

## ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

### Merger Working Group

Spain

[Date]

**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>	<ul style="list-style-type: none"><li>• <b>Art. 8 (thresholds), art. 55 and 56 (notification) COMPETITION ACT</b> 15/2007 of 3rd July (“Spanish Competition Act”) ( <a href="https://www.cnmc.es/file/64176/download">https://www.cnmc.es/file/64176/download</a>) (English); <a href="https://www.boe.es/eli/es/l/2007/07/03/15">https://www.boe.es/eli/es/l/2007/07/03/15</a> (Spanish) and</li><li>• <b>Art. 54, 55, 56, 57</b> of ROYAL DECREE 261/2008 of 22 February 2008, approving the <b>Defence of Competition Regulation</b>. (“Defence of Competition Regulation”) <a href="https://www.cnmc.es/file/64236/download">https://www.cnmc.es/file/64236/download</a>. (english); <a href="https://www.boe.es/buscar/act.php?id=BOE-A-2008-3646">https://www.boe.es/buscar/act.php?id=BOE-A-2008-3646</a> (Spanish)</li></ul>
<b>B. Substantive merger review Provisions</b>	<ul style="list-style-type: none"><li>• <b>Art. 10</b> Spanish Competition Act ( <a href="https://www.cnmc.es/file/64176/download">https://www.cnmc.es/file/64176/download</a>) (English) ; <a href="https://www.boe.es/eli/es/l/2007/07/03/15">https://www.boe.es/eli/es/l/2007/07/03/15</a> (Spanish)</li></ul>

<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.

<b>C. Implementing regulations</b>	<ul style="list-style-type: none"> <li>Defence of Competition Regulation. <a href="https://www.cnmc.es/file/64236/download">https://www.cnmc.es/file/64236/download</a>. (English); <a href="https://www.boe.es/buscar/act.php?id=BOE-A-2008-3646">https://www.boe.es/buscar/act.php?id=BOE-A-2008-3646</a> (Spanish)</li> </ul>
<b>D. Notification forms or information requirements</b>	<ul style="list-style-type: none"> <li>Art. 56 of Defence of Competition Regulation: The notification provided for in articles 55 and 56 of Act 15/2007 of 3 July 2007 will be presented to the National Competition Commission using the official ordinary notification form set out in Annex II, or in the official short form set out in Annex III in the events provided for in article 56 of Act 15/2007 of 3 July 2007.</li> <li><b>ANNEX II (Ordinary procedure) and III (Simplified procedure) of</b> Defence of Competition Regulation. <a href="#">DefenceCompetitionRegulation_95ing.pdf</a> (English); <a href="https://www.boe.es/buscar/act.php?id=BOE-A-2008-3646">https://www.boe.es/buscar/act.php?id=BOE-A-2008-3646</a> (Spanish)</li> </ul>
<b>Interpretative Guidelines and Notices</b>	
<b>E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]</b>	<ul style="list-style-type: none"> <li>Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008XC0416(08)&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008XC0416(08)&amp;from=EN</a>)</li> <li>GUIDELINES ON SHORT-FORM NOTIFICATION OF MERGERS UNDER ARTICLE 56 OF THE LDC <a href="https://www.cnmc.es/file/64307/download">https://www.cnmc.es/file/64307/download</a>.</li> </ul>
<b>F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]</b>	<b>We use</b> <ul style="list-style-type: none"> <li>Guidelines on the assessment of horizontal (and non-horizontal) mergers under the Council Regulation on the control of concentrations between undertakings <a href="https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CELEX%3A52004XC0205%2802%29">https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CELEX%3A52004XC0205%2802%29</a> <a href="https://eur-lex.europa.eu/legal-content/ES/ALL/?uri=CELEX%3A52008XC1018%2803%29">https://eur-lex.europa.eu/legal-content/ES/ALL/?uri=CELEX%3A52008XC1018%2803%29</a></li> <li>COMMISSION NOTICE on the definition of relevant market for the purposes of Community competition law: <a href="https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=celex%3A31997Y1209%2801%29">https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=celex%3A31997Y1209%2801%29</a></li> </ul>

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	NO

<b>2. Agency (or Agencies) responsible for merger enforcement.</b>	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	<ul style="list-style-type: none"> <li>National Commission for markets and competition (CNMC)</li> </ul>
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	<ul style="list-style-type: none"> <li>Calle del Barquillo, 5, 28004 Madrid</li> <li>+34 915 68 05 10</li> <li><a href="https://www.cnmc.es/">https://www.cnmc.es/</a> (Spanish and English)</li> </ul>
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	<ul style="list-style-type: none"> <li>Yes dc.unidadapoyo@cnmc.es</li> </ul>

<b>3. Covered transactions</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]	<ul style="list-style-type: none"> <li>Art. 7 of the Spanish Competition Act</li> </ul> <p>1. For the purposes set out in this Act, an economic concentration shall be deemed to arise when a stable change takes place of the whole or part of one or more undertakings results from:</p> <p>a) The merger of two or more previously independent undertakings, or</p>

	<p>b) The acquisition by an undertaking of control of the whole or part of one or more undertakings.</p> <p>c) The creation of a joint venture and, in general, the acquisition of the joint control of one or more undertakings, when they perform on a lasting basis the functions of an autonomous economic entity.</p> <p>2. For the above purposes, control shall be constituted by contracts, rights or any other means which, having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking and, in particular by: a) ownership or the right to use all or part of the assets of an undertaking, b) contracts, rights or any other means which confer decisive influence on the composition, voting or decisions of the organs of the undertaking</p>
<p><b>B. What is the geographic scope of transactions covered?</b></p>	<p><b>Thresholds apply to turnover and market shares achieved in Spain.</b></p>
<p><b>C. If change of control is a determining factor, how is control defined and interpreted in practice?</b></p>	<ul style="list-style-type: none"> <li>• See art. 7 of the Spanish Competition Act (above)</li> <li>• <b>The essence of control is wider developed in the</b> Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008XC0416(08)&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008XC0416(08)&amp;from=EN</a>) (paragraphs 11-90), which is in practice applied in our jurisdiction.</li> </ul>
<p><b>D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</b></p>	<ul style="list-style-type: none"> <li>• <b>Are partial (less than 100%) stock acquisitions /minority shareholdings covered?</b> Partial Stock acquisitions are covered as well as minority shareholdings (&lt;50%) as long as the undertaking takes control by other ways (veto rights): Following our law, control shall be constituted by contracts, rights or any other means which, having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking and, in particular by: a) ownership or the right to use all or part of the assets of an undertaking, b) contracts, rights or any other means which confer decisive</li> </ul>

	<p>influence on the composition, voting or decisions of the organs of the undertaking (regardless from the exact % of shareholdings hold)</p> <ul style="list-style-type: none"> <li>• <b>Are acquisitions of assets ever covered? Yes if so, do the assets have to form a free-standing business</b> Yes. It has to form a free-standing business with an associated market share (or potential market share (pipeline products))</li> <li>• <b>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> (I don’t know if I am understanding correctly). We consider assets purchases as long as they form a free-standing business with an associated market share (with an associated goodwill). If this condition is fulfilled, it does not matter to us whether the acquirer has no previous presence in this market or any other vertically related market (no horizontal or vertical overlaps)</li> </ul>
--	--

<b>4. Thresholds for notification</b>	
<p><b>A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]</b></p>	<p>Art. 8. Of the Spanish Competition Act.</p> <p>1. The control procedure apply to economic concentrations when at least one of the two following circumstances occurs:</p> <p>a) That as a consequence of the concentration, <b>a share equal or higher than 30 percent of the relevant product or service market at a national level or in a geographical market defined within the same, is acquired or increased.</b></p> <p>b) That the global turnover in Spain for all the participants in the last accounting year exceeds the amount of 240 million euros, providing that at least two of the participants achieve an individual turnover in Spain of more than 60 million euros.</p>
<p><b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b></p>	<ul style="list-style-type: none"> <li>• ART 5 of the Spanish Competition Act establishes <b>which entities should be considered in order to calculate the turnover thresholds</b> (same applies for the market share threshold calculation in practice)</li> </ul>

	<p>2. The turnover of a participating company will be calculated as the sum of the turnover of the following companies:</p> <p><b>a) the participating company,</b>  <b>b) the companies controlled by the participating company exclusively or jointly, and</b>  <b>c) the companies that exclusively or jointly control the participating company</b></p> <p>3. The aggregate turnover of a participating company will not take into account transactions that take place between companies in the same group.</p> <p>4. For the purposes of avoiding double accounting, when the acquired companies were already controlled by one or more of the acquiring companies, the entire turnover of the acquired entity will be imputed to that entity only.</p> <p>5. When the concentration operation consists in the acquisition of a business branch, business unit, establishment or, in general, of part of one or more companies, and irrespective of whether that part has its own legal personality, <b>there shall only be taken into account, insofar as relates to the acquired company, the turnover relative to the part subject to acquisition.</b></p> <p>6. When two or more concentrations within the meaning of the preceding paragraph take place within a two-year period between the same buyers and sellers, the concentrations will be considered as a single concentration carried out on the date of the last operation.</p> <ul style="list-style-type: none"> <li>• <b>Art.4 (calculation of market share)</b> of the Spanish Competition Act.</li> </ul> <p>In line with Paragraphs 175 and 177 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008XC0416(08)&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008XC0416(08)&amp;from=EN</a>)</p>
<p><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</b></p>	<p>Turnover and/or market shares achieved in Spain.</p>

<p>are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</p>	
<p><b>D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</b></p>	<p>In the case of <b>turnover threshold</b>, at least <b>two parties</b> have to reach each a <b>turnover of 60 million € in Spain</b>.</p> <p>In the case of <b>market share thresholds</b>, it is enough for triggering the notification threshold if the acquired party has a market share of <b>30%</b> (even if the acquirer is not active in this market).</p>
<p><b>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</b></p>	<ul style="list-style-type: none"> <li>• <b>There are no sectors excluded from notification requirements</b></li> </ul> <p>For the purposes provided in article 8.1.b) of the Spanish Competition Act, the overall turnover in Spain will comprise the figure generated by the sale of goods and provision of services as part of the ordinary business of the companies that participate in the concentration operation <b>in the last accounting year, after deducting the amount of rebates and other reductions of sales, Value Added Tax and other taxes directly related to the turnover</b>.</p> <p>This is in line with the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings the CNMC will generally refer to accounts which relate to the closest financial year to the date of the transaction and <b>which are audited under the standard applicable to the undertaking in question and compulsory for the relevant financial year</b>.</p>
<p><b>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?</b></p>	<p><b>No, there are not special threshold calculations for specific sectors</b></p>
<p><b>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the</b></p>	<p>No, there are not special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign.</p>

<p>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]</p>	
<p>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]</p>	<p>No, it has not this authority.</p>
<p>I. Are current notification criteria catching relevant transactions related to digital markets?</p>	<p><b>YES.</b> We strongly believe that our <b>threshold based on market share</b> is a valuable tool to catch mergers that can arise competition concerns in the affected markets, specially taking into account digital markets. In fact, the market share threshold has allowed the CNMC to catch some digital mergers as well as cases that have been referred to the European Commission, ending in Phase II decisions (i.e Apple/Shazam).</p>

**Calculation Guidance and related issues**

<p>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:</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>	<ul style="list-style-type: none"> <li>• The overall turnover in Spain will comprise the figure generated by the sale of goods and provision of services as part of the ordinary business of the companies that participate in the concentration operation in the last accounting year, after deducting the amount of rebates and other reductions of sales, Value Added Tax and other taxes directly related to the turnover. This provision is included in article 5 of the Defence of Competition Regulation</li> <li>• For the purposes provided for in articles 8.1.a the market share resulting from a concentration operation in a relevant market will be understood to be the sum of the market shares in that market of the companies participating in the operation. In all cases it shall be understood that:</li> </ul>
--	--



	<p>a) There is an acquisition of share when, even if there is prior control by the purchasers, the economic concentration has the effect of a change in the characteristics of that control, be it joint or exclusive.</p> <p>b) Similarly, there is an acquisition of share when a joint venture is created and the parent companies contribute all or part of their business to the newly created entity</p>
<p><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><b>According to art. 5.7 of the Defence of Competition:</b></p> <p><i>a) In the event that a participant in the concentration operation is an investment fund, its turnover will be determined as the sum of the turnover of its management companies and the turnover of the companies controlled by the investment funds managed by those management companies.</i></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><b>See above (Answer 4K)</b></p>
<p><b>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</b></p>	<p>We follow the methodology set out in the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (par 204 and 205)</p> <p><i>204) When converting turnover figures into euro great care should be taken with the exchange rate used. The annual turnover of a company should be converted at the average rate for the twelve months concerned. This average can be obtained via DG Competition's website. The audited annual turnover figures should be converted as such and not be broken down into quarterly or monthly figures which would then be converted individually.</i></p> <p><i>(205) When a company has sales in a range of currencies, the procedure is no different. The total turnover given in the consolidated audited accounts and in that company's reporting currency is converted into euros at the yearly average rate. Local currency sales</i></p>

	<i>should not be converted directly into euros since these figures are not from the consolidated audited accounts of the company</i>
<b>5. Pre-notification</b>	
<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>	PRENOTIFICATION procedure is voluntary under Spanish Competition regulation, and it is not subject to time limits. It usually contents the same information that parties pretend to submit in the formal notification, so as to verify that the information submitted is complete and sufficient for the analysis of the merger.
<b>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</b>	The preliminary filling form and and/or any additional information or documents that the Competition Directorate may require.
<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>	<p><b>YES.</b> NOTIFICATION is mandatory for all cases that meet the notification thresholds set out in art. 8 of the Spanish Competition Act.</p> <p>According to Art. 9 of the Spanish Competition Act: Economic concentrations that fall under the scope of application of the article 7 and 8 shall be notified to the National Competition Commission prior to their implementation. The economic concentration cannot be executed until the express or tacit authorisation of the Administration has been issued except in case of lifting of the suspension.</p> <p>The sections above shall not prevent from making a public takeover bid for shares admitted to negotiation in a stock market authorized by the National Securities Commission which is an economic concentration subject to control in accordance with the provisions of this Act, providing that:</p> <p>a) the concentration is notified to the National Competition Commission within the period of five days as of the presentation of the application for authorisation of the bid to the National Securities Commission, if it has not been notified beforehand, and</p> <p>b) the buyer does not exercise the voting rights inherent to the affected equities or exercise them only to safeguard the integral value of the investment based on a dispensation awarded by the National Competition Commission.</p>

<b>B. If parties can make a voluntary merger filing when may they do so?</b>	Spanish regulation on merger control does not contemplate voluntary filings for cases where thresholds are not met.
<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>	<ul style="list-style-type: none"> <li>• The notification provided for in articles 55 and 56 of the Spanish Competition Act may be done as from the time the concentration proposal or agreement exists, according to art. 54 of the Defence of Competition Regulation</li> <li>• For these purposes, a proposal or agreement is considered to exist: <ul style="list-style-type: none"> <li>a) In cases involving acquisition of control, a concentration proposal or agreement exists as from the time the participants consent to carry out the transaction that gives rise to the concentration, and determine the manner, time frame and conditions in which it will be executed. If the participants are companies, the agreement will be considered to exist when it has been approved by the management body, even though legal provisions or the articles of association require subsequent adoption or ratification of another corporate body.</li> <li>b) In cases involving a public tender offer, provided there is a resolution of the Board of Directors of the offerors and their intention to present the offer has been publicly announced.</li> <li>c) In cases of corporate mergers, a concentration proposal or agreement will be considered to exist when the relevant company law provisions are fulfilled.</li> </ul> </li> <li>• The existence of clauses which in any way condition the future formalization or execution of those agreements does not release the entity from the notification duty. If after the proposed concentration has been notified and before the proceeding has been resolved, the parties abandon the concentration, the notifying party will immediately inform the Directorate for Investigation of this circumstance, giving formal evidence thereof, in view of which the Council of the National Competition Commission may resolve to dismiss the case with no further proceedings.</li> </ul>

**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?**

- Once there is a concentration proposal or an agreement among the parties, parties can notify. There is **no specific deadline but the fact set out in art. 9** of the Spanish Competition Act that the notification and Decision of the CNMC (Administrative authorization) must take place before the implementation of the merger.

*In this sense, art. 9.5 specifies: In the event that the National Competition Commission has not been notified of a concentration subject to control pursuant to the provisions of this Act, it, ex officio, shall require the obliged parties to notify so that they make the corresponding notification within a period no longer than twenty days as of the reception of the requirement. After the notification period has elapsed without the notification having been made, the Directorate of Investigation may initiate ex officio concentration control proceedings, notwithstanding the application of the penalties and coercive fines set out in Articles 61 to 70.*

- YES. There are special rules for public takeover set out in the above-mentioned art. 9 of the Spanish Competition Act:

*The sections above shall not prevent from making a public takeover bid for shares admitted to negotiation in a stock market authorized by the National Securities Commission which is an economic concentration subject to control in accordance with the provisions of this Act, providing that:*

*a) the **concentration is notified to the National Competition Commission within the period of five days as of the presentation of the application for authorisation of the bid to the National Securities Commission, if it has not been notified beforehand, and***

*b) the buyer does not exercise the voting rights inherent to the affected equities or exercise them only to safeguard the integral value of the investment based on a dispensation awarded by the National Competition Commission.*

<p><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>No, parties can not request an extension for the notification deadline</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>Article 56 of the Spanish Competition Act introduces a simplified procedure for transactions that do not raise competition concerns, and fulfills some requirements. Art. 57 of the Defence of Competition Regulation, describes which cases can apply to the simplified procedure.</p>
<p><b>B. Describe the criteria adopted to consider a transaction under the simplified procedure.</b></p>	<p>According to art 56 of Spanish Competition Act and 57 of the Defence of Competition Regulation simplified notification form may be submitted, in the following cases:</p> <p>a) When no horizontal or vertical overlapping exists between the parties of the operation;</p> <p>b) When the participation by the parties in the markets, due to their low importance, is not capable of affecting significantly competition, that is:</p> <ul style="list-style-type: none"> <li>• the participants in the concentration do not have a combined market share of more than 15 percent in the same product or service market at the national level or in a geographic market defined therein, or if they do reach a combined market share of more than 15 percent and less than 30 percent, the addition of share is not greater than 2 percent, and</li> <li>• the participants in the concentration do not reach an individual or combined share of 25% in a product market which is upstream or downstream of a product market in which the other party to the concentration is active at the national level or in a geographic market defined therein</li> </ul> <p>c) When a party acquires the exclusive control of one or more undertakings or parts of an undertaking over which it already has joint control;</p>

	d) When, given that it is a joint venture, it does not carry out nor does it plan to carry out activities in Spain or when these activities are marginal.

8. Information and documents to be submitted with a notification	
<b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</b>	<p>According to the Section 8 of the Annex II and Section 7 of the Annex III of the Defence of Competition Regulation includes the documents that the parties must submit with the notification in a complete or a short form.</p> <p>Among them: Copy of the management reports and annual financial statements for the last financial year of the companies participating in the operation and, if applicable, of their parent companies; Copy of the final or most recent version of the documents relating to the agreement that gives rise to the concentration operation and translation, if they are drawn up in other than an official language of the Spanish State, without prejudice to the authority of the Directorate for Investigation to require a sworn translation of those documents; Analyses, reports or studies considered of relevance; Cooperation or other agreements; Receipt of payment of the fee in</p>
<b>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</b>	<p>There are no specific sections that relate only to digital transactions nor specific sections that mention only intangible assets as both tangible and intangible aspects would be covered by the current wording. However, in transactions where data can play a role, should the notification fail to adequately address the issue, the competition authority would require the notifying party to provide all the relevant information. In this regard, the CNMC has ample powers to require the notifying party to provide any information that is necessary to assess the merger and this applies to all mergers.</p>
<b>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</b>	<p>According to art 6 of the Defence of Competition Regulation, to take into account the economic efficiencies envisaged in article 10.1 of Act 15/2007 of 3 July 2007 and alleged by the parties to a concentration operation, the notifying party must describe the nature and effects of such efficiencies, quantifying them if possible, and indicate the time frame in which they are expected to be achieved, and prove that the efficiencies will be</p>

	transferred and therefore will benefit the final consumer, evidencing all these points with the means at its disposal.
<b>D. What information is required in case the target company is experiencing financial insolvency?</b>	<p><b>If the target company is experiencing financial insolvency, the parties have to submit any legal document which could prove it.</b></p> <p>As for applying the failing firm defence we apply the Commission Consolidated Jurisdictional Notice, which considers the following three criteria for the application of a 'failing firm defence'. First, the allegedly failing firm would in the near future be forced out of the market because of financial difficulties if not taken over by another undertaking. Second, there is no less anti-competitive alternative purchase than the notified merger. Third, in the absence of a merger, the assets of the failing firm would inevitably exit the market.</p> <p>It is for the notifying parties to provide in due time all the relevant information necessary to demonstrate that the deterioration of the competitive structure that follows the merger is not caused by the merger.</p>
<b>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</b>	No, there is not a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids.
<b>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</b>	The parties have to submit a Power of attorney or certified photocopy thereof with a sworn translation if it is drawn up in other than an official language of the Spanish State.
<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>	There are no exemptions in this sense for foreign to foreign transactions.

<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. Art. 55.6 of the Competition Act 15/2007.  55.6. <i>At any moment during the procedure, the National Competition Commission may request third operators the information that it deems appropriate for the adequate assessment of the concentration. It may also request the reports that it deems necessary to resolve to anybody of the same or different Administration</i></p> <p>As for the voluntarily submission of information, third parties can submit information and/or contact the agency at any moment during the procedure as well. (However only during a second phase can third parties request to be considered interested parties in the procedure.</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, the parties are allowed to submit additional information beyond what is required in the initial filing voluntarily throughout the reviewing process.</p>
<p><b>J. Are there different forms for different types of transactions or sectors?</b></p>	<p>No, there are not.</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><b>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</b></p>	<p><b>i) Yes. when an investment fund takes part in a transaction, it's always asked if it or its controllers manage any other investment funds in the same relevant market or vertical related ones. It is also requested to provide information of whether it or its controllers have other minority shareholdings in the relevant market or vertical related ones.</b></p> <p><b>ii)</b> In this case, an investment fund controlled by an entity that is also responsible for other funds in the same relevant market, should be considered part of the transaction. In this case, the controlling entity will be asked about market information (e.g., market share) related to the other funds it manages and which are in the same relevant market.</p> <p><b>iii)</b> Just in the cases that meet the criteria set out in art 56 of Competition Act and art. 57 of Defence of Competition Regulation (for simplified procedure) have to submit less documents during notification as set out in the Annex III</p>



<p>to the other funds it manages and which are in the same relevant market?</p> <p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	<p>or the Defense of Competition Regulation (Simplified CO Form). These criteria apply for all kind of concentration, not just involving investment funds.</p>
--	--

<p><b>9. Translation</b></p>	
<p><b>A. In what language(s) can the notification forms be submitted?</b></p>	<p>According to the Spanish Administrative regulation, the official language is the Spanish, so the notification form must be submitted in Spanish.</p>
<p><b>B. Describe any requirements to submit translations of documents:</b></p> <p>i) with the initial notification; and</p> <p>ii) later in response to requests for information.</p> <p><b>In addition:</b></p> <p>iii) what are the categories or types of documents for which translation is required;</p> <p>iv) what are the requirements for certification of the translation;</p> <p>v) which language(s) is/are accepted; and</p> <p>vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?</p>	<p>According to Annex II and III from Defense Competition Regulation:</p> <ul style="list-style-type: none"> <li>• A notification made through a representative must be accompanied by the document evidencing the authority to act as representative or certified photocopy thereof with sworn translation if that authority is drawn up in a language other than an official language of Spanish country.</li> <li>• A copy of the final or most recent version of the documents relating to the agreement that gives rise to the concentration operation and translation, if they are drawn up in other than an official language of Spanish. The Competition Directorate could require a sworn translation of all the documents attached to the notification.</li> </ul>

<p><b>10. Review Periods</b></p>	
<p><b>A. Describe any applicable review periods following notification.</b></p>	<p>According to Art 36 Spanish Competition Act, the maximum period for issuing and notifying the resolutions of the Council in concentration control proceedings will be:</p> <p>a) of one month in the first phase, from the reception in due form of the notification by the CNMC.</p>

	b) of two months in the second phase, from the date on which the Council of the CNMC decides to open of the second phase
<b>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</b>	There are no different rules for public tenders in the Spanish Competition Act.
<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>	<p>There are some provisions in the Competition Act that contemplate the extension or not applicability of the review periods.</p> <p>In this sense, according art. 37 of the Competition Act the review period may be suspended, when the CNMC asks for the notifying parties to rectify deficiencies, provide documents and other necessary elements of judgment for the resolution of concentration control proceedings. But also, when any interested/third party is called for the rectification of deficiencies, the provision of documents and other necessary elements of judgment.</p> <p>Moreover, art. 9.5 37.4 and 55.5 of the Competition act describe circumstances where the review periods would not apply:</p> <p><i>55.5 The National Competition Commission may, at any time during the procedure, require the notifying party to provide, within a period of ten days, documents or other necessary elements for resolving. In the event that the notifying party does not fulfil the requirement or fulfils it outside the period established for it, it shall not benefit from the positive silence set out in Article 38.</i></p> <p><i>37.4. Exceptionally, the extension of the maximum period of resolution may be decided by means of clear motivation of the concurrent circumstances. In the event of deciding the extension of the maximum period, this may not be more than that established for the processing of proceedings.</i></p> <p><i>9.5 In the event that the National Competition Commission has not been notified of a concentration subject to control pursuant to the provisions of this Act, it, ex officio, shall require the obliged parties to notify so that they make the corresponding notification within a period no longer than twenty days as of the reception of the requirement. The positive silence set out in Article 38 shall not benefit concentrations notified on the requirement of the National Competition Commission</i></p>

<b>D. Is there a statutory or other maximum duration for extensions?</b>	There is no statutory or other maximum duration for extensions.
<b>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</b>	The CNMC have the authority to suspend review periods according to art 37 of Spanish Competition Act in the cases included in art 37 Spanish Competition Act, without the consent of the notification parties.
<b>F. What are the time periods for accelerated review of non-problematic transactions, if any?</b>	There are no time periods for accelerated review of non-problematic transactions.
<b>A</b>	
<b>G. If remedies are offered, do they impact the timing of the review?</b>	According to art 59.2 Spanish Competition Act, when remedies are proposed, the maximum period to resolve and notify the proceedings will be extended by 10 days in the first phase and 15 days in the second phase.

<b>11. Waiting periods / suspension obligations</b>	
<b>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</b>	We have a full suspension from implementation. According to art. 9 of the Spanish Competition Act: Economic concentrations shall be notified to the National Competition Commission prior to their implementation. They cannot be executed until the express or tacit authorisation of the Administration has been issued is executive under the terms set out in Article 38, except in case of lifting of the suspension.

<p><b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b></p>	<p>According to Art. 9 of the Spanish Competition Act, under specific circumstances, the parties can ask for it, with a reasonable justification.</p> <p><i>The Council of the National Competition Commission may decide to lift the suspension of the concentration referred to in Section 2 of this article, on the proposal of the Directorate of Investigation and prior motivated request. The resolution shall be issued prior appraisal, among other factors, of the damage that the suspension of the execution would cause to undertakings participating in the concentration and that executing the operation would cause to free competition. Lifting the suspension of the execution may be subject to the fulfilment of conditions and obligations that guarantee the efficacy of the decision that is finally adopted.</i></p>
<p><b>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</b></p>	<p>Yes, the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction.</p>
<p><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<p>As set out in art. 38.2 of the Spanish Competition Act, the course of the maximum period established for the resolution in first phase of concentration control (1 month) shall determine the estimate of the corresponding application by administrative silence, except in the cases set out in Articles 9.5, 55.5 and 57.2.d) (referral to the European Commission by art. 22 of the European regulation 139/2004).</p>
<p><b>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</b></p>	<p>All official information requirements launched to the parties, or third parties imply a time suspension, as stated in our national legislation (as explained before). (art.55 and 37 of the Competition Act)</p>

<p><b>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b></p>	<p>This possibility is not granted by the current legislation in place.</p>
--	---

--	--

<p><b>G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</b></p>	<p>There are no provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted</p>
---	--

<p><b>12. Responsibility for notification / representation</b></p>	
--	--

<p><b>A. Who is responsible for notifying – the acquiring company (ies), acquired company (ies), or both? Does each party have to make its own filing?</b></p>	<p>The notification must be submitted:  a) Jointly by the parties participating in a merger, in the creation of a joint venture or in the acquisition of the joint control of the whole or part of one or more undertakings.  b) Individually by the party that acquires the exclusive control of the whole or part of one or more undertakings.</p>
--	--

--	--

<p><b>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</b></p>	<p>No, there are not different rules for public tenders.</p>
--	--

--	--

<p><b>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</b></p>	<p>Any licensed lawyer can represent the parties, as long as a power of representation for the concentration is submitted to the CNMC.</p>
---	--

--	--

<p><b>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</b></p>	<p>See answer to the previous question.</p>
--	---

13. Filing fees	
<p><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></p>	<p>Yes, a filing fee must be paid by the parties for assessing a notification.</p> <p>Flat fee for short form mergers, stated in the Annex of Law 3, of creation of the CNMC: Article: amount of 1.560,90 €</p> <p>Several thresholds for ordinary mergers:</p> <p>Fee is 5.502,15 € the turnover in the merger of the participants in Spain is up to 240 million € (or below).</p> <p>Fee of 11.004,31 € when the turnover in the merger of the participants in Spain is between 240 million and 480 million €.</p> <p>Fee of 22.008,62 €, when the turnover in the merger of the participants in Spain is over 480 million and not over 3.000 million €.</p> <p>Fee of 43.944 €, when the turnover in the merger of the participants in Spain is over 3.000 million €, plus additional 11.004,31 € for each 3.000 million € is above the aforementioned quantity, up to a maximum limit of 109.806 €.</p>
<p><b>B. Who is responsible for payment?</b></p>	<p>The notifying party/parties</p>
<p><b>C. When is payment required?</b></p>	<p>The must be paid before filing the notification form.</p>
<p><b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b></p>	<p>The procedures for making payments are established by the Ministry of Finance.</p>
14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
<p><b>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</b></p>	<ul style="list-style-type: none"> <li>• Reviewing the documents provided in the filing.</li> <li>• Check the information submitted by the parties in the filing.</li> <li>• Request any additional information to the parties, including strategic information, if needed.</li> </ul>

	<ul style="list-style-type: none"> <li>• Run a market test with competitors and clients (if needed)</li> <li>• Identify theories of harm, inf any</li> <li>• Asses if the package/scope of remedies voluntarily proposed by the parties address the competition problems detected, and determine whether they are sufficient to clear the transaction in the first phase (if applicable).</li> <li>• Decide whether to open a second phase (if necessary).</li> <li>• Additional requirements to the parties third operators, including strategic data. Additional requirements to clients.</li> <li>• Assess remedies proposed by the parties in second phase( if applicable)</li> <li>• If no remedies voluntarily proposed, decide whether to impose conditions to clear the operation.</li> <li>• Clear the transaction with/ without remedies or conditions or block it.</li> </ul>
<b>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</b>	According to art 10 Spanish Competition Act the CNMC applies the substantial lessening of competition test.
<b>C. What theories of harm does the agency consider in practice?</b>	<p>The theories of harm most used by the CNMC in horizontal transactions are the following:          The increase in prices post-merger due to non-coordinated effects due to the elimination of competition between the merging firms. And the elimination or reduction of innovation in the market.</p> <p>And related to vertical transactions: 1. anti-competitive foreclosure practices (the merged entity deprives competitors from access to essential inputs (inputs foreclosure) or to consumers (clients foreclosure), or 2. otherwise attempts to leverage its market power into another market</p>
<b>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</b>	<p>The National Competition Commission shall assess the economic concentrations in light of the possible impediment to the maintenance of effective competition in all or part of the national market.</p> <p>Specifically, the National Competition Commission shall adopt its decision taking into</p>

	<p>account, among others, the following elements:</p> <ul style="list-style-type: none"> <li>a) the structure of all the relevant markets,</li> <li>b) the market position of the undertakings affected, their economic and financial power</li> <li>c) the real or potential competition of undertakings located either within or out with the national territory,</li> <li>d) the alternatives available to suppliers and consumers, their access to supplies or markets,</li> <li>e) any barriers to entry in these markets,</li> <li>f) supply and demand trends for the relevant products and services,</li> <li>g) the negotiating power of the demand or of the supply and their capacity to offset the position in the market of the undertakings affected.</li> <li>h) the economic efficiencies derived from the concentration operation and, in particular, the contribution that the concentration may make to improving the production or</li> </ul>
<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><b>Not by the CNMC. However according to art. 58 of the Competition act:</b></p> <p>The resolutions in second phase in which the CNMC prohibits a concentration or makes it subject to the fulfilment of commitments or conditions shall not be effective or executive and shall not bring the administrative procedure to an end:</p> <ul style="list-style-type: none"> <li>a) Until the Minister of Economy and Finance has resolved not to refer the concentration to the Council of Ministers or the legal period established for this (15 days) has elapsed.</li> <li>b) In the event that the Minister of Economy and Finance has decided to refer the concentration to the Council of Ministers, until the Council of Ministers has adopted a decision on the concentration. It may confirm the resolution of the Council of the National Competition Commission or modify it taking into account non-competition issues (issues of general interest)</li> </ul>
<p><b>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</b></p>	<p>According to art 58 Spanish Competition Act, the Council of the CNMC shall adopt the final decision by means of a resolution, in which it may:</p> <ul style="list-style-type: none"> <li>a) Authorize the concentration.</li> <li>b) Subordinate the clearance of the concentration to the fulfilment of certain commitments proposed by the notifying parties or conditions.</li> </ul>



	c) Prohibit the concentration.
<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>	
	According to art 59 Spanish Competition Act, when obstacles for the maintenance of effective competition may result from a concentration, the notifying parties, <i>ex officio</i> or at the request of the CNMC, may propose commitments to resolve them. These remedies can be both structural (divestment) and or behavioral one. The council of CNMC has a preference on structural remedy.

<b>15. Confidentiality</b>	
<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>	The CNMC does not make public the fact that a premerger notification filing was made. According to art 27 Spanish competition Act and 61 the CNMC will make public fact of initiating concentration control proceedings shall be public
<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>	The notifying parties have no access to the agency's file in the first phase review. According to what is provided in article 58.2 of the Spanish Competition Act 15/2007, after the statement of objections has been notified to the interested parties, the latter may ask to see the case file, after being cleared of confidential aspects.
<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>	Third parties or other government agencies cannot obtain access to notification materials and any other information provided by the parties.
<b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b>	According to the art 42 Spanish Competition Act and 20 of the Defence of Competition Regulation, any person when submitting documents to the CNMC requests confidential treatment of the data or information, must do so on a reasoned basis before

	the competent body within the framework of the proceeding in question, and must also submit a non-confidential version of those documents.
<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>	The Competition Director can deny a party's claim that certain information contained in notification materials is confidential. The Decision can be challenged before the CNMC Council within 2 weeks and the final Decision before the Court of Appeal.
<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>	The parties can have procedures to provide public and non-public versions of agency orders, decisions, and court filings.

<b>16. Transparency</b>	
<b>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</b>	The CNMC publishes in its web General Information about mergers; Fees; Latest published Decisions and latest operations in process. The merger cleared in the previous year are also included in the Annual Report. <a href="https://www.cnmc.es/ambitos-de-actuacion/competencia/concentraciones">https://www.cnmc.es/ambitos-de-actuacion/competencia/concentraciones</a>
<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>	The CNMC publish online a monthly press releases related to merger cleared in the previous month, and individually if the clearance was subject to remedies or in the second phase. <a href="https://www.cnmc.es/ambitos-de-actuacion/competencia/concentraciones">https://www.cnmc.es/ambitos-de-actuacion/competencia/concentraciones</a>
<b>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a</b>	The CNMC publish in its monthly press release a brief description of the merger, the assessment made and the reasons why the transaction was cleared.

<b>link. If not available online, describe how one can obtain a copy of decisions.</b>	The Decisions are available in the web: <a href="http://www.cnmec.es/ambitos-de-actuacion/competencia/concentraciones">www.cnmec.es/ambitos-de-actuacion/competencia/concentraciones</a>
<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>	

<b>17. Cooperation</b>	
<b>A. Is the agency able to exchange information or documents with international counterparts?</b>	The CNMC is able to exchange information or documents with European counterparts according to the Best Practices on Cooperation between EU National Competition Authorities in Merger Review and with international counterparts with the consent of the parties.
<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>	The CNMC is not a party to any agreements that permit the exchange of information with foreign competition authorities.
<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>	The CNMC needs consent from the parties who submitted confidential information to share such information with foreign competition authorities. The CNMC follows the European Best Practices, where appropriate, encouraging the parties to waive confidentiality with regard to mergers subject to cooperation. For this purpose, the format proposed by the <a href="#">ICN model waiver</a> is recommended.
<b>D. Is the agency able to exchange information or documents with other domestic regulators?</b>	The CNMC is able to exchange information or documents with other domestic regulators only with the consent of the notifying parties.

<b>18.Sanctions/penalties</b>
-------------------------------

<p><b>A. What are the sanctions/penalties for:</b></p> <ul style="list-style-type: none"> <li><b>i) failure to file a notification;</b></li> <li><b>ii) incorrect/misleading information in a notification;</b></li> <li><b>iii) failure to comply with information requests;</b></li> <li><b>iv) failure to observe a waiting period/suspension obligation;</b></li> <li><b>v) breach of interim measures;</b></li> <li><b>vi) failure to observe or delay in implementation of remedies;</b></li> <li><b>vii) implementation of transaction despite the prohibition from the agency?</b></li> </ul>	<p>According to article 62 of the Spanish Competition Act, having submitted to the National Competition Commission the notification of the economic concentration outside the periods laid down in the Act, or not having notified a concentration required <i>ex officio</i> by the CNMC, represent minor infringements that could be sanctioned with a fine of up to 1% of the total turnover of the infringing undertaking in the business year immediately preceding to that of the imposition of the fine.</p> <p>The execution of a concentration subject to control in accordance with the provisions of this Act before it is notified to the CNMC or before an express or tacit resolution authorising it has been issued and has become executive, without the lifting of the suspension having been decided, represent a serious infringement that could be sanctioned with a fine of up to 5% of the total turnover of the infringing undertaking in the business year immediately preceding to that of the imposition of the fine.</p>
<p><b>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</b></p>	<p>According to art 9.4 of the Spanish Competition Act, 4, the notification must be submitted jointly by the parties participating in a merger, in the creation of a joint venture or in the acquisition of the joint control of the whole or part of one or more undertakings.</p> <p>b) Individually by the party that acquires the exclusive control of the whole or part of one or more undertakings. So, these are the parties potentially liable for the above-mentioned infringements.</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>The CNMC can impose the sanctions directly.</p> <p>The CNMC has to open a sanctioning proceeding against the parties have committed the infringement. This proceeding takes three months.</p>
<p><b>D. Are there any recent or significant fining decisions?</b></p>	<p>In 2015 the CNMC sanctioned Atresmedia with 2.8 million euros for a very serious infringement of Spanish Competition Act 15/2007 consisting in no fulfilling the certain conditions imposed in the concentration of Antena 3 and La Sexta cleared in 2012.</p> <p>In 2015 The CNMC fined Grifols with 106,500 euros for failing to comply with the obligation to notify a concentration prior to its execution when the market share exceeds 50%.</p>

	<p>In 2016 the CNMC sanctioned Mediaset with 3 million euros for having breached certain commitments to which it was obliged after the concentration Telecinco/Cuatro.</p> <p>In 2019, the CNMC fined NUFRI with 21.000 euros for the failure to comply with its obligation to notify the NUFRI/INDULLEIDA merger before its execution.</p>
--	---

<b>19. Independence</b>	
<p><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></p>	<p>According to the Article 60 Spanish Competition Act, the Minister of Economy and Finance may refer the decision on the concentration to the Council of Ministers for reasons of general interest when, in the second phase, the Council of the National Competition Commission:</p> <ul style="list-style-type: none"> <li>a) Has resolved to prohibit the concentration.</li> <li>b) Has resolved to subordinate its authorisation to the fulfilment of certain commitments proposed by the notifying parties or conditions</li> </ul>
<p><b>B. What are the grounds for such ministerial intervention?</b></p>	<p>The Council of Ministers may:</p> <ul style="list-style-type: none"> <li>a) Confirm the resolution issued by the Council of the National Competition Commission.</li> <li>b) Decide to authorise the concentration, with or without conditions. This decision must be duly justified on reasons of general interest other than protecting competition, in accordance with the provisions of Article 10 Spanish Competition Act.</li> </ul>
<p><b>C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]</b></p>	<p>The Minister of Economy and Finance may refer the decision on the concentration to the Council of Ministers for reasons of general interest when, in the second phase, the Council of the National Competition Commission:</p> <ul style="list-style-type: none"> <li>a) Has resolved to prohibit the concentration.</li> <li>b) Has resolved to subordinate its authorisation to the fulfilment of certain commitments proposed by the notifying parties or conditions.</li> </ul> <p>2. The resolution of the Minister of Economy and Finance shall be communicated to the</p>

	<p>National Competition Commission at the same time as its notification to the interested parties.</p> <p>3. The Council of Ministers may:</p> <p>a) Confirm the resolution issued by the Council of the National Competition Commission.</p> <p>b) Decide to authorise the concentration, with or without conditions. This decision must be duly justified on reasons of general interest other than protecting competition, in accordance with the provisions of Article 10. Before adopting the corresponding Decision, the National Competition Commission may be requested to issue a report.</p>
--	--

<b>20. Administrative and judicial processes/review</b>	
<b>A. Describe the timetable for judicial and administrative review related to merger transactions.</b>	The merger transactions Decisions by the CNMC Council could be appealed before the National Court of Appeal within 2 months from the Decision.
<b>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</b>	The National Court of Appeal decides how to protect confidential information used in judicial proceedings or in an appeal/review of an agency decision.
<b>C. Are there any limitations on the time during which an appeal may be filed?</b>	The appeal must be filed within 2 months from the Decision.

<b>21. Additional filings</b>	
<b>A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?</b>	No, there are not any additional clearances required for such types of transactions

<b>22. Closing Deadlines</b>
------------------------------

<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>Depending on the remedies there could be a time period within which the parties must close for it to remain authorized (fix it first). If the parties can obtain an extension of the deadline if they need more time.</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>No, it can not.</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>No, the CNMC has not publish studies ex-post analysis of reportable cleared transactions yet.</p>