

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Kuwait

Date

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

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

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

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]
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Statutory Laws	
A. Notification provisions	Competition protection LAW No.72 in 2020 Article number 10 ,11, 12,13,14 and 34
B. Substantive merger review Provisions	Competition protection LAW No.72 in 2020 Article (13): “The Agency shall examine the notification request mentioned in Article (12) to determine the harms and benefits of the concentration and to examine potential adverse effects on free competition in the relevant market and submit it to the Board of Directors to issue a resolution in accordance with the provisions of this Law. The Agency may utilize experts or specialist local or international companies to examine the applications referred to in Article (12) and to prepare any studies related to the work of the Agency. The Executive Regulations shall set out the terms and procedures for examining

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.

	the concentration notification requests that are according to the provisions of this Law. “
C. Implementing regulations	Due to the establish of this law Pending approval of the new executive regulations
D. Notification forms or information requirements	<p>Competition protection LAW No.72 in 2020 Article (12) “Persons participating in an economic concentration must notify the Agency prior to the completion of the concentration, if the total registered assets or annual sales in the State – as per the last annual audited accounts before the concentration – exceed total or individual limits determined by a resolution of the Board of Directors. The notification request must include a receipt for the notification fee estimated at (0.1%) of the lesser of the total paid-up capital, or of the total consolidated assets of the persons, in the State, and a maximum of One Hundred Thousand Kuwaiti Dinars.</p> <p>The Executive Regulations shall specify the application parameters and the required documents and all other documents and data that must be submitted by the concerned persons to the Agency. “</p> <p>Due to the establish of this n law Pending approval of the new executive regulations.</p>
Interpretative Guidelines and Notices	
E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	Due to the establish of this law Pending approval of the new executive regulations.
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	Due to the establish of this law Pending approval of the new executive regulations.
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	No
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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.	Only the Competition Protection Agency is the responsible to monitor mergers and acquisition according to the competition law and perspective.
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	

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>Competition protection LAW No.72 in 2020 Article NO. 10: "The Board of Directors establishes the terms and conditions for the cases considered as an economic concentration. The following cases shall be considered as economic concentrations according to the provisions of the Law:</p> <p>a- An amalgamation of two or more persons by acquisition or merger or amalgamating parts of individuals which would lead to control or increase of control.</p> <p>b- A person or group of persons gaining control directly or indirectly over a person or more</p>

	<p>wholly or partially, whether by acquiring assets, property rights, usufruct (right of use), purchase of equities or shares or obligations, or by any other means.</p> <p>c- A partnership (joint venture) between two or more persons which would lead to permanent and independent economic or commercial activity in whatever legal form or activity.”</p>
B. What is the geographic scope of transactions covered?	State of Kuwait
C. If change of control is a determining factor, how is control defined and interpreted in practice?	Due to the establish of this law Pending approval of the new executive regulations.
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?	Due to the establish of this law Pending approval of the new executive regulations.

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)]	Due to the establish of this law Pending approval of the new executive regulations.
B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for	Due to the establish of this law Pending approval of the new executive regulations.

threshold purposes? If based on control, how is control determined?	
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)?”	Due to the establish of this law Pending approval of the new executive regulations
D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?	Yes.
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)?	No
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?	No.
G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]	Competition protection LAW No.72 in 2020 Article (3) : ‘The provisions of this law shall apply to acts committed inside or outside the country in contravention of its provisions, whenever these acts prevent the freedom of the self, restrict it, or harm it in the state’.

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]	No.
I. Are current notification criteria catching relevant transactions related to digital markets?	No.

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).	Due to the establish of this law Pending approval of the new executive regulations.
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?	Not applicable
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?	Not applicable
M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].	Not applicable

5. Pre-notification	
A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].	
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	

6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	yes
B. If parties can make a voluntary merger filing when may they do so?	Not applicable
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?)	Due to the establish of this law Pending approval of the new executive regulations.
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?	Due to the establish of this law Pending approval of the new executive regulations.
E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please	Due to the establish of this law Pending approval of the new executive regulations.

describe the procedure and whether there is a maximum length of time for the extension.	
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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.).	Due to the establish of this law Pending approval of the new executive regulations.
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	Due to the establish of this law Pending approval of the new executive regulations.

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).	Due to the establish of this law Pending approval of the new executive regulations.
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]	Due to the establish of this law Pending approval of the new executive regulations.
C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]	Due to the establish of this law Pending approval of the new executive regulations.

<p>D. What information is required in case the target company is experiencing financial insolvency?</p>	<p>Due to the establish of this law Pending approval of the new executive regulations.</p>
<p>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</p>	<p>Due to the establish of this law Pending approval of the new executive regulations.</p>
<p>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</p>	<p>Due to the establish of this law Pending approval of the new executive regulations.</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>Due to the establish of this law Pending approval of the new executive regulations.</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>Due to the establish of this law Pending approval of the new executive regulations.</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>Due to the establish of this law Pending approval of the new executive regulations.</p>
<p>J. Are there different forms for different types of transactions or sectors?</p>	<p>Due to the establish of this law Pending approval of the new executive regulations.</p>

<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>	<p>Due to the establish of this law Pending approval of the new executive regulations.</p>
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<p>9. Translation</p>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>Arabic</p>
<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>In addition:</p> <p>iii) what are the categories or types of documents for which translation is required;</p>	<p>Arabic</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>	
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10. Review Periods	
<p>A. Describe any applicable review periods following notification.</p>	<p>Due to the establish of this law Pending approval of the new executive regulations.</p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>Due to the establish of this law Pending approval of the new executive regulations.</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>Due to the establish of this law Pending approval of the new executive regulations.</p>
<p>D. Is there a statutory or other maximum duration for extensions?</p>	<p>Due to the establish of this law Pending approval of the new executive regulations.</p>
<p>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</p>	<p>Due to the establish of this law Pending approval of the new executive regulations.</p>
<p>F. What are the time periods for accelerated review of non-problematic transactions, if any?</p>	<p>Due to the establish of this law Pending approval of the new executive regulations.</p>

G. If remedies are offered, do they impact the timing of the review?	Due to the establish of this law Pending approval of the new executive regulations.
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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.	
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	Due to the establish of this law Pending approval of the new executive regulations.
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)?	Due to the establish of this law Pending approval of the new executive regulations.
D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	It will be valuation of the competition law under article No.34
E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	Due to the establish of this law Pending approval of the new executive regulations.

<p>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.</p>	
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<p>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).</p>	<p>Not applicable</p>
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<p>12. Responsibility for notification / representation</p>	
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<p>A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?</p>	<p>Notification and application are submitted by the parties involved in the merger.</p>
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<p>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>Not applicable</p>
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<p>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)?</p>	<p>Yes, the parties or there lawyer representative</p>
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<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>Legal representative statements</p>
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<p>13. Filing fees</p>	
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A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]	Yes , there is a fee for the parties participating in the concentration to pay 1 of a thousand (0.01%) of the capital paid or from the value of the asset collected to the persons concerned in the country whichever is lower and maximum of KD 100,000 which equivalent to 329,490USD
B. Who is responsible for payment?	The parties involved in the concentration.
C. When is payment required?	When submitting the Notify
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	By a payment receipt.

14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	Examine the merger process, identify the market and the product market, and if there is a harm on competition and competitors participating in this market.
B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	Due to the establish of this law Pending approval of the new executive regulations.
C. What theories of harm does the agency consider in practice?	Market foreclosure .
D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?	Not applicable

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
F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?	Eventually, the agency will approve the merge , approve with remedies , or prevent the merger.
G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?	The agency provides remedies related to the market like for example, an adjustment in the types of contracts that restrict competition, or an adjustment to geographical areas not to be monopolized unilaterally.

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?	Not applicable
B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?	No
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?	No.

D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	Yes, the parties can determine which information that submitted to be confidential
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.	Not applicable
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?	There are public copies published without the confidential information.

16. Transparency	
A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.	Yes, there is an annual report that cover all the mergers economic sector . https://cpa.gov.kw/ar/pages/defaulted.aspx .
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)?	Not yet applicable
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.	Not yet applicable but it will be in the future

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]	Not yet applicable due to the newest the agency but it will be in the future
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17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	Yes.
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?	No
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.	Not applicable
D. Is the agency able to exchange information or documents with other domestic regulators?	Yes.

18.Sanctions/penalties	
A. What are the sanctions/penalties for: i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests;	Competition protection LAW No.72 in 2020 Article (34): "The Disciplinary Council can apply fines as follows: Item 2: A maximum 10% of total annual revenues of the parties to the concentration for the previous financial year for the failure to notify the Agency in accordance with Article 12 of the Law

<p>iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency?</p>	<p>item 3: A maximum 10% of total annual revenues of the parties to the concentration for the previous financial year if the notification contain incorrect/misleading information ”</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>The parties involved in the concentration.</p>
<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.</p>	<p>Yes, thro the disciplinary board</p>
<p>D. Are there any recent or significant fining decisions?</p>	<p>Not yet applicable</p>

<p>19. Independence</p>	
<p>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)?</p>	<p>No, due to the article no.14 from the competition law</p>
<p>B. What are the grounds for such ministerial intervention?</p>	<p>There is not.</p>
<p>C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]</p>	<p>There is not.</p>

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20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	Due to the establish of this law Pending approval of the new executive regulations.
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	Not applicable
C. Are there any limitations on the time during which an appeal may be filed?	

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)?	Yes.

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?	Due to the establish of this law Pending approval of the new executive regulations.

22. 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?	Not applicable
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?	Not applicable