

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

PANAMA

January 2006

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	Executive Decree #31-98 Law 29 of 1996 Notification is voluntary
B. Notification forms or information requirements	Executive Decree #31-98 Law 29 of 1996
C. Substantive merger review provisions	Law 29 of 1996 Executive Decree #31 of 1998
D. Implementing regulations	Law 29 of 1996 Executive Decree #31 of 1998
E. Interpretive guidelines and notices	Guidelines

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one	CLICAC in administrative level Judicial Power (specialized courts)
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authority, please describe allocation of responsibilities.	
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	3TSJ CLICAC, Plaza Cordob a, 1st floor www.clicac.gob.pa
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	Yes Maureen Rey maureenrey@clicac.gob.pa

3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)	All forms of concentrations (control)
B. If change of control is a determining factor, how is control defined?	Is defined by the rights, contracts or another way that by itself or jointly, facilitate the possibility to influenced the activities of the economics agents.
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	There is no percentage established
D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?	The joint ventures are excluded

4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>N.A.</p>
<p>B. To which entities do the merger notification thresholds apply, <i>i.e.</i>, which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>N.A.</p>
<p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>N.A.</p>
<p>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>N.A.</p>
<p>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p>	<p>N.A.</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>N.A.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the</p>	<p>N.A.</p>

jurisdiction, or both?	
H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	N.A.
I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an "effects" test?	All concentrations that produce effects in Panama
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	It all depends of the definition of the market within panamenian territory
K. If market share tests are used, are there guidelines for calculating market shares?	Yes
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)?	N.A.
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
O. Does the agency have the authority to review transactions that fall below the thresholds?	No

5. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	No
B. Is notification mandatory post-merger?	No
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	Yes
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)?	When is an agreement considered definitive
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 is no specific period

<p>there special rules for public takeover bids?</p>	
<p>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	

6. Simplified procedures

<p>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</p>	<p>There is no short form. There is only one methodology defined in guidelines.</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>General information about merging parties, the agreement, market studies</p>
<p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p>	<p>Notarization or apostille</p>
<p>C. Are there special rules for exemptions from information requirements (e.g. information</p>	

submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?	
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8. Translation

A. In what language(s) can the notification forms be submitted?	
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.	Translation of an authorize public translator

9. Review periods

A. Describe any applicable review periods following notification.	N.A.
B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?	No
C. What are the procedures for an extension of the	Panamenian law establishes a 60 day investigatory period for those concentrations that are previously examined.

<p>review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	

10. Waiting periods / suspension obligations

<p>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</p>	<p>N.A.</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of</p>	<p>Panamenian law only allows the investigation that occurs or have effects within the territory.</p>

<p>local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>Panamanian law establishes a 60 day investigatory period for those concentrations that are previously examined.</p>
<p>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.</p>	<p>Panamanian law establishes a 60 day investigatory period for those concentrations that are previously examined.</p>
<p>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</p>	<p>Panamanian law establishes a 60 day investigatory period for those concentrations that are previously examined.</p>

to close if no "irreversible measures" are taken).	
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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?	Acquiring party
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	No
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	Must be a lawyer with suitability
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?	The power must be notarized and the representation must have suitability to practice in Panama

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	No
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fees based on complexity, tiered fees based on size of transaction)?	
B. Who is responsible for payment?	N.A.
C. When is payment required?	N.A.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	N.A.

13. Confidentiality

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?	All the information CLICAC receives is confidential, but the parties can make it public.
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	Yes, the parties have access to the authority's file.
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	No, only by a request of the Judicial Power.
D. Are procedures available to request confidential treatment of the fact of notification and/or	The parties only have to identify what is confidential to receive that treatment.

notification materials? If so, please describe.	
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?	No
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?	

14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	Annual Report
B. Does the agency publish press releases related to merger policy or investigations?	
C. Does the agency publish decisions on why it cleared / blocked a transaction?	

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>Desconcentration (Totally or partially) or corrective measures, but also can be suit for damages to society.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>All the parties involved in the concentration</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	

16. Judicial review

<p>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</p>	<p>If the decision is taken by the administrative entity, the parties have a possibility of a Judicial review. If the decision is taken by the Judicial power, there are several resources for the parties and it can take years.</p>
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17. Additional filings

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

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?

No

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?