

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## MACEDONIA

2011

**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)

<b>A. Notification provisions</b>	Law on Protection of Competition (Official Gazette of the Republic of Macedonia no. 145/2010); Article 14 and 15  <a href="http://www.kzk.gov.mk/images/LPC%20eng%20final%20version%20145%2010.pdf">http://www.kzk.gov.mk/images/LPC%20eng%20final%20version%20145%2010.pdf</a>
<b>B. Notification forms or information requirements</b>	Law on Protection of Competition (Official Gazette of the Republic of Macedonia no. 145/2010); Article 15  <a href="http://www.kzk.gov.mk/images/LPC%20eng%20final%20version%20145%2010.pdf">http://www.kzk.gov.mk/images/LPC%20eng%20final%20version%20145%2010.pdf</a>  Regulation on the form and the content of the notification and criteria on concentration's evaluation (Official Gazette of the RM no. 91/05) Article 3, 4, 5, 6, 7, 8, 9, 10, 11, 12  <a href="http://www.kzk.gov.mk/images/Vestiimages/301/DOWNLOAD.PDF">http://www.kzk.gov.mk/images/Vestiimages/301/DOWNLOAD.PDF</a>
<b>C. Substantive merger review provisions</b>	Law on Protection of Competition (Official Gazette of the Republic of Macedonia no. 145/2010); Article 17, 19  <a href="http://www.kzk.gov.mk/images/LPC%20eng%20final%20version%20145%2010.pdf">http://www.kzk.gov.mk/images/LPC%20eng%20final%20version%20145%2010.pdf</a>

<p><b>D. Implementing regulations</b></p>	<p>Regulation on the form and the content of the notification and criteria on concentration's evaluation (Official Gazette of the RM no. 91/05)</p> <p>Regulation on block exemption granted to technology transfer agreements licence know-how (Official Gazette of the RM no. 91/05)</p> <p>Regulation on block exemption of granted to agreements on distribution and servicing of motor vehicles (Official Gazette of the RM no. 91/05)</p> <p>Regulation on block exemption granted to horizontal specialisation agreements (Official Gazette of the RM no. 91/05)</p> <p>Regulation on block exemption granted to vertical agreements (Official Gazette of the RM no. 91/05)</p> <p>Regulation on block exemption granted to agreements in the insurance sector (Official Gazette of the RM no. 91/05)</p> <p>Regulation on block exemption of horizontal RD agreements (Official Gazette of the RM no. 91/05)</p> <p>Regulation on Agreements of minor importance (Official Gazette of the RM no. 91/05)</p> <p><a href="http://www.kzk.gov.mk/eng/zapis.asp?id=5">http://www.kzk.gov.mk/eng/zapis.asp?id=5</a></p>
<p><b>E. Interpretive guidelines and notices</b></p>	<ol style="list-style-type: none"> <li>1. Guidelines on remedies acceptable to the Commission for Protection of the Competition under Chapter III Control of concentration –of the Law on Protection of Competition</li> <li>2. Guidelines on the assessment of vertical and conglomerate concentrations for the purposes of the LPC</li> <li>3. Guidelines on the assessment of horizontal concentrations for the purposes of the LPC</li> <li>4. Information leaflet on control of concentration according LPC</li> <li>5. Guidelines on defining relevant market for the purposes of the LPC</li> </ol>

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

<p><b>A. Name of authority. If there is more than one</b></p>	<p>Commission for Protection of Competition</p>
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<b>authority, please describe allocation of responsibilities.</b>	
<b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b>	<p>Commission for Protection of Competiton  St. Mito Hadzivasilev Jasmin nn, 1000 Skopje, R. Macedonia  Tel: ++389 2 3298 666  Fax:++389 2 3296 466</p> <p>e-mail: <a href="mailto:kzk.@kzk.gov.mk">kzk.@kzk.gov.mk</a>  <a href="mailto:cedomir.kraljevski@kzk.gov.mk">cedomir.kraljevski@kzk.gov.mk</a>  <a href="mailto:rozanav@mon.upr.gov.mk">rozanav@mon.upr.gov.mk</a></p> <p><a href="http://www.kzk.gov.mk">www.kzk.gov.mk</a></p> <p>English language</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>Yes.</p> <p>Tel: ++389 2 3298 666  Fax:++389 2 3296 466</p> <p><a href="mailto:valentina.nikolova@kzk.gov.mk">valentina.nikolova@kzk.gov.mk</a>  <a href="mailto:karolina.andonovska@kzk.gov.mk">karolina.andonovska@kzk.gov.mk</a></p>

### 3. Covered transactions

<b>A. Definitions of potentially covered transactions (i.e., concentration or merger)</b>	<p>According to article 12 of the LPC, a concentration shall be deemed to arise where a change of control on a lasting basis results from:</p> <ol style="list-style-type: none"> <li>1) the merger of two or more previously independent undertakings or parts of undertakings, or</li> <li>2) the acquisition of direct or indirect control of the whole or parts of one or more other undertakings by <ul style="list-style-type: none"> <li>- one or more persons already controlling at least one undertaking, or</li> <li>- one or more undertakings,</li> </ul> whether by purchase of securities or assets, by means of an agreement or in other manner stipulated by law.</li> </ol> <p>The control referred to in paragraph (1) of this Article shall be constituted by rights, agreements or any other means which, either separately or in combination, and having regard to the actual or legal condition, confer the possibility of exercising decisive influence on an undertaking, in particular by:</p> <ol style="list-style-type: none"> <li>1) ownership or the right to use all or part of the assets of an undertaking, or</li> <li>2) rights or contracts which confer the possibility for exerting decisive influence over the composition, voting or decision-making of the bodies of the undertaking.</li> </ol>
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	<p>Control is acquired by persons or undertakings which:</p> <p>1) are holders of the rights or have acquired the rights under the agreements referred to in paragraph (2) of this Article, or</p> <p>2) while not being holders of such rights or having acquired the rights under the contracts referred to in paragraph (2) of this Article, have the power to exercise such rights.</p> <p>The creation of a joint venture performing on a longlasting basis the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph (1) item 2) of this Article.</p> <p>Article 12 of the LPC</p>
<b>B. If change of control is a determining factor, how is control defined?</b>	See 3A
<b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b>	See 3A
<b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b>	See 3A

#### 4. Thresholds for notification

<b>A. What are the general thresholds for notification?</b>	<p>According to article 14 paragraph 1 of the Law on Protection of Competition a concentration shall be notified to the Commission for Protection of Competition if the following conditions are satisfied:</p> <p>1) the aggregate turnover of all undertakings participants, generated by sale of goods and/or services on the world market, amounts to at least 10 million euro in denar equivalence according to the exchange rate valid on the day of compiling the annual account, realized in the business year preceding the concentration and provided that at least one participant must be registered in the Republic of Macedonia, and/or</p> <p>2) the aggregate turnover of all undertakings participants, generated by sale of goods and/or services in the Republic of Macedonia, amounts to at least 2.5 million euro in denar equivalence according to the exchange rate valid on the day of compiling the annual account, realized in the business year</p>
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	<p>preceding the concentration, and/or</p> <p>3) the market share of one of the participants amounts to more than 40% or the total market share of the participants in the concentration amounts to more than 60% in the year preceding the concentration.</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>Participants in a concentration are:</p> <ol style="list-style-type: none"> <li>1) merging undertakings and</li> <li>2) persons or undertakings acquiring control of the whole or parts of one or more other undertakings, as well as the undertakings or parts thereof over which control is acquired.</li> </ol>
<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>No</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>The thresholds relates to business year preceding the concentration.</p>
<p><b>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?</b></p>	<p>The methodology is based on the aggregate turnover, generated by sale of goods and/or services on the world market and on the territory of the Republic of Macedonia, realized during the business year preceding the concentration.</p> <p>Calculation of the aggregate turnover shall comprise the revenues generated from sales, loaning or leasing of typical products of the undertaking produced within its regular operations, as well as the revenues generated from typical services that the undertaking provides within its regular operations, after deduction of the sales rebates and of value added tax and other taxes directly related to turnover.</p> <p>If one of the participants is a related undertaking, within the meaning of the provisions of the Company Law, all undertakings related in such manner shall be regarded as one undertaking, when calculating the aggregate turnover.</p> <p>When calculating the aggregate turnover of the related</p>

	<p>undertakings, the revenues generated from the sales of goods or/and provider of services between them shall not be taken into consideration.</p> <p>In cases when a concentration is related to acquisition of a part or parts of the asset of one or several undertakings, irrelevant whether those parts are established as legal entities, when calculating the revenues generated by the undertaking selling this asset, only this asset shall be taken into consideration.</p> <p>Two or more transactions performed during the period of two years between same persons or undertakings shall be considered as one and same concentration performed on the day of the last transaction.</p> <p>The aggregate turnover for the banks, saving houses and other financial institutions, shall be determined according to the aggregate revenues realized from the regular operations during the business year preceding the concentration.</p> <p>The aggregate turnover for the insurance companies shall be determined according to the value of the gross calculated premiums of the participants for the financial year preceding the concentration.</p>
<p><b>F. Describe methodology for calculating exchange rates.</b></p>	<p>The revenues realized in foreign currency shall be expressed in denar according to the average exchange rate of the National Bank of the Republic of Macedonia.</p>
<p><b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b></p>	<p>Yes, the thresholds apply to worldwide sales and to the sales realized in the territory of the Republic of Macedonia.</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, because the conditions for triggering the notification obligation are cumulatively set and have to be fulfilled by all participants in the concentration. Article 13 and 14 of the LPC</p>
<p><b>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</b></p>	<p>The nexus to the jurisdiction is determined by sales in Macedonia or the global market.</p>

sufficient to meet an “effects” test?	
<b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b>	The location of the customers is relevant.
<b>K. If market share tests are used, are there guidelines for calculating market shares?</b>	No
<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>The aggregate turnover for the banks, saving houses and other financial institutions shall be determined according to the aggregate revenues realized from the regular operations during the business year preceding the concentration.</p> <p>The aggregate turnover for the insurance companies shall be determined according to the value of the gross calculated premiums of the participants for the financial year preceding the concentration.</p>
<b>M. Are any sectors excluded from notification requirements? If so, which sectors?</b>	No.
<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>	No

## 5. Notification requirements and timing of notification

<b>A. Is notification mandatory</b>	The participants in the concentration are obliged to notify the
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<b>pre-merger?</b>	concentration to the Commission for Protection of Competition prior to its implementation and following the procedural order of the merger agreement, the announcement of the public bid for the purchase or the acquisition of the controlling interest in the nominal capital of the undertaking.
<b>B. Is notification mandatory post-merger?</b>	No it is mandatory pre-merger.
<b>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</b>	Yes, the parties can submit notification even if the thresholds are not met. The Commission for Protection of Competition shall examine the notification as of the day when it is received and if it determine that the notified concentration does not fall under the provisions of this Law, the Commission for Protection of Competition shall adopt a decision declaring that the notified concentration does not fall under the provisions of the Law.
<b>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)?</b>	See 5A
<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>	See 5A
<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>	No

## 6. Simplified procedures

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

NA

## 7. Documents to be submitted

**A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).**

The notification of the concentration must include the following:

- 1) original of the legal act which is the basis for the creation of the concentration or a verified transcript thereof;
- 2) financial report of the participants regarding the business year preceding the concentration in the original or a verified transcript thereof;
- 3) certificate from the trade register or other register of legal persons containing the basic information on the undertaking, the registered office and the scope of operation of the participants in the original or a verified transcript thereof and
- 4) data regarding the market shares of the participants, as well as the shares of their competitors..

The day of receipt of the notification shall be deemed to be the day when the Commission for Protection of Competition receives all data and documents.

The Commission for Protection of Competition shall issue a special confirmation letter for the receipt of the notification to the notifying party.

The Commission has additionally enacted a Regulation on the form and the content of the notification and criteria on concentration's evaluation. According to this Regulation, the participants in the concentration, or:

- 1) undertakings participants in merger – in case of merger of undertakings or parts of undertakings;
- 2) person acquiring majority shares or parts or majority voting rights – in case of purchase of securities or property;
- 3) person acquiring control or decisive influence – in case of acquiring control or decisive influence over undertakings on any other manner;
- 4) all participants in the process of creation of joint venture submit joint notification or the participant authorized by the other participants as their joint representative – in case of joint venture;
- 5) bidder – in case of acquiring control or decisive influence on the basis of a public bid;
- 6) In other cases all participants in the concentration shall bear

the obligation to jointly submit the notification, or the obligation shall bear the participant authorized by the other participants in the concentration as their joint representative. The notification shall be submitted in a written form. In addition to the notification in a written form, enclosures in electronic form shall also be submitted.

There is no special form for submission of the notification.

The notification shall be submitted in paper of A4 format.

The person submitting the notification shall fulfill the notification in the following manner:

1. each data shall be stated on a separate sheet, with the possibility of adding as many sheets as necessary for presenting a correct and complete data;

2. The number and the exact title of each separate data, according to the order in which these data are stipulated in this Regulation, shall be stated in obvious manner on the top of the sheet;

3. Under the number and the title of data, stated in the manner stipulated in paragraph (4) item 2 of this Article the person submitting the notification shall:

- state the data and provide correct and complete description of the circumstances pertaining to the concentration;

- state which data is not relevant for evaluation of the concentration and provide explanation;

- in cases under Article 12 paragraph (2) of this Regulation, state from whom and when has made an attempt to obtain those data, reasons due to which such data could not have been obtained and where the Commission shall refer to obtain the data;

4. on the back side of the text referring to separate data, state the documents, proofs, analysis, diagrams or other documents which prove the separate indications and which are submitted in addition to the enclosures of the notification;

5. when necessary, state other data and descriptions considered as helpful for the Commission in evaluating the notified concentration;

6. state clearly "Enclosures to the notification", on a separate sheet at the end of the notification, by enumerating all documents and written proofs, analysis and diagrams enclosed to the notification.

Also, the notification shall contain the following data:

1. Business name, registered office and scope of operation of the person submitting the notification;

2. Business name, registered office and scope of operation of all participants in the concentration;

3. Authorization of the representative or proxy submitting the notification, as a representative of the person submitting the notification;

4. name, address, telephone number, fax number and e-mail address of the person determined by the person submitting the notification as person in charge of contact and cooperation with the Commission, if such person differs from the person submitting the notification;

5. detailed description of the legal form of the concentration;

6. legal basis of the concentration (name of the document, business operational number, business name of the party in the legal matter, place and date of conclusion of the legal matter),

such as

- merger agreement;
- accession agreement or adequate decisions of the undertaking's management bodies;
- agreement on acquiring shares or parts;
- agreement on management of the undertaking;
- agreement on transfer of profit;
- decisions on amendment of undertaking's charters, agreement on the undertaking or any other act which confers to any of the participants decisive influence;
- agreement on lease of assets which confers to any of the participants decisive influence;
- public bid for takeover;
- joint venture agreement.

7. list of financial reports for the year preceding the concentration (balance sheet, income statement, report on change of charter capital, data on the paid premiums of the insurance undertakings), as well as other reports expressing the financial condition of the participants in the concentration, which shall be submitted to the notification;

8. total annual income (business income, financial income, extraordinary income) of the participants in the concentration, following the deduction of the sales taxes and value added taxes and other public duties directly connected to the income, pursuant to Article 16 paragraph (1) of the Law, separately stated for each participant in the concentration:

- on the world market;
- on the market of the Republic of Macedonia;

9. determining the relevant markets on which the participants in the concentration and their controlled or controlling undertakings operate and assessment of their market shares prior to and following the concentration;

10. list and assessment of market shares of the main competitors of the participants in the concentration on the relevant market;

11. structure of the shareholders or holders of parts in the undertaking over which a control or a decisive influence is being acquired, prior to and following the concentration (expressed in percentages);

12. list of other undertakings of the relevant market in which the participant in the concentration individually or jointly possess 10% or more parts in the charter capital or 10% or more voting rights, with brief description of the core activities of such undertakings;

13. list of all undertakings on the relevant market in which the members of the management or supervisory bodies are at the same time members of the management or supervisory bodies of the participants in the concentration, with a brief description of the core activities of such undertakings;

14. indication of other bodies authorized for evaluation of the concentration out of the territory of the Republic of Macedonia, to which a request for evaluation of the same concentration has been submitted, or in case an intention for submission of such request exists;

15. detailed description of the organization of the network of distribution or retail trade of goods and/or services on the relevant market, by special description of the network of distribution or retail trade utilized by the participants in the concentration (own network, agreed network etc.);

	<p>16. description of realized or planned researches and investments in the development of the participants of the concentration (form and type of investment or research, their significance for the production or trade of goods and/or services on the relevant market, amount of funds invested for such purpose or planned for investment etc.);</p> <p>17. reasons for legal and economic explanation of the concentration;</p> <p>18. description and a detailed explanation of the anticipated benefits for the consumers which will derive from the concentration, and particularly:</p> <ul style="list-style-type: none"> <li>- decrease of the price of goods and/or services;</li> <li>- improvement of the quality of goods and/or services;</li> <li>- introduction of innovations;</li> <li>- increase and expanding of the possibility for choice of goods and/or services for the consumers;</li> </ul> <p>19. signature of the person liable for the accuracy, correctness and completeness of data contained in the notification;</p> <p>20. place and date of submission of the notification.</p>
<p><b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b></p>	<p>The notification and all documents submitted with the notification shall be submitted in Macedonian language. If the legal documents, which represent a basis for the concentration, are originally prepared in foreign language, the person submitting the notification is obliged, in addition to the submitting original version or a certified copy, to submit a translation that is certified.</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 notification and all documents submitted with the notification shall be submitted in Macedonian language. If the legal documents, which represent a basis for the concentration, are originally prepared in foreign language, the person submitting the notification is obliged, in addition to the submitting original version or a certified copy, to submit a translation that is certified.</p>
<p><b>B. Describe any requirements to submit</b></p>	<p>The translation must be submitted with the notification form.</p>

<p><b>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>	
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## 9. Review periods

### **A. Describe any applicable review periods following notification.**

The Commission for Protection of Competition is obliged within 25 working days as of the day of receipt of the complete notification either to :

- adopt a decision declaring that the notified concentration does not fall under the provisions of the Law,
- adopt a decision declaring that the concentration is compliant with the provisions of the Law or
- to initiate a procedure by means of a procedural order in case where it finds that the concentration notified falls under the provisions of this Law and may have as its effect significant impediment of effective competition on the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

The previous mentioned period of 25 working days shall be extended up to 35 working days if the participants in the concentration offer commitments vis-a-vis the Commission for Protection of Competition with the view to rendering the concentration compliant with the provisions of this Law.

When the Commission initiates a procedure and finds that the concentration shall not have as its effect significant impediment of effective competition on the market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, it shall adopt a decision declaring that the concentration is compliant with the provisions of this Law. This decision have to be adopted within 90 working days as of the day of the initiation of the procedure.

At any time following the initiation of the procedure, the time limits mentioned above, may be extended by the Commission for Protection of Competition in agreement with the participants in the concentration.

The total duration of each extension(s) may not exceed 20 working days.

If the Commission for Protection of Competition has not adopted a decision within the deadlines, the concentration shall be

	considered to be compliant with the provisions of the Law.
<b>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</b>	No
<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>	See 9A
<b>D. What are the procedures for accelerated review of non-problematic transactions, if any?</b>	NA

## 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>The concentration shall not be implemented either before its notification to the Commission for Protection of Competition, or after the submission of the notification until it has been declared compliant with the provisions of this Law or until the presumption (if the Commission for Protection of Competition has not adopted a decision within the deadlines, the concentration shall be considered to be compliant with the provisions of the Law) is satisfied.</p> <p>The above mentioned shall not prevent the implementation of a public bid for purchase of securities or series of transactions in securities, including those convertible into other securities admitted to trading on a market in accordance with the law, if:</p> <ol style="list-style-type: none"> <li>1) the concentration has been notified to the Commission for Protection of Competition pursuant to this Law without delay and</li> <li>2) the acquirer of securities does not exercise the voting rights attached to the securities in question, or does so only to the extent which is necessary to maintain the full value of its investment and based on a procedural order for exemption from the obligations stipulated above.</li> </ol>
<p><b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b></p>	<p>The Commission for Protection of Competition may, upon a request by the notifying party adopt a decision to allow an exemption from the obligations mentioned in the first and second paragraph of 10A. The request must be reasoned. In deciding upon the request for exemption, the Commission for Protection of Competition shall, <i>inter alia</i>, take into account the effects of the suspension of the concentration on one or more undertakings concerned by the concentration or on a third party, as well the threat to the competition posed by the concentration. This exemption may be subject to conditions and obligations in order to ensure conditions for effective competition. The exemption may be applied for and granted at any time, i.e. prior to the notification or following the transaction referred to in second paragraph of 10A.</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</b></p>	<p>NA</p>

<p><b>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><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<p>If the Commission for Protection of Competition has not adopted a decision within the deadlines, the concentration shall be considered to be compliant with the provisions of this Law.</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>There are not such provisions</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 early termination.</b></p>	<p>See 10B.</p>
<p><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></p>	<p>There are no such provisions. The only possibility to suspend the waiting period is given in 10B.</p>

## 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>	The participants in the merger, i.e. the acquirers of the joint control shall submit a joint notification of the concentration arising as a result of a merger or of a concentration resulting from the acquisition of a joint control. In all other cases, the notification shall be filed by the person or undertaking acquiring control of a whole undertaking or part of one or more undertakings.
<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>	NA
<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 apostilled?</b>	Usually power of attorney submits notification in the name of the notifying party.

## 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>	Yes. According to the Law on administrative fees, the notifying party is obliged to pay: - an administrative fee of 100 Euro for the notification for concentration, - an administrative fee of 500 Euro for the decision declaring that the concentration is compliant with the provisions of the Law - an administrative fee of 80 Euro for the decision declaring that the concentration is not compliant with the provisions of the Law - an administrative fee of 80 Euro for the decision that the notified concentration does not fall under the provisions of the Law - an administrative fee of 80 Euro for the request for an
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	<p>exemption from the suspension of concentration  - an administrative fee of 80 Euro for the decision allowing an exemption from the suspension of concentration</p>
<b>B. Who is responsible for payment?</b>	The notifying party.
<b>C. When is payment required?</b>	<p>An administrative fee of 100 Euro for the notification for concentration must be paid when the notification is submitted to the Commission.</p> <p>An administrative fee of 500 Euro for the decision declaring that the concentration is compliant with the provisions of the Law, must be paid on the day when the decision is enacted, i.e. the original payment notice must be submitted to the Commission when the notifying party is collecting the decision from the Commission.</p> <p>An administrative fee of 80 Euro for the decision declaring that the concentration is not compliant with the provisions of the Law, must be paid on the day when the decision is enacted, i.e. the original payment notice must be submitted to the Commission when the notifying party is collecting the decision from the Commission.</p> <p>An administrative fee of 80 Euro for the decision declaring that the notified concentration does not fall under the provisions of the Law, must be paid on the day when the decision is enacted, i.e. the original payment notice must be submitted to the Commission when the notifying party is collecting the decision from the Commission.</p> <p>An administrative fee of 80 Euro for the request for an exemption from the suspension of concentration must be paid when the request is submitted to the Commission.</p> <p>An administrative fee of 80 Euro for the decision allowing an exemption from the suspension of concentration, must be paid on the day when the decision is enacted, i.e. the original payment notice must be submitted to the Commission when the notifying party is collecting the decision from the Commission.</p>
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	The notifying party pays the amount to the Budget of the Republic of Macedonia by payment notice and afterwards the Commission requires a proof of this payment.

## 13. Confidentiality

<p><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>	<p>The notifications of the concentrations shall be posted on the website of the Commission for Protection of Competition by stating the names of the participants, seat, basic business activities of the participants and the form of the concentration, whereas all interested parties are invited to deliver their comments, opinions and remarks regarding the concerned concentration within the deadline stipulated in the notification.</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 parties in the procedure before the Commission for Protection of Competition shall be entitled to inspect the files of the case and to make, at their own expense, a transcription or a copy of the whole file or certain documents.</p> <p>The request for access to files shall be submitted in written form, and shall be approved by means of a procedural order by the President of the Commission for Protection of Competition. The President of the Commission for Protection of Competition shall, by means of the procedural order, determine the date and hour of the access to be performed within 15 days as of the day of receiving the request for access to files.</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 and other government agencies can obtain access to the notification materials only if they have the status of a party in the proceedings before the Commission.</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>Yes, data collected during the procedure before the Commission may be used only for the purpose for which they were acquired.</p> <p>The President and the members of the Commission for Protection of Competition and the employees are obliged to keep business or professional secrets regardless of how they have learnt it. The obligation to keep business or professional secrets shall last for five years as of the termination of the employment with the Commission for Protection of Competition or after the expiry of the term of office of the President or the Commission member.</p> <p>The above mentioned persons may not give statements in the public which could harm the reputation of the undertaking or statements on the measures they have undertaken or the procedures they have initiated while performing the activities under their competence until they are final, unless it regards the announcement of general information.</p> <p>The business secret shall imply in particular the following:</p> <ol style="list-style-type: none"> <li>1) What has been determined by law and other regulations as business secret and</li> <li>2) What shall be determined by the undertaking as business secret if the Commission for Protection of Competition accepts</li> </ol>

	<p>such determination.</p> <p>The Commission for Protection of Competition shall accept the classification of data as business secret if it concerns data that have economic or market value and whose discovery or use may lead to economic advantage of other undertakings.</p> <p>When evaluating the above mentioned data, the following criteria shall apply in particular:</p> <ol style="list-style-type: none"> <li>1) the extent to which the data is known outside the undertaking;</li> <li>2) the extent to which measures have been taken for the protection of data secrecy in the undertaking and</li> <li>3) the value of the data to the undertaking and its competitors.</li> </ol> <p>Business secret within the meaning of the provisions of the Law shall not, as a rule, be:</p> <ol style="list-style-type: none"> <li>1) publicly available data or publicly announced data based on another regulation or decision of the managing bodies of the undertaking;</li> <li>2) data older than 5 years, regardless whether they were considered as business secret;</li> <li>3) the revenues contained in the annual financial and statistical reports which do not constitute business secret because they have been publicly announced;</li> <li>4) data and documentation of decisive relevance for the decisions of the Commission for Protection of Competition.</li> </ol> <p>When submitting data classified as business secret, the undertaking is obliged to justify such determination by indicating objective reasons.</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 authorities? Are the agreements publicly available?</b></p>	<p>The Commission for Protection of Competition has signed memoranda of cooperation with the competition authorities from Croatia, Bosnia and Herzegovina, Albania, Serbia, Bulgaria and Kosovo.</p>
<p><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></p>	<p>No, the confidential information cannot be exchanged.</p>

## 14. Transparency

<p><b>A. Does the agency publish an annual report? Please provide the web address if available.</b></p>	<p>According to the Law on Protection of Competition the Commission for Protection of Competition shall be accountable for its work to the Assembly of the Republic of Macedonia and shall submit an annual report for its activities no later than by March 31st.</p> <p>The Web address of the Commission is <b>www.kzk.gov.mk</b>.</p>
<p><b>B. Does the agency publish press releases related to merger policy or investigations?</b></p>	<p>No</p>
<p><b>C. Does the agency publish decisions on why it cleared / blocked a transaction?</b></p>	<p>The decisions of the Commission for Protection of Competition and of the Commission for misdemeanour matters are published in the "Official Gazette of the Republic of Macedonia".</p> <p>The decisions of the Commission for Protection of Competition and the Commission for misdemeanour matters and the judgments, i.e. decisions of the court, are published on the website of the Commission for Protection of Competition.</p> <p>The published text of the decision must contain the names of the parties in the procedure and the basic contents of the decision.</p> <p>The notifications of the concentrations are also posted on the website of the Commission for Protection of Competition by stating the names of the participants, seat, basic business activities of the participants and the form of the concentration, whereas all interested parties are invited to deliver their comments, opinions and remarks regarding the concerned concentration within the deadline stipulated in the notification.</p> <p>All data regarded as business or professional secrets, is not be published.</p>

## 15. Sanctions/penalties

<p><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></p>	<p>For misdemeanour matters, the Commission shall impose, by means of a decision, to the participants in the concentration that have an obligation for notification a fine in the amount of up to 10% of the value of their total annual turnover calculated in absolute and nominal amount, if they:</p> <ol style="list-style-type: none"> <li>1) fail to file a notification of the concentration in accordance with the provisions of the Law;</li> <li>2) implement the concentration before its notification to the Commission for Protection of Competition, or after the submission of the notification until it has been declared compliant with the provisions of the Law;</li> <li>3) implement a concentration which has been determined by means of a decision that the concentration is not compliant with</li> </ol>
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	<p>the provisions of this Law;  4) failed to submit notification on concentration, when the criteria referred in the Law are met;  5) failed to meet certain condition or duty referred to in the Law.</p>
<p><b>B. Which party/ies are potentially liable?</b></p>	<p>The liability is with the party that in the first place had the obligation that was breached.</p>
<p><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></p>	<p>Since the changes of the Law on Protection of Competition in 2007, the Commission can initiate misdemeanor procedure and impose misdemeanor sanctions.</p> <p>According to the new Law on Protection of Competition (enacted November 2010), regarding the misdemeanors stipulated in this Law, the misdemeanor procedure in front of the Commission for Protection of Competition is conducted and the misdemeanor sanction is imposed by the Commission for misdemeanor matters.</p> <p>The decisions of the Commission for misdemeanour matters are final. A legal action on instituting an administrative dispute before the competent court may be brought against such decisions.</p> <p>The legal action on instituting an administrative dispute shall be brought within 8 days as of the day of receiving the decision and it shall defer the enforcement of the decision.</p> <p><b>Serious misdemeanors</b></p> <p>The Commission for misdemeanour matters shall impose a fine to the undertaking (and/or association of undertakings) by means of a decision in the amount of up to 10% of the value of the total annual turnover earned in the last business year, calculated in absolute and nominal amount for which the undertaking or association of undertakings has compiled an annual account if it:</p> <ol style="list-style-type: none"> <li>1) concludes a prohibited agreement or otherwise participates in a agreement, decision or concerted practices leading to distortion of competition;</li> <li>2) abuses a dominant position;</li> <li>3) fails to act pursuant to the decision of the Commission for Protection of Competition for interim measures,</li> <li>4) fails to act pursuant to the decision of the Commission for Protection of Competition for measures for reinstatement of effective competition.</li> </ol> <p><b>Procedural misdemeanors</b></p> <p>The Commission for misdemeanour matters shall, by means of a decision, impose a fine to the undertaking (and/or association of undertakings) in the amount of up to 1% of the value of the total annual turnover calculated in absolute and nominal amount earned in the last business year for which the undertaking or association of undertakings has compiled an annual account if:</p> <ol style="list-style-type: none"> <li>1) it fails to act pursuant to the procedural order of the Commission for Protection of Competition or the Commission for</li> </ol>

	<p>Misdemeanour Matters as to the submission of data in the determined deadline</p> <ol style="list-style-type: none"> <li>2) it submits false, incomplete or misleading data to the Commission for Protection of Competition or the Commission for misdemeanour matters,</li> <li>3) it fails to act pursuant to the procedural order for requesting data in inspections in administrative and misdemeanor procedure</li> <li>4) it fails to provide unhindered access to any business premises, land or means of transport of a certain undertaking, while performing inspections;</li> <li>5) it fails to provide unhindered examination of books or other documentation, while performing inspections;</li> <li>6) it fails to provide unhindered taking or keeping of objects, books, other documentation in any form, copies or extracts from books or other documentation, while performing inspections;</li> <li>7) it fails to provide unhindered sealing while performing inspections;</li> <li>8) it unseals seals placed during inspections;</li> <li>9) an authorized person or another employee refuses to provide explanation regarding certain facts or circumstances while performing inspections;</li> <li>10) an authorized person or another employee provides false, incomplete or misleading data to the Commission for Protection of Competition or the Commission for misdemeanor matters while performing inspections;</li> <li>11) it fails to provide unhindered performance of other actions while performing inspections.</li> </ol> <p>The Commission for Misdemeanor Matters shall impose, by means of a decision, to the participants in the concentration that have an obligation for notification, a fine in the amount of up to 1% of the value of their total annual turnover if in the notification and the appendices to the notification and the supplement to the notification they submit false or misleading data to the Commission for Protection of Competition.</p>
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## 16. Judicial review

<p><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>	<p>The decisions of the Commission for Protection of Competition issued in an administrative procedure are final. A legal action on instituting an administrative dispute before the competent court may be brought against such decisions of the Commission for Protection of Competition.</p> <p>The legal action on instituting an administrative dispute shall be brought within 30 days as of the day of receiving the decision and it shall not defer the enforcement of the decision.</p> <p>The decisions of the Commission for misdemeanour matters are final. A legal action on instituting an administrative dispute before the competent court may be brought against such decisions.</p> <p>The legal action on instituting an administrative dispute shall be</p>
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	brought within 8 days as of the day of receiving the decision and it shall defer the enforcement of the decision.
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## 17. Additional filings

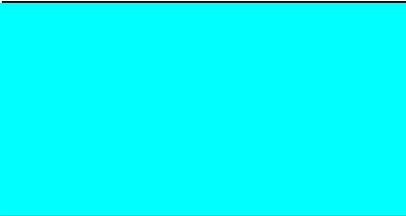
<b>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</b>	No
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## 18. Closing deadlines

<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>	No
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## 19. Post merger review of transactions

<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>The Commission for Protection of Competition may revoke its decision declaring that the concentration is compliant with the provisions of this Law in cases when:</p> <ol style="list-style-type: none"> <li>1) the decision was adopted on the basis of false and/or incomplete data for which one of the participants in the concentration is responsible or they were obtained by way of deceit and had a decisive influence when adopting the decision or</li> <li>2) the participants commit a breach of an obligation attached to the decision.</li> </ol> <p>With the revocation decision, the Commission for Protection of Competition shall:</p> <ol style="list-style-type: none"> <li>1) revoke the decision declaring that the concentration is compliant with the provisions of the Law;</li> <li>2) declare that the concentration is not compliant with the provisions of the Law and</li> <li>3) if necessary, impose measures and obligations to restore effective competition on the relevant market.</li> </ol>
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The Commission for Protection of Competition may adopt a decision without being bound by the time limits for adopting decisions.

The Commission for Protection of Competition shall inform the participants of the decision without delay.