

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

DENMARK

June 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

Part 4, section 12 b (1) of Act No. 384 of 10 June 1997 as last amended by Act No. 1336 19 December 2008 (The Competition Act).

See consolidated Act No. 1027 of 21 august 2007.

<http://www.ks.dk/en/competition/legislation/love/the-competition-act-consolidation-act-consolidation-act-no-1027-of-21-august-2007/>

In December 2008 a Merger Committee set up by the Danish government submitted a report in which it recommends a revision of the Danish merger regulation. The main recommendations concern a reduction of the turnover thresholds for notification, an introduction of a simplified procedure for notification and handling/approval of unproblematic mergers and an extension of the deadlines within which the Competition Council must finalize its case handling.

It is expected that the Danish government will propose an amendment to the Danish Competition Act in order to implement the Committee's recommendations. If the amendment is adopted by the Danish Parliament it is expected to come into force during 2010.

B. Notification forms or

Notifications must be submitted on Form K2, in a Danish or English version. The paper version of the form is available from the Authority (www.ks.dk). Electronic filing of the

information requirements	notification is also possible. Where no competition law issues arise, the parties may submit a notification leaving out information which the parties and the Danish Competition Authority find non-relevant (cf. part 6 in this template).
C. Substantive merger review provisions	The Competition Act, Part 4.
D. Implementing regulations	Executive Order No. 895 of 21 September 2000 on the calculation of turnover in the Competition Act. The order is currently under revision. The amended order is expected to come into force by 1 September 2009. (http://www.ks.dk/en/competition/legislation/bekendtgørelser/bekendtgørelser-kronologisk/executive-order-no-895-of-21-september-2000-on-the-calculation-of-turnover-in-the-competition-act/) Executive order No. 480 of 15 June 2005 on the notification on mergers. http://www.ks.dk/en/competition/legislation/bekendtgørelser/bekendtgørelser-kronologisk/executive-order-no-480-of-15-june-2005-on-the-notification-of-mergers/
E. Interpretive guidelines and notices	The Danish competition authorities have issued a guideline on different aspects of merger control. In addition, EU precedent, Commission notices and Commission guidelines are interpretive on Danish merger regulation.

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	The Competition Council (Konkurrencerådet) and the Competition Authority (Konkurrencestyrelsen). The Competition Authority works as a secretariat for the Competition Council. The Competition Authority is the investigative authority in competition and merger cases, and also makes decisions in cases where precedent from the Council is sufficiently normative.
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	Danish Competition Authority Nyropsgade 30 DK - 1780 København V Phone: + 45 72 26 80 00 Fax: + 45 33 32 61 44 E-mail: ks@ks.dk Web site: www.ks.dk, most information is in Danish, but there is also information in English.
C. Is agency staff available for pre-notification	Yes, contact to the right persons can be provided through: Phone: + 45 72 26 80 00 E-mail: ks@ks.dk

consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	
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3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)	Transactions where i) two or more previously independent undertakings merge, or ii) where one or more persons already controlling at least one undertaking, or one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings. See Section 12 a of the Competition Act.
B. If change of control is a determining factor, how is control defined?	Control is constituted by rights, contracts or any other means which either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking.
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	Partial stock acquisitions / minority shareholdings are covered to the extent that there is a change in control.
D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?	All concentrations that meet the turnover thresholds are caught. The Danish definition of a concentration has been taken from the EC Merger Regulation 139/2004. As with the Merger Regulation, the Danish Merger Control regime therefore covers full function joint ventures, as defined in the Commission notice on the concept of full-function joint ventures under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66 of 02.03.1998).

4. Thresholds for notification

A. What are the general thresholds for notification?	Turnover requirement: i) combined aggregate turnover in Denmark of all the undertakings concerned is more than DKK 3.8 billion and the aggregate turnover in Denmark of each of at least two of the undertakings is more than DKK 300 million, or ii) the aggregate turnover in Denmark of at least one of the undertakings concerned is more than DKK 3.8 billion and the aggregate world-wide turnover of at least one of the other
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	undertakings concerned is more than DKK 3.8 billion.
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?	<p>When determining relevant undertakings for threshold purposes, the turnover of all associated undertakings (excluding intra-group operations) is considered, including its subsidiaries, parent companies and any other undertakings in which these undertakings have the power, individually or jointly, to exercise controlling interest.</p> <p>Furthermore the "Commission notice on the concept of undertakings concerned under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings" (OJ C 66 of 02.03.1998) is interpretive.</p> <p>When the amended executive order comes into force by 1 September 2009, cf. part 1D, the executive order will include a codification of the case law on certain merger situations involving joint ventures. The codification will cover the situations 1) where a merging undertaking participates in a joint venture on a 50/50 basis together with a third party undertaking, and 2) where a joint venture participates in a merger.</p>
C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.	No.
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>Most recent accounting year.</p> <p>When the amended executive order comes into force by 1 September 2009, cf. part 1D, the order will state that calculation of the turnover thresholds relate to the most recently audited annual accounts.</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?	The notion of turnover refers to the net turnover derived from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of value added tax and other taxes directly related to sales. See Executive order No. 895 of 21 September 2000, on the Calculation of turnover in the Competition Act.
F. Describe methodology for calculating exchange rates.	Turnover in foreign currency shall be converted into DKK on the basis of the average rate of exchange during the preceding accounting year of the undertaking concerned.
G. Do thresholds apply to	See above 4(A).

worldwide sales/assets, to sales/assets within the jurisdiction, or both?	
H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	No. See above 4(A).
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 by the sales of the undertakings concerned. There is no requirement of local presence in Denmark.
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	The turnover of the undertakings concerned is allocated according to the customer's place of residence at the time of the conclusion of the contract.
K. If market share tests are used, are there guidelines for calculating market shares?	N/A
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)?	There are specific methods of turnover calculation for insurance companies (turnover is replaced by the value of the gross premiums written), credit institutions and other financial undertakings (turnover is replaced by net ordinary operating income). There are also specific rules in relation to commercial and savings banks, mortgage-credit institutes and mortgage-credit groups, investment companies as well as for public authorities.
M. Are any sectors excluded from notification requirements? If so,	No.

which sectors?	
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?	No.

5. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	Yes, cf. the Competition Act section 12 b (1)
B. Is notification mandatory post-merger?	N/A
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	N/A
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>Where a concentration is not likely to raise competition concerns, it is possible to request the Competition Council to approve a planned transaction (as opposed to an agreement, public bid etc.), before the obligation to notify pursuant to section 12 b has come into effect. Approvals of such mergers will not be communicated to the public at the time of the approval, but may be postponed until a later date, cf. section 12 c (7). However, this rule is rarely used in practice.</p> <p>The earliest that a transaction will be notified is normally after a merger agreement has been concluded, a takeover bid has been published or a controlling interest has been acquired and before the merger is carried through, cf. section 12b (1) of the act. An agreement is concluded when the agreement is binding on both parties.</p>
E. Must notification be made within a specified period following a triggering event? If so, describe the	<p>Yes, within one week, cf. section 12 b (1) of the Act.</p> <p>The triggering event is the first of the following events:</p> <ul style="list-style-type: none"> - the conclusion of the agreement, - the announcement of the public bid, or - the acquisition of a controlling interest.

<p>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>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>No, the deadline cannot be extended.</p>

6. Simplified procedures

<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>A transaction may be notified in "short form", ie. using the ordinary Form K2 but leaving out information (only in the B-section) that the parties consider non-relevant. There is not yet a formal short form nor a formal simplified procedure in the Danish merger regulation.</p>
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7. Documents to be submitted

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</p>	<ul style="list-style-type: none"> - A compiled summary from the Commerce and Companies Agency's register or a corresponding register for other countries for all the undertakings participating in the merger; - Copies of all the final or latest versions of all documents leading to the merger, irrespective of whether it takes place according to an agreement between the undertakings concerned, through the acquisition of controlling interest or after a public acquisition offer; - In connection with public acquisition offers, a copy of the acquisition document must be submitted; if this has not been received on the date of the notification, it must be forwarded as soon as possible and at the latest at the same time as it is forwarded to the shareholders; - Copies of the last annual accounts and annual reports of each
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	of the undertakings concerned; - Copies of reports, surveys and analyses for the purpose of evaluating or analysing the merger with respect to competition conditions, competitors (present or potential) and market conditions.
B. Are there any document legalization requirements (e.g., notarization or apostille)?	No.
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?	No.

8. Translation

A. In what language(s) can the notification forms be submitted?	The notification form must be submitted in Danish or 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 must be in Danish. However, if agreed with the Competition Authority some documents may be in English. In some cases selected excerpts may be acceptable in lieu of complete documents.

9. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>The Competition Authority must inform the parties on whether the notification is complete or ask for further information, within eight working days after receipt of the notification. Within four weeks (Phase I) after receipt of a complete notification, the Competition Council must decide whether to approve a merger or initiate an in-depth investigation. If the Competition Council has decided to initiate an in-depth investigation, a decision whether to approve or prohibit a merger must be reached within three months (Phase II) after receipt of a complete notification. A merger must not be put into effect until it has been approved by the Competition Authority (or Council).</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>Public bids may be implemented if they have been notified to the Competition Authority, provided the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of those investments and on the basis of a derogation granted by the Competition Authority. Cf. section 12 c (5).</p>
<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	<p>In exceptional cases the Competition Council may suspend the waiting periods (Phase I and Phase II) if the council initiates a dawn raid, if new information appears, if the parties offers new commitments shortly before the deadline or with a view to obtaining further information, cf. section 12 d (3). Such a suspension should be no longer than two weeks.</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>In addition to the possibility of filing a short notification form (cf. part 5D), the Competition Act includes a special provision for non-problematic transaction. According to this provision, if it is evident from the information available to the Competition Authority that a planned merger may be authorized without conditions or obligations, the parties can obtain a preliminary approval of the merger without publication of the fact that a merger has been notified to or approved by the Council. At the time of approval the Competition Council sets a date for publication of its decision. Cf. Section 12 c (7).</p>

10. Waiting periods / suspension obligations

<p>A. Describe any waiting periods/suspension</p>	<p>In principle, a concentration cannot be put into effect until it has been approved by the Competition Council. However, public bids or transactions in securities may be</p>
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<p>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>	<p>implemented, if the concentration is reported to the Competition Authority and the acquirer does not exercise the voting right attached to the securities in question, or does it only to maintain the full value of his investment and on the basis of a derogation granted by the Competition Council (see below).</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>Yes, the Competition Council may, on request of the parties, grant derogation from these obligations. Such derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition.</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	<p>The above-mentioned obligations are applicable to all notifiable concentrations. However, the Danish Competition Authority has no jurisdiction to prevent a transaction from being put into effect where the concentration takes place outside Denmark.</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within</p>	<p>Yes.</p>

the statutory period?	
E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.	In exceptional cases the Competition Council may suspend the waiting periods (Phase I and Phase II) if the Council initiates a dawn raid, if new information appears, if the parties offers new commitments shortly before the dead line or with a view to obtaining further information, cf. Section 12 d (3). Such a suspension should be no longer than two weeks.
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.	A concentration will be approved in Phase I (within four weeks) if it does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded. Failing this, the concentration will be assessed under a Phase II investigation (three months).
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).	A public bid that has been notified to the Competition Authority may be implemented, if the acquirer does not exercise the voting rights attached to the securities in question, cf. section 12 c (5).

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?	In principle, all the parties to a concentration are responsible for filing. The filing, however, is often made by the acquiring party
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	No.

<p>who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</p>	<p>There are no specific requirements.</p>

12. Filing fees

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

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 Danish Competition Authority may make the fact that it has received a notification public, cf. section 12 b (2). The Authority does not publish the contents of the notification.</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>The parties have right of access to the Authority's documents. Such right can be exercised during and after the case handling upon request from the parties.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>No. See however 13 F below.</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>Notification materials will always be kept confidential. If the concentration has not yet been made public the fact of notification may also be kept confidential upon the parties' request.</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>The European Competition Authorities (ECA) have developed a practice of information exchange between the authorities in cases where a merger has to be notified in more than one Member State.</p> <p>In addition, the Danish Competition Authority has an agreement with Konkurransetilsynet (Norway), Samkeppnisstofnun (Iceland), and Konkurrensverket (Sweden) that allows the exchange of confidential information.</p> <p>These agreements with further details are available on www.ks.dk.</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>Yes. Confidential information may be exchanged between authorities when it may be assumed that the information will be of significant importance to a decision, which the requesting authority is to make (cf. section 28 of the Administrative Code).</p>
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14. Transparency

<p>A. Does the agency publish an annual report? Please provide the web address if available.</p>	<p>Yes - in Danish. See www.ks.dk</p>
<p>B. Does the agency publish press releases related to merger policy or investigations?</p>	<p>Yes.</p>
<p>C. Does the agency publish decisions on why it cleared / blocked a transaction?</p>	<p>Yes.</p>

15. Sanctions/penalties

<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</p>	<p>Failing to file a notification and failing to observe the mandatory waiting periods may be punishable by fine.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>The Danish Competition Authority has no experience in this field. But in general both parties would be liable. However, in the event of a public bid, only the acquirer should be liable.</p>

<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>Only the courts have the authority to impose sanctions. The Competition Authority would have to hand over the matter to the Office of the Public Prosecutor, who would take the decision whether to bring judicial action before the courts.</p>
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16. Judicial review

<p>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</p>	<p>According to section 19 decisions regarding merger notification and review may be brought before the Competition Appeals Tribunal. Appeals must be lodged with the Competition Appeals Tribunal within four weeks after the decision has been communicated to the party(ies) concerned. cf. section 20 (2).</p>
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17. Additional filings

<p>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</p>	<p>Undertakings operating within the financial sector (banking and insurance companies) have to get approval from the Danish Financial Supervisory Authority (Finanstilsynet), cf. Financial Business Act, Act No. 501 of 7 June 2001 (Lov om finansiel virksomhed).</p>
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18. Closing deadlines

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

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?

The Competition Authority can withdraw the clearance of a merger if (1) the Decision to a significant extent is based on inaccurate or misleading information, that can be attributed to one or several of the merging parties or (2) if the merging parties fail to comply with obligations or conditions. Cf. section 12(1).