

## ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Competition Commission (Mauritius)

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**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>

### 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

<b>A. Notification provisions</b>	Mauritius has a voluntary merger notification regime.  <i>As per section 47(4) of the Competition Act 2007 of Mauritius (the “Act”): “Where 2 or more enterprises intend to be in a merger situation, any one of the enterprises may apply to the Commission for guidance as to whether the proposed merger situation is likely to result in a substantial lessening of competition within any market for goods or services.”</i> The Act can be accessed at: <a href="https://competitioncommission.mu/wp-content/uploads/2020/01/Competition-Act-2007-Amended-2019.pdf">Act 25/2007 (https://competitioncommission.mu/wp-content/uploads/2020/01/Competition-Act-2007-Amended-2019.pdf)</a>
<b>B. Substantive merger review Provisions</b>	Section 47 of the Act defines a “merger situation” as the “bringing together under common ownership and control of 2 or more enterprises of which one at least carries its activities, in Mauritius, or through a company incorporated in Mauritius.”

<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.

	<p>As per section 48 of the Act, “a merger situation shall be subject to review by the Commission where -</p> <p>(a) all the parties to the merger, supply or acquire goods or services of any description, and will following the merger, together supply or acquire 30 per cent or more of all those goods or services on the market; or</p> <p>(b) one of the parties to the merger alone supplies or acquires prior to the merger, 30 per cent or more of goods or services of any description on the market; and the Commission has reasonable grounds to believe that the creation of the merger situation has resulted in, or is likely to result in, a substantial lessening of competition within any market for goods or services.”</p> <p>The Act can be accessed at: <a href="https://competitioncommission.mu/wp-content/uploads/2020/01/Competition-Act-2007-Amended-2019.pdf">Act 25/2007 (https://competitioncommission.mu/wp-content/uploads/2020/01/Competition-Act-2007-Amended-2019.pdf)</a></p>
<b>C. Implementing regulations</b>	<p>While there are no implementing regulations per se, the Competition Commission’s Rules of Procedure is available on <a href="https://competitioncommission.mu/wp-content/uploads/2019/08/CC1-Rules-of-Procedure2.pdf">https://competitioncommission.mu/wp-content/uploads/2019/08/CC1-Rules-of-Procedure2.pdf</a></p>
<b>D. Notification forms or information requirements</b>	<p>Rule 7 of the Rules of Procedure indicates a list of information required. (<a href="https://competitioncommission.mu/wp-content/uploads/2019/08/CC1-Rules-of-Procedure2.pdf">https://competitioncommission.mu/wp-content/uploads/2019/08/CC1-Rules-of-Procedure2.pdf</a>)</p> <p>"Form 1" which is available on this <a href="https://competitioncommission.mu/wp-content/uploads/2019/06/03-Merger-form-1.pdf">link (https://competitioncommission.mu/wp-content/uploads/2019/06/03-Merger-form-1.pdf)</a> lists the detailed information and supporting documents which must be provided when making an application for guidance under section 47 of the Act.</p>
<b>Interpretative Guidelines and Notices</b>	
<b>E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]</b>	<p>There is no Guideline or Notice in particular on the Merger Notification Process but there is a Guidance Note on Merger Notification which can be assessed on</p>

	<a href="https://competitioncommission.mu/wp-content/uploads/2019/09/Guidance-note-on-merger-notification.pdf">https://competitioncommission.mu/wp-content/uploads/2019/09/Guidance-note-on-merger-notification.pdf</a>
<b>F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]</b>	The "CC2 Market Definition and the Calculation of Market Shares" guidelines is available from: <a href="https://competitioncommission.mu/wp-content/uploads/2019/09/CC2-Guidelines-Market-definition.pdf">https://competitioncommission.mu/wp-content/uploads/2019/09/CC2-Guidelines-Market-definition.pdf</a> The "CC5 – Mergers Guidelines", available from: <a href="https://competitioncommission.mu/wp-content/uploads/2019/09/CC5-Guidelines-Mergers.pdf">https://competitioncommission.mu/wp-content/uploads/2019/09/CC5-Guidelines-Mergers.pdf</a> , provides guidance on the Substantive Assessment framework on Merger Review in Mauritius.
<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>	The "CC6 – Remedies and Penalties" guidelines is available from: <a href="https://competitioncommission.mu/wp-content/uploads/2019/09/CC6-Guidelines-Remedies-and-Penalties.pdf">https://competitioncommission.mu/wp-content/uploads/2019/09/CC6-Guidelines-Remedies-and-Penalties.pdf</a> The "CC7 – General Provisions" guidelines is available from: <a href="https://competitioncommission.mu/wp-content/uploads/2019/09/CC7-Guidelines-General-Provisions.pdf">https://competitioncommission.mu/wp-content/uploads/2019/09/CC7-Guidelines-General-Provisions.pdf</a>

<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>	Competition Commission.
<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: 10th Floor, Hennessy Court, Pope Hennessy Street, Port Louis, Mauritius. Telephone: +(230) 211-2005 Fax: +(230)211-3107

	Email Address: <a href="mailto:info@competitioncommission.mu">info@competitioncommission.mu</a> Website Address: <a href="https://competitioncommission.mu">https://competitioncommission.mu</a> Language available on website: 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. Questions on merger filing requirements and/or consultations may be sent to <a href="mailto:info@competitioncommission.mu">info@competitioncommission.mu</a>
<b>3. Covered transactions</b>	
<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>	For the purposes of the Act, a “merger situation” means the bringing together under common ownership and control of 2 or more enterprises of which one at least carries its activities, in Mauritius, or through a company incorporated in Mauritius.
<b>B. What is the geographic scope of transactions covered?</b>	One of the criteria for a transaction to be covered is that at least one of the enterprises involved in the merger situation carries its activities, in Mauritius, or through a company incorporated in Mauritius. Moreover, the Act applies to economic activities within, or having an effect within, Mauritius or a part of Mauritius.
<b>C. If change of control is a determining factor, how is control defined and interpreted in practice?</b>	Section 47(3) of the Act provides that a person may bring an enterprise under his control where - <ul style="list-style-type: none"> <li>a) he becomes able to control or materially to influence the policy of the enterprise, but without having a controlling interest in it;</li> <li>b) being already able to control or materially to influence the policy of the enterprise, he acquires a controlling interest in it; or</li> <li>c) being already able materially to influence the policy of the enterprise, he becomes able to control that policy.</li> </ul> Based on the above provision, three levels of control can be identified, namely material influence, <i>de facto</i> control and controlling interest. Material influence is the lowest level

	of control, followed by <i>de facto</i> control, while controlling interest is the highest level of control. An increase in the level of control may be considered to amount to an acquisition of control and may lead to a new merger situation.
<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>Yes, minority shareholding is captured in the form of acquisition of material influence and <i>de facto</i> control.</p> <p>In so far as an acquisition involves assets amounting to an enterprises within the meaning of the Act, such assets can be covered in a merger situation.</p>

<b>4. Thresholds for notification</b>	
<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>	N/A (Notification is voluntary in Mauritius)
<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>	N/A
<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>	N/A

D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	N/A
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)?	N/A
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?	N/A
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]	N/A
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]	N/A
I. Are current notification criteria catching relevant transactions related to digital markets?	N/A

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>i) the value of the transaction;</li> <li>ii) the relevant sales or turnover;</li> <li>iii) the relevant assets;</li> <li>iv) market shares;</li> <li>v) other (please describe).</li> </ul>	<p>N/A</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>N/A</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>N/A</p>
<p><b>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</b></p>	<p>N/A</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>While Mauritius does not have a mandatory notification system, the Competition Commission has set up a consultative process for parties which intend to seek the guidance of the Competition Commission. Such consultation is voluntary and may be held prior to formal notification where parties opt to engage in pre-notification consultation.</p> <p>Parties wishing to obtain more information on the pre-notification consultations process are welcome to contact the Competition Commission either by phone, fax, and email or call in at our office.</p>

	A request for pre-notification consultations may be done by the parties, their legal representatives or other authorised representatives verbally over the phone or in writing, via email or letter to the Competition Commission.
<b>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</b>	As per the Guidance Note on Merger Notification, the following information is expected during pre-notification: (a) Parties involved; (b) Shareholding structure of the merging parties pre-transaction; (c) Related enterprises to the merging parties; (d) Indication of the nature of the transaction; (e) Rationale of transaction; (f) Products/services offered by each party; (g) Indication of relevant sector/industry/market in which parties operate; (h) Indication of market shares of parties, if available; (i) Indication of any overlap between the product/services supplied by the parties; (j) Indication as to the possible impact that the transaction will have on competition in the affected markets, if known.

<b>6. Notification requirements and timing of notification</b>	
<b>A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]</b>	No, notification is voluntary in Mauritius.
<b>B. If parties can make a voluntary merger filing when may they do so?</b>	The Competition Commission may be notified of a prospective merger at any point in time.
<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>	As per section 47(4) of the Act, a transaction can be notified where 2 or more enterprises intend to be in a merger situation.

<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><b>N/A</b> (Mauritius has no mandatory notification system, but a party may notify prior to the transaction)</p>
<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><b>N/A</b></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>In certain circumstances, the Competition Commission may accept a shorter form of notification. This will basically entail providing less information to the Competition Commission than what is required in the notification form (short form notification). The possibility of submitting a short form notification is available only to merging parties which have engaged with the Competition Commission through pre-merger consultations and the informational requirements have been pre-agreed. The Competition Commission will take into account various factors in determining whether less information is acceptable in the particular circumstance. This will depend on the nature of the transaction, the markets involved, the likelihood of competition concerns, and the information already available to the Competition Commission among others.</p>
<p><b>B. Describe the criteria adopted to consider a transaction under the simplified procedure.</b></p>	<p>Subject to agreement with Competition Commission a shorter form of notification ("short form notification") can be accepted. The possibility of submitting a short form notification is available only to merging parties which have engaged with the Competition Commission through pre-merger consultations and the informational requirements have been pre-agreed.</p>

<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>	The parties should submit documents such as agreements between the merging parties describing the transaction, the rationale of the transaction, documents pertaining to their market shares, commercial strategies, business plans, information on their customers, competitors, and the impact of the merger on the market. A full list is detailed in Form 1, accessible at the following link: <a href="#">FORM M1 (competitioncommission.mu)</a>
<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>	This is not part of the requirement listed in Form 1, but the Competition Commission could ask notifying parties this information on a case-by-case basis.
<b>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</b>	If the parties have efficiency claims they are expected to substantiate same.
<b>D. What information is required in case the target company is experiencing financial insolvency?</b>	The information required will be on a case-to-case basis. However, if the target is a failing firm the company will need to satisfy the criteria for the failing firm defence, as specified at paragraph 3.20, in the CC5-Guidelines to Mergers, accessible at the following link: <a href="#">CC5-Guidelines-Mergers.pdf (competitioncommission.mu)</a>
<b>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</b>	There is no specific procedure as such, but the Competition Commission may issue information request orders to ask for the information needed.

<p><b>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</b></p>	<p>No.</p>
<p><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></p>	<p>There are no such rules.</p>
<p><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></p>	<p>Yes, the authority has the power to ask information from third parties. Third Parties may also submit information voluntarily.</p>
<p><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></p>	<p>Yes, they may provide supplementary information to their merger notification documents and to documents submitted with the Form 1.</p>
<p><b>J. Are there different forms for different types of transactions or sectors?</b></p>	<p>No.</p>
<p><b>K. With respect to investment funds:</b></p> <p><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?</b></p>	<p>There is no specific rule catering for investment funds. However, information may be requested as and when necessary from them. Generally, it is expected that notifications involving investment funds will include information as in Form 1 and as such information in relation to their controller and related entities.</p>

<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>	
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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>Our official language is English; therefore, it is expected that the notification be submitted in English.</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>Documents are expected to be English, otherwise parties may engage with the Commission to discuss.</p>

<b>10. Review Periods</b>	
<b>A. Describe any applicable review periods following notification.</b>	For enquiry phase (Phase I assessment), the review period lasts up to 30 working days. If there are grounds to believe that the transaction may result in SLC, then an investigation is triggered (Phase II assessment) and the review period lasts up to 6 months.
<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>	There is no automatic extension of the review period. The Executive Director may extend the review period where there are compelling reasons to do so or where delays are caused by merging parties.
<b>D. Is there a statutory or other maximum duration for extensions?</b>	No.
<b>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</b>	N/A
<b>F. What are the time periods for accelerated review of non-problematic transactions, if any?</b>	We do not have established time periods but for phase I, the review period cannot exceed 30 working days.
<b>G. If remedies are offered, do they impact the timing of the review?</b>	Yes, we aim to expedite matters in those circumstances, but this would also depend on the effectiveness of the remedy and its timing among others.

<b>11. Waiting periods / suspension obligations</b>	
<b>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from</b>	N/A

implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.	
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	N/A
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)?	N/A
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	N/A
E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	N/A
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.	N/A
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).	N/A

<b>12. Responsibility for notification / representation</b>	
<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>	We have a voluntary regime and therefore there is no mandatory notification. However, as per section 47(4) of the Competition Act 2007, “ <i>where two or more enterprises intend to be in a merger situation, any one of the enterprises may apply to the Commission for guidance as to whether the proposed merger situation is likely to result in a substantial lessening of competition within any market for goods or services</i> ”.
<b>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</b>	No.
<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>	No.
<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>	N/A
<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>	N/A (Notification is free of charge)
<b>B. Who is responsible for payment?</b>	N/A
<b>C. When is payment required?</b>	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
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<b>14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]</b>	
A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	It would depend on a case-to-case basis, but the Framework is laid in the Merger Review Guidelines. ( <a href="https://competitioncommission.mu/wp-content/uploads/2019/09/CC5-Guidelines-Mergers.pdf">https://competitioncommission.mu/wp-content/uploads/2019/09/CC5-Guidelines-Mergers.pdf</a> )
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	The Competition Commission will assess whether a merger situation exists, whether it meets the market share threshold and whether a merger situation has resulted or is likely to result in a substantial lessening of competition (“SLC”).
C. What theories of harm does the agency consider in practice?	The main test remains whether the merger situation has resulted or is likely to result in an SLC. However, the main theories of harm that are considered are as follows: (a) Unilateral effects (horizontal mergers, mainly) (b) Coordinated effects (horizontal mergers, mainly, but also vertical mergers) (c) Foreclosure (vertical and conglomerate mergers, mainly)
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	It would depend on a case-to-case basis. Nevertheless, our guidelines lay out the required framework.  To the extent that a joint venture meets the definition of a merger situation under the Act, it may be reviewable and the same key stages would apply. However, a joint venture agreement may be reviewed under the provisions for collusive agreements if it is between competitors and has the object or effect of fixing prices, market sharing or restricting supply.

<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>Section 50 (3) of the Act provides that before deciding on any remedial action to be taken, the Competition Commission would consider if there are any offsetting public benefits as per section 50 (4) of the Act.</p>
<p><b>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</b></p>	<p>In the case of a prospective merger the Competition Commission may require an enterprise to desist from completion or implementation; divest such assets or to adopt or desist from such conduct as may be specified in the direction.</p> <p>In the case of a completed merger, the Competition Commission may require the enterprise to divest itself of such assets or adopt or to desist from such conduct as may be specified in the direction.</p> <p>Of course, if there is no concern, the Commission will not object to the transaction.</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>Section 63 of the Act provides that an enterprise may offer a written undertaking to the Commission to address any concern that has arisen, or is likely to arise, during an investigation in respect of a restrictive agreement subject to investigation, a monopoly situation or a merger situation. We also have a guideline on remedies which provides for the remedies imposed under the Act.</p> <p>The Competition Commission's Guidelines provide that the Commission will normally strongly prefer remedies which enhance or protect the process of competition.</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>It depends on a case-to-case basis depending on the nature of confidential information being involved.</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>There is no established rule on this matter.</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>There is no established rule on this matter.</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>Yes, the procedure for confidentiality is set out in section 31 of the Competition Commission Rules of Procedure.</p> <p>Rule 31 (2) of the Rules of Procedure provides that any party may submit a request in writing to the Executive Director that a document be treated as confidential. Such a request should be accompanied by a statement setting out cogent reasons for such treatment and to the extent possible the date on which such confidential treatment shall expire. The request will only be considered if the document, or a part or parts thereof, is made public and this will result in disclosure of trade secrets or destruction or appreciable diminution of the commercial value of any information or can be reasonably expected to cause serious injury.</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 Rules of Procedure provides for the circumstances in which the Commission can consider an information to be confidential.</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>Yes.</p> <p>The Competition Commission requests the party to identify material in their submissions that they consider confidential before the Executive Director publishes such information in his reports addressed to other parties or in a public version of his report. There are also additional safeguards.</p>
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<p><b>16. Transparency</b></p>	
<p><b>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</b></p>	<p>The Competition Commission does issue annual reports with information about mergers as per the provisions of section 35 of the Act.</p> <p>Please see <a href="https://competitioncommission.mu/publication-category/annual-report/">https://competitioncommission.mu/publication-category/annual-report/</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>Yes, same can accessed on the website of the Competition Commission. Please see <a href="https://competitioncommission.mu/">https://competitioncommission.mu/</a></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>Yes, same can be accessed on the website of the Competition Commission. Please see <a href="https://competitioncommission.mu/cat/media-releases/">https://competitioncommission.mu/cat/media-releases/</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>Yes, same is published in its annual reports.</p>

**17. Cooperation**

<p><b>A. Is the agency able to exchange information or documents with international counterparts?</b></p>	<p>Yes, section 30 (i) of the Act provides that the Executive Director shall liaise and exchange information, knowledge and expertise with competition authorities in other countries entrusted with functions similar to those of the Commissions.</p> <p>The Competition Commission have entered into MoUs with certain foreign competition authorities which permit the exchange of information or documents.</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>Yes, in particular with the COMESA Competition Commission, the Fair-Trading Commission of the Republic of Seychelles and the competition authorities of the member states of the SADC community on cooperation in the field of Competition Policy, Law and Enforcement.</p> <p>The MoUs are available on the website of the Competition Commission. Please see <a href="https://competitioncommission.mu/memoranda-of-understanding/">https://competitioncommission.mu/memoranda-of-understanding/</a></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 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></p>	<p>As per the clauses of the MoU, the consent of the persons who submitted confidential information is required prior to sharing same.</p>
<p><b>D. Is the agency able to exchange information or documents with other domestic regulators?</b></p>	<p>Yes, section 66 of the Act provides the Competition Commission and regulators shall enter into memorandum of understanding governing the effective exercise of their respective responsibilities and establishing mechanisms for practical co-operation, including the exchange of information. The Competition Commission has indeed concluded MoUs with several regulators.</p>

<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>	<ul style="list-style-type: none"> <li>i. Since notification is not mandatory there is no sanction/penalties for failure to notify.</li> <li>ii. Supply of incorrect/misleading information during notification is an offence which may entail a “fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years”.</li> <li>iii. Failure to comply with an information order is an offence and to the following sanctions: (a) an individual, to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years; or (b) a body corporate, to a fine not exceeding 200,000 rupees.</li> <li>iv. N/A</li> <li>v. An application must be made to the Judge in Chambers for a mandatory order requiring the enterprise to make good the default within a time specified in the order.</li> <li>vi. Same as above.</li> <li>vii. Same as above.</li> </ul>
<p><b>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</b></p>	<p>Where applicable it can be either the person or a corporate body, depending on the circumstances.</p>
<p><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></p>	<p>As per section 73(3) of the Act: Notwithstanding - (a) section 114(2) of the Courts Act; and (b) section 72(5) of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under this Act or any regulations made thereunder and may impose any penalty provided under this Act.</p>
<p><b>D. Are there any recent or significant fining decisions?</b></p>	<p>No, not in relation to the offences mentioned in this section.</p>

<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, but the Minister may give written directions of a general character to the Commission relating to any public policy factors to which he wishes the Commission to have regard in reaching its determinations.
<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>	N/A

<b>20. Administrative and judicial processes/review</b>	
<b>A. Describe the timetable for judicial and administrative review related to merger transactions.</b>	Where there has been a notification, the Executive Director must complete phase 1 review within 30 days and phase 2 review within 6 months. The Commission then has 40 days from the hearing to issue its decision. The parties have 21 days from the date of the direction to make an appeal to 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>	Depending on the type of confidential information involved, a non-confidential version of the case file may be drawn up. For instance, confidential information may be anonymized, aggregated or excised from the documents which are to be used in the judicial proceedings.
<b>C. Are there any limitations on the time during which an appeal may be filed?</b>	Yes, an appeal must be within 21 days from the direction.

<b>21. Additional filings</b>
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<p><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></p>	<p>They are required in certain circumstances but is not a precondition to make a notification or for the Commission to make a determination.</p>
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<p><b>22. Closing Deadlines</b></p>	
<p><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></p>	<p>There is no prescribed deadline in law but if so required it can be part of the decision or undertaking, and the parties may apply for a variation if an extension is required with justifications.</p>

<p><b>22. Post Merger review of transactions</b></p>	
<p><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></p>	<p>Yes, but the authority will do so in limited and strict circumstances, mainly where the information supplied were erroneous. There is no time limit set.</p>
<p><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></p>	<p>Such study has not been conducted yet.</p>