

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

MONOPOLY CONTROL AUTHORITY PAKISTAN

August 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 that are available at www.mca.gov.pk and internet: info@mca.gov.pk

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

A. Notification provisions	There is no merger notification requirement in Pakistan. However, undertakings and individuals that meet criteria prescribed in Section 5(1)(b) of Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970) (hereinafter "MRTPO") must register with the Monopoly Control Authority UNDER SECTION 16(1)(i).
B. Notification forms or information requirements	See Form-1 attached to the Monopoly Control Authority Rules, 1971 [Gazette of Pakistan, Extraordinary, 31 st December, 1971) for the necessary information.
C. Substantive merger review provisions	Section 5(1)(b) of MRTPO.
D. Implementing regulations	Section 11 read with section 12(I)(b)(iv) of the MRTPO.
E. Interpretive guidelines and notices	Explanation to Section 16(1) of the MRTPO.

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	Monopoly Control Authority ("MCA")
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	87, Double Road, F-10/1, P.O. Box # 1227, Islamabad, Pakistan Tel: +92-51-9267607-8, Fax: +92-51-9267609 URL http://www.mca.gov.pk Internet: info@mca.gov.pk
C. Is agency staff available for pre-	Yes. Companies and individuals may seek advice from the MCA on

notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	matters covered by the MRTPO. For contact please visit www.mca.gov.pk
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3. Covered transactions

<p>A. Definitions of potentially covered transactions (i.e., concentration or merger)</p>	<p>Under Section 5 (1)(b), unreasonable monopoly power (prohibited under section 3 of the MRTPO) shall be deemed to have been brought about, maintained and continued if there has been any acquisition by one person or undertaking of the stock or assets of any other person or undertaking, or any merger of undertakings, where the effect of the acquisition or merger is likely to create monopoly power or to substantially lessen competition in any market, including any acquisition which creates any such relationship between two or more undertakings as makes them associated undertakings where they are competitors in the same market and together produce, supply, distribute or provide not less than one third of the total goods or services in such market.</p>
<p>B. If change of control is a determining factor, how is control defined?</p>	<p>Control is defined in Section 2(d) of the MRTPO in the following manner:-</p> <p>‘Control’, in relation to an undertaking, means the power to exercise a controlling influence over the management or the policies of the undertaking and, in relation to shares, means the power to exercise a controlling influence over the voting power attached to such shares.</p>
<p>C. Are partial (less than 100%) stock acquisitions / minority shareholdings covered? At what levels?</p>	<p>Section 3 read with Section 5 (1)(b) prohibits acquisitions or merger that creates any such relationship between two or more undertakings as makes them associated undertakings where they are competitors in the same market. Definition of ‘associated undertakings’ is given in section 2(1)(b) of the MRTPO:</p> <p>“associated undertakings” means any two or more undertakings interconnected with each other in the following manner, namely:-</p> <p>(i) if a person who is the owner or a partner of an undertaking or who directly or indirectly holds or controls shares carrying not less than thirty percent of the voting power in such undertaking, is also the owner or a partner of another undertaking, or directly or indirectly, holds or controls shares carrying not less than thirty percent of the voting power in that undertaking; or</p>

	(ii) if the undertakings are under common control or common management or one is the subsidiary of another;
D. Do the notification requirements cover joint ventures? If so, what types(e.g., production joint ventures)?	See response to A of Serial No.1 above.
4. Thresholds for notification	
A. What are the general thresholds for notification?	See response to A of Serial No.3 above
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?	The thresholds apply to associated undertakings, defined as any two or more undertakings interconnected with each other either by (1) a person who is the owner or a partner of an undertaking or who directly or indirectly holds or controls shares carrying not less than 30% of the voting power in such an undertaking, is also the owner or partner of another undertaking or, directly or indirectly, holds or controls shares carrying not less than 30% of the voting power in that undertaking or (2) if the undertakings are under common management or common control or one is the subsidiary of the other. Section 2(1)(b) of the MRTPO.
C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.	There is no such provision.
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 threshold relates to the most recent calendar 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 the relevant assets?	For purposes of determining the one third of any goods produced, distributed or sold or of any services provided, the percentage is computed on the basis of the monthly statistical bulletin of the Federal Statistical Office of the Federal Government of Pakistan or on such other basis as the MCA may prescribe by Rule. See explanation to Section 16(1) of the MRTPO.
F. Describe methodology for calculating exchange rates.	US dollar vis-a-vis Pak Rupee parity is used for calculation of exchange rates.
G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?	The threshold apply to sales within the jurisdiction i.e. Pakistan.
H. Can a single party trigger the notification	Single party does trigger the registration threshold.

threshold (e.g., one party's sales, assets, or market share)?	See Section 16(1) (a) and (c) of the MRTPO.
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?	The nexus to the jurisdiction is determined on the basis of production, supply, distribution or provision of service of not less than one third of the total goods or services in the jurisdiction. Creation and continuation of monopoly power that is prohibited is defined in section 2(1)(g) of the MRTPO as under:- "monopoly power" means the ability of one or more sellers in a market to set non-competitive prices or restrict output without losing a substantial share of the market or to exclude others from any part of that market;
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	Section 2 (1)(f) defines the market as under:- "market" in relation to any goods or services, means the geographic region in which competition in the production or sale of such goods or the provision of such services takes place;
K. If market share tests are used, are there guidelines for calculating market shares?	See response to E of Serial No.4 above
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)?	No.
M. Are any sectors excluded from notification requirements? If so, which sectors?	Government owned sectors and sectors regulated by regulatory authorities. See Section 25 of the MRTPO.
N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?	No.
O. Does the agency have the authority to review transactions that fall below the thresholds?	Yes, the Authority have the powers to review transactions that create monopoly power or substantially lessen competition in any market.
5. Notification requirements and timing of notification	
A. Is notification mandatory pre-merger?	No.
B. Is notification mandatory post-merger?	Under Section 16(1)(i) of the MRTPO, registration must be made if there has been an agreement for an acquisition by one person or undertaking of the stock or assets of any other person or undertaking, or any merger of undertakings, where the effect of the acquisition or merger is likely to create monopoly power or to substantially lessen competition in any

	market, including any acquisition which creates a relationship of associated undertakings between competitors in the same market that together produce, supply, distribute or provide at least one third of the total goods or services in such market. Application for registration must be filed within 15 days under Rule 10, MCA Rules, 1971
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	Yes. They can seek advice under section 10(d) of MRTPO, 1970.
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)?	An agreement for any such acquisition or merger as is referred to in clause (b) of sub-section (1) of section 5. Agreement has been defined under section 2(1)(a) to include any arrangement or understanding whether or not it is or is intended to be legally enforceable.
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?	Within 15 days an agreement becomes registerable.
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.	Yes. The parties can request for extension in the registration deadline. The Monopoly Control Authority gives extension in time on case to case basis.

6. Simplified procedures

Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).

There are no special procedures for such transaction prescribed in the law.

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,

The registration forms do not require documents to be attached. However, pursuant to Section 21 of the MRTPO, the MCA may call for any person to furnish information concerning the activities of an undertaking

transaction documents).	which may include a copy of the agreement, annual reports, market surveys, reports by independent consultants and any other relevant documents.
B. Are there any document legalization requirements (e.g., notarization or apostille)?	Affidavits and statements must be attested/verified by a Notary Public/oath commissioner. Similarly, a power of attorney submitted by counsel to a party must be stamped with judicial stamps as prescribed by law.
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?	There are no special rules for exemptions.
8. Translation	
A. In what language(s) can the notification forms be submitted?	All documents and forms submitted to the MCA must be in English.
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.	All documents and forms submitted to the MCA must be in English.
9. Review periods	
A. Describe any applicable review periods following notification.	Review period is not specified in the law.
B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?	No.
C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?	No such laid down procedure for an extension of the review periods have been prescribed in the law.
D.	
E. What are the procedures for accelerated	

review of non-problematic transactions, if any?	No specific procedure is given in the law
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 waiting period following registration. A person or undertaking subject to review can approach the MCA for a grace period or extension. The MCA reviews such requests on a case by case basis with reference to what is in the public interest.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	No specific procedure is given in the law .
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)	Provisions of the law are applicable to the transactions that occur within the jurisdiction. .
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	There is no pre-merger notification requirement. Most of the proceedings in merger cases are initiated after the completion of the transaction.
E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.	No specific procedure is given in the law
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.	No specific procedure is given in the law
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).	No specific procedure is given in the law
11. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?	The person responsible for the affairs of an undertaking is responsible for the registration, Section 16(3) of MRTPO, 1970.
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	There is no different rule that apply to public tenders.
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)?	Rule 8 of the MCA Rules, 1971, provides that any person entitled or required to attend before the MCA in connection with any proceeding under the MRPTO, except when required to attend personally for examination under oath or affirmation, may be represented by a person authorized by him in writing on his behalf, or an Advocate or an Accountant.
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?	A power of attorney must be apostilled and signed by the party and counsel as required by the prevailing law of the person's country.
12. Filing fees	
A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?	Every registration must be accompanied by a fee of Pak. Rs 1000/-, Rule 10(3) MCA Rules 1971.
B. Who is responsible for payment?	The person responsible for the affairs of an undertaking.
C. When is payment required?	At the time of registration.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	MCA Rules 1971, Rule 17(2) provides for payment of fees by bank draft in favor of the Monopoly Control Authority Fees Account National Bank of Pakistan, Main Branch, Islamabad.

13. Confidentiality

<p>A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?</p>	<p>The MCA does not have a press or media policy and currently does not publicize any proceedings.</p> <p>Registrations are maintained in files at the MCA. All particulars stated in a registration are recorded in a register. If a party or undertaking has applied to treat portions of the registration as a trade secret, the MCA maintains that information in a confidential portion of the register designated as a Special Part.</p>
<p>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</p>	<p>Yes. Any party or person may apply to inspect the registers and files, excluding the Special Part, maintained by the MCA, upon payment of fee of Pak. Rs 100/-.</p> <p>The MCA register may be inspected during working hours under the supervision of the Registrar or his staff. The party or person may not make copies of anything in the register, but may be allowed to take notes.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>Yes, see response to 13.B. above.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>Yes, see response to 13.B. above.</p>
<p>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>No.</p>
<p>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</p>	<p>There is no such agreement of exchange of documents or information with other reviewing agencies.</p>

14. Transparency

<p>A. Does the agency publish an annual report? Please provide the web address if available.</p>	<p>The Annual Report of the Monopoly Control Authority gives a brief description of merger cases and post-merger monitoring. Monopoly Control Authority is not required under the laws to publish its report regularly</p>
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	ons annual basis. However, important events are disclosed on web site: www.mca.gov.pk .
B. Does the agency publish press releases related to merger policy or investigations?	MCA uploads its important decisions and news on its web site : www.mca.gov.pk .
C. Does the agency publish decisions on why it cleared / blocked a transaction?	MCA uploads its important decisions and news on its web site : www.mca.gov.pk .
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?	Under Section 19 of the MRTPO, the MCA may direct a person or undertaking to pay a penalty not to exceed PKR 100,000/- for a willful failure to register as required.
B. Which party/ies are potentially liable?	Any person or undertaking designated to do so in MCA order.
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.	Yes. The Authority can impose/order these sanctions/ penalties directly.
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.	MCA orders passed under Sections 11 or 19 of the MRTPO may be appealed on point of law in the High Courts of Pakistan within 60 days from the date of the MCA order. MRTPO, Section 20.
17. Additional filings	
Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?	The undertakings are essentially required to get there mergers/acquisitions sanctioned from the respective High Courts as required under the Companies Law administered by the Securities and Exchange Commission of Pakistan..
18. Closing deadlines	
When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?	No such closing deadline is prescribed in the Monopoly law.

19. Post merger review of transactions

Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?

If a merger is cleared by the Authority with some conditions, the Authority can reopen the case if the conditions are not fulfilled within the period specified in the order of the Authority.