

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

CHILE

January, 2007

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

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

A. Notification provisions

1) The main antitrust law that applies to mergers is Decree N° 211 of the Ministry of Economy. This law is referred to as the Free Competition Protection Act (Competition Act).

The last amendment of the Competition Act came into force on 2004 with the creation of the "Tribunal de Defensa de la Libre Competencia" (TDLC or the Competition Court).

The Competition Act provides for voluntary merger consultation before the Competition Court, through the public procedure established in its article 31°. The law does not provide for mandatory merger notification.

There are exceptions that provide for mandatory pre merger consultation for certain firms and markets established by decisions of the TDLC and the former antitrust commissions (referred as Comissions).

Any interested person or the "Fiscalía Nacional Económica" (FNE, the National Economic Prosecutor, or Agency) can challenge a merger before the Competition Court if it considers that the operation prevents, restricts or hinders free competition or tends to produce such effects. After an action has been placed, it is not possible to file a voluntary consultation, as established by the Competition Court's Instruction N° 5-2004 ("Auto Acordado N° 5/2004").

Parties may choose to prevent such actions by filing a voluntary consultation before the TDLC. As provided by the same Auto Acordado N° 5/2004, after a voluntary consultation has been filed, it is not possible to challenge the transaction

	<p>through a contentious procedure.</p> <p>Article 32^o of the Competition Act encourages the parties to file a voluntary consultation, as it provides that the contracts or agreements executed or formed in accordance with TDLC's decisions, cannot be considered against Competition Law, unless a new decision of the TDLC, based on new information, qualifies the same contracts or agreements as anticompetitive and only since this new ruling is notified or published.</p> <p>2) Under article 38 of the Freedom of Opinion and Speech Act (Law 19.733), which came into force on 2001, media industry undertakings require a post-merger notification to the Competition Court (subsection 1). The same provision establishes that TV and Radio undertakings require previous approval from the Competition Court (subsection 2).</p>
<p>B. Notification forms or information requirements</p>	<p>1) Neither the Competition Act nor Law 19.733 require the submission of a particular form or any other specific information for voluntary consultations. Although, as consultations must be made before a Tribunal, there are general formal requirements that must be accomplished (such as written, founded and specific petitions).</p> <p>2) Regarding information requirements, Competition Court's Instruction N° 6-2005 ("Auto Acordado N° 6/2005") establishes specific information requirements for filings in accordance with Law 19.733.</p>
<p>C. Substantive merger review provisions. What article of the Competition Act contains the substantive review provisions?</p>	<p>1) The Competition Act does not have specific substantive provisions for mergers.</p> <p>Nevertheless, article 3 of Competition Act establishes the following general provision:</p> <p>Art. 3: Any person who executes or signs, whether individually or collectively, any deed, act or contract that prevents, restricts or hinders free competition, or tends to produce such effects, will be subject to the measures prescribed by article 26 of this law, notwithstanding the other corrective or restrictive measures that may be imposed in each case (subsection 1).</p> <p>2) Also, articles 37 and 38 of Law 19.733 establish the following:</p> <p>Art. 37: For the purpose of the Competition Act, the acts or agreements that hinder the production of information, the transportation, distribution, circulation, advertising and comercialization of any means of communication (media) will be considered, among others, as acts or agreements that tend to restrict free competition. (subsection 1)</p> <p>Art. 38: Any relevant act related to the modification or change in the ownership or control of any means of communication (media) must be informed to the respective Regional</p>

	<p>Preventive Commission or the Central Preventive Commission (currently, the TDLC), as may apply, within 30 days of its execution. (EX POST NOTIFICATION)</p> <p>Notwithstanding the above, in case of means of social communication that are subject to a concession granted by the State, the relevant act must comply, before its execution, with a report from the respective Preventive Commission (currently, the TDLC) regarding its impact on the information market. This report must be issued within 30 days following the request, and on the contrary, the transaction will be considered approved. (EX ANTE REPORT)</p>
D. Implementing regulations	<p>1) The procedure for voluntary merger consultations to the Competition Court is established in article 31^o of the Competition Act.</p> <p>2) As said before, Auto Acordado N° 6/2005 establishes the specific information requirements for filings in accordance with Law 19.733.</p>
E. Interpretive guidelines and notices	<p>The non-mandatory “Internal Guide for the Analysis of Horizontal Concentration Operations”, established by the Chilean Competition Agency (FNE) in October, 2006. (See www.fne.cl for the Guide in spanish)</p>

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	<p>The “Tribunal de Defensa de la Libre Competencia” (TDLC or the Competition Court) is an independent court of law that has jurisdiction on competition matters, with adjudicative powers.</p> <p>Regarding mergers, the Competition Court decides on merger’s consultations, being empowered to set the conditions that the parties of an agreement will have to accomplish. It also decides on infringements to the Competition Act.</p> <p>The “Fiscalía Nacional Económica” (FNE or the National Economic Prosecutor) is the Chilean competition enforcement agency that investigates competition infringements and brings cases before the TDLC or other courts of law as a party.</p> <p>Regarding mergers, in a proceeding of voluntary consultation, the FNE informs and expresses its opinion on the effects on competition of the proposed merger or acquisition. If there is no consultation and the merger is anticompetitive, FNE can bring the case before de TDLC.</p>
B. Address, telephone and fax (including country code), e-mail, website address and languages	<p>Tribunal de Defensa de la Libre Competencia Agustinas 640, 19th floor, Santiago Postal code: 8320219 Phone: (56-2)7538300 Fax: (56-2)7538303</p>

available.	<p>e-mail: jvelozo@tdlc.cl, chorn@tdlc.cl www.tdlc.cl Spanish and English</p> <p>Fiscalía Nacional Económica Agustinas 853 2nd and 12th floors, Santiago Postal code: 8320199 Phone: (56-2)7535600 Fax: (56-2)7535607 e-mail: contactenos@fne.cl; jbarahona@fne.cl, msalamanca@fne.cl www.fne.cl Spanish</p> <p>The Competition Act can be found at FNE web site in Spanish and English.</p>
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	<p>Yes.</p> <p>Tribunal de Defensa de la Libre Competencia: Mr. Javier Velozo, Secretary Lawyer 56-2-7538300, jvelozo@tdlc.cl Ms. Carolina Horn, Lawyer 56-2-7538317 chorn@tdlc.cl</p> <p>Fiscalía Nacional Económica: Mrs. Mónica Salamanca, Director of Studies Department 56-2-7535600 msalamanca@fne.cl</p>

3. Covered transactions	
A. Definitions of potentially covered transactions (i.e., concentration or merger)	<p>1) There is no definition of concentration or merger in the Competition Act.</p> <p>2) The non-mandatory “Internal Guide for the Analysis of Horizontal Concentration Operations” produced by the FNE, defines concentration as “mergers, stock acquisitions, acquisition of assets, associations and, in general, the acts and covenants whose purpose or effect is that two or more economically independent enterprises become a single enterprise or members of the same business group”.</p> <p>3) The former includes any action taken by, or agreement between, two or more independent companies to act or conduct their businesses together, either through ownership or control, under a single firm or individual.</p>
B. If change of control is a determining factor, how is control defined?	<p>1) There is no definition of control in the Competition Act.</p> <p>2) Article 97 of the Stock Market Law (Law 18.045) defines the controller of a company:</p>

	<p>Art. 97: Every person or group of persons with an agreement to act jointly that, directly or through other individual or legal entity, have a stockholding or an interest and have power to do one of the following actions:</p> <ul style="list-style-type: none"> a. Ensure majority of votes on shareholders' meetings and choose majority of board directors in public corporations, or ensure majority of votes in meetings and choose the manager or legal representative or the majority of them, in other kind of companies, or b. Have substantial influence in the management of the company. <p>When a group of persons reach an agreement to act jointly in exercising any of the powers indicated on previous letters, each of them will be called a member of the controller.</p> <p>In limited partnerships, the management partner will be considered the controller.</p>
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	Yes, because there are no predefined levels. It will depend on the specific operation and market conditions.
D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?	Yes, because there are no predefined transactions. It will depend on the specific operation and market conditions.

4. Thresholds for notification

A. What are the general thresholds for notification?	<p>As notification is voluntary, there are no general thresholds under Competition Act.</p> <p>Nevertheless, the non-mandatory "Internal Guide for the Analysis of Horizontal Concentration Operations" uses the Herfindal Hirshman Index (HHI) to establish thresholds. The FNE will not analyze operations of concentration if:</p> <ul style="list-style-type: none"> a. Post merger HHI is under 1000 b. Post merger HHI is between 1000 and 1800 (moderately concentrated), and the HHI increases in less than 100 with the merger. c. Post merger HHI is over 1800 (highly concentrated), and the HHI increases in less than 50 with the merger.
B. To which entities do the merger notification thresholds apply, i.e., which entities are	Not applicable.

<p>included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	
<p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>Not applicable.</p>
<p>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>Not applicable.</p>
<p>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p>	<p>Not applicable.</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>Not applicable.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>Not applicable.</p>
<p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>Not applicable.</p>
<p>I. How is the nexus to the jurisdiction determined</p>	<p>In accordance with general principles, Chilean authorities have no jurisdiction beyond national frontiers.</p>

<p>(e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine,” please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an “effects” test?</p>	<p>Nevertheless, to understand the effects of a merger in the national market, it could be necessary to analyze international market conditions or relations (through ownership or control) between national and international companies.</p>
<p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	<p>There is no legal provision about this matter.</p>
<p>K. If market share tests are used, are there guidelines for calculating market shares?</p>	<p>There is no legal provision about this matter.</p> <p>Although, as said above, the non-mandatory “Internal Guide for the Analysis of Horizontal Concentration Operations”, of the FNE, uses the Herfindal Hirshman Index (HHI).</p>
<p>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)?</p>	<p>Certain industries and economic activities require approval by other governmental agencies, including media, banking, and electricity.</p> <p>Also, in accordance with a previous decision of competition authorities, there are specific restrictions in the port sector. (Dictamen N° 1.045 of the former “Comisión Preventiva Central)</p>
<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>Not applicable.</p>
<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>There are no general thresholds under the Competition Act, nor are they determined by the nationality of the parties.</p>
<p>O. Does the agency have the authority to review transactions that fall</p>	<p>As there is no notification threshold, the TDLC may review any transaction if the FNE or any interested party consults or files a suit. See answer to letter A.</p>

below the thresholds?	
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5. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	<p>1) The Competition Act does not require mandatory pre-merger or post-merger notification.</p> <p>2) According to article 38 of 19.733 Law (subsection 2), pre-merger notification is mandatory for transactions involving the media (Ex. TV and Radio).</p>
B. Is notification mandatory post-merger?	<p>1) The Competition Act does not require mandatory pre-merger or post-merger notification.</p> <p>2) According to article 38 of 19.733 Law (subsection 1), post merger notification is mandatory for transactions involving other media (Ex. Newspapers).</p>
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	<p>Yes. The Competition Act establishes a voluntary pre merger consultation before the TDLC.</p>
D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?	<p>There are no legal provisions about this matter.</p> <p>Nevertheless, at a consultation proceeding it is necessary to describe thoroughly the transaction or agreement and its effects in order to obtain a ruling.</p>
E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	<p>1) There is no legal provision about this matter in the Competition Act.</p> <p>2) In accordance to article 38 of 19.733 Law, ex-post notification must be made within 30 days of the execution of the act. No specific provisions define the moment in which the act must be considered executed.</p>
F. Can parties request an extension for the notification deadline? If	<p>Operations that require mandatory notification (media), there is no procedure to request an extension for the notification deadline.</p>

yes, please describe the procedure and whether there is a maximum length of time for the extension.	
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6. Simplified procedures

Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).	<p>1) There is no legal provision about this matter in the Competition Act.</p> <p>2) In accordance to Law 19.733, ex ante reports must be issued by the TDLC within 30 days from the presentation of the consultation by the interested party or parties (see Art. 38 Law 19.733).</p>
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7. Documents to be submitted

A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).	See answers to questions 1 B and 1 D.
B. Are there any document legalization requirements (e.g., notarization or apostille)?	<p>In accordance with general rules of evidence, some foreign legal instruments must be properly translated to spanish language and legalized to produce effects in Chile.</p> <p>Nevertheless, the TDLC and the FNE have accepted non official translations or non legalized documents in some cases.</p>
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?	See answer 7 B.

8. Translation

A. In what language(s) can the notification forms be submitted?	See answers 7 B.
B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	See answer 7 B.

9. Review periods

A. Describe any applicable review periods following notification.	1) The Competition Act does not prescribe any specific review period. 2) In accordance to Law 19.733, ex ante reports must be issued by the TDLC within 30 days following the request.
B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?	No.
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	Not applicable.

maximum for extensions?	
D. What are the procedures for accelerated review of non-problematic transactions, if any?	Not applicable.

10. Waiting periods / suspension obligations

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 period and/or further review period.	<p>1) In accordance with "Competition Court's Instruction N° 5-2004" (Auto Acordado N° 5/2004), if a voluntary consultation is filled, the transaction cannot be closed during the review period, until a favorable decision is pronounced by the TDLC.</p> <p>2) If the merger is challenged and is sued before the TDLC, by any interested party or person, or the FNE, on grounds that the operation prevents, restricts or hinders free competition or tends to produce such effects, the TDLC may issue an injunction to prohibit the closing during the procedure.</p> <p>3) The operations that require ex ante reports issued by the TDLC, cannot be executed without the mentioned favorable report.</p>
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	No.
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	There is no legal provision about this matter.

<p>any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>See answer to question 1.C.</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>See answer to question 10 A N°2).</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>Not applicable.</p>
<p>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>Not applicable.</p>

11. Responsibility for notification / representation

<p>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</p>	<p>The interested parties are the only persons that can file the voluntary consultation.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>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)?</p>	<p>To file any request to the TDLC, the party must be represented by a lawyer recognized by the Chilean Supreme Court.</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</p>	<p>The power of attorney is a solemn contract. To produce effects it must be written and the signatures must be authorized by a Chilean Public Notary (in a public deed) or the corresponding Court's Secretary.</p> <p>Foreign representatives or firms can provide a public instrument from their country, which must be properly translated to spanish language and legalized to have legal effect in Chile.</p>

12. Filing fees

<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?</p>	<p>No.</p>
<p>B. Who is responsible for payment?</p>	<p>Not applicable.</p>

C. When is payment required?	Not applicable.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Not applicable.

13. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	In accordance with article 31 ^o of the Competition Act, voluntary consultations must be published in the newspapers, in order to communicate to any interested party the right to submit information.
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	Yes, the authorities' files are public.
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	Yes, the authorities' files are public.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	The consultation cannot be confidential (See answer 13 A). Consultation parties, interested parties, as well as FNE or other government agencies, can request the TDLC to give confidential treatment to specific documents or information they provide.
E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities?	The FNE has signed Cooperation Agreements with the Competition Bureau of Canada; the Ministry of Commerce of Costa Rica, and the Federal Competition Commission of Mexico. Chile has also signed Trade Agreements which contain provisions on cooperation and exchange of information between

<p>If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>competition authorities with the European Union, the United States, Korea and the European Free Trade Association (EFTA).</p> <p>All these agreements are available to the public. (See www.direcon.cl to find the texts of the agreements).</p>
<p>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?</p>	<p>The FNE and TDLC cooperate with antitrust authorities from other jurisdictions through the exchange of non confidential information.</p>

14. Transparency

<p>A. Does the agency publish an annual report? Please provide the web address if available.</p>	<p>No. The FNE and the TDLC provide public information of its activities through their web pages (www.fne.cl, www.tdlc.cl). There are reports and press releases that inform of their activities.</p>
<p>B. Does the agency publish press releases related to merger policy or investigations?</p>	<p>Yes. The web pages of the TDLC www.tdlc.cl and the FNE www.fne.cl have a press section.</p>
<p>C. Does the agency publish decisions on why it cleared / blocked a transaction?</p>	<p>Yes. The decisions of the TDLC are published in the web pages www.tdlc.cl and www.fne.cl.</p>

15. Sanctions/penalties

<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</p>	<p>As consultation is voluntary, there are no penalties for not filing.</p> <p>Nevertheless, as said above (answer 1 A) a merger or acquisition, not subject to previous consultation, can be considered an infringement to the Competition Act if it prevents, restricts or hinders free competition or tends to produce such effects, in which case it can be penalized.</p>
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B. Which party/ies are potentially liable?	Not applicable.
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.	Not applicable.

16. Judicial review

Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.	<p>In accordance with article 31^o of the Competition Act, final decisions of the TDLC that establish conditions that must be complied with by the parties to a merger, can be reviewed by the Supreme Court, upon a request of a party through a special appeal named <i>recurso de reclamación</i>.</p> <p>The judicial review made by the Supreme Court takes between 3 and 6 months, on average.</p>
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17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?	Yes. Certain industries and economic activities, including electricity, media, and banking, are subject to approval by additional regulatory agencies in Chile.
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18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain	No.
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authorized?

19. Post merger review of transactions

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?

As said before, the advantage of consulting is that a favorable pronouncement of the TDLC gives certainty about the legality of the operation from the competition law point of view (answer 1 A).

Nevertheless, in accordance with article 32^o of the Competition Act, the only case in which a merger approved by the TDLC can be considered contrary to the Competition Law is when a new decision of the TDLC, based on new information, finds the same acts or contracts as anticompetitive and only since this new ruling is notified or published.