

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## Bosnia and Herzegovina

December 2010

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

### 1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

<b>A. Notification provisions</b>	Competition Act (Official Gazette of Bosnia and Herzegovina No. 48/05, 76/07 and 80/09); Articles 16 and 30 <a href="http://www.bihkonk.gov.ba/en/index.html">www.bihkonk.gov.ba/en/index.html</a>
<b>B. Notification forms or information requirements</b>	Regulation on Notification and Criteria for Assessing a Concentration ("Regulation"), Articles 4 - 14
<b>C. Substantive merger review provisions</b>	Competition Act, Articles 17, 18, 19, 27, 28, 32, 41, 42, 43
<b>D. Implementing regulations</b>	<ul style="list-style-type: none"><li>- Regulation on the Definition of a Relevant Market</li><li>- Regulation on Definition of the Periodic Fine Payment</li><li>- Regulation on Agreements of Minor Importance</li><li>- Regulation on the Procedure for Granting Immunity from Fines (Leniency Policy)</li><li>- Regulation on Block Exemption Granted to Insurance Agreement</li><li>- Regulation on Block Exemption Granted to Certain Categories of Horizontal Agreements (Between Undertakings Operating on the Same Level of Production or Distribution Chain) Relating Particularly to Research, Development and Specialization Agreements</li><li>- Regulation on Block Exemption Granted to Certain Categories of Vertical Agreements (Between Undertakings Operating on the Different Level of</li></ul>

	Production or Distribution) - Regulation on Block Exemption Granted to Agreements on Distribution and Servicing of Motor Vehicles - Regulation on Definition of a Dominant Position - Regulation on Block Exemption Granted to Certain Categories of Technology Transfer Agreements (License and Know-how Agreements) - Regulation on Amount of Administration Taxes Relating to the Practices Before the Council of Competition - Regulation on Notification and Criteria for Assessing a Concentration
<b>E. Interpretive guidelines and notices</b>	None.

## 2. Authority or authorities responsible for merger enforcement.

<b>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</b>	Bosnia and Herzegovina Competition Council
<b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b>	Bosnia and Herzegovina Competition Council Radiceva 8/IV 71 000 Sarajevo Bosnia and Herzegovina Telephone: 0038733251406 Fax: 0038733251408 e-mail: <a href="mailto:kontakt@bihkonk.gov.ba">kontakt@bihkonk.gov.ba</a> <a href="http://www.bihkonk.gov.ba/en/index.html">www.bihkonk.gov.ba/en/index.html</a>
<b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b>	Agency staff is available for consultation at the above mentioned phone number, fax and e-mail address.

### 3. Covered transactions

<b>A. Definitions of potentially covered transactions (i.e., concentration or merger)</b>	<p>Under the Competition Act, a concentration shall be defined as:</p> <ul style="list-style-type: none"><li>a) joining or merger of two or more previously independent economic entities or parts of economic entities;</li><li>b) the acquisition of control or prevailing influence of one or more economic entities over other economic entity, or over more other economic entities or a part of other economic entity, or the parts of other economic entities, as it is:<ul style="list-style-type: none"><li>1) acquisition by purchasing the majority of shares or share capital, or</li><li>2) acquisition of majority of voting rights, or</li><li>3) otherwise, in accordance with the provisions of the laws governing the establishment of economic entities and their management;</li></ul></li><li>c) joint venture on a long lasting basis, of two or more independent economic entities, acting as an independent economic entity.</li></ul> <p>See Article 12 of the Competition Act.</p>
<b>B. If change of control is a determining factor, how is control defined?</b>	<p>The acquisition of control or prevailing influence of one or more economic entities over other economic entity, or over more other economic entities or a part of other economic entity, or the parts of other economic entities, as it is:</p> <ul style="list-style-type: none"><li>1) acquisition by purchasing the majority of shares or share capital, or</li><li>2) acquisition of majority of voting rights, or</li><li>3) otherwise, in accordance with the provisions of the laws governing the establishment of economic entities and their management.</li></ul> <p>See Article 12, paragraph (1) item (b) of the Act.</p>
<b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b>	<p>See Article 12, paragraph (1), item (b) of the Competition Act.</p>
<b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b>	<p>Yes. Merger notification may be required for the formation of a joint venture on a long lasting basis, of two or more independent economic entities, acting as an independent economic entity. See Article 12, paragraph (1), item (c) of the Act.</p>

#### 4. Thresholds for notification

<p><b>A. What are the general thresholds for notification?</b></p>	<p>The intended concentration of economic entities, referred to in Article 12 paragraph (1) of this Act, is required to be notified by parties to the concentration, if the following conditions are met:</p> <p>a) the total annual income of all participants to the concentration, achieved by selling goods and/or services in the world market, amounts to 100,000,000 KM (approx. 70 million USD) in the year preceding the concentration, and</p> <p>b) total annual income of each of at least two economic entities - participants to the concentration realized by selling goods and/or services on the market of Bosnia and Herzegovina is at least 8,000,000 KM (approx. 5 million USD) according to the final account in the year preceding the concentration, or if their joint share in the relevant market exceeds 40%. See the Competition Act, Article 14, paragraph (1).</p>
<p><b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b></p>	<p>Groupwide entities are included for threshold purposes, based on control.</p> <p>The acquisition of control or prevailing influence of one or more economic entities over other economic entity, or over more other economic entities or a part of other economic entity, or the parts of other economic entities, as it is :</p> <ol style="list-style-type: none"> <li>1) acquisition by purchasing the majority of shares or share capital, or</li> <li>2) acquisition of majority of voting rights, or</li> <li>3) otherwise, in accordance with the provisions of the laws governing the establishment of economic entities and their management.</li> </ol> <p>See the Competition Act, Article 12, paragraph (1), (b).</p>
<p><b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</b></p>	<p>No</p>
<p><b>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</b></p>	<p>The thresholds relate to the calendar year preceding the merger.</p>
<p><b>E. Describe the methodology for identifying and calculating any values necessary to determine if</b></p>	<p>Article 8, (g), (h) and (l) of the Regulation provides that the following information must be included:</p> <ul style="list-style-type: none"> <li>- The annual financial report for the year preceding the concentration (balance sheet, profit/loss account, cash-flow statement, statement on changes of shareholder's equality,</li> </ul>

<p><b>notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</b></p>	<p>accounting policies and notes to the annual accounts, for the Insurance companies the value of total premiums paid ) as well as other reports, which provide with an insight into the financial state of the parities to the concentration;</p> <ul style="list-style-type: none"> <li>- The total annual income (operational revenues, financial revenues, extraordinary revenues) of the parties to the concentration after the deduction of the value added tax, other taxes directly relating to the turnover and rebates, within the meaning of Article 14 and 15 of the Competition Act, calculated separately for each party to the concentration: <ul style="list-style-type: none"> <li>• worldwide level,</li> <li>• in the market of Bosnia and Herzegovina;</li> </ul> </li> <li>- The list of other undertakings in the relevant market in which the parties to the concentration solely or jointly hold 10% or more of the share capital, or 10% or more voting rights, accompanied by a brief description of the prevailing business activity of the undertakings in question (connected associations).</li> </ul>
<p><b>F. Describe methodology for calculating exchange rates.</b></p>	<p>The calculation is based on the official exchange rate of Bosnia and Herzegovina Central Bank.</p>
<p><b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b></p>	<p>Thresholds apply to both. See Article 14, paragraph (1) of the Competition Act.</p>
<p><b>H. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</b></p>	<p>No.</p>
<p><b>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine,” please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction</b></p>	<p>The nexus to the jurisdiction is determined with the thresholds. The thresholds refer to Bosnia and Herzegovina, and worldwide income. See Article 14, paragraph (1) of the Competition Act.</p>

<p><b>sufficient to meet an “effects” test?</b></p>	
<p><b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b></p>	<p>By the location of the seller.</p>
<p><b>K. If market share tests are used, are there guidelines for calculating market shares?</b></p>	<p>The guidelines are provided in the Regulation on definition of relevant market and its Amendments.</p>
<p><b>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</b></p>	<p>For the purpose of control of concentration in banks, other financial institutions and the insurance companies, instead of the total annual income, the following shall be taken into consideration:</p> <p>a) for legal entities which are engaged in providing financial services, after rejection of indirect taxes related to them, the sum of the following incomes is taken:</p> <ol style="list-style-type: none"> <li>1) interest income and similar incomes;</li> <li>2) income from securities: <ol style="list-style-type: none"> <li>2.1. income from shares and other securities which are of the changeable profit,</li> <li>2.2. income from the share in economic entity;</li> <li>2.3. income from shares in related economic entities;</li> </ol> </li> <li>3) receivable the fee</li> <li>4) net profit of financial operations; and</li> <li>5) other operating income.</li> </ol> <p>b) for insurance companies and companies engaged in reinsurance, the gross value of premiums which includes a paid to amounts relating to contracts on insurance concluded by or on behalf of insurance companies, also including reinsurance premiums, after the rejection of taxes and parafiscal taxes that are charged based on the amount of individual premiums or in relation to the total amount of the premium.</p> <p>See Article 15 of the Competition Act.</p>
<p><b>M. Are any sectors excluded from notification requirements? If so, which sectors?</b></p>	<p>No.</p>
<p><b>N. Are there special rules regarding jurisdictional thresholds for transactions in which</b></p>	<p>No.</p>

<b>both the acquiring and acquired parties are foreign?</b>	
<b>O. Does the agency have the authority to review transactions that fall below the thresholds?</b>	No.

## 5. Notification requirements and timing of notification

<b>A. Is notification mandatory pre-merger?</b>	Yes, if the requirements set by Article 14 of the Competition Act are met.
<b>B. Is notification mandatory post-merger?</b>	Economic entities, participants to the concentration are required to submit a notification of concentration in terms of Article 12 and 14 of the Competition Act, within 15 days of signing the agreement, the publication of public offering or acquisition of control, depending on which happens first. See Article 16, paragraph (1) of the Competition Act and Article 4 of the Regulation.
<b>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</b>	Yes. Parties to the concentration can file a notification when they prove a fair intention for concentration by signing framework agreement, memorandum of understanding, letter of intent or publishing intent for bid. See Article 4 of the Regulation.
<b>D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive)?</b>	A concentration may be notified if parties prove fair intention for concentration by signing framework agreement, memorandum of understanding, letter of intent or publishing intent for bid. See Article 4 of the Regulation.
<b>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline</b>	Economic entities, participants to the concentration are required to submit a notification of concentration in terms of Article 12 and 14 of the Competition Act, within 15 days of signing the agreement, the publication of public offering or acquisition of control, depending on what happens the first. See Article 16, paragraph (1) of the Competition Act and Article 4 of the Regulation.

<p><b>and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</b></p>	
<p><b>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</b></p>	<p>No.</p>

## 6. Simplified procedures

<p><b>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</b></p>	<p>There is no special procedure for such transactions.</p> <p>Council of Competition, on the basis of information and documentation that are submitted with the notification of concentration, the degree of probability of violation of competition rules through such concentration, and estimation that the intended concentration does not result in negative effects, may adopt a decision within 30 days. See the Competition Act, Article 18, paragraph (5).</p>
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## 7. Documents to be submitted

<p><b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</b></p>	<ol style="list-style-type: none"> <li>1) The notification of concentration shall be accompanied by: <ol style="list-style-type: none"> <li>a) original legal basis of the concentration or a certified transcript or certified translation, if the official text of the original legal basis of the concentration is not in official languages that are in use in Bosnia and Herzegovina;</li> <li>b) annual financial report for the participants to the concentration of the financial year preceding the concentration;</li> <li>c) other facts regulated in by-laws within this Act.</li> </ol> </li> <li>2) The applicant must specify in the application whether he intends to submit an application for assessment of the concentration to other body authorized to assess the concentration outside the territory of Bosnia and Herzegovina or, if he has already filed such application, to</li> </ol>
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enclose a decision which is adopted by the authority if the same has already been made.

- 3) The Council of Competition shall, in written form, inform the applicant by submitting an acknowledgment of receipt of the complete and adequate notification. See the Competition Act, Article 30.

The notifying party is obliged to provide, accompanied to the notification, a copy of the original document or certified photocopy of particular documents/identifications and other written evidences, and particularly:

- a) the excerpt from the court register or other register supplying the evidence on the name, address and the business activity of the notifying party;
- b) the excerpt from the court register or other register. supplying the evidence on the name, address and the business activity of all parties to the concentration;
- c) a valid authorization if the notification is submitted by the authorized person;...
- d) a copy of the original or certified photocopy of the legal basis for the concentration laid down under Article 8 of this Regulation, enclosed to the certified translation in one of the official languages in use in Bosnia and Herzegovina, in case when the original document is in foreign language;...
- e) principal annual financial reports of the parties to the concentration for the financial year preceding the year of implementation of the concentration , consisting of the data on the total income of all parties to the concentration, consisting of the data on the total income of all parties to the concentration realized in sales of products and/or services after deduction of the value added tax, other taxes directly relating to the turnover and rebate: - worldwide level, - in the market of Bosnia and Herzegovina
- f) all available analyses and studies, presentations or other reports prepared for any member of the management, supervisory board or the chairman and /or members of the shareholders` meeting,

dealing with estimation and analysis of the concentration from the viewpoint on the market position, market conditions and the existence of any actual and potential competitors in the relevant market;

- g) the graphic presentation (diagram) of the organizational structure of the parties to the concentration and connected associations, where it can be seen:
- the relations between the parties to the concentration and connected associations;
  - the shares hold by the controlling companies in the share capital of the controlled companies, that is the shares hold by the daughter companies within the group or concern (expressed as percentages);
- h) the report of the management giving the legal and economic explanation for the concentration;
- i) the decisions of other authorities competent for assessment of concentration outside the territory of Bosnia and Herzegovina (when it has been already made) or to note obligatory whether it has already submitted or shall submit the request for assessment of the concentration;....
- j) the receipt on the paid administration taxes (Regulation on Amount of Administration Taxes relating to the Practices before the Council of Competition-«Official Gazette of BH», No.30/06).

See Article 11 of the Regulation.

Beside the supporting documentation stated under Article 11 of this Regulation, the Council of Competition may request the submission of other supplements containing the information which it considers relevant in the assessment of the notified concentration, particularly such as:

- a) principal annual financial reports for the parties to the concentration in the period of three subsequent years preceding the year when the concentration is being implemented, accompanied by the data on the total income of all the parties to the concentration realized by the

	<p>sales of products and/or services after the deduction of the value added tax, other taxes directly relating to the turnover and discounts:</p> <ul style="list-style-type: none"> <li>- worldwide level,</li> <li>- in the market of Bosnia and Herzegovina;</li> </ul> <p>b) the production and/or sale value and production and/or sales volume, calculated in convertible marks, i.e. the number of units or the measures, realized in the sales of products and/or services by the parties to the concentration in the relevant market in the period of three subsequent years preceding the year when the concentration is implemented.</p> <p>See Article 12 of the Regulation.</p>
<p><b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b></p>	<p>If the notification and supporting documents are being submitted in one of the official languages of Bosnia and Herzegovina, then only the original and one copy needs to be submitted. If, however, the original notification, the supporting documents and/or other documents are submitted in a foreign language, the notifying party is obliged to submit the certified translation in one of the official languages in use in Bosnia and Herzegovina, enclosed to the original copy or a certified photocopy of the original document.</p> <p>See Article 6, paragraph (2) of the Regulation.</p>
<p><b>C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?</b></p>	<p>No.</p>

## 8. Translation

<p><b>A. In what language(s) can the notification forms be submitted?</b></p>	<p>Article 7, paragraph (2) of the Regulation.</p>
<p><b>B. Describe any requirements to submit translations of documents</b></p>	<p>Article 7, paragraph (2) of the Regulation..</p>

<p><b>with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.</b></p>	
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**9. Review periods**

<p><b>A. Describe any applicable review periods following notification.</b></p>	<p>The Council of Competition, on the basis of information and documentation that are submitted with the notification of the concentration, the degree of probability of violation of competition rules through such concentration, and the estimation that the intended concentration does not result in negative effects, may adopt a decision within 30 days.</p> <p>In case that the Council of Competition, within 30 days, starting from the date of issuance of the acknowledgment of receipt of complete and adequate notification referred to in Article 30 of the Competition Act, does not adopt a conclusion on initiation of the process of assessment of concentration, the concentration shall be deemed declared compatible. Article 18, paragraph (5) and (6) of the Competition Act</p> <p>Upon adoption of conclusion on initiation of the proceedings, the Council of Competition shall make a final decision within:</p> <ul style="list-style-type: none"> <li>a) six months for determination of the prohibited agreements prescribed in Article 4 of this Act;</li> <li>b) three months for determination of the individual exemption prescribed in Article 5 of this Act;</li> <li>c) four months for determination of abuse of dominant position prescribed in Article 11 of this Act;</li> <li>d) three months for determination of the assessment of concentration prescribed in Article 18 of this Act.</li> </ul> <p>If within a period referred to in paragraph (1) of this Article, the Council of Competition fails to adopt the final decision, in a cases when it estimates that for determination of the facts and assessment of the evidences is necessary to make additional expert opinion or analysis, or when it comes to sensitive economic sectors or markets, the Council of Competition may</p>
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	extend the deadline for making the final decision up to three months, about which is required to inform in writing the parties to the proceedings. Article 41 of the Competition Act.
<b>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</b>	No.
<b>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</b>	<p>If within a period referred to in paragraph (1) of this Article, the Council of Competition fails to adopt the final decision, in a cases when it estimates that for determination of the facts and assessment of the evidences is necessary to make additional expert opinion or analysis, or when it comes to sensitive economic sectors or markets, the Council of Competition may extend the deadline for making the final decision up to three months, about which is required to inform in writing the parties to the proceedings.</p> <p>See Article 41, paragraph (2) of the Competition Act.</p>
<b>D. What are the procedures for accelerated review of non-problematic transactions, if any?</b>	None.

## 10. Waiting periods / suspension obligations

<b>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review</b>	<p>Concentrations shall not be implemented prior to the issuance of a decision that confirms the compliance of the concentration concerned referred to in Article 12 and 14 of this Act. See Article 18, paragraph (9) of the Competition Act.</p>
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<p><b>period and/or further review period.</b></p>	
<p><b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b></p>	<p>No.</p>
<p><b>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</b></p>	<p>No.</p>
<p><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<p>In case that the Council of Competition, within 30 days, in accordance with paragraph (5) of this Article, starting from the date of issuance of the acknowledgment of receipt of complete and adequate notification referred to in Article 30 of this Act, does not adopt a conclusion on initiation of the process of assessment of concentration, the concentration shall be deemed compatible.</p> <p>If the Council of Competition does not declare such a decision within the time limits laid down in Article 41 of this Act, concentration shall be deemed to be approved. Article 18, paragraph (6) and (7) of the Competition Act.</p>

<p><b>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</b></p>	<p>The Council of Competition, following the completion of the proceedings, within the period laid down in Article 41. of the Competition Act, shall adopt one of the following decisions:</p> <p>a) the concentration is compatible;  b) the concentration is incompatible;  c) the concentration is conditionally compatible.</p> <p>The Council of Competition, in the decision, referred to in paragraph (2), (c) of this Article, when assesses that the concentration is conditionally compatible, shall determine the extent, conditions and terms of their fulfillment.</p> <p>The participants to the concentration referred to in paragraph (2) (c) of this Article, as a rule, may continue the implementation of the concentration after filling out the measures and terms and conditions referred to in paragraph (3) of this Article, unless the Council of Competition, due to particular justified request, determines different.</p> <p>Article 18, paragraph (2) and (3) and (4) of the Competition Act.</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>None.</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>None.</p>

**11. Responsibility for notification / representation**

<p><b>A. Who is responsible for</b></p>	<p>In the case when control over the whole or parts of one or more economic entities is acquired by other economic entity, the</p>
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<p><b>notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</b></p>	<p>notification is to be submitted by the economic entity acquiring control; in all other cases the economic entities participating to the concentration shall submit a joint application. See Article 16 of the Competition Act.</p> <p>The notification is to be submitted, in a case when the conditions laid down in Article 14 of the Competition Act are fulfilled, by the following party:</p> <ul style="list-style-type: none"> <li>a) the acquiring undertaking participating in the merger or joint undertakings participating in the merger;</li> <li>b) the one or more undertakings (acquirer) acquiring a control or decisive influence or one or more undertakings, or on more another undertaking or on a part of another undertaking or on parts of another undertakings;</li> <li>c) acquirer of the majority of shares or share capital or voting rights, or any other way within the meaning of the provisions stipulated by the law;</li> <li>d) all the participants in the joint venture on a long-term basis or a participant in the joint venture appointed by the other participants as their joint representative in a case of creation of a joint venture on long-term basis (joint venture);</li> <li>e) the bidder, in a case of acquiring a control or decisive influence on the basis of a public bid (particularly in the case of acquisition of the majority of shares or share capital or voting rights).</li> </ul> <p>In cases not covered by paragraph (1) of this Article the obligation to notify shall fall on all parties to the concentration submitting a joint notification or on their commonly appointed party to the concentration.</p> <p>Article 3 of the Regulation.</p>
<p><b>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</b></p>	<p>No.</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>No.</p>
<p><b>D. How does the validity of the representation need to be attested (e.g., power of</b></p>	<p>Valid authorization is needed if the notification is submitted by the authorized person, which must be notarized.</p> <p>Article 11, (c) of the Regulation</p>



<p><b>attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</b></p>	<p>There are no special rules for foreign representatives or firms.</p>
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## 12. 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 transaction)?</b></p>	<p>Yes, Article 2, tariff number 106, item (2) of Regulation on Amount of Administration Taxes Relating to the Practices Before the Council of Competition states the filing fee for notification in amount of 2.000,00 KM.</p>
<p><b>B. Who is responsible for payment?</b></p>	<p>The notifying party.</p>
<p><b>C. When is payment required?</b></p>	<p>The obligation for payment is created at the time of notification.  Article 3, paragraph (1) of Regulation on Amount of Administration Taxes Relating to the Practices Before the Council of Competition.</p>
<p><b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b></p>	<p>The payment is made to the State budget foreign currency account, by a special bank transfer. Its copy is to be submitted to the Competition Council within 8 days from the payment.</p>

## 13. Confidentiality

<p><b>A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents</b></p>	<p>The Council of Competition is obliged to publish the data from the notification of concentration in daily newspapers, in particular: a) the names of economic entities the participants to the concentration; b) a form of concentration, and c) the economic sector within which the concentration takes</p>
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<b>of the notification?</b>	place. See Article 16, paragraph (1) of the Competition Act.
<b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</b>	<p>(1) Parties in proceedings before the Council of Competition have right to access the case file.</p> <p>(2) The Council of Competition at the request of the party will make a copy of case files or certain documents submitted by other parties.</p> <p>(3) The Request for access to case file under paragraph (1) of this Article shall be submitted in writing to the Council of Competition. The Council of Competition will determine a date for access to case file, within eight days of receipt of the request.</p> <p>(4) Exceptionally to provisions of paragraphs (1) and (2) of this article, there can not be seen, rewritten or copied draft of the acts of the Council of Competition, the official reports, minutes of meeting of the Council of Competition, internal instructions and notes on the case and other documents and materials that are considered a business secret in the sense of Article 38 of the Competition Act. See Article 37 of the Competition Act.</p>
<b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b>	Third parties or government agencies can obtain access to the notification materials only if they show justified legal interest. However, they cannot obtain access to the materials defined as confidential by notifying parties.
<b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b>	<p>The business secret referred to in paragraph (1) of this Article in particular implies:</p> <p>a) all which is as a business secret provided by law or other regulation;</p> <p>b) all that is, as a business secret, regulated by the general or some other act of the parties to the proceedings or other persons;</p> <p>c) all that is, by the parties to the proceeding or other persons, specifically marked as business secret.</p> <p>Article 38, paragraph (2) of the Competition Act.</p>
<b>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b>	<p>Yes, with competition authorities of Croatia, Serbia, Macedonia, Romania, Bulgaria, and Albania.</p> <p>Signing of the agreements is published publicly but not the whole text of agreements.</p>

<b>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</b>	<p>The Competition Council can exchange information with other reviewing agencies regarding non-confidential information.</p>
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## 14. Transparency

<b>A. Does the agency publish an annual report? Please provide the web address if available.</b>	<p>Yes.  <a href="http://www.bihkonk.gov.ba/en/index.html">www.bihkonk.gov.ba/en/index.html</a></p>
<b>B. Does the agency publish press releases related to merger policy or investigations?</b>	<p>Yes.</p>
<b>C. Does the agency publish decisions on why it cleared / blocked a transaction?</b>	<p>Yes.</p>

## 15. Sanctions/penalties

<b>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</b>	<p>A fine in the amount up to 10% of the total annual income of the economic entity, for the year preceding the year in which the violation of the Act happened, shall be imposed on economic entity or natural person, if:</p> <ul style="list-style-type: none"> <li>- participates in the implementation of prohibited concentration of economic entities in accordance with the provisions of Article 13 of this Act;</li> <li>- conducts a concentration without previously adopted a decision on the concentration in terms of Article 18 Paragraph (9) of this Act.</li> </ul> <p>The Council of Competition may impose a fine on responsible persons of economic entity, referred to in paragraph (1) of this</p>
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	<p>Article, in the amount of 15.000 KM to 50.000 KM. Article 48, paragraph (1) (c) and (e) and paragraph (2)</p> <p>The Council of Competition may impose on economic subjects fines not exceeding 1% of the total income in the previous year of business, if:</p> <ul style="list-style-type: none"> <li>- do not submit the notification of intent concentration in terms of Article 16 of this Act;</li> </ul> <p>The Council of Competition may impose a fine on the responsible persons of the economic entities referred to in paragraph (1) of this Article, in the amount of 5,000 KM to 15,000 KM.</p> <p>Article 49, paragraph (1) (b) and paragraph (2)</p>
<b>B. Which party/ies are potentially liable?</b>	Economic entities or physical entities.
<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>	The Council of Competition can impose sanctions directly.

## 16. Judicial review

<b>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</b>	<p>(1) The decision of the Council of Competition is final.</p> <p>(2) Unsatisfied party to the proceedings may start administrative proceedings before the Court of Bosnia and Herzegovina within 30 days of receipt of the decision, or from the date of publication of the decision. Article 46 of the Competition Act.</p>
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## 17. Additional filings

<b>Are any additional filings/clearances required</b>	No.
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<p><b>for some types of transactions, e.g., sectoral regulators, securities regulator?</b></p>	
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**18. Closing deadlines**

<p><b>When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?</b></p>	<p>No.</p>
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**19. Post merger review of transactions**

<p><b>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?</b></p>	<p>The Council of Competition may, <i>ex officio</i> or upon request of a party, amend the decision taken under paragraph (2) of this Article when the parties cannot fulfill certain conditions or when infringe some of the measures set forth in the decision of the Council of Competition, owing to particular circumstances that could not be predicted or avoided and which do not depend on volition of the parties. Article 18, paragraph (8) of the Competition Act.</p>
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