

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

European Union

April 2006

IMPORTANT NOTE: This template is intended to provide introductory material. Reading the template is not a substitute for consulting the referenced statutes and regulations. If you are analyzing a particular transaction, this template should be a starting point only.

The following explanations are made available for information purposes only and do not constitute an official publication of the European Commission with legally binding effects. The official versions of the applicable texts are published in the Official Journal of the European Union.

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

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| A. Notification provisions | Article 4 of the Merger Regulation; Articles 1-5 of the Implementing Regulation Please note that the materials referred to here and below, as well as non-confidential versions of the Commission's decisions in merger cases and other kinds of merger-related information are available at: http://europa.eu.int/comm/competition/index_en.html |
| B. Notification forms or information requirements | Form CO relating to the notification of a concentration pursuant to Regulation (EC) No 139/2004 (Annex of the Implementing Regulation) |
| C. Substantive merger review provisions | Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (hereinafter referred to as "the Merger Regulation") (OJ L 24/1, 29.1.2004) |

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| <p>D. Implementing regulations</p> | <p>Commission Regulation (EC) No 802/04 of 7 April 2004 implementing Council Regulation (EC) No 139/04 on the control of concentrations between undertakings (OJ L 133/1, 30.4.2004) (hereinafter referred to as “the Implementing Regulation”)</p> |
| <p>E. Interpretive guidelines and notices</p> | <p>Commission Notices:</p> <ul style="list-style-type: none"> – Commission Notice on the concept of full-function joint ventures under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.1) – Commission Notice on the concept of a concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.5) – Commission Notice on the concept of undertakings concerned under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.14) – Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p. 25) – Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EEC) No 4064/89 (OJ C 217, 29.07.2000, p. 32). – Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 (OJ C 68, 02.03.2001, p. 3) – Guidance notes attached to the notification Form CO (Appendix 9 to Protocol 4 of the Surveillance and Court Agreement): <ul style="list-style-type: none"> – Guidance note I – Calculation of turnover for insurance undertakings – Guidance note II – Calculation of turnover for joint undertakings – Guidance note III – Application of the two-thirds rule – Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 05.02.2004, p. 5) – Commission Notice on case referral in respect of concentrations (OJ C 56, 05.03.2005, p. 2) – Commission Notice on restrictions directly related and necessary to concentrations (OJ C 56, 05.03.2005, p. 24) |

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| | <ul style="list-style-type: none"> – Commission Notice of 13 December 2005 on the rules for access to the Commission file (OJ C 325, 21.12.2005, p. 7) – DG Competition Best Practices on the conduct of EC merger control proceedings <p>Please note that the materials referred to here are available at: http://europa.eu.int/comm/competition/index_en.html</p> |
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2. Authority or authorities responsible for merger enforcement.

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| <p>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</p> | <p>European Commission, Directorate General for Competition.</p> <p>The European Commission has exclusive merger control jurisdiction for concentrations with a Community dimension as defined in Article 1 of the Merger Regulation (see Article 21 of the Merger Regulation). In addition, cases may be referred to the Commission by one or several Member States pursuant to Article 22(3) of the Merger Regulation. In turn, the Commission can refer or partially refer cases to the competent authorities of Member States upon their request (see Article 9 of the Merger Regulation).</p> <p>In addition pursuant to Art. 4(4) and 4(5) of the Merger Regulation notifying parties may request a transfer of jurisdiction either from or to the Commission prior to notification. In the case of requests for referral from the Commission to a particular Member State, Article 4(4) provides that where the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market the notifying parties may make a reasoned submission requesting that the transaction should therefore be examined, in whole or in part, by that Member State.</p> <p>Requests should be made on the basis of a reasoned submission from the parties using the Form RS which is an annex to the Implementing Regulation. Article 4 (5) provides that where a concentration does not have a Community dimension within the meaning of Art. 1 and where it is capable of being reviewed under the national competition laws of at least three Member States the notifying parties may, prior to notification to the competent authorities, request that the concentration is examined by the Commission, using the above mentioned Form.</p> |
| <p>B. Address, telephone and fax (including country code), e-mail, website</p> | <p>European Commission</p> |

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| <p>address and languages available.</p> | <p>DG COMP</p> <p>Postal address: B-1049 Brussels, Belgium</p> <p>Office address: 70, Rue Joseph II, B-1000 Brussels, Belgium</p> <p>Tel: +32.2.299.11.11 / Fax: +32.2.296.43.01)</p> <p>E-Mail: comp-mergers@cec.eu.int (caution: this e-mail address is a contact point for external queries only; it may not be used for any specific messages relating to individual merger cases, in particular not for merger notifications)</p> <p>Website: http://europa.eu.int/comm/competition/index_en.html (languages available: English, French, German, Italian, Spanish, Greek, Portuguese, Dutch, Finnish, Swedish, Danish)</p> |
| <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> | <p>Yes. The European Commission even encourages notifying parties to enter into pre-notification contacts with the relevant service.</p> <p>See our best practice guidelines: http://europa.eu.int/comm/competition/mergers/others/best_practice_gl.html</p> |

3. Covered transactions

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| <p>A. Definitions of potentially covered transactions (i.e., concentration or merger)</p> | <p>Pursuant to Article 3(1) and 3(4) of the Merger Regulation:</p> <p>(1) A concentration shall be deemed to arise where:</p> <p>(a) two or more previously independent undertakings merge, or</p> <p>(b) one or more persons already controlling at least one undertaking, or one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings.</p> <p>(4) The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity, shall constitute a concentration within the meaning of paragraph 1(b).</p> <p>Article 3 of the Merger Regulation contains provisions concerning</p> |
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| | <p>control and the acquisition of control.</p> <p>See also the Commission Notice on the concept of a concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.5) and the Commission Notice on the concept of full function joint ventures under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.1)</p> |
| <p>B. If change of control is a determining factor, how is control defined?</p> | <p>Pursuant to Article 3(3) of the Merger Regulation:</p> <p>For the purpose of the Merger Regulation, control shall be 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 undertaking, in particular by:</p> <p>(a) ownership or the right to use all or part of the assets of an undertaking;</p> <p>(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.</p> <p>Article 3(5) of the Merger Regulation contains specific provisions concerning the circumstances under which a concentration shall not be deemed to arise.</p> <p>See also the Commission Notice on the concept of a concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.5) and the Commission Notice on the concept of full function joint ventures under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.1)</p> |
| <p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p> | <p>Yes, as long as the transaction is a concentration and has a Community dimension within the meaning of Articles 1 and 3 of the Merger Regulation.</p> |
| <p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</p> | <p>Yes. Article 3(4) of the Merger Regulation provides that the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of the Merger Regulation.</p> <p>See also the Commission Notice on the concept of a concentration under Council Regulation (EEC) No 4064/89 on the</p> |

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| | control of concentrations between undertakings (OJ C 66, 2.3.1998, p.5) and the Commission Notice on the concept of full function joint ventures under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.1) |
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4. Thresholds for notification

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| A. What are the general thresholds for notification? | <p>Pursuant to Article 1 of the Merger Regulation, the Merger Regulation shall apply to all concentrations with a Community dimension defined as follows:</p> <p>(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 billion; and</p> <p>(b) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.</p> <p>A concentration that does not meet these thresholds has a Community dimension where:</p> <p>(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2 .5 billion;</p> <p>(b)in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;</p> <p>(c) in each of at least three Member States included for the purpose of point (b), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and</p> <p>(d) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million;</p> <p>unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.</p> |
| B. To which entities do the | Pursuant to Article 5(4) of the Merger Regulation, and without |

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| <p>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>prejudice to Article 5(2), the aggregate turnover of an undertaking concerned within the meaning of Article 1 (2) and 3 shall be calculated by adding together the respective turnovers of the following:</p> <ul style="list-style-type: none"> (a) the undertaking concerned; (b) those undertakings in which the undertaking concerned, directly or indirectly; <ul style="list-style-type: none"> – owns more than half the capital or business assets, or – has the power to exercise more than half the voting rights, or – has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or – has the right to manage the undertakings' affairs; (c) those undertakings which have in an undertaking concerned the rights or powers listed in (b); (d) those undertakings in which an undertaking as referred to in (c) has the rights or powers listed in (b); (e) those undertakings in which two or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b). <p>Pursuant to Article 5(1), first subparagraph, second sentence, of the Merger Regulation, the aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in Article 5(4).</p> <p>See also the Commission Notice on the concept of undertakings concerned under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.14), the Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p. 25),.</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 adjusted periodically, but Article 1(4) of the Merger Regulation provides that the Commission shall report on the operation of the thresholds by 1 July 2009 and that a revision may follow.</p> |

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| <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>Pursuant to Article 5(1), first subparagraph, of the Merger Regulation, aggregate turnover within the meaning of the Merger Regulation shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover.</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>Pursuant to Article 5(1), second subparagraph, of the Merger Regulation, turnover, in the Community or in a Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that Member State as the case may be.</p> <p>See also the Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p. 25).</p> <p>Pursuant to Article 5(2) of the Merger Regulation, where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the subject of the transaction shall be taken into account with regard to the seller or sellers.</p> <p>However, two or more such transactions which take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the last transaction.</p> <p>See also the Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of 8 of 22 concentrations between undertakings (OJ C 66, 2.3.1998, p. 25).</p> |
| <p>F. Describe methodology for calculating exchange rates.</p> | <p>The European Commission suggests relying on the exchange rates published by the European Central bank, to the extent applicable.</p> |
| <p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p> | <p>The stated tests apply to worldwide figures, Community-wide figures and figures relating to Member States.</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> |

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| <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 requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an “effects” test?</p> | <p>The thresholds laid down in Article 1 of the Merger Regulation determine jurisdictional nexus as far as the obligation to notify is concerned (for details regarding these thresholds, please refer to section 5.A).</p> <p>See also Judgment of the Court of First Instance of the European Communities of 25 March 1999 in case T-102/96 – Gencor Ltd. / Commission [1999] ECR II-879, at paragraphs 76- 111. The judgment can be found at the following webpage: http://curia.eu.int/en/jurisp/index.htm</p> |
| <p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p> | <p>Pursuant to Article 5(1), second subparagraph, of the Merger Regulation, turnover, in the Community or in a Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that Member State as the case may be. The Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p. 25) clarifies "that the location of the turnover is determined by the location of the customer at the time of the transaction."</p> |
| <p>K. If market share tests are used, are there guidelines for calculating market shares?</p> | <p>The jurisdiction of the European Commission does not depend on a market share test.</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>Pursuant to Article 5(3) of the Merger Regulation, in place of turnover the following shall be used:</p> <p>(a) for credit institutions and other financial institutions, as regards Article 1 (2) and (3) of the Merger Regulation, the sum of the following income items as defined in Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, after deduction of value added tax and other taxes directly related to those items, where appropriate:</p> <p>(i) interest income and similar income</p> <p>(ii) income from securities:</p> <p>– income from shares and other variable yield securities,</p> |

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| | <p>– income from participating interests,</p> <p>– income from shares in affiliated undertakings;</p> <p>(iii) commissions receivable;</p> <p>(iv) net profit on financial operations;</p> <p>(v) other operating income.</p> <p>The turnover of a credit or financial institution in the Community or in a Member State shall comprise the income items, as defined above, which are received by the branch or division of that institution established in the Community or in the Member State in question, as the case may be.</p> <p>(b) for insurance undertakings, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums; as regards Article 1 (2)(b) and (3)(b), (c) and (d) and the final part of Article 1(2) and (3) of the Merger Regulation, gross premiums received from Community residents and from residents of one Member State respectively shall be taken into account.</p> <p>See also the Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p. 25).</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</p> | <p>Yes, but only following a referral of jurisdiction as per the provisions described above in section 2.B..</p> |

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

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| A. Is notification mandatory pre-merger? | Notification is mandatory pre-merger. |
| B. Is notification mandatory post-merger? | Please see section 5.A: Notification is mandatory pre-merger. This obligation to notify remains unchanged should the parties illegally implement the merger without prior notification to the Commission. |
| C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when? | No. |
| 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>Pursuant to Article 4(1) of the Merger Regulation, concentrations with a Community dimension defined in the Merger Regulation shall be notified to the Commission prior to implementation and following the conclusion of the agreement, or the announcement of the public bid, or the acquisition of a controlling interest.</p> <p>Notification is also possible where the undertakings concerned satisfy the Commission of their intention to enter into an agreement for a proposed concentration and demonstrate to the Commission that their plan for that proposed concentration is sufficiently concrete, for example on the basis of an agreement in principle, a memorandum of understanding, or a letter of intent signed by all undertakings concerned, or, in the case of a public bid, where they have publicly announced an intention to make such a bid, provided that the intended agreement or bid would result in a concentration with a Community dimension.</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? | No. |

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| <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>Not applicable.</p> |
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6. Simplified procedures

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| <p>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> | <p>Pursuant to the Form CO and the Commission Notice on a simplified procedure for treatment of certain concentrations, the Commission may allow a short form notification and dispense with a full-form notification on the grounds that the operation to be notified will not raise competition concerns. If the Commission is satisfied that the concentration qualifies for the simplified procedure, it will normally issue a short form clearance decision within one month from the date of notification, pursuant to Article 10(1) and 6(1)(b) of the Merger Regulation.</p> <p>The categories of concentrations eligible for simplified procedure treatment, which are laid down in Form CO and the aforementioned Commission Notice, are the following:</p> <p>(a) in the case of a joint venture, the joint venture has no, or negligible, actual or foreseen activities within the territory of the European Economic Area (EEA). Such cases occur where:</p> <ul style="list-style-type: none"> – the turnover of the joint venture and/or the turnover of the contributed activities is less than EUR 100 million in the EEA territory; and – the total value of the assets transferred to the joint venture is less than EUR 100 million in the EEA territory; <p>(b) none of the parties to the concentration are engaged in business activities in the same relevant product and geographic market (no horizontal overlap), or in a market which is upstream or downstream of a market in which another party to the concentration is engaged (no vertical relationship);</p> <p>(c) two or more of the parties to the concentration are engaged in business activities in the same relevant product and geographic market (horizontal relationships), provided that their combined market share is less than 15%; and/or</p> |
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| | <p>– one or more of the parties to the concentration are engaged in business activities in a market which is upstream or downstream of a market in which any other party to the concentration is engaged (vertical relationships), and</p> <p>– provided that none of their individual or combined market shares at either level is 25% or more; or</p> <p>(d) a party is to acquire sole control of an undertaking over which it has joint control.</p> <p>In order to assess in detail the applicability of the simplified procedure and of the short form notification, the Commission is available for pre-notification contacts (for details, please refer to section 2.F). It is also advisable to refer to the Commission Notice on a simplified procedure for treatment of certain concentrations.</p> |
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7. Documents to be submitted

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| <p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</p> | <p>Section 5 of the notification Forms (Annexes I and II to the Implementing Regulation) specify the information and the documents that must be provided by an undertaking or undertakings when notifying a proposed concentration the Commission.</p> |
| <p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p> | <p>Pursuant to Article 2(3) of the Implementing Regulation, the supporting documents shall be either originals or copies of the originals; in the latter case, the notifying parties shall confirm that they are true and complete.</p> |
| <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> | <p>At the pre-notification stage, the parties can approach the Commission in order to discuss the exact type of information and documentation which should be provided in a given case. This applies to all notifying parties.</p> |

8. Translation

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| A. In what language(s) can the notification forms be submitted? | <p>Article 21(3) of the Treaty establishing the European Community (the EC Treaty) provides that every citizen of the Union may write to any of the institutions or bodies, referred to in this Article or in Article 7 (the European Parliament, the Council, the Commission, the Court of Justice, and the Court of Auditors) in one of the languages mentioned in Article 314 of the EC Treaty and have an answer in the same language.</p> <p>Pursuant to Article 3(4) of the Implementing Regulation, notifications shall be in one of the official languages of the Community. This language, which notifying parties are free to choose when submitting their notification, shall also be the language of the proceeding for the notifying parties. Where the original language is not one of the official languages of the Community, a translation into the language of the proceeding shall be attached.</p> |
| 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. | <p>Article 4(2) of the Implementing Regulation provides that the Commission may dispense with the obligation to provide any particular information, including documents, requested by Form CO where the Commission considers that such information is not necessary for the examination of the case.</p> |

9. Review periods

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| A. Describe any applicable review periods following notification. | <p>Initial waiting period during the preliminary investigation ("Phase I"):</p> <p>Pursuant to Article 10(1) of the Merger Regulation, the decision referred to in Article 6(1) (the "Phase I decision") must be taken within 25 working days at most. That period shall begin on the working day following that of the receipt of a notification or, if the information to be supplied with the notification is incomplete, on the working day following that of the receipt of the complete</p> |
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| | <p>information.</p> <p>That period shall be increased to 35 days if the Commission receives a request from a Member State in accordance with Article 9(2) of the Merger Regulation (request for referral of the case to that Member State), or where, after notification of a concentration, the undertakings concerned submit commitments pursuant to Article 6(2) of the Merger Regulation, which are intended by the parties to form the basis for a decision pursuant to Article 6(1)(b) ("Phase I" clearance decision).</p> <p>Extended waiting period after the initiation of proceedings ("Phase II"):</p> <p>Article 10(2) of the Merger Regulation provides that decisions taken pursuant to Article 8 ("Phase II" decisions) concerning notified concentrations must be taken as soon as it appears that the serious doubts referred to in Article 6(1)(c) have been removed, particularly as a result of modifications made by the undertakings concerned.</p> <p>Pursuant to Article 10(3) of the Merger Regulation, without prejudice to Article 8(7), decisions taken pursuant to Article 8(3) (prohibition decisions) concerning notified concentrations must be taken within not more than 90 working days of the date on which proceedings are initiated (date of the "Phase I" decision based on Article 6(1)(c) of the Merger Regulation).</p> <p>Pursuant to Article 10 (3) that period shall be increased to 105 working days where the undertakings concerned offer commitments pursuant to Article 8(2) second sub-paragraph, with a view to rendering the concentration compatible with the common market, unless these commitments have been offered less than 55 working days after the initiation of proceedings. These periods may also be extended by up to 20 working days with the notifying parties' request or with their agreement.</p> <p>Obligation to suspend closing:</p> <p>Article 7(1) of the Merger Regulation provides that a concentration as defined in Article 1 shall not be implemented either before its notification or until it has been declared compatible with the common market pursuant to a decision under Article 6(1)(b), 8(1) or 8(2) or on the basis of a presumption according to Article 10(6) of the Merger Regulation.</p> |
| <p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile</p> | <p>The review periods are the same for all types of transaction. However, as described in Section 10.A below, the suspension obligation has a different effect for public tenders.</p> |

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| bids)? | |
| 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? | The possibilities of extending the review periods are discussed at 9.A above. |
| D. What are the procedures for accelerated review of non-problematic transactions, if any? | <p>For Phase I investigations, there are no procedures for accelerated review.</p> <p>For Phase II investigations, Article 10(2) of the Merger Regulation provides that Phase II clearance decisions must be taken as soon as it appears that the serious doubts which justified the opening of the Phase II investigation have been removed, particularly as a result of modifications made by the undertakings concerned.</p> |

10. Waiting periods / suspension obligations

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| 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>Article 7(1) of the Merger Regulation provides that a concentration shall not be implemented either before its notification or until it has been declared compatible with the common market either pursuant to</p> <ul style="list-style-type: none"> – a decision made pursuant to the provisions described above in Section 9.A or – on the basis of a presumption set forth in Article 10(6). <p>Pursuant to Article 7(2) of the Merger Regulation, the suspension obligation discussed above shall not prevent the implementation of a public bid, or a series of transactions on the stock exchange, provided</p> <ul style="list-style-type: none"> – the concentration is notified without delay; and – the acquirer <ul style="list-style-type: none"> – does not exercise the voting rights attached to the securities in question or – does so only to maintain the full value of those investments and on the basis of a derogation granted by the Commission (see Section 10.B below) |
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| <p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p> | <p>Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on request, grant derogation from the obligations to suspend the concentration. A request to grant derogation must be reasoned and derogations may be applied for and granted at any time, even before notification or after the transaction.</p> <p>In deciding on the request, the Commission shall <i>inter alia</i> take into account the effects of the suspension on one or more undertakings concerned by a concentration or on a third party and the threat to competition posed by the concentration. Derogations may be made subject to conditions and obligations in order to ensure conditions of effective competition.</p> |
| <p>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.)</p> | <p>The applicable waiting periods are not limited to aspects of the transaction that occur within the Commission's jurisdiction. They apply to the proposed concentration as a whole.</p> |
| <p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p> | <p>Yes. Article 7(4) of the Merger Regulation provides that where the Commission has not taken a decision in accordance with Articles 6(1)(b),(c), 8(1), (2) or (3) within the time limits discussed in Section 9.A, the concentration shall be deemed to have been declared compatible with the functioning of the common market, without prejudice to Article 9.</p> |
| <p>E. Describe any provisions or procedures available</p> | <p>The "Phase-I" period of 25 working days shall be increased to 35 working days if the Commission receives a request for referral</p> |

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| <p>to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p> | <p>from a Member State pursuant to Article 9 of the Merger Regulation, or where, after notification of a concentration, the undertakings concerned submit commitments pursuant to Article 6(2) of the Merger Regulation, which are intended by the parties to form the basis for a "Phase I" clearance decision (Art. 10(1), second subparagraph, of the Merger Regulation)</p> <p>Pursuant to Article 10(4) of the Merger Regulation, the periods set by paragraphs 1 and 3 shall exceptionally be suspended where, owing to circumstances for which one of the undertakings involved in the concentration is responsible, the Commission has had to request information by decision pursuant to Article 11 or to order an investigation by decision pursuant to Article 13</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>The procedures for derogations from the suspension obligation are described in Section 10.B above.</p> <p>Early termination of the review period, and hence the suspension obligation, in Phase II investigations (only) are discussed above in Sections 9.A and 9.D.</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>Parties that take measures in accordance with a decision providing for a derogation from the suspension obligation (see Section 10.B above) assume the risk that the final decision in the matter is adverse. Parties that implement a public bid, or a series of transactions on the stock exchange (see Section 10.A above) also assume this risk. There are no other relevant procedures.</p> |

11. Responsibility for notification / representation

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| <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>Article 4(2) of the Merger Regulation provides that a concentration which consists of a merger within the meaning of Article 3(1)(a) or in the acquisition of joint control within the meaning of Article 3(1)(b) shall be notified jointly by the parties to the merger or by those acquiring joint control, as the case may be. In all other cases, the notification shall be effected by the person or undertaking acquiring control of the whole or parts of one or more undertakings.</p> |
| <p>B. Do different rules apply to</p> | <p>No.</p> |

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| public tenders (e.g. open market stock purchases 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? | Article 2(2) of the Implementing Regulation provides that where notifications are signed by representatives of persons or of undertakings, such representatives shall produce written proof that they are authorized to act. There are no special rules for foreign representatives or firms. |

12. Filing fees

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| 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)? | There are no filing fees for notifications to the European Commission. |
| B. Who is responsible for payment? | Not applicable. |
| C. When is payment required? | Not applicable. |
| D. What are the procedures for making payments (e.g., accepted forms of payment, proof of | Not applicable. |

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| payment required, wire transfer instructions)? | |
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13. Confidentiality

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| 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>Article 4(3) of the Merger Regulation provides that where the Commission finds that a notified concentration falls within the scope of this Regulation, it shall publish the fact of the notification, at the same time indicating the names of the parties, the nature of the concentration and the economic sectors involved. The Commission takes account of the legitimate interest of undertakings in the protection of their business secrets.</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>Art. 17 of the Implementing Regulation provides that the Commission shall, upon request, give notifying parties access to the file. Access is granted when the Commission has addressed to the notifying parties a Statement of Objections, for the purpose of enabling them to exercise their rights of defence. Insofar as this is necessary for the purposes of preparing their observations, the Commission shall, upon request, also give access to the file to the "other involved parties" (such as the seller and the company which is the target of the concentration) who have been informed of the Commission's objections.</p> |
| C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances? | <p>Pursuant to Article 19(1) of the Merger Regulation, the Commission shall transmit to the competent authorities of the Member State copies of notifications within three working days and, as soon as possible, copies of the most important documents lodged with or issued by the Commission pursuant to the Merger Regulation. Such documents shall include commitments which are intended by the parties to form the basis for a decision pursuant to Articles 6(2) or 8(2) of the Merger Regulation (conditional "Phase I" or "Phase II" clearance decisions).</p> <p>Article 17(1) of the Merger Regulation provides that information acquired as a result of the investigation of a merger case shall be used only for the purposes of that case.</p> <p>Pursuant to Article 17(2) of the Merger Regulation, without prejudice to Articles 4(3), 18 and 20, the Commission and the competent authorities of the Member States, their officials and other servants are under an obligation of professional secrecy; they shall not disclose information they have acquired through the application of the Merger Regulation of the kind covered by the obligation of professional secrecy.</p> |

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| | As a general rule, third parties do not have access to notification materials. |
| D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe. | No confidential treatment can be granted with regard to the fact of the notification. As regards notification materials, please see section B. above. |
| 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>The Agreements to which the European Community is party do not permit the exchange of case related information provided by the parties or third parties without their prior consent.</p> <p>For further information, please refer to the following internet websites:</p> <p>http://europa.eu.int/comm/competition/international/bilateral/</p> <p>http://europa.eu.int/comm/competition/international/multilateral/</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? | The Commission may not exchange case related information with other agencies unless the parties or third parties provide their prior consent. |

14. Transparency

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| A. Does the agency publish an annual report? Please provide the web address if available. | <p>Annual Report on Competition Policy – available on the Internet:</p> <p>http://europa.eu.int/comm/competition/annual_reports/</p> |
| B. Does the agency publish press releases related to merger policy or investigations? | <p>Yes, these are available on the Internet, please see for instance:</p> <p>http://www.europa.eu.int/comm/competition/press_releases/</p> |

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| C. Does the agency publish decisions on why it cleared / blocked a transaction? | <p>Yes, these are available on the Internet, please see:</p> <p>http://www.europa.eu.int/comm/competition/mergers/cases/</p> |
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15. Sanctions/penalties

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| A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations? | <p>Sanctions:</p> <p>Pursuant to Article 14(1) of the Merger Regulation, the Commission may by decision impose fines not exceeding 1% of the aggregate turnover of the undertaking or association of undertakings concerned where intentionally or negligently parties:</p> <ul style="list-style-type: none"> - supply incorrect or misleading information in a submission, certification, notification or supplement thereto pursuant to Article 4, article 10(5) or Article 22(3) - supply incorrect or misleading information in response to a request made pursuant to Art. 11 (2); - in response to a request made by decision pursuant to Article 11 (3), supply incorrect, incomplete or misleading information or do not supply information within the required time limit; - they produce books or records related to the business in incomplete form during an inspection or refuse to submit to an inspection ordered by decision pursuant to Art. 13 (4); - in response to a question put during an oral interview they provide an incorrect or misleading answer, fail to rectify an incorrect answer or fail or refuse to provide a complete answer in relation to information requested pursuant to Art. 13 (4). <p>Article 14(2) of the Merger Regulation provides that the Commission may by decision impose fines not exceeding 10% of the aggregate turnover of the undertakings concerned within the meaning of Article 5 on the persons referred to in Article 3(1)b or undertakings concerned where, intentionally or negligently, they – fail to notify a concentration in accordance with Articles 4 and 22 (3) prior to its implementation;</p> <ul style="list-style-type: none"> - implement a concentration in breach of Article 7 of the Merger Regulation; |
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| | <p>- implement a concentration declared incompatible with the common market by decision pursuant to Article 8 (3) or do not comply with any measure ordered by decision pursuant to Article 8 (4) or (5);</p> <p>– fail to comply with a condition or an obligation imposed by decision pursuant to Articles 6(1)(b), 7(3) or 8(2) of the Merger Regulation;</p> <p>Other consequences:</p> <p>Pursuant to Articles 6(3) and 8(6) of the Merger Regulation, the Commission may revoke a clearance decision it has taken where this decision is based on incorrect information for which one of the undertakings is responsible or where this decision has been obtained by deceit, or where the undertakings concerned commit a breach of an obligation attached to the decision.</p> |
| <p>B. Which party/ies are potentially liable?</p> | <p>The persons referred to in Article 3(1)(b) of the Merger Regulation, undertakings or associations of undertakings.</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 Commission has powers to impose the sanctions discussed above in section 15.B.</p> |

16. Judicial review

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| <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>The legality of decisions adopted by the Commission can be reviewed by the Court of First Instance and the Court of Justice of the European Communities under the conditions and within the time-limits laid down in the Treaty establishing the European Community, in particular Article 230 thereof, as well as the Statute of the Court of Justice and the Rules of Procedure of the Community courts. The Rules of Procedure of the Community courts provide, for instance, the possibility of applying an expedited procedure.</p> <p>[Internet links: http://europa.eu.int/comm/competition/court/</p> |
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| | <p>http://www.curia.eu.int/</p> <p>Pursuant to Article 10(5) of the Merger Regulation, where the Court of Justice annuls a Commission decision taken under the Merger Regulation in whole or in part, the periods laid down in the Merger Regulation shall start again from the date of the receipt of a new complete notification, a supplement to the original notification or a certification that there have been no changes to the facts contained in the original notification.</p> |
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17. Additional filings

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| <p>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</p> | <p>Article 21(3) of the Merger Regulation provides that Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by the Merger Regulation and compatible with the general principles and other provisions of the Community law.</p> <p>Public security, plurality of the media and prudential rules shall be regarded as such legitimate interests. Any other public interest must be communicated to the Commission by the Member State concerned and shall be recognized by the Commission after an assessment of its compatibility with the general principles and other provisions of Community law before the measures referred to above may be taken. The Commission shall inform the Member State concerned of its decision within one month of that communication.</p> |
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18. Closing deadlines

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| <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>No.</p> |
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19. Post merger review of transactions

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| <p>Can the agency reopen an</p> | <p>Articles 6(3) and 8(6) of the Merger Regulation provides that the</p> |
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| 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? | <p>Commission may revoke a clearance/conditional clearance decision where:</p> <p>(a) the decision is based on incorrect information for which one of the undertakings is responsible or where it has been obtained by deceit; or</p> <p>(b) the undertakings concerned commit a breach of an obligation attached to the decision.</p> <p>There is no time limit prescribed for the adoption of revocation decisions.</p> |
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