

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## LITHUANIA

April 2009

**IMPORTANT NOTE:** his 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

The basic notification provisions are set in Article 10, Article 11 and Article 14<sup>1</sup> of the Law on Competition of 23 March 1999 No VIII-1099 (As amended by 15 April 2004 No. IX-2126 and 9 April 2009 No. XI-216).

Article 10. Notification of Concentration.

„1. The intended concentration must be notified to the Competition Council and its permission shall be required where combined aggregate income of the undertakings concerned is more than LTL 30 million for the financial year preceding concentration and the aggregate income of each of at least two undertakings concerned is more than LTL 5 million for the financial year preceding concentration.

2. The combined aggregate income of the undertakings participating in a concentration shall be conceived as:

1) the sum of aggregate income of the undertakings concerned;

2) the sum of aggregate income of the undertakings where one or more of the undertakings concerned acquire by contract another undertaking (the whole or parts of the enterprise), all or a part of the assets of the undertaking or a part of its shares which, including all previous acquisitions, constitute 1/4 or more of the authorised capital, or confer 1/4 or more of all the voting rights. Where the undertaking acquiring a part of shares in another undertaking belongs to the group of associated undertakings, in calculating the shares being acquired, the shares in this entity that are owned by the undertakings belonging to the same group of associated undertakings shall be included. In the case of acquisition of a part of the undertaking (enterprise) or a part of assets of

the undertaking, aggregate income and market share shall be calculated proportionately to the part of the property acquired;

3) the amount of aggregate income of the undertakings subject to concentration, in one or more of which one and the same natural person or persons, having the right of control, acquire another undertaking (whole enterprise or a part of it), all or a part of the assets of the undertaking or a part of its shares which, including previous acquisitions, constitute 1/4 or more of the authorised capital or confer 1/4 or more of all the voting rights. When calculating the part of the shares acquired by a natural person or natural persons from another undertaking, the shares owned in this undertaking by the undertakings controlled by a natural person or the same natural persons, as well as by all undertakings belonging to the same group of associated undertakings shall be included. In the case of acquisition of a part of the undertaking (enterprise) or a part of the assets thereof, aggregate income and market share shall be calculated proportionately to the part of the assets acquired;

4) the amount of aggregate income of the undertakings which, based on an agreement, jointly set up a new undertaking, or establish a common management or supervisory body or any administrative subdivision, also of those which, due to the decisions taken, will have a half or more of the same members in supervisory board, administrative board or other management body, or of those which commit themselves to co-ordinate among themselves decisions concerning their economic activity or to transfer to each other the whole or a certain part of profit, or of those which confer to each other the right to dispose of all or a part of their assets, or one or several undertakings of which by contract or otherwise acquire control of another undertaking. Where one undertaking confers to another undertaking the right to dispose of a part of its assets, the aggregate income and market share shall be calculated proportionately to the part of the assets disposed“.

According to Article 11 „Concentration shall be notified to the Competition Council prior to the implementation of the concentration.“

According to Article 14<sup>1</sup>:

„1. The Competition Council may oblige the undertakings to submit notifications on concentration and *mutatis mutandis* apply the concentration control procedure, defined in Section III of the Law, even though the gross income indicators established in paragraph 1 of Article 10 are not exceeded, where it becomes probable that concentration will result in the creation or strengthening of the dominant position, or a significant restriction of competition in the relevant market.

2. The Competition Council may pass an individual decision to apply the concentration control procedure only in cases where no more than 12 months have passed from the implementation of concentration in question.“

Cases when notification on concentration is required are clearly indicated in PROCEDURE FOR THE SUBMISSION AND EXAMINATION OF NOTIFICATION ON CONCENTRATION AND OF CALCULATION

	<p>OF AGGREGATE TURNOVER (approved by Resolution No. 45 of 27 April 2000 of the Competition Council of the Republic of Lithuania; As amended by 13 January 2005 No. 1S-4):</p> <p>„4. The intended concentration must be notified to the Competition Council and permission shall be obtained in the following cases:</p> <p>4.1. the intended concentration shall be notified if the following conditions are met:</p> <p>4.1.1. the intended actions constitute merger or acquisition of control within the meaning of Art.3(14) and Art.10(2) of the Law on Competition, and</p> <p>4.1.2. the aggregate turnover of the undertakings participating in concentration and their combined aggregate turnover exceed that set forth in Art.10(1) of the Law on Competition.</p> <p>4.2. the intended or implemented concentration shall be notified where the undertakings concerned are obliged to notify the concentration as prescribed in Art.14<sup>1</sup> of the Law on Competition.“</p>
<p><b>B. Notification forms or information requirements</b></p>	<p>The basic information requirements are set in Article 11 of the Law on Competition: Article 11. Submission of Notification.</p> <p>The notification of concentration shall include:</p> <ul style="list-style-type: none"> <li>- registration data of the undertakings participating in concentration;</li> <li>- reasons and purposes of concentration;</li> <li>- description of the way of concentration;</li> <li>- annual financial accounts of each undertaking participating in concentration, for the preceding three years prior to concentration;</li> <li>- data on the enterprises owned by each undertaking participating in concentration or the enterprises owned by controlling persons as well as data on the enterprises the hare-holders of which they are;</li> <li>- purchase and sale volumes of each undertaking participating in concentration within the preceding three years prior to concentration and evaluation of their market share in a relevant market;</li> <li>- the list of the major purchasers and suppliers as well as the main competitors in the relevant markets of each undertaking participating in concentration.</li> </ul> <p>Where notification of intended concentration with the participation of the undertaking belonging to a group of associated undertakings is submitted, the data on all the undertakings belonging to the group of associated undertakings shall be submitted pursuant to the requirements of paragraph 3 hereof.</p> <p>Notifications are submitted according to a Standart Form (SF), adopted by the Competition Council Resolution No 45 of 27 April 2000 - Procedure for submission and examination of notification on concentration and of calculation of aggregate turnover, Annex 1.</p> <p>Where the notified intended concentration is with the participation of banks or other credit institutions, the Competition Council shall also be submitted the finding of the Bank of Lithuania (Art.11.5 of the Law on Competition).</p>

	<p>Notification and supporting documents shall be submitted to the Competition Council at the address indicated in SF by handed delivery or sent by registered mail. A joint notification shall be submitted in one SF.</p> <p>The supporting documents may be originals or copies thereof. In this case the notifying parties shall confirm the authenticity of copies.</p> <p>The supporting documents shall be submitted in the language in which they are executed. If the supporting documents are written not in Lithuanian, the translation into Lithuanian shall be attached with the approval of its authenticity. The documents supplementing the notification of foreign undertakings (annual accounts, market research reports etc.) may be submitted in the English language.</p> <p>Notification shall contain the information and supporting documents required under SF. The information shall be true and complete.</p> <p>The Competition Council may decide to change the obligation to provide all the information and supporting documents required under SF if after preliminary consultations regarding the intended notification the Competition Council resolves that such information to be submitted and the supporting documents shall be established in the consultation protocol if so requested by the person submitting a notification on concentration.</p>
<b>C. Substantive merger review provisions</b>	<p>The substantive test is whether the proposed concentration “will establish or strengthen a dominant position or substantially restrict competition in a relevant market” (Art.14.1.3 of the Law on Competition). A 40 percent market share creates a deniable presumption of dominance. There is also a deniable presumption of dominance when the three largest firms collectively have a 70 percent market share.</p>
<b>D. Implementing regulations</b>	<p>Resolution No. 45 of April 27, 2000 of the Competition Council of the Republic of Lithuania (As amended by 13 January 2005): Procedure for submission and examination of notification on concentration and of calculation of aggregate turnover (the Merger Regulation).</p>
<b>E. Interpretive guidelines and notices</b>	<p>Apart above mentioned regulation the Competition Council of the Republic of Lithuania adopted the following interpretive guidelines and notices:</p> <p>on February 24, 2000 Resolution No. 17 ‘Explanations of the Competition Council on the definition of a relevant market’;</p> <p>on May 17, 2000 Resolution No. 52 ‘Explanations of the Competition Council concerning definition of the dominant position’(As amended by 3 February 2005 No. 1S-15).</p>

## 2. Authority or authorities responsible for merger enforcement.

<b>A. Name of authority. If there is more than one authority, please describe</b>	The Competition Council of the Republic of Lithuania.
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<b>allocation of responsibilities.</b>	
<b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b>	A.Vienuolio St. 8, LT-01104 Vilnius, LITHUANIA Tel: (370-5) 212 64 92 Fax: (370-5) 212 64 92 E-mail: tarnyba@konkuren.lt Website: www.konkuren.lt Languages: Lithuanian, English.
<b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b>	Interested parties may enter into pre-notification consultations with the Competition Council. Contact points: Concentration Division Tel. (370-5) 629840, (370-5) 313627 , (370-5) 614728 Fax: (370-5) 212 64 92 E-mail: reno@konkuren.lt

### 3. Covered transactions

<b>A. Definitions of potentially covered transactions (i.e., concentration or merger)</b>	According to the Law on Competition ‘Potentially covered transactions’ means: <ul style="list-style-type: none"> <li>- acquisition of control, when one and the same natural person or persons already controlling one or more undertakings, or one or more undertakings, acting by contract, jointly set up a new undertaking or gain control over another undertaking by acquiring an enterprise or a part thereof, all or part of the assets of the undertaking, shares or other securities, voting rights, by contract or by any other means.</li> <li>- merger when one or more undertakings which terminate their activity as independent undertakings are joined to the undertaking which continues its operations, or when a new undertaking is established out of two or more undertakings which terminate their activity as independent undertakings.</li> <li>- creation of a joint venture.</li> </ul>
<b>B. If change of control is a determining factor, how is control defined?</b>	‘Control’ means any rights arising from laws or contracts that entitle a legal or natural person to exert a decisive influence on the activity of the undertaking, including: <ol style="list-style-type: none"> <li>1) ownership or the right to use all or part of the assets of the undertaking,</li> <li>2) other rights which confer decisive influence on the decisions or the composition of the undertaking’s managing bodies. (Art. 3(14) of the Law on Competition)</li> </ol> ‘Controlling person’ means a legal or natural person having or acquiring control over an undertaking. A controlling person may

	<p>be a citizen of the Republic of Lithuania, a foreign national or a stateless person, or any other undertaking, as well as public administration entities. Spouses, parents and their under-age (adopted) children shall be considered as one controlling person. When two or more legal or natural persons, acting under contract, exercise control over an undertaking which is subjected to concentration, each of the legal or natural persons shall be considered a controlling person. (Art. 3(16) of the Law on Competition)</p> <p>‘Decisive influence’ means the situation when the controlling person implements or is in the position to implement its decisions regarding the economic activity, decisions or staff composition of the controlled undertaking. (Art. 3(17) of the Law on Competition)</p>
<p><b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b></p>	<p>Acquisition of 25 percent or more of an entity's authorised capital or voting stock also constitutes a "concentration" and is subject to merger control regulations.</p>
<p><b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b></p>	<p>The notification requirements cover all types of joint ventures.</p>

#### 4. Thresholds for notification

<p><b>A. What are the general thresholds for notification?</b></p>	<p>According to the Law on Competition, the intended concentration must be notified to the Competition Council and its permission shall be required where combined aggregate income of the undertakings concerned is more than LTL 30 million for the financial year preceding concentration and the aggregate income of each of at least two undertakings concerned is more than LTL 5 million for the financial year preceding concentration.</p>
<p><b>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</b></p>	<p>According to the CHAPTER III. IDENTIFICATION OF UNDERTAKINGS PARTICIPATING IN CONCENTRATION of the Procedure for the Submission and Examination and of Calculation of Aggregate Turnover, the entities are included in determining relevant undertakings:</p> <p>„5. When concentration is performed by way indicated in Art. 10(2)(1) of the Law on Competition through the merger of the undertakings concerned, each merging undertaking shall be</p>

**based on control, how is control determined?**

considered as an undertaking participating in the concentration.

6. When concentration is performed in the manner specified in Art.10(2)(2) of the Law on Competition, and:

6.1. one undertaking acquires another undertaking (the enterprise or a share thereof), all or a part of the assets of another undertaking or a part of the shares of another undertaking, which, including all previous acquisitions, constitute  $\frac{1}{4}$  or more of the authorised capital, or acquires the right to  $\frac{1}{4}$  or more of the votes of another undertaking, the undertaking which acquires the control (hereinafter referred to as the acquiring undertaking) and an undertaking over which the control is acquired (hereinafter referred to as the acquired undertaking) shall be considered as undertakings participating in concentration. In cases where:

6.1.1. a part of an undertaking (a part of an enterprise) or a part of the assets is acquired which may be considered as an independent economic entity and to which a certain turnover in a relevant market is explicitly ascribed, then the acquiring undertaking and the relevant part of the acquired undertaking shall be considered as undertakings participating in the concentration;

6.1.2. the acquiring undertaking is jointly controlled by several other undertakings (hereinafter referred to as the joint venture) and the joint venture is not a full-function venture, then the undertakings, which exercise control over the joint venture, and the acquired undertaking shall be considered as undertakings participating in the concentration.

A full-function joint venture shall be the joint venture performing all the functions of an autonomous economic entity and having sufficient financial and other resources to perform its activity on a lasting basis. A full-function joint venture shall be considered as an undertaking participating in the concentration.

6.2. several undertakings, acting on the basis of an agreement (acquisition of a joint control), acquire another undertaking (whole enterprise or a part of it), all or a part of the assets of another undertaking or a part of the shares of another undertaking, which, including all previous acquisitions, constitute  $\frac{1}{4}$  or more of the authorised capital or acquire the right to  $\frac{1}{4}$  or more of the votes of another undertaking, then each undertaking acquiring the joint control and the acquired undertaking shall be considered as undertakings participating in the concentration.

In cases where:

6.2.1. the acquired undertaking was previously controlled by another undertaking (sole control) and one or several undertakings (new shareholders) acquire the joint control together with the undertaking which previously exercised sole control, and

the acquired undertaking continues its activities following the acquisition, then all the undertakings which acquire joint control, including the undertaking which previously exercised sole control, shall be considered as undertakings participating in the concentration. The undertaking being acquired shall not be considered as participating in the concentration;

6.2.2. joint control is acquired and it is agreed to divide the assets of the acquired undertaking immediately after conclusion of the transaction according to the plan agreed in advance, then such acquisition of a joint control shall be considered as an individual cases of concentration during which each acquiring undertaking acquires a respective part of the assets of the acquired undertaking. In such case, the undertakings participating in the concentration shall be defined in conformity with items 6.1, 6.1.1 or 6.1.2 of this Procedure.

6.3. the existing control is strengthened, then the undertaking strengthening the control and the undertaking in respect of which the control is being strengthened shall be considered as undertakings participating in the concentration.

7. Where concentration is performed in the manner specified in Art.10(2)(3) of the Law on Competition, and the same natural person or persons which already have the right of control over one or several undertakings acquire another undertaking (enterprise or a part thereof), all or a part of the assets of the undertaking, or acquire a part of the shares of another undertaking which, including all previous acquisitions, constitute  $\frac{1}{4}$  or more of the authorised capital or acquire the right to  $\frac{1}{4}$  or more of the votes of another undertaking, then the person(s) which acquire(s) control and acquired undertaking shall be considered as undertakings participating in the concentration.

In cases of acquisition of a part of an undertaking (a part of an enterprise) or a part of assets, which may be considered as an independent economic entity and to which a certain turnover in a relevant market is explicitly ascribed, the person (persons) which acquire control and the relevant part of the acquired undertaking shall be considered as undertakings participating in the concentration.

8. Where concentration is performed in the manner specified in Art. 10(2)(4) of the Law on Competition, and undertakings, based on an agreement, jointly set up a new undertaking or create a common management body or common administrative subdivision, or which, in respect of resolutions taken will have a half or more of the same members in supervisory boards, administrative boards or other management bodies, or which commit to co-ordinate among themselves decisions concerning their economic activity or to transfer to each other the whole or a certain part of profit, or which pass over to each other the right to dispose of all or a part of their assets, or



	<p>one or several undertakings of which by contract or otherwise acquire control over another undertaking, then all the undertakings participating in the agreement (parties to the agreement) shall be considered as undertakings participating in the concentration.</p> <p>In cases of granting the right to use, on long-term basis, a part of the assets, which may be considered as an independent economic entity and to which a certain turnover in a relevant market is ascribed, then the acquiring undertaking and the relevant part of the acquired undertaking shall be considered as undertakings participating in the concentration.“</p>
<p><b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</b></p>	<p>Thresholds are not subject to adjustment.</p>
<p><b>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)?</b></p>	<p>The thresholds are related to the financial year preceding concentration or the year before.</p>
<p><b>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?</b></p>	<p>The Competition Council in its activity follows a provision that aggregate turnover, as an indicator of economic activity, has to reflect, as precisely as possible, the economic capacity and status of the undertakings participating in concentration.</p> <p>The concept of aggregate turnover is understood as a sum of money derived from sale of goods (provision of service). Sales, as an indicator reflecting the activity of an undertaking, are an essential criterion for calculation of aggregate turnover. In financial accounts of the undertakings registered in the Republic of Lithuania, the amounts derived from sales are represented under heading “Sales and services” (Profit and loss account). Respective data of personal enterprises and partnerships are represented under heading “Aggregate turnover (incomes)” of the Income Declaration.</p> <p>The aggregate turnover of the undertakings participating in concentration should reflect an ordinary course of economic activity. While calculating the aggregate turnover of undertaking, other operating income indicated in the financial statements of an undertaking as “Other activity” or “Financial and investment activity” (Profit and loss account) shall be included as well.</p> <p>Pursuant to Art. 10(1) of the Law on Competition, the combined aggregate turnover of the undertakings participating in concentration shall be calculated for the last financial year</p>

preceding concentration. The data of the aggregate turnover shall be audited or confirmed by the documents of compulsory financial accountability. In case of absence of data of the aggregate turnover for the last financial year preceding concentration, audited or confirmed by the documents of compulsory financial accountability, the data of the aggregate turnover of the business year before last preceding concentration shall be taken into account.

In case of difficulties in calculating the aggregate turnover undertakings participating in concentration, the interested persons may apply in advance to the Competition Council with the request to give explanation with respect to proper calculation of the aggregate turnover.

Pursuant to Art. 10(3)(4) of the Law on Competition, if a participant of concentration is and undertaking which belongs to the group of associated undertakings, its aggregate turnover shall be calculated as the sum total of the aggregate turnover of all the undertakings belonging to the group of associated undertakings, except the reservation provided in item 18 of the Procedure (Resolution No. 45 of April 27, 2000 of the Competition Council of the Republic of Lithuania 'On the Procedure for Submission and Examination of Notification on Concentration and of Calculation of Aggregate Turnover'). A group of associated undertakings is understood as referred to in Art. 3(12) of the Law on Competition. A group of associated undertakings to which an undertaking subject to concentration belongs is determined at the moment of giving the notification on concentration. The Competition Council shall immediately be notified of all the changes in the group of associated undertakings, which occur during examination of the notification on concentration.

The aggregate turnover of an undertaking participating in concentration, which belongs to the group of associated undertakings, shall be calculated in avoidance of double calculation.

When the acquired undertaking belongs to the group of associated undertakings, then the aggregate turnover of the acquired undertaking shall be calculated as the sum of aggregate turnover of all undertakings which will belong to such group of associated undertakings after concentration. By this provision it is stated that in case that only a certain part of the group of associated undertakings to which an acquiring undertaking belongs is concentrated, instead of the entire group, then only the aggregate turnover of such part shall be included in calculation.

When the acquiring undertaking acquires a part of another undertaking (enterprise) or a part of the assets of an undertaking or acquires the right to use a part of the assets of another undertaking, then the aggregate turnover of the acquired undertaking shall be calculated proportionately to the part of the assets acquired. Valuation of assets (a part thereof), in consideration of the valid laws, shall be confirmed by the property valuation documents: certificate for establishment of the value of property, act on property valuation, statement on

property valuation (explanatory letter).

When the acquiring undertaking acquires a part of another undertaking (enterprise) or a part of the assets of an undertaking, or acquires the right to use on a long-lasting basis a part of the assets of another undertaking, which may be considered as units of autonomous economic activity, and to which a certain turnover in a relevant market is explicitly ascribed, then the aggregate turnover of the part of the acquired undertaking shall be calculated. The aggregate turnover of the part of the acquired undertaking shall be audited or confirmed by the documents of compulsory financial accountability.

When the undertakings participate in concentration as described in item 6.2.1 of the Procedure, then the aggregate turnover of the acquired undertaking shall be added to the aggregate turnover of the undertaking which previously exercised sole control.

When undertakings participate in concentration as specified in item 7 of the Procedure, then the aggregate turnover of the person (persons) which acquires (acquire) the control shall be calculated as a sum of the aggregate turnover of all the undertakings in which such person (persons) has (have) the right of control. If any of the undertakings in which a person (persons) exercises (exercise) the right of control belongs to the group of associated undertakings, then the aggregate turnover of such undertakings shall be calculated as the sum of the aggregate turnover of all the undertakings belonging to the group of associated undertakings, pursuant to the regulations indicated in items 16 and 17 of the Procedure.

If an insurance enterprise participates in concentration, then pursuant to Art. 10(3)(2) of the Law on Competition, the value of gross insurance contributions (premiums) shall be calculated instead of the aggregate turnover. In financial statements of an undertaking registered in the Republic of Lithuania the amount of insurance contributions (premiums) is represented under heading "Sales and services" (Profit and loss account). The insurance contributions obtained from reinsurance shall also be equated to the aggregate turnover. Income from the financial and investment activity shall not be included into aggregate turnover.

If an investment company participates in concentration, then pursuant to Art. 10(3)(3) of the Law on Competition, the aggregate turnover shall be calculated as the sum total of the aggregate turnover of all the undertakings under the control of this investment company.

If an undertaking of foreign states participates in concentration, then pursuant to Art. 10(3)(5) of the Law on Competition, the aggregate turnover shall be calculated as the sum total of turnover, derived on the product markets of the Republic of Lithuania. When calculating the turnover of an undertaking of foreign states, derived on product markets of the Republic of Lithuania, the following shall be included:

- the whole income from sales to the undertakings registered in the Republic of Lithuania;

	<ul style="list-style-type: none"> <li>- the whole income of associated undertakings registered in foreign states from sales to the undertakings registered in the Republic of Lithuania;</li> <li>- aggregate turnover of associated undertakings registered in the Republic of Lithuania.</li> </ul> <p>Where a collective investment undertaking or management companies managing them participate in concentration, pursuant to Art. 10(3)(3) of the Law on Competition the aggregate turnover shall be calculated as the total aggregate turnover of all undertakings controlled by the management company or the investment company with variable capital the management of assets whereof has not been delegated to a management company.</p>
<p><b>F. Describe methodology for calculating exchange rates.</b></p>	<p>There are any specific rules governing the conversion of foreign currencies into litas (LTL) for the purposes of determining whether the thresholds are met. The companies registered in Lithuania follow the general accounting principles. Economic transactions, the execution of which is related to foreign currency, are converted into LTL according to the foreign currency exchange rate established by the Bank of Lithuania on the day of execution of the transaction. Foreign companies may convert foreign currencies into LTL in accordance with the International Accounting Standard 21 (35) using exchange rate on the last day of the financial year.</p>
<p><b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b></p>	<p>The thresholds are applied to worldwide sales. If a party to a concentration is an undertaking of a foreign country, its aggregate turnover is calculated as the sum of income received from the sale of its products in the Lithuanian market.</p> <p>When calculating the turnover of an undertaking of foreign states, derived on product markets of the Republic of Lithuania, the following shall be included:</p> <ul style="list-style-type: none"> <li>- the whole income from sales to the undertakings registered in the Republic of Lithuania;</li> <li>- the whole income of associated undertakings registered in foreign states from sales to the undertakings registered in the Republic of Lithuania;</li> <li>- aggregate turnover of associated undertakings</li> </ul> <p>In foreign-to-foreign transactions with no local presence, participating enterprises must have made export sales into Lithuania meeting the established thresholds.</p>
<p><b>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</b></p>	<p>Only in particular cases, when is changing of control from joint to sole or acquiring according to Art.14<sup>1</sup> of the law on Competition.</p>
<p><b>I. How is the nexus to the jurisdiction determined</b></p>	<p>In foreign-to-foreign transactions with no local presence, participating enterprises must have made export sales into Lithuania meeting the established thresholds.</p>

<p><b>(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?</b></p>	
<p><b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b></p>	<p>Location of customer.</p>
<p><b>K. If market share tests are used, are there guidelines for calculating market shares?</b></p>	<p>Resolution No. 17 ‘Explanations of the Competition Council on the definition of a relevant market’. There are described the concept of relevant markets influenced or affected by concentration in the Standard Form of Notification on Concentration (SF) (ANNEX 1).</p>
<p><b>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)?</b></p>	<p>If an insurance enterprise participates in concentration, then pursuant to Art. 10(3)(2) of the Law on Competition, the value of gross insurance contributions (premiums) shall be calculated instead of the aggregate turnover. In financial statements of an undertaking registered in the Republic of Lithuania the amount of insurance contributions (premiums) is represented under heading "Sales and services" (Profit and loss account). The insurance contributions obtained from reinsurance shall also be equaled to the aggregate turnover. Income from the financial and investment activity shall not be included into aggregate turnover.</p> <p>If a collective investment undertaking or management companies managing them participate in concentration, pursuant to Art. 10(3)(3) of the Law on Competition the aggregate turnover shall be calculated as the total aggregate turnover of all undertakings controlled by the management company or the investment company with variable capital the management of assets whereof has not been delegated to a management company.</p> <p>If an undertaking of foreign states participates in concentration, then pursuant to Art. 10 (3)(5) of the Law on Competition, the aggregate turnover shall be calculated as the sum total of turnover, derived on the product markets of the Republic of Lithuania. When calculating the turnover of an undertaking of foreign states, derived on product markets of the Republic of Lithuania, the following shall be included:</p> <ul style="list-style-type: none"> <li>- total amounts derived from sales to undertakings registered</li> </ul>

	<p>in the Republic of Lithuania;</p> <ul style="list-style-type: none"> <li>- total amounts of associated undertakings registered in foreign States from sales to the undertakings registered in the Republic of Lithuania;</li> <li>- aggregate turnover of associated undertakings registered in the Republic of Lithuania.</li> </ul>
<b>M. Are any sectors excluded from notification requirements? If so, which sectors?</b>	<p>Pursuant to Art. 10(5) of the Law on Competition, a concentration shall not be deemed to arise where commercial banks, other credit institution, intermediaries of public trading in securities, investment companies and insurance companies acquire ¼ or more of shares in another enterprise or insurance company with a view to transferring them, provided that they do not exercise voting rights in respect of those shares and that any such disposal takes place within one month after acquisition. If the financial institutions which acquired ¼ or more of shares in another company decide not to comply with the conditions provided for in this paragraph, they must submit a notification of concentration in accordance with the established general procedure.</p>
<b>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</b>	<p>No, it follows from the rule applied to foreign undertakings.</p>
<b>O. Does the agency have the authority to review transactions that fall below the thresholds?</b>	<p>Yes, according to Art.14<sup>1</sup> of the Law on Competition.</p>

## 5. Notification requirements and timing of notification

<b>A. Is notification mandatory pre-merger?</b>	<p>Yes</p>
<b>B. Is notification mandatory post-merger?</b>	<p>Yes, if pursuant to Art. 14<sup>1</sup>(2) the Competition Council passed an individual decision to apply the concentration control procedure in cases where no more than 12 months have passed from the implementation of concentration in question.</p>
<b>C. Can parties make a voluntary merger filing even if filing is not</b>	<p>Yes, in cases where it becomes probable that concentration will result in the creation or strengthening of the dominant position, or a significant restriction of competition in the relevant market.</p>

<b>mandatory? If so, when?</b>	
<b>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?)?</b>	Pursuant to Art. 11(2) of the Law on Competition the notification shall be notified after the submission of the proposal to conclude the agreement or in case of a good faith intension to conclude the agreement or announce a public bid to buy-up shares.
<b>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?</b>	Pursuant to Art. 11(2) of the Law on Competition concentration shall be notified prior to the implementation of the concentration.
<b>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.</b>	No.

## 6. Simplified procedures

<b>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.).</b>	The Competition Council may decide to waive the obligation to provide all the information and supporting documents required under SF in case following the preliminary consultations regarding the intended notification the Competition Council resolves that for examination of concentration such information is not necessary. In this case, the scope of the compulsory information to be submitted and the supporting documents shall be defined in the consultation protocol if the person submitting a notification on concentration requests so.
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## 7. Documents to be submitted

<b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</b>	Notification shall contain the information and supporting documents required under SF. In this case the notifying parties shall confirm the authenticity of copies.
<b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b>	Yes.
<b>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?</b>	No.

## 8. Translation

<b>A. In what language(s) can the notification forms be submitted?</b>	Lithuanian
<b>B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required,</b>	The supporting documents shall be submitted in the language in which they are executed. If the supporting documents are written not in Lithuanian, the translation into Lithuanian shall be attached with the approval of its authenticity. The documents supplementing the notification of foreign undertakings (annual accounts, market research reports etc.) may be submitted in the English language.



<b>requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.</b>	
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## 9. Review periods

<b>A. Describe any applicable review periods following notification.</b>	<p>The Law on Competition establishes two phases of examination of the concentration. The initial examination period may not last more than one month. Thus, within one month after receipt of a proper notification of concentration, the Competition Council either permits the concentration or adopts a decision for further examination of the concentration. Such further examination may last up to three months, which in total makes four months as mentioned above. Pursuant to Art. 13(4) the Competition Council upon a duly grounded request of the person notifying the concentration may extend the term for the examination of the concentration by one month (by then 5 months).</p> <p>Parties interested in speeding up the official clearance procedure or for other raisons may enter into pre-notification consultations with the competition authority seeking to reduce the scope of the notification as well as to clarify issues that the Council would consider important in the process of formal examination. Of course, cooperation with the Council as well as prompt provision of all necessary material during the first examination phase would increase the chances of obtaining a quicker final decision.</p>
<b>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</b>	<p>No, but it is possibility to get permission for individual actions of concentration pursuant to Art. 12(3) of the Law on Competition.</p>
<b>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</b>	<p>Only pursuant to Art. 13(4) of the Law on Competition the Competition Council, for the purpose of passing a decision in accordance with Art. 14(1)(2), upon a duly grounded request of the person notifying the concentration may extend the term for the examination of the concentration by one month.</p>

<b>extensions?</b>	
<b>D. What are the procedures for accelerated review of non-problematic transactions, if any?</b>	Pursuant to Art. 12(3) of the Law on Competition the Competition Council, taking into account the consequences of the suspension of concentration on the persons concerned and the projected influence of concentration on competition may permit to exercise individual actions of concentration.

## 10. Waiting periods / suspension obligations

<b>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.</b>	Pursuant to Art. 12(1) the undertakings or controlling persons participating in the concentration shall have no right to implement concentration until the resolution of the Competition Council is passed.
<b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b>	Yes, pursuant to Art. 12(3) of the Law on Competition “upon justified request of the undertaking participating in concentration or of the controlling person, the Competition Council, taking into account the consequences of the suspension of concentration on the persons concerned and the projected influence of concentration on competition, may permit to exercise individual actions of concentration. The permission of the Competition Council to implement individual actions of concentration may be made subject to certain conditions and obligations necessary to ensure effective competition. A justified request to permit to exercise individual actions of concentration may also be submitted during examination of concentration. The Competition Council shall examine the request within 7 days and adopt a justified resolution to comply with or decline such request.
<b>C. Are the applicable waiting periods/suspension obligations limited to</b>	No, see above. The revision of concentration, waiting periods, examination procedures and standards are applied uniformly, and there is no discrimination on nationality or locality basis.

<p><b>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.)</b></p>	<p>The Competition Council offers pre-notification consultations on the rules for submission of notifications both in writing responding to inquiries and verbally. Such consultations are regarded very seriously, since they facilitate and shorten the procedures for the review of concentrations.</p>
<p><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<p>Only in case of permission according to Art. 12(3) of the Law on Competition.</p>
<p><b>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</b></p>	<p>Pursuant to Art. 13(5) of the Law on Competition, the Competition Council, when examining notifications on concentration, can require from undertakings, controlling persons, and public administrative entities' information, verbal and written clarifications, necessary for taking a decision concerning the concentration.</p> <p>The Competition Council can authorize the concentration within 1 month when:</p> <ol style="list-style-type: none"> <li>1) in accordance with Art. 14(1)(1) of the Law on Competition where no written objections of interested parties have been received;</li> <li>2) in accordance with Art. 14(1)(2) of the Law on Competition where the notifying persons have submitted written commitments necessary to prevent the creation or strengthening of a dominant position, or significant restrictions of competition, and no written objections of interested parties have been received.</li> </ol>
<p><b>F. Describe any procedures for obtaining early</b></p>	<p>Having regard to Art. 12(3) of the Law on Competition the person who submits a notification may attach a duly grounded request for permission to implement individual actions of concentration</p>

<p><b>termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b></p>	<p>pending the final decision. The Competition Council, within 7 days, shall examine the request and pass a resolution to comply with request or deny it.</p>
<p><b>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).</b></p>	<p>See section D. There aren't any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted.</p>

## 11. Responsibility for notification/representation

<p><b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</b></p>	<p>For notifying is responsible the acquiring person(s). A notification on concentration shall be submitted by:</p> <ul style="list-style-type: none"> <li>- undertakings participating in concentration in cases of mergers;</li> <li>- the acquiring persons in cases of acquisitions.</li> </ul> <p>Each party has to make its own filing only in case of parties' disaccord.</p>
<p><b>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</b></p>	<p>No special rules apply.</p>
<p><b>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)?</b></p>	<p>Where the notification is signed by representatives of undertakings or natural persons such representatives shall submit written evidence of the authorization for such action.</p>
<p><b>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there</b></p>	<p>Yes, e.g. power of attorney. There are no special rules for foreign representatives or firms. A power of attorney must be notarized, legalized or apostilled in accordance with usual practice depending on foreign state.</p>

<p><b>special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</b></p>	
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## 12. Filing fees

<p><b>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)?</b></p>	<p>Yes. The flat fee is equal to 4600 LTL.</p>
<p><b>B. Who is responsible for payment?</b></p>	<p>The notifying party(ies) is responsible for payment.</p>
<p><b>C. When is payment required?</b></p>	<p>Accordingly to Art. 11(6) of the Law on Competition: “The notification to the Competition Council shall be accompanied by documents, confirming that the undertakings concerned have paid the fee of the amount established by the Government for the submission and examination of the notification”.</p>
<p><b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b></p>	<p>Documents confirming the payment of the fee are required.</p>

## 13. Confidentiality

<p><b>A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents</b></p>	<p>Having received notification of concentration, the Competition Council shall publish an announcement to the effect in the “Valstybės žinios” (Official Gazette), indicating the nature of concentration and the parties concerned</p>
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<b>of the notification?</b>	
<b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</b>	The notifying person upon receipt of notice of concentration, are entitled to get acquainted with the material of the case of examination of concentration, except information, which is commercial secret of other undertakings.
<b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b>	The interested persons which have submitted written clarifications (objections) to the Competition Council regarding the intended concentration upon receipt of notice of concentration are entitled to get acquainted with the material of the case of examination of concentration, except information, which is commercial secret of other undertakings.
<b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b>	Pursuant to Art. 22(1) of the Law on Competition, the undertakings shall have the right to protection of commercial secrets. If the information (notification, documents, and clarifications) submitted to the Competition Council contains commercial secrets, each page of such material shall be marked by the words "commercial secret". Such information shall not be disclosed in public or to other persons, except the cases provided by laws or with written consent of the person to full or partial disclosure of the information, which constitutes a commercial secret of such a person. In case of necessity, the Competition Council may request to submit an extract from the documents containing no commercial secrets.
<b>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?</b>	ES member states, ECA (in accordance with the decision made at the ECA meeting on 20 April 2001)
<b>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</b>	Yes, the consent is needed.

<b>information to exchange such information?</b>	
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#### 14. Transparency

<b>A. Does the agency publish an annual report? Please provide the web address if available.</b>	Yes, the reports can be found at: <a href="http://www.konkuren.lt">www.konkuren.lt</a>
<b>B. Does the agency publish press releases related to merger policy or investigations?</b>	Yes, at the: <a href="http://www.konkuren.lt">www.konkuren.lt</a>
<b>C. Does the agency publish decisions on why it cleared/blocked a transaction?</b>	Yes, at the: <a href="http://www.konkuren.lt">www.konkuren.lt</a>

#### 15. Sanctions/penalties

<b>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</b>	<p>Upon establishing that undertakings have engaged in conduct prohibited under this Law or have otherwise infringed this Law, the Competition Council shall have the right :</p> <p>1) to place the undertakings under an obligation to end illegal activity, to carry out actions restoring the previous situation or eliminating consequences of infringement, including the obligation to cancel, amend or conclude contracts, also to set the time limit and lay down the conditions for meeting the above obligations;</p> <p>2) to obligate the undertakings or controlling persons, who have effected concentration resulting in the establishment or strengthening of a dominant position and subsequent considerable reduction of competition in a relevant market without notifying the Competition Council or getting its permission, also in the cases provided for in Article 15(2) of this Law, to carry out actions restoring the previous situation or eliminating the consequences of concentration, including obligations to sell the enterprise or a part thereof, the assets of the undertaking or a part thereof, shares or a part thereof, to reorganise the enterprise, to cancel or change contracts, as well as to set the time limit and lay down the conditions for fulfilling of the above obligations;</p>
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	<p>3) to impose fines on undertakings fixed by this Law.</p> <p>Upon being issued an authorisation by the Vilnius Regional Administrative Court judge, the Competition Council may by its resolution prescribe the following restrictions of economic activity of undertakings which default on the imposed penalties specified in paragraph 1 hereof: suspend export-import operations, bank operations, the validity of the permit (licence) to engage in certain economic activity. The resolutions of the Competition Council shall have a binding force for the institutions empowered to apply the above restrictions and must be implemented without delay. The restrictions shall be lifted after the implementation of penalties imposed by the Competition Council.</p> <p>For violation of this Law an action may be brought against undertakings not later than within three years from the date of infringement, and in case of continued violation - from the date of performance of the last acts.</p> <p>A fine of up to 10 percent of the gross annual income shall be imposed by the Competition Council on undertakings for putting into effect of a notifiable concentration without the permission of the Competition Council; continuation of concentration within the period of its suspension, also infringement of concentration conditions or mandatory obligations established by the Competition Council.</p> <p>In the case when infringements listed in this paragraph have been made in aggravating circumstances, a fine of a larger amount may be imposed on the undertakings but not exceeding 10 % of the gross annual income.</p> <p>A fine of up to 1 per cent of the gross annual income in the preceding business year may be imposed on undertakings for providing incorrect or incomplete information required for investigation in notification of concentration.</p>
<p><b>B. Which party/ies are potentially liable?</b></p>	<p>The parties who failed to provide notifications.</p>
<p><b>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.</b></p>	<p>Pursuant to Art. 44 of the law on Competition:</p> <p>“1. An undertaking must pay into the State Budget the fine imposed by the Competition Council not later than within three months after the date of receipt of the resolution.</p> <p>2. Upon a justified request of the undertaking payment of a fine or a part thereof may be postponed by a decision of the Competition Council for up to six months.</p> <p>3. The fine not paid by the undertaking shall be recovered into the State Budget. The resolution of the Competition Council shall be submitted to the bailiff for execution according to the procedure established by the Code of Civil Procedure. The</p>



	resolution may be submitted for execution not later than within three years from the date of its adoption.“
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## 16. Judicial review

<p><b>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</b></p>	<p>Pursuant to Art. 38 of the Law on Competition “the undertakings as well as other persons who believe that their rights protected by this Law have been violated shall have the right to appeal to the Vilnius Regional Administrative Court against the resolutions of the Competition Council. The parties to the proceedings shall have the right to appeal against the resolutions of the Competition Council adopted pursuant to Article 36 of this Law.</p> <p>A written complaint shall be lodged not later than within 20 days after the delivery of the resolution or publication of its operative part in “Valstybės žinios” (<i>Official Gazette</i>).</p> <p>Unless the Vilnius Regional Administration Court decides otherwise, the lodging of a complaint shall not suspend the implementation of the resolutions of the Competition Council.</p> <p>Decision of the Court.</p> <p>Upon investigation of the complaint against the resolution of the Competition Council, the court shall make one of the following decisions:</p> <ol style="list-style-type: none"> <li>1) to leave the resolution as it stands and to reject the complaint;</li> <li>2) to revoke the resolution or its individual sections and to remand the case to the Competition Council for supplementary investigation;</li> <li>3) to revoke the resolution or its individual sections;</li> <li>4) to amend the resolution on concentration, application of penalties or interim measures.</li> </ol>
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## 17. Additional filings

<p><b>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</b></p>	<p>No additional filings/clearances are required at the Competition Council (except for the banks and other credit institutions shall be submitted the finding of the Bank of Lithuania).</p>
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## 18. Closing deadlines

<b>When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?</b>	No
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#### 19. Post merger review of transactions

<b>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?</b>	Yes, pursuant to Art. 15 of the Law on Competition.
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