

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## SWITZERLAND

FEBRUARY 2015

Website: <http://www.weko.admin.ch/index.html?lang=en>

**IMPORTANT NOTE:** This template is intended to provide background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

[PART 1: LEGISLATION, GUIDELINES AND JURISDICTION \(Questions 1 – 4\)](#)

[PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION \(Questions 5 – 14\)](#)

[PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY MERGER COOPERATION \(Questions 15 – 17\)](#)

[PART 4: SANCTIONS \(Question 18\)](#)

[PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW \(Questions 19 – 23\)](#)

QUICK LOOK SUMMARY	
<b>Mandatory or voluntary regime?</b>	<input checked="" type="checkbox"/> Mandatory <input type="checkbox"/> Voluntary
<b>Power to review non-notifiable transactions?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>What are the time limits for review?</b>	Initial review / Phase I <input type="text" value="1 month"/> Extended review / Phase II <input type="text" value="4 months"/>
<b>Substantive merger test?</b>	<input checked="" type="checkbox"/> Dominance <input type="checkbox"/> Significant impediment to effective competition <input type="checkbox"/> Substantial lessening of competition <input type="checkbox"/> Other <input type="text"/>

## PART 1: LEGISLATION, GUIDELINES AND JURISDICTION

### 1. Legal authority and guidance: Merger notification and review

(please provide title(s), popular name(s), effective date and citation(s)/web address)

Statutory law	
<b>A. Notification provisions</b>	Article 9 of the Federal Act on Cartels and other Restraints of Competition (Cartel Act, CartA; SR 251) of 6 October 1995 (Status as of 1 May 2013). Link: <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> > Documentation > Legislation.
<b>B. Substantive merger review provisions</b>	Articles 10–11 and 32–38 of the Cartel Act (cf. 1.A.)
<b>C. Implementing regulations</b>	Ordinance on the Control of Concentrations of Undertakings (Merger Control Ordinance, MCO; SR 251.4) of 17 June 1996 (Status as of 1 January 2013). Link: <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> > Documentation > Legislation.
<b>D. Notification forms or information requirements</b>	The Swiss Competition Commission (COMCO) has published a combined explanatory note and form for the notification of mergers. An updated version of the Merger Notification Explanatory Note and Form is available in German, French and Italian (Status as of 21 October 2014). <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> > Dienstleistungen > Meldeformulare.
Agency guidance	
<b>E. Guidance on merger notification process (e.g., regarding the calculation of thresholds, etc.)</b>	Cf. 1.D.  There is also a note by the COMCO's Secretariat on the notification and evaluation practice of mergers of 25 March 2009 (continuously updated). It is available in German only and published on the COMCO's website: <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> > Dienstleistungen > Meldeformulare > Praxis zur Meldung und Beurteilung von Zusammenschlüssen.
<b>F. Guidance on substantive assessment in merger review</b>	Cf. 1.D. and 1.E.

<b>G. Guidance on merger remedies</b>	No documents available.
<b>H. Guidance on the submission of information, especially regarding economic evidence or data, or electronic information</b>	Merger Notification Explanatory Note and Form (cf. 1.D.).
<b>I. Guidance or statements regarding the treatment of confidential information and/or domestic laws/regulations on third-party or public access to information provided during the review process (e.g., transparency regulations or freedom of information provisions)</b>	Art. 25 of the Cartel Act.  The Secretariat of the COMCO has published an explanatory note on business secrets. This explanatory note is available in German, French and Italian on the COMCO's homepage: <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> > Dokumentation > Bekanntmachungen/ Erläuterungen > Merkblatt: Geschäftsgeheimnisse.  See also 1.D., Numeral I.
<b>J. Guidance on pre-notification consultations</b>	See the updated version of the Merger Notification Explanatory Note, available in German, French and Italian (cf. 1.D.).
<b>K. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process</b>	No further relevant documents.
<b>L. If available, please provide a link to statistics on annual notifications received, clearances, prohibitions etc.</b>	The COMCO's Annual Report (section "statistics") contains a number of figures related to mergers such as the number of notifications received, the number of phase II mergers and the number of mergers with early implementation. See <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> > Documentation > Annual press conference, Annual Report or <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> > Dokumentation > Recht und Politik des Wettbewerbs (RPW), first volume of each year.

## 2. Agency or agencies responsible for merger enforcement

<b>A. Name of agency. If there is more than one agency, please describe allocation of responsibilities.</b>	Swiss Competition Commission (COMCO)  The COMCO is supported by a full-time Secretariat. The latter conducts the investigations, whereas the former takes the decisions. Parties have to submit notifications as well as pre-notifications to the Secretariat of the COMCO.
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<p><b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b></p>	<p>Competition Commission Secretariat</p> <p>Address until June 2015: Monbijoustrasse 43 3003 Bern Switzerland</p> <p>Address from July 2015 onwards: Hallwylstrasse 4 3003 Bern Switzerland</p> <p>Tel.: +41 58 462 20 40 Fax: +41 58 462 20 53 E-mail: <a href="mailto:weko@weko.admin.ch">weko@weko.admin.ch</a></p> <p>Website: <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> (in German, French, Italian and English; please note that not all the content of the website is available in all four languages)</p>
<p><b>C. Agency contact information for jurisdiction/filing guidance (including possible pre-notification consultations).</b></p>	<p>Please contact:</p> <p>For cases regarding products: Mr. Patrik Ducrey (direct line:+41 58 464 96 78)</p> <p>For cases regarding services: Mr. Olivier Schaller (direct line: +41 58 462 21 23)</p> <p>For cases regarding infrastructure: Ms. Carole Söhner-Bührer (direct line:+41 58 464 96 69)</p> <p>For cases regarding construction: Mr. Frank Stüssi (direct line:+41 58 462 27 07)</p>

### 3. Jurisdiction: Covered transactions

<p><b>A. Definitions of potentially covered transactions (i.e., share acquisitions, asset acquisitions, mergers, de-mergers and combinations such as consolidations, amalgamations and joint ventures)</b></p>	<p>Art. 4 para. 3 of the Cartel Act: Concentration of undertakings are:</p> <ul style="list-style-type: none"> <li>- the merger of two or more previously independent undertakings;</li> <li>- any transaction, in particular the acquisition of an equity interest or the conclusion of an agreement, by which one or more undertakings acquire direct or indirect control of one or more previously independent undertakings or parts thereof.</li> </ul> <p>A change of control is usually also covered by this definition.</p>
<p><b>B. If change of control is a determining factor, how is control defined and interpreted in practice?</b></p>	<p>Art. 1 of the Merger Control Ordinance defines control as the ability of an undertaking to exercise a decisive influence on the activity of the other undertaking by the acquisition of rights over shares or by any other means. Control is assumed if major aspects of an undertaking's business activity (e. g. the production, the prices, the investments, the supply, the sales or the</p>

	distribution of the profits) or its general business policy may be decisively influenced. It is not important whether control is actually exercised nor whether control is vested directly or indirectly.
<b>C. Are partial (less than 100%) interests/minority shareholdings covered? At what levels?</b>	Yes. As change of control as described above is a determining factor, partial interests and minority shareholdings are covered if they allow an undertaking to exercise a decisive influence over another undertaking.
<b>D. If the notification requirements cover joint ventures, what types of joint venture are covered (e.g., production joint ventures)?</b>	<p>Corporate joint ventures are subject to merger control if the joint venture performs all the functions of an autonomous economic entity on a lasting basis (Art. 2 para. 1 Merger control Ordinance). If two or more undertakings found an undertaking that they intend to control jointly, this constitutes a concentration of undertakings if the joint venture performs the aforementioned functions and if business activities from at least one of the controlling undertakings are transferred to the joint venture (Art. 2 para. 2 Merger Control Ordinance). Transitory joint control for a very limited period of up to one year during the starting-up period of the joint venture is , however, not considered as a separate merger and therefore does not require a separate merger filing (see <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> &gt; Dienstleistungen &gt; Meldefomulare &gt; Praxis zur Meldung und Beurteilung von Zusammenschlüssen, “Verkürzung der Anlaufzeit bei Zusammenschlüssen”).</p> <p>The Secretariat of the COMCO has decided in a case that a merger is exempted from notification if the following two conditions are both met: firstly, the joint venture neither has activities in Switzerland nor generates any revenues in Switzerland, and secondly, neither such activities or revenues in Switzerland are planned nor are to be expected in the future (see: <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> &gt; Dienstleistungen &gt; Meldefomulare &gt; Praxis zur Meldung und Beurteilung von Zusammenschlüssen).</p>

#### 4. Jurisdiction: Thresholds for notification

Key threshold information	
<b>A. What are the thresholds for notification? If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)</b>	<p>According to Art. 9 para. 1 Cartel Act, the COMCO must be notified of planned concentrations of undertakings before their implementation if in the financial year preceding the concentration:</p> <ol style="list-style-type: none"> <li>the undertakings concerned together reported a turnover of at least 2 billion Swiss francs, or a turnover in Switzerland of at least 500 million Swiss francs, and</li> <li>at least two of the undertakings concerned each reported a turnover in Switzerland of at least 100 million Swiss francs.</li> </ol> <p>The Federal Assembly may by general federal decree not subject to a referendum adjust the amounts set forth in Art. 9 para. 1 and 3 Cartel Act, taking account of any change in circumstances (Art. 9 para. 5 Cartel Act).</p>

<p><b>B. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)?</b></p> <p>If based on an “effects doctrine,” please describe how this is applied in practice.</p>	<p>Thresholds apply to both worldwide sales and sales within the jurisdiction as described in the answer to question 4.A.</p> <p>For further guidance with regard to the geographical attribution of turnovers see <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> &gt; Dienstleistungen &gt; Meldeformulare &gt; Praxis zur Meldung und Beurteilung von Zusammenschlüssen, “Geografische Zuordnung von Umsätzen”. In product markets, basically the location of demand side is relevant (place of delivery of the product, e.g. “where competition for the client takes place”; the billing address is usually not relevant). In Service markets different rules may apply.</p>
<p><b>C. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</b></p>	<p>No (cf. 4.A.), but a party with a dominant position has to notify a merger even when the thresholds are not reached (for more information, cf. 4.F.).</p>
<p><b>D. Are any sectors excluded from notification requirements? If so, which sectors?</b></p>	<p>No sectors are excluded from notification requirements.</p>
<p><b>E. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)?</b></p>	<p>No special rules apply for foreign undertakings with respect to the application of jurisdictional thresholds.</p>
<p><b>F. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so what is the procedure to initiate a review?</b></p>	<p>Yes. Notification is mandatory if one of the undertakings concerned has in proceedings under the Cartel Act in a final and non-appealable decision been held to be dominant in a market in Switzerland, and if the concentration concerns either that market or an adjacent market or a market upstream or downstream thereof (Art. 9 para. 4 Cart Act).</p>
<p><b>Calculation guidance and related issues</b></p>	
<p><b>G. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</b></p> <p><b>(i) the value of the</b></p>	<p>Only (ii) is relevant: Thresholds apply to both worldwide sales and sales within the jurisdiction as described in the answer to question 4.A, with the location of the customer being the relevant location for calculating the sales.</p> <p>For the calculation of the turnover, see Art. 4 (as follows) and 5 (cf. 4.H.) of the Merger Control Ordinance.</p>

<p><b>transaction</b></p> <p><b>(ii) the relevant sales or turnover</b></p> <p><b>(iii) the relevant assets</b></p> <p><b>(iv) market shares</b></p> <p><b>(v) other (please describe)</b></p>	<p>Art. 4 para. 1 Merger Control Ordinance: For the calculation of turnover, all reductions such as discounts, rebates, value added tax and other consumption taxes as well as other taxes directly related to turnover shall be deducted from the amounts derived by the undertakings concerned from the sale of products and the provision of services within the ordinary business activities of the undertakings concerned in the preceding financial year.</p> <p>Art. 4 para. 2 Merger Control Ordinance: Financial years that do not cover a full twelve month period shall be converted to a full twelve month period based on the average turnover of the recorded months. Turnover in foreign currencies shall be converted into Swiss francs in accordance with generally accepted accounting principles applicable in Switzerland.</p> <p>Art. 4 para. 3 Merger Control Ordinance: If, within a period of two years, two or more transactions take place between the same undertakings resulting in the acquisition of control over parts of these undertakings, those transactions shall be treated as a single concentration for the purposes of calculating the turnover. The decisive date is the date of the last transaction.</p> <p>For insurances and banks cf. 4.I.</p>
<p><b>H. Which entities are included in determining relevant undertakings/firms for threshold purposes?</b></p> <p><b>If based on control, how is control determined for notification purposes?</b></p>	<p>Merger notification thresholds apply to the turnover of the undertakings concerned in the concentration, which is (Art. 3 Merger Control Ordinance):</p> <ul style="list-style-type: none"> <li>- In a merger: the merging undertakings</li> <li>- In an acquisition of control: the controlling and the controlled undertakings. If only part of an undertaking is the subject of the concentration, it is that part that constitutes the undertaking concerned.</li> </ul> <p>According to Art. 5 para. 1 Merger Control Ordinance, the turnover of an undertaking concerned shall consist of the turnover from its own business activities and the turnover of:</p> <ol style="list-style-type: none"> <li>a. the undertakings in which it owns more than one half of the capital or holds more than one half of the voting rights or in which it is entitled to appoint more than half of the members of the bodies legally representing the undertaking or in which it otherwise has the right to manage the undertaking's affairs (subsidiaries);</li> <li>b. the undertakings which alone or jointly have the rights or powers listed under letter a (parent companies);</li> <li>c. the undertakings in which an undertaking under letter b has the rights or powers listed under letter a (sister companies);</li> <li>d. the undertakings over which two or more undertakings listed in this paragraph jointly have the rights or powers listed under letter a (joint venture companies).</li> </ol>
<p><b>I. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of</b></p>	<p>In the case of insurance companies, the gross annual insurance premium income is taken into account for the purposes of determining the relevant thresholds (Art. 9 para. 3 Cartel Act and Art. 6 of the Merger Control Ordinance).</p> <p>In the case of banks and other financial intermediaries, the relevant thresholds are calculated by gross income (Art. 9 para. 3 Cartel Act, Art. 8 of the Merger Control Ordinance, as well as the combined explanatory note and form for the notification of mergers [cf. 1.D.]).</p>

transactions?	
<b>J. Describe the methodology for calculating exchange rates.</b>	Turnover in foreign currencies are converted into Swiss francs in accordance with generally accepted accounting principles applicable in Switzerland (Art. 4 para. 2 Merger Control Ordinance). The conversion is carried out based on the average annual exchange rate according to the the publication in the Swiss National Bank (SNB) Monthly Statistical Bulletin. (combined explanatory note and form for the notification of mergers, numeral 3).

## PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION

### 5. Pre-notification

<b>A. If applicable, please describe the pre-notification procedure (e.g., time limits, type of guidance given etc.)</b>	Undertakings can in advance hand in a draft of the notification to the Secretariat of the COMCO, which it then evaluates (Art. 23 para. 2 Cartel Act). The Secretariat will then evaluate whether the notification is complete (similar to Art. 14 Merger Control Ordinance). There is no time limit for the prenotification procedure.
<b>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</b>	The Secretariat of the COMCO will evaluate the draft of the notification based on the information and documents handed in. There are no requirements at this stage regarding information and documents. The more information is handed in though, the better is the forecast of the Secretariat concerning the completeness of the successive notification.

### 6. Notification requirements and timing of notification

<b>A. Is notification...</b>	<input checked="" type="checkbox"/> Mandatory pre-merger <input type="checkbox"/> Mandatory post-merger <input type="checkbox"/> Voluntary
<b>B. If parties can make a voluntary merger filing when may they do so?</b>	Not applicable.
<b>C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an</b>	A transaction can basically be notified at any given time prior to the execution of a merger or concentration, as long as the notification contains all information and documents mandatory according to the Merger Control Ordinance.



<p><b>agreement considered definitive?)?</b></p>	<p>A requirement to notification is generally the conclusion of the purchase agreement. If the purchase agreement is not yet concluded and the merger merely intended, a notification is possible if the notifying parties can credibly demonstrate that the undertakings taking part in the merger are willing to conclude the purchase agreement. See <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> &gt; Dienstleistungen &gt; Meldeformulare &gt; Merkblatt und Formular Zusammenschlussvorhaben.</p>
<p><b>D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</b></p>	<p>There is no triggering event. In any case the notification must be made before the implementation of the concentration.</p> <p>In the case of a public bid for the acquisition of an undertaking, the notification is to be made immediately after the publication of the offer, and in any case before its implementation (combined explanatory note and form for the notification of mergers [cf. 1.D.], numeral F.).</p>
<p><b>E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</b></p>	<p>Not applicable.</p>
<p><b>F. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</b></p>	<p>Yes.</p>

## 7. Simplified procedures

<p><b>A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information</b></p>	<p>Art. 12 Merger Control Ordinance: Prior to the notification of a concentration, the undertakings concerned and the Secretariat of the COMCO may mutually agree on the details of the content of the notification. In doing so, the Secretariat may grant an exemption from the duty to submit particular information or documents set out in Article 11 paragraphs 1 and 2 if it is of the opinion that such information is not required for the assessment of the case. The duty to disclose additional information and documents in accordance with Article 15 is reserved.</p>
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<p><b>requirements, etc.).</b></p>	<p>Parties may submit a simplified notification in cases that do not raise any 'prima facie' competition problems. Such a simplified notification may particularly be justified in cases for international mergers with limited effects on the Swiss market, for mergers that affect markets which the COMCO is already familiar with from previous decisions, or in cases a joint venture is founded in order to enter an emerging market</p> <p>For further information see combined explanatory note and form for the notification of mergers (cf. 1.D.), numeral B. and <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> &gt; Dienstleistungen &gt; Meldefomulare &gt; Praxis zur Meldung und Beurteilung von Zusammenschlüssen, numeral IV.</p>
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## 8. Information and documents to be submitted with a notification

<p><b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</b></p>	<p>According to Art. 11 para. 1 Merger Control Ordinance, the notification shall contain the following information:</p> <ol style="list-style-type: none"> <li>name, domicile and a brief description of the business activities of the undertakings that are to be taken into account to ascertain whether the thresholds are met in accordance with Articles 4-8, and of the seller of the shares;</li> <li>a description of the planned concentration, of the relevant facts and circumstances, and of the goals that are being pursued by the planned concentration;</li> <li>the turnover, balance sheet totals or gross premium income of the undertakings concerned calculated in accordance with Articles 4-8, and the amounts apportioned to Switzerland;</li> <li>information on all product and geographic markets that are affected by the concentration and in which two or more of the undertakings concerned jointly hold a market share of 20 per cent or more in Switzerland or in which one of the undertakings concerned holds a market share of 30 per cent or more in Switzerland, and a description of these markets containing at least information on the distribution and demand structures and on the importance of research and development;</li> <li>with regard to the markets referred to under letter d, the market shares of the undertakings concerned for the preceding three years and, if known, for each of the three principal competitors as well as an explanation of the basis used for calculating the market shares;</li> <li>for the markets referred to under letter d, information regarding undertakings that have newly entered the market in the preceding five years and undertakings that might enter these markets within the next three years and, if possible, the costs that would arise from an entry into the market.</li> </ol> <p>According to Art. 11 para. 2 Merger Control Ordinance, the notification shall be accompanied by the following documents:</p> <ol style="list-style-type: none"> <li>copies of the most recent annual accounts and annual reports of the undertakings concerned;</li> <li>copies of the agreements that effect the concentration or that are otherwise connected with it, insofar as their relevant content is not already contained in the information disclosed under Art. 11 para. 1 letter b Merger Control Ordinance, i. e. is not already contained in the notification itself;</li> <li>in the case of a public offer, copies of the offer documentation;</li> </ol>
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	<p>d. copies of the reports, analyses and business plans made with regard to the concentration insofar as they contain information relevant to the assessment of the concentration that is not already contained in description provided in accordance with Art. 11 para. 1 letter b Merger Control Ordinance, i.e. insofar as the information is not already contained in the notification itself.</p>
<p><b>B. Is there a procedure for obtaining information from target companies in the case of hostile/unsolicited bids?</b></p>	<p>There is no specific procedure for obtaining information from target companies of hostile/unsolicited bids.</p> <p>But the Cartel Act contains a provision regarding the duty to provide information. It states that parties to agreements, undertakings with market power, undertakings concerned in concentrations and affected third parties shall provide the competition authorities with all the information required for their investigations and produce the necessary documents (Art. 40 Cartel Act).</p>
<p><b>C. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalised?</b></p>	<p>No.</p>
<p><b>D. What is the agency's practice regarding exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</b></p>	<p>Information from the combined explanatory note and form for the notification of mergers (cf. 1.D.), numeral K:</p> <p>A notification submitted to a foreign authority may in principle also be used for notification purposes to the COMCO. A notification in one of the languages accepted (German, French or Italian) and containing all information required (Art. 11 Merger Control Ordinance) will be considered complete. The parts of the notification with the relevant information for Switzerland must be identified.</p> <p>Certain notions (for example control, joint venture, participating enterprise) contained in foreign regulations may not be identical to those of the Cartel Act and the Merger Control Ordinance. It is therefore recommended that the parties clarify with the Secretariat in advance whether such a notification can be considered as complete in Switzerland. The Secretariat can also inform the notifying undertaking which information must be completed.</p> <p>Sections 1–11 of the Form CO relating to the notification of a concentration pursuant to regulation (EC) No 139/2004 contain all information required by Art. 11 Merger Control Ordinance, provided that the parties complement the correspondent information for Switzerland.</p>
<p><b>E. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or</b></p>	<p>According to Art. 40 Cartel Act and Art. 15 para. 2 Merger Control Ordinance, the Secretariat may request affected third parties to provide information that may be relevant for the assessment of the planned concentration. To that end the Secretariat may inform third parties of the planned concentration in an appropriate manner while protecting the business secrets of the undertakings</p>

<p><b>otherwise contact the agency to intervene?</b></p>	<p>concerned, associated undertakings within the meaning of Art. 5 and the sellers.</p> <p>Information can also be handed in on a voluntary basis. In case of a second phase merger investigation, the Secretariat states a time frame within which third parties may comment on the notified concentration (Art. 33 para. 1 Cartel Act, see also Art. 19 Merger Control Ordinance).</p>
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## 9. Translation

<p><b>A. In what language(s) can the notification forms be submitted?</b></p>	<p>The notification itself must be in one of Switzerland's official languages (Art. 11 para. 4 Merger Control Ordinance), i.e. in French, German or Italian (or Romansh for communication with persons who speak this Swiss language, cf. Art. 70 para. 1 Federal Constitution of the Swiss Confederation, SR 101).</p> <p>Supporting documents (appendices) of the notification are also accepted in English (Art. 11 para. 4 Merger Control Ordinance and Art. 33a para. 3 of the Federal Act on Administrative Procedure of 20 December 1968 (Administrative Procedure Act, APA; SR 172.021)).</p> <p>The language of the notification will thereafter be the language of the proceeding, except otherwise agreed (Art. 11 para. 4 Merger Control Ordinance and Art. 33a Administrative Procedure Act).</p>
<p><b>B. Describe any requirements to submit translations of documents:</b></p> <p><b>(i) with the initial notification; and</b></p> <p><b>(ii) later in response to requests for information.</b></p> <p><b>In addition:</b></p> <p><b>(iii) what are the categories or types of documents for which translation is required;</b></p> <p><b>(iv) what are the requirements for certification of the translation;</b></p> <p><b>(v) which language(s) is/are accepted; and</b></p> <p><b>(vi) are summaries or excerpts are allowed in</b></p>	<p>(i) The notification must be made in one of the official languages of Switzerland (cf. 9.A.), but supporting documents of the notification are also accepted in English.</p> <p>(ii) As for the notification, the official languages of Switzerland are accepted for the communication.</p> <p>(iii) If a party files official documents that are not in an official language, the authority may with the consent of the other parties waive the requirement of a translation (Art. 33a para. 3 Administrative Procedure Act). If necessary, the authority shall order a translation to be obtained (Art. 33a para. 4 Administrative Procedure Act).</p> <p>(iv) There are no specific requirements for the certification of the translation.</p> <p>(v) Cf. 9.A. and 9.B. (i) and (ii)</p> <p>(vi) There are no such rules, but as mentioned in (iii) the authority may waive the requirement of a translation.</p>

<p><b>lieu of complete translations and in which languages are summaries accepted?</b></p>	
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## 10. Review periods

<p><b>A. Describe any applicable review periods following notification.</b></p>	<p>The Swiss merger control procedure is divided into two phases. The opening of an (in-depth) investigation must be notified to the parties within one month of receiving the notification (Art. 32 para. 1 Cartel Act). The one month period for examination procedure commences on the day following receipt of the complete notification and expires the following month at the end of the same numerical day as the day upon which the period commences (Art. 20 para. 1 Merger Control Ordinance). Should this day not exist in the month that immediately follows, then the period expires on the last day of such month (Art. 20 para. 3 of the Federal Act on Administrative Procedure of 20 December 1968 (Administrative Procedure Act, APA; SR 172.021)). The Secretariat will provide the notifying enterprises with a written confirmation of the receipt of the notification and its completeness.</p> <p>The in-depth investigation has to be completed within a period of four months (Art. 33 para. 3 Cartel Act).</p>
<p><b>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</b></p>	<p>The Cartel Act does not contain any specific rules regarding public takeover bids. In these cases, the COMCO should be contacted in advance so that it can coordinate its course of action with the Swiss Takeover Board (TOB). This is particularly important for hostile bids.</p>
<p><b>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</b></p>	<p>The maximum time for the preliminary assessment (first phase) is one month after the complete notification (Art. 32 para. 1 Cartel Act) has been handed in. The authority is obliged to complete its in-depth investigation (second phase) within four months unless prevented from doing so for reasons attributable to the undertakings concerned (Art. 33 para. 3 Cartel Act). Requests for additional information thus basically do not suspend or restart the review period.</p> <p>Thus, extensions are only possible for reasons attributable to the enterprises taking part. This includes prolonging the evaluation period with consent of the parties e.g. for finding possible remedies.</p>
<p><b>D. Is there a statutory or other maximum duration for extensions?</b></p>	<p>The law does not state a specific maximum length of the possible extensions mentioned in 10.C.</p>
<p><b>E. Does the agency have the authority to suspend</b></p>	<p>No. Exception cf. 10.C.</p>

<b>review periods? Does suspending a review period require the parties' consent?</b>	
<b>F. What are the time periods for accelerated review of non-problematic transactions, if any?</b>	There are no specific time periods for non-problematic transactions.
<b>G. What is the procedure for offering and assessing remedies and how does this impact the timing of the review?</b>	<p>According to Art. 10 para. 2 Cartel Act, the COMCO may prohibit a concentration or authorise it subject to conditions and obligations if the investigation indicates that the concentration creates or strengthens a dominant position liable to eliminate effective competition (lit. a); and does not improve the conditions of competition in another market such that the harmful effects of the dominant position can be outweighed (lit. b).</p> <p>There are no specific provisions or procedures for offering and assessing remedies. However the assessment of remedies has no impact on the timing of the investigation. i.e with and without remedies, the maximum examination time for the first phase is one month and for the second phase (in-depth examination) four months (cf. 10.A.). However, with consent of the parties, e.g. for finding possible remedies, the review period might be prolonged.</p>

## 11. Waiting periods / suspension obligations

<b>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</b>	Participating enterprises must refrain from implementing the concentration for one month following the notification unless, at their request, the Commission has authorised them to do so for good cause. If within the one month period no notice of the opening of an investigation is given, the merger may be completed. If the COMCO decides to initiate an investigation, it must be completed within a period of four months, during which the implementation of the concentration is prohibited, unless authorized by the Commission in exceptional cases (Art. 33 para. 2 Cartel Act). Please see also answer to question 11.F.
<b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b>	The parties may request the COMCO to exceptionally allow the implementation of the merger before the end of the (preliminary or in-depth) investigation (Art. 32 para. 2 and Art. 33 para. 2 Cartel Act). This may, for instance, be the case for a restructuring merger of a target company in serious financial difficulties (see combined explanatory note and form for the notification of mergers (cf. 1.D. for the link), numeral H.).
<b>C. Are the applicable waiting periods/suspension obligations limited to</b>	The waiting periods refer to the notified transaction and do not distinguish between jurisdictions. Theoretically, parties might be allowed to implement transactions in other jurisdictions if those

<p><b>aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)?</b></p> <p><b>If not, to what extent can the parties implement the transaction outside the jurisdiction prior to clearance (e.g., derogation from suspension, hold separate arrangements)?</b></p>	<p>can be clearly separated from the transaction in Switzerland and they do not have competition effects in Switzerland.</p>
<p><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<p>Yes.</p>
<p><b>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</b></p>	<p>The COMCO is obliged to complete its in-depth investigation within four months unless prevented from doing so for reasons attributable to the undertakings taking part (cf. 10.C.). This may include an extension of the period with the consent of the parties to find possible remedies.</p>
<p><b>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b></p>	<p>Once notification is completed, the transaction may not be closed for a period of one month, or until the COMCO has issued its clearance, i.e. its decision not to open an investigation, whichever is earlier. If within that one-month period the COMCO decides to investigate the merger, the transaction cannot be closed prior to the COMCO rendering its final decision (within 4 months) unless it has given special authorisation. The enterprises may file for early consummation of the transaction in certain limited circumstances (Art. 32 para. 2 Cartel Act). The COMCO shall decide, at the outset of the investigation, whether the concentration may be carried out provisionally by way of exception or whether it should remain suspended. An exception might be granted for example for a takeover which involves a situation where the enterprise being acquired would in short time go bankrupt if the concentration was not carried out.</p>
<p><b>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</b></p>	<p>In the event a merger which is subject to notification is closed without notification or prior to clearance, the enterprises involved face substantial fines and may be required to take measures to reinstate effective competition, either by unwinding the transaction, by ceasing to exercise effective control or by any other appropriate action.</p>

## 12. Responsibility for notification / representation

<p><b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</b></p>	<p>In case of a statutory merger, notification must be made jointly by the undertakings concerned. In case of the acquisition of control, the filing must be made by the undertaking or undertakings acquiring control.</p>
<p><b>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</b></p>	<p>The Cartel Act does not contain any specific rules regarding public takeover bids.</p>
<p><b>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</b></p>	<p>There is no obligation that the notifying parties need to be represented by a lawyer.</p>
<p><b>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</b></p>	<ol style="list-style-type: none"> <li>1. Representatives of parties must submit a written document to prove that they are authorised (usually a power of attorney).</li> <li>2. No. However if they live abroad, they must indicate a domicile for service in Switzerland, unless international law permits the authority to serve notices in the state concerned by post. Alternatively they may also indicate an electronic mail address and declare that they consent to service by electronic mail. [Art. 11b para. 1 and 2 Administrative Procedure Act]</li> <li>3. No.</li> </ol>

## 13. Filing fees

<p><b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of</b></p>	<p>For the first phase a flat fee of 5000 Swiss francs is imposed on the notifying parties (Art. 1 para. 1 lit. c in conjunction with Art. 4 para. 3 of the Ordinance on Fees and Charges in the Cartel Act (SR 251.2) of 25 February 1998 (Status as of 1 January 2013)</p> <p>If the COMCO decides to conduct an (in-depth) investigation (second phase) according to Art. 33 Cartel Act, the fees from that point onwards are based on the expenditure of time, with rates per hour ranging from CHF 100 to CHF 400 (Art. 1 para. 1 lit. c in conjunction with Art. 4 para. 1 and 2 GebV-KG). The exact rates</p>
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<b>transaction)?</b>	<p>per hour depend on the urgency of the case and the position of the staff involved.</p> <p>The fee for the evaluation of the pre-notification is included in the flat fee of CHF 5000 if a notification is handed in later on and the notification is evaluated according to Art. 32 Cartel Act. If no notification is handed in, the fee for pre-notification is based on fees charged for expert reports and other services (Art. 1 para. 1 lit. d GebV-KG). The latter fees are based on the expenditure of time.</p>
<b>B. Who is responsible for payment?</b>	The undertakings concerned in the concentration.
<b>C. When is payment required?</b>	The undertakings have 30 days after receipt of the final decision to pay the fee.
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	Parties receive an invoice. The due amount is usually paid by transfer.

## 14. Process for substantive analysis and decisions

<b>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</b>	Procedural stages are neither defined at the level of legislation nor at the level of ordinances. Furthermore, the COMCO has neither published an informal note/notification on this subject.
<b>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</b>	The COMCO applies a dominance test based on Art. 10 para. 1 Cartel Act (cf. 14.C.).
<b>C. What theories of harm does the agency consider in practice?</b>	<p>According to Art. 10 para. 2 Cartel Act, the COMCO may prohibit a concentration or authorise it subject to conditions and obligations if the investigation indicates that the concentration: a. creates or strengthens a dominant position liable to eliminate effective competition; and b. does not improve the conditions of competition in another market such that the harmful effects of the dominant position can be outweighed.</p> <p>Different from the European Commission and from the Bundeskartellamt, the COMCO has no guidelines on the substantive analysis of a merger.</p>

<p><b>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</b></p>	<p>In practice, the key stages in the substantive analysis are firstly the definition of the relevant markets and secondly the effect of the merger on the position of the parties in the market. The latter key stages can especially include the analysis of the following elements: actual and potential competition with barriers to entry, possible countervailing power of the opposite market side, collective dominance (if needed), elimination of effective competition, improvement of the conditions for competition in another market.</p>
<p><b>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</b></p>	<p>No, not by the agency. However, a concentration of undertakings that has been prohibited in accordance with Art. 10 Cartel Act may be authorised by the Federal Council at the request of the undertakings involved if, in exceptional cases, it is necessary for compelling public interest reasons (Art. 11 Cartel Act). It may thus override the decision made by the COMCO, the Federal Administrative Court or the Federal Court (Art. 36 Cartel Act).</p>
<p><b>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</b></p>	<p>Possible outcomes of the merger review are unconditional clearance, conditional clearance and prohibition (Art. 10 para. 2 Cartel Act).</p>
<p><b>G. What types of remedies does the agency accept in practice? How is the process initiated and conducted in practice?</b></p>	<p>The COMCO has in the past imposed structural as well as behavioural remedies. As mentioned in 10.G, there is no official procedure for assessing remedies. After the decision, usually an independent auditor supervises that the conditions are complied with.</p> <p>Some cases with remedies (not an exhaustive list) are the following:</p> <ul style="list-style-type: none"> <li>- RPW 2008/1, pp. 208–209, <i>Migros/Denner</i></li> <li>- PRW 2008/2, pp. 336–337, <i>fenaco/Steffen-Ris Holding AG</i></li> <li>- RPW 2008/3, p. 506, <i>Coop/Fust</i></li> <li>- RPW 2008/4, p. 661, <i>Coop/Carrefour</i></li> <li>- RPW 2009/4, p. 441, <i>Post/NZZ/Tamedia und Post/Tamedia</i></li> <li>- RPW 2012/4, pp. 880–881, <i>Schweizerische Post/La Poste</i></li> </ul> <p>Note: The COMCO's publication series RPW can be downloaded from: <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> &gt; Dokumentation &gt; Recht und Politik des Wettbewerbs (RPW).</p>

**PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY  
MERGER COOPERATION**

**15. Confidentiality**

<p><b>A. To what extent, if any, does the agency make public the fact that a pre-merger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</b></p>	<p>Neither the (pre-)notification nor its content are made public. However, the decision to open an investigation proceeding (second phase) is published in the Federal Gazette (&lt;<a href="http://www.admin.ch/ch/d/ff/index.html">www.admin.ch/ch/d/ff/index.html</a>&gt;) as well as in the Swiss Official Gazette of Commerce (SOGC) (&lt;<a href="http://www.shab.ch">www.shab.ch</a>&gt;) (cf. Art. 33 para. 1 Cartel Act and Art. 18 Merger Control Ordinance).</p>
<p><b>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</b></p>	<p>The notifying parties have no access to file during the preliminary assessment (i.e. first phase investigation). However if the COMCO opens an in-depth investigation of the merger, the notifying parties have a right of access to file concerning their merger (Art. 39 Cartel Act in conjunction with Art. 26f. Administrative Procedure Act). Exceptions are made where business secrets and internal documents are concerned (Art. 27 Administrative Procedure Act; cf. 15.C.).</p> <p>The notifying parties may view the files at the Secretariat of COMCO on appointment (Art. 26 para. 1 Administrative Procedure Act) and may copy documents if they wish to do so. The Secretariat of the COMCO can also make the documents available for inspection electronically provided the party or his representative is in agreement (Art. 26 para.1bis Administrative Procedure Act).</p>
<p><b>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)?</b></p> <p><b>If so, under what circumstances?</b></p>	<p>In principle, third parties can get access to all documents of the COMCO (including submissions of the parties) according to the Federal Act on Freedom of Information in the Administration of 17 December 2004 (Freedom of Information Act, FoIA; SR 152.3). However, there are exceptions for business secrets and personal data. The former have to be described, while the latter have to be made anonymous. In case this is not possible, a decision has to be taken case by case. In this regard, the COMCO discloses information to third parties only in a restrained manner, as, until now, there is little practice concerning the relation between privacy and freedom of information by the Federal Data Protection and Information Commissioner (FDPIC) and the courts in Switzerland, giving clear guidelines how much information can be disclosed by the authorities. Access to documents according to the Freedom of Information Act is granted only after an investigation has been closed by the authority.</p>
<p><b>D. Are procedures available to request confidential treatment of the fact of</b></p>	<p>There are no such special procedures. The opening of an in-depth investigation (second phase) has to be published by law. However, the competition authorities are bound by professional</p>

<b>notification and/or notification materials? If so, please describe.</b>	secrecy (Art. 25 para. 1 Cartel Act). Information collected in performance of their duties may be used only for the purpose of the investigation (Art. 25 para. 2 Cartel Act). The Swiss competition authorities' publications may not reveal business secrets.
<b>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</b>	<p>Yes, the COMCO can deny a party's claim that certain information contained in notification materials is confidential. The COMCO can issue a ruling stating which information it considers as being confidential. This ruling as all rulings is subject to an appeal (Art. 5 para. 1 lit. c and Art. 44 Administrative Procedure Act (APA)).</p> <p>The Federal Administrative Court is the competent court for the dealing with the appeal (Art. 31 and Art. 33 lit. f of the Federal Administrative Court Act of 17 June 2005 [VGG, SR 173.32]).</p>
<b>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</b>	<p>The competition authorities are bound by the rules on official secrecy (Art. 25 para. 1 Cartel Act). The competition authorities' publications may not reveal any business secrets (Art. 25 para. 4 Cartel Act).</p> <p>The concerned parties as well as third parties are requested to designate business secrets or to directly hand in additional versions of their filings without business secrets. Before publishing a decision or rulings, the COMCO will eliminate business secrets, usually by consulting the parties beforehand.</p> <p>In case it is contested if an information contains business secrets, the COMCO will issue a ruling (see above 15.E.).</p> <p>Cf. 1.E. with link for the explanatory note on business secrets, which the Secretariat of the COMCO has published on its homepage.</p>

## 16. Transparency

<b>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</b>	Yes. Cf. 1.L.
<b>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each</b>	<p>Only few mergers of those assessed by the COMCO are accompanied by a press release. The COMCO's press releases can be downloaded from its homepage and are usually available in German, French and Italian, but only rarely in English, too: <a href="http://www.weko.admin.ch">www.weko.admin.ch</a> &gt; Aktuell&gt; Medieninformationen</p> <p>As mentioned before (cf. 15.A.), the decision to open an investigation proceeding (second phase) as well as the final decision of the COMCO (summary) are published in the Federal Gazette as well as in the SOGC (Art. 18 and 23 Merger Control</p>

<p>decision)?</p>	<p>Ordinance).</p> <p>The results of the COMCO's merger assessments (phase one- and phase two-decisions) are published in its publication series RPW (cf. 1.D. for the link of the online version), usually only in the language of the case.</p>
<p><b>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.</b></p>	<p>Cf 15.A. and 16.B.</p>

## 17. Interagency Merger Cooperation

<p><b>A. Is the agency able to exchange information or documents with foreign competition authorities?</b></p>	<p>Cf. 17.B. and 17.C.</p>
<p><b>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b></p>	<p>Yes, the agency is party to the Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws of 17 May 2013 (Swiss-EU-Cooperation-Agreement; SR 0.251.268.1). For the English version, see &lt;<a href="http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A1203(01)&amp;from=EN">eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A1203(01)&amp;from=EN</a>&gt; (or see &lt;<a href="http://ec.europa.eu/competition/international/bilateral">ec.europa.eu/competition/international/bilateral</a>&gt;, link in the table under Switzerland).</p> <p>Besides, Art. 104 of the Agreement on Free Trade and Economic Partnership Between the Swiss Confederation and Japan of 19 February 2009 (JSFTEPA; SR 0.946.294.632) as well as the associated Implementing Agreement regulate the cooperation on addressing anticompetitives practices between Switzerland and Japan and thus also the exchange of information. See &lt;<a href="http://www.seco.admin.ch/themen/00513/02655/02731/02970">www.seco.admin.ch/themen/00513/02655/02731/02970</a>&gt; link "The Text of the Basic Agreement" and link "Implementing Agreement", respectively.</p>
<p><b>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the</b></p>	<p>As mentioned in 17.B, Switzerland has an agreement with the European Union concerning the exchange of information between its competition agencies, i.e. the European Commission and the COMCO. The rules of the exchange of information are set in Article 7 of the Agreement. The authorities may informally discuss even confidential information. The exchange of confidential information for the purpose of proof is possible with the consent of the party* or – if certain conditions are met – even without the consent of the party.</p>

<p><b>agency accepts the ICN's model waiver of confidentiality in merger investigations form.</b></p>	<p>*If the notifying undertakings notify the concentration to the European Commission as well, the Swiss competition authorities ask the notifying undertakings to issue waivers for the European Commission and the Swiss competition authorities (see also Art. 7 para. 3 of the Swiss-EU-Cooperation-Agreement). This information exchange enables the authorities a faster evaluation of the concentration as well as a coordination with the proceedings of the European Union (cf. combined explanatory note and form for the notification of mergers (cf. 1.D.), numeral 10).</p> <p>Switzerland as well has an agreement with Japan concerning free trade which also regulates information exchange between their respective competition agencies.</p> <p>For all other competition agencies (including all national agencies within the European Union), Switzerland has no legal basis for the exchange of documents or information. In practice co-operation depends largely on the party's participation, especially the issuing of waivers.</p> <p>The Swiss competition authorities have no model waiver. The structure of the ICN's model waiver fulfills the Secretariat of the COMCO's requirements for a waiver. As mentioned in 9.A–B, the notification must be made in one of the official languages of Switzerland, but supporting documents of the notification are also accepted in English. Thus in practice, the Secretariat accepts waivers written in English, too.</p>
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**PART 4: SANCTIONS**

**18. Sanctions/penalties**

<p><b>A. What are the sanctions/penalties for:</b></p> <p><b>(i) failure to file a notification</b></p> <p><b>(ii) incorrect/misleading information in a notification</b></p> <p><b>(iii) failure to observe a waiting period/suspension obligation</b></p> <p><b>(iv) failure to observe or delay in implementation of remedies</b></p> <p><b>(v) implementation of transaction despite the</b></p>	<p>(i), (iii), (iv) and (v): According to Art. 51 para. 1 Cartel Act, any undertaking that implements a concentration that should have been notified without filing a notification, fails to observe the suspension obligation, fails to comply with a condition attached to the authorisation, implements a prohibited concentration, or fails to implement a measure intended to restore effective competition shall be charged up to one million Swiss francs. Furthermore a natural person who implements a concentration that should have been notified without filing a notification, or who violates rulings relating to concentrations of undertakings is liable to a fine not exceeding 20,000 Swiss francs (Art. 55 Cartel Act).</p> <p>(i): Besides, according to Art. 35 Cartel Act, if a concentration of enterprises has been carried out without due notification, the procedure set forth at Articles 32 to 38 (notably the assessment of the merger) shall be initiated ex officio.</p> <p>(ii): According to Art. 52 Cartel Act, any undertaking that does not, or does not fully fulfil its obligation to provide information or produce documents shall be charged up to 100 000 Swiss francs. Furthermore a natural person who wilfully does not, or does not</p>
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<p><b>prohibition from the agency?</b></p>	<p>fully comply with a ruling of the competition authorities concerning the obligation to provide information (Art. 40 Cartel Act) is liable to a fine not exceeding 20,000 Swiss francs (Art. 55 Cartel Act).</p> <p>(iv): According to Art. 51 para. 2 Cartel Act, in case of <i>repeated</i> failure to comply with a condition attached to the authorisation, the undertaking shall be charged up to 10 per cent of the total turnover in Switzerland achieved by all the undertakings concerned. Article 9 paragraph 3 Cartel Act applies by analogy.</p> <p>(v) If a merger is prohibited after completion and exceptional authorization for the concentration has not been requested or granted, the undertakings taking part are required to take the necessary steps to re-establish effective competition (Art. 37 para. 1 Cartel Act). According to Art. 37 para. 4 Cartel Act, if those steps are not approved by the COMCO, remedies may include:</p> <ul style="list-style-type: none"> <li>- separation of the concentrated enterprises or assets;</li> <li>- cessation of the effects of control;</li> <li>- other measures to re-establish effective competition.</li> </ul>
<p><b>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(v)?</b></p>	<p>See 18.A.</p>
<p><b>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</b></p>	<p>The authority can impose these sanctions/penalties directly. The prosecuting authority with regards to criminal offences is the Secretariat in consultation with a member of the presiding body. The decision-making authority is the COMCO (Art. 57 para. 2 Cartel Act).</p>
<p><b>D. Are there any recent or significant fining decisions?</b></p>	<p>On 10 December 2012, the Swica Gesundheitsorganisation was sanctioned CHF 35'000 because it had violated Art. 9 para. 1 of the Cartel Act by omitting to give notice of its acquisition of the company ProVAG. (RPW 2013/2, 222–234, Verfügung in Sachen Übernahme der ProVAG Versicherungen AG und der PROVITA Gesundheitsversicherung AG; for the link of the online version of the RPW see 1.D).</p> <p>On 23 September 2013, The Swatch Group AG was sanctioned because it had violated its obligation to notify a concentration according to Art. 9 para. 4 Cartel Act (cf. RPW 2014/1, 316 pp., Verfügung vom 23. September 2013 betreffend die Übernahme der Phm Holding, der Simon et Membrez S.A. und der Termiboîtes S.A., sanctions according to Art. 51 para. 1 Cartel Act). The Swatch Group AG then filed an appeal with the Federal Administrative Court. On 29 April 2014, the latter decided in favour of the Swatch Group AG, overruling the COMCO's decision (cf. &lt;<a href="http://www.bvger.ch">www.bvger.ch</a>&gt; Judgments &gt; FAC judgments database (in German)).</p>

## PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW

### 19. Ministerial intervention

<p><b>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</b></p>	<p>According to Art. 36 para. 1 Cartel Act, if the COMCO has prohibited a concentration, the undertakings concerned may, within 30 days, submit to the Federal Department of Economic Affairs, Education and Research (EAER) an application for exceptional authorisation by the Federal Council for compelling public interest reasons. If such an application is submitted, the period in which an appeal may be filed with the Federal Administrative Court begins to run only after the parties have been notified of the Federal Council's decision.</p> <p>Applications for exceptional authorisation by the Federal Council may also be submitted within 30 days of the entry into effect of a judgment of the Federal Administrative Court or the Federal Supreme Court (Art. 36 para. 2 Cartel Act).</p>
<p><b>B. What are the grounds for such ministerial intervention? Other policy goals? Are they defined? What guidance is available regarding such grounds?</b></p>	<p>Cf. 19.A. ("compelling public interest reasons")</p> <p>There has been no such case yet.</p>
<p><b>C. Describe the main elements of the ministerial intervention process and procedures, and indicate any guidance available</b></p>	<p>There is no specific process or procedure. If possible, the Federal Council takes its decision within four months of receipt of the application (Art. 36 para. 3 Cartel Act).</p>

### 20. Administrative and judicial processes/review

<p><b>A. Describe the timetable for judicial and administrative review related to merger transactions.</b></p>	<p>Regarding timetables for the investigation of the authority see above 10.A–G.</p> <p>There are neither time-limits for the Federal Administrative Court nor the Federal Supreme Court to rule on an appeal.</p> <p>Cf. 20.C.</p>
<p><b>B. Describe the procedures for protecting confidential information used in</b></p>	<p>The Federal Administrative Court basically applies the same provisions as the authority . Additionally, according to guidelines of the Federal Administrative Supreme Court its decisions are</p>



<p><b>judicial proceedings or in an appeal/review of an agency decision.</b></p>	<p>published in an anonymized way. The Supreme Court can exclude the public from the proceeding notably in case of an preponderant private interest (e.g. business secrets). Basically the judgements are published in an anonymized way.</p>
<p><b>C. Are there any limitations on the time during which an appeal may be filed?</b></p>	<p>The parties may, within 30 days, appeal from the decision. Appeals may be lodged with the Federal Administrative Court. Against its decisions, again within 30 days, an appeal can be lodged with the Swiss Federal Supreme Court.</p> <p>The time limitation to submit an application for authorization from the Federal Council on the grounds of compelling public interest is 30 days (cf. 19.A).</p>

## 21. Additional filings

<p><b>A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?</b></p>	<p>Additional filings to other regulatory authorities are required notably under the following circumstances:</p> <ul style="list-style-type: none"> <li>- In addition to merger control, special authorisations are required if the merger transaction involves banks or Swiss real estate companies. Mergers of banks are notifiable to the Swiss Financial Market Supervisory Authority FINMA (Art. 10 para. 3 Cartel Act), whose approval is especially required if the acquiring party is a foreign enterprise. Under the Federal Law on the Acquisition of Real Estate by Persons Abroad (BewG; SR 211.412.41), any merger involving a foreign undertaking and a Swiss real estate company, i.e. a company whose principal purpose is the holding of real estate in Switzerland and whose assets include a significant portfolio of residential properties in Switzerland, may need to obtain a special permit from the competent cantonal (local) authorities.</li> <li>- For air transport: See Art. 11 para. 1 of the Agreement between the European Community and the Swiss Confederation of 21 June 1999 on Air Transport (Swiss/EC Air Transport Agreement; SR 0.748.127.192.68).</li> <li>- Broadcasters of Swiss programme services: They must notify the Federal Office of Communications of any changes in capital and in voting rights as well as any substantial holdings in other enterprises (Art. 16 and 48 of the Federal Act on Radio and Television (RTVA) of 24 March 2006; SR 784.40).</li> </ul> <p>Please note that the list above may not be exhaustive. We recommend to contact the competent regulatory body.</p>
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## 22. Closing deadlines

**A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?**

No.

## 23. Post merger review of transactions

**A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?**

According to Art. 38 para. 1 Cartel Act, the Competition Commission may revoke an authorisation or decide to investigate a concentration despite the expiry of the deadline set out in Article 32 paragraph 1 if:

- a. the undertakings concerned have provided inaccurate information;
- b. the authorisation was obtained fraudulently; or
- c. the undertakings concerned are in serious breach of a condition attached to the authorisation.