

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Israel 2009

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. The information herein does not constitute legal advice and does not substitute the official text of any relevant statutes or regulations.

1. Merger Notification and review materials (please provide title(s)' popular name(s), and citation(s)/web address)	
A. Notification provisions	Restrictive Trade Practices Act, 5748-1988 (" <i>The Act</i> "), Chapter III, Art. 1, 17-20. (http://www.antitrust.gov.il/Files/HPLinks/RTP%20Law.pdf) Restrictive Trade Practices Regulations (Registration, Publication and Reporting of Transactions), 5754-2004. (" <i>The Regulations</i> "). The regulations, including the notification forms are available at: (http://www.antitrust.gov.il/Files/HPLinks/Antitrust%20Regulations%20And%20Forms%202004.pdf)
B. Notification forms or information requirements	The notification of a merger shall be made on the form which appears as an addendum to the Restrictive Trade Practices Regulations (Registration, Publication and Reporting of Transactions), 5754-2004, ("Form 2 or Form 3").
C. Substantive merger review provisions	Art. 21 (a) of the Act.
D. Implementing regulations	Restrictive Trade Practices Regulations (Registration, Publication and Reporting of Transactions), 5754-2004 ("Form 2 and Form 3").
E. Interpretive guidelines and notices	Guidelines of the General Director of the Israel Antitrust Authority for Reporting and Evaluating Mergers Pursuant to the Restrictive Trade Practices Act, 1988 (Hereinafter " <i>The Guidelines</i> ") (http://www.antitrust.gov.il/Files/HPLinks/Merger%20Guidelines.pdf)

2. Authority or authorities responsible for merger enforcement.	
A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	Israel Antitrust Authority
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	22 Kanfei Nesharim St., P.O. Box 34281 Jerusalem 91341, Israel Telephone: +972-2-6556103 Fax: +972-2-6515330 e-mail: lishka@aa.gov.il Website: www.antitrust.gov.il

	Languages: Hebrew; English.
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	Ms. Iris Achmon, Adv. Address: 22 Kanfei Nesharim st., P.O.Box 34281 Jerusalem 91341, Israel Direct telephone number: +972-2-6556124 Fax number: +972-2-6515330 e-mail: irisa@aa.gov.il

3. Covered transactions	
A. Definitions of potentially covered transactions (i.e., concentration or merger)	The Act defines a “merger” as including one or more of the following: a) the acquisition of the essential assets of a company by another company or b) the acquisition of shares of a company by another company that confers on the purchasing company more than one quarter of the nominal value of the share capital issued at that time, or of the voting rights or c) the right to appoint more than one quarter of the board of directors or d) the right to participate in more than one quarter of the profits of the company; Whether the acquisition is direct or indirect or by means of contractual rights and including transactions with similar results. The IAA interprets the definition broadly as to include all transactions that are likely to establish an affinity or to significantly reinforce an affinity between the mechanisms for making business decisions of two or more bodies.
B. If change of control is a determining factor, how is control defined?	The Act refers to the purchase of less than a holding stake establishing “control” as a merger. Art. 1 defines a merger as: Including the acquisition of most of the assets of a company by another company or the acquisition of shares in a company by another company by which the acquiring company is accorded more than a quarter of the nominal value of the issued share capital, or of the voting power, or the power to appoint more than a quarter of the directors, or participation in more than a quarter of the profits of such company; the acquisition may be direct or indirect or by way of rights accorded by contract; whereas "controlling interest" is defined as possession of more than half of one of the following means of control: (1) The right to vote at the general assembly of a company or the parallel body

	of another corporation; (2) The right to appoint the directors of a corporation.
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	Yes. See 3A above.
D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?	According to the aforementioned benchmarks.

4. Thresholds for notification	
A. What are the general thresholds for notification?	<p>Merging parties should submit a merger notification in any of the following instances:</p> <p>(1) As a result of the merger, the market share of the merging companies in the production, sale, marketing or purchase of a particular asset and a similar asset or in the provision of a particular service and a similar service, would exceed fifty percent, or lower market share as the Minister shall determine with respect to a monopoly, pursuant to Section 26(c);</p> <p>(2) The combined sales turnover of the merging companies, in the fiscal year preceding the merger, exceeded NIS 150 million; the Minister may, with the ratification of the Knesset's Economic Affairs Committee, amend the above amount;</p> <p>(3) One of the merging companies is a monopoly within the definition of the term in Section 26.</p> <p>The amount mentioned in (2) shall be updated annually on January 1, according to the rate of the increase in the Index compared to the Base Index, provided that the aforementioned rate of increase of Index exceeds 10 percent. (Art. 17(b)(1))</p>
B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?	The Act and Regulations apply to the merging parties and all entities that are linked to them through controlling interests, as defined above (sec.3B). In the practical sense, this encompasses all firms controlled by the ultimate controlling owner of the person party filing the notice.
C. Are the thresholds subject to	See 4A above. In practice, the automatic

adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.	update mechanism has not yet been activated, because the inflation thresholds were not met. The total was updated in 1999 by the Minister.
D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar yearend, fiscal year-end, other)?	Most recent calendar year.
E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?	The turnover of each of the merging parties includes the value of its sales according to its audited financial statement, but does not include purchase tax or VAT. If a merging party has holding companies or subsidiary companies, its turnover will be determined by their consolidated financial statement.
Describe methodology for calculating exchange rates.	N/A.
G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?	The thresholds apply to sales in Israel only.(Art. 18)
H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	In principle – no. However, in rare cases, the IAA would agree to start the examination process based on the filing of one of the parties (for example, in case of a purchase offer in the stock exchange). In such case, it should be noted that the time set by the Act for reaching a decision is not counted until the moment in which both notification forms are filed.
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?	As a general rule, the Act applies to companies which have business presence representation in Israel (including subsidiaries, agents, offices, etc.) or are listed in Israel as a foreign company according to Israeli Companies Law.
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	N/A
K. If market share tests are used, are there guidelines for calculating market shares?	The Guidelines briefly address the subject, stating that all companies in control relationships with the companies entering into the merger agreement must of course be taken into consideration. No specific guidelines for market share calculations are given.
L. Are there special threshold calculations for particular sectors e.g., banking, airlines, media) or particular	No. However, in the financial sector, the calculation is not of the total sales turnover but of the income turnover from daily

types of transactions (e.g. joint ventures, partnerships, financial investments)?	operations (commission fees, management fees, premiums), since insurance companies, investment firms and holding companies do not necessarily engage in sales.
M. Are any sectors excluded from notification requirements? If so, which sectors?	No.
N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?	No. In the case of a merger with a company conducting business both in Israel and overseas, the provisions of the Act concerning mergers shall apply solely with respect to the sales turnover of the company within Israel and with respect to the company's market share in Israel in the production, sale, purchase and marketing of an asset or the provision or receipt of a service. (Art. 18)
O. Does the agency have the authority to review transactions that fall below the thresholds?	The Merger chapter of the Act does not apply to transactions that fall below the thresholds.

5. Notification requirements and timing of notification	
A. Is notification mandatory pre-merger?	Yes. Merging without prior approval of the General Director is illegal.
B. Is notification mandatory post-merger?	No.
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	No.
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)?	Generally, parties should notify the IAA of a merger after a definitive agreement is signed. In practice: a) the IAA is willing to start the investigation before a signed agreement is delivered if it is convinced that there is high probability that the transaction will be carried out and a memorandum or a draft agreement are available (the statutory timeframe granted to conclude the merger review starts only after a definitive signed agreement is delivered). or b) in case of a purchase offer in the stock exchange, the IAA is willing to start investigating, on the basis of the purchaser notification alone. This procedure is only considered a pre-ruling and the statutory timeframe granted to conclude the merger review would not apply in such instances.
E. Must notification be made within a	No. However, the merger may not proceed

<p>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>without the approval of the General Director.</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>(Irrelevant)</p>

6. Simplified procedures

<p>A. 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>The new regulations (2004) constitute two notification forms: (1) An elaborated ("long") form which expands upon the information submitted to the IAA at the initial notification of the transaction. But, in order to minimize the burden on parties, they are requested to classify the merger according to type (horizontal, vertical or conglomerate) and subsequently fill in only certain chapters; (2) A short form to be used by parties to transactions that meet certain terms which are specified in the regulations.</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>	<p>The merger notification should be accompanied by: (1) Merger agreement and exhibits; (2) Audited financial statements of the person filing the Notice of Merger for the last two fiscal years; (3) A foreign company that files a merger notification may attach audited financial statements of entities through which it operates in Israel, instead of filing its financial statements; (4) Prospectuses filed by the person filing the merger notification during the last five fiscal years; (5) Other documents relevant to</p>
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	considering the effects of the merger on competition;
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 documents mentioned in 7A above should be submitted to the IAA in Hebrew or Arabic. The IAA will usually permit the submission of the signed documents in English, given that the parties also submit an additional copy of the notification form in Hebrew which is certified as an authentic translation.
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.	See answer 8A above.

9. Review periods

A. Describe any applicable review periods following notification.	The Act determines a waiting period of 30 days from the time of delivery of a merger notification to the General Director. During the waiting period it is prohibited to implement the merger. The waiting period may be extended by the Antitrust Tribunal according to Art.38 or with the consent of the merging parties.
B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?	Yes. See answer 5D above. Nevertheless, the IAA gives priority to the examination of merger transactions that concern purchase offers and companies in dissolution.
C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for	The waiting period may be extended by the Antitrust Tribunal according to Art.38 or with the consent of the merging parties.

additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?	
D. What are the procedures for accelerated review of non-problematic transactions, if any?	Once the merger is notified, it is classified according to the expected competitive concerns it raises, if any exist. Non-problematic mergers are classified as "green" and are reviewed in the fast track.

10. Waiting periods / suspension obligations	
A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.	The Act determines a waiting period of 30 days from the time a merger is notified to the General Director. During the waiting period it is prohibited to implement the merger. The waiting period may be extended by the Antitrust Tribunal according to Art.38 or with the consent of the merging parties.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	Not officially. However, the IAA may make an effort to hasten procedures if the objective circumstances of a specific transaction so require, for example, in light of bankruptcy proceedings.
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 derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)	No.
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Yes, unless the period has been extended by either the parties' consent or the Antitrust Tribunal.
E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend	See answer 10D above.

the waiting period/suspension obligation.	
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.	There are no such procedures.
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).	There are no such procedures.

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?	Each of the companies that intend to merge is required to inform the Director General in a separate merger notification.
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	Yes. The IAA will commence its merger investigation based on the purchaser's merger notification alone. See answer 8A above.
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)?	No.
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?	With respect to acts reserved to advocates alone, the Chamber of Advocates Act, 5721- 1961, applies (Art. 20 and see exceptions in Art. 21 and 23). The Act determines Israeli residency as one of the admission conditions to the Israeli Bar Association (Art. 42).

12. Filing fees

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

13. Confidentiality

A. To what extent, if any, does your	The IAA does not publish the fact that a
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<p>agency make public the fact that a pre-merger notification filing was made or the contents of the notification?</p>	<p>notification was filed. But, naturally, in the course of the merger investigation, the fact that a merger notification was filed might be revealed, since applications to third parties are made by the IAA.</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>Anyone can access the public section of a merger file once a decision regarding the merger is reached. The public section of the merger file contains the notification form, the General Director's decision, decisions of the Antitrust Tribunal and the Supreme Court which are relevant to the merger and every publication of the Director General in daily newspapers or in the official gazette with respect to the merger. (Art. 5 and 7(C) Restrictive Trade Practices Regulations (Registration, Publication and Reporting of Transactions), 5754-2004. The "Administrative Tribunals Act, 5752-1992" determines that whoever is entitled to appeal an administrative authority's decision is entitled to read the documents the authority holds which are relevant to the decision and to copy them. This does not apply to documents which:</p> <ol style="list-style-type: none"> (1) are not relevant to the decision; (2) contain confidential business or commercial information; (3) cannot be accessed due to national security, foreign policy or an important public matter; (4) are considered classified evidence; (5) are internal documents, such as minutes of internal discussions, proposals or drafts of decisions; (6) may harm a personal matter or a particular right of another person; (7) concern the appointment, personal evaluation, qualification or achievements of a person, including the appellant. <p>Preventing access to the file due to any of the abovementioned reasons should be measured. (Art. 30- 31)</p> <p>Entitled to appeal the Director General's decision, and therefore to read the relevant documents, are either the parties themselves, in the event that the merger is not approved or conditions have been imposed, or a third party who was injured by the merger. This has been construed by the Antitrust Tribunal as an antitrust injury. The parties may not appeal the approval of a merger. Protection for trade secrets is provided.</p>
<p>C. Can third parties or other</p>	<p>See answer 13B above. In addition, every</p>

<p>government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>person can file an application according to the Freedom of Information Act, 1998 which stipulates the circumstances in which a government agency may deny an application, what types of information it is not authorized to disclose and what types of information it is not obligated to disclose.</p> <p>The Protection of Privacy Law 5741-1981 sets the conditions under which information may be obtained between government agencies.</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>In the event of a hostile purchase offer, the potential purchaser can ask the IAA to carry out a pre-ruling procedure based on documents it provides without disclosing the existence of a purchase offer.</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>Yes. There is an agreement between the United States and Israel regarding the application of their competition laws (available at: http://eng-archive.antitrust.gov.il/ANTIItem.aspx?ID=171). According to the agreement neither party is required to communicate information to the other Party if such a communication is prohibited by the laws of the party possessing the information or would be incompatible with that party's important interests.</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>The IAA occasionally consults and exchanges information with other reviewing agencies abroad. In such cases, parties are informed and their consent is requested.</p>

<p>14. Transparency</p>	
<p>A. Does the agency publish an annual report? Please provide the web address if available.</p>	<p>Yes. The most recent annual report was published and is available at: http://www.antitrust.gov.il/Files/HPLinks/2007-2008E.pdf</p>
<p>B. Does the agency publish press releases related to merger policy or investigations?</p>	<p>The IAA generally publishes press releases regarding its decisions and public policy documents. Press Releases in English are available at: http://eng-archive.antitrust.gov.il/ANTSearchItems.aspx?Subject=100222</p>
<p>C. Does the agency publish decisions on why it cleared / blocked a transaction?</p>	<p>All the Director General and the Courts' decisions are posted on the IAA's website: www.antitrust.gov.il. Most approval decisions do not contain the reasoning behind the decision in the published text. Blocking decisions, on the other hand, are reasoned according to The Administration Organization Reform Act (Decisions and Reasoning) 1958, (unofficial translation).</p>

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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>The Act specifies civil and criminal sanctions on the contravention of articles of the Act which concern mergers. The criminal sanction is determined in section 47(a) of the Act: "Any person committing one of the following:</p> <p>(3) Not giving notice of a corporate merger or performing an act tantamount to a full or partial merger, contrary to the provisions of Chapter III;... shall be liable to three years' imprisonment or a fine ten times the fine provided by Section 61(a)(4) of the Penal Law, 1977 (hereinafter, "the Penal Law") and an additional fine ten times the fine provided by Section 61(c) of the Penal Law (hereinafter, "Additional Fine") for each day that such offense persists, and, in the case of an offense as provided by paragraphs (1) or (3) – for each day such offense persists following delivery of the Director General's notice as provided by Section 43; in the case of a corporation, the fine or the additional fine, as applicable, shall be doubled.</p> <p>A civil sanction with respect to a contravention of the Act concerning mergers is determined by Section 25(a) of the Act: (a) In the case that, pursuant to an application of the Director General, the Tribunal believes that there is a reasonable likelihood that, as a result of a corporate merger made contrary to the provisions of this Law, competition in the relevant sector would be significantly harmed or that the public would be injured as provided in Section 21, it may order the divestiture of the merged companies.</p> <p>An additional civil sanction is determined in Section 50 of the Act, according to which: An act of omission in contradiction to the provisions of the Act is a wrong in pursuance to the Torts Ordinance [New Version].</p>
<p>B. Which party/ies are potentially liable?</p>	<p>Whoever failed to comply with the Act's provisions is liable.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it</p>	<p>The IAA is required to approach the Court in order to impose the aforementioned</p>

required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	sanctions.
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16. Judicial review

A. Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.	<p>The Director General's decisions may be appealed before the Antitrust Tribunal (Art. 22). If the Director General blocked the merger or imposed conditions, the merging parties may appeal the decision to the Antitrust Tribunal within 30 days of the date they receive the decision. If the Director General approved a merger, with or without conditions, any person who may be injured by the merger, any industrial association and any consumers' association, may appeal to the Antitrust Tribunal within 30 days of the date the decision was published in the newspapers. As mentioned above, "injured by the merger" has been construed as an antitrust injury.</p> <p>The Tribunal has the power to uphold the Director General's decision, revoke it or amend it (Art. 22(c)). A decision of the Antitrust Tribunal can be appealed to the Supreme Court within 45 days.</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?	<p>Sometimes clearance from other agencies is required. The duty to obtain such clearance is not set by the Act and the IAA is usually not involved in the process. However, the IAA is obligated to inform the relevant Ministry of any merger transaction which falls within its areas of responsibility. The Ministry may file an opinion with the IAA, however such an opinion does not bind the IAA's Director General in any way.</p>
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18. Closing deadlines

When a transaction is cleared or	The standard clearance form requires the
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approved, is there a time period within which the parties must close for it to remain authorized?	transaction to be completed within one year. After that, the parties must re-obtain the Director General's approval.
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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?	In very rare cases, the merger clearance may be conditioned upon re-examination of the market within a specified time period. Such a decision would entail insertion of specific provisions within the merger clearance decision.
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