

## ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

### Merger Working Group

### Estonian Competition Authority

02.03.2021

**IMPORTANT NOTE:** This template is intended to provide background on ICN jurisdiction's merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]<sup>1</sup>

<b>1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]</b>
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#### Statutory Laws

<b>A. Notification provisions</b>	The Competition Act, Articles 25 and 26, <a href="https://www.riigiteataja.ee/en/eli/510042019001/consolide">https://www.riigiteataja.ee/en/eli/510042019001/consolide</a>
<b>B. Substantive merger review Provisions</b>	The Competition Act, Articles 22 and 27, <a href="https://www.riigiteataja.ee/en/eli/510042019001/consolide">https://www.riigiteataja.ee/en/eli/510042019001/consolide</a>
<b>C. Implementing regulations</b>	
<b>D. Notification forms or information requirements</b>	"Guidelines for Submission of Notices of Concentration", Regulation No. 69 of the Minister of Economic Affairs and Communications of 17 July 2006. <a href="https://www.riigiteataja.ee/en/eli/522042016005/consolide">https://www.riigiteataja.ee/en/eli/522042016005/consolide</a>

<sup>1</sup> Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

### Interpretative Guidelines and Notices

<b>E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]</b>	Guidelines for Calculation of Turnover of Parties of Concentration, Regulation No. 68 of the Minister of Economic Affairs and Communications of 17 July 2006. <a href="https://www.riigiteataja.ee/en/eli/522042016004/consolide">https://www.riigiteataja.ee/en/eli/522042016004/consolide</a>
<b>F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]</b>	
<b>G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]</b>	No
<b>H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process</b>	

<b>2. Agency (or Agencies) responsible for merger enforcement.</b>	
<b>A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.</b>	Estonian Competition Authority
<b>B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]</b>	Address: Tatari 39, Tallinn 10134, ESTONIA Telephone: + 372 667 2400 E-mail: <a href="mailto:info@konkurentsiamet.ee">info@konkurentsiamet.ee</a> Website: <a href="http://www.konkurentsiamet.ee">www.konkurentsiamet.ee</a> (available in Estonian and English)
<b>C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]</b>	Yes, Ms Külliki Lugenberg, Head of Merger Control Department + 372 667 2483, <a href="mailto:kylliki.lugenberg@konkurentsiamet.ee">kylliki.lugenberg@konkurentsiamet.ee</a>

	Mr Veiko Ilves, Deputy Head of Merger Control Department +372 667 2481, <a href="mailto:veiko.ilves@konkurentsiamet.ee">veiko.ilves@konkurentsiamet.ee</a>
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<b>3. Covered transactions</b>	
<p><b>A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]</b></p>	<p>The covered transactions are mergers and acquisitions of control of the whole or part of another undertaking. Potentially covered transactions are listed in Chapter 5, Article 19 of the Competition Act and include</p> <ol style="list-style-type: none"> <li>1) previously independent undertakings merge or parts of undertakings are being merged;</li> <li>2) an undertaking acquires control of the whole or a part of another undertaking, or of several undertakings or parts thereof;</li> <li>3) undertakings jointly acquire control of the whole or a part of another undertaking, or of several undertakings or parts thereof;</li> <li>4) a natural person already controlling at least one undertaking acquires control of the whole or a part of another undertakings, or of several undertakings or parts thereof;</li> <li>5) several natural persons already controlling at least one undertaking jointly acquire control of the whole or a part of another undertaking, or of several undertakings or parts thereof;</li> <li>6) the joint creation, by persons specified in clauses 3) and 5), of a new undertaking performing on a lasting and independent basis.</li> </ol> <p>The term "undertaking" is defined in Article 2 of the Act.</p>
<p><b>B. What is the geographic scope of transactions covered?</b></p>	
<p><b>C. If change of control is a determining factor, how is control defined and interpreted in practice?</b></p>	<p>Control is defined in Article 2 (4) of the Act as the opportunity for one undertaking or several undertakings jointly or for one natural person or several natural persons jointly, by purchasing shares or on the basis of a contract or articles of association or by any</p>

	<p>other means, to exercise direct or indirect influence on another undertaking which may consist of a right to:</p> <ol style="list-style-type: none"> <li>1) exercise significant influence on the composition, voting or decision-making of the management bodies of the other undertaking;</li> <li>2) use or dispose of all or a significant proportion of the assets of the other undertaking.</li> </ol>
<p><b>D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</b></p>	<p>Yes, if control is obtained. See the definition of control on the response to 3.C above.</p>
<p><b>4. Thresholds for notification</b></p>	
<p><b>A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]</b></p>	<p>The Competition Act, Article 21 (1):  A concentration shall be subject to control by the Competition Authority if, during the previous financial year, the aggregate turnover in Estonia of the parties to the concentration exceeded 6,000,000 euros and the aggregate turnover in Estonia of each of at least two parties to the concentration exceeded 2,000,000 euros.</p> <p>The Competition Act, Article 24 (7):  If, within the preceding two years one and the same undertaking or an undertaking belonging to the same group has acquired control of parts of an undertaking or undertakings which operate within one and the same sector of economy in Estonia, the turnover of the undertaking over which control is acquired shall include the</p>

	turnover of the undertakings over which control has been acquired within the two years preceding concentration.
<b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b>	<p>Competition Act Article 24 (1):</p> <p>The turnover of a party to a concentration specified in Article 21(1) of Competition Act shall be calculated by adding up the turnovers of the following undertakings:</p> <ol style="list-style-type: none"> <li>1) the party to the concentration;</li> <li>2) the undertaking or undertakings controlled by the party to the concentration;</li> <li>3) the undertaking or undertakings controlling the party to the concentration;</li> <li>4) the undertaking or undertakings controlled by an undertaking specified in clause 3) of this subsection;</li> <li>5) the undertaking or undertakings jointly controlled by undertakings specified in clause 1)–4) of this subsection.</li> </ol>
<b>C. 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 in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</b>	<p>Turnover in Estonia by at least two merging parties (including import sales to Estonia).</p> <p>The location of customer is relevant.</p>
<b>D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</b>	No
<b>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</b>	<p>The thresholds relate to most recent fiscal year. Competition Act, Article 21(1).</p> <p>No sectors are excluded from notification requirements.</p>
<b>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types</b>	The turnover of a credit or financial institution is deemed to comprise the total amount of the following income items after

<p><b>of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</b></p>	<p>deduction of value added tax and income tax:</p> <ol style="list-style-type: none"> <li>1) interest income;</li> <li>2) income from financial investments;</li> <li>3) income from service charges;</li> <li>4) income from financial operations;</li> <li>5) other operating income.</li> </ol> <p>Competition Act, Article 23 (3).</p> <p>The turnover of a credit or financial institution in Estonia consists of the income earned by a credit or financial institution established in Estonia, or an Estonian branch of a foreign credit or financial institution. Competition Act, Article 23(4).</p> <p>The turnover of an insurer is deemed to comprise the value of the gross insurance premiums received and receivable in respect of insurance contracts issued by or on behalf of the insurer, including outgoing reinsurance premiums. Competition Act, Article 23(5).</p> <p>In all these cases the whole group must be considered and if there are undertakings under mentioned institutions, their turnovers must be added in case of direct or indirect control of them.</p> <p>If a concentration takes place by way of creating a joint venture, the turnovers of parties to the concentration which control the joint venture shall be taken into account.</p>
<p><b>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]</b></p>	<p>There are no special rules or exceptions regarding foreign-to-foreign transactions.</p>

<p><b>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]</b></p>	<p>N/A</p>
<p><b>I. Are current notification criteria catching relevant transactions related to digital markets?</b></p>	

**Calculation Guidance and related issues**

<p><b>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</b></p> <ul style="list-style-type: none"> <li><b>i) the value of the transaction;</b></li> <li><b>ii) the relevant sales or turnover;</b></li> <li><b>iii) the relevant assets;</b></li> <li><b>iv) market shares;</b></li> <li><b>v) other (please describe).</b></li> </ul>	<p>The thresholds are based on relevant turnover in Estonia.  In general, see "Guidelines for Calculation of Turnover of Parties to Concentrations", Regulation of the Minister of Economic Affairs and Communications.  The turnover of a party to a concentration is comprised of the returns on the goods sold (turnover) by the party during the financial year preceding the concentration.  Competition Act, Article 23.  The turnover of a party to a concentration includes to goods sold to buyers within the territory of Estonia.  If control over a part of an undertaking is acquired in a manner provided for in the Competition Act, Article 19 (1), 2)–5), the turnover of the undertaking shall be calculated by taking into account the turnover of only such part of the undertaking which is subject of the transaction. Competition Act, Article 24(3).</p>
<p><b>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</b></p>	<p>All the funds under the same manager are included.</p>

<p><b>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?</b></p>	<p>Yes.</p>
<p><b>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</b></p>	
<p><b>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</b></p>	<p>The turnover of an undertaking given in a foreign currency shall be converted into Euros using the average daily exchange rate of the currency as quoted by the Bank of Estonia during the reporting period. Guidelines for Calculation of Turnover.</p>
<p><b>5. Pre-notification</b></p>	
<p><b>A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].</b></p>	<p>Pre-notification is voluntary, but pre-notification consultations are recommended in case of more complicated transactions.</p>
<p><b>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</b></p>	<p>No specific requirements.</p>
<p><b>6. Notification requirements and timing of notification</b></p>	
<p><b>A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]</b></p>	<p>Yes, the notification is mandatory pre-merger.</p>
<p><b>B. If parties can make a voluntary merger filing when may they do so?</b></p>	<p>N/A</p>
<p></p>	

<p><b>C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)</b></p>	<p>There has to be a clear understanding that the parties are willing to be bind by the agreement. The Competition Authority may accept a notice of concentration before the transaction/agreement has been signed, but the permission to concentrate shall in this case be given after the parties to the concentration have signed the agreement.</p>
<p><b>D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</b></p>	<p>Competition Act, Article 25(1): Notification must be made before the enforcement of the concentration, in adherence to the terms provided in Articles 26 and 27, and after:</p> <ol style="list-style-type: none"> <li>1) entry into a merger agreement or performance of a transaction or other act for acquisition of parts of the undertaking;</li> <li>2) performance of a transaction or other act for acquisition of control;</li> <li>3) performance of a transaction or other act for acquisition of joint control;</li> <li>4) announcement of a public bid for securities.</li> </ol>
<p><b>E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</b></p>	<p>There is no notification deadline. According to Article 27(6) of the Competition Act, the parties to the concentration shall not enforce the concentration before the permission is granted. Unless concentration is permitted pursuant to subsection (5) of this Article.</p>

<p><b>7. Simplified Procedures</b></p>	
<p><b>A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).</b></p>	<p>According to Article 26(2) of the Competition Act, the parties to the concentration can file a short form of the notification and therefore provide less information on goods markets.</p>

<b>B. Describe the criteria adopted to consider a transaction under the simplified procedure.</b>	
	<p>Short form notification may be submitted when the following conditions have been met:</p> <ol style="list-style-type: none"> <li>1) a party to the concentration or an undertaking belonging to the same group with the party does not operate within the same goods market as another party to the concentration or an undertaking belonging to the same group with the party (there is no horizontal overlap of the goods markets) or in the previous or following affected market, in which the other party to the concentration or an undertaking belonging to the same group with the party operates (there is no vertical relationship between the goods markets);</li> <li>2) at least two parties to the concentration or undertakings belonging to the same group with the parties operate within the same goods market and their joint market share will not exceed 15 per cent after concentration, or one or several two parties to the concentration or undertakings belonging to the same group with the parties operate in the previous or following affected market, in which another party to the concentration or an undertaking belonging to the same group with the party operates, unless the individual market share of a party to the concentration of the joint market share of the parties to the concentration does not exceed 25 per cent;</li> <li>3) the parties to the concentration jointly establish a new undertaking within the meaning of subsection 19 (2) of this section and the new undertaking does not operate and has no intention to operate in Estonia;</li> <li>4) a party to the concentration acquires control over an undertaking over which the party, together with another undertaking, is already exercising joint control.</li> </ol>

<b>8. Information and documents to be submitted with a notification</b>	
<b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</b>	<p>See "Guidelines for Submission of Notices of Concentration" and the Competition Act, Article 26(3).</p> <p>The following shall be annexed to a notice of concentration:</p> <ol style="list-style-type: none"> <li>1) copies of the registration documents of the parties to the concentration from different state registers;</li> <li>2) the documents on the basis of which the concentration is put</li> </ol>

	<p>into effect;</p> <p>3) the annual reports and annual accounts of the parties to the concentration for the financial year preceding the concentration;</p> <p>4) a document certifying the authority of the person submitting the notice;</p> <p>5) a document certifying payment of the state fee;</p> <p>6) analyses, reports, researches, overviews and other documents for evaluation or analysis of the concentration;</p> <p>7) a list of the documents annexed to the notice of concentration.</p>
<b>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</b>	No specific provisions in the Competition Act.
<b>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</b>	No specific provisions in the Competition Act.
<b>D. What information is required in case the target company is experiencing financial insolvency?</b>	No specific requirements provided in the Competition Act.
<b>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</b>	No specific provisions in the Competition Act.
<b>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</b>	<p>Documents annexed to a notice of concentration shall be original or certified copies thereof (Competition Act, Article 26(3)).</p> <p>By agreement with the Competition Authority, the annexed</p>

	documents may be true copies of the originals, certified by the signature of the person submitting the copies. Upon submission of a copy, the Competition Authority has the right to request submission of the original document to verify the authenticity of the copy (Competition Act, Article 59).
<b>G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</b>	The Competition Authority may release a party to a concentration from the obligation to submit some of the documents or information (the Competition Act, Article 26 (9)). There are no special rules applying to foreign-to-foreign transactions.
<b>H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</b>	Yes, the Competition Authority can request information from third parties and all interested parties have the right to submit opinions and objections.
<b>I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</b>	Yes.
<b>J. Are there different forms for different types of transactions or sectors?</b>	No.
<b>K. With respect to investment funds:</b>  i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?	Yes.

<p>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</p> <p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	<p>Yes.</p> <p>The Competition Authority may release a party to a concentration from the obligation to submit some of the documents or information (the Competition Act, Article 26 (9)).</p>
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<p><b>9. Translation</b></p>	
<p><b>A. In what language(s) can the notification forms be submitted?</b></p>	<p>The notification and annexed documents shall be submitted in Estonian.</p>
<p><b>B. Describe any requirements to submit translations of documents:</b></p> <ul style="list-style-type: none"> <li>i) with the initial notification; and</li> <li>ii) later in response to requests for information.</li> </ul> <p><b>In addition:</b></p> <ul style="list-style-type: none"> <li>iii) what are the categories or types of documents for which translation is required;</li> <li>iv) what are the requirements for certification of the translation;</li> <li>v) which language(s) is/are accepted; and</li> <li>vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?</li> </ul>	<p>By agreement with the Competition Authority, the documents annexed to the notice may be submitted in another language (Guidelines for Submission of Notices of Concentrations). The language accepted in this case is English. Translation is required for the substantial parts of transactions.</p>

10. Review Periods	
<b>A. Describe any applicable review periods following notification.</b>	<p>Within thirty calendar days as of the submission of a notice of concentration, the Competition Authority shall:</p> <ol style="list-style-type: none"> <li>1) make a decision to grant permission to concentrate if the concentration does not involve circumstances specified in Article 22 (3) and (4);</li> <li>2) make a decision to initiate supplementary proceedings in order to ascertain whether the concentration does or does not involve circumstances specified in Article 22 (3) and (4).</li> <li>3) make a decision if the concentration does not fall within the scope of Article 19 (1) or (2) of the Competition Act or is not subject to control pursuant to Article 21 of the Act.</li> <li>4) make a decision to terminate the proceedings if the parties to the concentration decide not to concentrate.</li> </ol> <p>In the course of supplementary proceedings (Phase 2), the Competition Authority shall make one of the following decisions within four months:</p> <ol style="list-style-type: none"> <li>1) to grant permission to concentrate if the concentration does not involve circumstances specified in Article 22 (3) and (4);</li> <li>2) to prohibit the concentration if the concentration involves circumstances specified in Article 22 (3) and (4);</li> <li>3) to terminate the proceedings if the parties to the concentration decide not to concentrate. Competition Act, Article 27 (1) and (2).</li> </ol>
<b>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</b>	No.
<b>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</b>	If the Competition Authority sets a term for elimination of the deficiencies in the notice of concentration, the terms provided for in Article 27 (1) and (2) of the Competition Act start to run as of the date of the elimination of the deficiencies.

	When remedies are submitted by the merging parties the remedies require additional analysis, proceedings may be suspended once for up to two months.
<b>D. Is there a statutory or other maximum duration for extensions?</b>	Two months for the analysis of the remedies.
<b>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</b>	On the occasions described in 10.C
<b>F. What are the time periods for accelerated review of non-problematic transactions, if any?</b>	The minimum time for accelerated review of non-problematic transactions is 7 days, related to the fact that the Competition Authority shall publish a notice concerning receipt of a notice of concentration and interested parties have the right to submit opinions and objections within 7 days as of publication of a notice concerning receipt of a notice of concentration.
<b>G. If remedies are offered, do they impact the timing of the review?</b>	If the remedies require additional analysis, proceedings may be suspended once for up to two months.

<b>11. Waiting periods / suspension obligations</b>	
<b>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</b>	<p>According to the Article 27(6) of the Competition Act the parties to the concentration shall not enforce the concentration before the permission is granted, unless the concentration is permitted pursuant to Article 27(5).</p> <p>The parties to a concentration must implement the concentration within six months from entry into force of the decision to grant permission to concentrate. Based on a reasoned</p>

	application of a party to the concentration, the Competition Authority may extend the specified term once for up to one year (Article 27(6 <sup>1</sup> ) of the Competition Act).
<b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b>	Competition Act, Article 27(8): Based on a reasoned application of the parties to a concentration, the Competition Authority may make an exception and give permission to perform acts before the permission to concentrate is granted. In reviewing the application, the Competition Authority shall, among other, take into account the effect of the requested acts on one or several of the parties to the concentration or to a third party, and any dangers to competition resulting from the concentration. Upon giving permission, the Competition Authority may impose obligations related to the performance of acts on the parties to the concentration.
<b>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</b>	Within the jurisdiction it is easier to monitor the transaction, but the Competition Act does not make any difference between local and foreign transactions.
<b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b>	Yes, a concentration is permitted if the Competition Authority has not made one of the decisions provided for in Article 27 (1) and (2) of the Competition Act within the term specified.
<b>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</b>	There are no such provisions.

<p><b>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b></p>	<p>There are no such provisions.</p>
<p><b>G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</b></p>	<p>There are no such provisions.</p>

<p><b>12. Responsibility for notification / representation</b></p>	
<p><b>A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?</b></p>	<p>Notification of a concentration shall be carried out by:</p> <ol style="list-style-type: none"> <li>1) the undertakings jointly if previously independent undertakings merge within the meaning of the Commercial Code or when parts of undertakings are merged;</li> <li>2) the undertaking acquiring control of the whole or a part of another undertaking, or of several undertakings or parts thereof;</li> <li>3) the undertakings jointly acquiring joint control of the whole or a part of another undertaking, or of several undertakings or parts thereof;</li> <li>4) the natural person acquiring control of the whole or a part of another undertaking, or of several undertakings or parts thereof, provided that the natural person is already controlling at least one undertaking ;</li> <li>5) the natural persons jointly acquiring control of the whole or a part of another undertaking, or of several undertakings or parts thereof, provided that such natural persons are already controlling at least one undertaking;</li> <li>6) the undertakings jointly or natural persons jointly upon establishment of a joint venture;</li> <li>7) the bidder in the case of a public bid to acquire control of an undertaking.</li> </ol> <p>(Guidelines for Submission of Notices of Concentration).</p>

<p><b>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</b></p>	<p>In the case of a public bid to acquire control of an undertaking, the bidder is obliged to notify. Guidelines for Submission of Notices of Concentration.</p> <p>According to Article 27(7) of the Competition Act, the provisions of Article 27(6) do not prohibit to perform the public bid of securities or transactions with securities as a series, including securities interchangeable with other securities admitted to be traded on a securities market, whereby control is acquired from different sellers within the meaning of Article 19 of the Act, provided that:</p> <ol style="list-style-type: none"> <li>1) the Competition Authority is immediately informed of the concentration pursuant to Article 25 of the Act;</li> <li>2) the acquirer of the securities does not use the voting rights related to the acquired securities or uses such rights only with the aim to maintain the value of the investments.</li> </ol> <p>Article 27 does not influence the validity of transactions with securities, including transactions with securities interchangeable with other securities admitted to be traded on a securities market, unless the buyer or seller knew or should have known that the transaction was performed in violation of the provisions of Article 27(6) of the Competition Act. Competition Act, Article 27(9).</p>
<p><b>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</b></p>	<p>No specific rules.</p>
<p><b>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</b></p>	<p>The representative of the undertaking(s) or person(s) who has (have) signed the notification shall provide a document certifying his/her authority.</p>

<b>13. Filing fees</b>	
<b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31<sup>st</sup>, 2020]</b>	A state fee of 1920 euros shall be paid for proceedings concerning a concentration (Article 116 <sup>1</sup> of the State Fees Act).
<b>B. Who is responsible for payment?</b>	The person filing a notification.
<b>C. When is payment required?</b>	Payment has to made before filing the merger notification.
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	Proof of payment is required.

<b>14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]</b>	
<b>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</b>	Reviewing case-law, consulting third parties.
<b>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</b>	Substantial lessening of competition
<b>C. What theories of harm does the agency consider in practice?</b>	In substantive analysis, the Competition Authority relies mainly on the European Commission's guidelines
<b>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</b>	

<p><b>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</b></p>	<p>According to the Competition Act, the Competition Authority shall prohibit a concentration if it is likely to significantly restrict competition. Other, non-competition arguments can be taken account only additionally (i.e to further support the decision).</p>
<p><b>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</b></p>	<p>Unconditional clearance, conditional clearance, prohibition.</p>
<p><b>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</b></p>	<p>Both structural and behavioral remedies have been accepted. The remedies are to be submitted by the merging parties.</p> <p>According to Article 28(1) of the Competition Act, if the Competition Authority finds that the concentration may significantly restrict competition, the parties to the concentration shall be informed thereof in writing promptly but not later than one month before the termination of the term of the supplementary proceeding (Phase 2). The notice shall indicate the term for submission of objections, or for making a proposal for submitting remedies.</p>

<p><b>15. Confidentiality</b></p>	
<p><b>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</b></p>	<p>The Competition Authority shall publish a notice concerning receipt of a notice of concentration in the official publication "Ametlikud Teadaanded". The notice to be published shall set forth the names and business names of the parties to the concentration, their countries of residence and the manner of concentration pursuant to the appropriate clause of Article 19(1) of the Competition Act. (Competition Act, Article 27(12)).</p> <p>The notification materials are always treated confidentially.</p>

<p><b>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</b></p>	<p>Yes, the parties have access to file, but during the proceedings in addition to business secrets many other documents are considered to be confidential. Access is not given to business secrets and confidential information.</p>
<p><b>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</b></p>	<p>Without the agreement of the notifying party, the Competition Authority does not have the right to disclose any business secrets contained in a notice and annexed documents to any other person or to make such business secrets public. Business secrets can be used only in competition matters, can be passed to the court arguing competition matters and European Commission in merger cases.</p>
<p><b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b></p>	<p>No. The fact of notification cannot be made confidential. Notification materials are always treated confidentially.</p>
<p><b>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</b></p>	<p>The information needs to meet certain requirements in order to be considered as a business secret.</p>
<p><b>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</b></p>	<p>Public versions of the decisions are published on the website.</p>

**16. Transparency**

<p><b>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</b></p>	<p>Yes, annual reports are published on the website (available in English):  <a href="https://www.konkurentsiamet.ee/en/annual-reports">https://www.konkurentsiamet.ee/en/annual-reports</a></p>
<p><b>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</b></p>	<p>According to Article 27(12) of the Competition Act, the Competition Authority shall publish a notice concerning receipt of a merger notification and the decisions made in the publication Ametlikud Teadaanded.  Additionally, sometimes press releases are published regarding prohibition decisions, conditional clearances or cases of high public interest.</p>
<p><b>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.</b></p>	<p>Decisions are available on the website (available in Estonian):  <a href="https://www.konkurentsiamet.ee/et/konkurentsijarelevalve-koondumised/koondumised/koondumiste-teated-ja-otsused">https://www.konkurentsiamet.ee/et/konkurentsijarelevalve-koondumised/koondumised/koondumiste-teated-ja-otsused</a></p>
<p><b>E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]</b></p>	<p>The statistics on the number of notification etc is presented in the annual reports..</p>

<p><b>17. Cooperation</b></p>	
<p><b>A. Is the agency able to exchange information or documents with international counterparts?</b></p>	<p>Non-confidential information can be exchanged.</p>
<p><b>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b></p>	<p>No special agreements.</p>
<p><b>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model</b></p>	<p>Confidential information can be exchanged with the agreement of parties. The Competition Authority does not have a model waiver and the ICN's model waiver of confidentiality would be accepted.</p>

waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.	
<b>D. Is the agency able to exchange information or documents with other domestic regulators?</b>	Non-confidential information can be exchanged.

<b>18.Sanctions/penalties</b>	
<p><b>A. What are the sanctions/penalties for:</b></p> <ul style="list-style-type: none"> <li><b>i) failure to file a notification;</b></li> <li><b>ii) incorrect/misleading information in a notification;</b></li> <li><b>iii) failure to comply with information requests;</b></li> <li><b>iv) failure to observe a waiting period/suspension obligation;</b></li> <li><b>v) breach of interim measures;</b></li> <li><b>vi) failure to observe or delay in implementation of remedies;</b></li> <li><b>vii) implementation of transaction despite the prohibition from the agency?</b></li> </ul>	<p>According to Article 73(6) of the Competition Act, enforcement of concentration without permission to concentrate, as well as violation of a prohibition on concentration or the terms of the permission to concentrate is punishable by a fine of up to 300 fine units or by detention. The same act, if committed by a legal person, is punishable by a fine of up to 400,000 euros.</p> <p>According to Article 29 of the Competition Act, the Competition Authority may decide to revoke a decision to grant permission to concentrate if:</p> <ol style="list-style-type: none"> <li>1) the parties to the concentration submitted false, misleading or incomplete information which was a determining factor for the decision;</li> <li>2) the concentration was effected in violation of a term or other condition or obligation specified in the Act or the decision to grant permission to concentrate.</li> </ol> <p>In case of failure to supply information, the Competition Authority can issue a precept and require the information. Upon failure to comply with a precept, the maximum rate of the penalty payment imposed pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act is up to 6400 euros for natural persons and up to 9600 euros for legal persons.</p>
<p><b>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</b></p>	Notifying parties are liable.

<b>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</b>	See 18 A Fine and detention require judicial action against the infringing party.
<b>D. Are there any recent or significant fining decisions?</b>	-

<b>19. Independence</b>	
<b>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</b>	No.
<b>B. What are the grounds for such ministerial intervention?</b>	N/A
<b>C. Please provide any description or guidance regarding the ministerial intervention process and procedures [if applicable]</b>	

<b>20. Administrative and judicial processes/review</b>	
<b>A. Describe the timetable for judicial and administrative review related to merger transactions.</b>	An action for annulment of an administrative act may be filed with the Administrative Court within thirty days after the date on which the administrative act was made public, unless otherwise provided by law. The decision of the Administrative Court can be appealed to the District Court within 30 days after the date on which the decision was made public. The decision of the District court can be appealed in cassation procedure in the Supreme Court

<b>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</b>	Confidential information is protected and documents containing confidential documents are submitted separately.
<b>C. Are there any limitations on the time during which an appeal may be filed?</b>	30 days after the date on which the decision act was made public.

<b>21. Additional filings</b>	
<b>A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?</b>	Credit institutions, financial institutions and insurers shall notify of a concentration after obtaining permission from the supervisory authority of the corresponding field.

<b>22. Closing Deadlines</b>	
<b>A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?</b>	Article 27(6 <sup>1</sup> ) of the Competition Act: The parties to a concentration must give effect to the concentration within six months from entry into force of the decision to grant permission to concentrate. Based on a reasoned application of a party to the concentration, the Competition Authority may extend the specified term once for up to one year.

<b>22. Post Merger review of transactions</b>	
<b>A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</b>	No, except for the following occasions: <ol style="list-style-type: none"> <li>1) If according to the court decision the Competition Authority has to make a new decision, the case will be reopened. There have been no such cases so far.</li> <li>2) The Competition Authority may decide to revoke a decision to grant permission to concentrate if the parties submitted false, misleading, or incomplete information or the concentration was effected in violation of a term or other condition or obligation specified in the Act or the decision to grant permission to concentrate. Revocation of permission to concentrate does not deprive the parties to the</li> </ol>

	concentration the right to apply for a new permission to concentrate. (Competition Act, Article 29).
<b>B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?</b>	No such studies available.