**ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE**

**Merger Working Group**

**European Commission, Directorate-General for Competition**

**24 February 2021**

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

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

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

| **1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]** | |
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| | **Statutory Laws** |
| **A. Notification provisions** | Article 4 of the Merger Regulation; Articles 1-5 of the Implementing Regulation<br><br>Please note that the materials referred to here and below, as well as non-confidential versions of the Commission's decisions in merger cases and other kinds of merger-related information are available at:<br>https://ec.europa.eu/competition/mergers/overview_en.html |
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| **B. Substantive merger review Provisions** | Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (hereinafter referred to as "the Merger Regulation") (OJ L 24/1, 29.1.2004) |
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[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.

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| **C. Implementing regulations** | Commission Regulation (EC) No 802/04 of 7 April 2004 implementing Council Regulation (EC) No 139/04 on the control of concentrations between undertakings (OJ L 133/1, 30.4.2004) (hereinafter referred to as "the Implementing Regulation") |
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| **D. Notification forms or information requirements** | Form CO and Short Form CO relating to the notification of a concentration pursuant to Regulation (EC) No 139/2004 (Annexes of the Implementing Regulation) |

**Interpretative Guidelines and Notices**

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| **E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]** | Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16 April 2008, p.1<br><br>Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, OJ C 366, 14 December 2013, p. 5<br><br>Commission Notice on case referral in respect of concentrations, OJ C 56, 5 March 2005, p. 2<br><br>Commission Notice on the rules for access to the Commission file in case pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004, OJ C 325, 22 December 2005, p. 7 |
| **F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]** | Commission Notice on the definition of the relevant market for the purposes of Community competition law, OJ C 372, 9 December 1997, p. 5<br><br>Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5 February 2004, p. 5<br><br>Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18 October 2008, p. 6 |

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| | Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267, 22 October 2008, p. 1<br><br>Commission Notice on restrictions directly related and necessary to concentrations, OJ C 56, 5 March 2005, p. 24 |
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| **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 |
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| **H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process** | DG Competition Best Practices on the conduct of merger control proceedings, 20 January 2004<br><br>Explanatory Note/Best Practice Guidelines on the Commission's model texts for divestiture commitments and the trustee mandate under the EC Merger Regulation, 5 December 201<br><br>Commission Model Text for Divestiture Commitments, 5 December 2013<br><br>Commission Model Text for Trustee Mandate, 5 December 2013<br><br>Best Practices for the submission of economic evidence and data collection in cases concerning the application of articles 101 and 102 TFEU and in merger cases (Staff working paper |

| 2. Agency (or Agencies) responsible for merger enforcement. | |
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| **A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.** | European Commission, Directorate General for Competition<br><br>The European Commission has exclusive merger control jurisdiction for concentrations with a Community dimension as defined in Article 1 of the Merger Regulation (see Article 21 of the Merger Regulation). In addition, cases may be referred to the Commission by one or several Member States pursuant to Article 22(3) of the Merger Regulation. In turn, the Commission can refer or partially refer cases to the competent authorities of Member States upon their request (see Article 9 of the Merger Regulation).<br><br>In addition, pursuant to Art. 4(4) and 4(5) of the Merger Regulation, notifying parties may request a transfer of jurisdiction either from or to the Commission prior to notification. In the case of requests for referral from the Commission to a particular Member State, Article 4(4) provides that where the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market, the notifying parties may make a reasoned submission requesting that the transaction should therefore be examined, in whole or in part, by that Member State.<br><br>Article 4 (5) provides that where a concentration does not have a Community dimension within the meaning of Art. 1 and where it is capable of being reviewed under the national competition laws of at least three Member States the notifying parties may, prior to notification to the competent authorities, request that the concentration is examined by the Commission, using the above mentioned Form.<br><br>Requests should be made on the basis of a reasoned submission from the parties using the Form RS which is an annex to the Implementing Regulation. |
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| **B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]** | European Commission<br>DG COMP<br><br>Postal address: |

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| | B-1049 Brussels, Belgium<br><br>Visiting address:<br>Place Madou, Madouplein 1<br>1210 Saint-Josse-ten-Noode /Sint-Joost-ten-Node<br>Belgium<br><br>Tel: +32.2.299.11.11 / Fax: +32.2.296.43.01<br><br>E-Mail: comp-mergers@cec.eu.int (caution: this e-mail address is a contact point for external queries only; it may not be used for any specific messages relating to individual merger cases, in particular not for merger notifications)<br><br>Website: https://ec.europa.eu/competition/mergers/overview_en.html<br>(languages available: English) |
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| **C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]** | Yes. The European Commission even encourages notifying parties to enter into pre-notification contacts with the relevant service. The European Commission also examines consultations submitted by merging companies on jurisdictional questions, on the basis of which it may confirm or infirm its jurisdiction under the EU Merger Regulation.<br><br>More details can be found in the best practice on merger control proceedings (https://ec.europa.eu/competition/mergers/legislation/proceedings.pdf). |

| **3. Covered transactions** | |
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| **A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or** | Pursuant to Article 3(1) and 3(4) of the Merger Regulation:<br><br>(1) A concentration shall be deemed to arise where: |

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| **other forms of contractual relationships, such as partnerships and alliance agreements]** | (a) two or more previously independent undertakings merge, or<br>(b) one or more persons already controlling at least one undertaking, or one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings.<br><br>(4) The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity, shall constitute a concentration within the meaning of paragraph 1(b).<br><br>Article 3 of the Merger Regulation contains provisions concerning control and the acquisition of control.<br><br>See also the Commission's consolidated jurisdictional notice (https://ec.europa.eu/competition/mergers/legislation/draft_jn.html). |
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| **B. What is the geographic scope of transactions covered?** | Pursuant to Article 1 of the Merger Regulation, the Merger Regulation shall apply to all concentrations with a Union dimension defined as follows:<br><br>(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 billion; and<br>(b) the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million,<br>unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.<br><br>A concentration that does not meet these thresholds has a Union dimension where:<br>(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2 .5 billion; |

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| | (b) in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;<br>(c) in each of at least three Member States included for the purpose of point (b), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and<br>(d) the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million;<br>unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. |
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| **C. If change of control is a determining factor, how is control defined and interpreted in practice?** | Pursuant to Article 3(3) of the Merger Regulation:<br><br>For the purpose of the Merger Regulation, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:<br>(a) ownership or the right to use all or part of the assets of an undertaking;<br>(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.<br><br>Article 3(5) of the Merger Regulation contains specific provisions concerning the circumstances under which a concentration shall not be deemed to arise.<br><br>See also the Commission's consolidated jurisdictional notice (https://ec.europa.eu/competition/mergers/legislation/draft_jn.html). |
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| **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-** | As long as the transaction is a concentration and has a Community dimension within the meaning of Articles 1 and 3 of the Merger Regulation, less than 100% stock acquisitions/ minority shareholdings are covered. |

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| **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?** | According to Article 3, paragraph 1 point (b) of the Merger Regulation, a concentration requires the acquisition of direct or indirect control.<br><br>Guidance on whether a transaction leads to an acquisition of control can be taken from the Commission's consolidated jurisdictional notice (https://ec.europa.eu/competition/mergers/legislation/draft_jn.html).<br><br>Acquisitions of assets are covered if the assets form the whole or parts of an undertaking other than the acquirer before the transaction. |

| **4. Thresholds for notification** | |
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| **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)]** | Pursuant to Article 1 of the Merger Regulation, the Merger Regulation shall apply to all concentrations with a Union dimension defined as follows:<br><br>(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 billion; and<br>(b) the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million,<br>unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.<br><br>A concentration that does not meet these thresholds has a Union dimension where:<br>(a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2 .5 billion;<br>(b) in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million; |

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| | (c) in each of at least three Member States included for the purpose of point (b), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and<br>(d) the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million;<br>unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. |
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| **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?** | Pursuant to Article 5(4) of the Merger Regulation, and without prejudice to Article 5(2), the aggregate turnover of an undertaking concerned within the meaning of Article 1 (2) and 3 shall be calculated by adding together the respective turnovers of the following:<br><br>(a) the undertaking concerned;<br>(b) those undertakings in which the undertaking concerned,<br>directly or indirectly;<br>– owns more than half the capital or business assets, or<br>– has the power to exercise more than half the voting rights, or<br>– has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or<br>– has the right to manage the undertakings' affairs;<br><br>(c) those undertakings which have in an undertaking concerned the rights or powers listed in (b);<br>(d) those undertakings in which an undertaking as referred to in (c) has the rights or powers listed in (b);<br>(e) those undertakings in which two or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b). |

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| | Pursuant to Article 5(1), first subparagraph, second sentence, of the Merger Regulation, the aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in Article 5(4).<br>See also the Commission's consolidated jurisdictional notice (https://ec.europa.eu/competition/mergers/legislation/draft_jn.html). |
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| **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)?"** | Nexus to the EU is established by the amount of turnover achieved by the undertakings concerned in the EU, as set out in Article 1 of the EU Merger Regulation (as explained in point 4.A above).<br><br>In addition, the second subparagraph of Article 5(1) Merger Regulation provides that the location of turnover is determined by the location of the customer at the time of the transaction:<br>'Turnover, in the Community or in a Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that Member State as the case may be.'<br><br>For more details about the geographic allocation of turnover, see also the Commission's consolidated jurisdictional notice (https://ec.europa.eu/competition/mergers/legislation/draft_jn.html). |
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| **D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?** | No. |
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| **E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds** | No. |

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| **relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?** | |
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| **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?** | Pursuant to Article 5(3) of the Merger Regulation, in place of turnover the following shall be used:<br>(a) for credit institutions and other financial institutions, as regards Article 1 (2) and (3) of the Merger Regulation, the sum of the following income items as defined in Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, after deduction of value added tax and other taxes directly related to those items, where appropriate:<br>(i) interest income and similar income<br>(ii) income from securities:<br>– income from shares and other variable yield securities,<br>– income from participating interests,<br>– income from shares in affiliated undertakings;<br>(iii) commissions receivable;<br>(iv) net profit on financial operations;<br>(v) other operating income.<br>The turnover of a credit or financial institution in the Union or in a Member State shall comprise the income items, as defined above, which are received by the branch or division of that institution established in the Union or in the Member State in question, as the case may be.<br><br>(b) for insurance undertakings, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums; as regards Article 1 (2)(b) and (3)(b), (c) and (d) and the final part of Article 1(2) and (3) of the Merger Regulation, gross premiums received from Community residents and from residents of one Member State respectively shall be taken into account. |

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| | See also the Commission's consolidated jurisdictional notice (https://ec.europa.eu/competition/mergers/legislation/draft_jn.html). |
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| **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]** | According to paragraph 5(a) of the Commission notice on a simplified procedure, the Commission applies the simplified procedure to concentrations in which two or more undertakings acquire joint control of a joint venture, provided that the joint venture has no, or negligible, actual or foreseen activities within the territory of the European Economic Area (EEA); such cases occur where:<br>(i) the turnover of the joint venture and/or the turnover of the contributed activities is less than EUR 100 million in the EEA territory at the time of notification; and<br>(ii) the total value of the assets transferred to the joint venture is less than EUR 100 million in the EEA territory at the time of notification. |
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| **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]** | Transactions not having a Union dimension may be referred to the Commission by one or several Member States pursuant to Article 22(3) of the Merger Regulation.<br><br>In addition, pursuant to Art. 4(5) of the Merger Regulation, notifying parties may request a transfer of jurisdiction to the Commission prior to notification of transactions which would, otherwise, be capable of being reviewed under the national competition laws of at least three EU Member States. |
| **I. Are current notification criteria catching relevant transactions related to digital markets?** | Yes. In particular, under Article 22 of the EU Merger Regulation and the Commission's current policy and guidance, EU Member States can request the Commission to examine any concentration that would not have met the EU Merger Regulation's notification thresholds but affects trade between Member States and threatens to significantly affect competition with the territory of one or several Member States making the request. That |

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| | provision is applicable to all transactions, including concentrations falling below the jurisdictional criteria of the referring Member States.<br><br>The Commission's policy in this respect is aimed at covering concentrations involving firms that play or may develop into playing a significant competitive role on the market(s) at stake despite generating little or no turnover at the moment of the concentration. Such concentrations are foreseen to be particularly relevant in digital markets, among others.<br><br>See also the Commission Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases: guidance_article_22_referrals.pdf (europa.eu) |
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**Calculation Guidance and related issues**

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| **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:**<br>**i) the value of the transaction;**<br>**ii) the relevant sales or turnover;**<br>**iii) the relevant assets;**<br>**iv) market shares;**<br>**v) other (please describe).** | The relevant calculation of turnover is set out in Article 5 of the Merger Regulation. According to this Article, amongst others:<br><br>1. Aggregate turnover within the meaning of this Regulation shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in paragraph 4.<br><br>Turnover, in the Community or in a Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that Member State as the case may be.<br><br>2. By way of derogation from paragraph 1, where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more |

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| | undertakings, only the turnover relating to the parts which are the subject of the concentration shall be taken into account with regard to the seller or sellers.<br><br>However, two or more transactions within the meaning of the first subparagraph which take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the last transaction.<br><br>See also the Commission's consolidated jurisdictional notice (https://ec.europa.eu/competition/mergers/legislation/draft_jn.html). |
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| **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?** | Pursuant to Article 5(4) of the Merger Regulation, and without prejudice to Article 5(2), the aggregate turnover of an undertaking concerned within the meaning of Article 1 (2) and 3 shall be calculated by adding together the respective turnovers of the following:<br><br>(a) the undertaking concerned;<br>(b) those undertakings in which the undertaking concerned,<br>directly or indirectly;<br>– owns more than half the capital or business assets, or<br>– has the power to exercise more than half the voting rights, or<br>– has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or<br>– has the right to manage the undertakings' affairs;<br><br>(c) those undertakings which have in an undertaking concerned the rights or powers listed in (b);<br>(d) those undertakings in which an undertaking as referred to in (c) has the rights or powers listed in (b);<br>(e) those undertakings in which two or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b). |

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| | Pursuant to Article 5(1), first subparagraph, second sentence, of the Merger Regulation, the aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in Article 5(4).<br><br>The Commission assesses whether investment funds meet these criteria on a case-by-case basis and in particular whether the relevant investment fund has the power to indirectly exercise the voting rights in portfolio companies.<br><br>See also the Commission's consolidated jurisdictional notice (https://ec.europa.eu/competition/mergers/legislation/draft_jn.html). |
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| **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?** | The general rules on the calculation of turnover under the EU Merger Regulation apply to investment funds. The Commission assesses the applicable calculation on a case-by-case basis.<br><br>See also the Commission's consolidated jurisdictional notice (https://ec.europa.eu/competition/mergers/legislation/draft_jn.html). |
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| **M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].** | The European Commission suggests relying on the exchange rates published by the European Central bank, to the extent applicable. |
| **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.].** | Pre-notification contacts are not mandatory but strongly recommended by the Commission. They provide for the possibility, prior to notification, to discuss jurisdictional and other legal issues. They also serve to discuss issues such as the scope of the |

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| | information to be submitted and to prepare for the upcoming investigation by identifying key issues and possible competition concerns (theories of harm) at an early stage.<br><br>Pre-notification contacts should preferably be initiated at least two weeks before the expected date of notification. The extent and format of the pre-notification contacts required is, however, linked to the complexity of the individual case in question. In more complex cases a more extended pre-notification period may be appropriate and in the interest of the notifying parties.<br><br>Pre-notification contacts should be launched with a submission that allows the selection of an appropriate case-team. This memorandum should provide a brief background to the transaction, a brief description of the relevant sector(s) and market(s) involved and the likely impact of the transaction on competition in general terms. It should also indicate the case language. In straightforward cases, the parties may chose to submit a draft Form CO as a basis for further discussions with the Commission.<br><br>For more information, see the Commissions Best Practices on the conduct of EC merger control proceedings (https://ec.europa.eu/competition/mergers/legislation/proceedings.pdf). |
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| **B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?** | There is no mandatory submission of documents during pre-notification.<br><br>However, the Commission recommends that notifying parties submit a substantially complete draft Form CO before filing a formal notification. The Commission will normally require five working days to review the draft before being asked to comment, at a meeting or by phone- or video-conference, on the adequacy of the draft. In case of voluminous submissions, this time will normally be extended. |

| **6. Notification requirements and timing of notification** |
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| **A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]** | According to Article 4(1) of the Merger Regulation, a notification is mandatory prior to the implementation of a concentration. |
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| **B. If parties can make a voluntary merger filing when may they do so?** | Not applicable. |
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| **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?)** | Pursuant to Article 4(1) of the Merger Regulation, concentrations with a Union dimension as defined in the Merger Regulation shall be notified to the Commission prior to implementation and following the conclusion of the agreement, or the announcement of the public bid, or the acquisition of a controlling interest.<br><br>Notification is also possible where the undertakings concerned satisfy the Commission of their intention to enter into an agreement for a proposed concentration and demonstrate to the Commission that their plan for that proposed concentration is sufficiently concrete, for example on the basis of an agreement in principle, a memorandum of understanding, or a letter of intent signed by all undertakings concerned, or, in the case of a public bid, where they have publicly announced an intention to make such a bid, provided that the intended agreement or bid would result in a concentration with a Community dimension. |
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| **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?** | According to Article 4(1) of the Merger Regulation, a notification is mandatory prior to the implementation of a concentration.<br><br>There is no deadline for notification following any of the events that would allow for a notification mentioned above. |
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| **E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please** | Not applicable. |

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| **describe the procedure and whether there is a maximum length of time for the extension.** | |

| **7. Simplified Procedures** | |
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| **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.).** | Cases that are unlikely to give rise to competition concerns are treated under a simplified procedure. The notifying parties can notify the transaction by using the Short Form CO, which includes less information than the regular Form CO.<br><br>If a transaction is considered a simplified procedure, the Commission will normally issue a short-form decision. The concentration will thus be declared compatible with the internal market, within 25 working days from the date of notification, pursuant to Article 10(1) and (6) of the Merger Regulation. The Commission will endeavour to issue a short-form decision as soon as practicable following expiry of the 15 working day period during which Member States may request referral of a notified concentration pursuant to Article 9 of the Merger Regulation. However, in the period leading up to the 25 working day deadline, the option of reverting to a normal first phase merger procedure and thus launching investigations and/or adopting a full decision remains open to the Commission, should it judge such action appropriate in the case in question. |
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| **B. Describe the criteria adopted to consider a transaction under the simplified procedure.** | According to the Commission Notice on a simplified procedure for treatment of certain concentrations, cases that qualify in principle for such procedure are the following:<br><br>(a) two or more undertakings acquire joint control of a joint venture, provided that the joint venture has no, or negligible, actual or foreseen activities within the territory of the European Economic Area (EEA); such cases occur where:<br>(i) the turnover of the joint venture and/or the turnover of the contributed activities is less than EUR 100 million in the EEA territory at the time of notification; and<br>(ii) the total value of assets transferred to the joint venture is less than EUR 100 million in the EEA territory at the time of notification; |

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| | (b) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, provided that none of the parties to the concentration are engaged in business activities in the same product and geographic market, or in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged;<br><br>(c) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and both of the following conditions are fulfilled:<br>(i) the combined market share of all the parties to the concentration that are engaged in business activities in the same product and geographic market (horizontal relationships) is less than 20 %;<br>(ii) the individual or combined market shares of all the parties to the concentration that are engaged in business activities in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (vertical relationships) are less than 30 %;<br><br>(d) a party is to acquire sole control of an undertaking over which it already has joint control.<br><br>In addition, the Commission may also apply the simplified procedure where two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, and both of the following conditions are fulfilled:<br>(i) the combined market share of all the parties to the concentration that are in a horizontal relationship is less than 50 %; and<br>(ii) the increment (delta) of the Herfindahl-Hirschman Index (HHI) resulting from the concentration is below 150. |

| 8. Information and documents to be submitted with a notification | |
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| **A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).** | Section 5 of the notification Forms (Annexes I and II to the Implementing Regulation) specify the information and the documents that must be provided by an undertaking or undertakings when notifying a proposed concentration the Commission.<br><br>These documents notably include, among others, the notifying parties' merger agreement, the parties' annual reports and financial statements, and documents prepared by or for or received by any member of the parties' governing boards or the shareholders' meeting's minutes, analyses, reports, studies, surveys, presentations and any comparable documents for the purpose of assessing or analyzing the concentration. |
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| **B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]** | No. |
| **C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]** | No documents proving efficiencies of the transaction are required.<br><br>However, if the undertaking wishes the Commission specifically to consider from the outset whether efficiency gains generated by the concentration are likely to enhance the ability and incentive of the new entity to act pro-competitively for the benefit of consumers, the undertaking is asked to provide a description of, and supporting documents relating to, each efficiency (including cost savings, new product introductions, and service or product improvements) that the parties anticipate will result from the proposed concentration relating to any relevant product.<br><br>For each claimed efficiency, the undertaking is asked to provide:<br>(i) a detailed explanation of how the proposed concentration would allow the new entity to achieve the efficiency and to specify the steps that the parties anticipate taking to |

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| | achieve the efficiency, the risks involved in achieving the efficiency, and the time and costs required to achieve it;<br>(ii) where reasonably possible, a quantification of the efficiency and a detailed explanation of how the quantification was calculated. Where relevant, also an estimate of the significance of efficiencies related to new product introductions or quality improvements. For efficiencies that involve cost savings, undertakings should state separately the one-time fixed cost savings, recurring fixed cost savings, and variable cost savings (in EUR per unit and EUR per year);<br>(iii) the extent to which customers are likely to benefit from the efficiency and a detailed explanation of how this conclusion is arrived at; and<br>(iv) the reason why the party or parties could not achieve the efficiency to a similar extent by means other than through the concentration proposed, and in a manner that is not likely to raise competition concerns. |
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| **D. What information is required in case the target company is experiencing financial insolvency?** | There are no specific requirement for such circumstances unless the parties want to make use of a "failing firm defense".<br><br>The requirements under which the Commission may accept a failing firm defense are set out in the Commission's Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings. |
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| **E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?** | No. The Commission may ask any party to provide information relevant for its assessment. |
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| **F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?** | There are no legalization requirements.<br><br>Pursuant to Article 2(3) of the Implementing Regulation, where a notification is signed by authorised external representatives of persons or of undertakings, such representatives shall produce written proof that they are authorised to act. |

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| | Pursuant to Article 3(3) of the Implementing Regulation, the supporting documents shall be either originals or copies of the originals; in the latter case, the notifying parties shall confirm that they are true and complete. |
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| **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)?** | At the pre-notification stage, the parties can approach the Commission in order to discuss the exact type of information and documentation which should be provided in a given case. This applies to all notifying parties. |
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| **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?** | Yes. The Commission can require third parties to submit information under Article 11 of the EU Merger Regulation.<br><br>In addition, any third party can voluntarily submit information to the Commission. |
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| **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. Parties are allowed to submit any information they consider relevant or useful. |
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| **J. Are there different forms for different types of transactions or sectors?** | The standard notification form is the Form CO. For transactions falling under the simplified procedure, the notification can be made using the Short Form CO. |
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| **K. With respect to investment funds:**<br><br>**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?** | As stated above, the situation of investment funds is assessed by the Commission on a case-by-case basis, using the same rules that apply to all undertakings.<br><br>If the Commission comes to the conclusion that additional entities should be considered for the purposes of calculating the relevant turnover or for the competitive assessment, it will request the necessary information from the parties. |

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| **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?**<br><br>**iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?** | |

| **9. Translation** | |
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| **A. In what language(s) can the notification forms be submitted?** | Article 21(3) of the Treaty establishing the European Community (the EC Treaty) provides that every citizen of the Union may write to any of the institutions or bodies, referred to in this Article or in Article 7 (the European Parliament, the Council, the Commission, the Court of Justice, and the Court of Auditors) in one of the languages mentioned in Article 314 of the EC Treaty and have an answer in the same language.<br><br>Pursuant to Article 3(4) of the Implementing Regulation, notifications shall be in one of the official languages of the European Union. This language, which notifying parties are free to choose when submitting their notification, shall also be the language of the proceeding for the notifying parties. Supporting documents shall be submitted in their original language. Where the original language is not one of the official languages of the European Union, a translation into the language of the proceeding shall be attached.<br><br>According to Article 3(5) of the Implementing Regulation, where notifications are made pursuant to Article 57 of the Agreement on the European Economic Area, they may also be submitted in one of the official languages of the EFTA States or the working language of the EFTA Surveillance Authority. If the language chosen for the notifications is not an |

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| | official language of the European Union, the notifying parties shall simultaneously supplement all documentation with a translation into an official language of the Union. The language which is chosen for the translation shall determine the language used by the Commission as the language of the proceeding for the notifying parties |
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| **B. Describe any requirements to submit translations of documents:**<br>**i) with the initial notification; and**<br>**ii) later in response to requests for information.**<br>**In addition:**<br>**iii) what are the categories or types of documents for which translation is required;**<br>**iv) what are the requirements for certification of the translation;**<br>**v) which language(s) is/are accepted; and**<br>**vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?** | Generally, for all documents submitted that are not in one of the official languages of the European Union, a translation into the language of the proceeding shall be attached.<br><br>Article 4(2) of the Implementing Regulation provides that the Commission may dispense with the obligation to provide any particular information, including documents or translations therefore, requested by Form CO where the Commission considers that such information is not necessary for the examination of the case. |

| **10. Review Periods** | |
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| **A. Describe any applicable review periods following notification.** | Initial waiting period during the preliminary investigation ("Phase I"):<br><br>Pursuant to Article 10(1) of the Merger Regulation, the decision referred to in Article 6(1) (the "Phase I decision") must be taken within 25 working days at most. That period shall begin on the working day following that of the receipt of a notification or, if the information to be supplied with the notification is incomplete, on the working day following that of the receipt of the complete information.<br><br>That period shall be increased to 35 days if the Commission receives a request from a Member State in accordance with Article 9(2) of the Merger Regulation (request for |

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| | referral of the case to that Member State), or where, after notification of a concentration, the undertakings concerned submit commitments pursuant to Article 6(2) of the Merger Regulation, which are intended by the parties to form the basis for a decision pursuant to Article 6(1)(b) ("Phase I" clearance decision).<br><br>Extended waiting period after the initiation of proceedings ("Phase II"):<br><br>Article 10(2) of the Merger Regulation provides that decisions taken pursuant to Article 8 ("Phase II" decisions) concerning notified concentrations must be taken as soon as it appears that the serious doubts referred to in Article 6(1)(c) have been removed, particularly as a result of modifications made by the undertakings concerned.<br><br>Pursuant to Article 10(3) of the Merger Regulation, without prejudice to Article 8(7), decisions taken pursuant to Article 8(3) (prohibition decisions) concerning notified concentrations must be taken within not more than 90 working days of the date on which proceedings are initiated (date of the "Phase I" decision based on Article 6(1)(c) of the Merger Regulation).<br><br>Pursuant to Article 10 (3) that period shall be increased to 105 working days where the undertakings concerned offer commitments pursuant to Article 8(2) second sub-paragraph, with a view to rendering the concentration compatible with the common market, unless these commitments have been offered less than 55 working days after the initiation of proceedings.<br><br>Obligation to suspend closing:<br><br>Article 7(1) of the Merger Regulation provides that a concentration as defined in Article 1 shall not be implemented either before its notification or until it has been declared compatible with the common market pursuant to a decision under Article 6(1)(b), 8(1) or 8(2) or on the basis of a presumption according to Article 10(6) of the Merger Regulation. |
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| **B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?** | The review periods are the same for all types of transaction. However, as described in below, the suspension obligation has a different effect for public tenders. |
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| **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 periods for a Phase I review may not be extended.<br><br>According to Article 10 (3) second subparagraph of the Merger Regulation, the period for a Phase II may be extended if the notifying parties make a request to that effect not later than 15 working days after the opening of a Phase II review. The notifying parties may make only one such request. Likewise, at any time during the Phase II, the review periods may be extended by the Commission with the agreement of the notifying parties.<br><br>Requests for information do not suspend the review period. However, according to Article 10 (4) of the Merger Regulation, the review periods shall exceptionally be suspended where, owing to circumstances for which one of the undertakings involved in the concentration is responsible, the Commission has had to request information by decision pursuant to Article 11 or to order an inspection by decision pursuant to Article 13. |
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| **D. Is there a statutory or other maximum duration for extensions?** | The total duration of any extension or extensions shall not exceed 20 working days. This does not affect the possible duration of a suspension. |
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| **E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?** | According to Article 10 (4) of the Merger Regulation, the review periods shall exceptionally be suspended where, owing to circumstances for which one of the undertakings involved in the concentration is responsible, the Commission has had to request information by decision pursuant to Article 11 or to order an inspection by decision pursuant to Article 13. |
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| **F. What are the time periods for accelerated review of non-problematic transactions, if any?** | For Phase I investigations, there are no procedures for accelerated review. However, in simplified procedures, the Commission will endeavour to issue a short-form decision as soon as practicable following expiry of the 15 working day period during which Member States may request referral of a notified concentration pursuant to Article 9 of the Merger Regulation.<br><br>For Phase II investigations, Article 10(2) of the Merger Regulation provides that Phase II clearance decisions must be taken as soon as it appears that the serious doubts which justified the opening of the Phase II investigation have been removed, particularly as a result of modifications made by the undertakings concerned. |
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| **G. If remedies are offered, do they impact the timing of the review?** | Yes. See the answer provided under 10.A. above. |

| **11. Waiting periods / suspension obligations** | |
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| **A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.** | Article 7(1) of the Merger Regulation provides that a concentration shall not be implemented either before its notification or until it has been declared compatible with the common market either pursuant to a (conditional) clearance decision or on the basis of a presumption set forth in Article 10(6).<br><br>Pursuant to Article 7(2) of the Merger Regulation, the suspension obligation discussed above shall not prevent the implementation of a public bid, or a series of transactions on the stock exchange, provided<br>– the concentration is notified without delay; and<br>– the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of those investments based on a derogation granted by the Commission. |
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| **B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?** | Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on request, grant derogation from the obligations to suspend the concentration. A request to grant derogation must be reasoned and derogations may be applied for and granted at any time, even before notification or after the transaction.<br><br>In deciding on the request, the Commission shall inter alia take into account the effects of the suspension on one or more undertakings concerned by a concentration or on a third party and the threat to competition posed by the concentration. Derogations may be made subject to conditions and obligations in order to ensure conditions of effective competition. |
| | |
| **C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?** | The applicable waiting periods are not limited to aspects of the transaction that occur within the Commission's jurisdiction. They apply to the proposed concentration as a whole. |
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| **D. Are parties allowed to close the transaction if no decision is issued within the statutory period?** | Yes. Article 10(6) of the Merger Regulation provides that where the Commission has not taken a decision in accordance with Articles 6(1)(b),(c), 8(1), (2) or (3) within the applicable time limits, the concentration shall be deemed to have been declared compatible with the functioning of the common market, without prejudice to potential referrals. |
| **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 "Phase-I" period of 25 working days shall be increased to 35 working days if the Commission receives a request for referral from a Member State pursuant to Article 9 of the Merger Regulation, or where, after notification of a concentration, the undertakings concerned submit commitments pursuant to Article 6(2) of the Merger Regulation, which are intended by the parties to form the basis for a "Phase I" clearance decision (Art. 10(1), second subparagraph, of the Merger Regulation). |

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| | The "Phase-II" period of 90 working days shall be increased, pursuant to Article 10 (3) of the Merger Regulation, to 105 working days where the undertakings concerned offer commitments pursuant to Article 8(2) second sub-paragraph, with a view to rendering the concentration compatible with the common market, unless these commitments have been offered less than 55 working days after the initiation of proceedings.<br><br>According to Article 10 (4) of the Merger Regulation, the review periods shall exceptionally be suspended where, owing to circumstances for which one of the undertakings involved in the concentration is responsible, the Commission has had to request information by decision pursuant to Article 11 or to order an inspection by decision pursuant to Article 13.<br><br>Pursuant to Article 10(4) of the Merger Regulation, the applicable time periods shall exceptionally be suspended where, owing to circumstances for which one of the undertakings involved in the concentration is responsible, the Commission has had to request information by decision pursuant to Article 11 or to order an investigation by decision pursuant to Article 13. |
| **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.** | The procedures for derogations from the suspension obligation are described in Section 11.B above. |
| | |
| **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).** | Parties that take measures in accordance with a decision providing for a derogation from the suspension obligation (see Section 11.B above) assume the risk that the final decision in the matter is adverse. Parties that implement a public bid, or a series of transactions on the stock exchange (see Section 11.A above) also assume this risk. There are no other relevant procedures. |

| 12. Responsibility for notification / representation | |
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| **A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?** | Article 4(2) of the Merger Regulation provides that a concentration which consists of a merger within the meaning of Article 3(1)(a) or in the acquisition of joint control within the meaning of Article 3(1)(b) shall be notified jointly by the parties to the merger or by those acquiring joint control, as the case may be. In all other cases, the notification shall be effected by the person or undertaking acquiring control of the whole or parts of one or more undertakings. |
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| **B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?** | No. |
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| **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)?** | No. |
| | |
| **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?** | Article 2(2) of the Implementing Regulation provides that where notifications are signed by representatives of persons or of undertakings, such representatives shall produce written proof that they are authorized to act. There are no special rules for foreign representatives or firms. |

| 13. Filing fees | |
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| **A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]** | There are no filing fees for notifications to the European Commission. |
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| **B. Who is responsible for payment?** | Not applicable |
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| **C. When is payment required?** | Not applicable |
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| **D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?** | Not applicable |

| **14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]** | |
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| **A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?** | In a normal phase I procedure, key procedural stages are as follows:<br>- The Commission first conducts a market investigation, notably by sending out questionnaires to relevant market participants (typically including competitors, customers and suppliers)<br>- If, based on the feedback from the market, the Commission considers that the transaction will likely create "serious doubts", it will offer a State-of-Play meeting to the notifying parties within 3 weeks after notification.<br>- The notifying parties have until working day 20 (i.e., four weeks after notification) to propose remedies in phase I.<br>- By working day 25 (i.e., five weeks after notification) or by working day 35, if remedies have been offered, the Commission will decide whether to clear the transaction, clear the transaction subject to remedies or to open an in-depth investigation.<br><br>The key procedural stages during a phase II investigation typically are:<br>- After receiving the notifying parties comments on the Commission decision opening the phase II, the Commission conducts a second market investigation<br>- If, based on the feedback from the market, the Commission maintains competition concerns, it prepares a Statement of Objections.<br>- The notifying parties have the opportunity to reply to the Statement of Objections and to defend their transaction in an oral hearing.<br>- At any point during the phase II investigation but at the latest on working day 65, the notifying parties can submit a remedy proposal. |

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| | For more information, see the Commissions Best Practices on the conduct of EC merger control proceedings (https://ec.europa.eu/competition/mergers/legislation/proceedings.pdf) |
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| **B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?** | Applying Article 2 paragraphs 2 and 3 of the Merger Regulation, the Commission assesses whether a concentration would significant impede effective competition. |
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| **C. What theories of harm does the agency consider in practice?** | The Commission investigates horizontal, vertical and conglomerate theories of harm for potential unilateral or coordinated effects of the transaction. |
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| **D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?** | Key stages for the substantive analysis are when the Commission receives the feedback from its market investigation (in phase I or phase II). |
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| **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?** | The relevant test for the assessment by the Commission is whether the concentration is likely to create a significant impediment to effective competition. Other considerations are therefore irrelevant to the merger review under the EU Merger Regulation outside of the Commission's competitive assessment, which is the sole ground for its review.<br><br>This is without prejudice to public interest-based reviews conducted at the national level, as explained below (see point 21.A). |
| | |
| **F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?** | The Commission may find that it has no jurisdiction over the case, clear the transaction unconditionally, clear the transaction subject to remedies or prohibit the transaction. |
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| **G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?** | The Commission has a clear preference for structural remedies. However, on the basis of a case-by-case assessment, it may also accept other remedies.<br><br>More information about remedies can be found in the Commission Notice on remedies acceptable under the Merger Regulation. |

| **15. Confidentiality** | |
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| **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?** | Article 4(3) of the Merger Regulation provides that where the Commission finds that a notified concentration falls within the scope of this Regulation, it shall publish the fact of the notification, at the same time indicating the names of the parties, the nature of the concentration and the economic sectors involved. The Commission takes account of the legitimate interest of undertakings in the protection of their business secrets. |
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| **B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?** | Art. 17 of the Implementing Regulation provides that the Commission shall, upon request, give notifying parties access to the file. Access is granted when the Commission has addressed to the notifying parties a Statement of Objections, for the purpose of enabling them to exercise their rights of defence.<br><br>Further information can be found in the Commission Notice on the rules for access to the Commission file. |
| | |
| **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?** | Pursuant to Article 19(1) of the Merger Regulation, the Commission shall transmit to the competent authorities of the Member State copies of notifications within three working days and, as soon as possible, copies of the most important documents lodged with or issued by the Commission pursuant to the Merger Regulation. Such documents shall include commitments which are intended by the parties to form the basis for a decision pursuant to Articles 6(2) or 8(2) of the Merger Regulation (conditional "Phase I" or "Phase II" clearance decisions). |

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| | Article 17(1) of the Merger Regulation provides that information acquired as a result of the investigation of a merger case shall be used only for the purposes of that case.<br><br>Pursuant to Article 17(2) of the Merger Regulation, without prejudice to Articles 4(3), 18 and 20, the Commission and the competent authorities of the Member States, their officials and other servants are under an obligation of professional secrecy; they shall not disclose information they have acquired through the application of the Merger Regulation of the kind covered by the obligation of professional secrecy.<br><br>As a general rule, third parties do not have access to notification materials. |
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| **D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.** | No confidential treatment can be granted with regard to the fact of the notification. As regards notification materials, please see above. |
| | |
| **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.** | Notication material is considered confidential and not shared with third parties other than the competent authorities of the Member States. |
| | |
| **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?** | In compliance with Article 20 of the Merger Reulgation, the Commission publishes non-confidential versions of decisions taken pursuant to Articles 8(1) to 8(6), 14 and 15. Moreover, the Commission publishes additional decisions, notably all phase I decisions.<br><br>Before publishing these decisions, confidential information is redacted.<br><br>Further information can be found in the Commission's Guidance on the preparation of public versions of merger decisions. |

| 16. Transparency | |
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| **A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.** | Yes, the Commission publishes the Annual Report on Competition Policy. It is available under https://ec.europa.eu/competition/publications/annual_report/ |
| | |
| **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)?** | Yes, all case-related publications are made available on the Commission's website under the respective case number and can be found via the online search tool, available under https://ec.europa.eu/competition/elojade/isef/index.cfm |
| | |
| **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.** | Yes, all decisions clearing (with or without remedies) and prohibiting a merger are made public on the Commission's website under the respective case number and can be found via the online search tool, available under https://ec.europa.eu/competition/elojade/isef/index.cfm |
| **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]** | Yes. Monthly updated statistics are available under https://ec.europa.eu/competition/mergers/statistics.pdf |

| 17. Cooperation | |
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| **A. Is the agency able to exchange information or documents with international counterparts?** | The Commission can exchange information with competition authorities of the Member States.<br><br>The Commission may not exchange case related information with other agencies unless the parties or third parties provide their prior consent. |
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| **B. Is the agency or government a party to any agreements that permit the exchange of information with foreign** | See above. |

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| **competition authorities? If so, with which foreign authorities? Are the agreements publicly available?** | |
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| **C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.** | Yes, consent is needed from the parties to share their confidential information.<br><br>The Commission waiver model is available under https://ec.europa.eu/competition/mergers/legislation/npwaivers.pdf |
| | |
| **D. Is the agency able to exchange information or documents with other domestic regulators?** | The Commission can exchange information with competition authorities of the Member States. |

| **18.Sanctions/penalties** | |
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| **A. What are the sanctions/penalties for:**<br>**i) failure to file a notification;**<br>**ii) incorrect/misleading information in a notification;**<br>**iii) failure to comply with information requests;**<br>**iv) failure to observe a waiting period/suspension obligation;**<br>**v) breach of interim measures;**<br>**vi) failure to observe or delay in implementation of remedies;**<br>**vii) implementation of transaction despite the prohibition from the agency?** | Sanctions:<br><br>Pursuant to Article 14(1) of the Merger Regulation, the Commission may by decision impose fines not exceeding 1% of the aggregate turnover of the undertaking or association of undertakings concerned where intentionally or negligently parties:<br>- supply incorrect or misleading information in a submission, certification, notification or supplement thereto pursuant to Article 4, Article 10(5) or Article 22(3)<br>- supply incorrect or misleading information in response to a request made pursuant to Art. 11 (2);<br>- in response to a request made by decision pursuant to Article 11 (3), supply incorrect, incomplete or misleading information or do not supply information within the required time limit;<br>- they produce books or records related to the business in incomplete form during an inspection or refuse to submit to an inspection ordered by decision pursuant to Art. 13 (4); |

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| | - in response to a question put during an oral interview they provide an incorrect or misleading answer, fail to rectify an incorrect answer or fail or refuse to provide a complete answer in relation to information requested pursuant to Art. 13 (4).<br><br>Article 14(2) of the Merger Regulation provides that the Commission may by decision impose fines not exceeding 10% of the aggregate turnover of the undertakings concerned within the meaning of Article 5 on the persons referred to in Article 3(1)b or undertakings concerned where, intentionally or negligently, they<br>– fail to notify a concentration in accordance with Articles 4 and 22 (3) prior to its implementation;<br>- implement a concentration in breach of Article 7 of the Merger Regulation;<br>- implement a concentration declared incompatible with the common market by decision pursuant to Article 8 (3) or do not comply with any measure ordered by decision pursuant to Article 8 (4) or (5);<br>– fail to comply with a condition or an obligation imposed by decision pursuant to Articles 6(1)(b), 7(3) or 8(2) of the Merger Regulation.<br><br>Other consequences:<br>Pursuant to Articles 6(3) and 8(6) of the Merger Regulation, the Commission may revoke a clearance decision it has taken where this decision is based on incorrect information for which one of the undertakings is responsible or where this decision has been obtained by deceit, or where the undertakings concerned commit a breach of an obligation attached to the decision. |
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| **B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?** | The persons referred to in Article 3(1)(b) of the Merger Regulation, undertakings or associations of undertakings. |
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| **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 Commission has powers to impose the sanctions discussed above in section 18.A directly. |

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| **D. Are there any recent or significant fining decisions?** | Recent fining decisions by the Commissions:<br>- M.7184 Marine Harvest/ Morpol (infringement of the standstill obligation)<br>- M.7993 Altice/ PT Portugal (infringement of the standstill obligation)<br>- M.8228 Facebook/ Whatsapp (submission of misleading or incorrect information)<br>- M.8436 General Electric Company/ LM Wind Power Holding (submission of misleading or incorrect information)<br>- M.8179 Canon/Toshiba (infringement of the standstill obligation)<br>- M.8181 Merck/ Sigma-Aldrich (submission of misleading or incorrect information)<br><br>Non-confidential versions of all these decisions are available under the respective case entry on the Commission's website. |

| **19. Independence** | |
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| **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)?** | Merger decisions taken by the Commission cannot be abrogated, challenged or changed other than by the European courts. |
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| **B. What are the grounds for such ministerial intervention?** | Not applicable |
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| **C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]** | Not applicable |

| **20. Administrative and judicial processes/review** |
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| **A. Describe the timetable for judicial and administrative review related to merger transactions.** | According to Article 230 of the Treaty on the Functioning of the European Union, proceedings shall be instituted within two months of the publication of the measure or of its notification to the plaintiff.<br><br>There is no fixed timetable for the judicial review. |
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| **B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.** | If necessary, confidential information is protected during court proceedings via confidentiality rings.<br><br>The final decision published by European courts does not contain confidential information. |
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| **C. Are there any limitations on the time during which an appeal may be filed?** | Yes. According to Article 230 of the Treaty on the Functioning of the European Union, proceedings shall be instituted within two months of the publication of the measure or of its notification to the plaintiff. |

| **21. Additional filings** | |
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| **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)?** | Article 21(3) of the Merger Regulation provides that Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by the Merger Regulation and compatible with the general principles and other provisions of the Community law.<br><br>Public security, plurality of the media and prudential rules shall be regarded as such legitimate interests. Any other public interest must be communicated to the Commission by the Member State concerned and shall be recognized by the Commission after an assessment of its compatibility with the general principles and other provisions of Community law before the measures referred to above may be taken. The Commission shall inform the Member State concerned of its decision within one month of that communication. |

| 22. Closing Deadlines | |
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| **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?** | While there is no fixed closing deadline, the transaction would need to still be considered the same at closing as the one that had been approved. If there would be significant time between approval and closing, the Commission would review whether the transaction is still the same on a case-by-case basis. |

| 22. Post Merger review of transactions | |
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| **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?** | Articles 6(3) and 8(6) of the Merger Regulation provides that the Commission may revoke a clearance/conditional clearance decision where:<br>(a) the decision is based on incorrect information for which one of the undertakings is responsible or where it has been obtained by deceit; or<br>(b) the undertakings concerned commit a breach of an obligation attached to the decision.<br><br>There is no time limit prescribed for the adoption of revocation decisions. |
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| **B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?** | The Commission has published a Merger Remedy Study in October 2005, available under http://bookshop.europa.eu/uri?target=EUB:NOTICE:KD7105376:EN:HTML<br><br>In addition, the Commission has issued and published an external ex-post review of merger control decisions in 2006, available under https://ec.europa.eu/competition/mergers/studies_reports/lear.pdf |