

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

CROATIA

April 2006

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

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

A. Notification provisions	Competition Act (Official Gazette of the Republic of Croatia, No. 122/2003); Article 22, 45; http://www.crocompet.hr/eng/trzisno_n.htm
B. Notification forms or information requirements	Regulation on Notification and Assessment of Concentrations, Article 11-14. http://www.crocompet.hr/eng/trzisno_n.htm
C. Substantive merger review provisions	Competition Act ; Article 18, 19, 22, 25; http://www.crocompet.hr/eng/trzisno_n.htm
D. Implementing regulations	Regulation on Notification and Assessment of Concentrations. Regulation on the Definition of Relevant Market. Regulation on Agreements of Minor Importance. Regulation on Block Exemption Granted to Certain Categories of Vertical Agreements. Regulation on Block Exemption Granted to Certain Categories of Horizontal Agreements. Regulation on Block Exemption Granted to Agreements on Distribution and Servicing of Motor Vehicles. Regulation on Block Exemption Granted to Certain Categories of Technology Transfer Agreements Regulation on Block Exemption Granted to Insurance Agreements http://www.crocompet.hr/eng/trzisno_n.htm

E. Interpretive guidelines and notices	None
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2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	Croatian Competition Agency.
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	<p>The Republic of Croatia Croatian Competition Agency Savska 41/VII 10000 Zagreb Croatia tel: +385 1 617 64 48 ; fax: +385 1 617 64 50 http://www.aztn.hr (in Croatian and English) e-mail: agencija.ztn@crocompet.hr, ana.pavlakovic@aztn.hr</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.	The agency staff is available for pre-notification by telephone, fax or e-mailing.

3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)	<p>A concentration of undertakings shall be deemed to arise by means of:</p> <ol style="list-style-type: none"> 1. merger association of undertakings; 2. by acquiring control or prevailing influence of one or more undertakings over another undertaking, i.e. of more undertakings or a part of an undertaking, or parts of other undertakings, in particular by: <ul style="list-style-type: none"> - acquisition of the majority of shares or share capital, or - obtaining the majority of voting rights, or - in any other way in compliance with the provisions of the Company Law and other regulations. <p>The creation of a joint venture having the nature of a permanent independent economic unit shall constitute a concentration. Article 19.</p>
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<p>B. If change of control is a determining factor, how is control defined?</p>	<p>An undertaking is deemed to be controlled by another undertaking if that undertaking, directly or indirectly holds more than half of share capital or half of shares, or may exercise more than half of voting rights, or has the right to appoint more than half of the members of the management board or supervisory committee or similar administrative or managing body, or in any other way exercises a decisive influence on the right to manage business operations of the undertaking.</p> <p>Article 5 (2).</p>
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Partial stock acquisitions/ minority shareholdings are covered only if the conditions regarding total turnover are simultaneously met.</p>
<p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</p>	<p>Joint ventures created with the nature of a permanent independent economic unit will constitute concentration.</p> <p>Article 19 (2, 5).</p>

4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>The parties of the merger are obliged to notify it if the following conditions are met:</p> <ol style="list-style-type: none"> 1. the total turnover of all the undertakings – parties of the merger, realized by the sale of goods and/or services in the global market, amounts to at least 1 billion Kuna in the financial year preceeding the merger, and 2. the total turnover of each of at least two parties of the merger realized by the sale of goods and/or services in the domestic market, amounts to at least 100,000,000.00 Kuna in the financial year preceeding the merger. <p>Article 22 (4).</p>
<p>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?</p>	<p>Group-wide undertakings are included.</p> <p>For threshold purposes, determining group-wide undertakings is based on control. An undertaking is deemed to be controlled by another undertaking if that undertaking, directly or indirectly holds more than half of share capital or half of shares, or may exercise more than half of voting rights, or has the right to appoint more than half of the members of the management board or supervisory committee or similar administrative or managing body, or in any other way exercises a decisive influence on the right to manage business operations of the undertaking.</p> <p>Article 5 (2).</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>The thresholds are not subject to adjustment.</p>
<p>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>The thresholds relate to the calendar year preceding the merger</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>Calculation for the value of the transaction is based on the documentation that parties submit to the Agency.</p> <p>Calculation of the relevant turnover is based on annual financial reports of parties of the merger.</p> <p>Calculation of the value of relevant assets is based on the documentation that parties submit to the Agency.</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>Calculation is based on the official average annual middle exchange rate of the Croatian National Bank.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>Thresholds apply to both.</p>
<p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>No</p>
<p>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</p>	<p>The nexus to the jurisdiction is determined with the thresholds. The thresholds refer to the Croatian market but also to all undertakings - parties of the procedure and their realized sale of goods or services in the global market.</p> <p>Article 22 (4).</p>

<p>requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an “effects” test?</p>	
<p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	<p>By the location of the seller.</p>
<p>K. If market share tests are used, are there guidelines for calculating market shares?</p>	<p>The guidelines are provisions contained in the Regulation on the Definition of Relevant Market.</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>Special threshold calculations are applied when banks and other financial institutions as parties to mergers are involved. In that case the total turnover calculated on the basis of the total turnover from their regular business operations in the financial year preceding the merger. In the matters of control of mergers including insurance companies as parties to merger, the total turnover is calculated on the basis of the total gross premiums of the parties to the merger in the financial year preceding the merger.</p> <p>Article 23, 24.</p>
<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>No</p>
<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>No</p>
<p>O. Does the agency have the authority to review transactions that fall below the thresholds?</p>	<p>No</p>

5. Notification requirements and timing of notification

<p>A. Is notification mandatory pre-merger?</p>	<p>Yes, if the thresholds are reached.</p> <p>Article 22 (1).</p>
<p>B. Is notification mandatory post-merger?</p>	<p>Notification is mandatory at the latest within 8 days following the day of the publication of the public bid or the day of the conclusion of the contract through which the control or prevailing influence of an undertaking is acquired.</p> <p>Article 22 (2).</p>
<p>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</p>	<p>Yes.</p>
<p>D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?</p>	<p>A concentration can be notified prior to an agreement, a definitive agreement is not required</p>
<p>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>	<p>Notification must be made at the latest within 8 days following the day of the publication of the public bid or the day of the conclusion of the contract through which the control or prevailing influence of an undertaking is acquired.</p> <p>Article 22 (2).</p>
<p>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>No</p>

6. Simplified procedures

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>There is no special procedure for such transactions.</p> <p>If the Agency, on the basis of valid evidence submitted together with the notification of concentration and on the evidence basis of the available information and findings, establishes beyond dispute that it is reasonable to suppose that the implementation of the proposed concentration is not prohibited, and if the notifying party is not given notice, within 30 days following the receipt of the complete notification of concentration about the decision procedural order on the initiation of the assessment proceedings of the concentration, the concentration concerned shall be deemed to be compatible.</p> <p>Article 26 (1).</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).	<p>The notification of the proposed concentration needs to be accompanied by the original or a certified copy of the document, or a certified translation, if the original official text has not been written in Croatian, proving the legal grounds for the concentration; annual financial reports for the parties to the concentration for the financial year preceding the concentration; other data as required by the provisions of the Regulation on Notification and Assessment on Concentrations.</p> <p>Article 45 (1). Regulation on notification and assessment of concentrations, Article 11.</p>
B. Are there any document legalization requirements (e.g., notarization or apostille)?	<p>Yes, the document proving the legal grounds for the concentration has to be a original or a certified copy of the document.</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?	<p>No</p>

8. Translation

A. In what language(s) can the notification forms be submitted?	The notification, supporting documentation and entire documentation shall be submitted in Croatian Regulation on Notification and Assessment of Concentrations, Article 7
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.	The notification and supporting documentation are to be translated into Croatian by a certified translator. The notifying party shall deliver the certified translation supported by the original copy or certified photocopy of the original document (in the original language). Regulation on Notification and Assessment of Concentrations, Article 7.

9. Review periods

A. Describe any applicable review periods following notification.	After receiving all necessary documentation in relation to notification, the Agency will make the resolution on instituting the proceedings ex officio, or upon the submitted 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	Where the Agency considers that the implementation of the concentration concerned could have as its effect a significant prevention, restriction or distortion of competition in the relevant market, it shall order the initiation of the proceedings for the purpose of evaluating the compatibility of the concentration concerned, and within three months following the day of the procedural order on instituting the proceedings, render its decision: 1. by which the concentration concerned is evaluated as compatible, or 2. by which the concentration concerned is evaluated as

maximum for extensions?	incompatible, or 3. by which the concentration concerned is evaluated as conditionally compatible, provided that certain measures are observed and conditions met, within the time limits set by the Agency. Article 26 (3).
D. What are the procedures for accelerated review of non-problematic transactions, if any?	There are none.

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.	Notification prohibits the implementation of the merger for all the parties as long as the Agency is taking its final decision authorising it, or until the expiry of 30 days following the receipt of the complete notification of concentration, or until the expiry of 3 months after initiating the proceedings for the purpose of evaluating the compatibility of the transaction.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	None
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	The waiting periods are limited to the transactions that have an impact within the jurisdiction

<p>extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>After the expiry period of 30 days after notification if parties have not been given notice about the procedural order on the initiation of the assessment proceedings of the merger. In this case, the merger is deemed to be compatible.</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>Where the Agency considers that the implementation of the concentration concerned could have as its effect a significant prevention, restriction or distortion of competition in the relevant market, it shall order the initiation of the proceedings for the purpose of evaluating the compatibility of the concentration concerned, and within three months following the day of the procedural order on instituting the proceedings, render its decision:</p> <ol style="list-style-type: none"> 1. by which the concentration concerned is evaluated as compatible, or 2. by which the concentration concerned is evaluated as incompatible, or 3. by which the concentration concerned is evaluated as conditionally compatible, provided that certain measures are observed and conditions met, within the time limits set by the Agency. <p>Article 26 (3).</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>None</p>
<p>G. Describe any provisions or procedures allowing</p>	<p>None</p>

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).	
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11. Responsibility for notification / representation

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>The obligation to notify the Agency on the proposed concentration shall depending on its legal form fall on:</p> <ul style="list-style-type: none"> a) the acquiring undertaking or newly established undertaking, in the case of merger association of undertakings; b) the acquirer of the majority of shares or share capital or voting rights, in the case of acquisition of the majority of shares, share capital or voting rights; c) the controlling undertaking or undertaking with decisive influence, in the case of acquiring control or decisive influence; d) all undertakings - participants in the joint venture, whereby they may notify jointly or appoint the undertaking from the joint venture as their joint representative, in the case of creation of joint venture; e) the bidder, in the case of acquiring 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). <p>In other cases, the obligation to notify shall fall on all undertakings - parties to the concentration submitting a joint notification, or by their commonly appointed representative - party to the concentration.</p> <p>Regulation on Notification and Assessment of Concentrations, Article (2,3).</p>
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	No
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)?	Any person who has full contractual capacity can represent the notifying part
D. How does the validity of the representation need	The validity of the representation needs to be attested in writing, by the power of attorney which must be notarised. There are no special rules for foreign representatives or firms.

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?	
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12. Filing fees

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)?	For the notification of concentration filing fees are 10.000,00 Kn when the thresholds are reached, and 5.000,00 Kn when notification is made for the evaluation of concentration under special regulation.
B. Who is responsible for payment?	The notifying party.
C. When is payment required?	The obligation for payment is created at the time of notification.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	The payment is made to the State Budget foreign currency account, by a special bank transfer. Its copy is to be submitted to the Agency within 8 days of the payment.

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?	<p>Under the term official secret is considered all that undertakings, or persons have defined as business or official secret. However, data and documents which have been made accessible to the general public in any way, or decisions of managing or administrative bodies of the undertakings published to be available to the general public pursuant to particular regulations, shall not be considered official secret.</p> <p>Article 51 (2.3, 4).</p>
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<p>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</p>	<p>Yes, parties to the proceedings have the right of access to case files and are allowed by the Agency to make a photocopy of the file or of single documents at their own expense. Drafts of the decisions of the Agency, official statements and protocols from the sessions of the Committee, internal instructions and notes on the case, correspondence and information exchanged with the European Commission or other authorities of the European Communities, as well as other documents considered official secret may neither be inspected nor photocopied.</p> <p>Article 50.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>Third parties or government agencies can obtain access to the notification materials only if they have and show justified legal interest. However, they cannot obtain access to the materials defined as confidential by notifying parties.</p> <p>General Administrative Procedure Act, Article 80. (Official Gazette of the republic of Croatia, No. 53/91, 103/96)</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>According to the Croatian Competition Act all that notifying parties define as business or confidential secret will be considered as such.</p> <p>See 14. A.</p>
<p>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>The Agency cooperates with all foreign competition authorities, but is not a party to any special agreements which regulate that cooperation.</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 Agency can exchange information with other reviewing agencies regarding the non-confidential information. Regarding the confidential information the consent should be required from the parties, although so far the Agency did not deal with such cases.</p>

14. Transparency

<p>A. Does the agency publish an annual report? Please provide the web address if available.</p>	<p>Annual Report 2004 Annual Report January-December 2003 Annual Report April 2001 - February 2002 Annual Report April 2000 - April 2001 Annual Report March 1999 - April 2000 Annual Report March 1998 - April 1999 http://www.crocompet.hr/eng/izvjesce_o_r.htm</p>
<p>B. Does the agency publish press releases related to merger policy or investigations?</p>	<p>Yes http://www.crocompet.hr/eng/press.asp</p>
<p>C. Does the agency publish decisions on why it cleared / blocked a transaction?</p>	<p>Yes http://www.crocompet.hr/eng/odluke.asp</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>For failure to file a notification the undertaking - legal or natural person will be fined at the most with 1% of the value of its total annual turnover in the financial year preceding the year when the infringement was committed. Also, the responsible person of the undertaking - legal person concerned shall be also fined an amount ranging from 15,000.00 to 50,000.00 Kuna. Article 62 (1.2, 2).</p>
<p>B. Which party/ies are potentially liable?</p>	<p>Parties that participate in the proceedings before the Agency, but also persons that are not parties to the proceedings if they fail to act upon the request of the Agency.</p>
<p>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.</p>	<p>The Agency is required to bring judicial action against the infringing party. The procedure depends on a case by case situation, can take from 2 months up to 2 years.</p>

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.

Against the decisions or procedural orders of the Agency no appeal is allowed, but the injured party which is not satisfied may file an administrative dispute before the Administrative Court of the Republic of Croatia. The administrative dispute may be filed within 30 days from delivery of the decision to the injured party.

17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?

No

18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?

No

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?

No

