

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

SPAIN

June 2009

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

A. Notification provisions	<ul style="list-style-type: none">- Spanish Competition Act 15/2007, of 3 July: Chapter III, Section I, Articles 55 and 56.- The Defense of Competition Regulation (it was approved by Royal Decree 261/2008 of 22 February 2008): Chapter III, Section I, Articles 54-60; Annex II and Annex III.
B. Notification forms or information requirements	<p>Pursuant to Article 56 of The Defense of Competition Regulation, "the notification provided for in articles 55 and 56 of Act 15/2007 of 3 July 2007 will be presented to the National Competition Commission using the official ordinary notification form set out in Annex II, or in the official short form set out in Annex III in the events provided for in Article 56 of Act 15/2007 of 3 July 2007. In the event of joint notification, only one form will be used."</p> <p>In addition, the notifying party may submit all such analyses, reports or studies as may have been carried out and are considered significant in relation to the concentration.</p> <p>If the notification is not presented in due form, the Directorate for Investigation may issue a resolution not to admit the notification for consideration.</p> <p>Once the notification has been received in due form, if the Directorate for Investigation finds that information is missing or that the information contained in any of the sections of the notification form needs to be completed, it shall instruct the</p>

	<p>notifying party to remedy the lack of information within ten days. If the problem is not remedied within that time limit, the notifying party will be considered to have dropped the petition, although this will not prevent the Directorate for Investigation from being able to initiate the control of concentrations proceeding ex officio in accordance with the provisions of Article 9.5 of Act 15/2007 of 3 July 2007.</p>
C. Substantive merger review provisions	<p>- Article 10 of Competition Act: “The National Competition Commission shall assess the economic concentrations in light of the possible impediment to the maintenance of effective competition in all or part of the national market.”</p> <p>Specifically, the National Competition Commission shall adopt its decision taking into account different elements: structure of all relevant markets, undertaking’s position on the markets, barriers on the entry, etc.</p> <p>Also, Article 10, in paragraphs 2, 3 and 4 provides for several specific circumstances (joint ventures, ancillary restrictions of competition, Council of Ministers’ assessment).</p> <p>Article 4 of the Defense of Competition Regulation establishes the calculation of the market share.</p> <p>- Article 5 of the Defense of Competition Regulation establishes the calculation of turnover for the purposes of establishing the scope of application for economic concentrations (Article 8.1b of Act 15/2007)</p>
D. Implementing regulations	<p>Royal Decree 261/2008 of 22 February 2008, approving the Defense of competition Regulation, which develops Competition Act 15/2007 regarding the control of economic concentrations.</p>
E. Interpretive guidelines and notices	<p>None</p>

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	<p>-The National Competition Commission (hereinafter CNC) shall exercise its functions throughout the Spanish territory, in relation to all markets or productive sectors of the economy.</p> <p>Since the new Competition Act 15/2007, there a single authority, the CNC, responsible for the public enforcement of competition law.</p> <p>The new Act maintains the distinction between the investigation phase and the decision-making phase of the proceedings. The Directorate of Investigation of the CNC assumes responsibility for the investigation phase, whereas the Board of the CNC is responsible for taking the final decisions.</p>
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	<p>-The Council of Ministers may intervene in the economic concentration control procedure (in the second phase), when the Minister of Economy and Finance decides there are reasons of general interest to do so, other than protecting competition (such as defence and national security, protection of public security or public health, free movement of goods and services within the national territory, environment protection, promotion of technological research and development, guarantee of adequate maintenance of the objectives of sectorial regulation.)</p>
<p>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</p>	<p>Comisión Nacional de la Competencia C/ Barquillo, 5 - 28004 Madrid (España) Tel.: +34 91 568 0510 - Fax: +34 91 568 0590</p> <p>Contact: informacion@cncompetencia.es</p> <p>Homepage address: http://www.cncompetencia.es/</p> <p>Legislation :http://www.cncompetencia.es/Default.aspx?TabId=81</p> <p>Languages: Spanish and English.</p>
<p>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</p>	<p>Yes, there is (Article 56.2 Royal Decree 261/2008).</p> <p>Contact point: Phone number : 91 536 90 72 Fax number : 91 536 91 08 e-mail: DI.UnidadApoyo@cncompetencia.es</p>

3. Covered transactions

<p>A. Definitions of potentially covered transactions (i.e., concentration or merger)</p>	<p>Pursuant to Article 7.1 of Act 15/2007, "For the purposes set out in this Act, an economic concentration shall be deemed to arise when a stable change takes place of the whole or part of one or more undertakings results from:</p> <ul style="list-style-type: none"> a) The merger of two or more previously independent undertakings, or b) The acquisition by an undertaking of control of the whole or part of one or more undertakings. c) The creation of a joint venture and, in general, the acquisition of the joint control of one or more undertakings, when they perform on a lasting basis the functions of an autonomous economic entity" <p>According to Article 7.3 "The following shall not be considered to be a concentration:</p> <ul style="list-style-type: none"> a) The simple redistribution of equities or assets between
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	<p>undertakings from the same group.</p> <p>b) Holding on a temporary basis of securities which have been acquired in an undertaking for their resale by a credit institution or other financial institution or insurance company, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition. Exceptionally, the National Competition Commission may extend that period on request where such institutions or companies can show that the disposal was not reasonably possible within the period set.</p> <p>c) The operations carried out by the financial holding companies referred to in Article 5(3) of Fourth Council Directive 78/660/EEC, of 25 July 1978, which acquire on a temporary basis securities in other undertakings, provided that the voting rights in respect of the holding are exercised only to maintain the full value of those investments and not to determine the competitive conduct of those undertakings.</p> <p>d) The acquisition of control by an office-holder according to law in accordance with insolvency regulations.”</p> <p>Additionally, Article 54.1 and 54.2 of Royal Decree 261/2008 establishes when a concentration project can be notified.</p>
<p>B. If change of control is a determining factor, how is control defined?</p>	<p>As mentioned before, “...an economic concentration shall be deemed to arise when a stable change takes place of the whole or part of one or more undertakings ..”.</p> <p>So, the existence of a change of control determines if a concentration occurs or not. Additionally, article 7.2 explains the concept of control.</p> <p>According to Article 7.2 for the above purposes, control shall be constituted by contracts, rights or any other means which, having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking and, in particular by:</p> <p>a) ownership or the right to use all or part of the assets of an undertaking,</p> <p>b) contracts, rights or any other means which confer decisive influence on the composition, voting or decisions of the organs of the undertaking.</p> <p>In any event, this control shall be considered to exist when the conditions set out in Article 4 of the Securities Market Act 24/1988 of 28 July, http://www.cnmv.es/index.htm occur.</p>
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Yes. Control, in the sense mentioned above, is a substantive matter, and it can be constituted with small stockholdings acquisitions. If the minority stockholder has the possibility of exercise decisive influence on the decision making of the company, and can block or make strategic decisions such as</p>

	approval of undertaking's budget, hiring executives, deciding investment policy...), it could be assumed that the minority partner could exercise control over a company. There are not specific levels established by the Act.
D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?	Yes, as established in article 7.1., the Spanish Merger Regulation covers, on one hand, the merger of two or more previously independent undertakings, and, on the other hand, the creation of a joint venture and, in general, the acquisition of the joint control of one or more undertakings, when they perform on a lasting basis the functions of an autonomous economic entity", So, the Spanish Competition Act does not distinguished JV according of the type of the JV and covers every fusion or full function JVs.

4. Thresholds for notification

A. What are the general thresholds for notification?	Pursuant to Art 8 of Act 15/2007, the control procedure set out in this Act shall apply to economic concentrations when at least one of the two following circumstances occurs: a) That as a consequence of the concentration, a share equal or higher than 30 percent of the relevant product or service market at a national level or in a geographical market defined within the same, is acquired or increased. b) That the total turnover in Spain for all the participants in the last accounting year exceeds the amount of 240 million euros, providing that at least two of the participants achieve an individual turnover in Spain of more than 60 million euros.
B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?	The merger notification thresholds apply to the entity/s or assets that is being acquired and to the company or group of companies acquiring. Calculation of the thresholds for notification are developed in Articles 4 (market share) and 5 (turnover) of the Royal Decree 261/2008.
C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.	No. the thresholds are established by Law, so any adjustment should be carried out by Law. These provisions do not impede actualization of the parties' turnover of market shares at the notification.

<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>For the calculation of the thresholds it should be noted what article 5 of the Royal Decree 261/2008 establishes: “1. For the purposes provided in article 8.1.b) of Act 15/2007 of 3 July 2007, the overall turnover in Spain will comprise the figure generated by the sale of goods and provision of services as part of the ordinary business of the companies that participate in the concentration operation in the last accounting year, after deducting the amount of rebates and other reductions of sales, Value Added Tax and other taxes directly related to the turnover. Without prejudice to the above, any acquisition or assignment of control of all or part of the companies after the closing date of the audited financial statements of the participating companies will be reflected in the turnover used for purposes of notifying the concentration operation.” Additionally some special rules apply to specific economic sectors (see article 5 of the Spanish Merger Regulation). These provisions imply that parties’ market shares in a concentration (value/units) should be actualized in the notification, when it is relevant to the concentration, as established in article 56.7 of the Spanish Merger Regulation (“The notifying party will inform the National Competition Commission immediately of any significant modification that could affect the content of the concentration notification form during the course of the proceeding”).</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>In deciding if notification is required, the Directorate for Investigation should be given a description of the concentration and of the parties involved, the turnover of the participant companies in the last financial year, and all information needed to determine the relevant markets and the participant companies’ shares in those markets (see article 4 and Sections 5 and 6 of Annexes II and III of the Royal Decree 261/2008) For the calculation of the turnover, the Merger Regulation establishes that the overall turnover in Spain will comprise the figure generated by the sale of goods and provision of services as part of the ordinary business of the companies that participate in the concentration operation in the last accounting year, after deducting the amount of rebates and other reductions of sales, Value Added Tax and other taxes directly related to the turnover. Without prejudice to the above, any acquisition or assignment of control of all or part of the companies after the closing date of the audited financial statements of the participating companies will be reflected in the turnover used for purposes of notifying the concentration operation (Art 5 of the Defence of Competition Regulation) Besides this general rule, the same Article 5 establishes specific guidelines for undertakings that operate in certain economic sectors, like banking, financial investments or insurance. Also, to face the difficult task of allocating geographically the transactions when calculating the turnover in the service market (e.g. on-line sales...) the Competition Acts provides with specific rules for these sectors.</p>
<p>F. Describe methodology for</p>	<p>The average exchange rate for the year.</p>

<p>calculating exchange rates.</p>	<p>http://www.bde.es/tipos/tiposc.htm</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p><u>The thresholds apply to sales/assets within the jurisdiction:</u></p> <p><u>Market share:</u> at a national level or in a geographical market defined within the same (article 8.1 a) Spanish Competition Act)</p> <p><u>Turnover:</u> the global turnover in Spain and the individual turnover in Spain (article 8.1 b) of the Spanish Competition Act)</p>
<p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>Yes, but only in the market share threshold (article 4.1. of the Merger Regulation "For the purposes provided for in articles 8.1.a) and 56.1 of Act 15/2007 of 3 July 2007, in all cases the market share resulting from a concentration operation in a relevant market will be understood to be the sum of the market shares in that market of the companies participating in the operation").</p>
<p>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?</p>	<p>Turnover, comprises products sold and services provided to undertakings or consumers, so the general rule is that turnover/market share should be attributed to the place where the customer is located.</p> <p>Nevertheless special rules are applied for the provision of certain services (e.g. airlines, and see article 5 Royal Decree 261/2008 for the calculation of the turnover).</p>
<p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	<p>As said before, it depends of the characteristics of the affected markets. The general rule is location of costumer, although it could be others in order to achieve the effects of the concentration in the market affected.</p>
<p>K. If market share tests are used, are there guidelines for calculating market shares?</p>	<p>Prior to calculating market shares, it is necessary to define the relevant product or service market (see Sections 5 and 6 of Annexes II and III of the Royal Decree 261/2008.)</p> <p>Then, pursuant to Article 4 of the Defense of Competition Regulation, for the purposes of merger control, in all cases, the market share resulting from a concentration operation in a relevant market will be understood to be the sum of the market shares in that market of the companies participating in the operation.</p> <p>For the purposes of merger control in participated companies</p>

	<p>(joint ventures), in all cases it shall be understood that:</p> <p>a) There is an acquisition of share when, even if there is prior control by the purchasers, the economic concentration has the effect of a change in the characteristics of that control, be it joint or exclusive.</p> <p>b) Similarly, there is an acquisition of share when a joint venture is created and the parent companies contribute all or part of their business to the newly created entity.</p>
<p>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)?</p>	<p>Yes, there are. (See answer 4E)</p> <p>Article 5.7 of the Spanish Merger Regulation establishes: “Without prejudice to the above, the following specific rules shall be observed:</p> <p>a) In the event that a participant in the concentration operation is an investment fund, its turnover will be determined as the sum of the turnover of its management companies and the turnover of the companies controlled by the investment funds managed by those management companies.</p> <p>b) In the case of credit institutions and other financial institutions, the turnover will be replaced by the sum of the following revenue items received by the institution in Spain, as defined in Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, after deducting, if applicable, Value Added Tax and other taxes directly relating to those revenues:</p> <ol style="list-style-type: none"> 1. Interest and similar income. 2. Income from securities, whether shares, units and other variable-yield securities, including shares in group companies. 3. Commissions received. 4. Net profit from financial operations. 5. Other operating income. <p>The turnover of credit institutions and other financial institutions obtained in Spain will be that of the institution's branches or divisions located in Spain.</p> <p>c) In the case of insurers, the turnover will be replaced by the value of the gross premiums written that include all amounts received and receivable in respect of insurance contracts established by those companies or for their account, including the premiums assigned to reinsurers and after deducting the taxes and assessments applied on the basis of the different premiums or of the total volume thereof, taking into account the gross premiums paid by residents in Spain.</p> <p>The calculation method refers to the activities proper to the insurance or lending business, respectively, without prejudice to there being included in the aggregate turnover the part that corresponds to the companies controlled by the participants who carry on other businesses, which will be calculated according to the general rules.</p>
<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>No.</p>

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?	The agency can only review the mergers that fulfill one of the legal thresholds.

5. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	Yes it is. Economic concentrations that fall under the scope of application of the control procedure shall be notified to the National Competition Commission prior to their implementation. (Art 9.1 of Competition Act)
B. Is notification mandatory post-merger?	No, but in the event that the National Competition Commission has not been notified of a concentration subject to control pursuant to the provisions of this Act, the CNC, <i>ex officio</i> , shall require the obliged parties to notify so that they make the corresponding notification within a period no longer than twenty days as of the reception of the requirement. After the notification period has elapsed without the notification having been made, the Directorate of Investigation may initiate <i>ex officio</i> concentration control proceedings, notwithstanding the application of the penalties and coercive fines set out in Articles 61 to 70. (See Art.9.5 of Competition Act)
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	The only previous and voluntary consultation formally established in the Competition Act is the one aimed to check whether a given operation is a concentration and whether a concentration exceeds the minimum thresholds for compulsory notification, and may be made by any of the parties. The consultation is confidential. (See Art 55.2 of Competition Act, and for consultation procedure Art 59 of Defence of Competition Regulation)
D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an	According to Art 54.1 of Defense of Competition Regulation, the notification may be done as from the time the concentration proposal or agreement exists. A proposal or agreement is considered to exist:

<p>agreement considered definitive?)?</p>	<ul style="list-style-type: none"> • In cases involving acquisition of control, a concentration proposal or agreement exists as from the time the participants consent to carry out the transaction that gives rise to the concentration, and determine the manner, time frame and conditions in which it will be executed. <p>If the participants are companies, the agreement will be considered to exist when it has been approved by the management body, even though legal provisions or the articles of association require subsequent adoption or ratification of another corporate body.</p> <ul style="list-style-type: none"> • In cases involving a public tender offer, provided there is a resolution of the Board of Directors of the offerors and their intention to present the offer has been publicly announced. • In cases of corporate mergers, a concentration proposal or agreement will be considered to exist when the relevant company law provisions are fulfilled.
<p>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?</p>	<p>In Spain there is not a legal period established for notification (the only rule is to notified the transaction prior to its execution),</p> <p>In fact, article 54 of the Royal Decree 261/2008 establishes that 2. The existence of clauses which in any way condition the future formalisation or execution of those agreements does not release the entity from the notification duty”</p> <p>In the case of public tender offer, with a maximum of a five day term from the authorisation request to the regulator (see article 9.3 of the Spanish Competition Act).</p>
<p>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>Yes, in the terms envisaged by article 37.4 of the Spanish Competition Act and article 56.8 of the Royal Decree 261/2008.</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</p>	<p>When an operation does not raise competition concerns, an abbreviated notification form may be submitted, which is established in Annexe III of Defence of Competition Regulation.</p> <p>According to Article 56 of Competition Act, this abbreviated form of notification may be used, among others, in the following cases:</p> <p>a) When no horizontal or vertical overlapping exists between the</p>
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<p>certificates, discretion to waive certain responses, etc.).</p>	<p>parties of the operation because neither of them carries out economic activities in the same referred geographical and product market or in upstream or downstream related markets within the production and trading process.</p> <p>b) When the participation by the parties in the markets, due to their scant importance, is not capable of affecting significantly competition, in accordance with the provisions established in regulations (developed in article 57 of the Royal Decree 261/2008).</p> <p>c) When a party acquires the exclusive control of one or more undertakings or parts of an undertaking over which it already has joint control.</p> <p>d) When, given that it is a joint venture, it does not carry out nor does it plan to carry out activities in Spain or when these activities are marginal.</p>
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7. Documents to be submitted

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</p>	<p>The Defence of Competition Regulation sets out in annexe II, the ordinary notification form, and in annexe III, the short form.</p> <p>The notification form and its attached documents should be presented in a hard copy (paper) and in electronic format.</p> <p>- This ordinary notification form is composed of:</p> <p>a) A cover indicating the identity of the notifying party (or of its representative), the identity of the other participants, the nature of the operation, an executive summary of the operation, the economic sector, the request for confidential treatment and, if applicable, for lifting of the suspension of execution of the operation, as well as the place, date and signatures of the notifying parties.</p> <p>b) The information required in sections 1 to 8 should be provided in order on separate sheets, and it can be summarized as follow:</p> <p>1) Completed information of the parties which notify and/or are involved in the transaction. 2) Structure of the operation (enclosing binding information about its nature, characteristics, dimension...) 3) Ancillary restrictions to competition 4) Previous ownership and control 5) Market definitions 6) Information on relevant markets: parties' market share, competitor's share, supply structure, demand structure, distribution channels, cost structure, potential competition, entry barriers, investments in research and development, etc. 7) General questions: description of how the operation can improved efficiency, other benefits. 8) Attached documents: Management reports and annual financial statements for the last financial year; the most recent version of the documents relating to the agreement; analyses, reports or studies considered of relevance; any relevant agreement among the parties; if the operation involves public offers, include the offer prospectus that must be filed with the Spanish Securities Market Commission (<i>Comisión Nacional del Mercado de Valores</i>) or its equivalent in other countries; receipt of payment of the fee, and</p>
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	<p>any other relevant documents.</p> <p>- The short notification form is used in cases with less competition concerns, and the required information is greatly simplified, especially regarding the relevant market.(See question 6)</p>
B. Are there any document legalization requirements (e.g., notarization or apostille)?	<p>Since the new Form Co enter into force, the notification through a representative must be accompanied by the document evidencing the authority to act as representative or certified photocopy with sworn translation.</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>Only in case the required information is provided in other language than Spanish. (See answer 8 B).</p>

8. Translation

A. In what language(s) can the notification forms be submitted?	<p>Spanish</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>The notifying party should provide all the information and documents requested in the form, as well as additional documents considered useful and necessary (such as the merger agreement) in Spanish.</p> <p>If the information is drawn up in other language than Spanish, it is necessary to present a State Power of attorney or certified photocopy thereof with a sworn translation (see Section 7 of Annexes II and III of Royal Decree 261/2008)</p>

9. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>According to Article 36.2 of the Competition Act, the maximum period for issuing and notifying the resolutions of the Council of the National Competition Commission in concentration control proceedings shall be:</p> <ul style="list-style-type: none">a) of one month in the first phase, counting from the reception in due form of the notification by the National Competition Commission, andb) of two months in the second phase, from the date on which the Council of the National Competition Commission decides of the opening of the second phase. <p>These review periods don't include the any contacts previous to notification.</p> <p>Finally, the Minister of Finance has 15 days - following the CNC's resolution- for the referral of the file to the Council of Ministers, which has one month to make the final Resolution.</p> <p>Therefore, the authorization process can last from one month to four and a half months, depending on the operation being approved on the first phase, or having to wait for a decision from the Council of Ministers.</p> <p>There should be taken into account that article 37 of the Spanish Competition Act develops cases of extension of periods and suspension of their computation.</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>Yes, there are. The Spanish Merger Regulation establishes in article 9 of the Spanish Competition Act as mentioned before, that economic concentrations that fall under the scope of application of this Act, need of authorisation prior execution, but in the particular case of public takeover bids, this rule shall not prevent from making a public takeover bid for shares admitted to negotiation in a stock market authorised by the National securities Commission which is an economic concentration subject to control in accordance with the provisions of this Act, providing that:</p> <ul style="list-style-type: none">a) the concentration is notified to the National Competition Commission within the period of five days as of the presentation of the application for authorisation of the bid to the National Securities Commission, if it has not been notified beforehand, andb) the buyer does not exercise the voting rights inherent to the affected equities or exercise them only to safeguard the integral value of the investment based on a dispensation awarded by the National Competition Commission. <p>Additionally, article 54 of the Royal Decree 261/2008, establishes in relation to the proposal or agreement for a concentration, that it exists "In cases involving a public tender offer, provided there is a resolution of the Board of Directors of the offerors and their intention to present the offer has been publicly announced"</p>
<p>C. What are the procedures for an extension of the</p>	<p><u>Suspension</u> The course of the maximum periods legally foreseen to resolve</p>

<p>(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>proceedings may be suspended, by means of motivated resolution, only in the cases mentioned in Article 37.1 of Competition Act: rectification of deficiencies, request of additional documentation, need of cooperation/coordination with other National Competition Authorities or the EU, Council's decision of complementary actions or evidence, where a change occurs in the legal assessment of the matter submitted to the Council and lodging of an administrative or judicial appeal.</p> <p>Also, the maximum period for resolving proceedings must be suspended in the cases provided for in Art 37.2, which include, among others, the event of the European Commission instituting proceedings for the application of Articles 81 and 82 of the Treaty of the European Community until the European Commission adopts the corresponding Decision; when the report of the sectorial regulators is requested (this period cannot exceed 3 months) or when it is requested a report from the sectorial regulator.</p> <p>Extension of period</p> <p>In case of submission of commitments, the maximum period to resolve and notify the proceedings shall be extended by 10 days in the first phase and 15 days in the second phase.</p> <p>Exceptionally, the extension of the maximum period of resolution may be decided by means of clear motivation of the concurrent circumstances. In the event of deciding the extension of the maximum period, this may not be more than that established for the processing of proceedings.</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>There is not an specific procedure for non-problematic transactions, but, as it is mentioned in answer 6, when an operation doesn't raise competition concerns, an abbreviated notification form may be submitted, which is established in Annexe III of Defence of Competition Regulation.</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),</p>	<p>Pursuant to Art 9 of Competition Act, an economic concentration cannot be executed before the Administration expressly or tacitly declares its approval of the transaction, with the exception of the lifting of the suspension.</p> <p>The Council of the National Competition Commission may decide to lift the suspension of the concentration referred to above, on the proposal of the Directorate of Investigation and prior motivated request.</p> <p>The resolution shall be issued prior appraisal, among other factors, of the damage that the suspension of the execution would cause to undertakings participating in the concentration and that executing the operation would cause to free competition.</p> <p>Lifting the suspension of the execution may be subject to the fulfilment of conditions and obligations that guarantee the efficacy of the decision that is finally adopted.</p>
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<p>during any initial review period and/or further review period.</p>	<p>As mentioned in Section 9B a special regulation applies in case of public takeover bids.</p> <p>After the Council has adopted a resolution, the concentration may be authorised subordinate to the fulfilment of certain commitments proposed by the notifying parties or conditions. Only in this case, the Competition Authority may monitor the conditions/commitments imposed to execute the concentration..</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>According to the terms of article 58 of the Defence of Competition Regulation, the notifying party may request at any time during the proceeding, including when presenting the confidential draft notification form, that the total or partial suspension of execution of the concentration be lifted.</p> <p>The notifying party will request the lifting of the total or partial suspension of execution by submitting a reasoned brief setting out the harm that the suspension would cause to the concentration and, if applicable, submit to the Directorate for Investigation commitments aimed at eliminating the possible negative effects execution of the concentration could have on effective competition.</p> <p>As mentioned in answer 10A, the lifting of the suspension of execution will be decided by the Council of the National Competition Commission at the proposal of the Directorate for Investigation. The resolution shall be issued prior appraisal, among other factors, of the damage that the suspension of the execution would cause to undertakings participating in the concentration and that executing the operation would cause to free competition..</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</p>	<p>No. See 10A and 10 B.</p> <p>The only mean that the notifying party has to permit consummation of the concentration outside Spain is the request of derogation from the suspension of execution of the concentration.</p>

obligations, commitment to hold separate the local business operations, escrow agents.)	
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Yes, because if no decision has been issued within the statutory period, it is considered that exist a tacit authorization by the Administration, except in some specific cases provided for in articles 9.5, 55.5 and 57.2 of the Spanish Competition Act.
E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.	See answer 9.C for the extension of the resolution period. Additionally, in case of monitoring of compliance with obligations and resolutions of the Council of the National Competition Commission, see article 42 of the Royal Decree 261/2008.
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.	As said before, it doesn't exist specific provisions for an early termination. The only provisions that could be assimilated would be the request of the suspension of execution of a concentration (articles 9.6 of Act 15/2007 and 58 of the Royal Decree 261/2008) and the submission of commitments (articles 59 of the Spanish Competition Act and 69 of the Royal Decree)
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).	It doesn't exist that provision in the Spanish Regulation. In fact, article 62.3 d) of the Act, refers to it as a serious infringement of the Spanish Competition regulation. Serious infringements can be sanctioned with a fine of up to 5% of the total turnover of the infringing undertaking in the business year immediately preceding to that of the imposition of the fine.

11. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does	Pursuant to Art 9.4 of Competition Act, the notification must be submitted: a) Jointly by the parties participating in a merger, in the creation of a joint venture or in the acquisition of the joint control of the
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<p>each party have to make its own filing?</p>	<p>whole or part of one or more undertakings. b) Individually by the party that acquires the exclusive control of the whole or part of one or more undertakings.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No, the only special rules in public tenders where mentioned in Section 9.</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>The Defense of Competition Regulation, in its Art 55, only requires that the representative be duly accredited. If the representative's capacity is not duly evidenced, the Directorate for Investigation may issue a resolution not to admit the notification for consideration.</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>The Law requires the identification of the name, surname and charge in the undertaking for the person that grants the representation, and a translation of the document in case the representation has not been granted in Spanish. There is no need for a notarized power of attorney. But in case of a foreign notarized power of attorney, apostilled should be required..</p>

12. Filing fees

<p>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)?</p>	<p>Yes there are. Rate management shall be carried out by the National Competition Commission under the terms established by regulations.</p> <p>- For concentrations notified through the ordinary form, the rate quota shall be:</p> <p>a) 3,000 euros when the global turnover in Spain for all the participants in the concentration operation is equal to or less than 240,000,000 euros.</p> <p>b) 6,000 euros when the global turnover in Spain of the participating undertakings is in excess of 240,000,000 euros and equal to or less than 480,000,000 euros.</p> <p>c) 12,000 euros when the global turnover in Spain of the participating undertakings is in excess of 480,000,000 euros and equal to or less than 3,000,000,000 euros.</p> <p>d) A fixed sum of 24,000 euros when the turnover in Spain for all the participants is in excess of 3,000,000,000 euros, plus an additional 6,000 euros for every 3,000,000,000 euros in which the aforementioned turnover exceeds the above sum, up to a maximum limit of 60,000 euros.</p>
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	<p>Calculation of aggregate turnover in Spain of the participants will be done on the basis of the last accounting year.</p> <p>- For concentrations notified through the abbreviated form a reduced rate of 1,500 euros shall apply.</p>
B. Who is responsible for payment?	<p>Persons who are obliged to notify in accordance with Article 9 of this Act shall be the taxpayers of the rate.</p> <p>The effective payment can be carrying out through representative.</p>
C. When is payment required?	<p>The rate shall be accrued when the taxpayer submits the notification.</p> <p>If, at the time of the notification, self settlement without income is submitted, its levying shall be by the attachment procedure, without prejudice to the National Competition Commission handling the corresponding proceedings.</p>
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	<p>The payment will be made in the deposit institutions authorised to act as government revenue collection collaborating entities.</p> <p>In the alternative, the fee may be paid by telematic means.</p> <p>It exists also a restrictive account to make the payment from outside Spain.</p>

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?	<p>The National Competition Commission shall make public the fact of initiating concentration control, in particular, the notification presentation date, the names of the participant companies, the economic sector affected and a summary description of the operation.</p> <p>The CNC shall also make public the resolutions that bring the first and second phase to an end in concentration control proceedings, as well as, the reports that it drafts once the resolutions corresponding to first and second phase have been adopted by the Council of the National Competition Commission</p> <p>The resolutions, decisions and reports shall be made public by IT and telematic media once the interested parties have been notified, after resolving, as the case may be, on the confidential aspects of their content and prior dissociation of the personal Data.</p>
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the	<p>Article 67 of the Royal Decree 261/2008 establishes that, according to what is provided in article 58.2 of Act 15/2007 of 3 July 2007, after the statement of objections has been notified to the interested parties, the latter may ask the Directorate for</p>

<p>right of access be exercised?</p>	<p>Investigation to see the case file, after being cleared of confidential aspects and, if applicable, submit allegations within ten days (it should be appointed that temporary exceptions to this strict rule may be apply by the Spanish Competition Authority in order to grant rights of defence of the parties and interested parties in a concentration).</p> <p>Once the procedure is finished any citizen may have access to the non confidential file, according to Spanish general rules of public administration.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>Particulars</p> <p>Additionally to answers 13A and 13B, once the second phase of the procedure has been initiated, the Directorate of Investigation shall elaborate a succinct note on the concentration that shall be posted on the National Competition Commission website so that any affected person (natural or legal) may submit information within a ten day period.</p> <p>Government agencies</p> <p>Article 63 of the Royal Decree 261/2008 establishes that For the purposes of article 17.2.c) of Act 15/2007 of 3 July 2007, the Directorate for Investigation will issue a request for a report from the sector regulator, which will be accompanied by a copy of the notification presented.</p> <p>Article 65.3 of the Royal Decree settles that “When the concentration has a significant effect in the territory of an Autonomous Community, the Directorate for Investigation will notify the respective office at the Autonomous Community of the succinct note, together with a copy of the notification presented, as well as the report prepared by the Directorate for Investigation, in order for that office to issue a mandatory, non-binding report within twenty days. This request for the mandatory report will be notified to the interested parties, for the purposes of article 37.1 of Act 15/2007 of 3 July 2007”</p> <p>Additionally, the Spanish general rules of public administration rules the cooperation between the different governmental agencies (articles 4 and 18 of the Act 30/1992).</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>Yes there are. Even though the initiation of the concentration control proceeding is public, the actions carried out by the Directorate for Investigation in relation to the notification will be considered confidential until the Council of the National Competition Commission has issued its resolution both in the first phase and the second phase.</p> <p>In fact, article 42 of the Competition Act establishes that at any time during the procedure, it may be ordered, ex officio or at the request of the parties, that the data or documents considered confidential are kept secret, using them to create a separate proceeding, without prejudice to Article 18 of this Act.</p> <p>Additionally, article 20 of the Royal Decree 261/2008 provides that any person who when submitting documents to the National Competition Commission requests confidential treatment of the data or information, must do so on a reasoned basis before the competent body within the framework of the proceeding in question, and must also submit a non-confidential version of those documents.</p>

	<p>Once the resolution of the Council of the National Competition Commission has been entered in first or second phase, the resolution and the report will be notified to the notifying party so that the latter, within five days, can submit a reasoned request to the Directorate for Investigation to declare the confidentiality of the content it deems confidential. On receiving the request for declaration of confidentiality, the Directorate for Investigation will have ten days within which to resolve on the request.</p> <p>If the notifying party has not requested the declaration of confidentiality within the aforesaid time limit of five days, the relevant resolution and report will be deemed not to contain confidential information and may be made public in their entirety</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>Article 18 of the Spanish Competition Act rules the collaboration with National Competition Authorities and the European Commission in the following terms “For the purpose of applying Articles 81 and 82 of the Treaty of the European Community, the National Competition Commission may exchange with the European Commission and the National Competition Authorities of other Member States and use in evidence any matter of fact or of law, including confidential information, under the terms of Community law”</p> <p>Additionally, Spain provides information about mergers through the ECA.</p>
<p>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</p>	<p>Yes it can.</p> <p>The National Competition Commission may exchange with the European Commission and the National Competition Authorities of other Member States and use in evidence any matter of fact or of law, including confidential information, under the terms of Community law (see answers 13 D and E).</p>

14. Transparency

<p>A. Does the agency publish an annual report? Please provide the web address if available.</p>	<p>Yes, it does.</p> <p>http://www.cncompetencia.es/Default.aspx?TabId=72</p>
<p>B. Does the agency publish press releases related to merger policy or investigations?</p>	<p>Yes, it does</p> <p>http://www.cncompetencia.es/Inicio/ConocerlaCNC/GabinetePrensa/tabid/75/Default.aspx</p>
<p>C. Does the agency publish</p>	<p>Yes, it does. These decisions are published at the press releases</p>

decisions on why it cleared / blocked a transaction?	website. Additionally every Council resolution and the Directorate of Investigation non confidential report and resolution proposal are published in the website.
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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?	<p>-Competition Act defines as minor infringements: (fine of up to 1% of the total turnover, or from 100.000 to 500.000€) the following:</p> <p>a) Having submitted to the National Competition Commission the notification of the economic concentration outside the legal time frame.</p> <p>b) Not having notified a concentration required <i>ex officio</i> by the CNC.</p> <p>- It is considered a serious infringement, the execution of a concentration subject to control in accordance with the provisions of Competition Act before it is notified to the National Competition Commission or before an express or tacit resolution authorising it has been issued and has become executive, without the lifting of the suspension having been decided. (Fine of up to 5% of the total turnover, or from 500.001€ to 10 mill)</p> <p>- It is classified as a very serious infringement, not complying with or contravening a resolution, decision or commitment adopted in application of this Act, regarding concentration control. (Fine of up to 10% of the total turnover or 10 mill €)</p> <p>Irrespective of penalty fines and notwithstanding the adoption of other measures of compulsory execution permitted by law, the National Competition Commission may impose coercive fines up to 12,000 euros a day with the aim of obliging them to undo a concentration operation that has been declared prohibited.</p>
B. Which party/ies are potentially liable?	The parties that were legally obliged to notify the transaction.
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	The CNC is authorized to impose the sanctions.

this procedure can take.

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.

- **Administrative appeal** before the Council of the CNC. Only against resolutions and acts issued by the **Directorate of Investigation** that lead to defencelessness or irreparable damage to rights or legitimate interests). **Timetable:** 10 days.

- **Judicial Appeals** before the *Audiencia Nacional* (National Court), and against resolutions and acts issued by the **Chairman and by the Council** of the CNC. **Timetable:** 2 months.

17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?

Pursuant Article 17.2c “The National Competition Commission shall request the sectorial regulators to issue the corresponding non-binding report within the framework of proceedings of concentration control between undertakings that carry out activities in the sector of its competence”.

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, there isn't.

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?

It doesn't exist any specific provision in the Spanish Merger Regulation, but those circumstances are regulated in the general administrative legislation.