

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

LATVIA

February 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 Law, Section 15. Cabinet Regulation No.897 of 26 October 2004 "Procedure of Submitting and Examination of Market Participant' Merger Notification".
B. Notification forms or information requirements	Cabinet Regulation No.897 of 26 October 2004 "Procedure of Submitting and Examination of Market Participant' Merger Notification".
C. Substantive merger review provisions	Competition Law, Section 15. Cabinet Regulation No.897 of 26 October 2004 "Procedure of Submitting and Examination of Market Participant' Merger Notification".
D. Implementing regulations	Cabinet Regulation No.897 of 26 October 2004 "Procedure of Submitting and Examination of Market Participant' Merger Notification".
E. Interpretive guidelines and notices	

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of	Competition Council.
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responsibilities.	
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	Address: Blaumana iela 5a, Riga, Latvia, LV-1011 Phone: +3717282865 Fax: +3717242141 e-mail: council@competition.lv website address: http://www.competition.lv Languages: Latvian, 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.	Competition Council is available for pre-notification consultation.

3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)	A merger of market participants is: 1) the merging of two or more independent market participants in order to become one market participant (consolidation); 2) the joining of one market participant to another market participant (acquisition); or 3) a situation where one or more natural persons who already have decisive influence over another market participant or other market participants, or one or more market participants acquire part or all of the assets of another market participant or other market participants or the right to utilize such, or a direct or indirect decisive influence over another market participant or other market participants (Competition Law, Section 15, Paragraph 1).
B. If change of control is a determining factor, how is control defined?	Decisive influence – the capability, directly or indirectly, to: a) control (regularly or irregularly) the taking of decisions in market participant supervisory bodies, with or without active participation thereof, and b) appoint such numbers of members in the market participant supervisory body, which ensures for the wielder of the decisive influence can ensure a majority of votes in the relevant body (Competition Law, Sections 1, Paragraph 2).
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	See 3.B.
D. Do the notification requirements cover joint ventures? If so, what	In conformity with the Competition Law, a market participant is a natural or legal person or partnership, which performs or is preparing to perform, economic activity in the territory of Latvia, irrespective of the form of such activity

types (e.g., production joint ventures)?	(Competition Law, Sections 1, Paragraph 9).
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4. Thresholds for notification

A. What are the general thresholds for notification?	<p>Market participants who have decided to merge (..) shall, prior to merger, submit a notification of such merger to the Competition Council (..) if one of the following conditions exists:</p> <p>1) the combined turnover of the participants in the merger during the previous financial year was not less than 25 million lati, and</p> <p>2) the combined turnover of the market participants involved in the merger in a concrete market exceeds 40 per cent.</p> <p>(Competition Law, Sections 15, Paragraph 2).</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?	See 3.B.
C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.	The thresholds are not subjected to adjustment.
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)?	The thresholds relate to the previous financial year.
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	<p>Calculation of turnover. In accordance with the Cabinet Regulation No.897 of 26 October 2004 "Procedure of Submitting and Examination of Market Participant' Merger Notification".</p> <p>Turnover of the market participant is calculated, by summarizing receipts of the previous financial year of the business activities of the market participant, sales and service supply, and from the amount acquired, by taking away trade's allowances and other allowances, as well as VAT and other taxes, that are closely related to sales.</p>

the relevant assets?

When calculating the common turnover of the market participant, the turnover of the market participant as well as turnovers of market participants mentioned in subparagraphs 13.2., 13.3., 13.4., and 13.5. of the Regulation have been taken into account. Turnover from distributed goods or services for those market participants mentioned in subparagraphs 13.2., 13.3., 13.4., and 13.5. are not included in the common turnover of market participant. In case any ambiguities arise, calculation of double turnover is to be excluded.

In calculation of common turnover of merging parties, in accordance with Section 15., Paragraph 2. of the Competition Law the common turnovers of market participants have been taken into account.

In case merger has been accomplished in accordance with Section 15., Paragraph 1., Subparagraph 3. of the Competition Law the turnover of such merging party has not been taken into account, that lose its decisive influence after the merger. As regards to the acquisition of assets the turnover to be taken into account is the turnover gained from the use of the assets in question.

13. Common turnover of the market participant must be calculated by calculation of the turnover:

13.1. for the respective market participant;

13.2. of such market participants, where the respective market participant directly or indirectly has one of the following influences:

13.2.1. the control of more than a half of the capital or assets of economic activity (including proprietorship);

13.2.2. the power to exercise more than half the voting rights;

13.2.3. the power to appoint more than a half of members of enforcement authorities or legal subjects of it, or associations, which represent market participants de jure;

13.2.4. authority to control businesses of the market participant (not only managing economic activities of the market participant);

13.3. in such market participants, who have authorities and opportunities described in subparagraph 13.2. of the regulations, in the respective market participant;

13.4. in such market participants, mentioned in subparagraph 13.3, who have authorities and opportunities described in subparagraph 13.2 of the regulations;

13.5. in such market participants, where two or more market participants mentioned in subparagraphs 13.1., 13.2., 13.3., and 13.4. jointly, have authorities and opportunities mentioned in subparagraph 13.2 of the regulations.

14. In case market participants jointly have authorities or opportunities mentioned in subparagraph 4.2., it means, they have common decisive influence, then, when calculating the common turnover of these market participants in understanding of paragraph 2. of the regulations, such turnover has not been taken into account, that has occurred from sales of goods or supply of services between market participant subject to common decisive influence and:

14.1. each market participant who possesses common decisive

	<p>influence or any other market participant related to any of these market participants, who have common decisive influence, as mentioned in subparagraphs 13.2., 13.3., 13.4., and 13.5. of the regulations;</p> <p>14.2. any third market participant. This turnover has to be divided proportionally among market participants, who have common decisive influence.</p> <p>Cabinet Regulation No.897 of 26 October 2004 "Procedure of Submitting and Examination of Market Participant' Merger Notification", Chapter IV).</p>
<p>F. Describe methodology for calculating exchange rates.</p>	
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>Thresholds apply to sales/assets 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>Yes</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 requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an "effects" test?</p>	<p>In accordance with Section 1, Paragraph 9 of Competition Law , the market participant is a natural or legal person or partnership, which performs or is preparing to perform economic activity in the territory of Latvia, irrespective of the form of such activity. If a market participant or several market participants jointly have a decisive influence over one or more of the other market participants, then all market participants within the meaning of this Law shall be considered as one market participant. Foreign natural or legal persons may also be considered as market participants within the meaning of this Law if they, in a direct way, provide services or sell goods in the territory of Latvia.</p>
<p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	

<p>K. If market share tests are used, are there guidelines for calculating market shares?</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 requirements are provided for credit institutions, insurance companies.</p> <p>The following sum of income post of turnover of credit institutions has been assumed as (after deduction of VAT and other taxes directly linked with incomes):</p> <ol style="list-style-type: none"> 1. incomes from interest; 2. incomes from securities; 3. commission reward (recompense) that has been acquired; 4. net income received from financial operations; 5. other incomes. <p>The following income has been counted in turnover of credit institutions, which has been included in annual and consolidated reports of credit institutions.</p> <p>Value of prescribed bonus has been considered as turnover of insurance companies, that includes all sums received and sums to be received on insurance agreements of insurance companies and others, that act on behalf of such companies (reinsurance bonuses included), by deduction of dues and obligatory payments, by which insurance bonuses or common bulk of bonuses are imposed.</p>
<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>there is an exclusion from notification in case of insolvency or liquidation of the market participant, as provided in normative enactments, when the decisive influence has been acquired by liquidator or administrator</p>
<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>The Competition Law does not provide any special rules or exemptions when acquiring and acquired parties are foreign.</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>Market participants who have decided to merge (..) shall, prior to merger, submit a notification of such merger to the Competition Council (..) (Competition Law, Sections 15, Paragraph 2).</p>
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B. Is notification mandatory post-merger?	See 5.A.
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?)?	
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?	
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.	

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	
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waive certain responses, etc.).	
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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).	Besides the information required by the Articles 1- 8 of Annex of Cabinet Regulation No.897 of 26 October 2004 "Procedure of Submitting and Examination of Market Participant' Merger Notification" about the market participant, certain types of documents have to be attached to merger notification, including the procurancy of persons to represent a party or all parties for the review period; the statutes of market participants; the copies of the documents concerning the transaction (for example, agreements, decisions of governing institutions, protocols of intent, the proposal to participate in the bidding); the draft of the public announcement of the consolidation; documents that reflect the information on affected markets; the declaration of sincerity of submitted information (Article 9 of Annex of Cabinet Regulation No.897 of 26 October 2004 "Procedure of Submitting and Examination of Market Participant' Merger Notification") .
B. Are there any document legalization requirements (e.g., notarization or apostille)?	See 8.
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?	

8. Translation

A. In what language(s) can the notification forms be submitted?	In accordance with Section 10, Paragraph 3,4 of Official Language Law adopted on December 9, 1999, documents from persons in a foreign language shall be accepted if attached thereto is a translation into the official language, certified in accordance with the procedures prescribed by the Cabinet, or notarially certified. State and local government institutions, organizations and undertakings (companies) may accept and examine documents from foreign countries without a translation into the official language.
B. Describe any	

<p>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>	
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9. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>The Competition Council shall, within a period of one month from the receipt of a full notification in accordance with procedures specified by the Cabinet, examine the notification and take one of the decisions referred to in the Paragraph three or four of this Section, or a decision regarding the commencement of additional investigations After the commencement of additional investigations, the Competition Council , within a period of four months from the day of receipt of a full notification, shall take one of the decisions referred to in the Paragraph three or four of this Section. (Competition Law, Section 16,).</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>There are no different rules for public tenders.</p>
<p>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?</p>	<p>There is no possibility for the extension except specified in 9.A</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	

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.

There is no explicit suspension period but under Section 17 Paragraph 2 of the Competition law implementation of the transaction that is contrary to the decision of the Competition Council triggers an imposition of the daily fine.

B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?

No

C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe 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>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>if no decision is issued within the statutory period transaction is presumed to be allowed. (Competition Law, Section 15, Paragraph 5).</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>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>	

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>Both parties are responsible for notifying. (Competition Law, Section 15, Paragraph 2)</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</p>	

<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	<p>In accordance with Article 9.1 of Annex of Cabinet Regulation No.897 of 26 October 2004 "Procedure of Submitting and Examination of Market Participant' Merger Notification" Merger Notification" documents attached to the notification shall include procurancy of persons to represent a party or all parties for the review period.</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</p>	<p>See11C</p>

12. Filing fees

<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?</p>	<p>No filing fees are assessed for notification.</p>
<p>B. Who is responsible for payment?</p>	
<p>C. When is payment required?</p>	
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	

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>The Competition Council does not publish any reports regarding the pre-merger notification filing or the contents of the notification. In accordance with the Section 5, Paragraph 3, Freedom of Information Law adopted on October 29, 1998, the author of information or the manager of an institution has the right to grant, by his or her order, the status of restricted access information. This relates also to the information submitted by the parties to the Competition Council. If the status of the restricted access information has been designated by the parties to the submitted information to the Competition Council, the Competition Council acts in accordance with provisions laid down in Freedom of Information Law. Generally accessible information is any information which is not categorized as restricted access information and shall be provided to anyone who wishes to receive it.</p>
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	
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>In the framework of European Union there is a possibility for the exchange of information.</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?	
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14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	Competition Council publishes an Annual Report.
B. Does the agency publish press releases related to merger policy or investigations?	
C. Does the agency publish decisions on why it cleared / blocked a transaction?	

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?	If a notice has not been submitted in the cases prescribed by the competition law, the Competition Council may take a decision regarding the imposition of a fine of up to 1000 lati for each day, counting from the day when the notice should have been submitted, on the new market participant or the acquirer of a decisive influence. (Competition Law, Section 17, Paragraph 1).
B. Which party/ies are potentially liable?	See 15.A.
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	Competition Council can impose penalties directly.

describe the procedure and indicate how long this procedure can take.	
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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.	Decisions of the Competition Council (..) may be appealed, in accordance with the procedures prescribed in regulatory enactments, within a period of one month from the day when the interested person found out about or should have found out about the decision taken. (Competition Law, Section 8, Paragraph 2).
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17. Additional filings

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

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?	The parties remain authorized to complete the transaction after it has been cleared or approved by the Competition Council, so long as the facts and circumstances on which the decision of the Competition Council is based remain the same.
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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	No
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**time limit on this
authority?**