

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Superintendence of Competition of El Salvador

May 12th, 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]

Statutory Laws

A. Notification provisions	Article 33 of the Salvadoran Competition Law establishes the documents that shall be filled in the written application. In addition, article 25 of the Competition Law Regulation enlarges the content of the application for merger authorization. The Salvadoran Competition Law and its Regulation are available on the website of the Superintendence of Competition (www.sc.gob.sv), in Spanish (original language) and English (non-literal translation). Spanish version: https://www.sc.gob.sv/index.php/sala_multimedia/ley-de-competencia-reglamento-y-glosario/ English version: http://www.sc.gob.sv/site/uploads/Competition_Law_and_Regulation_2015.pdf
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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.

<p>B. Substantive merger review Provisions</p>	<p>Regarding merger analysis, the Salvadoran Competition Law establishes the inputs necessary to carry out such analysis, in particular:</p> <ul style="list-style-type: none"> • Article 28 lays down the necessary criteria to be contained in a relevant market definition. • Article 29 lays down considerations for determining that an economic operator has a dominant position on the relevant market. <p>Subsequently, Chapter IV "On Merges" establishes the most specific tools for merger analysis:</p> <ul style="list-style-type: none"> • Article 34 lays down the criteria under which the competition authority will assess whether the merger could lead to a competitive restriction. <p>In addition, the Competition Law Regulation provides articles to extend substantive analysis:</p> <ul style="list-style-type: none"> • Article 15 sets out the considerations that the Superintendence must consider to identify the relevant market. • Article 16 provides the aspects to consider to conclude whether an economic operator has a dominant position. • Article 21: presents some considerations for determining whether a concentration could limit competition, based on Article 34 of the Competition Law. • Article 22: Provides some considerations for determining other relevant elements, different from those stated in articles 28 and 29 of the Competition Law, that may lead to a possible restriction on competition, based on Article 34 of the Competition law.
<p>C. Implementing regulations</p>	<p>The Salvadoran Competition Law and its Regulation are available on the website of the Superintendence of Competition (www.sc.gob.sv), in Spanish (original language) and English (non-literal translation):</p>

	<p>Spanish version: https://www.sc.gob.sv/index.php/sala_multimedia/ley-de-competencia-reglamento-y-glosario/</p> <p>English version: http://www.sc.gob.sv/site/uploads/Competition_Law_and_Regulation_2015.pdf</p>
<p>D. Notification forms or information requirements</p>	<p>Article 33 of the Salvadoran Competition Law establishes the documents that shall be filled in the written application. In addition, article 25 of the Competition Law Regulation enlarges the content of the application for merger authorization. Also, since the enactment and entry into force of the Administrative Procedure Law, every notification must fulfill the requirements established in the article 72 of the referred law.</p>

Interpretative Guidelines and Notices

<p>E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]</p>	<p>Article 33 of the Salvadoran Competition Law establishes the thresholds for a merger to be notified, these are set in assets and revenues. Notification is mandatory if any of both thresholds are met. For the assets, the law requires that the combined total assets exceed fifty thousand minimum urban annual wages in the industry sector – here and after referred as muaw. Regarding the revenues threshold, the law states that must exceed sixty thousand muaw. As of today, fifty thousand muaw equals to USD 182,500,000.00, and sixty thousand muaw equals to USD 219,000,000.00</p> <p>To calculate the total amount of revenues or assets, the Superintendence of Competition (SC) considers all companies involved in the merger -this must be understood as the economic entity involved-.</p> <p><i>Economic Mergers Guidelines and form, in section VI. ¿ How does thresholds are calculated? provides a detailed description on these calculations and an illustrative description of the procedure to file a merger request. The “Guía y Formulario de Concentraciones Económicas” is available in its original language (Spanish) at the link:</i></p>
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	https://www.sc.gob.sv/index.php/sala_multimedia/guia-de-concentraciones-sc-sep2018/
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	Not applicable
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.
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	Not applicable

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	Superintendencia de Competencia (the Superintendence of Competition of El Salvador) is the only institution in the country that has the faculty to review mergers using a competition perspective. Other regulators may review and approve mergers but based on sectorial regulation applicable (for example, Superintendencia del Sistema Financiero).
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	Address: Superintendencia de Competencia. Edificio Madre Selva Primer Nivel, Calzada El Almendro y 1a. Av. El Espino No. 82 Antiguo Cuscatlán, La Libertad, El Salvador. Telephone: (503) 2523-6600 Email for merger-related inquiries: ConsultasIE@sc.gob.sv ; for general purpose: contacto@sc.gob.sv

	Website: https://www.sc.gob.sv/
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	<p>Within its mandate of promoting competition, the SC staff is available to answer questions about the Competition Law and its regulation as well as its application. Specific questions can be answered by telephone +503 2523-6600 or to ConsultasIE@sc.gob.sv.</p> <p>In addition, upon request, the SC staff can provide general training (standardized presentations) of topics related to competition law and the work of the agency. Among the multiple options available is mergers. The form to request a presentation is available in Spanish at : https://www.sc.gob.sv/index.php/formularios/ section “Hablemos”.</p>

3. Covered transactions	
A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]	<p>Article 33 of the Salvadoran Competition Law establishes that a merger exists:</p> <p>a) When economic agents that have been independent from each other perform, among others: acts, contracts, agreements, arrangements, with the purpose of merging, acquiring, consolidating, integrating or combining their businesses in all or in part; and</p> <p>b) When one or more economic agents that already control at least one other economic agent, acquire by any means, the direct or indirect control of all or part of more economic agents.</p> <p>Moreover, article 18 of the Competition Law Regulation states “a merger operation shall be considered, in addition to the company mergers made in the terms indicated in the Commercial Code, as any act, contract or legal figure, including judicial adjudication, acts of voluntary or compulsory liquidation and inheritances or legacies, which lead to mergers of companies, divisions or shares in companies and assets in general.”</p>

	(free translation of the Competition Law and its Regulation)
B. What is the geographic scope of transactions covered?	National Scope. The economic agents must have a presence in the national territory through the ownership of their property or the provision of their services.
C. If change of control is a determining factor, how is control defined and interpreted in practice?	<p>According to Article 31 of the Salvadoran Competition Law, control is a key factor in the definition of mergers. Hence, article 32 states that “control shall be understood as the capability of an economic agent to influence another through the exercise of property rights or the right of use of all or part of the assets of the economic agent or through arrangements that confer substantial influence on the composition, voting or resolutions of the management or administrative bodies, or legal representatives of the economic agent.”</p> <p>(free translation of the Competition Law and its Regulation)</p>
D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?	A partial acquisition would be covered by the Salvadoran Competition Law if it meets the criteria established in articles 31, 32 and 33.

4. Thresholds for notification	
A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]	Article 33 of the Salvadoran Competition Law establishes the thresholds for a merger to be notified, these are set in assets and revenues. Notification is mandatory if any of both thresholds are met.

	<ul style="list-style-type: none"> • For the assets, the law requires that the combined total assets exceed fifty thousand minimum urban annual wages in the industry sector – here and after referred as muaw. • Regarding the revenues threshold, the law states that must exceed sixty thousand muaw. As of today, (April 2021), fifty thousand muaw equals to USD 182,500,000.00, and sixty thousand muaw equals to USD 219,000,000.00
<p>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?</p>	<p>Per article 33 of Competition Law, to calculate the total amount of revenues or assets, the Superintendence of Competition considers all companies involved in the merger -this must be understood as the economic entity involved-</p> <p>As it was mentioned, article 32 of the Competition Law states that “control shall be understood as the capability of an economic agent to influence another through the exercise of property rights or the right of use of all or part of the assets of the economic agent or through arrangements that confer substantial influence on the composition, voting or resolutions of the management or administrative bodies, or legal representatives of the economic agent.”</p>
<p>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)?”</p>	<p>The nexus is determined by assets and sales within the national territory.</p> <p>This criterion was established in the decision of the case SC-027-S/C/R-2009. This case involved TACA International Airlines, S.A. and Aerovías del Continente Americano (Avianca), and it was concluded that the operation did not meet the necessary assumptions to require prior authorization from the Superintendence of Competition, since Avianca, at that time, did not participate in the Salvadoran market because it did not have assets or revenues in Salvadoran territory.</p>

<p>D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>This situation is possible in El Salvador and has arisen in merger cases that this authority has analyzed. For example: the SC-005-S/CE/R-2016 case, which involved the Imperia Group as buyer and Citibank Overseas Investment Corporation as the seller; Imperia alone exceeded the thresholds established by the Competition Law.</p>
<p>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>Salvadoran Competition Law does not distinguish between sectors for thresholds, both in revenues and assets.</p> <p>Regarding the periods of time, article 19 of the Competition Law Regulation determines that "To calculate the amount of total revenue referred to in art. 33 of the Law, the Superintendence shall add the amounts resulting from the sale of products and the provision of services performed by the companies involved in the merger transaction, during their last fiscal year, after the deduction made on sales discounts, as well as the sales tax and of any other taxes directly related to the economic activity in question."</p> <p>Concerning to assets, those of the immediately preceding fiscal year of all the agents involved in the operation are considered, that is, all the assets in the country of the participating economic agents must be added.</p>
<p>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?</p>	<p>The Salvadoran competition Law does not establish special thresholds for specific sectors. Neither make a distinction per type of transaction.</p>
<p>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</p>	<p>Not Applicable</p>

required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]	
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]	The Superintendence of Competition does not have the power to scrutiny mergers below the set thresholds.
I. Are current notification criteria catching relevant transactions related to digital markets?	No experience.

Calculation Guidance and related issues

J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required: i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe).	<p>Article 33 of the Salvadoran Competition Law establishes the thresholds for a merger to be notified, these are set in assets and revenues.</p> <ul style="list-style-type: none"> For the assets, the law requires that the combined total assets exceed fifty thousand minimum urban annual wages in the industry sector – here and after referred as muaw. Regarding the revenues threshold, the law states that must exceed sixty thousand muaw. As of today, fifty thousand muaw equals to USD 182,500,000.00, and sixty thousand muaw equals to USD 219,000,000.00 <p>Economic Mergers Guidelines and form, in section VI. How does thresholds are calculated? also provides a thorough description of this process. As mentioned above (response E) this illustrative document is only available in Spanish as “Guía y Formulario de Concentraciones Económicas” in the SC website.</p>
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?	No experience.

<p>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?</p>	<p>No experience.</p>
<p>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</p>	<p>Article 20 in the Competition Law Regulation states that “if the transactions are agreed in a foreign currency, the exchange rate published by the Central Reserve Bank of El Salvador shall be applied, in accordance with art. 57 of its Organic Law.”</p> <p>The official exchange rate published by the Central Reserve Bank can be consulted at the following link: https://www.bcr.gob.sv/esp/index.php?option=com_wrapper&view=wrapper&Itemid=356</p> <p>Official currency in El Salvador is US\$.</p>
<p>5. Pre-notification</p>	
<p>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.].</p>	<p>Not applicable.</p>
<p>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</p>	<p>Not applicable.</p>
<p>6. Notification requirements and timing of notification</p>	
<p>A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]</p>	<p>There is a “standstill obligation” for the agents that intend a concentration. Per article 38 paragraph 8 of the Competition Law, failure to present the notification of a merger that meet the requirements to be notified may result in an economic sanction for the agents involved.</p>

<p>B. If parties can make a voluntary merger filing when may they do so?</p>	<p>Not applicable.</p>
<p>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?)</p>	<p>There is no early term to submit the application.</p>
<p>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?</p>	<p>Article 23 of the Competition Law Regulation establishes that the notification must be presented before the following events:</p> <ul style="list-style-type: none"> • The legal act is perfected in accordance with the applicable legislation or, where appropriate, the suspensive condition to which said act is subject is met; • Control is exercised directly or indirectly de facto or de jure over another economic agent or are acquired de facto or de jure, among others, assets, participation in trusts, social participations, memberships or shares of another economic agent. • when a merger agreement is formalized between the economic agents involved, or in the case of a succession of acts, the last one is perfected, by virtue of which the amounts established in said article are exceeded. • In cases where the merger comes from an act of authority, the latter will require, before issuing the act, the favorable pronouncement of the Superintendence of Competition, which must be related to the act that is issued. • In the case of mergers derived from legal acts carried out abroad, the corresponding authorization must be requested before they have legal or material effects in national territory.
<p>E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>Not applicable.</p>

7. Simplified Procedures	
A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	Not applicable
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	
Not applicable	
8. Information and documents to be submitted with a notification	
A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).	<p>Article 25 of Competition Law Regulation, provides the information that application for merger authorization shall contain; regarding the type of documents to be submitted:</p> <ul style="list-style-type: none"> a) Name, denomination or company name of the economic agents applying for merger authorization and of those directly or indirectly involved in it. b) Where appropriate, the legal representative's name and documents that evidence their legal capacity, location and technical means to hear and receive notifications, and the name of the persons authorized for such purposes. c) Certified copy of the articles of association of the company and its amendments, duly registered in the Registry of Commerce. d) The externally audited financial statements of the immediately preceding fiscal year of the economic agents involved. e) Evidence of the ownership structure of the participating economic agents prior to the merger, issued by the legally authorized person, whether they are domestic or foreign companies and the description of the new composition of the capital. In addition, the participation of each direct and indirect shareholder must be identified, before and after the merger, as well as the people who are and shall be in control.

	<ul style="list-style-type: none"> f) Description of the merger, its objectives, type of operation and draft of the legal act leading to it, as well as any other relevant information related to the merger. g) Reference to the economic agents involved in the transaction with a direct or indirect participation in the shared capital, administration or in any activity of other economic agents that produce or commercialize goods or services substantially related to any operator involved in the merger. h) Description of the main goods and services produced or provided by each economic agent involved, including its use in the relevant market, and the list of goods and services identical or similar and main economic agents that produce, distribute or commercialize them in the country. i) Information of the market share of the economic agents involved. j) Location of the infrastructure of the economic agents involved, the location of their main distribution centers and the relationship they keep with said economic agents. <p>The documents referred to in the preceding letters b) and c), shall be submitted either in original, certified copy by notary or, where appropriate, in simple copy with its original for collation.</p>
<p>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]</p>	<p>Not applicable</p>
<p>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</p>	<p>Conforming to articles 34 of the Competition Law and 46 paragraph 5 of its Regulation, the burden of proof regarding efficiencies gains, it's on the applicants. On that regard, it is appropriate to present them with the notification form so the authority can evaluate them.</p>
<p>D. What information is required in case the target company is experiencing financial insolvency?</p>	<p>No experience.</p>

<p>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</p>	<p>No experience.</p>
<p>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</p>	<p>Article 25 of the Competition Law Regulation, states that documents referred to in letters b) and c) of that rule, shall be submitted either in original, certified copy by notary or, where appropriate, in simple copy with its original for collation.</p> <p>In the case of foreign documents, they must be presented with them apostille (or some diplomatic certification if the country of origin does not participate in the Apostille Convention) and the certifications issued by a notary. In addition, these should be submitted in Spanish, if they are in a different language; this translation must be authenticated by a notary.</p>
<p>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)?</p>	<p>The competition authority does not consider exemptions for any documents submitted in the application in foreign- to- foreign transaction.</p>
<p>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?</p>	<p>According with article 28 of Competition Law "The Superintendence shall require information to other economic agents related to the merger. Those with personal, legitimate and direct interest may intervene in the procedures, by presenting arguments and providing the necessary evidence."</p>
<p>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)?</p>	<p>Yes, the parties may submit additional information to which it was initially required.</p>

J. Are there different forms for different types of transactions or sectors?	No.
<p>K. With respect to investment funds:</p> <p>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?</p> <p>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?</p> <p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	No experience.

9. Translation	
A. In what language(s) can the notification forms be submitted?	All notification forms must be presented in Spanish.
<p>B. Describe any requirements to submit translations of documents:</p> <p>i) with the initial notification; and</p> <p>ii) later in response to requests for information.</p>	<p>i. Every document, public or private, that is not in Spanish must be presented with its translation.</p> <p>ii. Every document, public or private, that is not in Spanish must be presented with its translation.</p>

<p>In addition:</p> <p>iii) what are the categories or types of documents for which translation is required;</p> <p>iv) what are the requirements for certification of the translation;</p> <p>v) which language(s) is/are accepted; and</p> <p>vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?</p>	<p>iii. Every document, public or private, that is not in Spanish must be presented with its translation.</p> <p>iv. The translation must be certified before a notary conforming to the rules of the Notary Function, Voluntary Jurisdiction and Other Diligences Law.</p> <p>v. Spanish is the only language accepted.</p> <p>vi. Excerpts are accepted in some cases, depending on the document and its content. Excerpts must be presented in Spanish too.</p>
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<p>10. Review Periods</p>	
<p>A. Describe any applicable review periods following notification.</p>	<p>Once the complete application is received, the Salvadoran competition authority must issue a decision within the next 90 business days.</p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>The Superintendence of Competition of El Salvador has no precedent for such cases, so a response cannot be issued.</p>
<p>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?</p>	<p>There is no extension of the reviewing period, but there is a suspension of the clock when a request for information is issued.</p>
<p>D. Is there a statutory or other maximum duration for extensions?</p>	<p>Not applicable.</p>
<p>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</p>	<p>The period may be suspended when the authority issues a request for information; this is stipulated in article 90 of the Administrative Procedures Law. This suspension does not require the parties consent.</p>

F. What are the time periods for accelerated review of non-problematic transactions, if any?	Not applicable.
G. If remedies are offered, do they impact the timing of the review?	Not applicable.

11. Waiting periods / suspension obligations	
A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.	El Salvador has an <i>ex ante</i> regime; therefore, the transaction cannot be closed until the competition authority gives permission to proceed.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	Not Applicable.
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)?	Not Applicable.
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	Yes, article 35 of the Competition Law establishes that "the lack of resolution of the Superintendence of Competition within the prescribed period shall be understood as an authorization to merge."

E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	Not applicable.
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.	Not applicable.
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).	Not applicable.

12. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?	Both or any of the parties involved in the transaction may present the application.
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	Not applicable.
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. Any person can represent the notifying parties it is not necessary to be a lawyer.

<p>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?</p>	<p>The validity of the representation must be attested by power before a notary or a private document legalized. If the document is issued in other country it must be apostilled, and if it's not in Spanish it must be presented with a translation.</p>
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<p>13. Filing fees</p>	
<p>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]</p>	<p>No.</p>
<p>B. Who is responsible for payment?</p>	<p>Not applicable</p>
<p>C. When is payment required?</p>	<p>Not applicable</p>
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	<p>Not applicable</p>

<p>14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]</p>	
<p>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</p>	<p>The Salvadoran Competition Law does not have provisions regarding procedural stages of the substantive assessment of concentrations. However, in practice the</p>

	Superintendence during the reviewing period, request information to the notifying and third parties and conducts interviews with them, and sometimes with regulators.
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	In line with the article 34 of the Salvadoran Competition Law, the authority applies a “significant restriction of competition” test.
C. What theories of harm does the agency consider in practice?	The authority considers theories of harm related to unilateral effects and coordinated effects.
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	As mentioned above, the Salvadoran Competition Law does not have provisions regarding stages of the substantive assessment of concentrations, and in practice the Superintendence during the reviewing period request information to the notifying and third parties. This analysis does not differ in any type of transaction.
E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?	No experience
F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?	The possible outcomes are unconditional clearance, conditional clearance and prohibition.
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?	Remedies are imposed unilaterally by the competition authority, and both structural and behavioral remedies may be imposed. The remedies are determined in the decision issued by the authority on a case by case basis.

15. Confidentiality	
A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?	News of the notification filing are made available to the public through the SC website or, in some cases, through complementary press releases.
B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?	Once the information is delivered, it is subject to confidentiality rules. The parties can access information classified as public and their own, as established in article 48 of the Competition Law Regulation.
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?	Article 55 of the Competition Law Regulation states "If after the finalization of the administrative procedure, the file is required by any judicial authority in the exercise of its functions, it shall be referred to it as fast as possible, together with the piece containing the documents declared as confidential, accompanied by a statement warning about the confidential contents thereof so that the judicial authorities take appropriate measures."
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	Article 49 of the Competition Law Regulation establishes the parameters for information to be classified as confidential. Similarly, pursuant article 50, the parties may request that certain information be classified as confidential, and this being evaluated by the Superintendent. Also, according with article 51, the Superintendent can declare ex-officio through a reasoned resolution in which the reasons for that decision shall be stated.
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.	Article 52 of the Competition Law Regulation states that "in order to decide on the confidential character of business, commercial or official information, the Superintendent shall order a hearing for the participants for a period of five days, so that they can express their arguments and present, where appropriate, the evidence tending to justify the confidentiality or the lack of it, of the information in question."

<p>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?</p>	<p>According to article 30 of the Access to Public Information Law, when a public institution publishes its decisions, if the original version contains confidential information a censored version must be prepared, with marks that prevent disclosure, stating in a note a reason that expresses the deletion made.</p>
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<p>16. Transparency</p>	
<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p>The Superintendence of Competition annually publishes the institutional work report that includes a section on mergers. Available at: https://www.sc.gob.sv/index.php/biblioteca-de-publicaciones-institucionales/</p>
<p>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)?</p>	<p>The Superintendence does publish press releases related to merger proceedings; these are published when a final decision is issued.</p> <p>The press releases can be found on the following link: https://www.sc.gob.sv/index.php/noticias/</p>
<p>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.</p>	<p>Yes, the final decisions (in their public version) are available through the following link: https://www.sc.gob.sv/index.php/casos/?_palabra_clave=concentraci%C3%B3n&_sort=date_desc</p>
<p>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]</p>	<p>The Superintendence of Competition annually publishes the institutional work report that includes a section on mergers, that includes general statistics. Available at: https://www.sc.gob.sv/index.php/biblioteca-de-publicaciones-institucionales/</p>

17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	Only public documents or information.
B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	Since 2006, the SC has signed several cooperation agreements with peers that overall allow for technical assistance, cooperation and the exchange of public information, in accordance with the respective agreement. However, its scope is general as well as the matters covered (ie. Those are not negotiated specifically for an activity, for instance merger review). This agreements can be found at (Spanish only) https://www.sc.gob.sv/index.php/abogacia/convenios/ It must be clarified national and international agreements (with other competition agencies) are uploaded on the same link (https://www.sc.gob.sv/index.php/biblioteca-de-convenios/)
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.	No experience
D. Is the agency able to exchange information or documents with other domestic regulators?	Yes, but only public information.
18.Sanctions/penalties	
A. What are the sanctions/penalties for: i) failure to file a notification;	i. A fine with a maximum of five thousand monthly urban minimum wages in the industry sector, as of today, equal to US\$ 1,520,850.00. Also, according to article 38 paragraph 2 of the Competition Law, if the infringement is particularly serious, the fine may be up to the greater of: (i) up to 6% of a firm's total

<p>ii) incorrect/misleading information in a notification;</p> <p>iii) failure to comply with information requests;</p> <p>iv) failure to observe a waiting period/suspension obligation;</p> <p>v) breach of interim measures;</p> <p>vi) failure to observe or delay in implementation of remedies;</p> <p>vii) implementation of transaction despite the prohibition from the agency?</p>	<p>annual sales in El Salvador; (ii) up to 6% of a firm’s total assets in El Salvador; (iii) between two times and ten times the estimated gain resulting from the unlawful practice.</p> <p>ii. No experience, but the law dictates that the Superintendence may impose sanctions to any economic agent that does not provide the collaboration required in any procedure. In such a case, the fine can be up to ten monthly urban minimum wages in the industry sector for each day of delay to comply, as of today, equals to US\$ 3,041.70.</p> <p>iii. A fine of up to ten monthly urban minimum wages in the industry sector for each day of delay to comply, as of today, equals to US\$ 3,041.70.</p> <p>iv. Not applicable.</p> <p>v. No experience, but when interim measures are imposed by virtue of remedies, any breach can be sanctioned with a fine of up to five thousand monthly urban minimum wages in the industry, for each day without complying with the remedies, as of today, equals to US\$ 1,520,850.00 per day.</p> <p>vi. Failure to comply with remedies imposed, or doing it in a incomplete, inaccurate, false or misleading way, is sanctioned with a fine of up to five thousand monthly urban minimum wages in the industry, for each day without complying with the remedies, as of today, equals to US\$ 1,520,850.00 per day. Regarding the delay in implementation of the remedies, the law does not estipulates a sanction but the final decision may state that if the parties delay in the implementation of remedies, the concentration can not occur.</p> <p>vii. Not experience but may apply the sanction referred in paragraph i. Also, in line with caselaw of the Administrative Chamber of the Supreme Court (although in matters non related to competition) the SC may be able to pursue a procedure to restore conditions prior to the merger.</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>i. The parties involved in the transaction.</p> <p>ii. Not applicable.</p> <p>iii. Notifying and third parties.</p> <p>iv. Not applicable.</p>

	<p>v. Not applicable.</p> <p>vi. Economic agents to whom the remedies were imposed.</p> <p>vii. Not applicable.</p>
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 Superintendence imposes the sanctions directly. But to be imposed, it must follow a prior sanctioning procedure, which can be challenged in court.
D. Are there any recent or significant fining decisions?	Yes. In 2016 an economic agent was sanctioned for implementing a concentration without been notified. The concentration was carried out through the reconfiguration of boards of directors, acquisition of shares and other acts that, interpreted altogether, led the Board of Directors of the SC to understand that a concentration had materialized and it met the thresholds to be notified. The administrative procedure has reference SC-21-O-PIC / R-2015 and the fine imposed was US \$ 950,149.80

19. Independence	
A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?	No.
B. What are the grounds for such ministerial intervention?	Not applicable.
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	Not applicable.

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	<p>In line with articles 132 and 133 of the Administrative Procedure Law, once a final decision is issued in a merger proceeding, the notifying parties have the right to file an administrative appeal before the SC's board of directors within a period of ten business days from the day following the notification; after this term, no recourse can be admitted. If the recourse is presented on time and it's admitted, the SC board of directors shall issue a decision in the following month.</p> <p>Regarding judicial review, once a final decision is issued the notifying parties have 60 business days to file a suit against the decision, or 30 business days for suit notice, before the Administrative Chamber. After the suit is submitted, the court must issue a decision on the admission or prevention of the claim, within the next 15 business days from the day following the suit file.</p> <p>If the suit is admitted, a judgment can be issued in the next 103 business days, approximately. However, this time frame may be longer due to the workload of the court. Also, the period set above does not consider appeal before the Supreme Court, in such case the timetable could be extended in 156 business days more, approximately.</p> <p>The period for judicial review indicated above considers all the stages established in the Law of contentious-administrative jurisdiction.</p>
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	<p>In judicial proceedings, the protection of confidential information is subject to the fact that the Superintendence indicates which information is public or confidential. For this matter all the file is sent in separate pieces with such classification, moreover the file is sent along with a statement warning about the confidential contents thereof so that the judicial authorities take appropriate measures.</p>
C. Are there any limitations on the time during which an appeal may be filed?	<p>As stated above, once a final decision is issued in a merger proceeding, the notifying parties have the right to fill an administrative appeal before the SC's board of directors within a</p>

	period of ten business days from the day following the notification, and 60 business days to fill a suit before the Administrative Chamber, or 30 business days for a suit notice.
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21. Additional filings	
A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	Mergers decisions involving economic agents subject to control of any other sectoral regulators are binding for these regulators. Also, apart from the competition authority clearance, sometimes in mergers on the financial or telecommunication industry additional clearances of the sectoral regulator might be required, but this is subject to the type of transaction.

22. Closing Deadlines	
A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	The period in which the parties must close the transaction and its possible extension is established in the final decision.

23. Post Merger review of transactions	
A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	No.
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?	No.