

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## IRELAND

30/04/2009

**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 3 of the Competition Act 2002 ("the 2002 Act") became effective on 1 January 2003. The 2002 Act contains the statutory provisions underlying the Irish merger regime. The responses herein refer to the provisions of the 2002 Act and all sections cited below refer to the 2002 Act unless otherwise specified.

In 2008, the Credit Institutions (Financial Support) Act 2008 was enacted, pursuant to which, in certain circumstances, mergers/acquisitions involving credit institutions or their subsidiaries must be notified to the Irish Minister for Finance instead of the Competition Authority. See 17 below for further details.

#### B. Notification forms or information requirements

The information that notifying parties must supply to the Authority is set out in the Merger Notification Form. The Authority is empowered under section 20(2) of the 2002 Act to require further information of parties in the course of its examination.

#### C. Substantive merger review provisions

Part 3 of the Competition Act 2002.

<b>D. Implementing regulations</b>	S.I. No. 199 of 2002.
<b>E. Interpretive guidelines and notices</b>	<ul style="list-style-type: none"> <li>• Revised Procedures for the Review of Mergers and Acquisitions</li> <li>• Notice in Respect of Guidelines for Merger Analysis</li> <li>• Procedures for Access to the File in Merger Cases</li> <li>• Notice in respect of certain terms used in Part 3 of the Competition Act 2002 (as amended 12 December 2006)</li> <li>• Notice in respect of the review of non-notifiable mergers and acquisitions</li> </ul>

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

<b>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</b>	The Competition Authority.
<b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b>	<p>Parnell House, 14 Parnell Square, Dublin 1, Ireland</p> <p>Tel. 00353 1 8045400 Fax. 00353 1 8045401</p> <p>e-mail info@tca.ie Website www.tca.ie</p>
<b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b>	<p>Officers attached to the Mergers Division are available for non-binding pre-notification consultation.</p> <p>Contact details:</p> <p>Tel. 00353 1 8045400</p> <p>General email - <a href="mailto:mergers@tca.ie">mergers@tca.ie</a></p>

## 3. Covered transactions

<b>A. Definitions of potentially</b>	According to sections 16(1) and (4) of the 2002 Act, a merger or
--------------------------------------	--

<p><b>covered transactions (i.e., concentration or merger)</b></p>	<p>acquisition occurs if :</p> <p>(a) 2 or more undertakings, previously independent of one another, merge; or</p> <p>(b) one or more individuals or other undertakings who or which control one or more undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or</p> <p>(c) the result of an acquisition by one undertaking (the “first undertaking”) of the assets, including goodwill, (or a substantial part of the assets) of another undertaking (the “second undertaking”) is to place the first undertaking in a position to replace (or substantially to replace) the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition; or</p> <p>(d) a joint venture is created to perform, on an indefinite basis, all the functions of an autonomous economic entity.</p>
<p><b>B. If change of control is a determining factor, how is control defined?</b></p>	<p>"Control" is defined in section 16(2), (3) and (5) of the 2002 Act.</p> <p>Control exists if decisive influence is capable of being exercised over the activities of an undertaking, either by ownership or the right to use all or part of that undertaking's assets, or by rights or contracts which enable one to exert decisive influence as to the composition, voting or decisions of the organs of the undertaking.</p> <p>Section 16(5) states that in determining the issue of control regard shall be had to all of the circumstances of the matter and not only the legal effect of any document or act done.</p>
<p><b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b></p>	<p>Yes.</p> <p>There are no fixed levels. If the acquisition of a partial shareholding confers sole or joint control, then a notification is triggered, provided the financial thresholds are met.</p> <p>"Control", as defined in section 16(2), (3) &amp; (5) of the 2002 Act, and described in 4.B below, is the determining factor.</p>
<p><b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b></p>	<p>Yes. See 3.A above.</p>

#### 4. Thresholds for notification

<p><b>A. What are the general thresholds for notification?</b></p>	<p>Under section 18(1), a notifiable merger will occur if,</p> <p>(a) in the most recent financial year -</p> <p>(i) the world-wide turnover of each of 2 or more of the undertakings involved is not less than €40m,</p> <p>(ii) each of 2 or more of the undertakings involved carries on business in any part of the island of Ireland (i.e. including Northern Ireland), and</p> <p>(iii) the turnover in the State (excluding Northern Ireland) of any one of the undertakings involved is not less than €40m.</p> <p>or</p> <p>(b) the merger falls within a class of merger specified in an Order under Section 18(5) (see 4.F below)</p>
<p><b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b></p>	<p>For the purposes of calculating turnover, the term “undertakings involved” means the entire group of undertakings to which an undertaking belongs. It does not include, however, the vendor of the business or undertaking being sold.</p> <p>See 3.B above.</p>
<p><b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</b></p>	<p>Section 27(1) permits the Minister for Enterprise, Trade and Employment (“the Minister”) to make an Order once, and once only, in each year, amending the figures in section 18(1)(a)(i) &amp; (iii) and substituting a greater amount. In making such an Order, the Minister shall only have regard to such economic data as the Minister considers relevant. The Order must be passed through both Houses of the Oireachtas (the Irish Parliament).</p>
<p><b>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</b></p>	<p>Section 18(1) - thresholds relate to most recent financial year.</p>
<p><b>E. Describe the methodology for identifying and calculating any values</b></p>	<p>The methodology concerns the calculation of turnover only.</p> <p>The Authority understands turnover in the State to comprise sales made or services supplied to customers within the State. See the Authority's guidance notice N/02/003 - "Notice in respect of</p>

<p><b>necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</b></p>	<p>certain terms used in Section 18(1) of the Competition Act, 2002", as amended 12 December 2006, available at <a href="http://www.tca.ie">www.tca.ie</a>.</p> <p>Accordingly, turnover should be calculated on that basis. As not every potential issue regarding methodology is covered by this Notice, the Authority has suggested that pending possible publication of a more detailed Notice, it is satisfied for notifying parties to look to the European Commission's Notice on calculation of turnover (insofar as that Notice is consistent with the provisions of the 2002 Act).</p> <p>In guidance notice N/02/003, the Authority takes the view that for purposes of calculation of turnover, the turnover of the entire group of undertakings to which a notifying party belongs should be included. However this is qualified as follows:</p> <p>(1) In the case of the acquisition of part of an undertaking, only the turnover of that target undertaking (whether or not it is a separate legal entity) shall be taken into account on the vendor's side of the transaction.</p> <p>(2) In the case of an asset acquisition of the kind specified in section 16(1)(c) of the 2002 Act, only that part of the turnover of the vendor that is generated from the assets the subject of the transaction, shall be taken into account.</p> <p>To clarify, section 16(1)(c) states that where an undertaking's assets are acquired by another undertaking, so that the latter may replace the former in the business in which it was engaged before being acquired, then that is a merger for the purposes of the Act. section 18(2)(i) provides that the term "turnover", in regard to undertakings acquired within the terms of section 16(1)(c), shall apply as if it referred to turnover generated from the assets of that undertaking.</p>
<p><b>F. Describe methodology for calculating exchange rates.</b></p>	<p>No specific methodology at present.</p>
<p><b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b></p>	<p>The thresholds apply to both worldwide and domestic turnover, as set out in 4.A above.</p>
<p><b>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</b></p>	<p>No, at least two of the undertakings involved must satisfy the first two cumulative criteria and at least one must satisfy all three.</p>
<p><b>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in</b></p>	<p>An undertaking's nexus to the jurisdiction must be determined having regard to the wording of the Competition Act 2002, particularly section 18 and the meaning of "carries on business" in</p>

<p><b>the jurisdiction)? If based on an “effects doctrine,” please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an “effects” test?</b></p>	<p>Notice N/002/03 as amended.</p> <p>Section 18(1)(a)(ii) provides that a merger is notifiable only when "each of 2 or more of the undertakings involved carries on business in any part of the island of Ireland".</p> <p>The Authority's guidance Notice N/002/03 as amended states that the Authority understands "carrying on a business" to include sales into the island of Ireland of at least €2 million in the most recent financial year, when an undertaking does not have a physical presence within the island of Ireland.</p> <p>Section 18(1)(a)(iii) provides that a merger is notifiable only when “the turnover in the State of any one of the undertakings involved in the merger or acquisition is not less than €40,000,000”.</p> <p>For a further description on how turnover is calculated, see 4.E above.</p> <p>In accordance with a statutory instrument made pursuant to section 18(1)(b) of the Act, notification is also mandatory, regardless of turnover, where at least two of the undertakings involved carry on a “media business” in the State, or one of them carries on a media business in the State and one carries on a media business elsewhere.</p>
<p><b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b></p>	<p>Allocation of sales depends on the nature of the proposed merger or acquisition.</p> <p>Generally, the geographic location of the customer will be taken as the relevant location of sales.</p>
<p><b>K. If market share tests are used, are there guidelines for calculating market shares?</b></p>	<p>A market share test is not used. There are no guidelines on calculation of market share.</p>
<p><b>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</b></p>	<p>Media mergers, i.e., where</p> <ul style="list-style-type: none"> <li>• two or more of the undertakings involved carry on a “media business” in the State, or</li> <li>• where one or more of the undertakings involved carries on a “media business” in the State and one or more of the undertakings involved carries on a “media business” elsewhere,</li> </ul> <p>are notifiable regardless of their turnover. Currently, media mergers are the only category of merger treated differently. Under section 18(5) of the Act, the Minister has the power to designate other classes of merger as notifiable regardless of turnover.</p>
<p><b>M. Are any sectors excluded from notification requirements? If so,</b></p>	<p>No sector is excluded from notification requirements.</p>

<b>which sectors?</b>	
<b>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</b>	No.
<b>O. Does the agency have the authority to review transactions that fall below the thresholds?</b>	The Competition Act 2002 allows the Minister to specify classes of transactions that must be notified regardless of turnover. So far, only the Order concerning media mergers has been adopted. The Act also provides for “voluntary notification” of transactions which do not meet the turnover thresholds. The advantage to companies of making such a notification is that the transaction, if cleared by the Authority, cannot subsequently be the subject of a section 4 (agreements between undertakings) or section 5 (abuse of a dominant position) investigation.

## 5. Notification requirements and timing of notification

<b>A. Is notification mandatory pre-merger?</b>	<p>Yes. Where the proposed merger falls within the criteria set out in section 18(1), parties thereto are obliged to notify the Authority in writing within 1 calendar month after the conclusion of the agreement or the making of the public bid. Failure to do so is a criminal offence (section 18(9)).</p> <p>Any merger which purports to be put into effect before clearance by the Authority or before the statutory time periods have elapsed without the Authority having made a decision, is void by virtue of section 19(2).</p>
<b>B. Is notification mandatory post-merger?</b>	There is no provision in the 2002 Act for mandatory notification post-merger, because notification is required pre-merger.
<b>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</b>	<p>Yes. According to section 18(3), undertakings can notify a merger or acquisition which does not meet the financial thresholds set out in section 18(1). More details on this can be found in the Authority's "Notice in respect of the review of non-notifiable mergers and acquisitions", available at <a href="http://www.tca.ie">www.tca.ie</a>.</p> <p>Such notifications can only be made before the transaction has been put into effect.</p>
<b>D. What is the earliest that a</b>	Parties can notify the merger immediately upon conclusion of the

<p><b>transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?</b></p>	<p>agreement to merge or the making of the public bid, subject to the requirement that all requisite information be furnished.</p>
<p><b>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</b></p>	<p>A notification, whether mandatory (section 18(1)) or voluntary (section 18(3)) must be made within 1 calendar month after the conclusion of the agreement to merge or the making of a public bid.</p>
<p><b>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</b></p>	<p>No.</p>

## 6. Simplified procedures

<p><b>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</b></p>	<p>It is not necessary to complete Part 4 of the Merger Notification Form (Overlapping products and/or services) where there is no overlap, either horizontal or vertical, between the activities of the undertakings involved on the island of Ireland.</p> <p>In the course of pre-notification discussions, notifying parties may be permitted to omit certain information that would otherwise be required of them.</p>
---	---

## 7. Documents to be submitted

<p><b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</b></p>	<p>See Merger Notification Form (<a href="http://www.tca.ie">www.tca.ie</a>). In particular, refer to Parts 3 (Details of Undertakings Involved) and Part 7 (Further Information and Supporting Documentation) therein.</p> <p>Each notifying party must identify its principal business carried on in Ireland and the principal products or services of that business. For each area of overlapping products and/or services in the island of Ireland, the 5 largest suppliers and customers must be identified (with contact details). Sales and market share information must also be provided. Each undertaking will also have to provide its most recent annual report.</p> <p>Notifying parties must also describe the proposed merger, providing the following details: the date of the agreement to merge (or the date the public bid was made); an explanation of the structure of ownership and control of the undertakings involved, both before and after the merger; details of the consideration exchanged; and the commercial objectives intended to be achieved.</p> <p>Notifying parties must also provide copies of the substantive legal documents used to conclude the merger, and copies of all documents specifically prepared for the purpose of evaluating the merger with respect to markets affected.</p>
<p><b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b></p>	<p>No, although the Merger Notification Form contains a section seeking an original signed declaration from each notifying party, affirming that the information submitted by it is accurate and complete. An attorney may sign the Merger Notification Form on behalf of its client, provided that a power of attorney is also provided.</p>
<p><b>C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?</b></p>	<p>No.</p>

## 8. Translation

<p><b>A. In what language(s) can the notification forms be submitted?</b></p>	<p>The Authority expects all notifying parties to supply all information in the English or Irish language.</p>
<p><b>B. Describe any</b></p>	<p>See 8.A above.</p>

<p><b>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.</b></p>	
--	--

**9. Review periods**

<p><b>A. Describe any applicable review periods following notification.</b></p>	<p>Section 21(2) of the Act provides that within 1 calendar month of the “appropriate date”, the Authority must determine (a) that the merger may proceed or (b) that it intends to proceed to a “full investigation” (Phase 2).</p> <p>Section 22(4)(a) provides that where the Authority proceeds to Phase 2, it has four months after the “appropriate date” in which to furnish a copy of its final written determination to the undertakings involved.</p> <p>The “appropriate date” is normally the date of notification of the merger. However, the “appropriate date” changes if an information requirement is issued by the Authority under section 20(2) of the Act. In such a case, the Act provides the method of calculating the new “appropriate date”. The result depends on whether the parties complied with the information requirement(s) or not. For example, in the case of compliance with a requirement, the new “appropriate date” is the date on which the requirement was complied with.</p> <p>A merger must be put into effect within 12 months of the Authority’s determination.</p> <p>Should the Authority fail to make a determination within the permitted time-limits, either at Phase 1 or Phase 2, then the merger may be put into effect, but only if the parties do so within 13 months of the appropriate date for Phase 1, and 16 months of the appropriate date for Phase 2.</p>
<p><b>B. Are there different rules for public tenders (e.g.</b></p>	<p>No.</p>

<p><b>open market stock purchases or hostile bids)?</b></p>	
<p><b>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</b></p>	<p>(1) Where, in Phase 1, the Authority requests additional information of any notifying party under section 20(2), the time limit for reaching a decision becomes 1 calendar month from the date on which the information is received.</p> <p>(2) If during Phase 1 the undertakings make proposals regarding the manner in which the merger may be put into effect, then the period of 1 month is extended to 45 days.</p>
<p><b>D. What are the procedures for accelerated review of non-problematic transactions, if any?</b></p>	<p>None.</p>

## 10. Waiting periods / suspension obligations

<p><b>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</b></p>	<p>Section 19(2) prohibits the putting of a merger or acquisition into effect until the Authority has cleared the transaction, or the statutory time periods have elapsed without such a determination being made. It provides that any such consummation, in advance of the granting of clearance, will be void.</p>
<p><b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b></p>	<p>No.</p>

<p><b>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.)</b></p>	<p>There are no statutory provisions or procedures available to permit consummation of a merger or acquisition outside the jurisdiction. Having said that, the 2002 Act cannot prevent any such extra-territorial consummation. The Authority's mandate is to analyse the competition effects of a merger within the State.</p>
<p><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<p>Yes. If no determination is issued by the Authority within the statutory period allowed to the Authority, then the parties may go ahead and put the merger into effect. See 9.A above.</p>
<p><b>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</b></p>	<p>(1) Where, at Phase 1, the Authority requests additional information of any notifying party under Section 20(2), the clock is stopped and runs again from the start (i.e. the Phase 1 review period recommences from day one) once the information which has been requested is provided to the Authority or once the period specified by the Authority for the provision of the information elapses. See also 9.A above.</p> <p>(2) If during Phase 1 the undertakings make proposals regarding the manner in which the merger may be put into effect, then the period of 1 month is extended to 45 days.</p>
<p><b>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</b></p>	<p>None such, other than in the course of pre-notification discussions, when the parties may put a case to the Authority to expedite its determination when the formal notification is made. It should be noted that the 2002 Act prescribes only maximum time limits, and the Authority is not precluded from determining the matter in a shorter period. However, the Authority's procedures allow a 10-day period in Phase 1 (21 days in Phase 2) from publication of the website notice for third parties to make submissions. This precludes a determination being made during</p>

<b>early termination.</b>	this period. However, the Authority may change the duration of this waiting period by notice on its website in individual cases, if circumstances so require.
<b>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</b>	None such. To do so would be a breach of the Competition Act 2002. The merger would be automatically void and criminal sanctions may apply. There is no "comfort letter" provision.

## 11. Responsibility for notification / representation

<b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</b>	Section 18(1) of the 2002 Act provides that each of the undertakings involved in the merger must notify. However, an undertaking is not deemed to be "involved" in the merger where it is simply the vendor of any securities or other property involved in the merger, and any such vendor is not obliged to notify. Although each of the undertakings involved is obliged to notify, the Authority accepts joint notifications. The advantage of a joint notification is that only one filing fee need be paid.
<b>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</b>	No.
<b>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</b>	No. Notifying parties may represent themselves or be represented by any person or body of their choosing.
<b>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</b>	No special statutory or procedural rules exist for foreign representatives or firms. General Powers of Attorney are dealt with under the Powers of Attorney Act 1996. Such a power is not required to be made under seal (S.15 of the 1996 Act).

apostilled?	
-------------	--

## 12. Filing fees

<b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?</b>	A fee of €8,000 is imposed by Ministerial Order.
<b>B. Who is responsible for payment?</b>	There is one filing fee per notification. If the parties make a joint notification, they decide between themselves how the burden of the fee should be borne. In the case of separate notifications, each party must pay the full fee.
<b>C. When is payment required?</b>	On notification. A notification without an accompanying fee is invalid by virtue of section 18(8) of the Act.
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	The fee is paid by cheque or bank draft. Electronic payment is also acceptable.

## 13. Confidentiality

<b>A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?</b>	<p>All pre-notification communications (re: possible mergers that have not been formally notified) are confidential.</p> <p>Once a notification is received by the Authority, it has 7 days to publish notice of that notification. Publication of notified mergers is a statutory requirement under section 20(1)(a) of the 2002 Act. The Authority publishes such notice on its website. The website will list the names of the undertakings involved, a description of the transaction (i.e. whether a merger or acquisition), the business activities of the undertakings involved, the name of the case officer assigned to the transaction and the deadline by which submissions must be received.</p>
---	--

<p><b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</b></p>	<p>The notifying parties have access to the Authority's file during the course of a Phase 2 investigation, where the Authority has issued an Assessment. The circumstances are outlined in detail in the Authority's "Procedures on Access to the File in Merger Cases".</p>
<p><b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b></p>	<p>Third parties, including Government agencies, have no right of access to notification materials as part of the merger process. The Authority's final determination is published on its website.</p> <p>Should a request be made to access the Authority's files under the Freedom of Information Acts 1997 and 2003, the Authority would consider notification materials to be inaccessible. The Authority cannot however guarantee that the Information Commissioner would take the same view in the event of an appeal.</p> <p>Section 34 of the Act provides for co-operation between the Authority and other statutory bodies. Section 34(3)(a) states that any such agreement shall include a provision enabling the exchange of information. However the Authority shall at all times respect the confidential nature of information, where it is asserted.</p> <p>The statutory bodies to which such agreements may apply are listed in Column 1 of Schedule 1 of the 2002 Act.</p>
<p><b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b></p>	<p>No. See the answer to 13.A above. The only circumstances where the Authority will not publish the fact of a notification is where it considers that publication would not be in the public interest.</p> <p>As regards dissemination of notification materials, see 13.C above.</p>
	<p>The Merger Notification Form invites notifying parties to indicate any commercially sensitive information contained in the notification, giving clear reason as to why that information should be deemed confidential. The final decision in such matters rests with the Authority.</p>
<p><b>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign</b></p>	<p>No. Section 46 of the Act makes provision for the Authority, with the consent of the Minister for Enterprise, Trade and Employment, to enter into arrangements with a foreign competition body. No such arrangement has yet been entered into.</p>

<b>authorities? Are the agreements publicly available?</b>	
<b>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</b>	Where a waiver has been received by the parties, information may be exchanged.

## 14. Transparency

<b>A. Does the agency publish an annual report? Please provide the web address if available.</b>	Under section 42 of the Act, the Authority must publish an annual report within 2 months after the end of each financial year. Annual Reports are available at <a href="http://www.tca.ie">www.tca.ie</a> .
<b>B. Does the agency publish press releases related to merger policy or investigations?</b>	Yes, available at <a href="http://www.tca.ie">www.tca.ie</a> .
<b>C. Does the agency publish decisions on why it cleared / blocked a transaction?</b>	Yes, the Authority publishes its reasoned determinations, with due regard for commercial confidentiality. These are available at <a href="http://www.tca.ie">www.tca.ie</a> .

## 15. Sanctions/penalties

<b>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</b>	Under section 18(9) of the Act it is a criminal offence to fail to notify a merger which is the subject of a mandatory notification, where such a failure to notify is wilful and knowing on the part of the person responsible. Failure to notify could incur liability on summary conviction to a fine not exceeding €3,000 or, on conviction on indictment to a fine not exceeding €250,000. Section 19(1) provides that a merger cannot be put into effect until the Authority has determined that it may be put into effect (with or without conditions), or until the statutory time limits have passed without the Authority having made a determination.
---	--

	Any merger put into effect in breach of the provisions of the 2002 Act is void - section 19(2).
<b>B. Which party/ies are potentially liable?</b>	Section 18(9) provides that the person in control of an undertaking which has failed to notify a notifiable transaction commits an offence. Section 18(11) provides that the person in control of an undertaking is <ul style="list-style-type: none"> <li>- any officer of a body corporate who knowingly and wilfully authorises or permits the contravention;</li> <li>- each partner of a partnership who knowingly and wilfully authorises or permits the contravention;</li> <li>- any individual in control of an undertaking who knowingly and wilfully authorises or permits the contravention.</li> </ul>
<b>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</b>	The Authority cannot impose/order these sanctions/penalties directly. The Director of Public Prosecutions may bring proceedings.

## 16. Judicial review

<b>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</b>	<p>Notifying parties and third parties may take High Court judicial review proceedings. Such proceedings would challenge the legality of the Authority's determination and procedures but would not challenge the merits of the Authority's determination.</p> <p>To challenge the merits of a determination, the undertakings involved in the merger may appeal the determination under section 24 of the Act. The appeal may concern any issue of fact or law and the appeal must be brought within one month of the date on which the undertakings involved are informed by the Authority of its determination.</p> <p>Section 24(4) establishes a rebuttable presumption that any matters accepted or found to be fact by the Authority in the course of its merger review were correctly so accepted or found.</p>
--	---

## 17. Additional filings

<p><b>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</b></p>	<p>Special provisions apply for media mergers - section 23 of the 2002 Act.</p> <p>In 2008, the Credit Institutions (Financial Support) Act 2008 was enacted, pursuant to which, mergers/acquisitions involving credit institutions or their subsidiaries must be notified to the Irish Minister for Finance instead of the Competition Authority, where the Minister—</p> <p>(a) after such consultation with the Central Bank and the Regulatory Authority as the Minister considers necessary, is of the opinion that—</p> <p>(i) the proposed merger or acquisition is necessary to maintain the stability of the financial system in the State, and</p> <p>(ii) there would be a serious threat to the stability of that system if the merger or acquisition did not proceed, and</p> <p>(b) certifies in writing to various parties that he or she is of that opinion.</p> <p>Section 77 of the Central Bank Act 1989, as amended by Part 7 of the Central Bank and Financial Services Authority of Ireland Act 2004 provides that certain bank mergers are subject to the approval of the Central Bank and the Minister for Finance, after consultation with the Minister for Enterprise Trade &amp; Employment.</p>
---	---

**18. Closing deadlines**

<p><b>When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?</b></p>	<p>Yes. Under Section 19, where the Authority has made a Phase 1 or Phase 2 determination that a merger may proceed (sections 21 and 22), then the merger must be put into effect within 12 months of the date of that determination for it to remain lawful.</p>
--	---

**19. Post merger review of transactions**

<p><b>Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</b></p>	<p>No. The Competition Authority may however seek a court injunction under section 26(2) to enforce compliance with the terms of a commitment, a determination or an order.</p>
---	---