

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

[COSTA RICA], January 2008

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	In Costa Rica, the law does not establish the obligation of previously notifying the authorities in case of a merger. However, there is a law that establishes that some mergers may be considered as prohibited, and thus may be penalized and forced to be totally or partially reversed, according to article 16 of the Law for Competition Promotion and Effective Defense of the Consumer, Act N°7472
B. Notification forms or information requirements	The competent authority may request the information it considers relevant in order to reach a decision, but there is no format about information requirements. The former in agreement with article 67 of Act N°7472, and articles 225, 264, 297 and 300 of the General Law for Public Administration .
B. Substantive merger review provisions	Articles 16 and 28 of Act N°7472
C. Implementing regulations	Regulation to the Law for the Promotion of Competition
D. Interpretive guidelines and notices	There are none.
E. Annual report	No annual report is carried out. However, monthly newsletters are developed, and there is a web page in which the most important decisions made by the competent authority are available.

2. Authority or authorities responsible for merger enforcement.

<p>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</p>	<p>Commission for Competition Promotion</p> <p>In the case of mergers between pension fund operators, the responsible authority is the Pension Superintendence, upon non-entailing consultation with the Commission for Competition Promotion</p>
<p>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</p>	<p>100 meters west, 100 meters south, and 200 meters west of Lincoln School, Moravia, Los Colegios. San José, Costa Rica. Tel.: (506) 235-82-22/ (506) 235-27-00 Fax: (506) 235-75-25 P.O. Box. 10216, San José, Costa Rica. E-mail: coprocom@meic.go.cr Web site: www.coprocom.go.cr Languages available: Spanish and English.</p>
<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>	<p>For any consultations, please call Ana Victoria Velázquez G., Executive Director of the Technical Support Unit of the Commission for Competition Promotion (COPROCOM)</p>

3. Notification requirements

<p>A. Is notification mandatory pre-merger?</p>	<p>Act N°7472 does not establish the mandatory nature of performing a pre-merger notification. However, the Commission for Competition Promotion may open an investigation upon complaint or under authority, for a merger considered as prohibited.</p>
<p>B. Is notification mandatory post-merger?</p>	<p>Also, the aforementioned law does not establish the mandatory nature of post-merger notification.</p>
<p>C. Can parties make a voluntary pre- or post-merger filing even if filing is not mandatory?</p>	<p>Yes, even if pre- or post-merger notification is not mandatory, it is advisable to carry out a previous notification in case of mergers that involve obtaining or strengthening market power, especially considering that the authority also has the power to open an investigation under authority, to penalize, if it is the case, and to order the total or partial reversal of a merger it considers prohibited.</p>

4. Covered transactions

<p>A. Definitions of potentially covered transactions</p>	<p>Article 16 of the Law for Competition Promotion and Effective Defense of the Consumer establishes the definition of merger as the fusion, acquisition of control, or any other action by virtue of which corporations, associations, stock, equity, trust funds, or assets in general are concentrated among competitors, providers, clients or other commercial agents, with the objective or effect of diminishing, damaging or preventing free competition in relation to equal, similar or substantially related goods and services. In the analysis of mergers, the substantial power acquired through the operation must be considered.</p>
<p>B. If change of control is a determining factor, how is control defined?</p>	<p>The law does not establish a definition of control. This parameter has been determined by case law.</p>
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Yes, they are covered. However, the levels have been determined by case law.</p>
<p>D. Do the notification requirements cover production joint ventures or any other type of joint venture?</p>	<p>Joint ventures might, under certain circumstances, be considered as a prohibited merger. However, as indicated above, notifying merger is not mandatory.</p>
<p>E. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>Act N°7472 does not establish previous notifications as mandatory. However, it is important to point out that article 9 of said Act excludes the enforcement of competition regulations upon:</p> <ul style="list-style-type: none"> -Agents providing public services by virtue of a concession, under the terms established by the law in order to carry out the necessary activities for providing these services, according to the limitations established by the concession and by special regulations. -State monopolies created by law, as long as they continue to exist under special laws in order to carry out the activities specifically authorized in them, in areas such as: insurance, current account or demand bank deposits, alcohol distillation and marketing for internal use, distribution of fuels, and telephone,

	telecommunications, and power and water distribution services.
F. Are transactions that do not meet merger notification thresholds subject to substantive merger control?	Not applicable

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.	Not applicable
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)?	Not applicable
C. Describe methodology for identifying and calculating any values necessary to determine if notification is required, including:	Not applicable
i. The methodology for identifying and calculating the value of the transaction, if applicable.	Not applicable

<p>ii. The methodology for identifying and calculating relevant sales or turnover, if applicable.</p>	<p>Not applicable</p>
<p>iii. The methodology for identifying and calculating the value of relevant assets, if applicable.</p>	<p>Not applicable</p>
<p>iv. Methodology for calculating exchange rates.</p>	<p>Not applicable</p>
<p>D. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>Not applicable</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>It is possible to know about those practices originated abroad when they have an effect on national grounds and if there is a legal representative of the alleged infringing company within the country.</p>
<p>F. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	<p>Act N°7472 does not define it; it has been determined by case law.</p>
<p>G. If there are market share tests, are there guidelines for calculating market shares?</p>	<p>There are no guidelines; it has been determined by case law.</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>There are no guidelines; it has been determined by case law.</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>Not applicable</p>
<p>J. Are there special threshold calculations for joint ventures?</p>	<p>Not applicable</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>Pension fund operating companies have special regulations. In the case of mergers between these companies, it is mandatory to file a previous notification to the Pension Superintendence which, upon consultation with the Commission for Competition Promotion, decides whether or not to authorize the merger.</p>

Transactions in which the acquiring and acquired parties are foreign. Are there special rules or exemptions

<p>A. With respect to application of jurisdictional thresholds?</p>	<p>Not applicable</p>
<p>B. With respect to information required (e.g. information submitted or</p>	<p>In accordance with the General Law for Public Administration, the parties must enclose all relevant documentation in their possession. If the document conveyed was issued outside of Costa Rica, it must be authenticated. To this effect, article 294 specifies that</p>

document legalization)?	the document must be submitted to the representation of Costa Rica in the foreign country, so that the Consul or Ambassador can certify its authenticity. This document must also be submitted in our country to the Ministry of Foreign Affairs, in order to obtain the corresponding approval.
C. With respect to waiting periods?	Not applicable

6. 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.).	Not applicable
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7. Timing of notification

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)?	Not applicable
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	Not applicable

the event.	
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8. 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).	<p>In Costa Rica, regulations do not establish the mandatory nature of notifying a merger. However, in cases in which the Commission for Competition Promotion opens an investigation, the following information is requested as a minimum:</p> <ul style="list-style-type: none"> -characteristics of the good or services -possible substitutes -distribution of the product -organizational chart of the company -clients -competitors -barriers to entry -sales -market studies -financial statements
B. Are there any document legalization requirements (e.g., notarization or apostille)?	<p>As indicated above, the documents issued abroad must be authenticated by means of the procedure established through diplomatic channels (see item 6B)</p>

9. 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	<p>If documents in a foreign language are supplied, they must be accompanied by a translation that may be carried out by the party. The former according to article 294, paragraph b) of the General Law for Public Administration.</p>
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in lieu of complete documents.	
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10. 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>Once that the procedure has begun, the Competition Agency summons the parties to a private hearing at least 15 days in advance, so that the parties may provide relevant proof and pose their arguments. If all proof is furnished, the file is ready for the final decision.</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>The procedure and the regulations are the same.</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</p>	<p>Not applicable</p>

<p>local waiting period and/or clearance. (e.g. request for a derogation from the bar on closing, commitment to hold separate the local business operations.)</p>	
<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>Not applicable</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>Not applicable</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>Not applicable</p>

11. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both?	Not applicable
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	No
C. Are the parties required to appoint a joint representative?	According to the General Law for Public Administration, the parties may participate in person or through a representative. In the case of legal persons, a certification of legal capacity must be provided, be it issued by the Public Registry or by a notary, in order to ascertain the participation of the legal representatives.
G. 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)?	In general terms, the representation of the parties may be appointed by common legal measures (general or special power of attorney), and also by a simple letter authenticated by a lawyer or by the police authority of the place where it was issued (article 283 of the General Law for Public Administration).
H. 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?	See items C and D above.

12. Filing fees

A. Are any filing fees assessed for notification? If so,	Not applicable
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in what amount and how is the amount determined?	
1. Who is responsible for payment?	Not applicable
2. When is payment required?	Not applicable
3. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Not applicable

13. Confidentiality

1. 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?	<p>It is not mandatory to notify a merger. However, the Commission for Competition Promotion may open an investigation upon complaint or under authority, and eventually penalize.</p> <p>The beginning of this investigation is a public report.</p>
2. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	<p>The Commission for Competition Promotion has the authority to request information. This information may be declared confidential by the Technical Unit, be it by request of the party or by authority, according to article 67 of the Regulations to the Law for Competition Promotion and Effective Defense of the Consumer, and articles 272 to 274 of the General Law for Public Administration. If any information considered confidential is provided, a summary of this information must be supplied in public terms, as long as the nature of this information allows it. Also, if the party provides both public and confidential information, it must do so separately, so as to clearly identify which information is public and which is confidential, and the reasons for which it has been classified as such.</p> <p>Only those agents considered as parties in the procedure have access to the public record. According to article 275 of the General Law for Public Administration, anyone having a legitimate interest or right of action, and who may be directly affected, injured or satisfied by virtue of the final action, may be a party in the procedure. Only the party that provided confidential information has access to the confidential file, and exclusively to those pages that they provided with this character.</p>
3. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	Other economic agents, as well as Government agencies, may have access to the public file, only if they are considered a party in the administrative procedure. The same rules described in the former item apply to them.
4. Are procedures available to	Articles 272 to 274 of the General Law for Public

request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	Administration deal with the treatment that confidential information must receive during an administrative procedure, and are described in item B above.
5. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	<p>The Commission for Competition Promotion, within the background of the Treaty for Free Trade with Canada, has an agreement to inform the competent authority of this country when an investigation is opened on one of its companies.</p> <p>The scope of the treaty only permits sharing public information with the agency in this country.</p>

14. Sanctions/penalties

A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods?	<p>Since previous notification is not mandatory, the lack of it may not be penalized. However, the Commission holds the authority to penalize those mergers it considers prohibited, as established in article 28 of Act N° 7472:</p> <ul style="list-style-type: none"> a. The suspension, correction or suppression of the practice or merger in question b. The partial or full reversal of all that has been unlawfully merged, without prejudice to the payment of the corresponding fine. c. g. The payment of a fine of up to 410 times the amount of the lowest minimum monthly salary, for having incurred a merger prohibited in this Law for Competition Promotion and Effective Defense of the Consumer, Act N° 7472. h. The payment of a fine of up to 75 times the amount of the lowest minimum monthly salary, for those physical persons that have directly participated in monopolistic practices or prohibited mergers, representing legal persons or factual entities, or on their behalf or orders. <p>In case of infringements mentioned in paragraphs e) to h) of this article which, according to the Commission for Competition Promotion, are imbued with special gravity, this Commission may impose, as a penalty, a fine equivalent to 10% of the annual sales obtained by the transgressor during the former fiscal period, or of up to 10% of the value of the transgressor's assets. The highest of the two fines shall be the one imposed.</p>
Which party/ies are potentially liable?	It is not established; it is studied case by case.

4. Judicial review

Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.

When the Commission for Competition Promotion, take a decision, the economic agents may appeal in the Administrative Contentious Tribunal (Those Tribunals depends of our legal structure).

4.

Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., foreign investment or regulated sectors?

Workers Protection Act N° 7523, for the specific case of pension operator company mergers and their regulations. In this case, the request must be filed before the Pension Superintendence, which is the entity in charge of authorizing mergers upon consultation with the Commission for Competition Promotion. The Pension Superintendence regulates and inspects private pension systems; it was created on August 18th 1995, by Act Number 7523, as a maximum diversification agency appointed to the Central Bank of Costa Rica. For pension operator companies, it is mandatory to request authorization from the Pension Superintendence. The Workers Protection Act establishes that the Administration shall reach a decision in a period of 30 days after the information provided is complete.

5.

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?

Not applicable