

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

CYPRUS COMMISSION FOR THE PROTECTION OF COMPETITION (CPC)

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)

A. Notification provisions	Control of Concentrations Between Undertakings Law 22(I)/99, as amended by Law 107(I)/99 and Law 154(I)/00 (Herein "the Law")
B. Notification forms or information requirements	According to section 15 of the Law, "The notifications of concentrations shall contain the information referred to in Schedule III."
C. Substantive merger review provisions	Section 10 and 11 of the Law
D. Implementing regulations	None
E. Interpretive guidelines and notices	None

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	Cyprus Commission for the Protection of Competition
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	53 Strovolos Avenue Victory Strovolos 2018 Nicosia Cyprus Tel: 00357 22606600 Fax: 00357 22304944 Email: chairman@competition.gov.cy Website: www.competition.gov.cy (in Greek and English)
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	It is not provided for in the Law.

3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)	According to section 4 of the Law, the legislation covers concentrations which arise either as a result of a merger between independent undertakings or as a result of acquisition or change of control of an existing undertaking, as well as full function joint ventures.
B. If change of control is a determining factor, how is control defined?	According to section 4(3), "Control" for the purposes of the Law means control constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an enterprise.

<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Yes, they are covered given that there is acquisition or change of control in the sense mentioned above.</p>
<p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</p>	<p>All full function joint ventures are covered by the Law.</p>

4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>According to section 3(2) of the Law the thresholds set are as follows:</p> <ul style="list-style-type: none"> (i) The aggregate turnover achieved by at least two of the participating enterprises exceeds, in relation to each one of them, two million Cyprus pounds; and (ii) at least one of the participating enterprises engages in commercial activities within the Republic of Cyprus; and (iii) at least two million Cyprus pounds out of the aggregate turnover of all the participating enterprises relate to the disposal of goods or the supply of services within the Republic; or it is declared as being of major importance by the Minister.
<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>According to schedule II of the Law the thresholds apply to:</p> <p>“(a) the enterprises participating in the concentration; (b) enterprises in which the enterprises participating in the concentration hold, directly or indirectly-</p> <ul style="list-style-type: none"> (i) more than half of the capital or business assets; or (ii) more than half of the voting rights; or (iii) the power to appoint more than half of the members of the supervisory or administrative board or the bodies which legally represent the enterprise concerned; or (iv) the right to manage the affairs of the enterprise; <p>(c) the enterprises which hold in a participating enterprise the rights or powers referred to in subparagraph (b) of this paragraph; (d) the enterprises in which an enterprise referred to in subparagraph (c) of this paragraph holds the rights or powers referred to in subparagraph (b) of this paragraph; (e) the enterprises in which more [than one] enterprises as referred to in subparagraphs (a) to (d) of this paragraph hold jointly the rights or powers referred to in subparagraph (b) of this paragraph.”</p> <p>For the notion of control see above.</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>Thresholds are not subject to adjustment.</p> <p>However, according to section 7 of the Law, the relevant thresholds may be amended from time to time by Order of the Council of Ministers. The thresholds have not been amended to date.</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>Preceding fiscal year</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>In principle, the aggregate turnover referred in the Law comprises the amounts which derive from the sale of products and the provision of services by the enterprises concerned during the preceding financial year and which correspond to the ordinary activities of the enterprises, after deducting discounts on sales, value added tax and other taxes directly related to turnover (see schedule II of the Law).</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>Current exchange rates are applied.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>The thresholds apply to worldwide sales as well as to sales within the jurisdiction.</p>
<p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>At least two participating undertakings are required to meet the relevant thresholds in relation to their worldwide turnover. With regards to the turnover related to the disposal of goods or the supply of services within the Republic, the turnover of at least one undertaking is sufficient.</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>According to the national Law, at least two million Cyprus pounds out of the aggregate turnover of all the participating enterprises must relate to the disposal of goods or the supply of services within the Republic. Local presence is not a requirement.</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>n/a</p>
<p>K. If market share tests are used, are there guidelines for calculating market shares?</p>	<p>n/a</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 thresholds calculations are provided for banks or other credit providing organizations and insurance companies (see schedule II).</p>
<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>The Law does not provide for such exceptions</p>
<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>n/a</p>
<p>O. Does the agency have the authority to review transactions that fall below the thresholds?</p>	<p>The agency has the authority to review transactions which do not meet the thresholds if a transaction is declared of major importance by an Order of the Minister.</p>

5. Notification requirements and timing of notification

<p>A. Is notification mandatory pre-merger?</p>	<p>Yes.</p>
<p>B. Is notification mandatory post-merger?</p>	<p>n/a</p>
<p>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</p>	<p>n/a</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 captured by the Law has to be notified within one week at the latest from the date of conclusion of the relevant agreement or the publication of the relevant offer of purchase or exchange or the acquisition of a controlling interest, whichever of the said events occurs first.</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>A concentration captured by the Law has to be notified within one week at the latest from the date of conclusion of the relevant agreement or the publication of the relevant offer of purchase or exchange or the acquisition of a controlling interest, whichever of the said events occurs first.</p> <p>The deadline does not depend on the structure of the transaction. There are no special rules for public takeover bids.</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>n/a</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.).	n/a
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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).	According to schedule III of the Law, the parties must submit: (1) a copy of all the final or most recent documents which brought about the concentration; (2) in the case of a public tender, a copy of the document of the tender; (3) copies of the most recent annual reports and audited financial reports of all the enterprises participating in the concentration; and (4) copies of reports or analyses prepared for the purposes of the concentration.
B. Are there any document legalization requirements (e.g., notarization or apostille)?	n/a
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?	n/a

8. Translation

A. In what language(s) can the notification forms be submitted?	In one of the official languages of the Republic, i.e. Greek and Turkish
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 documents shall be submitted in one of the official languages of the Republic, i.e. Greek and Turkish or in English. If the originals have been completed in a language other than these languages, the document shall be submitted both in the original language and in translation into one of the official languages of the Republic.

9. Review periods

A. Describe any applicable review periods following notification.	<p>In a merger case after the preliminary investigation and on the basis of the report prepared by the Service the Competition Commission, within one month from the date of receipt of the notification or as the case may be, from the date on which the Service receives the additional information which is necessary for securing compliance of the notification with the requirements of Schedule III, may decide that the notified concentration does not fall within the scope of the law, or that, despite falling within the scope of the law, does not raise serious doubts as to its compatibility with the competitive market. Where the Commission ascertains that the notified concentration falls within the scope of the Law and raises serious doubts as to its compatibility with the competitive market, it decides to set in motion a procedure of full investigation.</p> <p>After the completion of the full investigation, which has to be completed 3 months from the date of compliance with the requirements of Schedule III, the Commission has one month to decide whether to declare the concentration compatible with the competitive market, subject to any specific terms and relevant</p>
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	commitments made by the parties, or declare the concentration in question as incompatible with the requirements of the competitive market.
B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?	n/a
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?	Time limits can be extended under specific conditions. During the first phase, time limits can be extended for 14 days due to exceptional volume or complexity of the information forwarded in the notification (see section 21 of the Law). During the second phase, if any delay in the fulfillment by the Service or the Commission of their obligations according to the law is due to an omission on behalf of any of the participants in the concentration or any representative of theirs, the time limits are subjected to such extension as in the opinion of the Commission is reasonably necessary for the fulfillment of the said obligations (see section 30 of the Law).
D. What are the procedures for accelerated review of non-problematic transactions, if any?	n/a

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	The rule is that a merger cannot be completed prior to the clearance. However temporal approval may be requested and granted per section 33 of the Law. Should the time limits set by the Law expire without the Commission issuing the relevant decision, a concentration is considered to have been declared compatible with the requirements of the competitive market (section 22 and 32).
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review period.	
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	The Law provides for temporary approval under the conditions of section 33 of the Law
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.)	n/a
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Yes (section 22 and 32).

<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>Time limits can be extended under specific conditions. During the first phase, time limits can be extended for 14 days due exceptional volume or complexity of the information forwarded in the notification. During the second phase, if any delay in the fulfillment by the Service or the Commission of their obligations according to the law is due to an omission on behalf of any of the participants in the concentration or any representative of theirs, the time limits are subjected to such extension as in the opinion of the Commission is reasonably necessary for the fulfillment of the said obligations.</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>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>n/a</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>In cases of acquisitions the acquiring entity and the person or enterprise acquiring control is responsible for notifying. In cases of joint ventures or a merger of two or more companies which were previously independent, the notification may be submitted by either party or jointly.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases</p>	<p>No</p>

or hostile bids)?	
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)?	No
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?	When one or more representatives have been authorized to sign the notification on behalf of one or more of the participating enterprises, the notification must be accompanied by the relevant authorization.

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)?	No
B. Who is responsible for payment?	n/a
C. When is payment required?	n/a
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	n/a

13. Confidentiality

<p>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>	<p>The Cyprus legislation does not provide for pre-notification. However, after the receipt of the notification, a relevant announcement is published in the Official Gazette of the Republic indicating the names of the participants, the nature of the concentration and the economic sectors involved. In so doing, the Service takes into account, as far as possible, the legitimate interest of the affected enterprises in protecting their business secrets.</p>
<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>No. Access to the file can be granted only when the decision of the Commission is appealed to the Supreme Court.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>The Ministry of Commerce, Industry and Tourism is informed of the notification according to section 35 and receives all notification documents.</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 Schedule III of the Law, "where any of the information included in the notification is regarded as confidential by the parties of the concentration, this must be marked as confidential and the reasons justifying such confidentiality must be mentioned. Such information may, in exceptional cases, be given in a separate envelope and due reference must be made thereto in the text of the notification."</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>Cyprus is a member of the European Union and a member of the ECA network.</p>
<p>F. Can the agency exchange documents or information with other reviewing</p>	<p>Please see 13.E above</p>

agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?	
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14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	The CPC publishes an Annual Report in hard copy, both in Greek and English. The Annual Report can also be found on the website of the CPC.
B. Does the agency publish press releases related to merger policy or investigations?	The fact of the notification of a merger is published on the website, as well as the decision of the CPC
C. Does the agency publish decisions on why it cleared / blocked a transaction?	The CPC publishes fully reason decisions in the Official Gazette of the Republic. However, the published decision takes into consideration the business secrets of the participating undertakings.

15. Sanctions/penalties

A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?	In case of failure to notify a concentration in the time limits set by the Law, a fine of up to £50.000 can be imposed and an additional fine of up to £5.000 for each day on which the infringement continues. A fine of up to ten per cent of the total turnover of the participating enterprises in the financial year immediately preceding the concentration, may be imposed in case a concentration is partially or completely put into effect before a clearance decision, or in case the concentration is put into effect without the fulfillment of a term imposed by the Commission or in case of failure to comply with a measure ordered by the Commission and in addition a fine of up to £5.000 for each day on which the infringement continues.
B. Which party/ies are potentially liable?	The participating undertakings and/or the entity oblige to notify

<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 has the power to impose the relevant sanctions directly.</p>
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16. Judicial review

<p>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</p>	<p>According to section 56 of the Law the decisions of the CPC are subjected to judicial review by the Supreme Court. According to the Constitution the timetable is set to 75 days.</p>
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17. Additional filings

<p>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</p>	<p>n/a</p>
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18. Closing deadlines

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

The Commission may at any time revoke the decision it has made in relation to the compatibility of any concentration or may amend the terms of the decision if it ascertains:

(a) that false or misleading information has been given or that necessary information relating to this concentration has been withheld by the sender of the notification or by any other participant in the concentration or by any interested person; or

(b) that any term which has been imposed on the participants in the concentration by the said decision has not been satisfied or has ceased to be satisfied.