ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Swiss Competition Commission

26 February 2021

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

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

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

1. Merger notification and review materials

Statutory Laws

A. Notification provisions	Article 9 of the Federal Act on Cartels and other Restraints of Competition (Cartel Act, CartA; SR 251) of 6 October 1995 (Status as of 1 December 2014). Link: www.weko.admin.ch > Documentation > Legislation.
B. Substantive merger review Provisions	Articles 10–11 and 32–38 of the Cartel Act (cf. 1.A.)

[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	Ordinance on the Control of Concentrations of Undertakings (Merger Control Ordinance, MCO; SR 251.4) of 17 June 1996 (Status as of 1 January 2013). Link: www.weko.admin.ch > Documentation > Legislation.
D. Notification forms or information requirements	The Swiss Competition Commission (COMCO) has published a combined explanatory note and form for the notification of mergers. An updated version of the Merger Notification Explanatory Note and Form is available in German, French and Italian (Status as of 1 August 2015). www.weko.admin.ch > Dienstleistungen > Meldeformulare.

Interpretative Guidelines and Notices

E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	Cf. 1.D. There is also a note by the COMCO's Secretariat on the notification and evaluation practice of mergers of 25 March 2009 (continuously updated). It is available in German only and published on the COMCO's website: www.weko.admin.ch > Dienstleistungen > Meldeformulare > Praxis zur Meldung und Beurteilung von Zusammenschlüssen.
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	Cf. 1.D. and 1.E.
G. Has your agency published guidelines or directives	No

on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	No further relevant documents.

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.	Competition Commission Secretariat
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	Hallwylstrasse 4 3003 Bern Switzerland Tel.: +41 58 462 20 40 Fax: +41 58 462 20 53 E-mail: weko@weko.admin.ch Website: www.weko.admin.ch (in German, French, Italian and English; please note that not all website content is available in all four languages).

C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	Please contact: For cases regarding products: Ms. Andrea Graber (direct line: +41 58 465 57 34) For cases regarding services: Mr. Olivier Schaller (direct line: +41 58 462 21 23) For cases regarding infrastructure: Ms. Carole Söhner-Bührer (direct line: +41 58 464 96 69) For cases regarding construction: Mr. Frank Stüssi (direct line: +41 58 462 27 07)

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]	Art. 4 para. 3 of the Cartel Act: concentrations of undertakings are: - the merger of two or more previously independent undertakings; - any transaction, in particular the acquisition of an equity interest or the conclusion of an agreement, by which one or more undertakings acquire direct or indirect control of one or more previously independent undertakings or parts thereof. A change of control is usually also covered by this definition.
B. What is the geographic scope of transactions covered?	- According to Art. 11 para. 1 lit. d of the Merger Control Ordinance, affected markets have to have a focus on Switzerland (joint market share

	of 20 % or more in Switzerland or market share by just one party of 30 % or more) - For guidelines concerning the geographic allocation of revenues, see «Praxis zur Meldung und Beurteilung von Zusammenschlüssen», chapter III. See also chapter III of those guidelines on «Keine Meldepflicht für GU ohne Bezug zur Schweiz»
C. If change of control is a determining factor, how is control defined and interpreted in practice?	Art. 1 of the Merger Control Ordinance defines control as the ability of an undertaking to exercise a decisive influence on the activity of the other undertaking by the acquisition of rights over shares or by any other means. Control is assumed if major aspects of an undertaking's business activity (e.g. the production, the prices, the investments, the supply, the sales or the distribution of the profits) or its general business policy may be decisively influenced. It is not important whether control is actually exercised neither if control is vested directly or indirectly.
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?	Yes. Change of control as described above is the determining factor: partial interests and minority shareholdings are covered if they allow an undertaking to exercise a decisive influence over another undertaking. The same requirements apply to the acquisition of assets.

4. Thresholds for notification	
A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]	According to Art. 9 para. 1 Cartel Act, the COMCO must be notified of planned concentrations of undertakings before their implementation if in the financial year preceding the concentration: a. the undertakings concerned reported together a turnover of at least 2 billion Swiss francs, or a turnover in Switzerland of at least 500 million Swiss francs, and b. at least two of the undertakings concerned each reported a turnover in Switzerland of at least 100 million Swiss francs. The Federal Assembly may by general federal decree not subject to a referendum adjust the amounts set forth in Art. 9 para. 1 and 3 Cartel Act, taking account of any change in circumstances (Art. 9 para. 5 Cartel Act).
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?	Merger notification thresholds apply to the turnover of the undertakings concerned in the concentration, which is (Art. 3 Merger Control Ordinance): - in a merger: the merging undertakings - in an acquisition of control: the controlling and the controlled undertakings. If only part of an undertaking is the subject of the concentration, it is that part that constitutes the undertaking concerned. According to Art. 5 para. 1 Merger Control Ordinance, the turnover of an undertaking concerned shall consist of the turnover from its own business activities and the turnover of: a. the undertakings in which it owns more than one half of the capital or holds more than one half of the voting rights or in which it is entitled to appoint more than half of the members of the bodies legally representing the undertaking or in which it otherwise has the right to manage the undertaking's affairs (subsidiaries);

	b. the undertakings which alone or jointly have the rights or powers listed under letter a (parent companies); c. the undertakings in which an undertaking under letter b has the rights or powers listed under letter a (sister companies); d. the undertakings over which two or more undertakings listed in this paragraph jointly have the rights or powers listed under letter a (joint venture companies).
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)?"	Thresholds apply to both worldwide sales and sales within the jurisdiction as described in the answer to question 4.A. For further guidance with regard to the geographical attribution of turnovers see www.weko.admin.ch > Dienstleistungen > Meldeformulare > Praxis zur Meldung und Beurteilung von Zusammenschlüssen, "Geografische Zuordnung von Umsätzen". In product markets, basically the location of the demand side is relevant (place of delivery of the product, e.g. "where competition for the client takes place"; the billing address is usually not relevant). In service markets different rules may apply.
D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	No (cf. 4.A.). But a party with a dominant position has to notify a merger even when the thresholds are not reached (for more information, cf. 4.H.).
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,	No sector is excempt from notification requirements. The cumulative sales in the last financial year of all companies involved worldwide are relevant to determine whether the threshold for notification is met. The last financial year is the year preceding the year in which the commitment transaction took place, or – in the

calendar year-end, fiscal year-end, other)?	case of an intended merger – the year prior to the year in which the letter(s) of intent were signed.
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?	In the case of insurance companies, "turnover" is replaced by "annual gross insurance premium income", and in the case of banks and other financial intermediaries that are subject to the accounting regulations set out in the Swiss Banking Act of 8 November 1934 (SR 952.0) by "gross income" (Art. 9 para. 3 Cart Act). Gross annual premium income shall include all premiums received and receivable from any direct insurance or reinsurance business in the previous business year, including all amounts for which reinsurance cover is being sought and after the deduction of any taxes or other duties levied on direct insurance premiums. In calculating the amount to be apportioned to Switzerland, the gross premium income paid by persons resident in Switzerland shall be taken into account (Art. 6 para. 1 Merger Control Ordinance). Gross income shall include all income earned from ordinary business activities in the previous business year in accordance with the provisions of the Swiss Banking Act of 8 November 1934 (SR 952.0) and its implementing orders, including: interest and discount revenue; interest and dividend income from securities; interest and dividend income from financial assets; commission income from credit transactions; commission income from security and asset transactions; commission income from other services; profits resulting from trading transactions; profits resulting from disposal of financial assets; income from shareholdings; income from real estate; and other ordinary income. Value added tax and other taxes directly related to gross income may be deducted therefrom (Art. 8 Merger Control Ordinance). Banks and other financial intermediaries that apply international accounting rules shall calculate gross income in line with the above provisions.

	If only some of the undertakings concerned in a concentration are banks or financial intermediaries or if they are only partially active in those business areas the gross income of these undertakings or parts of undertakings shall be calculated and added to the turnover or gross premium income of the other undertakings or parts of undertakings concerned in order to ascertain whether the thresholds are met.
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 special rules apply to foreign undertakings with respect to the application of jurisdictional thresholds.
H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]	Yes. Notification is mandatory if one of the undertakings concerned has in proceedings under the Cartel Act in a final and non-appealable decision been found to be dominant on a market in Switzerland, and if the concentration concerns either that market or an adjacent market or a market upstream or downstream thereof (Art. 9 para. 4 Cart Act). The method used to calculate exchange rates is described in the answer to question 4.M.
I. Are current notification criteria catching relevant transactions related to digital markets?	No.

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).**	Only (ii) is relevant: Thresholds apply to both worldwide sales and sales within the jurisdiction as described in the answer to question 4.A, with the location of the customer being the relevant location for calculating the sales. For the calculation of the turnover, see Art. 4 (as follows) and 5 of the Merger Control Ordinance. Art. 4 para. 1 of the Merger Control Ordinance: For the calculation of the turnover, all reductions such as discounts, rebates, value added tax and other consumption taxes as well as other taxes directly related to the turnover shall be deducted from the amounts derived by the undertakings concerned from the sale of products and the provision of services within the ordinary business activities of the undertakings concerned in the preceding financial year. Art. 4 para. 2 Merger Control Ordinance: Financial years that do not cover a full twelve month period shall be converted to a full twelve month period based on the average turnover of the recorded months. Turnover in foreign currencies shall be converted into Swiss francs in accordance with generally accepted accounting principles applicable in Switzerland. Art. 4 para. 3 Merger Control Ordinance: Where two or more transactions take place between the same undertakings within a two-year period that result in the acquisition of control over parts of those undertakings, those transactions shall be treated as a single concentration for the purpose of calculating turnover. The decisive date is the date of the last transaction.

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?	The relevant definition of control corresponds to the answer to question 3.C. Merger notification thresholds apply to the turnover of the undertakings concerned in the concentration, which is (Art. 3 Merger Control Ordinance): - in a merger: the merging undertakings - in an acquisition of control: the controlling and the controlled undertakings. If only part of an undertaking is the subject of the concentration, it is that part that constitutes the undertaking concerned. According to Art. 5 para. 1 Merger Control Ordinance, the turnover of an undertaking concerned shall consist of the turnover from its own business activities and the turnover of: a. the undertakings in which it owns more than one half of the capital or holds more than one half of the voting rights or in which it is entitled to appoint more than half of the members of the bodies legally representing the undertaking or in which it otherwise has the right to manage the undertaking's affairs (subsidiaries); b. the undertakings which alone or jointly have the rights or powers listed under letter a (parent companies); c. the undertakings in which an undertaking under letter b has the rights or powers listed under letter a (sister companies); d. the undertakings over which two or more undertakings listed in this paragraph jointly have the rights or powers listed under letter a (joint venture companies)
L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for	There are no specific rules regarding investment funds. Please refer to part 4.

turnover purposes?	
M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].	Turnover in foreign currencies are converted into Swiss francs in accordance with generally accepted accounting principles applicable in Switzerland (Art. 4 para. 2 Merger Control Ordinance). Up until 2015, the conversion was to be carried out based on the average annual exchange rate according to the the publication in the Swiss National Bank's (SNB) Monthly Statistical Bulletin of the Swiss National Bank (SNB) (combined explanatory note and form for the notification of mergers, part II: form: numeral 3). Today, it can be carried out according to the analogous data on the SNB's data portal data.snb.ch.
5. Pre-notification	
A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].	Undertakings can hand in a draft of the notification to the Secretariat of the COMCO in advance, which it then evaluates (Art. 23 para. 2 Cartel Act). The Secretariat will then evaluate whether the notification is complete (similar to Art. 14 Merger Control Ordinance). There is no time limit for the prenotification procedure and it is not mandatory.
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	The Secretariat of the COMCO will evaluate the draft of the notification based on the information and documents submitted. There are no requirements at this stage regarding information and documents. However, the more information is handed in, the better the forecast of the Secretariat concerning the completeness of the subsequent notification.

6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	☑ Mandatory pre- ☐ Mandatory post-merger ☐ Voluntary Cf. Answer 5.A.
B. If parties can make a voluntary merger filing when may they do so?	Not applicable.
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?)	A transaction can basically be notified at any given time prior to the execution of a merger or a concentration, as long as the notification contains all information and documents which are mandatory according to the Merger Control Ordinance. A requirement to notification is generally the conclusion of the purchase agreement. If the purchase agreement is not yet concluded and the merger merely intended, a notification is possible if the notifying parties can credibly demonstrate that the undertakings taking part in the merger are willing to conclude the purchase agreement. See www.weko.admin.ch > Dienstleistungen > Meldeformulare > Merkblatt und Formular Zusammenschlussvorhaben.
D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	There is no triggering event. In any case the notification must be made before the implementation of the concentration. In the case of a public bid for the acquisition of an undertaking, the notification has to be made immediately after the publication of the offer and in any case

	before its implementation (combined explanatory note and form for the notification of mergers [cf. 1.D.], numeral F.).
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.	Not applicable.

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.).	Art. 12 Merger Control Ordinance: Prior to the notification of a concentration, the undertakings concerned and the Secretariat of the COMCO may mutually agree on the details of the content of the notification. In doing so, the Secretariat may grant an exemption from the obligation to submit particular information or documents set out in Article 11 paragraphs 1 and 2 if it is of the opinion that such information is not required for the assessment of the case. The obligation to disclose additional information and documents in accordance with Article 15 is reserved. Parties may submit a simplified notification in cases that do not raise any 'prima facie' competition problems. Such a simplified notification may particularly be justified in cases of international mergers with limited effects on the Swiss market, for mergers affecting markets which the COMCO is already familiar with from previous decisions, or in cases in which a joint venture is founded in order to enter an emerging market For further information see the combined explanatory note and form for the notification of mergers (cf. 1.D.), numeral B. and www.weko.admin.ch >

	Dienstleistungen > Meldeformulare > Praxis zur Meldung und Beurteilung von Zusammenschlüssen, numeral IV.
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	Cf. 7.A.

8. Information and documents to be submitted with a notification	
A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).	According to Art. 11 para. 1 Merger Control Ordinance, the notification shall contain the following information: a. name, domicile and a brief description of the business activities of the undertakings that are to be taken into account to ascertain whether the thresholds are met in accordance with Articles 4-8, and of the seller of the shares; b. a description of the planned concentration, of the relevant facts and circumstances, and of the goals that are being pursued by the planned concentration; c. the turnover, balance sheet totals or gross premium income of the undertakings concerned calculated in accordance with Articles 4-8, and the amounts apportioned to Switzerland; d. information on all product and geographic markets that are affected by the concentration and in which two or more of the undertakings concerned jointly hold a market share of 20 per cent or more in Switzerland or in which one of the undertakings concerned holds a market share of 30 per cent or more in Switzerland, and a description of these markets containing at least information on the distribution and demand structures and on the importance of research and development;

	e. with regard to the markets referred to under letter d, the market shares of the undertakings concerned for the preceding three years and, if known, for each of the three principal competitors as well as an explanation of the basis used for calculating the market shares; f. for the markets referred to under letter d, information regarding undertakings that have newly entered the market in the preceding five years and undertakings that might enter these markets within the next three years and, if possible, the costs that would arise from an entry into the market. According to Art. 11 para. 2 Merger Control Ordinance, the notification shall be accompanied by the following documents: a. copies of the most recent annual accounts and annual reports of the undertakings concerned; b. copies of the agreements that effect the concentration or that are otherwise connected with it, insofar as their relevant content is not already contained in the information disclosed under Art. 11 para. 1 letter b Merger Control Ordinance, i.e. is not already contained in the notification itself; c. in the case of a public offer, copies of the offer documentation; d. copies of the reports, analyses and business plans made with regard to the concentration insofar as they contain information relevant to the assessment of the concentration that is not already contained in the description provided in accordance with Art. 11 para. 1 letter b Merger Control Ordinance, i.e. insofar as the information is not already contained in the notification itself.
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	There are no specific rules for digital markets or the description of intangible assets.

transaction]	
C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]	Cf. 8.A. (Art. 11 para. 1 and 2 Merger Control Ordinance)
D. What information is required in case the target company is experiencing financial insolvency?	If a concentration of banks as defined by the Swiss Banking Act of 8 November 1934 (SR 952.0) is deemed necessary by the Swiss Financial Market Supervisory Authority (FINMA) for reasons related to creditor protection, the interests of creditors may be given priority. In these cases, FINMA takes the place of the Competition Commission, which it shall invite to submit an opinion (Art. 10 para. 3 Cart Act). There are no other specific information requirements regarding companies experiencing financial insolvency.
E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?	There is no specific procedure for obtaining information from target companies of hostile/unsolicited bids. But the Cartel Act contains a provision regarding the duty to provide information. It states that parties to agreements, undertakings with market power, undertakings concerned in concentrations and affected third parties shall provide the competition authorities with all the information required for their investigations and produce the necessary documents (Art. 40 Cartel Act).

F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?	No.
G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?	Information from the combined explanatory note and form for the notification of mergers (cf. 1.D.), numeral K: A notification submitted to a foreign authority may in principle also be used for notification purposes to the COMCO. A notification in one of the languages accepted (German, French or Italian) and containing all the information required (Art. 11 Merger Control Ordinance) will be considered complete. The parts of the notification with the relevant information for Switzerland must be identified. Certain notions (for example control, joint venture, participating enterprise) contained in foreign regulations may not be identical to those of the Cartel Act and the Merger Control Ordinance. It is therefore recommended that the parties clarify with the Secretariat in advance whether such a notification can be considered as complete in Switzerland. The Secretariat can also inform the notifying undertaking which information must be completed. Sections 1–11 of the Form CO relating to the notification of a concentration pursuant to regulation (EC) No 139/2004 contain all information required by Art. 11 Merger Control Ordinance, provided that the parties complement the correspondent.

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?	According to Art. 40 of the Cartel Act and Art. 15 para. 2 of the Merger Control Ordinance, the Secretariat may request affected third parties to provide information that may be relevant for the assessment of the planned concentration. To that end, the Secretariat may inform third parties of the planned concentration in an appropriate manner while protecting the business secrets of the undertakings concerned, associated undertakings within the meaning of Art. 5 of the Merger Control Ordinance and the sellers. Information can also be handed in on a voluntary basis. In case of a second phase merger investigation, the Secretariat specifies a time frame within which third parties may comment on the notified concentration (Art. 33 para. 1 Cartel Act, see also Art. 19 Merger Control Ordinance).
I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?	Yes.
J. Are there different forms for different types of transactions or sectors?	No.
K. With respect to investment funds: **i) Is it requested that an investment fund taking part in a transaction provide a statement that its**	There are no specific rules regarding investment funds. The name, registered office and structure of the companies acquiring control of a company previously independent of them, or of the merging companies, must be indicated. Furthermore, the company name, registered office and structure of the

controllers do not manage any other investment funds in the same relevant market? **ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?** **iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?**	companies that are acquired, or – in the case of a joint venture – established, must be indicated (combined explanatory note and form for the notification of mergers, part II: number 1). If a company consists of several legally independent but economically dependent entities (i.e. other entities have the possibility of exercising a determining influence), the internal shareholding and control relationships must be disclosed. If this is readily apparent from other parts of the notification or the submitted annual reports, reference may be made to those.

9. Translation	
A. In what language(s) can the notification forms be submitted?	The notification itself must be in one of Switzerland's official languages (Art. 11 para. 4 Merger Control Ordinance), i.e. in French, German or Italian (or Romansh for communication with people who speak this Swiss language, cf. Art. 70 para. 1 Federal Constitution of the Swiss Confederation, SR 101). Supporting documents (appendices) of the notification are also accepted in English (Art. 11 para. 4 Merger Control Ordinance and Art. 33a para. 3 of the Federal Act on Administrative Procedure of 20 December 1968 (Administrative Procedure Act, APA; SR 172.021)). Thereafter, the language of the notification will be the language of the proceeding, except otherwise agreed upon (Art. 11 para. 4 Merger Control

	Ordinance and Art. 33a Administrative Procedure Act).
B. Describe any requirements to submit translations of documents: **i) with the initial notification; and** **ii) later in response to requests for information.** **In addition:** **iii) what are the categories or types of documents for which translation is required;** **iv) what are the requirements for certification of the translation;** **v) which language(s) is/are accepted; and** **vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?**	(i) The notification must be made in one of Switzerland's official languages (cf. 9.A.), but supporting documents of the notification are also accepted in English. (ii) As for the notification, Switzerland's official languagesare accepted for the communication. (iii) If a party files official documents that are not in an official language, the authority may with the consent of the other parties waive the requirement of a translation (Art. 33a para. 3 Administrative Procedure Act). If necessary, the authority shall order that a translation must be obtained (Art. 33a para. 4 Administrative Procedure Act). (iv) There are no specific requirements for the certification of the translation. (v) Cf. 9.A. and 9.B. (i) and (ii) (vi) There are no such rules, but as mentioned in (iii) the authority may waive the requirement of a translation.

10. Review Periods	
A. Describe any applicable review periods following notification.	The Swiss merger control procedure is divided into two phases. The opening of an (in-depth) investigation must be notified to the parties within one month of receiving the notification (Art. 32 para. 1 Cartel Act). The one month period for the examination procedure commences on the day following receipt of the

	complete notification and expires the following month at the end of the same numerical day as the day upon which the period commences (Art. 20 para. 1 Merger Control Ordinance). Should this day not exist in the month that immediately follows, the period expires on the last day of such month (Art. 20 para. 3 of the Federal Act on Administrative Procedure of 20 December 1968 (Administrative Procedure Act, APA; SR 172.021)). The Secretariat will provide the notifying enterprises with a written confirmation of the receipt of the notification and its completeness. The in-depth investigation has to be completed within a period of four months (Art. 33 para. 3 Cartel Act).
B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?	The Cartel Act does not contain any specific rules regarding public takeover bids. In these cases, the COMCO should be contacted in advance so that it can coordinate its course of action with the Swiss Takeover Board (TOB). This is particularly important for hostile bids.
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 maximum time for the preliminary assessment (first phase) is one month after the complete notification (Art. 32 para. 1 Cartel Act) has been handed in. The authority is obliged to complete its in-depth investigation (second phase) within four months unless prevented from doing so for reasons attributable to the undertakings concerned (Art. 33 para. 3 Cartel Act). Thus, requests for additional information basically do not suspend or restart the review period. Thus, extensions are only possible for reasons.attributable to the enterprises taking part in the merger. This includes prolonging the evaluation period with consent of the parties e.g. for finding possible remedies.

D. Is there a statutory or other maximum duration for extensions?	The law does not state a specific maximum length of the possible extensions mentioned in 10.C.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	No. Exception cf. 10.C.
F. What are the time periods for accelerated review of non-problematic transactions, if any?	There are no specific time periods for non-problematic transactions.
G. If remedies are offered, do they impact the timing of the review?	According to Art. 10 para. 2 Cartel Act, the COMCO may prohibit a concentration or authorise it subject to conditions and obligations if the investigation indicates that the concentration creates or strengthens a dominant position liable to eliminate effective competition (lit. a); and does not improve the conditions of competition in another market such that the harmful effects of the dominant position can be outweighed (lit. b). There are no specific provisions or procedures for offering and assessing remedies. However the assessement of remedies has no impact on the timing of the investigation. i.e with and without remedies, the maximum examination time for the first phase is one month and for the second phase (in-depth examination) four months (cf. 10.A.). However, with consent of the parties, e.g. for finding possible remedies, the review period might be prolonged.

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.	Participating enterprises must refrain from implementing the concentration for one month following the notification unless, at their request, the Commission has authorised them to do so for good cause. If no notice of initiation of an investigation is given within the one month period, the merger may be completed. If the COMCO decides to initiate an investigation, it must be completed within a period of four months, during which the implementation of the concentration is prohibited, unless authorized by the Commission in exceptional cases (Art. 33 para. 2 Cartel Act). Please see also answer to question 11.F.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	The parties may request the COMCO to exceptionally allow the implementation of the merger before the end of the (preliminary or in-depth) investigation (Art. 32 para. 2 and Art. 33 para. 2 Cartel Act). This may, for instance, be the case for a restructuring merger of a target company in serious financial difficulties (see combined explanatory note and form for the notification of mergers (cf. 1.D. for the link), numeral H.).
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 refer to the notified transaction and do not distinguish between jurisdictions. Theoretically, parties might be allowed to implement transactions in other jurisdictions if these can be clearly separated from the transaction in Switzerland and they do not have competition effects in Switzerland.

D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Yes
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 COMCO is obliged to complete its in-depth investigation within four months unless it is prevented from doing so for reasons attributable to the undertakings taking part (cf. 10.C.). This may include an extension of the period with the consent of the parties to find possible remedies.
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.	Once the notification is completed, the transaction may not be closed for a period of one month, or until the COMCO has issued its clearance, i.e. its decision not to open an investigation, whichever is earlier. If within that one-month period the COMCO decides to investigate the merger, the transaction cannot be closed prior to the COMCO rendering its final decision (within 4 months) unless it has been given special authorisation. The enterprises may file for early consummation of the transaction in certain limited circumstances (Art. 32 para. 2 Cartel Act). The COMCO shall decide, at the outset of the investigation, whether the concentration may be carried out provisionally by way of exception or whether it should remain suspended. An exception might be granted for example for a takeover which involves a situation where the enterprise being acquired would go bankrupt in a short time if the concentration was not carried out.
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).	In the event a merger subject to notification is closed without notification or prior to clearance, the enterprises involved face substantial fines and may be required to takein measures to reinstate effective competition, either by unwinding the transaction, by ceasing to exercise effective control or by any other appropriate action.

12. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?	In case of a statutory merger, the notification must be made jointly by the undertakings concerned. In case of the acquisition of control, the filing must be made by the undertaking or undertakings acquiring control.
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	The Cartel Act does not contain any specific rules regarding public takeover bids.
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	There is no obligation that the notifying parties need to be represented by a lawyer.
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?	1. Representatives of parties must submit a written document to prove that they are authorised (usually a power of attorney). 2. No. However if they reside abroad, they must indicate an address for service in Switzerland, unless international law or the competent foreign body permits the authority to serve documents directly in the state concerned. Alternatively they may also indicate an electronic mail address and declare that they consent to service by electronic mail. [Art. 11b para. 1 and 2 Administrative Procedure Act] 3. No.

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]	For the first phase a flat fee of 5000 Swiss francs (USD 5564 as of December 31st, 2020) is imposed on the notifying parties (Art. 1 para. 1 lit. c in conjunction with Art. 4 para. 3 of the Ordinance on Fees and Charges in the Cartel Act (SR 251.2) of 25 February 1998 (Status as of 1 January 2013) If the COMCO decides to conduct an (in-depth) investigation (second phase) according to Art. 33 Cartel Act, from that point onwards the fees are based on the expenditure of time, with rates per hour ranging from CHF 100 to CHF 400 (Art. 1 para. 1 lit. c in conjunction with Art. 4 para. 1 and 2 of the Ordinance on the Fees under the Cartel Act (GebV-KG; SR 251.2) of 25 October 1995 (Status as of 1 January 2013). The exact rates per hour depend on the urgency of the case and the positions of the staff involved. The fee for the evaluation of the pre-notification is included in the flat fee of CHF 5000 if a notification is handed in later on and the notification is evaluated according to Art. 32 Cartel Act. If no notification is handed in, the fee for pre-notification is based on fees charged for expert reports and other services (Art. 1 para. 1 lit. d GebV-KG). The latter fees are based on the time spent.
B. Who is responsible for payment?	The undertakings concerned in the concentration.
C. When is payment required?	The undertakings have 30 days after receipt of the final decision to pay the fee.

D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Parties receive an invoice. The amount due is usually paid by transfer.

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)?	Procedural stages are neither defined at the level of legislation nor at the level of ordinances. Furthermore, neither has the COMCO has published an informal note/notification on this subject.
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	The COMCO applies a dominance test based on Art. 10 para. 1 Cartel Act (cf. 14.C.).
C. What theories of harm does the agency consider in practice?	According to Art. 10 para. 2 Cartel Act, the COMCO may prohibit a concentration or authorise it subject to conditions and obligations if the investigation indicates that the concentration: a. creates or strengthens a dominant position liable to eliminate effective competition; and b. does not improve the conditions of competition in another market such that the harmful effects of the dominant position can be outweighed. Unlike the European Commission and the Bundeskartellamt, the COMCO has no guidelines on the substantive analysis of a merger.

D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	In practice, the key stages in the substantive analysis are, first, the definition of the relevant markets and, second, the effect of the merger on the parties' position in the market. The latter key stages may include, in particular, the analysis of the following elements: actual and potential competition with barriers to entry, possible countervailing power of the opposite market side, collective dominance (if needed), elimination of effective competition, improvement of the conditions for competition in another market.
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?	No, not by the agency. However, a concentration of undertakings that has been prohibited in accordance with Art. 10 of the Cartel Act may be authorised by the Federal Council at the request of the undertakings involved if, in exceptional cases, it is necessary for compelling public interest reasons (Art. 11 Cartel Act). It may thus override the decision made by the COMCO, the Federal Administrative Court or the Federal Court (Art. 36 Cartel Act).
F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?	Possible outcomes of the merger review are unconditional clearance, conditional clearance and prohibition (Art. 10 para. 2 Cartel Act).
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?	In the past, the COMCO has imposed structural as well as behavioural remedies. As mentioned in 10.G, there is no official procedure for assessing remedies. After the decision, usually an independent auditor supervises that the conditions are complied with.

	Some cases with remedies (not an exhaustive list) are the following: - RPW 2008/1, pp. 208–209, *Migros/Denner* - PRW 2008/2, pp. 336–337, *fenaco/Steffen-Ris Holding AG* - RPW 2008/3, p. 506, *Coop/Fust* - RPW 2008/4, p. 661, *Coop/Carrefour* - RPW 2009/4, p. 441, *Post/NZZ/Tamedia und Post/Tamedia* - RPW 2012/4, pp. 880–881, *Schweizerische Post/La Poste* Note: The COMCO's publication series RPW can be downloaded from: www.weko.admin.ch > Dokumentation > Recht und Politik des Wettbewerbs (RPW).

15. Confidentiality	
A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?	Neither the (pre-)notification nor its content is made public. However, the decision to open an investigation proceeding (second phase) is published in the Federal Gazette (<www.admin.ch/ch/d/ff/index.html>) as well as in the Swiss Official Gazette of Commerce (SOGC) (<www.shab.ch>) (cf. Art. 33 para. 1 Cartel Act and Art. 18 Merger Control Ordinance).
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 do not have access to the files relating to their merger during its preliminary assessment (i.e. first phase investigation). However if the COMCO opens an in-depth investigation of the merger, the notifying parties have the right to inspect the files relating to their merger (Art. 39 Cartel Act in conjunction with Art. 26f. Administrative Procedure Act). Exceptions are made when business secrets and internal documents are involved (Art. 27 Administrative Procedure Act; cf. 15.C.).

	The notifying parties may inspect the files at the Secretariat of the COMCO by appointment (Art. 26 para. 1 Administrative Procedure Act) and may copy documents if they wish to do so. The Secretariat of the COMCO may also make the documents available for inspection electronically provided that the party or its representative agrees to do so (Art. 26 para. 1bis Administrative Procedure Act).
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?	In principle, third parties can get access to all documents of the COMCO (including submissions of the parties) according to the Federal Act on Freedom of Information in the Administration of 17 December 2004 (Freedom of Information Act, FoIA; SR 152.3). However, there are exceptions for business secrets and personal data. The former have to be described, while the latter have to be made anonymous. If this is not possible, access to specific documents must be decided upon on a case-by-case basis. In this regard, the COMCO discloses information to third parties only in a restrained manner, as, until now, there is little practice concerning the relationship between privacy and freedom of information by the Federal Data Protection and Information Commissioner (FDPIC) and the courts in Switzerland, giving clear guidelines how much information can be disclosed by the authorities. Access to documents according to the Freedom of Information Act is granted only after an investigation has been closed by the authority.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	There are no such special procedures. The opening of an in-depth investigation (second phase) has to be published by law. However, the competition authorities are bound by professional secrecy (Art. 25 para. 1 Cartel Act). Information collected in performance of their duties may be used only for the purpose of the investigation (Art. 25 para. 2 Cartel Act). The Swiss competition authorities' publications may not reveal business secrets.

E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.	Yes, the COMCO can deny a party's claim that certain information contained in notification materials is confidential. The COMCO can issue a ruling stating which information it considers as being confidential. This ruling as all rulings is subject to an appeal (Art. 5 para. 1 lit. c and Art. 44 Administrative Procedure Act (APA)). The Federal Administrative Court is the competent court to deal with the appeal (Art. 31 and Art. 33 lit. f of the Federal Administrative Court Act of 17 June 2005 [VGG; SR 173.32]).
F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?	The competition authorities are bound by the rules on official secrecy (Art. 25 para. 1 Cartel Act). The competition authorities' publications may not reveal any business secrets (Art. 25 para. 4 Cartel Act). The concerned parties as well as third parties are requested to designate business secrets or to directly hand in additional versions of their filings without business secrets. Before publishing a decision or rulings, the COMCO will eliminate business secrets, usually after prior consultation with the parties. In case it is contested if an information contains business secrets, the COMCO will issue a ruling (see above 15.E.). Cf. 1.E. with link to the explanatory note on business secrets, which the Secretariat of the COMCO has published on its homepage.

16. Transparency	
A. Does the agency publish an annual report with	The COMCO's Annual Report (section "statistics") contains a number of figures related to mergers such as the number of notifications received, the number of

information about mergers? Please provide the web address if available.	phase II mergers and the number of mergers with early implementation. See www.weko.admin.ch > Documentation > Annual press conference, Annual Report or www.weko.admin.ch > Dokumentation > Recht und Politik des Wettbewerbs (RPW), first volume of each year.
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)?	Only few mergers of those assessed by the COMCO are accompanied by a press release. The COMCO's press releases can be downloaded from its homepage and are usually available in German, French and Italian, but rarely in English,: www.weko.admin.ch > Aktuell> Medieninformationen As mentioned before (cf. 15.A.), the decision to open an investigation proceeding (second phase) as well as the final decision of the COMCO (summary) are published in the Federal Gazette as well as in the SOGC (Art. 18 and 23 Merger Control Ordinance). The results of the COMCO's merger assessments (phase one- and phase two-decisions) are published in its publication series RPW (cf. 1.D. for the link of the online version), usually only in the language of the case.
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.	Cf 15.A. and 16.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]	No.

17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	Cf. 17.B. and 17.C.
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?	Yes, the agency is party to the Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws of 17 May 2013 (Swiss-EU-Cooperation-Agreement; SR 0.251.268.1). For the English version, see <eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A1203(01)&from=EN> (or see <ec.europa.eu/competition/international/bilateral>, link in the table under Switzerland). Besides, Art. 104 of the Agreement on Free Trade and Economic Partnership Between the Swiss Confederation and Japan of 19 February 2009 (JSFTEPA; SR 0.946.294.632) as well as the associated Implementing Agreement regulate the cooperation on adressing anticompetitives practices between Switzerland and Japan and thus also the exchange of information. See <www.seco.admin.ch/themen/00513/02655/02731/02970> link “The Text of the Basic Agreement” and link “Implementing Agreement”, respectively.
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	As mentioned in 17.B, Switzerland has an agreement with the European Union concerning the exchange of information between its competition agencies, i.e. the European Commission and the COMCO. The rules of the exchange of information are set out in Article 7 of the Agreement. The authorities may even informally discuss confidential information. The exchange of confidential information for the

model waiver of confidentiality in merger investigations form.	purpose of proof is possible with the consent of the party* or – if certain conditions are met – even without the consent of the party. *If the notifying untertakings notify the concentration to the European Commission as well, the Swiss competition authorities ask the notifying untertakings to issue waivers for the European Commission and the Swiss competition authorites (see also Art. 7 para. 3 of the Swiss-EU-Cooperation-Agreement). This information exchange enables the authorities a faster evaluation of the concentration as well as a coordination with the preceedings of the European Union (cf. combined explanatory note and form for the notification of mergers (cf. 1.D.), numeral 10). Switzerland also has an agreement with Japan concerning free trade which also regulates information exchange between their respective competition agencies. For all other competition agencies (including all national agencies within the European Union), Switzerland has no legal basis for the exchange of documents or information. In practice co-operation depends largely on the party's participation, especially the issuing of waivers. The Swiss competition authorities have no model waiver. The structure of the ICN's model waiver fulfills the Secretariat of the COMCO's requirements for a waiver. As mentioned in 9.A–B, the notification must be made in one of Switzerland's official languages, but supporting documents of the notification are also accepted in English. In practice, the Secretariat therefore also accepts waivers written in English.
D. Is the agency able to exchange information or documents with other domestic regulators?	If a concentration of banks as defined by the Swiss Banking Act is deemed necessary by the Swiss Financial Market Supervisory Authority (FINMA) for reasons related to creditor protection, the interests of creditors may be given priority. In these cases, FINMA takes the place of the Competition

	Commission, which it shall invite to submit an opinion (Art. 10 para. 3 of the Cartel Act). Federal and cantonal government offices are required to co-operate with the competition authorities in their enquiries and to make any necessary documents available to them (Art. 41 of the Cartel Act).

18.Sanctions/penalties	
A. What are the sanctions/penalties for: **i) failure to file a notification;** **ii) incorrect/misleading information in a notification;** **iii) failure to comply with information requests;** **iv) failure to observe a waiting period/suspension obligation;** **v) breach of interim measures;** **vi) failure to observe or delay in implementation of remedies;** **vii) implementation of transaction despite the prohibition from the agency?**	(i), (iv), (v), (vi) and (vii): According to Art. 51 para. 1 of the Cartel Act, any undertaking that implements a concentration that should have been notified without filing a notification, fails to observe the suspension obligation, fails to comply with a condition attached to the authorisation, implements a prohibited concentration, or fails to implement a measure intended to restore effective competition shall be charged up to one million Swiss francs. Furthermore, a natural person who implements a concentration that should have been notified without filing a notification, or who violates rulings relating to concentrations of undertakings is liable to a fine not exceeding 20,000 Swiss francs (Art. 55 of the Cartel Act). (i): Besides, pursuant to Art. 35 of the Cartel Act, if a concentration of enterprises has been implemented without due notification, the procedure set out pursuant to Articles 32 to 38 (notably the assessment of the merger) is initiated ex officio. (ii) and (iii): According to Art. 52 of the Cartel Act, any undertaking that does not, or does not fully fulfil its obligation to provide information or produce documents shall be charged up to 100 000 Swiss francs. Furthermore, a natural person who wilfully does not, or does not fully comply with a ruling of the competition authorities concerning the obligation to provide information (Art. 40 of the Cartel Act) is liable to a fine not exceeding 20,000 Swiss francs (Art. 55 of the Cartel Act).

	(vi): According to Art. 51 para. 2 of the Cartel Act, in case of *repeated* failure to comply with a condition attached to the authorisation, the undertaking shall be charged up to 10 per cent of the total turnover in Switzerland achieved by all the undertakings concerned. Article 9 paragraph 3 of the Cartel Act applies by analogy. (vii) If a merger is prohibited after completion and exceptional authorization for the concentration has not been requested or granted, the undertakings taking part are required to take the necessary steps to re-establish effective competition (Art. 37 para. 1 Cartel Act). According to Art. 37 para. 4 Cartel Act, if those steps are not approved by the COMCO, remedies may include: - separation of the concentrated enterprises or assets; - cessation of the effects of control; - other measures to re-establish effective competition.
B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?	See 18.A.
C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	The authority can impose these sanctions/penalties directly. The prosecuting authority with regards to criminal offences is the Secretariat in consultation with a member of the presiding body. The decision-making authority is the COMCO (Art. 57 para. 2 of the Cartel Act).

D. Are there any recent or significant fining decisions?	On 10 December 2012, the Swica Gesundheitsorganisation was sanctioned CHF 35'000 because it had violated Art. 9 para. 1 of the Cartel Act by omitting to give notice of its acquisition of the company ProVAG. (RPW 2013/2, 222–234, Verfügung in Sachen Übernahme der ProVAG Versicherungen AG und der PROVITA Gesundheitsversicherung AG; for the link of the online version of the RPW see 1.D). On 23 September 2013, The Swatch Group AG was sanctioned because it had violated its obligation to notify a concentration according to Art. 9 para. 4 Cartel Act (cf. RPW 2014/1, 316 pp., Verfügung vom 23. September 2013 betreffend die Übernahme der Phm Holding, der Simon et Membrez S.A. und der Termiboîtes S.A., sanctions according to Art. 51 para. 1 Cartel Act). The Swatch Group AG then filed an appeal with the Federal Administrative Court. On 29 April 2014, the latter decided in favour of the Swatch Group AG, overruling the COMCO's decision (cf. <www.bvger.ch> Judgments > FAC judgments database (in German)).

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)?	According to Art. 36 para. 1 of the Cartel Act, if the COMCO has prohibited a concentration, the undertakings concerned may, within 30 days, submit to the Federal Department of Economic Affairs, Education and Research (EAER) an application for exceptional authorisation by the Federal Council for compelling public interest reasons. If such an application is submitted, the period in which an appeal may be filed with the Federal Administrative Court begins to run only after the parties have been notified of the Federal Council's decision. Applications for exceptional authorisation by the Federal Council may also be submitted within 30 days of the entry into effect of a judgment of the Federal Administrative Court or the Federal Supreme Court (Art. 36 para. 2 Cartel Act).

B. What are the grounds for such ministerial intervention?	Cf. 19.A. (“compelling public interest reasons”) There has been no such case yet.
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	There is no specific process or procedure. If possible, the Federal Council takes its decision within four months of receipt of the application (Art. 36 para. 3 Cartel Act).

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	Regarding timetables for the investigation of the authority see above 10.A–G. There are neither time-limits for the Federal Administrative Court nor the Federal Supreme Court to rule on an appeal. Cf. 20.C.
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	The Federal Administrative Court basically applies the same provisions as the authority. Additionally, according to guidelines of the Federal Administrative Supreme Court its decisions are published in an anonymized way. The Supreme Court can exclude the public from the proceeding notably in case of an preponderant private interest (e.g. business secrets). Basically the judgements are published in an anonymized way.

C. Are there any limitations on the time during which an appeal may be filed?	The parties may appeal against the decision within 30 days. Appeals may be lodged with the Federal Administrative Court. Against its decisions, again within 30 days, an appeal can be lodged with the Swiss Federal Supreme Court. The time limitation to submit an application for authorization from the Federal Council on the grounds of compelling public interest is 30 days (cf. 19.A).

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)?	Additional filings to other regulatory authorities are required notably under the following circumstances: - In addition to merger control, special authorisations are required if the merger transaction involves banks or Swiss real estate companies. Mergers of banks are notifiable to the Swiss Financial Market Supervisory Authority FINMA (Art. 10 para. 3 Cartel Act), whose approval is especially required if the acquiring party is a foreign enterprise. Under the Federal Law on the Acquisition of Real Estate by Persons Abroad (BewG; SR 211.412.41), any merger involving a foreign undertaking and a Swiss real estate company, i.e. a company whose principal purpose is the holding of real estate in Switzerland and whose assets include a significant portfolio of residential properties in Switzerland, may need to obtain a special permit from the competent cantonal (local) authorities. - For air transport: See Art. 11 para. 1 of the Agreement between the European Community and the Swiss Confederation of 21 June 1999 on Air Transport (Swiss/EC Air Transport Agreement; SR 0.748.127.192.68). - Broadcasters of Swiss programme services: They must notify the Federal Office of Communications of any changes in capital and in voting rights as

	well as any substantial holdings in other enterprises (Art. 16 and 48 of the Federal Act on Radio and Television (RTVA) of 24 March 2006; SR 784.40). Please note that the list above may not be exhaustive. We recommend contacting the competent regulatory body.

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.

23. 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?	According to Art. 38 para. 1 of the Cartel Act, the Competition Commission may revoke an authorisation or decide to investigate a concentration despite the expiry of the deadline set out in Article 32 paragraph 1 if: a. the undertakings concerned have provided inaccurate information; b. the authorisation was obtained fraudulently; or c. the undertakings concerned are in serious breach of a condition attached to the authorisation.
B. Does the agency publish studies regarding ex-post analysis of reportable transactions	No – the agency does not publish such studies.

which have been cleared by the agency? Are these studies publicly Available? How does the agency obtain data for carrying out these studies?	