temporarily suspend export-import operations, impose restrictions on the execution of bank operations and/or invalidate the entity's permission (license) to engage in economic activity. Besides, in urgent cases where the Competition Council has sufficient evidence on a violation of the Law on Competition, the Competition Council has the right to apply interim measures necessary for the implementation of a likely final		among the users of agricultural land in accordance with Article 5, 6 and 7 of the Law on Competition of the Republic of Lithuania". Besides, the 27 April 2000 Resolution No. 45 of the Competition Council of the Republic of Lithuania "On Approval of the Procedure for Submission and Examination of Notifications on Concentration and of Calculation of Aggregate Turnover" establish specific rules for calculation of the aggregate turnover in those instances when banks, investment and insurance companies are parties to the concentration.

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							<p>resolution of the Competition Council in order to prevent substantial and irreparable damage to the interests of other undertakings or society. In such a case the Competition Council may:</p> <p>1) obligate the undertaking to stop an illegal activity; or</p> <p>2) with a permission of Vilnius District Administrative Court, to impose an obligation to carry out certain actions if the failure to take such actions may result in significant harm to other undertakings or the interests of society or cause irreparable consequences.</p> <p>2- The above-specified sanctions may be</p>		

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							imposed on the undertaking upon establishment by the Competition Council that such undertaking has engaged in conduct prohibited under the Law on Competition or has otherwise infringed this Law,		
MACEDONIA	Law Against Limiting Competition	1- Monopoly Authority 2- Investigation and decision making body within the Ministry of Economy	1- Mandatory Notification. 3- According to the Law Against Limiting competition, pre-merger and post-merger notification must be delivered to the Monopoly Authority. Monopoly Authority must be informed about every planned merger (pre-merger) <i>at the moment when the enterprises are in a situation to submit the informations that must be stated in the notification.</i>	1- Dominance test. When it is expected that the merger shall lead to creation of a dominant market position or to strengthening of the already existing dominant market position, the Monopoly Authority may ban the merger.	1- Third party can initiate a procedure. 2- Damages, appeal, contentious administrative remedy	1- Monopoly Authority is a Ministerial Body. The Minister of Economy, upon request, shall issue a permit for the merger in those cases where the limitation of the competitions is balances with the advantages that the merger shall produce in the overall economy of the country, as well as in other cases where the merger is justified by some prevailing public interest. When deciding on the issue of a permit the capability of the relevant enterprises to compete on the markets of the economy shall be	1- Cash fine. 2- For the made infractions, the legal entity shall be penalised with a cash fine of 1.500,00 Euro to 10.000,00 Euro. The responsible person within the legal entity shall also be penalised with a cash fine of 500,00 Euro to 1.500,00 Euro.	1- Appeal 2- Against the decision of the Monopoly Authority, the participant in the procedure may appeal within 15 days. Against the decision of the Minister of Economy of first instance, the participant in the procedure may appeal within 15 days to the competent Commission within the Government of the Republic of Macedonia.	1- Banks and saving houses, insurance companies, companies dealing with publishing, printing or distribution c newspapers, periodicals, publication: or their parts. 2- No

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			<p>1. company name and seat; 2. type of business; 3. market share, the basis for the calculation or evaluation and the total sales, provided that the participation on the domestic market of all the enterprises that participate in the merger together does surpass 20%. For banks and other credit institutions instead of the amount of sales, the notification must contain the value of the total assets, while for the enterprises in the field of insurance to state the total premium income; 4. When shares or stocks in another enterprise are acquired, the acquired share and the total share in the</p>			<p>taken into consideration. The permit may be issued only when the effects of the caused limitation of the competitions does not endanger the system of the market economy. In every other case of merger, Monopoly Authority makes decision.</p>			

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			<p>enterprise. Whenever it is about already done merger (post-merger), the Monopoly Authority must be informed <i>immediately</i></p> <p>4- When the Monopoly Authority has been informed about the planned merger, it can ban the merger provided that it informs the person that has delivered it, within a one month upon the receipt of the notification, that it has started the procedure to review the proposed merger. In any case, Monopoly Authority must enact its decision within fourth month from the receipt of the notification. When it is about public interest merger, request for</p>						

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			<p>issuing permit is submitted to the Minister of Economy within one month from the receipt of the decision of the Monopoly Authority that ban the merger. The Minister of Economy must enact its decision within fourth month from the receipt of the request.</p>						
MALTA	<p>There is currently no specific legislation regulating mergers, although the Competition Act (Cap. 379) provides for the introduction of subsidiary legislation in this regard. Subsidiary legislation regulating mergers is being drafted and will come into force by the second quarter of 2002.</p>	The Office for Fair Competition	<p>1- Mandatory notification of such mergers is required under Section 10 of the Act.</p> <p>3- No, but a merger will create market dominance, the approval of the Director heading the Office for Fair Competition will be required.</p> <p>4- No</p>	<p>1- Dominance Test. An element of control exists by virtue of Section 9 of the Competition Act insofar as a merger may have the effect of strengthening an already existing dominant position held by one or more of the participating undertakings.</p>	No Special Legislative Provision.	No Special Legislative Provision.	<p>1- Violations of the Act may result in fines.</p>	No Special Legislative Provision.	

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MEXICO	Chapter III of the Federal Law on Economic Competition (FLEC) deals with the concentrations control. The Code of Regulations (CR), Chapters III and IV complement this legislation. In addition, the Federal Competition Commission (FCC) has developed an index for analysing the degree of market concentration (Dominance Index) which is utilized complementarily with the Herfindahl-Hirschman Index (HHI). The application criteria and calculating method of both Dominance and HHI has been published in the Official Gazette. (July 24, 1998)	3- The FCC is an administrative autonomous body, in charge of competition law enforcement (article 23 of FLEC). The FCC has exclusive jurisdiction. There is no other agency or adjudicative body in charge of competition law enforcement. FCC has investigative, adjudicative and sanctioning powers in concentration matters.	1-Mandatory Notification. Exemptions. (The foreign-to-foreign concentrations, which do not involve the acquisition of targets assets situated in Mexico, are exempted from notification (article 21, section I CR). The concentration between firms under the same control group (98% of shares during the last 3 years) are no bound to be notified to FCC (article 21, section II CR). In both cases the parties are bound to submit a notice to FCC	1,2,5- The Mexican competition law can be regarded as a mixture of substantial lessening (impairing or impeding) of competition and dominance tests, according to Article 17 of FLEC; the standards of merger review are the following: a) Assessment of the possibility to create or strengthen market power, b) To assess if a proposed merger has either the objective or the effect of unduly displacing competitors or blocking their entry into the market c) To assess if a proposed merger has either the objective or effect of substantially facilitating the engagement of	1- An affected party can complain before FCC in case of a prohibited or non-reported concentration; however pursuant to Article 26, section IV of CR, the FCC may dismiss the complaint if the transaction in question has already been notified yet information provided by the plaintiff must be taken into account in the FCC analysis.	2- The FCC is an Independent or Autonomous Competition Authority. The FLEC (article 19) empowers FCC to block, sanction or impose conditions upon concentrations, which may lessen competition pursuant article 17 of FLEC. The Plenum is the FCC highest decision body. The Plenum is integrated by five commissioners including the FCC's President. Decisions are reached by majority of votes, and the President has the casting vote (article 25 of FLEC).	1- FCC can issue a temporary or permanent injunction against the concentration (article 35, section I, FLEC). a) FCC can order the partial or total divestiture of what has illegally been concentrated (article 35, section II, FLEC). a) FCC can impose a maximum fine of 225,000 times MW for carrying out a prohibited concentration (article 35, section VI, FLEC), and a maximum fine of 100,000 times MW for failing to notify a concentration.	1- Participants in concentration can file an appeal before the 2- FCC for reversal or modification of resolutions 3- Appeal can only be filed against final resolutions issued by FCC. An appeal is not applicable against any stage of the concentration review by FCC (article 52 of CR). Furthermore, parties may file an Amparo lawsuit (injunction) before District Judge. Amparo lawsuit is a legal action of last resort brought by an aggrieved party seeking reparation for, or the suspension or annulment of an act by a government authority that violates the complainant's constitutional rights. 4- within 30 working days following the date in which those	1- All economic agents and activities are subject to merger review and antitrust enforcement except those strategic activities reserved to the State, strategic activities are defined by article 21 of the Mexican Constitution: postal services, telegraph and radiotelegraph, oil and other hydrocarbons, basic petrochemical, electricity, radioactive minerals and generation of nuclear energy, minting and issue of banknotes. Concentrations in some sectors also require authorization by a regulatory agency (e.g. banking, pension funds telecommunications, natural gas): However, the FCC is the only governmental agency in charge of concentration review focusing on the competition process. Approval of a concentration by the FCC does not necessarily implies the approval by other regulatory agency or

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			<p>within the first 5 working days after the concentration was consummated</p> <p>3-a) Pre-merger Notification.</p> <p>4- Waiting Period. There is not waiting period. The FCC may request additional information within twenty calendar days beginning on the day the notification is received¹. The interested parties have to submit this information to the Commission within fifteen calendar days (article 21, section II of FLEC). The FCC shall have</p>	<p>monopolistic practices by the merging parties. Since mergers in FLEC are analyzed based on a rule of reason approach, the possible efficiencies from a concentration should be taken into account and shown whether they may enhance competition (articles 15, section I, and 6, CR). A non-exhaustive list of efficiency gains includes economies of scale, economies of scope, network economies, transfer of know-how and substantial reduction of administrative costs. Claims of efficiency gains must be proven by the merging parties.</p>			<p>FCC can impose a maximum fine of 7,500 times the MW to any individual who directly participates in a prohibited merger on behalf of a firm (article 35, section VII, FLEC). The FCC may not impose conditions that are not directly linked to the correction of the effects of concentration. The imposed conditions imposed must be proportional to the intended correction. Parties may request the FCC to evaluate their own conditions proposals prior to final decision (article 16, last paragraph, CR).</p>	<p>resolutions are notified (article 39 FLEC).</p>	<p>vice versa.</p>

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			<p>forty-five calendar days beginning on the day the notification is received, or as the case may be, of the additional documents requested, to issue its resolution. It shall be understood that the Commission has not objections if this period of time goes by and the Commission has not issued a resolution (article 21, section III of FLEC). In exceptionally complicated cases, President of FCC may extend the term established under</p>						
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			<p>Sections II and III for up to sixty additional calendar days (article 21, section IV of FLEC). FCC can investigate a concentration even though it does not exceed the monetary thresholds, if the concentration can hinder competition. This investigation can be carried out by FCC any time within a year of the closing of the transaction (article 22, section I of FLEC).</p>						

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NETHERLANDS	New Regulations on Economic Competition (Competition Act)	2- The Netherlands Competition Authority	1- Mandatory Notification 3- a) Pre-merger notification. 4- There is a four week freeze” period from the time the Authority receives a notification. If, during that time, the Authority concludes that competition in the Dutch market will be affected significantly, the concentration cannot be affected until specific authorisation is granted.	1- Dominance Test	1- The Netherlands Competition Authority.	1- The Competition Authority may request information from customers, suppliers and competitors about the relevant markets or the envisaged transaction.	Sanctions can be imposed in the event of the abuse of a dominant position (fine or an order anctioned by periodic penalty payments)	1- Appeal. 2- District Court of Rotterdam (Chamber of Administrative Law). The judgement of the District Court may be further appealed to the Court of Appeal for Trade and Industry in the Hague. The Minister of Economic Affairs may, in response to a request, grant a license for an envisaged concentration even though the Competition Authority has refused to grant one. Decisions of the minister are subject to judicial review as well.	Credit institutions or other Financial Institutions, insurance companies. 2- Clauses 1a and 1c c the 1992 Credit Institutions Supervision Act, article 1h of the 1993 Insurance Industr Supervision Act
NEW ZEALAND	The principal source of New Zealand competition law is the Commerce Act 1986 and amendments. In particular, Part 3 (Business acquisitions) of the Act relates to merger control. Notably, substantial changes were introduced to this section with the Commerce Amendment Act 2001. This	1- The Commerce Commission is New Zealand’s competition authority. 5- The Commission is an independent quasi-judicial body with responsibility for enforcement and regulatory control under a number of	2- Notification of a merger to the Commerce Commission is voluntary. However, parties may apply for clearance or authorisation of an acquisition under sections 66	In May 2001 New Zealand moved from a test of “dominance” to a test of “substantially lessening competition”. As stated in the ‘Legislation’ section above, Section 47 (Certain acquisitions prohibited) now reads: (1) A person must	1- Section 84 of the Commerce Act allows third parties to seek an injunction restraining conduct that constitutes or would constitute a contravention of Section 47 (Certain acquisitions prohibited). Section 84 (Injunctions may be granted by Court for contravention of Part 3)	As under the ‘Enforcement Agencies’ section, the New Zealand Commerce Commission makes the decision on whether or not to grant clearance or authorisation for a merger to proceed.	1- The Courts have a number of remedies available to them once a breach of the Act has been proven. The main penalties and remedies available under the Commerce	1- A Commerce Commission s47 determination can be appealed under s91 (Appeals in relation to determinations by Commission). Section 91(2) states that every such appeal shall be made by giving notice of	1- New Zealand has tried to avoid sector-specific competition regulation as much as possible, instead favouring generic competition law under the Commerce Act. All mergers and acquisitions are subject to Section 47 of this Act

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	<p>was introduced on 26 May 2001. The merger threshold was lowered from one of 'dominance' to that of 'substantially lessening competition'. Section 47 (Certain acquisitions prohibited) now reads:</p> <p>(1) A person must not acquire assets of a business or shares if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market.</p> <p>(2) For the purposes of this section, a reference to a person includes 2 or more persons that are interconnected or associated.</p> <p>(3) For the purposes of this section, a person is associated with another person if that person is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.</p> <p>(4) A person is not able to exert a substantial degree of influence over the activities of another person for the purposes of subsection (3) by reason only of the fact that—</p> <p>(a) those persons are in competition in the same market; or</p> <p>1 of them supplies goods or</p>	<p>general and specific regulatory regimes set out in the:</p> <p>Commerce Act, Fair Trading Act 1986 (the Fair Trading Act), Electricity Industry Reform Act 1998 (EIRA), Telecommunications Act 2001 (Telecommunications Act) and the Dairy Industry Restructuring Act 2001 (DIRA).</p> <p>The overriding purpose of the Commission is to promote market efficiency by fostering healthy competition amongst businesses, informed choice by consumers and sound economic regulation. The Commission's activities cover enforcement (investigations, litigation, and the provision of information to the public) and regulatory control (adjudication and reports to Ministers). The Commission is independent and is not subject to direction in its enforcement and regulatory control activities.</p> <p>With respect to mergers, the Commission has two key functions: Investigations and</p>	<p>and 67 of the Commerce Act, where the merger may or does substantially lessen competition. Clearances or authorisations protect the merger from action by the Commission or private individuals. A merger clearance (section 66) is granted if the Commerce Commission assesses that a proposed merger will not lead to substantially lessening competition in a market. The Commerce Commission must provide written notice of a clearance decision to the applicant within 10 working days after the date of merger registration, or</p>	<p>not acquire assets of a business or shares if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market...</p> <p>5- Efficiencies. New Zealand does not have an efficiency defence per se, rather persons must apply for an authorisation as discussed above. Section 3A (Commission to consider efficiency) provides that the Commission shall have regard to any efficiencies that the Commission considers will result, or will be likely to result, from conduct when they are determining whether or not it is likely to result in a public benefit. In its competition analysis the Commerce Commission will take into consideration the efficiency benefits resulting from an acquisition, for example the benefits of economies of scale, however they have</p>	<p>states:</p> <p>2- Where it appears to the Court, on the application of the Commission, [or any other person, that a person intends to engage, or is engaging, or has engaged, in conduct that constitutes or would constitute a contravention of section 47] of this Act, the Court, by order, may do all or any of the following things:</p> <p>(a) Grant an injunction restraining any person from engaging in conduct that constitutes or would constitute—</p> <p>(i) A contravention of section [47] of this Act:</p> <p>(ii) Any attempt to contravene that provision:</p> <p>(iii) Aiding, abetting, counselling, or procuring any other person to contravene that provision:</p> <p>(iv) Inducing or attempting to induce any other person, whether by threats, promises or otherwise, to contravene that provision:</p> <p>(v) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that provision:</p>	<p>This is an independent body.</p>	<p>Act are:</p> <p>injunctions (including interim injunctions) restraining businesses and individuals from conduct that may breach the Act; awards of damages; cease and desist orders; pecuniary penalties; and order ing a person or company to dispose of specified assets or shares. Under sections 84 and 88(General provisions relating to granting of injunctions) the Commerce Commission has the same powers as private parties to obtain interim, permanent and mandatory injunctions against mergers. In April 2002 s74A-74D were inserted into the Act giving the Commission the</p>	<p>appeal within 20 working days after the date of the determination appealed against or within such further time as the Court may allow.</p> <p>2- Under Section 75 (Jurisdiction of High Court) the High Court can hear and determine appeals against determinations of the Commission [75(1)(e)]. Section 92 (Persons entitled to appeal) restricts who is able to exercise the right of appeal. Section 92(c) states: [The following persons may exercise the right of appeal pursuant to section 91 of this Act - ...]</p> <p>In the case of an appeal against a determination of the Commission under section 66 or 67 of this Act in relation to a notice seeking a clearance or an authorisation, as the case may be, -</p>	<p>The examples provided below are instances where sector specific legislation imposes a "higher" standard than the Commerce Act (however, these are sti subject to Section 47). Radio spectrum caps / Aggregation limits regarding fishing quota The Crown, as vendor, has imposed "spectrum caps" in recent radio spectrum auctions, thereby limiting the amount of spectrum a company may purchase Section 59 (Aggregatio of Quota) of the Fisheries Act 1996 limit the number of quota shares a person may hold, therefore effecting whether or not a person can acquire more quota shares. However, in some sectors, the Governmei has imposed ownership restrictions that are more stringent than the Act. Notably, the Electricity Industry Reform Act 1998 required full ownership separation of distributio businesses from supply (generation and retail)</p>

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	<p>services to the other.</p>	<p>enforcement for breach of the prohibition on anticompetitive mergers (section 47); and Adjudication on applications for clearances and authorisations for mergers. The Commerce Commission does not provide policy advice. The Competition Policy team of the Ministry of Economic Development (MED) is responsible for the provision of policy advice relating to competition policy and law. This team reports to the Minister of Commerce. The independence of the Commerce Commission is intended to ensure that the Commission's operational policies and decisions will be applied fairly and consistently and in accordance with the objectives of the Act, without influence by individual Ministers or the Government as a whole. The Government is able to transmit statements of government policy to the Commission to which the Commission must have regard (section 26 (Commission to have</p>	<p>such longer period as the Commission and the applicant agree. A clearance expires 12 months after the date on which it is given. Notably, the Commission will only grant a clearance for pre-merger notifications. The Commission's guidelines to business acquisitions, Practice Note 4, outlines proposed "safe harbours" to provide some guidance to the public on when it is unlikely to be necessary to apply for a clearance. It concludes that the SLC threshold is unlikely to be crossed where the three-firm concentration ratio in the relevant market is below 70% and the combined</p>	<p>stated that they expect that only on the rare occasion will efficiency benefits impact the outcome of decisions - In other words, these efficiency gains must be very substantial for the benefits to outweigh the detriments. In particular, Practice Note 4 [The Commerce Commission Business Acquisitions Guidelines] notes: "...The Commission recognises that while efficiencies are often best considered in the context of a business acquisition, there may be circumstances where they are also relevant to an application for clearance. In the context of a business acquisition, the combined entity might be able to make efficiency gains that are not obtainable by other means, such that its unit cost of production would decline. It is conceivable that this could result in the entity reducing its price below that obtaining prior to the acquisition, even though</p>	<p>(vi) Conspiring with any other person to contravene that provision: (b) Impose on any person obligations to be observed in the carrying on of any business or the safeguarding of any business or any assets of any business: (c) Provide for the carrying on of any business or the safeguarding of any business, either by the appointment of a person to conduct or supervise the conduct of any business (on such terms and with such powers as may be specified or described in the order), or in any other manner, as it thinks necessary in the circumstances of the case.</p> <p>Third parties are also able to sue for damages for contravention of section 47 provisions. Liability for damages is not limited to the person engaging in conduct breaching section 47. Section 84A (Actions for damages for contravention of Part 3) states:</p> <p>(1) Every person is liable in damages for any loss or damage caused by that</p>		<p>right to issue cease and desist orders. Section 74D (Pecuniary penalties for contravention of cease and desist order) enables the courts to order pecuniary penalties of up to \$500,000 on application of the Commission. Under Section 83 (Pecuniary penalties) the Commission is able to obtain pecuniary penalties in civil proceedings in the High Court. Currently, the maximum penalty is \$5 million for corporations and \$500,000 for natural persons. Under Section 85 (Court may order divestiture of assets or shares in respect of contravention of Part 3) the Commission is entitled to seek divestiture orders</p>	<p>(i) The person who sought the clearance or the authorisation; and (ii) Any person whose assets, or the shares in which, are proposed to be acquired pursuant to the clearance or authorisation; and Any person who participated in any conference held by the Commission under section 69B of this Act in relation to the clearance or authorisation:</p> <p>Section 69B (Conferences in relation to business acquisitions) allows the Commerce Commission to hold a conference to discuss relevant matters before making a final determination.</p> <p>Section 94 (Court may refer appeals back for reconsideration) provides that the Court can direct the Commerce</p>	<p>businesses by 1 January 2004 [Most companies achieved this by 1 April 1999]. Clearly this prevents mergers c firms in these different sectors of the industry.</p>

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		<p>regard to economic policies of Government)). These statements are required to be in writing, published in the Gazette, and tabled in Parliament.</p>	<p>entity has less than in the order of a 40% share, or, where the three-firm concentration ratio in the relevant market is above 70%, and the market share of the combined entity is less than in the order of 20%.</p> <p>A merger authorisation (section 67) also applies to pre-notification. It is granted if the Commerce Commission assesses that although a proposed merger will lead to substantially lessening competition in a market, the benefits to the public will outweigh the competitive detriments. The Commerce Commission must provide written</p>	<p>with the acquisition it would otherwise be considered to have substantially lessened competition, and would be able to raise price above costs. In these circumstances, the acquisition could be regarded as having a 'pro-competitive' effect overall, as the lower price would serve to enhance the constraint upon the unilateral behaviour of other firms in the market, and might undermine the propensity for co-ordinated conduct to be sustained. Where the applicant can make a sound and credible case that such efficiencies will be realised, that they cannot be realised without the acquisition, and that they will enhance competition in the relevant market, the Commission will include them in the broader analysis of all of the competitive effects of the acquisition in the course of assessing whether or not competition is likely to</p>	<p>person engaging in conduct that constitutes any of the following:</p> <p>(a) A contravention of section 47 of this Act:</p> <p>(b) Aiding, abetting, counselling, or procuring the contravention of that section:</p> <p>(c) Inducing by threats, promises, or otherwise the contravention of that section:</p> <p>(d) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention of that section:</p> <p>(e) Conspiring with any other person in the contravention of that section:</p> <p>(2) An action under subsection (1) of this section may be commenced at any time within 3 years from the time when the cause of action arose</p> <p>However, only the Commerce Commission is able to seek Pecuniary Penalties (s83) and apply to the Court to order divestiture of assets or shares in respect of a contravention of section 47 (s85).</p> <p>Third parties can notify the Commerce Commission where they believe a merger breaches the Commerce Act</p>		<p>in merger cases. An order may direct the disposal of assets or shares as determined by a court or as established in an undertaking given to the Commission in an application for clearance or authorisation. Section 89 (Other orders) contains provisions for the Courts to make other orders, for example, varying or cancelling a contract which is in breach of the Act.</p> <p>2- Sanctions under the Commerce Act refer to a "person". Section 47(2) defines, for the purposes of section 47, a reference to a "person" to include 2 or more persons that are interconnected or associated.</p>	<p>Commission to reconsider, either generally or in respect of specific matters, the whole or any specified part of the matter to which the appeal relates, rather than the High Court determining the appeal.</p> <p>In certain cases, when any party to an appeal to the High Court against a Commission determination is dissatisfied with the High Court decision or order, the party may, with leave of the Court, or the Court of Appeal, appeal to the Court of Appeal [Section 97 (Appeal to Court of Appeal in certain cases)]. In determining whether to grant leave to appeal, the Court to which the application for leave is made shall have regard to:</p> <p>(a) Whether any question of law or general principle is involved;</p>	

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			<p>notice of an authorisation decision to the applicant within 60 working days after the date of merger registration, or such longer period as the Commission and the applicant agree. An authorisation expires 12 months after the date on which it is granted.</p>	<p>be substantially lessened. Those other effects might also include the scope for product quality to be eroded as the result of the lessening of competition. The Commission envisages that efficiency claims of the required magnitude and credibility will only very rarely overturn a finding that competition would otherwise be substantially lessened.”</p>	<p>1986. The Commerce Commission will then assess whether or not this is likely to be the case and whether to investigate this further. Third parties can also make submissions to the Commission as part of the clearance and authorisation processes. The Commission publicly notifies all applications received and submissions are considered.</p> <p>If the Commerce Commission has given a merger clearance or authorisation, that merger then has full immunity to go ahead within the period of 12 months from the date of determination.</p> <p>A Commerce Commission s47 determination can be appealed under s91 (Appeals in relation to determinations by Commission). Section 92(c) entitles any person that participated in a Commerce Commission conference the right to appeal a Commission determination. For further details on appeals please see the section entitled ‘Appeal/Judicial Review’.</p>		<p>Section 47(3) states that a person is associated with another person if that person is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other. Section 47(4) limits this in that a person is not able to exert a substantial degree of influence over the activities of another person only of the fact that those persons are in competition in the same market or one of them supplies goods and services to the other. So a “person” under this section of the Act can represent a large pool of people/corporations which are connected in some way. Note that:</p>	<p>(b) The importance of the issues to the parties; (c) The amount of money in issue; (d) Such other matters as in the particular circumstances the Court thinks fit. The Court granting leave under this section may in its discretion impose such conditions as it thinks fit, whether as to costs or otherwise. The decision of the Court of Appeal on any such appeal shall be final. There is no limit on judicial review.</p>	

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							<p>any "person" that has contravened or attempted to contravene section 47; has aided, abetted, counselled, or procured any other person to contravene section 47; has induced, or attempted to induce any other person, whether by threats, promises or otherwise to contravene section 47; has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of section 47; or, has conspired with any other person to contravene section 47, can be ordered to pay pecuniary penalties. Cease and desist orders may be</p>		
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							<p>ordered of a person where a prima facie case has been made out that they have engaged in any conduct referred to in section 83(1) [i.e. the same 'people' as pecuniary penalties] and where it has been established that it is necessary to act urgently in order to prevent a particular person or consumers from suffering serious loss or damage, or when it is in the interests of the public.</p> <p>An injunction may be granted to restrain any person who contravenes section 47; attempts to contravene section 47; aids, abets, counsels or procures any other person to contravene section 47;</p>		
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							induces or attempts to induce any other person, whether by threats, promises or otherwise to contravene section 47; is in any way directly or indirectly, knowingly concerned in, or party to the contravention by any other person of section 47; or conspires with any other person to contravene section 47. Divestiture may be ordered of persons having contravened section 47.		
NORWAY	The Competition Act of 1993 ('the Act')	Konkurransetilsynet, the Norwegian Competition Authority (NCA)	2 - Voluntary Notification. 3 - There is no deadlines for notification. The parties are recommended to notify as soon as a final agreement is concluded. 4- Not applicable	2- Restriction of Competition.	1 - The NCA will normally inform customers, suppliers and competitors and invite them to give their views on the case and submit relevant information. Private parties may submit complaints to the NCA. 2 - The NCA is not obligated to initiate any investigation of the private parties' complaints.	Konkurransetilsynet, the Norwegian Competition Authority (NCA)	The NCA may prohibit a merger. It may require divestiture of shares, or the sale of the whole or parts of a company or of assets.	1 - Appeal 2 - The Ministry/ the Norwegian courts 4 - Within 3 weeks from the date of the NCA's decision.	No specific rules for sectors.

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PAKISTAN	Monopolies And Restrictive Trade Practices (Control and Prevention) Ordinance, 1970. The Authority has proposed a new Competition law to the Government of Pakistan further providing a balance between merger control and competitiveness of the domestic enterprises in the world market. The law is under active consideration of the Government.	The Monopoly Control Authority (MCA)	No special legislative provisions	3- Public interest. The Authority can only take action in case of contravention of provisions relating to mergers when it is satisfied that the action would be in the public interest, implying that it will protect and promote competition leading to economic growth and consumer welfare.	No special legislative provisions.	The Monopoly Control Authority (MCA)	1-MCA is vested with the power to prohibit the person or undertaking(s) or acquire any undertaking(s), require them to divest himself or itself of the ownership of any stock, assets or shares or other beneficial interest in any undertaking or require them to take such actions as may be necessary to restore competitive prices, eliminate restrictions on output or entry of competitors in the market. 2-The person or undertaking(s)		No specific rules for sectors.
PANAMA	Law 29 of February 1, 1996	Comision de la Libre Competencia y Asuntos del Consumidor (CLICAC)	2- Voluntary Notification	2- Restriction of Competition. The Panamanian Constitution prohibits concentration, contracts, or other actions that restrict or make impossible free commerce and competition or would	No special legislative provisions	Comision de la Libre Competencia y Asuntos del Consumidor (CLICAC)			No specific rules for sectors

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				have monopolistic effects to the detriment of the public					
PERU	Peruvian Competition Act (Decreto Legislativo 701- Ley contra las Prácticas Monopólicas Controlistas y Restrictivas de la Libre Competencia), passed on November 1991, provides remedies for anticompetitive conducts or practices (abuse of dominant position or collusion). It does not regulate structural market problems (excessive market concentration due to mergers or acquisitions). On November 1997, Electric Sector Antimonopoly Law (Ley 26876, Ley Antimonopolio y Antioligopolio del Sector Eléctrico) was enacted, imposing a previous authorization procedure before de Competition Agency (Instituto de Defensa de la Competencia y de la Propiedad Intelectual- INDECOPI) for mergers, acquisitions, joint ventures	The Commission on Free Competition	1- Mandatory Notification. 3- a) Pre-Merger Notification	2- Restriction of Competition		No special legislative provisions.	1- Sanctions due to formal and substantial infractions. The Commission may impose penalties due to formal infractions to the Law and to this Regulation to the individuals or companies involved in a merger operation, for an amount not higher than 500 UIT (Unit for Tax Purposes) when: (i) they omit the notification of the operation before it is performed; (ii) after being notified but prior to the decision of the Commission or the Chamber; (iii) although the Commission or	1-Appeal.Against the decisions prescribed by the Commission in application of this Regulation, the appeal resource before the Chamber can only be filed subject to the Decree and Unique Text Ordered by the Law on General Rules of Administrative Procedures (Supreme Decree No.02-94-JUSZ). The Chamber will resolve the appeal resource in a maximum unpostponable term of thirty (30) days as of the date of submittal by the Secretariat.	1- Electric Sector. 2- Regulation made under the law prescribing merger operations in the electric sector; Notification Process

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	and the like, considered as "concentrations". This restriction only applies to companies that operate in the electric sector, that is, electricity generation, transmission and/or distribution. For the rest of activities, no merger control is applied in Peru.						the Chamber declared it incompatible with the electricity market; or (iv) when they do not comply with the conditions established by the Commission in the cases considered in the second paragraph of article 23 or article 28 of this Regulation.		
POLAND	The Act on Protection of Competition and Consumers of December 15, 2000 (Ustawa o ochronie konkurencji i konsumentów, 'the Act')).	1- The Office for Competition and Consumer Protection 2- Administrative Body	1- Mandatory Notification. 3- The President of the Office must be notified of an intention to proceed with a concentration within 7 days of the conclusion of an agreement or execution of any other act on the basis of which concentration shall take place. 4- two months or	1- Dominance test	1- The President of the Office may, upon application, allow each entity demonstrating a legal interest to participate in the proceeding as an interested party. The Act defines an interested party as the undertaking coming under control or the seller. It is doubtful whether competitors or customers may qualify as interested parties	1- The Office for Competition and Consumer Protection	1- The President of the Office may issue a decision prohibiting a concentration if the statutory conditions for prohibition are met. The Act provides that fines may be imposed on an undertaking if it fails to comply with such a decision or may court judgements amending such a decision. 2- the	1- Appeal 2- The Anti-Monopoly Court. A judgement of the Anti-Monopoly Court may be overturned by the Supreme Court after an application for cassation is filed. The law allows for cassation in two circumstances: 1) where substantive law has been violated by an erroneous interpretation or inappropriate	1- Financial Sector 2- The following acts contain special notification requirements that are applicable in addition to the general merger control rules: the Public Trading in Securities Act of August 21, 1997 with respect to the acquisition of shares in public companies; the Investment Funds Act of August 28, 1997 with respect to mergers among investment funds; and the Organisation and Functioning of Pension

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			14 days in the case of notification of an acquisition of publicly-traded shares.				Undertakings	application thereof; 2) where procedural provisions were not followed and where such a breach of procedure could have had a decisive influence on the judgement in the case.	Funds Act of August 28 1998 with respect to pension funds.
PORTUGAL	(Decree-Law No. 371/93 of 29 October 1993 on Protection and Promotion of Competition). (Decreto-Lei nº 371/93, 29/10/93)	1- The Directorate-General for Trade and Competition (Direcção-Geral do Comércio e da Concorrência, 'DGCC'), which has wide investigative powers and conducts the appropriate proceedings prior to authorisation; - The Competition Council (Conselho da Concorrência, 'CC'), an administrative body having an important advisory role regarding concentration operations likely to have a negative effect on competition; and - The Minister in charge of trade matters (currently the Minister for Economy), alone or together with the Minister(s) responsible for the economic sector(s) affected by the concentration, with whom lie(s) the powers of decision.	1- Mandatory Notification. 3- a) Pre-merger Notification. 4- Waiting Period – 50 or 95 d (maximum delays)	1- Dominance test	3- The DGCC usually request, information from notably competitors or associations of undertakings. Subject to considerations of confidentiality or urgency, complainants - and generally any interested third parties - have the right to request access to files, to obtain copies of accessible documents, to be heard before a final decision is made, to request that further investigation is undertaken, to be kept informed during the proceedings and to be notified of final decisions relating to their complaint.	1- The competent Ministers may prohibit a concentration or make its authorisation subject to conditions or obligations. See article 34 of the Decree-Law No. 371/93. (Administrative/Ministerial Body)	1- Prohibitions orders-divestitures, others 2- Corporate enterprises	1-Appeal/Judicial Review 2- Supreme Administrative Court. 3- Ministerial decisions prohibiting concentrations or granting clearance subject to conditions may be appealed	1- Credit institutions, financial and insurance companies 2- Decree Law No. 298/92 of 31/12. (Decreto-Lei nº 298/92 de 31/12)

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		2- Administrative/Ministerial							
PHILIPPINES	The Philippine Constitution 1987 prohibits anti-competitive practices. Monopolies are not prohibited “per se”, but only when public interest so requires. The Philippine Corporation Code Batas Pambansa Blg. 68 (1980) provides rules and procedures to approve all combinations, mergers and consolidations.	Department of Trade and Industry.	No special legislative provisions.	2- Restriction of Competition. 3- Public Interest	No special legislative provisions.				1- Telecommunications, Energy, water, banks. 2- <i>Energy</i> : Executive Order No. 215. <i>Water</i> : Executive order No. 311 (1996), <i>Telecommunications</i> Executive Order No. 5 (1993). <i>Banks</i> Republic Act No. 337 regulates banks and

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									banking institutions and for other purposes.
ROMANIA	The basis of the current legal framework in the merger control field in Romania, is set out by Competition Law no. 21 of April 10, 1996, which came into force at February 1, 1997 followed by several rules and regulations adopted by the Romanian Competition Council (the "Competition Council"), namely: (i) Regulation on authorization of economic concentrations; (ii) Instructions on market definition; and (iii) Instructions on the calculation of the turnover for the economic concentration market threshold.	1-The Competition Council and the Competition Office. 2- Although the Competition Council is the primary agency for analyzing economic concentrations, the Competition Law is enforced by two separate bodies: the Competition Council, which is an independent agency and the Competition Office, which is part of the Government. 4-In analysing and authorizing the economic concentrations, the Competition Council carries out the investigation and it also makes the decision.	1- Mandatory Notification. 3- Notification must be submitted within 30 days from the date of signing the agreement which established the economic concentration. 4- Initial decision within 30 days of receipt of a complete notification (the notification is declared effective, meaning that all necessary/requested information has been provided). If an investigation is opened, final decision within 5	1- Dominance test The Competition Council mainly reviews the market position of the concerned undertakings, the market structure, the nature of the product, the ease and timeliness of market entry, size of competitors and other typical competition-related criteria. 5- The Competition Council assesses whether the merger is likely to create or strengthen a dominant position, which could lead to or is likely to lead to a significant restriction, prevention or distortion of competition. In order for any economic concentration to be approved by the Competition Council the parties shall have to prove to the authority	1- The Competition Council and the Competition Office are the only entities entitled to enforce the Competition Law. No other individuals or entities have private rights to enforce it. However, third parties may play a considerable role during the merger review. In addition to providing answers to Competition Council information request, interested third parties (such as suppliers, competitors, customer or employee representatives) may request participation at the hearing scheduled during the investigation 2- Third parties may file a complaint in relation with any anti-competitive practices or any abuse of dominant position, which led to an infringement of their interests. Apart from the sanctions to be applied by	1- The Competition Council. When the Competition Council issues a decision regarding an economic concentration in which a regie autonome is involved, such decision must also be communicated to the relevant ministry. Within 30 days from its communication to the relevant ministry, the Government may take, at its own responsibility, a decision different from that of the Competition Council, such action being supported by reasons of public general interests. The Government's decision is mandatory and will be published together with the Competition Council's decision in the Official Gazette of	1-The Competition Council has the power to impose fines on undertakings for failure to comply with their obligations under the Competition Law. In case of failure to observe the decision, apart from the sanctions it has the right to impose, the Competition Council can ask the Court of Appeal to order divestment or any other action that may be appropriate in order to restore. 2- The parties involved (individuals or undertakings) for	1- Appeal. 2-The Bucharest Court of Appeal, which may, upon request, suspend the execution of the decision. The decision of the Court of Appeal may be further appealed to the Supreme Court of Justice. 3- No specific grounds are provided. 4- Within 30 days from the communication to the parties involved of the decision of the Competition Council.	1- There are specific rules on calculating the turnover for financial, credit or insurance companies.

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			months of the date the notification is declared effective. Pending clearance, the merging parties may only take those measures that are not irreversible and do not change in a definitive manner the structure of the market in Romania.	the cumulative fulfillment of the following conditions: the economic concentration shall contribute to increased economic efficiency, amelioration of production, distribution or technical progress, or export efficiency and competitiveness; the positive effects of the economic concentration compensate the negative effects of the restriction of competition on the market; the consumers (beneficiaries, clients) shall benefit from the economic concentration, especially by having access to lower prices	the Competition Council to the infringing party, third parties have to right to request the court for complete damages repair. 3- Not applicable.	Romania.	breaching the provisions of the Competition Law or of its subsequent regulations and instructions. conditions of effective competition.		
RUSSIA	Law 948-1 of March 22, 1991 on Competition and the Restriction of Monopoly Activities in Commodity Markets (“the Antimonopoly law”)	1- Ministry of Antimonopoly Policy and support of entrepreneurship of Russia and its regional departments MAP Russia with the right of making decisions and carrying out analysis of competitive environment on a market during merger control. Decision taken by MAP Russia can be changed by Arbitration Court.	1- Mandatory Notification 3-a) Pre-merger notification if there is a merger of associations (in association not less than 2 companies); if assets of merging parties exceed ~ 333 000 of US dollars, any time	1- It is carried out according to the MAP’s Russia Order “On methodological recommendations on determination of dominant position of a company on a market” adopted 03.06.1994 ’67. There are also different orders for financial organizations. Possibility of restriction of competition is	1- Natural, juridical persons or government agencies have the right to challenge the merger by addressing to court. 2- The court can prohibit the merger already closed, and claim damages, received due to this merger. 3- The decision of the antimonopoly agency on merger can be appealed to	1-MAP Russia (its regional department) 2- None 3- Arbitration Court 4- None	1. According to the results of the consideration of notification on merger MAP Russia (or its regional departments) has the right to take motivated decision: on consent to finish the merger; the approval of	1- Appeal at court. Arbitration Court. 2- Decisions (directions) of MAP Russia and its regional departments could be appealed at the Court or at the Arbitration Court. 4- There is a right to appeal decisions of the antimonopoly	Control on merger of credit organization is exercised by the Central Bank of Russian Federation in accordance with the Regulation “On peculiarities of bank’s reorganization in form of merger and acquisition” dated 30 December 1997 1 12-P, as well as others legal acts.

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			<p>before closing the merger. b) Post-merger notification if assets of merging parties exceed ~ 167 000 US dollars but less than ~ 333 000 US dollars (in 15 days after merger). In case of merger of financial organizations notification must be presented before it is closed.</p> <p>4- 30 days (not more than 45 days) from the moment of receiving the necessary documents.</p>	<p>estimated according to the result of investigation of the market. The merger can be permitted even if market power augments or if the merger restricts competition, but it's proved that a positive effect takes place including social sphere. Competition authority can forbid a merger, when it's proved that this lead to the creation of dominance. It is fixed that if company's (after merger) market share exceeds 65 percents – it means creation of dominance, if from 35% to 65% than the decision will be made by antimonopoly authority upon analysis of the market structure, if less than 35% - there can't be a dominance. Competition authority, examining the notification, fixes the level and detailed elaboration of the market analysis. In case of possible negative consequences for competition, interested parties should prove that</p>	<p>the court.</p>		<p>the notification if participants of the merger carry out behavior undertakings, which are directed at the providing competition on the market or if they will prove that positive effect of the merger will exceed negative consequences; to reject the notification if its satisfaction would lead to the establishment or augmentation of a dominant position and (or) limitation of competition, or if the information submitted, important for the decision making proves to be not reliable. Arbitration Court, on the suit of antimonopoly authorities, can make the decision to liquidate the new enterprise (financial organization) or award damages in</p>	<p>authority completely or partly during 6 months from the date of their announcements. The given appeal interrupts performance of MAP's (or its regional departments) decisions till court's consideration and entrance of its decision into force.</p>	<p>Control over mergers of public enterprises under privatization is exercised in accordance with the Order of the President of the Russian Federation "On measures of realization of the industrial policy due to the privatization of state enterprises", dated 16.11.1992 ¹ 1392; mergers of holding companies in wood industry is regulated by the Order of the State Enterprise Committee of the Russian Federation dated 05 April 1994. Decree of the Government of Russian Federation "On approval of coordination procedure during state registration of juridical persons founded by reorganization", dated 19 June ¹ 440.</p>

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				positive effect of the merger will exceed negative.			<p>case of an unduly merger.</p> <p>2- Sanctions could be applied to the companies, persons and executive authorities in cases:</p> <ul style="list-style-type: none"> - if they have not forwarded a notification in time; if they have given unreliable information. <p>The work on administrative crime cases and execution of orders on the administrative penalties are carried out in accordance with the procedure, defined in the Administrative Code of Russian Federation.</p>		

Country	Statutory Standards	Enforcement Agencies	Notification Requirements	Substantive Test / Assessment Criteria	Private Enforcement	Decision Making	Final Orders / Sanctions	Appeal / Judicial Review	Sectoral Regulation / Other Regulatory Approval
SLOVAKIA	Slovakian Competition Act	1 - Antimonopoly Office of the Slovak Republic ('Authority') 2- Administrative body	1 - Mandatory Notification. 3 - Must be notified within 30 days from the agreement conclusion, from the announcement of acceptance of submission of the bid in a public tender, from the day a decision of state body has been delivered to an undertakings and etc. (Art.10) 4 - 30 days from the receipt of the request	1 - Dominance test 2 - Restriction of Competition	If third parties request in writing that they want to be heard at an oral hearing and show an interest in the matter, the Authority may enable them to take part in the oral hearing and make known their views.	1 - Antimonopoly Office of the Slovak Republic	1 - The Authority shall allow the concentration; shall prohibit the concentration. The Authority may tie its approval of the concentration to conditions imposed within its decision on a basis of which the major barriers to effective competition arisen through concentration shall be removed. The Authority shall impose the fines. 2 - Undertakings	1 - Appeal 2 - Appeal may only be given up with respect to the body that issued a first-degree decision, and only after the respective decision has been announced. 4 - An appeal against a first-degree decision within 15 days following the day of decision receipt.	No specific rules for sectors
SLOVENIA	Slovenia Prevention of the Restriction of Competition Act Act (Ur. I. RS 56/99) - Decree defining the contents and elements required for the notification form for the concentration of undertakings	1 - The Competition Protection Office of the Republic of Slovenia ('the Office') 3 -Independent and Autonomous	1- Mandatory Notification. 3- a) Pre-merger Notification. Notification must be completed within 1 week from the conclusion of the agreement or the announcement of the public bid, or acquisition of a controlling interest.	1- Dominance test 2- Restriction of Competition 5- Efficiencies. If the party obliged to notify wishes to claim efficiencies, an account shall be provided of those to be gained from the concentration and the way these are transmitted to the Slovenian market.	1- All natural or legal persons demonstrating a legal interest may apply for participation in the procedure within 30 days of publication in the Official Gazette of the Republic of Slovenia	2- The Competition Protection Office of the Republic of Slovenia ('the Office')	1- The Office shall issue the following decisions declaring: the compatibility of the concentration with competition rules; or the approval of the concentration provided the undertakings concerned comply with the conditions imposed on them;	Judicial protection against decisions issued by the Office shall be ensured via the administrative dispute. If an administrative dispute is filed against an order on the investigative action, the Office may not issue a decision until the appeal has been decided. If the lawsuit is upheld, the	The Bank of Slovenia shall participate in the procedures applying to concentrations of bank savings banks, and other financial organisations, and the Ministry of Finance shall participate in the procedures applying to concentrations of insurance undertakings

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			<p>4- The Office reviews the notice of concentration and has 30 days to decide whether to initiate proceedings to investigate. During this period the participants of the concentration are not permitted to exercise rights acquired by the concentration. If the office initiates proceedings to investigate the concentration must issue a decision w within 90 days of the introduction of proceedings. The Office can order companies concerned to stop the implementation of the concentration until a final decision is reached.</p>				<p>or the incompatibility of the concentration with competition rules (it may attach to its decision measures with a view to eliminate the effects of the prohibited concentration which have already occurred). The Office may also by order impose on the offender a monetary fine. 2- Individual person, undertaking</p>	<p>decision issued by the Office may not be based on the facts and evidence obtained through the investigative action with respect to which the appeal has been upheld.</p>	

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SOUTH AFRICA	The South African Competition Act	The enforcement agencies are the Competition Commission(intermediate mergers) , the Competition Tribunal (large mergers) and the Competition Appeal Court.	<p>1- Mandatory notification.</p> <p>3- a) Pre-merger Notification. Parties are required to notify their transactions prior to implementation of the same. All transactions that fall within the stipulated thresholds of intermediate and large mergers must be notified to the Competition Commission. However, parties to a small merger are not necessarily obliged to notify their transaction unless the Competition Commission requires them to do so in terms of the Competition Act.. b) Post-Merger Notification. Post-merger notification would only occur where</p>	<p>2- Restriction of Competition. If it is decided that the merger will lessen competition, then it much be decided whether or not the merger will result in technological, efficiency or other pro-competitive gains.</p> <p>3- Public Interest, even if a merger passes muster on the competition evaluation, it will still have to be assessed on public interest grounds.</p> <p>5- Efficiency. The standard efficiency claims presented by merging parties to the authorities relate to cost saving derived from rationalisation of certain services, frequently managerial, administrative or distribution services</p>	<p>1-A complaint against a merger or prohibited practice may be made by any person.</p> <p>3-Trade unions, provided they have been notified and have members employed by the parties, have an automatic right to intervene in the proceedings</p>	1- The South African Competition Commission enjoys both investigative and adjudicative powers in respect of intermediate and small mergers	<p>1- Parties who fail to notify or implement a transaction prematurely run the risk of being prosecuted by the Competition Commission before the Competition Tribunal. On successful prosecution an administrative penalty may be imposed by the Tribunal.</p> <p>2- All parties to the transaction are potentially liable.</p>	<p>1- Appeal,</p> <p>2- The decision of the Commission may be appealed to the Competition Tribunal. Decisions of the Tribunal may be appealed to the competition Appeal Court, a special division of the High court.</p> <p>4- The appeal must be filed within 10 business days of the Commission's decision. The Tribunal must within 10 days of the filing of the appeal either hear the appeal or hold an informal hearing to request further information from the parties. Appeals to the Tribunal are not confined to the record of the Commission's proceedings and the parties and the Commission may lead de novo evidence. All decisions of the Tribunal can be</p>	No specific rules for sectors

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			<p>the parties implemented the transaction prior to securing the competition authorities' approval. In such a case the parties can expect an administrative fine to be imposed on them by the Competition Tribunal at the Competition Commission's instance. 4- The initial waiting period for small and intermediate mergers is 20 business days, which may be extended only once for up to 40 business days. Where the Commission does not issue an extension certificate before the expiry of the initial waiting period, the transaction would be deemed to have been approved. The parties would be</p>					<p>appealed to the Competition Appeal Court, a specialist division of the High Court. Appeals to the Appeal Court must be made within 20 days after the decision by the Tribunal and is confined to the record. There are no time periods for the Appeal Court to hear an appeal, but typically the Court will hear an appeal within 3- 5 months of the filing of the appeal. Review proceedings may be handled by the ordinary courts. There are no time periods for the bringing of such a review but the requirement is that it is brought within a 'reasonable time'.</p>	

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			entitled to implement the transaction immediately. The initial waiting period for large mergers is 40 business days, which may be extended in multiples of 15 business days at the time. Where the Commission requires an extension of time in respect of a large merger, an application must be made to the Tribunal. The parties would be entitled to oppose the application.						
SPAIN	- THE ANTITRUST ACT 16/89, of July 17, as modified by Royal Decree 6/1999, of April 16, on Urgent Measures for the Liberalisation and Intensification of Competition, and by Royal Decree 6/2000, of June 23, on Urgent Measures for the intensification of Competition in Markets of Goods and Services.	1- THE ANTITRUST SERVICE (Servicio de Defensa de la Competencia) THE ANTITRUST COURT (Tribunal de Defensa de la Competencia) 2- The Antitrust Service is responsible for investigations into antitrust violations. The Antitrust Court is	1- Mandatory Notification. 3- a) Pre-Merger Notification. 4- Minimum waiting period: one month as of the date the merger was notified to the	1- The substantive test for clearance is that a qualifying transaction (in other words, one which meets the thresholds) 'may prevent the maintenance of effective competition in the market'. The government may challenge mergers or takeovers which affect	1- The scope for private action under the Spanish merger regime is almost non-existent. In the event that a third party who believes that a merger negatively affects competition would notify the Service, such notification does not, in law, require a response and the Service may or may not act on such notification at its own	1- The ultimate decision to authorise a merger rests with the GOVERNMENT (Ministerial Decision) The role of the Antitrust Court is merely advisory. 3- No intervention of the Judicial Authorities in the proceedings	1- Final orders may consist of (a) a tacit or express authorisation; (b) a conditional approval; (c) a prohibition; 2- In the event that the government conclusionary	1- The decisions taken by the Council of Ministers can be appealed 2- before the Supreme Court. The decisions taken by the Antitrust Court can be appealed before the "Juzgados Centrales de lo Contencioso Administrativo".	1- Sectors with specific rules Banking: Merger of private bank: requires the authorisation of the Chancellor of the Exchequer. Telecommunications audio-visual, telematic and interactive services markets:

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	<p>- ROYAL DECREE 1443/2001, of December 21,</p>	<p>responsible for a first-level "adjudication" (in reality, an advisory opinion) on the merits of a questioned transaction.</p> <p>3- The Antitrust Service is an administrative agency attached to the Ministry of Economy and acts on delegated authority from the Minister. The Antitrust Court is an autonomous organism with its own legal personality and its own economic resources, although it is also attached to the Ministry of Economic Affairs.</p> <p>4- Although there is not a definitive adjudication process as such under Spanish merger control proceedings, the role and function of the Antitrust Court is similar to that of a classic adjudicator, differing only in that its merger decisions constitute recommendations only. The ultimate decision with respect to reviewable mergers rests with the Government as a whole, which acts with the advice of the Minister and the Court.</p>	<p>Antitrust Service. Maximum waiting period: four months as of the date the merger was notified to the Antitrust Service.</p>	<p>or are likely to affect the Spanish market place when (and only when): (a) a share equal to or greater than 25 per cent of a national product or service market, or a substantial portion thereof, is acquired or increased as a consequence of the merger; or (b) the parties to the transaction have a combined turnover in Spain in excess of Euros 240,404,841.75, in the preceding accounting year, provided at least two of the participating companies each have a turnover in Spain greater than Euros 60,101,210.43. Mergers which have restrictive effects on competition might, however, be authorised or granted a conditional approval, if the government consider that they make a contribution to social and economic progress sufficient to compensate for restrictive competitive effects.</p>	<p>discretion.</p> <p>2- Third parties have little involvement in notification proceedings for reasons of confidentiality.</p> <p>3- In proceedings before the Antitrust Court, third parties having a direct interest in the case may apply to be declared as an "interested party". Only third parties who have been declared as an "interested party" will have access to the record of the proceedings and be able to submit their allegations before the Court issues its opinion.</p>	<p>following notification.</p> <p>4- No shared decision making, the ultimate decision to authorise a merger rests with the government.</p>	<p>order is not complied with, it may, in addition to taking other enforcement measures, impose a fine on each of the companies involved in the merger. of up to 10 per cent of a company's sales turnover in Spain are sanctioned. Furthermore, in this case, the Service will be able to propose to the government the imposition of coercive fines of up to Euros 12,020, for each day lapsed of non-execution of the obligations stipulated in compliance with the Government's decision</p>		<p>Mergers occurring in one of these markets are subjected to the control of the Commission for the Telecommunications Market.</p> <p>Electric Sector: Mergers occurring in the market are subjected to the control of the National Commission for Energy</p> <p>2- Banking: Banking Act of January 24 1927; Telecommunications: Law 12/1997, of April 24, on Telecommunications; Electric sector: Law 34/98, of October 7, on Hydrocarbons</p>

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		5- The National Commission for Energy The Commission for the Telecommunications Market		5- The Antitrust Court, when forming its opinion on whether effective competition in the market place is likely to be hindered, may consider the contribution the merger may make towards: (a) improving production or marketing systems; (b) promoting technical or economic progress; (c) the international competitiveness of national industry; and (d) the interests of consumers or users. In doing so it must assess whether the contribution under one or more of these heads is likely to be sufficient to outweigh the transaction's restrictive effects on competition.					
SRI LANKA	Fair Trading Commission Act Securities Exchange Commission Act	1- Fair Trading Commission and Securities and Exchange Commission Administrative/Ministerial 5- Quasi judicial body, investigative as well as adjudicative body	1- Mandatory Notification. Fair Trading Commission/Securities & Exchange Commission. Is only for listed public companies (takeovers and mergers)	1- Dominance Test 2- Restriction of Competition 3- Public Interest	1- Yes 3- Any person can make a request/Fair Trading Commission can institute proceedings on its own.	1- Administrative/Ministerial Decision	2- Based on assessment of case	1- Appeal 2- Court of Appeal of Sri Lanka 3- No special grounds need. Right of appeal is secured in the FTC Act (Sec. 17)	No specific rules for sectors

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			4- 21 days					4- Within 30 days of the order	
SWEDEN	Swedish Competition Act ('the Act'), Concerning Concentrations between Undertakings, see i.a. Articles 34-44, 57, 60, 63 and 67 of the Act.	1- Konkurrensverket, The Competition Authority 2-The Swedish Competition Authority (independent government authority, working under the surveillance of the Ministry of Industry, Employment and Communications) investigates and takes clearance decisions also after commitments.	1- Mandatory Notification. 3 a) Pre-merger Notification 4- From the date of receipt of a complete notification, the Competition Authority has 25 working days in which to take a decision either that there are no grounds for action or that it will initiate a special investigation of the merger. The Competition Authority has 10 working days to inform the parties whether the notification is complete.	1- Dominance test.	2- The final decision of the Competition Authority to clear a concentration cannot be appealed by third parties. 3- No companies other than those concerned by the acquisition are treated as parties to the procedure	3- The Stockholm City Court may, at the request of the Swedish Competition Authority, prohibit a concentration that is subject to compulsory notification, or which has been voluntarily notified. The Competition Authority itself has rather limited powers as far as enforcement is concerned. Should it consider that a merger ought to be prohibited, it will have to file an application to this effect with the Stockholm District Court, which will decide the issue. The Court may order that the merger should not go ahead, or if it is considered more appropriate impose other measures such	1- The Stockholm City Court may prohibit a concentration. If it is sufficient to eliminate the adverse effects of a concentration, a party to a concentration, instead of being subject to a prohibition may be required: 1. to divest an undertaking, or a part of an undertaking, or 2. to take some other measure having a favourable effect on competition. A prohibition or obligation may be imposed under penalty of a fine. A voluntary commitment	1- Appeals against judgements and decisions of the Stockholm City Court 2- The Market Court 4- If an appeal is made against the judgement of the Stockholm City Court, the Market Court shall make a ruling within three months of expiry of the period for appeal. This time limit may be extended. A prohibition or obligation may not, however, be imposed more than two years after a concentration has occurred.	1- The Act contains no special rules relating to particular areas of the economy. However, such rules are sometimes contained in sector-specific legislation.

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						as an order to divest or to take other pro-competitive action.	made in connection with a concentration may also be made subject to a penalty of a fine. 2- Undertakings (parties to a concentration).		
SWITZERLAND	Federal Act on Cartels and Other Restrictions of Competition of October 6, 1995, Ordinance on Merger Control of June 17, 1996 and form for the Notification of Concentration of Undertakings of September 7, 1998.	1- Competition Commission, Secretariat of the Competition Commission. 2- Administrative 3- Independent Competition Authority 4- Decision Making: Competition Commission, Investigation (Secretariat of Competition Commission) 5- The Federal Banking Commission (when mergers involve banks)	1- Mandatory Notification, 3- a) Pre-merger notification. Mergers must be notified 'prior to their completion', prior to the performance of the agreement, provided the transaction is of a certain economic significance. Notification can therefore be accomplished (and in general will be for reasons of confidentiality) after negotiations and the signing of the merger agreement. The law does not specify at what	1- Dominance test. 3- Public Interest, concentration can be authorised by government on the based of compelling public interests. 5- Efficiencies are part of the analysis, failing firm defence is possible.	1- No 2- Third parties have only a right to appellate against the decision of the Competition Commission. 3- Yes, but limited to written comments. Third parties do not have the formal rights like the parties to the merger. Third parties are invited to present their opinions on the merger (usually in written form) in a time limit specified in the publication (Art. 33 al. 1LCart)	2- Competition Commission, The Federal Banking Commission (when mergers involve banks)	1- The law provides for administrative sanctions against firms and criminal sanctions. 2- Against the firms' responsible persons – both types of sanctions are cumulative. Enterprises and individuals for violating the notification duty or the waiting period.	1- Appeal. A special procedure is still possible when a merger has been prohibited by the Commission. 2- Appeals Commission for Competition Matters. 3- Factual and legal Grounds. 4- The concerned undertakings have a period of 30 days, (commencing from the Commission's prohibition decision coming into force), or of the confirmation of this decision by the Appeal Commission to ask the Federal Council for an exceptional	1- Media, bank and insurance. 2- Regulation Act on Cartels

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			<p>moment the concerned firms can notify the merger.</p> <p>4- Waiting period until final decision of the Competition Commission.</p>					<p>authorisation on the basis of preponderant public interest. Authorisation should only be given in exceptional cases after a full assessment has been conducted, and taking into account political considerations more than the market's competitive conditions. The Federal Council's decision is not subject to appeal.</p>	
TAIWAN	<p>The Fair Trade Law of 1991 (FTL), with amendments to which were promulgated in February 1999, and the Enforcement Rules to the FTL, last revised in August 1999</p>	<p>1- The Fair Trade Commission (FTC)</p> <p>5- Government Authority</p>	<p>1- Mandatory Notification.</p> <p>3- a) Pre-merger Notification. The applications for approval must be filed in advance of the implementation of a combination</p>	<p>4- The FTC's task to weigh the advantages of a possible combination against any negative effects it might have on the economy. If a combination would result in more positive than negative effects on the economy, the FTC may approve the proposed combination.</p>	<p>1- If customers or competitors are aware of a filing for FTC approval, they may submit their views, but the FTC is under no statutory obligation to accept or take into account such views.</p> <p>2- If a party is injured by the actions of an enterprise that is acting in violation of the provisions of the law, the injured party may seek injunctive relief as well as damages. However, a party's ability to recover damages for injuries resulting from merger and acquisition activities is largely theoretical.</p>	<p>The Fair Trade Commission (FTC)</p>	<p>1- If a combination occurs without the requisite FTC approval, the Commission may impose fines for each violation of the FTL, issue orders: prohibiting the combination; setting a deadline within which the enterprises must separate; requiring the disposal of acquired shares requiring that business activities</p>	<p>1- Appeal</p> <p>2- First appeal to the Appeals Committee of the Executive Yuan, then to the High Administrative Court, and finally to the Supreme Administrative Court</p>	<p>1- Special rules for foreign investments in telecommunications, financial services, etc</p>

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							be transfer red; or requiring certain company officers or employees to resign from their positions.		
THAILAND	The Trade Competition Act	Office of Trade Competition Board, Department of Internal Trade, Ministry of Commerce, Thailand	2- Voluntary 3- a) Pre-merger Notification 4- The Act does not specify.	2- Restriction of Competition.	No special legislative provision.				No specific rules for sectors
TUNISIA	Loi No 91-64 du 29 juillet 1991 relative a la concurrence et aux prix, telle que modifiee et completee par la loi No 93-83 du 26 juillet 1993 la loi No 95-42 du 24 avril 1995 et la loi no. 99/41 du 10 mai 1999	Ministere du Commerce Conseil de la Concurrence	1 - Mandatory Notification 3 - Within 15 days from the agreement conclusion, from the announcement of acceptance of submission of the bid in a public tender etc.	1- Dominance test.	No special legislative provision.				No specific rules for sectors

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TURKEY	Article 7 of Act No. 4054 on the Protection of Competition of 1994 ('Act 4054') Communique No. 1997/1	1- The Competition Board 3- An Autonomous Body	1- Mandatory Notification 3- a) Pre-merger Notification. Within a reasonable period before closing (preferably 30 days in advance) 4- 15 days of receiving notification.	1- Dominance test 4- The market position of the undertakings concerned, their economic and financial powers, the alternatives available to suppliers and users, their opportunities for access to sources of supply or entry into market; any legal or other barriers to entry into the market; supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers, developments in the technical and economical progress provided that they are to the advantage of consumers and do not form an obstacle to competition, and other factors, are also taken into account.	1- Third parties may request from the Board to be heard, provided that they prove their legitimate interest. 2- Third parties may appeal to the Tribunal and also to the Supreme Court.	2- The Competition Board	1- Fines 2- The undertakings and associations of undertakings	1- Judicial review 2- The Council of State	1- Special rules for privatisations. Special rules for the calculation of thresholds for bank, private institutions, financial leasing companies, factoring companies, intermedial organisations and insurance companies/

Country	Statutory Standards	Enforcement Agencies	Notification Requirements	Substantive Test / Assessment Criteria	Private Enforcement	Decision Making	Final Orders / Sanctions	Appeal / Judicial Review	Sectoral Regulation / Other Regulatory Approval
UKRAINE	Law of Ukraine No. 2132-XII 'On the Limitation of Monopolism and the Prevention of Unfair Competition in Business Activity', dated February 18, 1992, as amended ('the Monopoly Law'), Law of Ukraine No. 3659-XII 'on the Anti-Monopoly Committee of Ukraine', dated November 26, 1993, as amended ('the AMC Law'); Law of Ukraine No. 236/96 'On Protection Against Unfair Competition', dated June 7, 1996, as amended ('the Competition Law')	1- The Anti-Monopoly Committee of Ukraine (AMC)	1- Mandatory Notification 3- a) Pre-merger Notification 4- 30-days, could be extended for an additional three-months	2- Restriction of Competition	1- There are no provisions relating to the participation of complainants or other third parties in the review process. 2- Third parties have right to appeal to the courts for protection of their rights and interests.	1- The Anti-Monopoly Committee of Ukraine (AMC).	1- The AMC may impose fines. 2- Entrepreneurs, agencies and other interested persons.	1- Appeal. 2- The Court or Economic Court.	No specific rules for sectors.

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UNITED KINGDOM	The statutory provisions relating to mergers are contained in the Fair Trading Act 1973 as amended by the Companies Act 1989 and the Deregulation and Contracting Out Act 1994	<p>1- Any mergers involving UK companies which do not fall under the EC Merger Regulation (ECMR), and which meet the jurisdictional tests in the Fair Trading Act 1973, fall to the UK authorities:</p> <p>2- Office of Fair Trading (OFT), Administrative/Ministerial</p> <p>3- Competition Commission (CC) (Independent Body) and the Secretary of State for Trade and Industry (SoS). The OFT investigate all mergers in the first instance and recommend to the SoS whether or not they should be referred to the CC for further investigation. The then SoS announced in October 2000 that he would follow the advice of the OFT on reference decisions, save in exceptional circumstances. At this stage there are three ways in which a merger may be treated: it may be referred to the CC for further investigation; it may be cleared; or undertakings may be sought in lieu of a reference to the CC.</p>	<p>1- Merger involving newspapers shall be notified.</p> <p>2- Voluntary notification.</p> <p>4- The Office of Fair Trading's administrative service standard states that merging parties can expect a response within 45 days of filing a complete submission (39 days for the Office and 6 for the Secretary of State to look at it). The voluntary pre-notification procedure (provided under the [Fair Trading Act]) makes provision for a proposed merger to be considered within 20 working days, with a maximum extension of 15 working days. Subject to some exceptions, the</p>	<p>3- The Fair Trading Act includes a test to determine whether a merger operates or might operate against the public interest. When the Secretary of State refers a particular merger to the Competition Commission, the Commission must take into account "all matters that appear to them in the particular circumstances to be relevant.</p>	<p>3- Where the OFT is informed of a prospective merger, third parties are generally given an opportunity to comment.</p>	<p>2- If the CC concludes that the merger may not be expected to operate against the public interest, the Secretary of State is not entitled to intervene. If the CC finds, by a two-thirds majority of the investigating panel, against the merger or that it should be allowed only if remedial action is taken, the Secretary of State has a discretion to make a decision. The final ruling on whether or not a merger may proceed is a governmental one through the Secretary of State.</p>	<p>1- The Secretary of State has a discretion either to block the merger or to permit it, conditionally or unconditionally. It has power to make a wide variety of orders following an adverse CC report but in practice undertakings are normally accepted rather than orders imposed. Where a merger has already been completed, the same powers exist and divestment can be ordered where appropriate. Failure to comply with an order made by the Secretary of State would result in the relevant companies being liable for contempt of court.</p> <p>2- Relevant companies</p>	<p>1- Judicial review. There is no statutory right of appeal from a recommendation of the CC or a decision made under the FTA by the Secretary of State. Such categories of decision-making are, however, subject to narrow rights of judicial review (for example, on grounds of illegality, irrationality or procedural irregularity).</p> <p>2- The High Court does not act as a court of appeal for the procedure but will simply review the merits of the decision-making process.</p>	<p>1- Special regimes exist for newspaper transfers and large water company mergers.</p>

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			merger would be automatically cleared where no reference has been made by the end of that period."						
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UNITED STATES	While Mergers in the United States at the federal level can be examined under the Clayton Act, the Sherman Act and the Federal Trade Commission Act, in practice both the FTC and the DOJ review mergers under the Clayton Act. Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (section 7a of the Clayton Act) established the federal pre- notification program	Federal Trade Commission (independent administrative agency) and the United States Department of Justice (part of the executive branch of the government)	1- Mandatory Notification. 3- There is no specific deadline for making a filing under the HSR Act. The parties can submit their filings at any time after the execution of a letter of intent (which can be non-binding) or definitive agreement. However. If a transaction is covered by the HSR Act, it can not be consummated until all required filings have been made and the applicable waiting period(s) has been observed.	2- Restriction of Competition. No person shall acquire [...] where [...] the effect of such acquisition maybe substantially to lessen competition, or to tend to create a monopoly” Cf. section 7 Clayton Act and Horizontal Merger Guidelines (US), Sections 1-3 5- The analysis of efficiencies is incorporated into the competition analysis	1- Under certain limited circumstances, private individuals, as well as foreign and state governments, may sue in federal court for damages or injunctive relief based on violations of the Clayton Act or Sherman Act. 3- Complainants (customers, competitors or others) have no formal rights to participate in the process. However, as a practical matter, the Agencies are very likely to contact a broad group of interested parties if a transaction presents possible competitive issues	5- Share merger enforcement Federal Trade Commission (Independent Agency) Department of Justice (Executive Agency)	1- If the Agency believes that the proposed acquisition may violate the antitrust laws, it has the power to seek an injunction in federal court prohibiting the transaction. The Agency has a right to impose a fine for failure to comply with any provision of the HSR Act.	1-Appeal. 2-Court of Appeals (and ultimately to Supreme Court). 3- Most litigated cases (FTC and DOJ) resolved at preliminary injunctions stage. Parties usually abandon transaction if agency win in court. Agency usually abandon challenge if parties win in court.	1- Special rules can apply to certain industrial sectors (telecommunications and banking).

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UZBEKISTAN	Law of the Republic of Uzbekistan on competition and restriction of monopolistic activity at the markets	1- The State Antimonopoly Body	1 - Mandatory Notification 3- a) Pre- Merger Notification. Must be notified in 15 days term.	1 - Dominance test 2 - Restriction of Competition.	No special legislative provisions.	1 - The State Antimonopoly Body	1 - The state antimonopoly body has a right to impose penalties (Art.18). The bodies guilty of violation of the antimonopoly legislation may be held administratively, criminally and in other ways responsible. 2 -Undertakings- legal bodies, undertakings- physical bodies, administrative bodies.	1 - Appeal 2 - Courts 4 - Within 1 month from the issue date of the decision.	No specific rules for sectors

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VENEZUELA	<p>The Venezuelan competition rules on mergers are contained in:</p> <ul style="list-style-type: none"> - the Venezuelan Competition Law (Ley para Promover y Proteger el Ejercicio de la Libre Competencia) published in Official Gazette N° 34,880 dated January 13, 1992 ('the Competition Law'); - Regulation No. 2 under the Competition Law, published in Official Gazette N° 35,963 dated May 21, 1996, on mergers ('the Merger Regulation'); and - Certain resolutions issued under the Merger Regulation. 	<p>3- The governmental body primarily in charge of enforcing the Competition Law and the Merger Regulation is the Superintendencia para la Promoción y Protección de la Libre Competencia ('Procompetencia'), an autonomous agency which is part of the Ministry of Production and Commerce.</p>	<p>2- In Venezuela filing is voluntary. However, if the threshold is met, Procompetencia may open a proceeding to investigate the impact of any transaction on competition in the Venezuelan market within one year following the consummation of the transaction.</p> <p>4- Voluntary notifications should be evaluated within four months of the date of filing, although the period may be extended by a further two months. However, prior notification does not impede the consummation of the transaction.</p>	<p>4- There are several aspects to consider in determining whether or not a transaction is anti-competitive. Some of the most important are:</p> <ul style="list-style-type: none"> - the level of concentration in the relevant market before and after the transaction; - barriers to entry for new competitors; - the availability of substitute products; - the possibility of collusion between the remaining suppliers; and <p>5- Efficiencies created by the transaction (effective competition, the interests of consumers, promotion of cost reduction and development of new technology). The main focus of the test has been on barriers to entry.</p>	<p>3- In the case of voluntary filing, third parties may become parties in the proceeding and may oppose the transaction. In the case of transactions which are not notified to Procompetencia, third parties may request that Procompetencia open an investigation to evaluate the transaction only after its closing.</p>	<p>2- Superintendencia para la Promoción y Protección de la Libre Competencia ('Procompetencia')</p>	<p>1- Procompetencia has the power to take appropriate measures for the purposes of reinstating effective competition. Such measures include the unwinding of the transaction, divestitures, or the imposition of fines of up to 40 per cent of the gross sales of the offending party for the preceding year. Although the Competition Law provides that any anti-competitive transaction is null and void, it seems that this does not necessarily apply to mergers.</p>	<p>1- Any affected party may appeal against a decision of Procompetencia.</p> <p>2- First Administrative Court.</p> <p>3- In general, the appeal automatically suspends the effects of the decision, provided that a bond is posted by the appellant. However, to date suspension has not been applied by the Court in the case of a merger. Finally, First Administrative Court decisions can now be appealed to the Supreme Court.</p> <p>4- Within 45 days from the rendering of the Procompetencia decision.</p>	<p>1- Neither the Competition Law nor the Merger Regulations contain special rules regarding particular sectors. However, there are special rules applying to banking, insurance and telecommunications which include requirements unrelated to antitrust issues.</p>

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YUGOSLAVIA	<p>The Antimonopoly Commission does not deal with mergers. At the moment, the existing Antimonopoly law of the FRY ("Official Gazette of the FRY", no. 29/96) contrary to other laws dealing with competition rules defines only two issues which are as follows: ban on abuse of the monopolistic/dominant position of an enterprise on the market and conclusion of monopolistic agreements. With an aim to be compatible with the EU regulations, the making of the new law, primarily covering the merger control as well as adjusting specific defects in order to comply with the EU regulations, is in the process. The draft of the new law will be finished by the end of the 2002.</p>								
ZAMBIA	<p>The Competition and Fair Trading Act of 1994. Chapter 417 of the Laws of Zambia</p>	<p>Zambia Competition Commission (ZCC) (Statutory Body corporate with perpetual succession). ZCC has wide ranging powers of enforcement and investigation under the act.</p>	<p>1- Mandatory Notification. 3- a) Pre-merger Notification. 4- It takes at least 3 months to complete a merger/takeover case.</p>	<p>1- Dominance Test 2- Restriction of Competition. The assessment of mergers or takeover by the Commission focuses on the question of whether a proposed transaction is likely to prevent, distort or lessen</p>	<p>No special legislative provisions.</p>	<p>Zambia Competition Commission</p>	<p>1- The Commission may impose fines or imprisonment.</p>		<p>No specific rules for sectors.</p>

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				<p>competition.</p> <p>5- Efficiency considerations are of primary importance in assessing the extent to which there may be an overall public benefit from the merger.</p>					
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