

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## COMMISSION ON PROTECTION OF COMPETITION BULGARIA

January 2007

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**IMPORTANT NOTE:** This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

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

<b>A. Notification provisions</b>	Law on Protection of Competition (LPC, Published in the SG No 52/1998, as amended, SG No. 112/1998, 81/1999, 28/2002, 9/2003, 107/2003, 105/2005, 37/2006, 59/2006 and 86/2006); <a href="http://www.cpc.bg/public/index.php?id=259">http://www.cpc.bg/public/index.php?id=259</a>
<b>B. Notification forms or information requirements</b>	Art. 26 of LPC sets out the information which should be provided in the notification form; Notification Form for Concentration and Guidelines for filing-in the Notification Form for Concentration.
<b>C. Substantive merger review provisions</b>	Chapter 6 of LPC
<b>D. Implementing regulations</b>	Methodology for carrying out Studies and Definitions of the Market Position of the Undertaking on the Relevant Market
<b>E. Interpretive guidelines and notices</b>	Guidelines for application of Chapter 6 of LPC

## 2. Authority or authorities responsible for merger enforcement.

<p><b>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</b></p>	<p>Commission on Protection of Competition (CPC)</p>
<p><b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b></p>	<p>18 Vitosha Blvd. Sofia 1000 Bulgaria Phone: +359 2 988 40 70 Fax: +359 2 980 73 15 E-mail: <a href="mailto:cpcadmin@cpc.bg">cpcadmin@cpc.bg</a> <a href="http://www.cpc.bg">www.cpc.bg</a> in Bulgarian and English</p>
<p><b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b></p>	<p>Yes Alexander Milev Director of Directorate Concentrations and Sector Analyses Phone: +359 2 935 61 19 Fax: +359 2 980 73 15 e-mail: <a href="mailto:amilev@cpc.bg">amilev@cpc.bg</a></p>

## 3. Covered transactions

<p><b>A. Definitions of potentially covered transactions (i.e., concentration or merger)</b></p>	<p>Transaction are covered by LPC when:</p> <ol style="list-style-type: none"> <li>1. Undertakings have intention to implement a concentration referred to in article 21 LPC; and</li> <li>2. The aggregate turnover of the participants in the concentration on market concerned in the territory of the country exceeds BGN 15 million for the previous year. (Art. 24, 1, LPC).</li> </ol> <p>After Art. 21 (1) LPC a concentration of economic activities occurs:</p> <ul style="list-style-type: none"> <li>- in case of merger or takeover of two or more independent undertakings, or</li> <li>- where one or several persons, already controlling an undertaking, acquire by purchase of securities, shares or assets, by contract or by any other means, direct or indirect control over other undertakings or over parts thereof.</li> </ul>
<p><b>B. If change of control is a determining factor, how is control defined?</b></p>	<p>Yes. The control is a determining factor.</p> <p>Control stands for any acquisition of rights, conclusion of contracts or other means which, separately or jointly, and with</p>

	<p>regard to the existing factual circumstances and the applicable law, confer a possibility for the exercise of a decisive influence on an undertaking through:</p> <ol style="list-style-type: none"> <li>1. the acquisition of ownership or right to use the entirety or part of the assets of the undertaking;</li> <li>2. the acquisition of rights, including under contract, which provide a possibility for a decisive influence on the composition, voting or decisions of the bodies of the undertaking. (Art. 21, 2, LPC).</li> </ol>
<b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b>	Only if such acquisition gives possibility for exercise of a decisive influence on an undertaking.
<b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b>	Yes. The creation of a joint venture that performs on a lasting basis all the functions of an autonomous economic entity shall also constitute a concentration within the meaning of Art. 21 of LPC.

#### 4. Thresholds for notification

<b>A. What are the general thresholds for notification?</b>	The general threshold is BGN 15 million aggregate turnover of the participants in the concentration on market concerned in the territory of the country for the previous year. (Art. 24, 1, LPC)
<b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b>	<p>For turnover purposes relevant undertakings are:</p> <ol style="list-style-type: none"> <li>a) the undertaking-participant;</li> <li>b) undertakings, in which the undertaking a) above participates directly or indirectly, when: <ul style="list-style-type: none"> <li>- it holds more than a half of the capital or shares;</li> <li>- it has more than a half of votes;</li> <li>- it can appoint more than a half of the members of supervisory and managing bodies or representatives; or</li> <li>- it can manage the undertaking.</li> </ul> </li> <li>c) these undertakings which have the right described in b) above in the undertaking-participant;</li> <li>d) these undertakings, in which the undertakings from c) have the rights described in b);</li> <li>e) these undertakings, in which two or more undertakings described from a) to d) have right described in b) jointly.</li> </ol>
<b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted,</b>	No

<p>state on what basis and how frequently.</p>	
<p><b>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</b></p>	<p>The previous fiscal year-end</p>
<p><b>E. 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?</b></p>	<p>It should be taken the turnover of the undertakings participating in the concentration and revenues from sales after deduction of VAT and other taxes related to turnover. There is Methodology for carrying out Studies and Definitions of the Market Position of the Undertaking on the Relevant Market.</p>
<p><b>F. Describe methodology for calculating exchange rates.</b></p>	<p>Not applicable</p>
<p><b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b></p>	<p>Thresholds apply to sales within the jurisdiction.</p>
<p><b>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</b></p>	<p>Yes</p>
<p><b>I. 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. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an</b></p>	<p>LPC is applicable to all undertakings which carry on their activities within or out of the territory of the Republic of Bulgaria, if they explicitly or tacitly prevent, restrict, distort or may prevent, restrict or distort competition in the country (Art. 2, 1 LPC). There is no requirement of local presence (local assets/ affiliates/ subsidiaries). Import sales are sufficient.</p>

<b>“effects” test?</b>	
<b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b>	‘Geographical market’ includes a specific territory on which the corresponding substitutable goods or services are offered and on which the conditions of competition are the same, while differing from those in neighbouring areas.
<b>K. If market share tests are used, are there guidelines for calculating market shares?</b>	Methodology for carrying out Studies and Definitions of the Market Position of the Undertaking on the Relevant Market
<b>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</b>	<p>In case of concentration of credit institutions and other financial institutions the amount of the revenues as shown in balance sheet for the last closed financial year after taxation, and for insurance undertakings – the amount of the insurance premiums after deduction of all taxes, installments, previewed by law and levies, shall be taken into consideration (Art. 24, 5 LPC).</p> <p>When the concentration is expressed in acquiring control of parts of one or more enterprises, regardless of whether these parts represent independent corporate bodies, the turnover shall be taken into consideration, regarding this part which is subject to the control (Art.24, 3 LPC).</p>
<b>M. Are any sectors excluded from notification requirements? If so, which sectors?</b>	No
<b>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</b>	No
<b>O. Does the agency have the authority to review transactions that fall below the thresholds?</b>	No

## 5. Notification requirements and timing of notification

<p><b>A. Is notification mandatory pre-merger?</b></p>	<p>Yes.</p> <p>The undertakings are obliged to notify CPC prior to their intention to implement the concentration. (Art. 24 LPC).</p> <p>Where the concentration shall be implemented by the conclusion of a contract awarded as a result of announced public bid or competition, the notification shall be submitted within seven days following the announcement of the bid or competition outcome.</p>
<p><b>B. Is notification mandatory post-merger?</b></p>	<p>No</p>
<p><b>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</b></p>	<p>Yes. When the parties have concerns that an acquisition could fall in the scope of LPC, they notify it by CPC. The Commission reviews all notifications for concentrations and enacts a decision.</p>
<p><b>D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?</b></p>	<p>A definitive agreement is not required.</p> <p>Where the concentration shall be implemented by the conclusion of a contract awarded as a result of announced public bid or competition, the notification shall be submitted within 7 days following the announcement of the bid or competition outcome.</p>
<p><b>E. 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. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</b></p>	<p>See 5D above</p>
<p><b>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the</b></p>	<p>No</p>

extension.	
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## 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, discretion to waive certain responses, etc.).	Not applicable
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## 7. 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 submit documents which are sources of information needed for determining of marketshares, turnover and ownership. Such documents could be preliminary contracts, agreements, decisions for acquisition, offers, annual reports, market studies and analysis carried out by the parties etc.
B. Are there any document legalization requirements (e.g., notarization or apostille)?	The extracts from the relevant register and other documents considering the legal status of parties shall be legalized or apostilled
C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?	No

## 8. Translation

<b>A. In what language(s) can the notification forms be submitted?</b>	The notification forms should be submitted in Bulgarian.
<b>B. 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 of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.</b>	All documents in foreign language shall be supported by authorized translation.

## 9. Review periods

<b>A. Describe any applicable review periods following notification.</b>	<p>CPC makes an appraisal of the concentration within one month after the notification the Commission.</p> <p>No actions in fact and in law relating to the concentration envisaged is allowed until the CPC enacts a decision.</p> <p>The Commission may decide to initiate an investigation provided that the concentration falls within the scope of LPC and raises serious doubts that its implementation would result in the creation or strengthening of an existing dominant position, and that effective competition in the market concerned would be prevented, restricted or distorted. Within three months after the publication the Commission shall complete the investigation and issue a decision.</p>
<b>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</b>	No

<p><b>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</b></p>	<p>Not applicable</p>
<p><b>D. What are the procedures for accelerated review of non-problematic transactions, if any?</b></p>	<p>Not applicable</p>

## 10. Waiting periods / suspension obligations

<p><b>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</b></p>	<p>CPC makes an appraisal of the concentration within one month after the notification the Commission.</p> <p>No actions in fact and in law relating to the concentration envisaged is allowed until the CPC enacts a decision.</p> <p>If the concentration is in the scope of LPC and raises serious doubts for infringement of the competition rules the CPC shall complete the investigation and issue a decision within 3 months after publishing of the first decision for the investigation.</p> <p>Until final decision of CPC about the concentration all operations relating it are prohibited. (Art. 29 LPC).</p>
<p><b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b></p>	<p>No</p>
<p><b>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction</b></p>	<p>No</p> <p>No actions in fact and in law relating to the concentration envisaged is allowed until the CPC enacts a decision.</p>

<p>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 suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<p>No</p>
<p><b>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</b></p>	<p>If the concentration is in the scope of LPC and raises serious doubts that its implementation would result in the creation or strengthening of an existing dominant position, and that effective competition in the market concerned would be prevented, restricted or distorted, CPC may decide to start an investigation.</p> <p>The decision shall be published in the State Gazette.</p> <p>CPC shall complete the investigation and issue a decision within 3 months after publishing of the first decision for the investigation.</p> <p>Until final decision of CPC about the concentration all operations relating it are prohibited. (Art. 29 LPC).</p>
<p><b>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b></p>	<p>Not applicable</p>

<p><b>G. 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).</b></p>	<p>In LPC is not established such possibility for the parties. They should wait until the final decision of CPC.</p>
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## 11. Responsibility for notification / representation

<p><b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</b></p>	<p>In case of merger the parties must notify CPC jointly and in the case of acquisition of share the acquiring undertaking is obliged to notify the Commission.</p>
<p><b>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</b></p>	<p>No</p>
<p><b>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</b></p>	<p>No</p>
<p><b>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</b></p>	<p>The representative power of third person (not executive) shall be attested with power of attorney where shall be given the names, personal number, address and phone number of empowered person.</p> <p>A power of attorney from a foreign firm needs to be apostilled.</p>

## 12. Filing fees

<b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?</b>	<p>For requests to issue authorization under art. 28 of the Law – 2000 BGN.</p> <p>For authorizations under art. 28 of the Law - 0.1% of the total turnover for the previous year of the participants in the concentration but not more than 60 000 BGN.</p>
<b>B. Who is responsible for payment?</b>	<p>The fee shall be paid by the party, which makes the notification.</p>
<b>C. When is payment required?</b>	<p>The fee for requests to issue authorization must be paid at the time of notification.</p> <p>The fee for authorizations must be paid after issuing the decision.</p>
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	<p>The fee shall be paid by bank transfer or cash.</p>

## 13. Confidentiality

<b>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?</b>	<p>Since May 2005 the Commission has been publishing on its web site (<a href="http://www.cpc.bg">www.cpc.bg</a>) announcements of the notifications for planned concentrations it receives. Thus all interested parties are given an opportunity to make submissions, backed up with appropriate evidence, as concerns the contemplated transaction and its impact on effective competition in the relevant national market. The information thus received by the CPC is used in the assessment of concentrations.</p>
<b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be</b>	<p>The parties have access only to the materials of the file which do not constitute business secret only after the investigation is completed.</p>

<b>exercised?</b>	
<b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b>	No
<b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b>	<p>Any documentation and information, received by the Commission in the course of an investigation may be used solely for the purposes of that investigation (Art. 42, LPC).</p> <p>If parties concern that their interests could be damaged with publishing of any information given to CPC in the investigation process, they shall submit the relevant documents separately and mark every page with "Secret".</p>
<b>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 available?</b>	The CPC can exchange any information including confidential with the competition authorities within the European Competition Network.
<b>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</b>	No

## 14. Transparency

<b>A. Does the agency publish an annual report? Please provide the web address</b>	The CPC publishes annual report which can be found in Internet via <a href="http://www.cpc.bg">http://www.cpc.bg</a>
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if available.	
<b>B. Does the agency publish press releases related to merger policy or investigations?</b>	<p>Since 2005 the CPC has also been publishing announcements of forthcoming concentrations thus enabling all interested parties to make their written submissions, supported by due evidence, in respect of the contemplated transaction.</p> <p>Besides press releases are published when the CPC takes a decision.</p>
<b>C. Does the agency publish decisions on why it cleared / blocked a transaction?</b>	All CPC decisions are uploaded to the web site and promulgated in State Gazette as soon as they are adopted.

## 15. Sanctions/penalties

<b>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</b>	<p>CPC may impose pecuniary sanction on the undertaking, in favour of the state, to the amount of BGN 5 000 to 300 000:</p> <ul style="list-style-type: none"> <li>- for failure to file a notification;</li> <li>- when CPC revokes authorisation of concentration, because it is based on incorrect or incomplete information provided by the parties;</li> <li>- when the parties fail to comply with the requirements set out in the Commission decision.</li> </ul>
<b>B. Which party/ies are potentially liable?</b>	The participating undertakings in case of failure of notification and the undertakings which submitted incorrect or incomplete information or fail to comply may be liable.
<b>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</b>	The CPC can impose sanctions directly.

## 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.**

The decisions of the Commission shall be subject to appeal before the Supreme Administrative Court within fourteen days of their notification.  
The decisions may be appealed by the persons who have participated in the proceedings before the Commission. When CPC issued that concentration is beyond the scope of LPC and may be appealed by other interested persons as well.

## 17. Additional filings

**Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?**

No

## 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

## 19. Post merger review of transactions

**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?**

The CPC can revoke authorisation of concentration when it is based on incorrect or incomplete information provided by the parties or when the parties fail to comply with the requirements set out in the Commission decision.