

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

UNITED KINGDOM

APRIL 2009

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

Notification of mergers is voluntary within the UK regime. However, particularly in the case of a public bid governed by the City Code on Takeovers and Mergers, parties often notify.

The Office of Fair Trading (OFT) is the authority to which voluntary notifications are made. It has published guidance on its web site at:

<http://www.offt.gov.uk/News/Publications/Leaflet+Ordering.htm>

This document is entitled 'Mergers -Procedural Guidance', OFT 526.

B. Notification forms or information requirements

Parties have the option of submitting a standard 'Merger Notice' if they require a decision from the OFT within a statutory timetable. This notification option is only available for proposed mergers in the public domain. There are statutory information requirements for submitting a Merger Notice as described in the procedural guidance.

The OFT also accepts informal submissions for completed or other proposed mergers. The OFT describes the information which it likes to be included in chapter 5 of the procedural guidance.

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| | <p>Following a reference to the Competition Commission (CC), the CC will send a letter to the main parties requesting a submission on their key arguments and views, together with a request for ‘off the shelf’ information relevant to the inquiry.</p> |
| <p>C. Substantive merger review provisions</p> | <p>The Enterprise Act 2002, The Communications Act 2003 (for newspaper and cross-media mergers), the Water Industry Act 1991 (for water and sewerage mergers), and the Railways Act 1993 (for franchise agreements to operate rail services).</p> |
| <p>D. Implementing regulations</p> | <ul style="list-style-type: none"> • 2008/2645 Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2008 • 2005/3558 Enterprise Act 2002 (Merger Fees) (Amendment) Order 2005 • 2003/3180 Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 • 2003/1595 Enterprise Act 2002 (Anticipated Mergers) Order 2003 • 2003/1398 Enterprise Act 2002 (Consequential Supplemental Provisions) Order 2003 • 2003/767 Enterprise Act 2002 (Consequential and Transitory Provisions) Order 2003 • 2004/2181 Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004 • 2003/1592 Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 • 2004/3204 Enterprise Act 2002 (Merger Fees and Determination of Turnover) (Amendment) Order 2003 • 2003/1370 Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 • The Enterprise Act 2002 (Merger Fees) (Amendment) Order 2005 • 2003/1369 Enterprise Act 2002 (Merger Pre-notification) Regulations 2003 |
| <p>E. Interpretive guidelines</p> | <ul style="list-style-type: none"> • ‘Mergers - Procedural guidance’ OFT 526 |

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| and notices | <ul style="list-style-type: none"> • ‘Mergers - Substantive assessment guidance’ OFT 516 • ‘Guidance note revising ‘Mergers - substantive assessment guidance’ OFT516a (October 2004) • ‘Guidance note on the calculation of turnover for the purposes of Part 3 of the Enterprise Act 2002’ (July 2003) • ‘Mergers fee information’ • Restatement of the OFT's position regarding acquisitions of 'failing firms' (December 2008) • Interim arrangements for informal advice and pre-notification contacts (April 2006) • ‘Merger References: Competition Commission Guidelines, June 2003: CC2’ • ‘Merger References: Competition Commission Guidelines, November 2008: CC8’ • ‘Guidance on the use of interim measures pending final determination of merger references, CC’ <p>(All of these documents are available on the relevant authority’s website)</p> |
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2. Authority or authorities responsible for merger enforcement.

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| A. Name of authority. If there is more than one authority, please describe allocation of responsibilities. | <p>The Office of Fair Trading (OFT) is the first stage competition authority to which all notifications are made. The OFT has a duty to keep merger situations under review, and may solicit notifications where it wishes to investigate a merger of which it is aware.</p> <p>The OFT has a duty to refer to the Competition Commission (CC) for further investigation any relevant merger situation (completed or anticipated) where it believes that it is or may be the case that the merger has (or may be expected to) result in a substantial lessening of competition (SLC). The OFT need not refer a transaction to which this duty relates if (a) the merger is insufficiently advanced or unlikely to proceed; (b) the market concerned is insufficiently important; (c) the customer benefits of the merger would outweigh its adverse effects; or (d) the OFT has accepted undertakings in lieu of reference to address the</p> |
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| | <p>competition concern identified.</p> <p>The Secretary of State of Business, Enterprise and Regulatory Reform (the Secretary of State) can issue a public interest intervention notice in mergers where he believes a public interest consideration specified in the Enterprise Act 2002 (national security, considerations relevant to newspaper and other media mergers and the stability of the UK's financial system) may be relevant. If an intervention notice or special intervention notice is issued the OFT provides advice to the Secretary of State on jurisdictional and competition issues, and where an intervention notice is given specifying a media public interest consideration, the Office of Communications (OFCOM) provides advice on that aspect. The Secretary of State balances the competition assessment against the public interest assessment and makes a decision on reference.</p> <p>The CC is the second stage competition authority. It investigates mergers referred to it by the OFT on competition grounds and by the Secretary of State on public interest grounds. It decides jurisdictional questions, determines the outcome of OFT references on competition grounds and decides appropriate remedies. On those mergers referred to it on specified public interest grounds the CC provides advice to the Secretary of State. The Secretary of State is determinative on the outcome of the investigation although he must accept the CC's conclusions on any competition grounds.</p> <p>The Competition Appeal Tribunal (CAT) is able to hear appeals against merger decisions made by the OFT, CC and the Secretary of State, on judicial review grounds. It can require a fresh decision to be taken but cannot substitute its own decision.</p> |
| <p>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</p> | <p>Office of Fair Trading Fleetbank House 2-6 Salisbury Square London EC4Y 8JX Tel: +44 (0) 20 7211 8915 / 8917 Fax: +44 (0) 20 7211 8916 www.of.gov.uk, available in English</p> <p>Competition Commission Victoria House Southampton Row London WC1B 4AD Tel: +44 (0) 20 7271 0100 / 0367 www.competition-commission.org.uk, available in English</p> |

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| | <p>Department of Business, Enterprise and Regulatory Reform 1 Victoria Street London SW1H 0ET Email: enquiries@berr.gsi.gov.uk www.berr.gov.uk, available in English</p> <p>Competition Appeal Tribunal Victoria House Southampton Row London WC1A 2EB Tel: +44 (0) 20 7979 7979 Fax: +44 (0) 20 7979 7978 www.catribunal.org.uk, available in English</p> |
| <p>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</p> | <p>Yes.</p> <p>Contact the team leader for the sector concerned, details available on OFT website, or telephone one of the mergers general office numbers.</p> <p>In some instances the OFT provides a non-statutory merger advisory service of informal advice on proposed transactions which are not yet in the public domain. Prenotification contacts will not be affected.</p> |

3. Covered transactions

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| <p>A. Definitions of potentially covered transactions (i.e., concentration or merger)</p> | <p>A merger must meet all three of the following criteria to constitute a relevant merger situation:</p> <ol style="list-style-type: none"> (1) Two or more enterprises must cease to be distinct; (2) The merger must not have taken place or a CC reference should be made not more than four months after either the date on which the merger became unconditional or information about the merger became public, or made known to the OFT, whichever is the later; and (3) Either: <ol style="list-style-type: none"> (i) the UK turnover of the acquired enterprise exceeds £70 million; or (ii) the merged enterprises both either supply or acquire goods or services of a particular description and will, after the |
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| | merger takes place, supply or acquire 25% or more of those goods and services in the UK or in a substantial part of it. There must be an increment to the share of supply. |
| B. If change of control is a determining factor, how is control defined? | <p>The law defines three levels of control: material influence, control of policy (also known as ‘de facto control’) and a controlling interest (also known as ‘de jure control’). The acquisition of material influence or an increase in the level of control may constitute a relevant merger situation.</p> <p>Chapter 2 of the OFT’s published guidance ‘Mergers - Substantive assessment guidance’ OFT 516 describes the general approach to determining whether there has been a change of control, which will be determined on a case-by-case analysis.</p> |
| C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? | <p>Yes, when these constitute a change of control.</p> <p>The law does not specify particular limits. The published guidance indicates that the OFT may investigate at a level of shareholding in the region of 15% or above.</p> |
| D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)? | <p>Yes.</p> <p>This kind of arrangement may fall within the scope of the merger regime.</p> |

4. Thresholds for notification

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| A. What are the general thresholds for notification? | <p>A merger qualifies for investigation if either:</p> <p>(1) the annual UK turnover of the acquired enterprise exceeds £70 million, or</p> <p>(2) the merged enterprises both either supply or acquire goods or services of a particular description and will, after the merger takes place, supply or acquire 25% or more of those goods and services in the UK or in a substantial part of it. There must be an increment to the share of supply.</p> |
| B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining | <p>The turnover test applies to the acquired enterprise.</p> <p>The share of supply test usually applies to acquired enterprise and the group-wide operations of the bidder. In the event of a joint venture merger the share of supply test may be applied to the</p> |

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| <p>relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p> | <p>group-wide operations of both partners.</p> |
| <p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p> | <p>There are no automatic or regular adjustments to the thresholds. However, the Secretary of State can adjust the turnover threshold based on advice given by the OFT.</p> |
| <p>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p> | <p>Turnover applies to business year preceding the date of completion of the merger or, if the merger has not yet taken place, the date of the OFT's decision whether or not to make a reference to the CC. However, in either case, the OFT may substitute an earlier date as it considers appropriate.</p> <p>Share of supply test applies at the time of the decision.</p> |
| <p>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p> | <p>Guidance on turnover has been published on the OFT's website. The share of supply test is described in 'Mergers - Procedural Guidance'.</p> |
| <p>F. Describe methodology for calculating exchange rates.</p> | <p>The turnover test is expressed in terms of pounds sterling, as most trade within the UK is performed in this currency. If it is necessary to convert foreign currencies in order to arrive at this figure then the OFT would usually be content to accept the approved exchange rate applicable at the date of the accounts.</p> |
| <p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p> | <p>The turnover threshold applies to turnover within the UK jurisdiction.</p> <p>The share of supply test applies to share of supply within the UK or a substantial part of it.</p> |
| <p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p> | <p>Yes. Where the turnover test is met, this will, by definition, be because the target generates turnover from sales to UK customers. For the share of supply test, both of the enterprises ceasing to be distinct must be active in supplying or acquiring goods or services within the UK or a substantial part of the UK.</p> |

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| <p>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine,” please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an “effects” test?</p> | <p>The two alternative jurisdictional tests each require effects within the UK jurisdiction. It is implicit in these criteria that at least one of the enterprises must be active within the UK. Where the turnover test is met, this will, by definition, be because the target generates turnover from sales to UK customers. For the share of supply test, both of the enterprises ceasing to be distinct must be active in supplying or acquiring goods or services within the UK or a substantial part of the UK. These principles apply equally to non-UK companies that sell to (or acquire from) UK customers or suppliers. In assessing whether a firm is active in the UK, the OFT will have regard to whether its sales are made directly or indirectly (via agents or traders).</p> |
| <p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p> | <p>This is not relevant in determining jurisdiction. The Enterprise Act 2002 allows for discretion in describing the relevant goods or services, requiring only that, in relation to that description, the parties share of supply or acquisition is 25% or more. The share of supply test is not a market share test.</p> |
| <p>K. If market share tests are used, are there guidelines for calculating market shares?</p> | <p>The UK does not have a market share test.</p> |
| <p>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</p> | <p>Yes. See the OFT’s published ‘Guidance note on the calculation of turnover for the purposes of Part 3 of the Enterprise Act 2002’ (July 2003), which can be found at http://www.of.gov.uk/NR/rdonlyres/6114AE81-0A3A-48C7-81F6-C6CF7A4E25FB/0/turnover.pdf</p> |
| <p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p> | <p>No.</p> |
| <p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p> | <p>No. All enterprises are treated alike if they meet the jurisdictional tests.</p> |

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| <p>O. Does the agency have the authority to review transactions that fall below the thresholds?</p> | <p>Yes, in very limited circumstances. Transactions that fall within a defined class of national security or media plurality may be subject to review if the Secretary of State decides to issue an intervention notice on special public interest grounds. In all other cases, transactions falling below the jurisdictional thresholds are not subject to substantive merger control.</p> |
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5. Notification requirements and timing of notification

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| <p>A. Is notification mandatory pre-merger?</p> | <p>No.</p> |
| <p>B. Is notification mandatory post-merger?</p> | <p>No.</p> |
| <p>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</p> | <p>Yes. Either while the merger is still proposed or after it has completed. Guidance on the type of information that the OFT requires is published on the OFT's website as well as in 'Mergers – Procedural Guidance'.</p> |
| <p>D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?</p> | <p>It is not necessary to have a formal agreement if there has been a public statement about the agreed principles, which is sufficiently clear as to permit a proper investigation. Indeed there is often no agreement when there are competing bids. If there is no agreement the OFT will wish to be sure that there is a genuine intention on the part of the bidder.</p> |
| <p>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p> | <p>In the UK notification is voluntary.</p> |
| <p>F. Can parties request an extension for the notification deadline? If yes, please describe the</p> | <p>This is not relevant to the UK.</p> |

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| <p>procedure and whether there is a maximum length of time for the extension.</p> | |
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6. Simplified procedures

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| <p>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</p> | <p>None since notification is voluntary.</p> <p>The parties may make a voluntary submission, which may contain as little information as they think the OFT needs. However, the OFT has the power to subsequently request additional information from the parties and to extend the investigation time period if that information is not provided on time.</p> |
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7. Documents to be submitted

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| <p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</p> | <p>The information that must be supplied to file a Merger Notice is described in our published guidance. In all other circumstances the content of the notification is at the discretion of the parties.</p> <p>OFT has indicated that the following information will assist it in investigating a merger. Failure to supply it may lead to requests for further information or delay to the investigation and decision-making process:</p> <ul style="list-style-type: none"> • details of the identity and nature of the merging enterprises. Copies of their most recent Annual Report and Accounts. If the offer is subject to the City Code on Takeovers and Mergers, copies of the Offer Document and Listing Particulars and any press releases or newspaper cuttings. Any other printed information which helps the OFT's understanding of the transaction or the affected sector; • a summary of the transaction, stating the names of the acquiring company and the target, the type of transaction (for example, whether it is an agreed bid, a full takeover or the |
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| | <p>acquisition of assets or of a minority shareholding giving material influence, or whether it is a joint venture), how the transaction qualifies as a relevant merger situation (for example through UK turnover or combined share of supply), a brief description of the business being acquired, the areas of overlap between acquirer and target, the reasons for the acquisition, and any other countries where the transaction has been notified;</p> <ul style="list-style-type: none"> • details of at least the five principal customers and competitors, for both the acquirer and target in each area of overlap, providing a named contact, telephone and fax numbers and email address where available; and • copies of analyses, reports, studies and surveys submitted to or prepared for any member(s) of the board of directors, the supervisory board, or the shareholders' meeting, for the purpose of assessing or analysing the proposed transaction with respect to competitive conditions, competitors (actual and potential), and market conditions and indicate (if not contained in the document itself) the date of preparation. |
| <p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p> | <p>The Merger Notice form, if used, must be signed by an authorised official of the company, or by a person authorised to act on its behalf. There are no such requirements for informal notifications.</p> |
| <p>C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?</p> | <p>No.</p> |

8. Translation

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| <p>A. In what language(s) can the notification forms be submitted?</p> | <p>English.</p> |
| <p>B. Describe any requirements to submit translations of documents with the initial notification, or later in</p> | <p>The OFT expects notifications and supporting information to be supplied in English. It will accept partial translations in appropriate circumstances. Certification of translations is not required but the parties are under a general duty not to provide any false or misleading information.</p> |

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| <p>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

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| <p>A. Describe any applicable review periods following notification.</p> | <p>In the case of a Merger Notice, the OFT has an initial 20 working days for review. This may be extended for an additional 10 working days where no intervention notice has been served and 20 days where an intervention notice has been served.</p> <p>Where an informal submission is made, there is no specific timetable applies, but the stated goal of the OFT is to issue a decision within 40 working days.</p> <p>For both Merger Notices and informal submissions, where the OFT believes that a merger creates the realistic prospect of a substantial lessening of competition within a market in the United Kingdom, it has a duty to refer the merger to the CC for further investigation. The CC has 24 weeks beginning with the date of the reference to review the transaction and publish its report. This period may be extended by up to eight weeks if there are special reasons why the report cannot be prepared and published.</p> |
| <p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p> | <p>No.</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</p> | <p>The OFT also has the power to 'stop the clock' if:</p> <ol style="list-style-type: none"> 1. a party has failed to provide information by a specified deadline; 2. the OFT is seeking undertakings (competitive remedies) in lieu of a reference to the CC. This extension of time expires either when undertakings have been given, or 10 working days after the notifying party informs the OFT that it does not intend to give undertakings or cancellation of the extension by the OFT; or |

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| maximum for extensions? | <p>3. the European Commission is considering whether to assume jurisdiction over the merger following a request under Article 22 of the EC Merger Regulation.</p> <p>4. and, for completed mergers, the OFT may, with the consent of the parties extend the statutory deadline by 20 working days.</p> <p>As set out in paragraph 9A, the CC may extend its 24 week period by up to eight weeks if there are special reasons why a report cannot be published or prepared. The CC may also extend the 24 week time period if a relevant person has not responded to a formal request for information</p> |
| D. What are the procedures for accelerated review of non-problematic transactions, if any? | None. Since notification in the UK is voluntary, the OFT examines relatively few transactions that are obviously non-problematic from the outset. |

10. Waiting periods / suspension obligations

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| A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period. | <p>There are no waiting periods. During the OFT investigation, the parties are free to go ahead with completion. If the OFT is concerned about a completed merger, however, it may seek interim undertakings or impose an interim order before it makes its decision on reference. Such a measure will prevent the parties from taking any action (e.g. disposals) or integrations, which could make it difficult to remedy any adverse effect of the merger.</p> <p>When a completed merger is referred to the CC the parties may not take any action in connection with the merger without the CC's consent. Where a merger is not complete, the parties may not acquire interests in each other's shares during the reference period without the CC's consent (section 78). Once the reference is underway, the CC may obtain undertakings from the parties or impose orders on them to prevent pre-emptive action.</p> |
| B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances? | N/A |
| C. Are the applicable waiting | There are no waiting periods. |

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| <p>periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p> | <p>In the event that interim undertakings are accepted or an interim order is made, these will generally relate only to those activities that fall within the UK's jurisdiction.</p> |
| <p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p> | <p>Whilst the merger is being considered by the OFT, parties are free to complete the merger and take any commercial actions at their own commercial risk. The OFT can seek interim undertakings or make an interim order while it is investigating a completed merger under certain circumstances.</p> <p>If a merger is referred to the CC, the Enterprise Act 2002 contains provisions that prevent the parties taking any actions which might prejudice the reference or make it difficult to take action on the CC's findings in the event of an adverse report.</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>There are no waiting periods.</p> <p>The timetable for a decision on a notification made through a Merger Notice may be extended to a maximum of 30 working days by the OFT, or a maximum of 40 working days by the OFT in a case involving an Public Interest Intervention Notice.</p> <p>The statutory period of four months after completion (after which a merger is automatically cleared) may be extended by 20 working days by agreement between the OFT and the parties.</p> |
| <p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension</p> | <p>Not applicable.</p> <p>If a quick decision is needed, the submission should clearly explain why the case is so urgent and why the submission was not made any earlier. In such cases, the OFT would expect the</p> |

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| obligation, and the criteria and timetable for deciding whether to grant early termination. | merging parties to be alert particularly to the importance of a full and complete merger submission. |
| 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>Whilst the merger is being considered by the OFT, parties are free to complete the merger and take any commercial actions at their own commercial risk.</p> <p>The OFT can seek interim undertakings or make an interim order while it is investigating a completed merger under certain circumstances.</p> <p>If a merger is referred to the CC, the Enterprise Act 2002 contains provisions that prevent the parties taking any actions which might prejudice the reference or make it difficult to take action on the CC's findings in the event of an adverse report.</p> |

11. Responsibility for notification / representation

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| A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing? | There is no statutory requirement to notify a merger. Typically, when a transaction is notified it is the acquiring party who notifies the OFT. |
| B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)? | No. |
| 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>No. Parties may represent themselves although they are commonly represented by a lawyer, member of the bar, economist and/or financial representative.</p> <p>If the acquiring party submits a Merger Notice it may formally appoint a representative.</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 | An authorised person of one of the merging parties can appoint a representative (e.g. a firm of solicitors) to complete a Merger Notice or make an informal merger submission and to act in correspondence and meetings with the OFT and CC. In the case of a Merger Notice, an authorised official of the company must sign the relevant declaration to this effect at Part Three of the Notice. The authorisation can be withdrawn at any time, but if so, |

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| be notarized, legalized or apostilled? | the party concerned must inform the OFT immediately in writing. |
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12. Filing fees

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| A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? | <p>Yes. For pre-notified mergers using the Merger Notice, payment must be sent with the completed Merger Notice. For informal submissions, the fee is payable when the decision on reference is announced. When a merger is found to fall within the scope of the EC Merger Regulation or is found not to qualify for investigation under the Enterprise Act 2002 a refund is made.</p> <p>Fees vary according to type and size of the merger, currently £15,000 where the value of the UK turnover of the enterprises being acquired is £20 million or less, £30,000 where the value of the UK turnover of the enterprise being acquired is between £20 million and £70 million, £45,000 where the value of the UK turnover of the enterprise being acquired is £70 million or more.</p> <p>Small and medium sized enterprises (as defined by the Companies Act 1985) are exempt from paying fees.</p> <p>See Chapter 7 of Procedural Guidance for more information. The Secretary of State sets the fees.</p> |
| B. Who is responsible for payment? | Fee is payable by the acquiring party. Where there is more than one acquirer, the co-acquirers will be jointly and severally liable for the fee. |
| C. When is payment required? | For pre-notified mergers using a Merger Notice payment is sent in advance. For other mergers fee is payable on announcement of the decision by OFT. |
| D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)? | The OFT issues an invoice for the appropriate fee to the acquiring party at the time the decision is announced, which will be payable within 30 days of the invoice date. Cheques and wire transfers are accepted. |

13. Confidentiality

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| A. To what extent, if any, | The OFT invites comments on all public merger situation under review from interested third parties by means of an invitation to |
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| <p>does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?</p> | <p>comment notice published through the Regulatory News Service and on its website. Contents of the notification are kept confidential.</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>There is no right of access to file.</p> <p>The courts can order disclosure of certain documents in certain circumstances.</p> <p>The CC while having regard to the disclosure of provisions of Part 9 of the Enterprise Act 2002, discloses appropriate information through its website during the course of an inquiry. In the UK the Freedom of Information Act 2000 allows access to certain information held by public bodies.</p> |
| <p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p> | <p>The OFT a duty to keep certain merger information confidential under Part 9 of the Enterprise Act 2002. Such information may be shared with government agencies only where there is a gateway under the Enterprise Act 2002, for example if this is deemed necessary for the purpose of fulfilling the OFT's functions.</p> <p>The OFT is able to pass all relevant information in its possession to the Secretary of State when there has been an intervention notice, or to the Competition Commission to enable it to undertake a second phase investigation.</p> <p>Confidential merger information may only be shared with overseas competition authorities with the express permission of the owners of the data concerned.</p> <p>The CC has similar duties to that of the OFT in relation to Part 9 of the Enterprise Act 2002. The CC aims to be open and transparent in its work, while maintaining confidentiality of information that it obtains during its inquiries. Parties are often requested to provide non-confidential versions of its submissions for the purpose of publication on the CC's website.</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>The OFT has a duty to publicise any mergers that it is investigating and cannot keep the fact of an investigation from the public.</p> <p>Notification materials will be handled as described above. The OFT is willing to consider requests that certain materials should not be shown to particular government bodies (e.g. a sector regulator) but the parties will be advised that if this hinders an investigation it may increase the risk of a transaction going to a second phase investigation.</p> |

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| | In public mergers, before the text of a decision is published it will be circulated to the parties and their advisers to enable them to request the excision of any business secrets from the text if necessary. |
| 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? | The UK has signed a number of cooperation agreements but none of these amend, or take precedence, over national law. |
| 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? | As indicated above, information on public merger situations may only be shared with other interested competition authorities if a waiver is sought and granted by the parties. Since these agreements involve the parties they are usually not made public. |

14. Transparency

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| A. Does the agency publish an annual report? Please provide the web address if available. | <p>Yes. The OFT publishes an Annual Report and Resource Accounts (2007-2008 is available on OFT website at http://www.of.gov.uk/News/Annual+report/index.htm).</p> <p>The CC publishes an Annual Review and Accounts (2007-2008 is available on the CC website at http://www.competition-commission.org.uk/rep_pub/annual_rev_archive/index.htm)</p> |
| B. Does the agency publish press releases related to merger policy or investigations? | The OFT does issue press releases although generally only in cases that are referred to the CC or in other high profile cases. The CC issues press releases for all its merger cases. |

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| C. Does the agency publish decisions on why it cleared / blocked a transaction? | Yes. |
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15. Sanctions/penalties

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| A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations? | None. A completed merger may be reversed if there is an adverse finding by the CC. Our experience suggests this is a significant sanction. |
| B. Which party/ies are potentially liable? | N/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 describe the procedure and indicate how long this procedure can take. | N/A |

16. Judicial review

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| Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review. | <p>The Enterprise Act 2002 introduced a statutory review procedure whereby persons aggrieved by a decision of the OFT, the CC or the Secretary of State made in connection with the merger control regime may apply to the Competition Appeal Tribunal (CAT) for a review of that decision. Applications must be brought within four weeks of the date on which the applicant was notified of the disputed decision, or the date of its publication, whichever is earlier. The CAT may either dismiss the application or quash the decision (in part or in its entirety) and refer it back to the original decision maker.</p> <p>These provisions are described fully on the Competition</p> |
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17. Additional filings

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

No, however readers may wish to be aware of the following additional information:

- In some circumstances, mergers of water or sewerage undertakings are subject to mandatory reference to the CC. Under the Water Industry Act 1991, the Secretary of State must refer any merger involving two or more 'water enterprises' unless the value of turnover of one of the enterprises is below £10 million.
- There are no special provisions for other regulated utilities. When considering mergers in the regulated sectors (e.g. gas and electricity) the OFT liaises closely with the regulators.
- The Communications Act 2003, which came into effect on 29 December 2003, introduced a new regime for handling newspaper and cross media mergers. These will now be considered in a similar way to the special public interest provisions applicable to mergers affecting national security. For further information see DTI's consultation document 'Intervention in Media Mergers' December 2003 www.dti.gov.uk/ccp/consultpdf/intervention.pdf

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?

If the merger is proposed and submitted through the pre-notified procedure a merger can still be referred to the CC after the expiry of the consideration period when the merger covered by the notice is not completed within six months of the expiry of the consideration period. We are not aware of such a reference having ever been made in practice.

19. Post merger review of transactions

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| 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? | No. However, where an aggrieved person has successfully appealed a decision of the OFT, CC or the Secretary of State (within 28 days of the publication of the decision), the CAT will quash that decision and refer the matter back to the original decision maker to review the matter once more. |
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