

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

SOUTH AFRICA

IMPORTANT NOTE: This template is intended to provide introductory material. Reading the template is not a substitute for consulting the referenced statutes and regulations. If you are analyzing a particular transaction, this template should be a starting point only.

1. Merger notification and review materials (please provide title(s), popular name(s) and citation(s))

A. Notification provisions	The Competition Act, No 89 of 1998, Chapter 3, Section 11. (the "Competition Act or Act") http://www.comptrib.co.za/legislation/theact.htm .
B. Notification forms or information requirements	The Competition Commission Rules enacted pursuant to the Act specify the forms in terms of which parties are required to submit information. Merger Notice, CC4(1), Statement of Merger Information, CC4 (2). The Competition Commission's merger forms can be found at www.compcom.co.za/forms.asp
C. Substantive merger control provisions	Competition Act, Section 12A
D. Implementing regulations	Competition Commission Rules, Part 6 and where proceedings are before the Competition Tribunal additionally the Competition Tribunal Rules, Part Four Division C The Competition Commission's Rules can be found at www.compcom.co.za and the Competition Tribunal's Rules can be found at www.comptrib.co.za/legislation/Tribunal%20Rules.htm
E. Interpretive guidelines and notices	The Competition Commission has not issued any merger guidelines at this stage. However, it makes available non-binding advisory opinions to merging parties on request. These advisory opinions are not made public. However, it issues practitioners' notes and updates from time to time that seek to indicate how the Commission views certain issues. Quite a number of these notes and updates have been published since the Competition Commission came into existence. See

F. Annual report	Both Commission and the Tribunal publish annual reports which are not presently available on line, but hard copies can be obtained from the relevant institution.
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2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	<p>The Competition Commission and the Competition Tribunal share responsibilities. The Competition Commission exercises investigative functions in respect of large mergers and makes recommendations to the Competition Tribunal. The Competition Commission exercises both investigative and adjudicative functions in respect of small and intermediate mergers. (See response to Question 5, herein for determination of small, intermediate and large mergers).</p> <p>The Competition Tribunal exercises adjudicative functions in respect of large mergers. The Tribunal also has appellate jurisdiction in respect of decisions by the Competition Commission regarding small and intermediate mergers.</p> <p>The Competition Appeal Court exercises appellate jurisdiction in respect of decisions of the Competition Tribunal.</p>
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	<p>Competition Commission, Private Bag X 23, Lynnwood Ridge, 0040; Telephone: 027 12 482 9000; Facsimile: 027; 12 482 9003; CCSA@compcom.co.za; http://www.compcom.co.za; Language: English.</p> <p>Competition Tribunal, Building C, Glenfield Office Park, Cnr. Glenwood & Oberon St., Faerie Glen, Pretoria; Telephone: 027 12 482 9200; Facsimile: 027 12 482 9201; ctsa@comptrib.co.za; http://www.comptrib.co.za; English.</p> <p>Competition Appeal Court, Building C, Glenfield Office Park, Cnr. Glenwood and Oberon St., Faerie Glen, Pretoria; Telephone: 027 12 482 9204; Facsimile: 027 12 482 9201; shanr@comptrib.co.za</p>
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	<p>Yes. The Manager, Compliance Division, Competition Commission Telephone: 012 482 9063</p>

3. Notification requirements

<p>A. Is notification mandatory pre-merger?</p>	<p>Yes, parties are required to notify their transactions prior to implementation of the same. All transactions that fall within the stipulated thresholds of intermediate and large mergers must be notified to the Competition Commission. However, parties to a small merger are not necessarily obliged to notify their transaction unless the Competition Commission requires them to do so in terms of the Competition Act. The thresholds for what constitutes a small merger are set out in the response to question 5 A below.</p>
<p>B. Is notification mandatory post-merger?</p>	<p>Post-merger notification would only occur where the parties implemented the transaction prior to securing the competition authorities' approval. In such a case the parties can expect an administrative fine to be imposed on them by the Competition Tribunal at the Competition Commission's instance. See response to Question 15 below.</p>
<p>C. Can parties make a voluntary pre- or post-merger filing even if filing is not mandatory?</p>	<p>Yes, for small mergers – see response to Question 4. F. below.</p>

4. Covered transactions

<p>A. Definitions of potentially covered transactions</p>	<p>Section 12 of the Competition Act defines a merger as:</p> <p>(1)(a) For purposes of this Act, a merger occurs when one or more firms directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another firm.</p> <p>(b) A merger contemplated in paragraph (a) may be achieved in any manner, including through-</p> <ul style="list-style-type: none"> (i) purchase or lease of the shares, an interest or assets of the other firm in question; or (ii) amalgamation or other combination with the other firm in question.
<p>B. If change of control is a determining factor, how is control defined?</p>	<p>Section 12 of the Competition Act provides that control may be achieved in any manner, including through purchase or lease of shares, an interest or assets of the other firm in question or amalgamation or other combination with the other firm in question. However, the central issue that is considered by the competition authorities is whether the acquiring firm has in fact acquired control over target firm, described as the transferred firm in the Rules. Section 12 (2) then sets out the various examples of situations where a firm may be deemed to have acquired control in terms of the Act.</p>

<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Under Section 12 of the Competition Act, partial stock acquisitions may trigger the notification requirements if the acquiring firm gains control of the acquired firm. In order to determine whether a partial stock acquisition constitutes a merger as defined in the Act, the Commission takes into account the structure of the shareholding within the target company, voting pool arrangements and any other peculiar arrangements that the parties may have entered into. Consequently, a ten per cent stock acquisition in one company may constitute the acquisition of control whilst a similar acquisition in another company may not constitute control.</p>
<p>D. Do the notification requirements cover production joint ventures or any other type of joint venture?</p>	<p>Yes, if the joint venture transaction satisfies the definition of a merger as articulated in the Competition Act.</p>
<p>E. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>No sector is excluded from the notification requirements. The only instance where Commission's jurisdiction may be excluded is for specific forms of banking transactions, as defined by Sections 37 and 54 of the Bank Act, 1990. In such cases, when deemed necessary on public interest grounds, the Minister of Finance can revoke the Commission's jurisdiction by issuing a notice to the Commission. See section 18 of the Competition Act.</p>
<p>F. Are transactions that do not meet merger notification thresholds subject to substantive merger control?</p>	<p>The Competition Act, Section 4, creates a category of mergers known as small mergers. These are transactions that fall below the minimum thresholds for intermediate mergers and are, therefore, generally not notifiable. However, these transactions may be notified to the Commission in two ways: (1) where the parties voluntarily file the transaction for assessment by the Competition Commission and (2) where the parties are required to notify the transaction pursuant to Section 13(3). The Commission is entitled to require parties to notify in this regard only if it is of the opinion that under the provisions of section 12A, that the transaction in question may substantially prevent or lessen competition or cannot be justified on public interest grounds.</p>

5. Thresholds for notification

A. What are the general thresholds? Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.

There are two general thresholds for determination of reportability. See General Notice, Notice 254 of 2001, Department of Trade and Industry, The Competition Act, 1998 (Act 89 of 1998)
<http://www.comptrib.co.za/legislation/notification.htm>.

The lower threshold required to be determined in terms of section 11 of the Act is reached in respect of a merger if the value of that merger equals or exceeds both of the South African rand values set out in paragraphs (a) and (b), below:

(a) Either –

(i) The combined annual turnover in, into or from the Republic of the acquiring firms and the target firms is valued below R 200 million; or

(ii) The combined assets in the Republic of the acquiring firms and the target firms are valued at less than R 200 million; or

(iii) The annual turnover in, into or from the Republic of the acquiring firms plus the assets in the Republic of the target firms are valued at less than R200 million; or

(iv) The annual turnover in, into or from the Republic of the target firms plus the assets in the Republic of the acquiring firms are valued at less than R200 million. AND

(b) Either –

(i) The annual turnover in, into or from the Republic, of the target firms is less than R 30 million; or

(ii) The asset value of the target firm is less than R 30million.

The higher threshold required to be determined in terms of section 11 of the Act is reached in respect of a merger if the value of that merger equals or exceeds both of the values set out in paragraphs (a) and (b),below:

(a) Either –

(i) The combined annual turnover in, into or from the Republic of the acquiring firms and the target firms is valued at or above R 3,5 billion; or

(ii) The combined assets in the Republic of the acquiring firms and the target firms are valued at or above R 3,5 billion; or

(iii) The annual turnover in, into or from the Republic of the acquiring firms plus the assets in the Republic of the target firms are at or above R 3,5billion; or

(iv) The annual turnover in, into or from the Republic of the target firms plus the assets in the Republic of the acquiring firms are at or above R3,5 billion.

(b) Either —

(i) The annual turnover in, into or from the Republic, of the target firms is valued at or above R 100 million; or

(ii) The asset value of the target firm is valued at or above R 100 million.

The provisions of the Act respecting a “small merger” apply to a merger if it falls below either value of the lower threshold.

The provisions of the Act respecting an “intermediate

	merger" apply to a merger if it equals or exceeds both values of the lower threshold but falls below either value of the higher threshold.
B. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?	Preceding financial year.
C. Describe methodology for identifying and calculating any values necessary to determine if notification is required, including:	The asset and turnover value of a firm must be calculated in accordance with South African generally accepted accounting practice ("GAAP"). Please refer to the 'Determination of Threshold,' referenced in 5.A., above, for a detailed explanation of the calculation of asset and turnover values.
i. The methodology for identifying and calculating the value of the transaction, if applicable.	Not applicable.
ii. The methodology for identifying and calculating relevant sales or turnover, if applicable.	<p>1) For the purpose of section 11 of the Act, the annual turnover of a firm at any time is the gross revenue of that firm from income in, into or from the Republic, arising from the following transactions and events as recorded on the firm's income statement for the immediately previous financial year, subject to the provisions of paragraph (2), (3) and (4) below:</p> <p>(a) the sale of goods; (b) the rendering of services; and (c) the use by others of the firm's assets yielding interest, royalties and dividends.</p>
iii. The methodology for identifying and calculating the value of relevant assets, if applicable.	<p>For the purpose of section 11 of the Act, the asset value of a firm at any time is based on the gross value of the firm's assets as recorded on the firm's balance sheet for the end of the immediately previous financial year, subject to paragraphs (2) and (3) below.</p> <p>(2) In particular –</p> <p>(a) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value; (b) the combined assets are to include all assets on the balance sheets of the firms concerned, including any goodwill or intangible assets included in their balance sheets; (c) no deduction may be taken for liabilities or encumbrances of the firm; (d) the combined assets are to be calculated on the basis of the combined assets before giving affect to the merger and accordingly the combined assets do not include any goodwill or</p>

	<p>intangible assets that would arise as a result of the merger; (e) the combined assets are not adjusted for any investments the acquiring firm might have in the target firm or amounts due by one firm to the other;and (f) assets in the Republic includes all assets arising from activities in the Republic.</p> <p>(3) If, between the date of the financial statements being used to calculate the asset value of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements –</p> <p>(a) The following items must be added to the calculation of the firm’s asset value if these items should in terms of G.A.A.P. be included in the firm's asset value;</p> <ul style="list-style-type: none"> (i) The value of those recently acquired assets; and (ii) Any asset received in exchange for those recently divested assets. <p>(b) The following items may be deducted in calculating the firm’s asset value if these items were included in the firm's asset value:</p> <ul style="list-style-type: none"> (i) The value of those recently divested assets at the date of their divestiture; and (ii) Any asset that was shown on the balance sheet and was subsequently used to acquire the recently acquired asset.
<p>iv. Methodology for calculating exchange rates.</p>	<p>The methodology for calculating exchange rate must be done in accordance with GAAP.</p>
<p>D. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>The tests are only applicable to revenue generated from, in and into South Africa.</p>
<p>E. How is the nexus to the jurisdiction determined? If based on an “effects doctrine,” please describe how this is applied.</p>	<p>The parties to merger will have to generate turnover from, in and into South Africa or possess assets in South Africa that meet the threshold requirements.</p>
<p>F. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	<p>Location of customer.</p>
<p>G. If there are market share</p>	<p>Not applicable.</p>

<p>tests, are there guidelines for calculating market shares?</p>	
<p>H. If there are market share tests, do they apply even if there is no horizontal overlap in the parties' activities, either in the jurisdiction or worldwide?</p>	<p>Not applicable.</p>
<p>I. Describe the methodology for determining relevant undertakings/firms for threshold purposes (e.g., group-wide? only the acquired entity? If based on control, how is control determined?).</p>	<p>The entire acquiring family is regarded as the acquiring firm; the vehicle through which the group does the acquisition is known as the primary acquiring firm. In order to determine whether a company is part of the group, recourse must be had to the issue of control. Section 12(2) gives examples of cases where control would be deemed to exist. Some of these examples are the following: Where the person in question beneficially owns more than one half of the issued share capital of the company; Where the person is entitled to vote a majority of the votes that may be cast at a general meeting, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person; Where the person is able to appoint or veto the appointment of a majority of the directors of the firm; Where the person is a holding company, and the firm is a subsidiary of that company as contemplated by the Companies Act, No. 61 of 1973; or Where the person has the ability to materially influence the policy of the firm in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in the preceding examples.</p>
<p>J. Are there special threshold calculations for joint ventures?</p>	<p>No.</p>
<p>K. Are there special threshold calculations for particular sectors (e.g., banking, airlines) or particular types of transactions (e.g. partnerships, financial investments)?</p>	<p>No.</p>

6. Transactions in which the acquiring and acquired parties are foreign

Are there special rules or exemptions

A. With respect to application of jurisdictional thresholds?	Only in the sense that turnover figures generated outside South Africa will not be considered in calculating the relevant thresholds
B. With respect to information required (e.g. information submitted or document legalization)?	Information of the parties' foreign activities will be required if it is relevant to the assessment of the transaction i.e. if the market is global or it has direct activities in South Africa. The parties will ordinarily be required to indicate what markets they are involved in without asking for more; this is a practice that the Commission has adopted to minimize transaction costs on international transactions.
C. With respect to waiting periods?	The Competition Act draws no distinction between local and international mergers. No party to a merger is entitled to consummate that merger prior to receiving the competition authorities' approval.

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7. Simplified procedures

Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, waivers, etc.).	<p>Although the Competition Commission Rules do not provide any simplified procedures for transactions that raise no competition concerns, the Commission has published a list of categories of transactions that it views as non-problematic, and as such are reviewed on an expedited basis. These categories are:</p> <p>Property transactions; Companies in liquidation (failing firms); Transactions where one of the parties is a new entrant into the market. Justification for this proposal lies in the fact that the transaction would normally represent the replacement of one participant by another; Management buy-out transactions are similar to new entrant cases and should therefore be treated in accordance with the</p>
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	<p>above suggestion; No product overlap in respect of the product market and no vertical concerns; Where the parties to the merger are not in the same geographic market; Where the parties are in the same relevant market both in terms of the product and geographic markets, but the combined market share post merger is less than fifteen per cent (15%); Where the parties are in the same relevant market and their combined market shares are above 15%, but the post-acquisition HHI is below 1000 points. Where the post-merger HHI is between 1000 – 1800 but the increase in HHI is below 100 points. Where the post-merger HHI is above 1800 but the increase thereof is less than 50 points.</p> <p>In all such cases, the parties must adhere to the standard information requirements, including comfort letters from trade unions. Cases will be finalized and a decision taken within twenty (20) business days.</p>
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8. Timing of notification

<p>A. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?</p>	<p>A transaction may be notified at any time prior to implementation so long as the Form can be completed and all documents required can be provided. The Rules require the parties to file their latest merger agreement in respect of the transaction, however, a memorandum of agreement has been accepted at the Commission's discretion in the past on condition that the final agreement will not alter the substance thereof.</p>
<p>B. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event.</p>	<p>It is entirely up to the parties to decide when to notify. The only limitation placed on the parties' relationship by the Act is that they may not implement the transaction before receiving approval from the Competition Agencies.</p>

9. Documents to be submitted

A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).	The parties must provide: the most recent version of all documents constituting the merger agreement, a document assessing the transaction with respect to competitive conditions, any document including minutes, reports, presentations and summaries, prepared for the Board of Directors regarding the transaction, the most recent annual report, the most recent business plan and the most recent report submitted to the Securities Regulation Panel. These documents must be accompanied by three schedules listed in the Act. If any of the above documents are not filed, then parties to transaction must provide signed an affidavit to this effect. Where a required document is translated, a certificate of the translator may be requested.
B. Are there any document legalization requirements (e.g., notarization or apostille)?	No.

10. Translation

Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification, language(s) accepted, and whether selected excerpts are accepted in lieu of complete documents.	Except in a few isolated cases, all documents must be submitted in English. Documents that are available in other languages may have to be translated to expedite the assessment of the transaction in question if they are to pertinent to any of the issues under consideration.
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11. Review and waiting periods/Suspensive effects

<p>A. Describe any applicable review and/or waiting periods following notification, including whether closing is suspended during any initial review or waiting period and/or further review periods (i.e., second-phase proceedings).</p>	<p>The initial waiting period for small and intermediate mergers is 20 business days, which may be extended only once for up 40 business days. Where the Commission does not issue an extension certificate before the expiry of the initial waiting period, the transaction would be deemed to have been approved. The parties would be entitled to implement the transaction immediately.</p> <p>The initial waiting period for large mergers is 40 business days, which may be extended in multiples of 15 business days at the time. Where the Commission requires an extension of time in respect of a large merger, an application must be made to the Tribunal. The parties would be entitled to oppose the application.</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>The waiting periods described above are applicable to all transactions, including public tenders. However, Rule 28 prescribes a procedure for dealing with hostile takeovers. This rule allows filing party to request special filing directions from Commission if the circumstances justify a departure from normal requirements. Even in such a case, the waiting periods may still be observed.</p>
<p>C. Are the applicable waiting periods limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance. (e.g. request for a derogation from the bar on closing, commitment to hold separate the local</p>	<p>The Act makes no distinction between local and international transactions. Consequently, the waiting periods may affect the consummation of international transactions. The Commission has not accepted the idea of ring-fencing the South African subsidiaries in such cases, except where the parties have excluded the aforesaid subsidiaries by a legally enforceable agreement. For such an agreement to be acceptable to the Commission, the parties must show that title will not pass from the seller to the purchaser in respect of the South African subsidiaries before the competition authorities approve the transaction.</p>

business operations.)	
<p>D. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period. Is there a statutory maximum for extensions of the review period by the authority.</p>	<p>As already indicated in the response to 11 A. above, the Competition Commission may extend an investigation beyond the initial waiting period in respect of small and intermediate mergers. It may apply for an extension of time in respect of large mergers.</p> <p>There is no provision in the Rules that would allow the parties to apply for an extension of time either from the Commission or the Tribunal.</p>
<p>E. Describe any procedures for obtaining early termination of the applicable waiting period, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>There are no procedures for obtaining early termination. The Competition Commission provides early termination through its fast-tracking procedures, (i.e Commission staff expediting review rather curtailing any procedural steps) for non-problematic transactions i.e. those described above in 7.</p>
<p>F. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>In view of the fact that the implementation of a transaction prior to approval is prohibited in terms of the Act, the parties may risk being prosecuted and fined for contravening the Act.</p>

12. Responsibility for notification / representation

<p>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both?</p>	<p>Both parties bear the responsibility of complying with the notification requirements. The parties must do a joint filing and any of the primary firms may make the aforesaid filing.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases</p>	<p>Rule 28 allows any of the parties to approach the Commission for direction on how to handle the filing in this regard. A separate filing may be allowed by the Commission in these circumstances. One of the parties may file certain documents on behalf of the</p>

or hostile bids)?	other where that other has failed to comply with any requirements from the Commission.
C. Are the parties required to appoint a joint representative ?	No. Each party to a merger may have its own representative.
D. 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.
E. 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?	Not applicable.

13. Filing fees

A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined?	The filing fees are fixed and they are based on the category of the merger, which is determined through the parties' annual turnover or asset values. Small mergers are not required to pay any filing fee. Intermediate mergers pay R75 000 plus VAT and large mergers pay R250 000 plus VAT.
B. Who is responsible for payment?	It is up to the parties to decide who will be responsible for the payment of the filing fee.
C. When is payment required?	Payment is required on or before the day of the filing. Where the filing fee is not received on the day of the filing, the time will not start running until such time that the fee has been paid in full.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire	The forms of payment specified by the Rule 10 are the following: cheque, money order, direct deposit or electronic transfer.

transfer instructions)?	
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14. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	The Commission is allowed by the Act to make public the fact that a particular filing was made. However, the contents of the notification remain restricted information until the matter is finalized by the competition authorities, i.e when a decision has been made in terms of an intermediate merger or a large merger has been referred to the Tribunal. All other information identified as confidential by the parties would not be made available to third parties unless the aforesaid third parties obtain an order from the Tribunal compelling the Commission to disclose such information.
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	Any information received by the Commission is restricted information until the matter is finalized by the Commission. If an adverse decision is to be taken in a merger filing the Commission releases information it received from third parties subject to any confidentiality claims by third parties.
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	Only if an order of the Tribunal compels the Commission to disclose such information would third parties have access to confidential information. This typically occurs in contested cases. Third parties must apply to the Tribunal which will make a decision on disclosure.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	The fact of notification may not be treated as confidential. However, notification materials may be treated as confidential if the parties identify such information and submit the requisite confidentiality form together with reasons for designating such information as confidential.
E. 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	No.

available?	
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15. Sanctions/penalties

A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods?	Parties who fail to notify or implement a transaction prematurely run the risk of being prosecuted by the Competition Commission before the Competition Tribunal. On successful prosecution, an administrative penalty may be imposed by the Tribunal. Section 59(2) states that an administrative penalty imposed by the Tribunal may not exceed 10% of the parties' annual turnover or asset value. In determining an appropriate penalty, the Tribunal is required to consider several factors including the nature, duration, gravity and extent of the contravention, loss or damage suffered as a result of the contravention, the behaviour of the respondent, the level of profit derived from the contravention, etc.
B. Which party/ies are potentially liable?	All parties to the transaction are potentially liable.

16. Judicial review

Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.	<p>As already indicated, the Competition Commission enjoys both investigative and adjudicative powers in respect of intermediate and small mergers. Parties to these transactions are, however, entitled to appeal to the Competition Tribunal against the Commission's decision. The appeal must be filed within 10 business days of the Commission's decision. The Tribunal must, within 10 days of the filing of the appeal, either hear the appeal or hold an informal hearing to request further information from the parties. Appeals to the Tribunal are not confined to the record of the Commission's proceedings and the parties and the Commission may present de novo evidence.</p> <p>All decisions of the Tribunal can be appealed to the Competition Appeal Court, a specialist division of the High Court. An appeal to the Appeal Court must be made within 20 days after the decision by the Tribunal and is confined to the record. There is no time period for the Appeal Court to hear an appeal, but typically the Court will hear an appeal within 3-5 months of the filing of the appeal.</p>
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	Review proceedings, i.e those that go to the fairness of the procedure of the decision maker as opposed to the substance of decision, may be handled by the ordinary courts. There are no time periods for the bringing of such a review but the requirement is that it is brought within a 'reasonable time'.
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17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., foreign investment or regulated sectors?	No additional clearances are required in this regard.
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18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?	No.
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