

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

RUSSIA

April 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)

A. Notification provisions

According to the Russian legislation, mergers, joining and foundation of companies as well as purchasing of stocks (shares) of companies are subject to the antimonopoly control.

At that, the antimonopoly legislation provides for both pre- and post- merger control.

Control over economic concentration is provided for by the Chapter 7 (Articles 27-35) of the Federal Law №135-FZ of July, 26, 2006, "On Protection of Competition"

http://en.fas.gov.ru/legislation/legislation_50481.html

B. Notification forms or information requirements

The notification is to be submitted in written free form and in Russian.

For the list of attachments to the notification the company may refer to:

Article 32 of the Law on Protection of Competition
http://en.fas.gov.ru/legislation/legislation_50481.html

Administrative Regulations of the FAS Russia on control over economic concentration №№ 293, 294, 457
<http://fas.gov.ru/legislative-acts/> (in Russian only)

C. Substantive merger review provisions	Chapter 7 (Articles 27-35) of the Federal Law №135-FZ of July, 26, 2006, “On Protection of Competition” http://en.fas.gov.ru/legislation/legislation_50481.html
D. Implementing regulations	The procedure is incorporated in the Law on protection of competition. Chapter 7 (Articles 27-35) of the Federal Law №135-FZ of July, 26, 2006, “On Protection of Competition” http://en.fas.gov.ru/legislation/legislation_50481.html Administrative Regulations of the FAS Russia on control over economic concentration №№ 293, 294, 457 http://fas.gov.ru/legislative-acts/ (in Russian only)
E. Interpretive guidelines and notices	See point B. Moreover all the clarifications can be found at: http://fas.gov.ru/clarifications/

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	Federal Antimonopoly Service of the Russian Federation (FAS Russia) and its 82 Regional Offices. Notification is submitted to the relevant Regional Office of the FAS Russia (in accordance with location of companies) or to the Central Office of the FAS Russia (if assets are quite large or if assets are located in different regions of the Russian Federation).
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	123995, Moscow, Sadovaya-Kudrinskaya 11. Tel.: 7-499-252-24-79; fax: 7-499-254-75-21. http://en.fas.gov.ru/ (in English) http://fas.gov.ru/ (in Russian)
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing	It is possible for a company to receive a pre-notification consultation by phone, email (within 7 working days) or in written form (within 30 days). Administrative Regulations contain restrictions on what kind of information can be provided through above

requirements and/or consultations.	mentioned ways.
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3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)	Article 4 of the Law on protection of competition provides for basic notions used for its application, including definition of economic concentration and acquisition of stocks (shares in the authorized capital) of business partnerships. The full list of covered transactions is given in Chapter 7 of the Law on protection of competition.
B. If change of control is a determining factor, how is control defined?	According to Articles 28-29 of the Law on protection of competition change of control (acquisition of stated percentage of shares(stocks)) is considered only if the thresholds are met.
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	See point 3 B
D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?	Yes, the Law on protection of competition is applicable to all the forms of companies

4. Thresholds for notification

A. What are the general thresholds for notification?	See Articles 27-30 of the Law on protection of competition. Currently, prior approval of the antimonopoly authority is needed in the following cases: <ul style="list-style-type: none"> - merger or joining of companies if the aggregate value of their assets exceeds 3 bln rub. (75 mln Euro) or their total revenues from sale of products for the preceding calendar year exceed 6 bln rub. (150 mln. Euro); - foundation of a company by putting stocks (shares)
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or property into its capital stock if the total value of the companies's founders assets exceeds 7 bln rub (175 mln Euro) or their total revenues from sale of products for the preceding calendar year exceed 10 bln rub (250 mln. Euro);

- transactions between the companies if total value of assets of acquirer company and of the company the stocks (shares) and property or rights of which is acquired exceeds 7 bln rub (175 mln. Euro) or their total revenues from sale of products for the preceding calendar year exceed 10 bln rub (250 mln Euro) while the total value of assets (group of persons) of the acquiring company whose stocks, property or rights are acquired exceeds 250 mln rub (6,3 mln Euro).

Besides, prior approval of the antimonopoly authority is needed if a company involved in the transaction or included in one group of persons is included in the Register of economic entities occupying more than 35% of the market share on a particular product market (the Register is maintained by the FAS Russia).

The companies have the right to send to the antimonopoly authority a post notification, instead of receiving the prior authority's approval, about similar actions or transactions if they are made within a group of persons.

The FAS Russia should receive post notifications in the following cases:

- establishment of a company as a result of merger, joining to the company of one or more companies, if the aggregate value of their assets or their total revenues from sales of products during the preceding year exceeds 400 mln rub (10 mln. Euro);

- transactions, if the total value of the acquiring company assets, and the company whose shares, property or rights are acquired, or their total revenues from sales of products during the preceding year exceeds 400 mln rub (10 mln. Euro) while the total value of assets, shares, property or rights of the acquired company exceeds 60 mln rub (1,5 mln. Euro).

The different thresholds are established for the financial and credit organizations that need to obtain pre merger approval and post notification. The thresholds are established on the basis of total value of assets sharing in the transaction

	between the companies. See Resolution of Government of the Russian Federation № 334 of 30.05.2007 (with amendments of 06.05.2009, 24.12.2009, 09.03.2010).
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?	Notification thresholds are applicable to joint aggregate assets of parties to transaction (See point 4 A)
C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.	Thresholds for commercial companies are given in the relevant Articles of the Law on protection of competition (see point 4 A). Thresholds for credit and financial companies are established by the relevant Resolution of the Government of the Russian Federation upon consent of the Central Bank of the Russian Federation (see point 1 A).
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)?	Usually most recent calendar year For more details please see Article 27-30 of the Law on protection of competition.
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?	Criteria for evaluation are provided in the Articles 27-30 of the Law on protection of competition
F. Describe methodology for calculating exchange rates.	Parties have to use the official exchange rate of the Central Bank of Russia, which is appropriate to the relevant date, e.g. to the date of balance sheet.
G. Do thresholds apply to worldwide sales/assets, to sales/assets within the	Both

jurisdiction, or both?	
H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	Yes
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?	According to Article 3 of the Law on protection of competition "Provisions of this Federal Law are applicable to the agreements reached between Russian and (or) foreign persons or organizations outside the Russian Federation, as well as to actions performed by them, if such agreements are reached and actions are performed towards the fixed production assets in the Russian Federation and (or) intangible assets, or shares (stock) of economic entities, or right regarding commercial organizations operating in the Russian Federation, or otherwise affecting the state of competition in the Russian Federation".
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	Both with regard to location of seller and customer
K. If market share tests are used, are there guidelines for calculating market shares?	N/A
L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?	See point 4 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 special rules as long as such transactions do not involve or impact assets located on the territory of the Russian Federation.
O. Does the agency have the authority to review transactions that fall below the thresholds?	Yes, if there is a signal that such transactions lead to restriction of competition

5. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	See 4 A
B. Is notification mandatory post-merger?	See 4 A
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	Yes, they can, under common grounds.
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)?	Pre-merger notification is to be submitted at any time. Post-merger notification is to be submitted not later than 45 days from the transaction.
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 triggering event or deadline for filing.

there special rules for public takeover bids?	
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.	N/A.

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.).	No special procedure. The notification should be filed in accordance with the Law on protection of competition. In certain cases the FAS Russia can voluntarily take faster its decision (within several days instead of 1 month).
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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).	Point 5 Article 32 of the Law on Protection of Competition http://en.fas.gov.ru/legislation/legislation_50481.html
B. Are there any document legalization requirements (e.g., notarization or apostille)?	If foreign resident applies to the FAS Russia, all documents should be provided in foreign language with notarized translation into Russian (with apostille of the competent authority of the state where the document was made). If documents are originally in Russian, there is no need to submit them in foreign language with notarized translation into Russian.

<p>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?</p>	<p>No.</p>
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8. Translation

<p>A. In what language(s) can the notification forms be submitted?</p>	<p>The notification must be submitted in Russian.</p>
<p>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.</p>	<p>If foreign resident applies to the FAS Russia, all documents should be provided in foreign language with notarized translation into Russian (with apostille of the competent authority of the state where the document was made). If documents are originally in Russian, there is no need to submit them in foreign language with notarized translation into Russian.</p>

9. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>According to Article 33 of the Law on protection of competition the FAS Russia is obliged to consider the notification within 30 days from the date of receipt of the full set of documents necessary for notification. In certain cases (also described in Article 33) the FAS Russia can prolonge the review period for another 60 days.</p>
<p>B. Are there different rules for public tenders (e.g.</p>	<p>No</p>

<p>open market stock purchases or hostile bids)?</p>	
<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	<p>According to Article 33 of the Law on protection of competition the FAS Russia can extend the term of the notification consideration, if the it has established that the transaction in question can result in restriction of competition (necessity for additional information with this regard), or if the transaction in question is to be considered on the subject of its compliance with the Federal Law № 57-FZ of April, 29, 2008, "On foreign investment in companies having strategic importance for State security and defense"</p> <p>In case if such decision is taken the FAS Russia posts on its official web-site the information about the expected transaction. The stakeholders have the right to submit to the FAS Russia information about the impact of transaction on competition.</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>There are no special procedures for accelerated review.</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>Waiting period is maximum 3 months. The FAS Russia takes either decision to clear, to clear with remedies, to refuse the transaction.</p>
<p>B. Can parties request a</p>	<p>N/A</p>

<p>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 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>N/A</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>They are no prohibited from doing this. In case the transaction led to restriction of competition the FAS Russia shall apply to court for admitting the transaction as invalid.</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>Extension of waiting period is possible only if there are grounds for more detailed consideration of transaction (but maximum period should be 3 months in total).</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension</p>	<p>N/A</p>

<p>obligation, and the criteria and timetable for deciding whether to grant early termination.</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 to close if no "irreversible measures" are taken).</p>	<p>Completion of transactions in violation of the requirements for preliminary consent or notification or failure to abide by conditions imposed by FAS are grounds for the transactions to be voided by a court on the basis of a suit filed by FAS.</p>

11. Responsibility for notification / representation

<p>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</p>	<p>Usually the acquiring person is responsible for notifying. However the documents required for notification should be signed by all the parties to merger. It is not prohibited for the representative of the parties to submit the notification.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No</p>
<p>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)?</p>	<p>No</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</p>	<p>It should be power of attorney. The power of attorney must be notarized and legalized or apostilled.</p>

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)?	The state fee for examination of application equals 20,000 rub (500 Euro) (according to Point 89, Part 1, Article 333.33 of the Tax Code of the Russian Federation)
B. Who is responsible for payment?	Applicants submitting the notification.
C. When is payment required?	Before submission of the notification.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Should be paid through the bank and goes to the Federal Budget. The proof of payment should be submitted together with notification.

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?	According to the Information Policy of the FAS Russia information about the fact of filing of pre-merger notification by legal and private person (without disclosure of parameters of transaction given in notification) and on taken decision or imposed remedies is provided at the request of mass media. Information on taken decisions with regard to premerger notification are published on the FAS Russia official website within 5 days from the registration of the letter containing decision.
B. Do notifying parties have	No

<p>access to the authority's file? If so, under what circumstances can the right of access be exercised?</p>	
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>Governmental agencies (courts and law-enforcement authorities) can obtain access to notification material under a letter of inquiry within their competence.</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>The parties can request for confidentiality of notification materials by providing a relevant stamp on its notification. However the fact and decision taken are to be publicly available.</p>
<p>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>The FAS Russia has a long-run experience in cooperation with foreign competition authorities. During the 20 years existence of the Antimonopoly Authority there were established good relations with the representatives of many foreign authorities that allow directly cooperating on information sharing on cases and exchange of experience.</p> <p>The legal base for such cooperation is 22 officially signed Inter-governmental or Interagency agreements, Programmes of cooperation and Memorandums of understanding with foreign competition authorities (Austria, Brazil, Bulgaria, China, Czech Republic, Estonia, Finland, France, Hungary, Italy, Korea, Latvia, Mexico, Mongolia, Poland, Romania, Slovakia, Sweden, Ukraine, USA, Venezuela, Vietnam) with a view of development of cooperation in the sphere of competition.</p> <p>These documents have various extent on possibility for exchange of non-confidential information. There is no possibility for exchange of confidential information in none of them.</p> <p>According to the Article 26 of the Law on protection of competition the FAS Russia doesn't have a right to disclose any confidential information, including business secret. Disclosure brings to administrative and criminal liability.</p> <p>Texts of agreements and memorandums are available at the following link:</p>

	http://en.fas.gov.ru/international-cooperation/bilateral-and-multilateral-documents/
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?	Exchange of non-confidential information is possible with the competition authorities parties to the bilateral agreements on cooperation. In certain cases waivers can be used.

14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	See the FAS Russia Annual Report 2009 for OECD
B. Does the agency publish press releases related to merger policy or investigations?	Yes, regularly
C. Does the agency publish decisions on why it cleared / blocked a transaction?	Yes, regularly

15. Sanctions/penalties

A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?	Failure of firms to abide by the rules concerning pre- and post-merger notifications, and also failure to abide by the terms of an order of the competition authority designed to preserve competition, may serve as grounds for FAS to bring an action in court seeking the liquidation of the firm or noncommercial organization involved (according to Article 34 of the Law on protection of competition), but such cases are extremely rare. The far more common consequence of failure to file the required notification or filing of the false information is the imposition of a fine under Article 19.8 of
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	the Code of Administrative Violations, which provides for fines both for individuals, officials and companies maximum up to 500,000 rubles (about \$16,600 US).
B. Which party/ies are potentially liable?	Liable are persons or companies obligated to notify according to the points 1-4 of the Article 32 of the Law on protection of competition.
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.	Directly.

16. Judicial review

Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.	According to Article 52 of the Law on protection of competition decisions or determinations of the antimonopoly authority can be appealed within three months from the date when the decision was adopted and the determination was issued. The appeal to a court of law or an arbitration court suspends the fulfillment of the determination issued by the antimonopoly authority for the period of its examination in a court of law until the court's ruling comes into legal force.
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17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?	No
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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?

In accordance with part 8 Article 33 of the Law on protection of competition the decision of the FAS Russia on approval of transaction is valid for one year.

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?

No.