

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Portuguese Competition Authority (AdC)

05 April 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	Chapter III, Sections I and II of the Competition Act approved by Law no. 19/2012 http://www.concorrenca.pt/vPT/A_AdC/legislacao/Documents/Nacional/Lei_19_2012-Lei_da_Concorrenca.pdf http://www.concorrenca.pt/vEN/A_AdC/About_Us_mission_and_functions/Documents/Law%2019-2012%20-%20Portuguese%20Competition%20Act.pdf under Legislation
B. Substantive merger review Provisions	Chapter III, Section I of the Competition Act approved by Law no. 19/2012 http://www.concorrenca.pt/vPT/A_AdC/legislacao/Documents/Nacional/Lei_19_2012-Lei_da_Concorrenca.pdf

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.

C. Implementing regulations	Regulation no. 1/E/2003 on Fees Payable for the assessment of concentrations and Regulation no. 60/ 2013 Relating to the Notification Form.
D. Notification forms or information requirements	Regulation no. 60/ 2013 http://www.concorrenca.pt/vPT/A_AdC/legislacao/Documents/Nacional/Regulamento_2013_60.pdf
Interpretative Guidelines and Notices	
E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	General instructions and clarifications regarding the notification are provided in the Notification form.
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	Guidelines on the economic assessment of mergers http://www.concorrenca.pt/vPT/Noticias_Eventos/ConsultasPublicas/Documents/Linhas%20de%20Orienta%C3%A7%C3%A3o%20para%20a%20An%C3%A1lise%20Econ%C3%B4mica%20de%20Opera%C3%A7%C3%B5es%20de%20Concentra%C3%A7%C3%A3o%20Horizontais.pdf Guidelines on prior assessment in merger review http://www.concorrenca.pt/vPT/A_AdC/legislacao/Documents/Nacional/Linhas%20de%20Orientacao%20Relativas%20a%20Avaliacao%20Previa.pdf Guidelines on Remedies in mergers http://www.concorrenca.pt/SiteCollectionDocuments/Noticias_e_Eventos/Comunicados/Comunicado201109_DOC_2-Linhas_de_Orientacao.pdf
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	Competition policy priorities for 2021 http://www.concorrenca.pt/vEN/A_AdC/Instrumentos_de_gestao/Documents/Competition%20Policy%20priorities%20for%202021.pdf

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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.	AUTORIDADE DA CONCORRÊNCIA In areas under sectoral regulation the Authority has to consult the regulator of the activity concerned by the concentration.
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	Av. de Berna, 19 1050-037 Lisboa Telephone: (*351) 21 790 20 00 e-mail: adc@concorrenca.pt web: http://www.concorrenca.pt (Portuguese and English)
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	The head of the merger department is the direct contact point or a request may be sent to preconcentracao@concorrenca.pt

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 Law no. 19/2012, article 36, paragraphs 1 and 2: 1. A concentration between undertakings shall be understood to exist: a. In the case of a merger between two or more hitherto independent undertakings; b. In the case that one or more individuals who already have control of at least one undertaking or of one or more undertakings acquire control, directly or indirectly, of the whole or parts of one or several other undertakings.

	<p>2. The establishment or acquisition of a joint undertaking shall constitute a concentration between undertakings, within the meaning of subparagraph b) of the paragraph above, in as much as the joint undertaking fulfils the functions of an independent economic entity on a lasting basis.</p> <p>According to the paragraph 4 of the same article, the following are not held to constitute a concentration between undertakings:</p> <ul style="list-style-type: none"> a. The acquisition of shareholdings or assets under the terms of a special process of corporate rescue or bankruptcy; b. The acquisition of a shareholding merely as a guarantee; c. The acquisition by credit institutions of shareholdings in nonfinancial undertakings, when such acquisition is not covered by the prohibition in Article 101 of the General Regulations for Credit Institutions and Financial Institutions approved by DecreeLaw no. 298/92 of 31 December. <p>(English translation available on the website of the Authority)</p>
<p>B. What is the geographic scope of transactions covered?</p>	<p>According to article 2 (2) the law is applicable to competition enforcement in terms of concentrations of undertakings taking place on Portuguese territory or whenever these concentrations have or may have an effect on national territory.</p>
<p>C. If change of control is a determining factor, how is control defined and interpreted in practice?</p>	<p>According to paragraph 3 of article 36, control shall be constituted by any act, irrespective of the form which it takes, which, separately or jointly and having regard to the circumstances of fact or law involved, implies the ability to exercise a determining influence on an undertaking's activity, in particular:</p> <ul style="list-style-type: none"> a. Acquisition of all or part of the share capital; b. Acquisition of rights of ownership, use or enjoyment of all or part of an undertaking's assets; c. Acquisition of rights or the signing of contracts which grant a decisive influence over the composition or decision-making of an undertaking's corporate bodies.

<p>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?</p>	<p>Yes, when they confer to the acquiring company the ability to exercise a determining influence on an undertaking's activity. The acquisition of control over assets can only be considered a concentration if those assets constitute the whole or a part of an undertaking, i.e. a business with a market presence, to which a market turnover can be clearly attributed.</p>
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<p>4. Thresholds for notification</p>	
<p>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)]</p>	<p>According to Article 37 of Law no. 19/2012, prior notification is required for all concentrations where at least one of the following circumstances occurs:</p> <ul style="list-style-type: none"> a) As a consequence of the concentration, a market share equal to or greater than 50% of the domestic market in a specific product or service, or in a substantial part of it, is acquired, created or reinforced; b) As a consequence of the concentration, a market share equal to or greater than 30% but smaller than 50% of the domestic market in a specific product or service, or in a substantial part of it, is acquired, created or reinforced in the case where the individual turnover in Portugal in the previous financial year, by at least two of the undertakings involved in the concentration are greater than five million euros, net of taxes directly related to such a turnover; c) The undertakings that are involved in the concentration have reached an aggregate turnover in the previous financial year greater than 100 million euros, net of taxes directly related to such a turnover, as long as the turnover in Portugal of at least two of these undertakings is above five million euros.
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining</p>	<p>According to the article 39 of Law no. 19/2012, calculation of the market share and turnover shall take into account, accumulatively, the turnover of:</p>

<p>relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>a) Undertakings taking part in the concentration; b) Undertakings in which such undertakings dispose, directly or indirectly, of: - A majority holding in the share capital; - More than half the votes; - The ability to nominate more than half the members of the management or supervisory bodies; - The power to manage the undertaking's business; c) Undertakings which, in the participating undertakings, separately or jointly, have the rights or powers specified in subparagraph b); d) Undertakings in which an undertaking referred to in subparagraph c) has the rights or powers specified in subparagraph b); e) Undertakings in which various undertakings referred to in subparagraphs a) to d) jointly dispose, among themselves or with third-party undertakings, of the rights or powers specified in subparagraph b).</p> <p>By way of derogation from this rule: if the concentration consists of the acquisition of parts, with or without their own legal personality, of one or more undertakings, the turnover to be taken into account with regard to the seller shall solely be the one related to the parts involved in the transaction [article 39(4)].</p>
<p>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)?”</p>	<p>The rules are applicable to concentrations between undertakings which take place, or which have or may have effects in Portugal. The effects doctrine is applied: the mere existence of import sales is sufficient to trigger the obligation to file. Thresholds are only based on the turnover generated within Portugal. The sales are allocated geographically by reference to the location of the customers.</p>
<p>D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>Yes, if the merger creates or reinforces a share equal to or exceeding 50% of the national market. If an undertaking buys assets that represent 50% or more of the market, even if there is no overlap, a filing has to be made.</p>

<p>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)?</p>	<p>No. Thresholds relate to the parties' turnover or share in the previous fiscal year.</p>
<p>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?</p>	<p>In the case of joint ventures, Article 39 (2) of Law 19/2012 states the calculation of the turnover for the undertakings taking part in the concentration in the following terms:</p> <ul style="list-style-type: none"> a. Shall not take into account the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings taking part in the concentration or any other undertaking of the participating groups; b. Shall take into account the turnover from the sale of products or provision of services between the joint undertaking and any other third-party undertaking and such turnover shall be attributed to each of the undertakings participating in the concentration in the part corresponding to its division into equal parts for all the undertakings controlling the joint undertaking. <p>In the case of credit and other financial institutions, Article 39 (5), a) of Law 19/2012 states that the turnover shall be substituted by the sum of the following items of income, as they are defined by the applicable legislation:</p> <ul style="list-style-type: none"> i. Interest and equivalent income; ii. Income from securities: income from shares and other variable-yield securities; income from equity investment; income from parts of the capital in associated undertakings; iii. Commissions received; iv. Net profit from financial operations; v. Other operating income. <p>In the case of insurance undertakings, Article 39 (5) b) of Law 19/2012 states that the turnover shall be replaced by the value of gross premiums written, paid by residents of Portugal, which shall include all amounts received or receivable in respect of insurance</p>

	contracts issued by or on behalf of such undertakings, including premiums paid to reinsurers, except for the taxes or levies charged on the basis of the amount of the premiums or their total volume.
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.
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.
I. Are current notification criteria catching relevant transactions related to digital markets?	As far as we are aware, no major/relevant transaction in digital markets have “escaped” the AdC’s review.
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).	According to Art. 39 (3) of Law no. 19/2012, turnover includes the value of products sold and services provided to undertakings and consumers within the territory of Portugal, net of taxes directly related to the turnover, but does not include transactions carried out between the undertakings within the group.

<p>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?</p>	<p>According to the article 39 of Law no. 19/2012, calculation of the market share and turnover shall take into account, accumulatively, the turnover of:</p> <p>a) Undertakings taking part in the concentration;</p> <p>b) Undertakings in which such undertakings dispose, directly or indirectly, of:</p> <ul style="list-style-type: none"> - A majority holding in the share capital; - More than half the votes; -The ability to nominate more than half the members of the management or supervisory bodies; - The power to manage the undertaking's business; <p>c) Undertakings which, in the participating undertakings, separately or jointly, have the rights or powers specified in subparagraph b);</p> <p>d) Undertakings in which an undertaking referred to in subparagraph c) has the rights or powers specified in subparagraph b);</p> <p>e) Undertakings in which various undertakings referred to in subparagraphs a) to d) jointly dispose, among themselves or with third-party undertakings, of the rights or powers specified in subparagraph b).</p> <p>The definition of control in these cases is not any different from the definition of control in general.</p>
<p>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?</p>	<p>Yes.</p>
<p>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</p>	<p>No specific rule. Foreign currencies are converted into euros according to the official exchange rate applicable at the time of the relevant fact.</p>
<p>5. Pre-notification</p>	

<p>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.].</p>	<p>It is a procedure of a voluntary, informal and confidential nature. At the end of the proceedings, the Authority provides the parties with an opinion and not a binding decision. The proceedings may be initiated before the obligation to notify is constituted. Under article 37 (2) concentrations must be notified to the Competition Authority after the parties have concluded an agreement and prior to its implementation, if this is to be the case, following the date of the preliminary announcement of a public offer of acquisition or exchange, or of the announcement of the acquisition of a controlling shareholding in an undertaking with shares listed on a regulated stock market or, in the case of a concentration resulting from a public procurement procedure, after the definitive tender selection and before the public contract is signed off.</p>
<p>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</p>	<p>Notifying companies are advised to present, as part of the prior assessment, a version as complete as possible of the Notification Form.</p>

<p>6. Notification requirements and timing of notification</p>	
<p>A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]</p>	<p>Yes, whenever the turnover or the market share thresholds are met.</p>
<p>B. If parties can make a voluntary merger filing when may they do so?</p>	<p>Under article 37 (4) when the undertakings taking part in a concentration make known to the Competition Authority that there is a serious intention to conclude an agreement, or, in the case of a public offer of acquisition or exchange, where they have publicly announced the intention to make such an offer, and if this agreement or the public offer at issue results in a concentration, the operation can be notified voluntarily to the Competition Authority, prior to the obligation to notify.</p>
<p>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?)</p>	<p>Under article 37 (4) when the undertakings taking part in a concentration make known to the Competition Authority that there is a serious intention to conclude an agreement, or, in the case of a public offer of acquisition or exchange, where they have publicly announced the intention to make such an offer, and if this agreement or the public offer</p>

	at issue results in a concentration, the operation can be notified voluntarily to the Competition Authority, prior to the obligation to notify.
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?	Under article 37 (2) concentrations must be notified to the Competition Authority after the parties have concluded an agreement and prior to its implementation, if this is to be the case, following the date of the preliminary announcement of a public offer of acquisition or exchange, or of the announcement of the acquisition of a controlling shareholding in an undertaking with shares listed on a regulated stock market or, in the case of a concentration resulting from a public procurement procedure, after the definitive tender selection and before the public contract is signed off.
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.	Parties must comply with a standstill obligation. Under article 40 a concentration subject to prior notification shall not be implemented prior to being notified.

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.).	A short form may be submitted under Regulation 60/2013 and a simplified procedure may be adopted, under which the Portuguese Competition Authority adopts its decision within 20 working days.
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	a) none of the parties to the concentration are engaged in business activities in the same product and geographic market, or in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged ;

	<p>b) the combined market share of all the parties to the concentration that are engaged in business activities in the same product and geographic market (horizontal relationships) does not exceed 15%</p> <p>c) the individual or combined market shares of all the parties to the concentration that are engaged in business activities in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (vertical relationships) does not exceed 25%.</p>
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8. Information and documents to be submitted with a notification	
<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</p>	<p>The parties must submit:</p> <ul style="list-style-type: none"> - If the notification is filled by the parties' legal representatives, the respective power of attorney - The approved financial statements and reports of each undertaking involved in the concentration, for the last three financial years. - A copy of the agreements involved in the setting-up of the concentration. - Shareholders' agreements, if they exist, when they are important for assessing the form and means of control. - They may further submit any studies they consider relevant. - As the notification is effective on the date of the fee payment, they must also present documentary evidence of the payment of the fee due, according to the Regulation on the Fees payable for the assessment of concentrations.
<p>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]</p>	<p>There is no distinction.</p>

<p>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</p>	<p>If the Notifying parties consider that there are efficiency gains resulting from the concentration (e.g. cost economies, economies of scale, the introduction of new products or improvements in the service or products) which will be relevant to the competition-law assessment of the concentration, they must provide a description and demonstration, based on economic studies, for each of the efficiency gains expected from the projected concentration; they must explain to what extent solely the implementation of the concentration projected will allow efficiency gains similar to those expected to be obtained; and also explain and demonstrate clearly to what extent users/consumers may benefit from the efficiency gains identified.</p>
<p>D. What information is required in case the target company is experiencing financial insolvency?</p>	<p>The application of the ‘failing firm defense’ in merger control takes place only in particular and exceptional circumstances, and is conditional on the proof of a wide set of criteria. The evidence collected must demonstrate the financial difficulties faced by the company at the time of the merger, must demonstrate the absence of credible restructuring efforts that would allow its recovery, that there is no less anti-competitive alternative purchase than the notified merger, as well as that in the absence of the merger, the assets would inevitably exit the market.</p>
<p>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</p>	<p>No.</p>
<p>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</p>	<p>No.</p>
<p>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)?</p>	<p>There are no special rules. General rules apply.</p>

<p>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?</p>	<p>Yes to both.</p>
<p>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)?</p>	<p>Yes.</p>
<p>J. Are there different forms for different types of transactions or sectors?</p>	<p>No.</p>
<p>K. With respect to investment funds:</p> <p>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?</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>i) A statement is not requested as such but it is the sort of information that the parties must supply enabling the AdC to conduct its investigation in due form.</p> <p>ii) Such funds will be considered part of the transaction and any information regarding them must be provided.</p> <p>iii) In particular and duly justified instances, the AdC may waive certain information requirements.</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>9. Translation</p>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>The notification form must be submitted in Portuguese.</p>
<p>B. Describe any requirements to submit translations of documents:</p> <ul style="list-style-type: none"> i) with the initial notification; and ii) later in response to requests for information. <p>In addition:</p> <ul style="list-style-type: none"> 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? 	<p>Other documents (namely, contracts, company documents, studies ...) may be submitted in other languages (English, French, Spanish, Italian) but if they are particularly complex, the Authority may ask for a translation. Such a request suspends proceeding time limits. Depending on the nature of the document, a summary or a full translation may be requested.</p>

<p>10. Review Periods</p>	
<p>A. Describe any applicable review periods following notification.</p>	<p>Within 30 working days following notification and a due investigation, the AdC may decide (i) that the concentration does not fall within the scope of the merger procedure; (ii) not to oppose the concentration; (iii) begin an in-depth investigation if it considers that the concentration may raise serious issues. Should the AdC decide to conduct an in-</p>

	depth investigation, the proceedings must be concluded within 90 working days following notification.
B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?	No.
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?	The 90 days review period may be extended to a further 20 working days upon request by the Notifying party or with its agreement should the AdC decide of its own accord. Requests for additional information or documents suspends the review period.
D. Is there a statutory or other maximum duration for extensions?	The 90 day review period can be extended by the Competition Authority, upon request from the notifying party or with its agreement, up to a maximum of 20 working days.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	Yes. As provided in the Competition Act, the review period is suspended when the AdC sends the Notifying party a request for information or whenever the parties present remedies. The parties' consent is not required in these cases.
F. What are the time periods for accelerated review of non-problematic transactions, if any?	Concentration which qualify for a simplified procedure may be decided within 20 working days from notification.
G. If remedies are offered, do they impact the timing of the review?	Yes. The submission of commitments suspends the review period for 20 working days.

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.	Article 40 of Law 19/2012 states that a concentration subject to prior notification shall not be put into effect before it has been both notified and a decision of non-opposition has been adopted. This does not prevent the implementation of a public bid to purchase or an exchange offer that has been notified to the Authority, provided that the acquirer

	does not exercise the voting rights attached to the securities in question or exercises them solely to protect the full value of its investments on the basis of a derogation granted.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	At the request, duly substantiated, of the participating undertaking or undertakings, the Authority may grant a derogation from the waiting period or from the suspension obligation, after considering the consequences for the participating undertakings of suspending the concentration or the exercise of voting rights and the negative effects of the derogation for the competition. The derogation may, if necessary, be accompanied by conditions and obligations intended to guarantee effective competition.
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 waiting periods apply to the entire transaction.
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	As provided in article 50 (4) of Law 19/20212, where a decision has not been taken within the time limit stipulated, a non-opposition decision is deemed to have been adopted concerning the proposed concentration between undertakings.
E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	The enforcement authority may ask for additional information or documents which suspends the proceeding's review periods. Whenever the notification documents or information are incomplete or inaccurate the Authority shall invite the authors of the notification, in writing and within seven working days, to complete or rectify the notification within the period it stipulates. In this case, the 30 working days period shall only begin on the date on which the Authority receives the information or documents.

<p>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.</p>	<p>Not applicable.</p>
<p>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).</p>	<p>At the request, duly substantiated, of the participating undertaking or undertakings, the Authority may grant a derogation from the prohibition to put a merger into effect, after considering the consequences for the participating undertakings of suspending the concentration. The derogation may, if necessary, be accompanied by conditions and obligations intended to guarantee effective competition.</p>

<p>12. Responsibility for notification / representation</p>	
<p>A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?</p>	<p>In the case of a merger, all the undertakings directly involved in the merger; in the case of acquisition of full control, the person or undertaking assuming control; in the case of joint control, the persons or undertakings assuming control. Joint notifications must be presented by a common representative empowered to send and receive documents on behalf of all the notifying parties (Regulation 60/2013, relating to the Notification form).</p>
<p>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	<p>Yes, a lawyer representing the parties must be a member of the Portuguese bar</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</p>	<p>The notification shall include a declaration of conformity signed by the notifying party or its representative or, for joint notifications, by the respective joint representative. The representatives of undertakings holding a special power of attorney for notification purposes are required to produce written evidence of their powers.</p>

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]	Yes. The amount of the fee, which depends on the parties' aggregate turnover, goes from a minimum of € 7,500 to a maximum of € 25,000. In case of an in-depth investigation, in addition to the initial fee, a further fee of 50% of its amount shall be payable. (Regulation 1/E/2003, on the Fees payable for the Assessment of Concentrations).
B. Who is responsible for payment?	The notifying party or parties.
C. When is payment required?	Payment is required as soon as the notification is presented to the Competition Authority. Notification shall be effective only on the date of payment of the fee due [article 45 (1)].
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Fees shall be paid by means of a bank transfer to an account duly identified in the Competition Authority website, and the respective documentary evidence shall be forwarded to the Authority on the day of payment.

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)?	Concentrations which have been duly notified are appraised in order to determine their effects on the structure of competition, taking into consideration the need to preserve and foster, in the interests of intermediate and final consumers, effective competition in the domestic market or in a substantial part of it. Where at any time during the proceedings more information or documentation is required, or what has been provided has to be rectified, the Competition Authority shall inform the notifying party, setting a reasonable time limit for providing the elements at issue or for making the necessary rectifications. Throughout the proceedings, the Competition Authority may request from any other entities, public or private, any information that it deems relevant for conclusion

	of the proceedings, which shall be provided within the time limits set by the Competition Authority.
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	The substantial lessening of competition test. As provided in article 41 (3) and (4) of Law 19/2012, concentrations which are not likely to create significant impediments to effective competition in the domestic market or in a substantial part of it shall be authorized. Concentrations which are likely to create significant impediments to effective competition in the domestic market or a substantial part of it, in particular if the impediments derive from the creation or reinforcement of a dominant position shall not be authorized.
C. What theories of harm does the agency consider in practice?	Concentrations which have been notified are appraised in order to determine their effects on the structure of competition, taking into consideration the need to preserve and foster, in the interests of intermediate and final consumers, effective competition in the domestic market or in a substantial part of it. In the appraisal, the following factors shall be taken into consideration, specifically: a) The structure of the relevant markets and the existence or absence of competition from undertakings in these markets or in separate markets; b) The position of the undertakings concerned in the relevant markets and their economic and financial power, compared with those of their main competitors; c) The purchaser's market power and its ability to prevent the reinforcement of situations of economic dependence vis-à-vis the undertaking that results from the concentration; d) Potential competition and the existence, in fact or in law, of barriers to entry into the market; e) The possibility of choice for suppliers, clients and users; f) The access of various undertakings to sources of supply and markets for their goods; g) The structure of existing distribution networks; h) Developments in the supply and demand of the products and services at issue; i) The existence of special or exclusive rights conferred by law or stemming from the nature of the products being traded or the services supplied;

	<p>j) The control of essential facilities by the undertakings concerned and the possibility of access to these facilities provided for competing undertakings;</p> <p>k) Any technical and economic progress that does not constitute an impediment to competition, provided there are efficiency gains that benefit consumers, stemming directly from the concentration.</p>
<p>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</p>	<p>The AdC considers all the information submitted by the parties. If it needs further information, it sends requests for information. The AdC may also address information requests to third parties, be it clients, suppliers, regulatory agencies. This approach does not differ depending on the type of transaction. It is a standard approach.</p>
<p>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?</p>	<p>No.</p>
<p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p>	<p>Unconditional/conditional clearance, prohibition, inapplicability of the scope of the merger procedure, either because the transaction does not qualify as a concentration or the thresholds are not met.</p>
<p>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?</p>	<p>The commitments offered must be sufficient and adequate to ensure that effective competition is maintained. The Competition Authority shall refuse the commitments whenever it considers that the submission is simply a delaying tactic or that the conditions or obligations offered are insufficient or inadequate to prevent impediments to competition that might result from the concentration between undertakings or that the feasibility of such commitments is uncertain.</p>

15. Confidentiality	
<p>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the</p>	<p>Whenever a notification is made, within five days of the date on which it is effective, the Authority shall publish a summary of the notification in two national newspapers, so that any interested third parties may present their observations within the prescribed time,</p>

contents of the notification? If applicable, when is this disclosure made?	which may not be less than 10 days. The summary of the notification is also published in the Authority's web site. In both cases, details of the notification will not be published.
B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?	The notifying parties have the right to access the file. Third parties' business secrets are not included in the right of access.
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, if they have been admitted to the proceedings as interveners or as "interested parties", e.g., competitors, clients, or suppliers who wish to supply observations, can also have access to the file, except to any business secrets of other involved undertakings. Also, as provided in article 55 of Law 19/2012, whenever there is a concentration in a market that is subject to sectoral regulation, the Competition Authority, prior to taking a final decision, must request the opinion of the sectoral regulatory authority, thereby granting access to the notification materials (both the confidential and the non - confidential version).
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	The fact that the notification has been made cannot be treated with confidentiality. Parties and third parties wishing to safeguard confidentiality of the information supplied, have to mark such information as "confidential" and state the relevant reasons. The Competition Authority shall decide on the grounds for maintaining the confidentiality of this information.
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.	Yes. The decision taken by the Authority to override a confidentiality request may be challenged by the parties before the courts.

<p>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?</p>	<p>Yes. The Authority has in place such procedures, for instance, a notification filing is not considered complete unless the Notifying party submits a non-confidential version of the notification and of all documents containing confidential information. Also, with every request for information that the Authority sends out, either to the Notifying party or to third parties, the Authority stresses the need for a non-confidential version of the reply should it contain any confidential information. In order to allow for access to file, the Authority keeps two versions of every proceeding: a complete/confidential version and a public/abridged version.</p>
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<p>16. Transparency</p>	
<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p>Yes. It is available (in Portuguese) at http://www.concorrenca.pt/vPT/A_AdC/Instrumentos_de_gestao/Relatorio-de-Atividades/Paginas/Relatorio-de-Atividades.aspx</p> <p>See also the annual report to the OECD Competition Committee (in English) at: http://www.concorrenca.pt/vEN/Sistemas_da_Concorrenca/International_Competition_System/OECD/Pages/Organisation-for-Economic-Co-operation-and-Development.aspx</p>
<p>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)?</p>	<p>Yes. Each decision is mentioned in the news section available at: http://www.concorrenca.pt/vPT/Noticias_Eventos/Noticias/Paginas/Lista-de-Noticias.aspx</p> <p>More detailed press releases are available for relevant cases at: http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/Comunicados.aspx</p>
<p>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.</p>	<p>Yes. They are available at: http://www.concorrenca.pt/vEN/Mergers/Decisooes/Pages/pesquisa.aspx?est=1 and https://extranet.concorrenca.pt/pesquisAdC/</p>

<p>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]</p>	<p>Yes. See the annual report available (in Portuguese) at: http://www.concorrenca.pt/vPT/A_AdC/Instrumentos_de_gestao/Relatorio-de-Atividades/Paginas/Relatorio-de-Atividades.aspx. See also the annual report to the OECD Competition Committee (in English) at: http://www.concorrenca.pt/vEN/Sistemas_da_Concorrenca/International_Competition_System/OECD/Pages/Organisation-for-Economic-Co-operation-and-Development.aspx</p>
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<p>17. Cooperation</p>	
<p>A. Is the agency able to exchange information or documents with international counterparts?</p>	<p>Yes.</p>
<p>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?</p>	<p>Yes. Portugal is a member of ECA – a network of European Competition Authorities, which was created on the 21 April 2001, in Amsterdam. ECA gathers all European Economic Area countries which have agreed, in what concerns concentrations, to establish a close cooperation regarding concentrations which are subject to notification in more than one country.</p> <p>https://ec.europa.eu/competition/ecn/eca_information_exchange_procedures_en.pdf</p>
<p>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.</p>	<p>The AdC adheres to the Best Practices on Cooperation between EU National Competition Authorities in Merger Review adopted by the EU Merger Working Group. Merging parties are encouraged to be proactive and to provide waivers of confidentiality to all NCAs concerned, including, where appropriate, at the pre-notification phase. The merging parties are encouraged to use the ICN model waiver provided in the Annex to the Best Practices.</p> <p>https://ec.europa.eu/competition/ecn/nca_best_practices_merger_review_en.pdf</p>

D. Is the agency able to exchange information or documents with other domestic regulators?	Yes.
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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?	According to article 69 (2) of the Law 19/2012, fines up to 10% of the previous year's turnover for each of the undertakings participating in the infringement, may be imposed (i) in case of implementation of concentrations of undertakings which have not been cleared or which were prohibited by the Authority and (ii) in case of disregard of the conditions or obligations imposed on the undertakings by the Authority. According to article 69 (3), a fine of up to 1% of the previous year's turnover for each of the undertakings may be imposed in case of failure to comply with information requests.
B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?	In principle the party upon which falls the obligation to notify is liable. According to article 73 of Law 19/2012, the following persons may be held responsible: individuals, legal persons, companies and associations without legal personality: (i) Legal persons and their equivalents for the offences provided for in Law 19/2012 when the facts have been carried out on their behalf or on their account or in the exercise of duty by members of their corporate bodies, their representatives or their employees; (ii) the directors of legal persons and equivalent bodies shall be subject to the fine prescribed for the author, if, when they know or should know of the infringement yet fail to take the appropriate measures to terminate it immediately; (iii) Undertakings which are part of an association of undertakings that is subject to a fine are jointly responsible for payment of the fine.
C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial	It can impose them directly.

action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	
D. Are there any recent or significant fining decisions?	Please see the most recent available fining decisions at: http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/Comunicados.aspx

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)?	As provided in article 41 of Decree Law 125/2014, which approved the Statutes of the AdC, the Notifying parties may challenge a prohibition decision taken by the AdC and appeal to the Minister responsible for the Economy.
B. What are the grounds for such ministerial intervention?	An overriding strategic national interest.
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [if applicable]	The Notifying parties may appeal within 30 days of the AdC prohibition decision. The Council of Ministers, upon proposal by the Minister responsible for the Economy, may authorize a merger prohibited by the AdC based on an overriding strategic national interest for the economy. The decision to authorize the merger must provide for conditions and obligations with a view to reduce the negative impact on competition.

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	Decisions of the Authority can be appealed before the <i>Tribunal da Concorrência, Regulação e Supervisão</i> . The appeal must be filed within a period of three months.

B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	All the proceedings have two versions: a complete/confidential version and an abridged/public version to allow for access to file and for review proceedings.
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C. Are there any limitations on the time during which an appeal may be filed?	As provided in article 74 of Law 19/2012, the statute of limitations is three years, in the following offences: a) Not providing information or providing false, inaccurate or incomplete information in response to a request of the Competition Authority; b) Not assisting the Competition Authority or obstructing it in the exercise of its powers under article 43; and five years, for all other cases.

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)?	The Decree-Law no. 138/2014, of 15 September establishes a foreign investment review regime for safeguarding strategic assets in sectors that are fundamental to the national interest concerning acquisitions by natural or legal persons from third countries from the European Union and the European Economic Area. In addition, whenever a concentration of undertakings affects a market that is subject to sector regulation, before reaching a decision, the Competition Authority shall ask the respective regulatory authority to state its opinion. These provisions shall not affect the exercise by the sector regulatory authorities of the powers that, within the scope of their specific duties, are legally conferred on them in relation to the concentration in question (article 55 Law 19/2012).

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?	No.

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 conditions? If so, are there any limitations, including a time limit on this authority?	Yes. The Competition Authority may initiate proceedings if one of the following situations arises: (i) concentrations of which the Authority becomes aware and which have not been subject to previous notification; (ii) concentrations for which the decision of non-opposition was grounded on information provided by the participants in the concentration, which was false or inaccurate; (iii) concentrations in which there has been total or partial disregard for the obligations or conditions imposed.
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?	To date such studies have not been conducted by the AdC.