ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Autorité de la Concurrence - France

February 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.][1]

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]	
	Statutory Laws
A. Notification provisions	Articles L. 430-1 to L. 430-10 of the French Commercial Code
B. Substantive merger review Provisions	Article L. 430-6 of the Commercial Code
C. Implementing regulations	Articles R. 430-2 to R. 430-10 of the Commercial Code
D. Notification forms or information requirements	Notifications must contain the information required detailed in appendices 4-3 to 4-5 of the Commercial Code. The content of the notification file is reduced for transactions which are presumed a priori not to be likely to affect competition and which are eligible for a simplified procedure (paragraph 230 of the Merger Control Guidelines of the

[1] 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.

	Autorité de la concurrence). Furthermore, some of those transactions may be notified electronically on a dedicated platform (paragraph 234 of the Merger Control Guidelines).

Interpretative Guidelines and Notices

E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	Merger Control Guidelines of the Autorité de la concurrence (2020); an English translation is available for information purposes
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	Merger Control Guidelines of the Autorité de la concurrence (2020); an English translation is available for information purposes
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]	No
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	Recommendations for the Submission of Economic Evidence (2013)

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	Autorité de la concurrence
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	Autorité de la concurrence À l'attention du Chef du service des concentrations 11, rue de l'Échelle F–75001 Paris (France) Tel : + 33 1 55 04 01 72 E-mail : controle.concentrations@autoritedelaconcurrence.fr Web site : http://www.autoritedelaconcurrence.fr

C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	Pre-notification contacts are recommended. Any question should be addressed, preferably via e-mail to: controle.concentrations@autoritedelaconcurrence.fr

3. Covered transactions	
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]	According to article L. 430-1 of the Commercial Code, a concentration arises in the following cases : 1° Merger of two or more previously independent undertakings. 2° One or more persons already having control of at least one undertaking, or one or more undertakings, acquire control of all or part of one or more other undertakings, directly or indirectly, whether by the acquisition of a holding in the capital or by purchasing assets, a contract or any other means. 3° Creation of a joint-venture performing on a lasting basis all the functions of an autonomous economic entity.
B. What is the geographic scope of transactions covered?	France
C. If change of control is a determining factor, how is control defined and interpreted in practice?	Control is defined as the possibility of exercising decisive influence on an undertaking. All factual and legal circumstances (shares, contracts) are taken into account to define such an influence (see the Merger Control Guidelines).
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?	A minority shareholding may be covered depending on the actual control it confers to its owner. There is no set level. A merger may concern assets which form part of an undertaking, such as trademarks or patents, as long as these assets constitute a business with a market presence to which a turnover can be unambiguously attributed. The control extends to "bare asset purchases".

4. Thresholds for notification	
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)]	The combined aggregate worldwide turnover of all participating entities must be above 150 million EUR (1st threshold) and the domestic turnover of at least two participating entities must be above 50 million EUR each (2nd threshold). To be notified in France, the merger must not reach the European thresholds set by the EU Merger Regulation N°139/2004 (in that case, the merger falls within the scope of the European Commission's exclusive jurisdiction). For mergers in the retail sector, thresholds are respectively 75 million EUR worldwide for all participants and 15 million EUR individually for at least two participating entities in the retail sector in France. In the French overseas territories, the thresholds are respectively 75 and 15 million EUR, except for retail mergers (Euro 75 and 5 million EUR in the retail sector). There is no periodic adjustment scheme.
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?	For the application of the thresholds, relevant turnovers have to be calculated by reference to the entities concerned, i.e.: – the acquired entity; – the whole group of the acquiring entity. The entities concerned are defined according to the methodology laid down in the Commission's Consolidated Jurisdictional Notice of 10 July 2007.
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)?"	The nexus is determined on the basis of sales in the jurisdiction. Turnover is to be allocated to the territory(ies) where competition effectively takes place, i.e. generally where the client is located.

D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	No. At least two parties must reach the second threshold (see A above).
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)?	No.
F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?	As a result of an express reference to article 5 of the EU Merger Regulation N°139/2004, the EU calculation rules for insurance and bank companies apply under French law. The Autorité also applies the methodology laid down in the Commission's Consolidated Jurisdictional Notice to adapt the turnover calculation to the specific conditions of the service provided. This is the case in particular for the sale of services in certain sectors of activity (such as package holidays and advertising) through intermediaries.
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]	No. A concentration involving foreign companies is subject to notification, as long as it reaches the turnover thresholds.
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]	No, however, the Authority can ask for referral under article 22 of the EU Merger Regulation N°139/2004. Article L. 430-9 of the Commercial Code also empowers the Autorité to require the modification or termination of agreements or acts whereby the concentration of economic power was achieved in case of abuse of dominance or economic dependence. There is no threshold for that specific provision.

I. Are current notification criteria catching relevant transactions related to digital markets?	Several mergers and acquisitions escape the control of competition authorities in cases involving emerging innovators or players that have not yet monetised their innovation, as is also the case at the EU level.

Calculation Guidance and related issues

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: **i) the value of the transaction;** **ii) the relevant sales or turnover;** **iii) the relevant assets;** **iv) market shares;** **v) other (please describe).**	Under article L. 430-2, relevant turnovers have to be calculated on the basis of the principles laid down in article 5 of the EU Merger Regulation N°139/2004. Sales are calculated on the basis of the last audited accounts. If there has been a significant change in the size of the company meanwhile (eg a recent merger), then updated figures must be used.
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?	Under article L. 430-2, relevant turnovers have to be calculated on the basis of the principles laid down in article 5 of the EU Merger Regulation N°139/2004. The Autorité also relies on the Commission's Consolidated Jurisdictional Notice, in particular paragraphs 15 and 189 to 191. Consequently, for investment funds as for all undertakings, the criteria used to identify the undertakings whose turnover can be attributed to the undertaking concerned are different from the criteria ofdecisive influence used to establish control. They are the criteria laid out in article 5-4 of the EU Merger Regulation N°139/2004: "the aggregate turnover (...) shall be calculated by adding together the respective turnovers of the following: a)the undertaking concerned; b)those undertakings in which the undertaking concerned, direct or indirectly; i)owns more than half the capital or business assets, or ii)has the power to exercise more than half the voting rights; iii)has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or iv)has the right to manage the undertakings' affairs;

	c)those undertakings which have in the undertaking concerned the rights or powers listed in b); d)those undertakings in which an undertaking as referred to in c) has the rights or powers listed in b); e)those undertakings in which two or more undertakings as referred to in a) to d) jointly have the rights or powers listed in b)." The investment company normally acquires indirect control over portfolio companies held by an investment fund. In the same way, the investment company may be considered to indirectly have the powers and rights which are set out in Article 5(4)(b) of the EU Merger Regulation N°139/2004, in particular to indirectly have the power to exercise the voting rights held by the investment fund in the portfolio companies.
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?	Yes. Typically, on the basis of the organisational structure, in particular links between the investment company and the general partner(s) of the different funds organised as limited partnerships, or contractual arrangements, the investment company may exercise a common control structure over the different funds which it has set. Consequently, such an organisation of the different funds by the investment company may lead to the result that the turnover of all portfolio companies held by different funds is taken into account if the investment company acquires indirect control of a portfolio company via one of the funds.
M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].	The Autorité uses the rules set down in the Commission's Consolidated Jurisdictional Notice.
5. Pre-notification	
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.].	In order to anticipate the forthcoming notification of a merger, undertakings may approach the Mergers Unit with an optional request for the appointment of a case team, who will be in charge of examining the case. Following this request, the name of the deputy head of the Mergers Unit responsible for examining the file shall be communicated to the notifying party within five working days.

	The pre-notification procedure, which is also optional but is strongly recommended, starts by sending a detailed presentation of the case or a preliminary draft notification to the Autorité. Accorging to the Merger Guidelines, the name(s) of the case handler(s) responsible for the examination of the notification shall be provided to the notifying party within five working days if the party has not made use of the mechanism for requesting a case team allocation described above. This period will be shorter if the notifying party has made use of the mechanism for requesting a case team allocation. The pre-notification phase may last from a few days to several weeks depending on the specifics of the case. It rarely lasts over a few months.
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	The Case Team Allocation Request must include a few basic details on the case (see paragraph 190 of the Merger Guidelines). A form is available on the Autorité's website. There is no specific requirement for a pre-notification but it is advised to start that phase on the basis of a detailed presentation of the case or a preliminary draft notification.

6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	Mandatory pre-merger
B. If parties can make a voluntary merger filing when may they do so?	N/A
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?)	Notification may be made as soon as the project of the parties is sufficiently well advanced and parties can demonstrate a good faith intention to conclude an agreement. This is notably the case when they have entered into a gentlemen's agreement or signed a letter of intent or upon public announcement of a public offer.

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?	There is no triggering event but control cannot be exercised until a clearance decision is obtained. There are specific rules for public takeover bids. On regulated markets, the need to obtain prior clearance does not limit transfers of shares, but only the exercise of the rights attached to shares.
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.	N/A

7. Simplified Procedures	
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.).	Some cases benefit from a simplified procedure. Those cases can use a reduced notification file and normally receive a decision in a shortened time period (15 working days on average). In addition, a subset of those transactions may be notified electronically on a dedicated platform.
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	According to the Merger Guidelines, the following cases are presumed a priori not to be likely to affect competition and are eligible for the simplified procedure: – where the combined market share of the undertakings concerned is less than 25% in markets consistently defined by past decisions; – in the case of an overlap in the economic activities of parties, where the combined market share of the undertakings concerned is less than 50% and the

	addition of market shares resulting from the transaction is less than 2 percentage points in markets consistently defined by past decisions; – in the case of presence on vertically related markets, where the combined market share of the undertakings concerned in those markets is less than 30% in markets consistently defined by past decisions; – in the case of presence in related markets, where the market shares of the undertakings concerned in the related markets are below 30% in markets consistently defined by past decisions; – in the case of acquisitions of sole control of undertakings, where the acquirer exercised joint control of the target prior to the transaction; – where the transaction concerns the creation of a full-function joint venture whose economic activity is only outside France; – where the transaction concerns the acquisition of joint control of a real estate asset for sale in a future state of completion. The cases eligible to the electronic notification are the following: – mergers do not result in an overlap of activities between the parties, whether horizontal, vertical or conglomerate in nature (usually transactions carried out by investment funds); – retail mergers that do not involve a change in the trade name of the retail store(s) concerned.

8. Information and documents to be submitted with a notification	
A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).	Notifications must contain the information required detailed in appendices 4-3 to 4-5 of the Commercial Code (the notification file is reduced in the simplified procedure), and notably: – a copy of the agreements creating the concentration; – a copy of the board decisions relating to a concentration; – a copy of the last audited accounts.

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]	No. Amount of user data may be relevant depending on the specifics of the case.
C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]	Article L. 430-6 of the Commercial Code specifies that, in the in-depth examination phase, the Autorité "shall assess whether the transaction makes a sufficient contribution to economic progress to offset the adverse impacts on competition". It is the responsibility of the notifying party to develop substantiated and quantified arguments demonstrating that the economic efficiency gains from the transaction are likely to offset its anticompetitive effects, and to provide evidence to support this demonstration.
D. What information is required in case the target company is experiencing financial insolvency?	No specific information required.
E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?	There is no procedure as such but the Autorité can request information from the target. The provision of incomplete or misleading information is potentially subject to administrative fines.
F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?	No
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)?	N/A

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?	The Autorité can require third parties to submit information. Third parties can also voluntarily submit information.
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)?	Yes
J. Are there different forms for different types of transactions or sectors?	No apart from cases eligible for the simplified procedure or electronic notification.
K. With respect to investment funds: **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?** **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?** **iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?**	i) Yes, notably if they wish to prove they are eligible to the electronic notification. ii) Yes. iii) See answers 7A and 7B above relating to the simplified procedure**.**

9. Translation	
A. In what language(s) can the notification forms be submitted?	Notifications have to be submitted in French.
B. Describe any requirements to submit translations of documents: **i) with the initial notification; and** **ii) later in response to requests for information.** **In addition:** **iii) what are the categories or types of documents for which translation is required;** **iv) what are the requirements for certification of the translation;** **v) which language(s) is/are accepted; and** **vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?**	Notifications and attachments must, as a general rule, be provided in French. Where certain documents are written in a foreign language, a translation of those documents is required if necessary (see paragraph 1(a) of appendix 4-3 of the Commercial Code). This translation may be limited to the passages necessary to enable the Autorité to exercise its office in merger control matters (paragraph 207 of the Merger Control Guidelines). A certification is not necessary. Responses to requests for information are to be submitted in French, like the notification itself, except in exceptional circumstances.

10. Review Periods	
A. Describe any applicable review periods following notification.	An initial examination phase of 25 working days starts from the day following the receipt of the notification by the Autorité (assuming the notification is recognized as complete by the Authority). A 15 working days extension applies in case remedies are proposed, for their assessment (Phase 1). If the transaction cannot be cleared during this initial examination phase, the Autorité conducts an in-depth analysis. The review period lasts for 65 days after the opening of a phase 2 and can be extended by 20 working days if commitments are received less than 20 days before the end of the initial review period (Phase 2). The time periods only apply insofar as the notification is complete.

B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?	The only specific rule is detailed under Question 6.D above and relates to the suspension obligation.
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?	Notifying parties can request extensions up to 15 working days in Phase 1 and 20 working days in Phase 2. Such extensions are generally used to finalize remedies before the termination of the review period. A suspension of time periods by the Autorité ("stop-the-clock") is also possible in phases 1 or 2 when the parties fail to provide requested information or when third parties refuse to do so due to notifying parties' interference. It lasts until the information is provided.
D. Is there a statutory or other maximum duration for extensions?	No
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	Extensions in Phase 1 and 2 requires the parties' consent, while a suspension for failure to provide information (stop-the-clock) is decided by the Autorité.
F. What are the time periods for accelerated review of non-problematic transactions, if any?	The indicative time period under the simplified procedure is of 15 working days (see Question 7.A above).
G. If remedies are offered, do they impact the timing of the review?	Remedies can to be proposed by the notifying party from the outset or following the preliminary assessment made by the Autorité. The Autorité market-tests the remedies proposed in order to ascertain that they are sufficient and adapted. As a result, the submission of remedies results in the extended time periods mentioned above.

11. Waiting periods / suspension obligations	
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.	The suspension period is a full suspension period. The suspension period covers the whole period of assessment by the Autorité plus an additional time period, during which the Minister for the Economy can take the following actions: – The Minister has 5 working days following the receipt of a phase 1 decision to ask the Autorité to open a phase 2; – The Minister has 25 working days following the receipt of a phase 2 decision to take the case on public interest grounds other than the protection of competition (see Question 19 below).
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	Notifying parties can request a derogation in exceptional circumstances, such as when the target is in insolvency proceedings or needs urgent refinancing. The derogation must be necessary. The Autorité may grant such a derogation in a few days time and assess the transaction in a second step. The derogation may be requested at any time during the procedure after the merger notification has been filed.
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)?	The suspension obligation applies to the transaction as a whole. There is no specific provision dealing with the possibility of closing the transaction outside the French territory.
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	A tacit clearance is obtained if the Autorité does not deliver an express decision in the statutory review period.

E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	See Question 10.C above
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.	Only an early clearance decision (see notably the simplified procedure) or a derogation to the obligation of suspension (Question 11.B) can result in early termination of waiting periods.
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).	There is no such provision.

12. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?	The person(s) acquiring control is(are) responsibly for notifying the transaction. For full mergers and joint ventures, all entities concerned are responsible to submit a joint notification.
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	No
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	There are no such rules

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?	A power of attorney is sufficient and it does not need to be notarized or apostilled. There are no special rules for foreign lawyers.

13. Filing fees	
A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]	There are no filing fees.
B. Who is responsible for payment?	N/A
C. When is payment required?	N/A
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	N/A

14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	The key procedural stages in the substantive assessment are the following : – case team allocation request (where relevant); – prenotification (where relevant); – notification and assessment by the case team; – market test on the impact of the proposed transaction and review of information provided by third parties (where relevant); – identification of the markets where remedies are needed (where relevant); – submission of proposed remedies (where relevant);

	– market test of remedies (where relevant); – clearance decision.
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	The Autorité reviews whether the proposed transaction is likely to to have an adverse effect on competition, in particular by creating or reinforcing a dominant position or by creating or reinforcing buying power that places suppliers in a situation of economic dependence. On the basis of the market characteristics and the functioning of competition, the Autorité carries out a prospective assessment of potential horizontal, vertical and conglomeral effects.
C. What theories of harm does the agency consider in practice?	The theories of harm considered by the Autorité are largely in line with the European Commission. A transaction can have an adverse effect on competition by non coordinated effects (effects resulting of the independent behaviour of the market participants) and/or coordinated effects (effects resulting from an increased ability of market participants to coordinate their behaviour).
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	The key stages in the substantive assessment are : – market delineation; – assessment of the level of market concentration; – measure of non coordinated effects; – measure of coordinated effects; – risk of coordination of the behaviours of the mother companies in joint ventures; – ancillary restrictions; – contributions to economic progress (efficiencies); – failing firm defense; – remedies.

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?	Non-competition issues are not considered by the Autorité, but the Minister for the Economy can consider other public interest grounds when he decides to take the case (see Question 11.A above and 19 below).
F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?	The possible outcomes of the review in phase 1 are: – inapplicability of French merger rules; – unconditional/conditional clearance; – opening of a phase 2. The possible outcomes of the review in phase 2 are: – unconditional/conditional clearance; – prohibition.
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?	The Autorité is likely to accept structural and/or behavioural remedies, that need to be brought forward by the parties themselves. Proposed remedies are discussed with the Autorité and market tested. Third parties have the opportunity to comment. The remedies may alternatively take the form of injunctions and obligations imposed by the Autorité, in phase 2 only. In principle, the remedies package is expected to include the appointment of an independent trustee, at the parties' expense.

15. Confidentiality	
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?	The entire pre-notification phase is strictly confidential. Nevertheless, subject to the prior written consent of the notifying party, a market consultation may be carried out. Article L. 430-3 provides that the Autorité shall publish a statement when it receives a notification file or the total or partial referral of a merger with a European dimension

	within five working days. The notifying party provides the statement as part of its nofication. It is then posted on the Autorité's website. It includes the names of the parties, the nature of the contemplated transaction and the economic sector concerned. The Autorité gives a time period opened for third parties comments.
B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?	In Phase 1, the notifying parties do not have access to the Autorité's file but the Mergers Unit has a general obligation of clear and fair information, with the limit of business secrets. A non confidential summary of the resuts of market tests is generally made available to the notifying parties, usually orally. In Phase 2, parties have access to the evidence on which the Autorité bases its decision, with the same limit of business secrets (non-confidential versions are provided).
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?	Third parties cannot access the notification itself nor the Autorité's file. Foreign agencies investigating the case may request information, which is delivered upon a waiver granted by the parties. A copy of the notification is sent to the Minister for the Economy.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	The fact of notification cannot remain confidential (see Question 15.A above). Pre-notification talks are completely confidential as well as the information provided in the notification and in the exchanges with the Autorité, as long as the parties do request and obtain the protection of business secrets.
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.	The protection of business secrets shall not deprive third parties of their ability to comment on the transaction and proposed remedies. Notifying parties are generally given 15 days to review decisions and claim confidentiality for business secrets. The Autorité can reject such claims.

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?	The Autorité invites notifying parties to prepare a non-confidential version of the decisions and other documents that are accessible to third parties. If a request is not justified, it can be rejected by the Autorité.

16. Transparency	
A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.	The Autorité publishes an annual report that is available on its website. https://www.autoritedelaconcurrence.fr/fr/publications
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)?	The Autorité publishes press releases for significant cases or policy announcements. They are available on its website. https://www.autoritedelaconcurrence.fr/fr/communiques-de-presse
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.	All decisions are published on the Autorité's website once a non confidential version is available. https://www.autoritedelaconcurrence.fr/fr/liste-de-controle-des-concentrations
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]	The Autorité publishes a number of relevant statistics as part of its annual report. https://www.autoritedelaconcurrence.fr/fr/publications

17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	The Autorité can exchange non confidential information with foreign competition authorities. Exchange of confidential information is subject to a waiver signed by the notifying parties.

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?	No.
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 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.	Yes. There is no specific model waiver. The ICN model waiver is generally accepted.
D. Is the agency able to exchange information or documents with other domestic regulators?	The Autorité can exchange non confidential information with other domestic regulators. Exchange of confidential information is subject to a waiver signed by the notifying parties.

18.Sanctions/penalties	
A. What are the sanctions/penalties for: **i) failure to file a notification;** **ii) incorrect/misleading information in a notification;** **iii) failure to comply with information requests;** **iv) failure to observe a waiting period/suspension obligation;** **v) breach of interim measures;** **vi) failure to observe or delay in implementation of remedies;** **vii) implementation of transaction despite the prohibition from the agency?**	(i) Failure to notify a merger can be punished by a fine up to 5 % of the turnover achieved in France by the company that was responsible for the notification, including the turnover achieved in France by the companies acquired. For natural persons, the maximum fine is Euro 1.5 million. The Autorité can also impose a periodic penalty payment (within the limit of 5 % of the daily turnover per day) until the notification is effectively received by the Autorité. (ii) The provision of incorrect or incomplete information in a notification can be punished by a fine with the same maximum amount as under (i) above. The Autorité can also withdraw the clearance decision in which case the parties shall either undo the merger and restore the prior situation or apply again for an authorisation in a one month maximum time limit.

	(iii) Violation of the suspension obligation can be punished by a fine with the same maximum amount as under (i) above. (iv) Failure to observe remedies or delay in the implementation of remedies can be punished by a fine with the same maximum amount as under (i) above. The Autorité can also withdraw the decision or impose a periodic penalty payment until the remedies are fully implemented. (v) Implementation of a transaction despite a prohibition decision can be punished by a fine with the same maximum amount as under (i) above. The Autorité also imposes a period penalty payment until the parties have undone the merger.
B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?	The part(y)ies acquiring control and responsible for the notification (all parties in case of a merger or a JV, see Question 12.A above).
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.	The Autorité has the power to impose these penalties by a decision.
D. Are there any recent or significant fining decisions?	– Decision n°11-D-12 dated 20 September 2011, Groupe Canal Plus/TPS (failure to implement remedies) – Decision n°12-D-12 dated 11 May 2012, Colruyt (failure to notify) – Decision n°12-D-15 dated 9 July 2012, Bigard/Socopa Viandes(failure to implement remedies) – Decision n°13-D-01 dated 31st January 2013, Réunica/Arpège (failure to notify) – Decision n°13-D-22 dated 20 December 2013, Castel/Patriarche (failure to notify) – Decision n°16-D-07 dated 19 April 2016 Altice (failure to implement remedies) – Decision n°16-D-24 dated 8 November 2016 Altice (gun-jumping) – Decision n°17-D-04 dated 8 March 2017 Altice (failure to implement remedies)

	– Decision n°18-D-16 dated 27 July 2018 Fnac-Darty (failure to implement remedies)

19. Independence	
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)?	When the Autorité authorises a merger in Phase I, the Minister for the Economy can ask the Autorité to open a Phase 2 within a 5 working days time limit. When the Autorité delivers a Phase 2 decision, the Minister for the Economy can decide to take the case and rule on the proposed concentration within a 20 days time limit.
B. What are the grounds for such ministerial intervention?	In Phase 1, article L 430-7-1 of the Commercial Code does not define the grounds on which the Minister for the Economy can ask for the opening of a phase 2. In Phase 2, the Minister may only rule on public interest grounds other than the protection of competition. Some public interest grounds are mentioned in the Commercial Code, though the list is not exhaustive: industrial development, competitiveness of the undertakings concerned with respect to international competition, creation or preservation of jobs.
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	The Minister can intervene ex-officio following the receipt of the Autorité's decision. When the Minister intervenes after a Phase 2 decision, its decision must be motivated and the parties to the transaction must be heard before.

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	The French Administrative Supreme Court (Conseil d'État) has jurisdiction to review the Autorité's merger control decisions, upon action by the parties or third parties. The time limit to introduce an action for annulment of a decision is 2 months. The French Administrative Supreme Court procedure is generally carried out in a 12-18 months time.

	Emergency procedures exist, under conditions.
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	There is no specific procedure before the Administrative Supreme Court to protect confidential information between the parties to the action. The Court can only consider evidence that was communicated to all parties. Concerning third parties, decisions of the Administrative Supreme Court are not intended to contain confidential information. The most effective protection is to use non confidential versions before the Court insofar as possible.
C. Are there any limitations on the time during which an appeal may be filed?	The time limit is 2 months after the receipt of the decision (for the notifying parties) or publication (for third parties).

21. Additional filings	
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)?	Yes. Foreign investments and/or transactions taking place in specific sectors may require additional steps before the Minister for the Economy for national security purposes. For a few sectors (audiovisual sector, medical analysis laboratories), specific merger regimes exist in addition to the general merger control regime.

22. Closing Deadlines	
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?	There is no such closing deadline but the Autorité states in its Guidelines that transactions have to be closed in a reasonable time frame and that parties cannot rely on the clearance decision if they bring significant changes to the contemplated transaction after clearance and before closing.

22. Post Merger review of transactions	
A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with	Under article L 430-9 of the Commercial Code, the Autorité can order the amendment, supplement or termination of agreements or acts whereby a concentration of market

conditions? If so, are there any limitations, including a time limit on this authority?	power that resulted in abuses of dominance or abuses of economic dependence was created, even if those agreements or acts have been notified and authorised under merger rules. The procedure is not the standard merger rules procedure but an *ad hoc* procedure.
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?	The Autorité has not yet published such a study.