

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

European Economic Area: EFTA Pillar

March 2006

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.

The following explanations are made available for information purposes only and do not constitute an official publication of the EFTA Surveillance Authority with legally binding effects. The official versions of the applicable texts are to be found in the EEA Agreement with amendments as published in the Official Journal of the European Union and in the EEA Supplement to the Official Journal of the European Union, as well as in the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

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

A. Notification provisions

The provisions on the notification of mergers to the EFTA Surveillance Authority are set out in the following instruments:

- Article 57 of the Agreement on the European Economic Area (the "EEA Agreement");
- Article 4 of the act referred to in point 1 of Annex XIV to the EEA Agreement (Council Regulation (EC) No 139/2004) (the "ECMR"); and
- Articles 1-5 of Chapter XIV of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (the "Surveillance and Court Agreement")

The merger review system closely resembles that of the European Communities, i.e. the ECMR and related instruments.

	<p>The EEA Agreement with its protocols and annexes and the Surveillance and Court Agreement and the EEA Supplement to the Official Journal of the European Communities are available on the website of the EFTA Secretariat:</p> <p>http://secretariat.efta.int/</p> <p>Also consult the EFTA Surveillance Authority's home page: www.eftasurv.int</p>
B. Notification forms or information requirements	Form CO, attached as Annex 9 to Protocol 4 of the Surveillance and Court Agreement.
C. Substantive merger review provisions	<p>Article 57 of the EEA Agreement.</p> <p>Article 2 of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR).</p>
D. Implementing regulations	Chapter XIV of Protocol 4 to the Surveillance and Court Agreement.
E. Interpretive guidelines and notices	<p>The EFTA Surveillance Authority has issued a Notice on the definition of the relevant market for the purposes of Competition law within the EEA (OJ L 200, 16.07.1998, p. 48 and EEA Supplement to the OJ No 28, 16.07.1998, p. 3).</p> <p>The EFTA Surveillance Authority has not issued interpretative guidelines and notices in the field of merger control. The Authority intends to apply the principles set out in the Notices of the European Commission (the "Commission") where relevant. In merger control the relevant notices are:</p> <ul style="list-style-type: none"> – Commission Notice on the concept of full-function joint ventures under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.1) – Commission Notice on the concept of a concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.5) – Commission Notice on the concept of undertakings concerned under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.14) – Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p. 25) – Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 (OJ C 68, 02.03.2001, p. 3)

	<ul style="list-style-type: none"> – Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2004/C 31/03) – Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (OJ 2005/C 56/04) – Commission Notice on Case Referral in respect of concentrations (OJ 2005/C 56/02) – Commission Notice on restrictions directly related and necessary to concentrations (OJ 2005/C 56/03) – Guidance notes attached to the notification Form CO (Appendix 9 to Protocol 4 of the Surveillance and Court Agreement): <ul style="list-style-type: none"> – Guidance note I – Calculation of turnover for insurance undertakings – Guidance note II – Calculation of turnover for joint undertakings – Guidance note III – Application of the two-thirds rule
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2. Authority or authorities responsible for merger enforcement.

<p>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</p>	<p>The EFTA Surveillance Authority, Competition and State Aid Directorate</p> <p>The EEA Agreement contains provisions on the attribution of cases between the EFTA Surveillance Authority and the European Commission in competition matters. The responsibility for handling competition cases under the EEA Agreement is shared between the Authority and the Commission (the so-called “two-pillar” system) in accordance with attribution rules contained in Articles 56 and 57 of the EEA Agreement. The Agreement is based on the “one-stop-shop” principle implying that either the Commission or the Authority, but not both, is competent to handle a case. As a result of these jurisdictional rules, the Authority has not had reason to review any merger cases to date.</p> <p>As regards merger control, Article 57(2)(a) provides that the European Commission has sole jurisdiction to take decisions in respect of concentrations with a “Community dimension” (cf. Article 1(1) of the ECMR). Such cases may also have a potential impact in the EFTA States. Where the Commission handles cases pursuant to its competence under the merger control regime of the EEA Agreement, the Authority participates in proceedings related to cases (known as “mixed cases”) that are covered by the co-operation rules of the EEA Agreement.</p>
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	<p>Protocol 24 to the EEA Agreement sets out the criteria for determining when these rules apply.</p> <p>Moreover, Article 57(2)(b) of the EEA Agreement provides that the EFTA Surveillance Authority is competent to review concentration cases where two conditions are met. First, the matter must not have a “Community dimension”, and second, the matter must have an “EFTA dimension”: the relevant thresholds are described in Section 4.A. below.</p> <p>The EFTA Surveillance Authority has exclusive merger control jurisdiction for concentrations with an EFTA dimension (see Article 21 of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement).</p> <p>Moreover, cases may be referred to the EFTA Surveillance Authority by one or more EFTA States pursuant to Article 22 of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement. In turn, the EFTA Surveillance Authority can refer or partially refer cases to the competent authorities of the EFTA States upon their request (see Article 9).</p> <p>In addition, pursuant to Articles 4(4) and 4(5) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, notifying parties may request a transfer of jurisdiction either from or to the EFTA Surveillance Authority prior to notification.</p> <p>Rules on referral of cases from the European Commission to the EFTA States and vice versa are set out in Article 6 of Protocol 24 to the EEA Agreement.</p>
<p>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</p>	<p>EFTA Surveillance Authority Competition and State Aid Directorate Rue Belliard 35 B-1040 Brussels Belgium</p> <p>Tel: (+32)(0)2 286 18 11 / Fax: (+32)(0)2 286 18 00</p> <p>E-mail: registry@eftasurv.int / Website: http://www.eftasurv.int</p>
<p>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</p>	<p>Yes. The EFTA Surveillance Authority encourages notifying parties to enter into pre-notification contacts with the Competition and State Aid Directorate.</p> <p>Please send a fax or an email with your query to the Authority, addressed to the Competition and State Aid Directorate</p>

3. Covered transactions

<p>A. Definitions of potentially covered transactions (i.e., concentration or merger)</p>	<p>Article 3 of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR) contains provisions concerning control and the acquisition of undertakings.</p> <p>Pursuant to Article 3(1) of the ECMR, a concentration shall be deemed to arise where:</p> <ul style="list-style-type: none"> (a) two or more previously independent undertakings merge; or (b) one or more persons already controlling at least one undertaking, or one or more undertakings, acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings. <p>Pursuant to Article 3(4) of the ECMR, the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of Article 3(1)(b).</p> <p>The EFTA Surveillance Authority will take account of applicable Commission notices, cf 1/E.</p>
<p>B. If change of control is a determining factor, how is control defined?</p>	<p>Pursuant to Article 3(3) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR) control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:</p> <ul style="list-style-type: none"> (a) ownership or the right to use all or part of the assets of an undertaking; or (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking. <p>Article 3(5) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR) contains specific provisions concerning the circumstances under which a concentration shall not be deemed to arise.</p> <p>The EFTA Surveillance Authority will take account of applicable Commission notices, cf 1/E.</p>
<p>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</p>	<p>Yes, provided the transaction is a concentration and has a Community or an EFTA dimension within the meaning of Articles 1 and 3 of the act referred to in point 1 of Annex XIV to the EEA Agreement (ECMR).</p>
<p>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production</p>	<p>Yes. Article 3(4) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR) provides that the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration</p>

joint ventures)?	<p>within the meaning of the said act.</p> <p>The EFTA Surveillance Authority also takes account of applicable Commission notices, cf 1/E.</p>
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4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>Article 57(2)(b) of the EEA Agreement provides that the EFTA Surveillance Authority is competent to review concentration cases which satisfy two requirements. First, the matter <u>must not</u> have a “Community dimension” (see Article 1 of the ECMR), and, second, the matter <u>must</u> have an “EFTA dimension”.</p> <p>An “EFTA dimension” is established when the turnover thresholds set out in Article 1 of the ECMR (cf. Annex XIV of the EEA Agreement) are satisfied within the EFTA States that are parties to the EEA Agreement (currently Iceland, Liechtenstein and Norway). It should be noted that it is not correct to treat the thresholds as applying in respect of the EEA as a whole: Article 57 of the EEA Agreement only covers situations involving a Community dimension and/or an EFTA dimension.</p> <p>An EFTA dimension is defined as follows:</p> <ul style="list-style-type: none"> a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 billion; and b) the aggregate EFTA-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million, <p>unless each of the undertakings concerned achieves more than two-thirds of its aggregate EFTA-wide turnover within one and the same EFTA State.</p> <p>A concentration that does not meet these thresholds has an EFTA dimension where:</p> <ul style="list-style-type: none"> a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2.5 billion; b) in each of at least three EFTA States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million; c) in each of at least three EFTA States included for the purpose of point b), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and d) the aggregate EFTA-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million; <p>unless each of the undertakings concerned achieves more than two-thirds of its aggregate EFTA-wide turnover within one and the</p>
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<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>same EFTA State.</p> <p>Pursuant to Article 5(4) and(5) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR), the aggregate turnover of an “undertaking concerned” shall be calculated by adding together the respective turnovers of the following:</p> <ul style="list-style-type: none"> (a) the undertaking concerned; (b) those undertakings in which the undertaking concerned, directly or indirectly: <ul style="list-style-type: none"> (i) owns more than half the capital or business assets, or (ii) has the power to exercise more than half the voting rights, or (iii) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or (iv) has the right to manage the undertakings' affairs; (c) those undertakings which have in the undertaking concerned the rights or powers listed in (b); (d) those undertakings in which an undertaking as referred to in (c) has the rights or powers listed in (b); (e) those undertakings in which two or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b). <p>Where undertakings concerned by the concentration jointly have the rights or powers listed in paragraph (b), in calculating the aggregate turnover of the undertakings concerned:</p> <ul style="list-style-type: none"> (a) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them, as set out in paragraph (b) to (e); (b) account shall be taken of the turnover resulting from the sale of products and the provision of services between the joint undertaking and any third undertakings. This turnover shall be apportioned equally amongst the undertakings concerned. <p>Pursuant to Article 5(2) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR):</p> <ul style="list-style-type: none"> – Where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the subject of the concentration shall be taken into account with regard to the seller or sellers. – However, two or more transactions within the meaning of the first subparagraph which take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the last
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	<p>transaction.</p> <p>The EFTA Surveillance Authority will take account of applicable Commission notices, cf 1/E.</p>
<p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>No.</p>
<p>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)?</p>	<p>The thresholds relate to turnover in the preceding financial year, cf Article 5(1) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR) (see Section 4.E below).</p> <p>The EFTA Surveillance Authority will take account of applicable Commission notices.</p>
<p>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?</p>	<p>Pursuant to Article 5(1) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR):</p> <ul style="list-style-type: none"> – Aggregate turnover shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and value added tax and other taxes directly related to turnover. – The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings that belong to one and the same group. – Turnover, in the Community or in an EC Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that EC Member State as the case may be. The same shall apply as regards turnover in the territory of the EFTA States as a whole or in an EFTA State. <p>The EFTA Surveillance Authority will take account of applicable Commission notices</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>The EFTA Surveillance Authority suggests relying on the exchange rates published by the European Central Bank, to the extent applicable.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the</p>	<p>The stated tests apply to worldwide figures, Community-wide and EFTA-wide figures and figures relating to EC Member States and EFTA States.</p>

jurisdiction, or both?	
H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	No.
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 "effects" test?	The thresholds laid down in Article 1 of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR) determine jurisdictional nexus as far as the obligation to notify is concerned (for details regarding these thresholds, please refer to Section 4.A above).
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	<p>Pursuant to Article 5(1), second subparagraph, of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR), turnover, in the Territory of the EFTA States as a whole or an EFTA State, shall comprise products sold and services provided to undertakings or consumers, in the territory of the EFTA States as a whole or an EFTA State as the case may be.</p> <p>Paragraph 45 of the Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings and the Guidance Notes attached to the notification Form CO clarify "that the location of the turnover is determined by the location of the customer at the time of the transaction".</p>
K. If market share tests are used, are there guidelines for calculating market shares?	The jurisdiction of the EFTA Surveillance Authority does not depend on a market share test.
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)?	<p>Pursuant to Article 5(3) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR), the following shall be used in place of turnover:</p> <p>(a) for credit institutions and other financial institutions, the sum of the following income items:</p> <p>(i) interest income and similar income</p> <p>(ii) income from securities:</p>

	<ul style="list-style-type: none"> – income from shares and other variable yield securities, – income from participating interests, – income from shares in affiliated undertakings; <p>(iii) commissions receivable;</p> <p>(iv) net profit on financial operations; and</p> <p>(v) other operating income.</p> <p>The turnover of a credit or financial institution in the Community or in an EC Member State shall comprise the income items, as defined above, which are received by the branch or division of that institution established in the Community or the EC Member State in question as the case may be. The same shall apply as regards turnover of a credit or financial institution in the territory of the EFTA States as a whole or in an EFTA State;</p> <p>(b) for insurance undertakings, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums; as regards Article 1(2)(b) and (3)(b), (c) and (d) and the final part of Article 1(2) and (3), gross premiums received from Community residents and from residents of one EC Member State respectively shall be taken into account. The same shall apply as regards gross premiums received from residents in the territory of the EFTA States as a whole and from residents in one EFTA State, respectively.</p> <p>The EFTA Surveillance Authority will also take account of the Commission Notice on calculation of turnover under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings and the Guidance Notes attached to the notification Form CO.</p>
<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>Yes. This is a result of the fact that the EEA Agreement does not cover trade in all products.</p> <p>Article 8(3) of the EEA Agreement specifies the product coverage with reference to the Harmonized Commodity Description and Coding System (“HS”). The EEA Agreement, including its provisions on merger control, do not apply to the products belonging to HS Chapters 1-24, save for a certain number of processed agricultural products enumerated in Tables I and II of Protocol 3 to the EEA Agreement.</p> <p>The Authority consequently has no power to apply the EEA competition rules in respect of products falling outside the scope of the EEA Agreement. Such products are either governed by national rules of the EFTA States or by the possible extraterritorial application of the EU competition rules.</p>

<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>No.</p>
<p>O. Does the agency have the authority to review transactions that fall below the thresholds?</p>	<p>Cases may be referred to the EFTA Surveillance Authority by one or several EFTA States pursuant to Article 22 of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement. In turn, the EFTA Surveillance Authority can refer or partially refer cases to the competent authorities of the EFTA States upon their request (see Article 9 of the same chapter).</p> <p>In addition, pursuant to Articles 4(4) and 4(5) of Chapter XIII to the Surveillance and Court Agreement, notifying parties may request a transfer of jurisdiction either from or to the EFTA Surveillance Authority prior to notification.</p>

5. Notification requirements and timing of notification

<p>A. Is notification mandatory pre-merger?</p>	<p>Yes.</p>
<p>B. Is notification mandatory post-merger?</p>	<p>No.</p>
<p>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</p>	<p>No. The EFTA Surveillance Authority has jurisdiction only to review concentrations which do not have a Community dimension as set out in Article 1 of the ECMR and which do have an EFTA dimension as described in Section 4.1 above.</p> <p>However, pursuant to Article 4(5) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, parties may in certain circumstances request that the EFTA Surveillance Authority assume jurisdiction over a concentration which does not initially fall within its jurisdiction.</p>
<p>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?)?</p>	<p>Pursuant to Article 4(1) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR), concentrations with a Community or an EFTA dimension shall be notified to the competent authority under Article 57 of the EEA Agreement prior to implementation and following the conclusion of the agreement, or the announcement of the public bid, or the acquisition of a controlling interest.</p> <p>Notification is also possible where the undertakings concerned satisfy the competent authority of their intention to enter into an</p>

	<p>agreement for a proposed concentration and demonstrate to the competent authority that their plan for that proposed concentration is sufficiently concrete, for example on the basis of an agreement in principle, a memorandum of understanding, or a letter of intent signed by all undertakings concerned, or, in the case of a public bid, where they have publicly announced an intention to make such a bid, provided that the intended agreement or bid would result in a concentration falling within its jurisdiction.</p>
<p>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?</p>	<p>No.</p>
<p>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 extension.</p>	<p>Not applicable.</p>

6. Simplified procedures

<p>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.).</p>	<p>The EFTA Surveillance Authority has not issued guidelines or notices on any special procedures for notifying transactions that do not raise competition concerns. The Authority will, however, follow the principles of the Commission notice on a simplified procedure if applicable. Point C of Appendix 9 to Protocol 4 to the Surveillance and Court Agreement also provides for Form CO to be submitted in short form if certain criteria are met.</p>
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7. Documents to be submitted

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</p>	<p>Pursuant to Article 3 of Chapter XIV of Protocol 4 to the Surveillance and Court Agreement, notifications shall contain the information, including documents, requested by Form CO.</p>
<p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p>	<p>Pursuant to Article 2(3) of Chapter XIV of Protocol 4 to the Surveillance and Court Agreement, the supporting documents shall be either originals or copies of the originals; in the latter case, the notifying parties shall confirm that they are true and complete.</p>
<p>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?</p>	<p>Pursuant to Article 3(2) of Chapter XIV of Protocol 4 to the Surveillance and Court Agreement, the EFTA Surveillance Authority may dispense with the obligation to provide any particular information, including documents, requested by form CO where the EFTA Surveillance Authority considers that such information is not necessary for the examination of the case.</p>

8. Translation

<p>A. In what language(s) can the notification forms be submitted?</p>	<p>Pursuant to Article 2(4) of Chapter XIV of Protocol 4 to the Surveillance and Court Agreement, notifications shall be in one of the official languages of an EFTA State or of the Community.</p>
<p>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</p>	<p>Pursuant to Article 2(4) of Chapter XIV of Protocol 4 to the Surveillance and Court Agreement, if undertakings choose to notify the EFTA Surveillance Authority in a language which is not one of the official languages of the States falling within the competence of the Authority or a working language of the Authority, they shall simultaneously supplement all documentation with a translation into an official language or a working language of the Authority. The language which is chosen for the translation shall determine the language in which the undertakings may be addressed by the Authority.</p> <p>As mentioned above in Section 7.C, Article 3(2) of Chapter XIV of Protocol 4 to the Surveillance and Court Agreement provides that the EFTA Surveillance Authority may dispense with the obligation to provide any particular information.</p>

are allowed in lieu of complete translations.

9. Review periods

A. Describe any applicable review periods following notification.

Article 10 of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement defines the review periods. The preliminary review period is commonly referred to as “Phase I investigation” and the review conducted following the initiation of proceedings is referred to as a “Phase II investigation”.

Pursuant to Article 10(1), the Phase I decision must be taken within 25 working days at most. That period shall begin on the working day following that of the receipt of a notification or, if the information to be supplied with the notification is incomplete, on the working day following that of the receipt of the complete information. That period shall be increased to 35 days if the EFTA Surveillance Authority receives a request from an EFTA State that the matter be referred to that EFTA State, or where, after notification of a concentration, the undertakings concerned submit commitments which are intended by the parties to form the basis for a conditional clearance decision.

Article 10(2) provides that decisions taken pursuant to Article 8 (“Phase II” decisions) must be taken as soon as it appears that the serious doubts which justified the initiation of proceedings have been removed, particularly as a result of modifications made by the undertakings concerned.

Pursuant to Article 10(3), prohibition decisions concerning notified concentrations must as a main rule be taken within not more than 90 working days of the date on which proceedings are initiated (date of the “Phase I” decision to initiate proceedings). That period shall be increased to 105 working days where the undertakings concerned offer commitments with a view to rendering the concentration compatible with the functioning of the EEA Agreement, unless these commitments have been offered less than 55 working days after the initiation of proceedings. These periods may also be extended by up to 20 working days at the notifying parties’ request or with their agreement.

B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?

The review periods are the same for all types of transactions. However, as described in Section 10.A, the suspension obligation has a different effect for public tenders.

C. What are the procedures for an extension of the review periods, if any (e.g., suspended by

The possibilities of extending the review periods are discussed at 9.A above.

<p>requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>There are no formal procedures for accelerated review. However, a short Form CO may be submitted if certain criteria are met, cf 6 above. In addition, the Authority will follow the principles of the Commission notice on a simplified procedure if applicable, cf 6 above.</p>

10. Waiting periods / suspension obligations

<p>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.</p>	<p>Article 7(1) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement provides that a concentration shall not be implemented either before its notification or until it has been declared compatible with the common market either pursuant to:</p> <ul style="list-style-type: none"> – a decision made pursuant to the provisions described above in Section 9.A; or – on the basis of a presumption set forth in Article 10(6). <p>Pursuant to Article 7(2) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, the suspension obligation discussed above shall not prevent the implementation of a public bid, or a series of transactions on the stock exchange, provided:</p> <ul style="list-style-type: none"> – the concentration is notified without delay; and – the acquirer does not exercise the voting rights attached to the securities in question <i>or</i> does so only to maintain the full value of those investments and on the basis of a derogation granted by the EFTA Surveillance Authority (see Section 10.B below).
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>Pursuant to Article 7(4) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, the EFTA Surveillance Authority may, on request, grant derogation from the obligations to suspend the concentration. A request to grant derogation must be reasoned and derogations may be applied for and granted at any time, even before notification or after the transaction.</p> <p>In deciding on the request, the EFTA Surveillance Authority shall <i>inter alia</i> take into account the effects of the suspension on one or more undertakings concerned by a concentration or on a third party and the threat to competition posed by the concentration.</p>

	Derogations may be made subject to conditions and obligations in order to ensure conditions of effective competition.
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	<p>The applicable waiting periods apply to the proposed concentration as a whole.</p> <p>Derogations have been discussed above in Section 10.B.</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes. Article 7(4) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement provides that where the EFTA Surveillance Authority has not taken a decision in accordance with Articles 6(1)(b),(c), 8(1), (2) or (3) within the time limits discussed in Section 9.A, the concentration shall be deemed to have been declared compatible with the functioning of the EEA Agreement, without prejudice to Article 9.</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>The possibilities that the Authority and notifying parties have to extend the review periods were discussed above at 9.A; no such possibilities exist for third parties. Since the suspension obligation described at 10.A applies during the entire review, an extension of the review period will also entail an extension in time of the suspension obligation.</p>
<p>F. Describe any procedures for obtaining early</p>	<p>The procedures for derogations from the suspension obligation are described in Section 10.B above.</p> <p>Early termination of the review period, and hence the suspension</p>

<p>termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>obligation, in Phase II investigations (only) are discussed above in Sections 9.A and 9.D.</p>
<p>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).</p>	<p>Pursuant to Article 7(2) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, the obligation to suspend the concentration laid down in Article 7(1) shall not prevent the implementation of a public bid or of a series of transactions in securities provided that the concentration is notified to the EFTA Surveillance Authority and the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments based on a derogation granted by the EFTA Surveillance Authority.</p> <p>Moreover, Article 7(3) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, the EFTA Surveillance Authority may, on request, grant a derogation from the suspension obligations imposed in paragraphs 1 or 2 of Article 7. The request to grant a derogation must be reasoned. In deciding on the request, the EFTA Surveillance Authority shall take into account inter alia the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration. Such a derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition. A derogation may be applied for and granted at any time, be it before notification or after the transaction.</p>

11. Responsibility for notification / representation

<p>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</p>	<p>Article 4(2) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR) provides that a concentration which consists of a merger or in the acquisition of joint control shall be notified jointly by the parties to the merger or by those acquiring joint control, as the case may be. In all other cases, the notification shall be effected by the person or undertaking acquiring control of the whole or parts of one or more undertakings.</p>
<p>B. Do different rules apply to public tenders (e.g. open market stock purchases</p>	<p>No. Nonetheless, in pre-notification discussions, notifying parties can approach the EFTA Surveillance Authority to discuss any issues of unavailability of information on the target company, for example in hostile bid situations.</p>

or hostile bids)?	
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)?	Article 1(3) of Chapter XIV of Protocol 4 to the Surveillance and Court Agreement provides that joint notifications should be submitted by a joint representative who is authorised to transmit and to receive documents on behalf of all notifying parties.
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?	Article 1(2) of Chapter XIV of Protocol 4 to the Surveillance and Court Agreement provides that where notifications are signed by representatives of persons or of undertakings, such representatives shall produce written proof that they are authorised to act. There are no special rules for representatives or firms located outside the EEA.

12. Filing fees

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)?	There are no filing fees for notifications to the EFTA Surveillance Authority.
B. Who is responsible for payment?	Not applicable.
C. When is payment required?	Not applicable.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	Not applicable.

13. Confidentiality

<p>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?</p>	<p>In cases where the EFTA Surveillance Authority is competent to handle a case under Article 57 of the EEA Agreement, Article 4(3) of the act referred to in point 1 of Annex XIV to the EEA Agreement (the ECMR) provides that where the Authority finds that a notified concentration falls within the scope of the act, it shall publish the fact of the notification, at the same time indicating the names of the parties, the nature of the concentration and the economic sectors involved. The Authority takes account of the legitimate interest of undertakings in the protection of their business secrets.</p>
<p>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</p>	<p>Article 18(3) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement provides that the Authority shall grant access to file to at least the parties directly involved, subject to the legitimate interest of undertakings in the protection of their business secrets.</p> <p>Article 13(3) of Chapter XIV of Protocol 4 to the Surveillance and Court Agreement provides that access to file should be granted when the Authority has addressed to the notifying parties a Statement of Objections, for the purpose of enabling them to exercise their rights of defense.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>As a general rule, third parties do not have access to notification materials. Article 13(3) of Chapter XIV of Protocol 4 to the Surveillance and Court Agreement provides that, insofar as necessary for the purposes of preparing their observations, the Authority shall, upon request, also give access to the file to the "other involved parties" (such as the seller and the company which is the target of the concentration) who have been informed of the Authority's objections.</p> <p>Pursuant to Article 19(1) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, the Authority shall transmit to the competent authorities of the EFTA States copies of notifications within three working days and, as soon as possible, copies of the most important documents lodged with or issued by the Authority. Such documents shall include commitments which are intended by the parties to form the basis for a Phase I or Phase II conditional clearance decision.</p> <p>Article 17(1) Chapter XIII of Protocol 4 to the Surveillance and Court Agreement provides that, without prejudice to Article 9 of Protocol 24 to the EEA Agreement, information acquired as a result of the investigation of a merger case shall be used only for the purposes of that case</p> <p>Article 17(2) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement states that, without prejudice to Article 4(3) of the act referred to in point 1 of Annex XIV to the EEA Agreement</p>

	(Regulation (EC) No 139/2004) and of Articles 18 and 20 of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, the EFTA Surveillance Authority and the competent authorities of the EFTA States, their officials and other servants and other persons working under the supervision of these authorities as well as officials and civil servants of other authorities of the EFTA States shall not disclose information they have acquired through the application of Protocol 24 to the EEA Agreement, of the said act or of this Chapter of the kind covered by the obligation of professional secrecy.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	No confidential treatment shall be granted with regard to the fact of the notification. As regards notification materials, please see section B. above.
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?	Within the framework of the EEA Agreement and the Surveillance and Court Agreement, the EFTA Surveillance Authority exchanges information with the European Commission and with the EFTA States.
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?	No.

14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	The EFTA Surveillance Authority publishes an Annual Report which covers Competition matters. The Annual report is available at the Authority's website: http://www.eftasurv.int/
B. Does the agency publish press releases related to	The EFTA Surveillance Authority issues press announcements on policy (including merger policy), enforcement actions and decisions. To date, the agency has not reviewed any

<p>merger policy or investigations?</p>	<p>concentration under the merger control rules of the EEA Agreement.</p> <p>The EFTA Surveillance Authority has issued “Information Guidelines” which explains its information policy, including on, for instance, openness and transparency and limits to such openness.</p> <p>The Authority’s press announcements and the Information Guidelines are available at the Authority’s website:</p> <p>http://www.eftasurv.int/</p>
<p>C. Does the agency publish decisions on why it cleared / blocked a transaction?</p>	<p>Pursuant to Article 20 of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, the EFTA Surveillance Authority shall publish the decisions which it takes pursuant to Article 8(1) to (6), 14 and 15 with the exception of provisional decisions taken in accordance with Article 18(2) together with the opinion of the Advisory Committee in the EEA Section of the Official Journal of the European Union.</p>

15. Sanctions/penalties

<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</p>	<p>The powers of the EFTA Surveillance Authority to impose fines are set out in Article 14 of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement.</p> <p>Article 14(1) provides that the EFTA Surveillance Authority by decision may impose fines not exceeding 1% of the aggregate turnover of the undertaking or association of undertakings concerned where, intentionally or negligently</p> <ul style="list-style-type: none"> (a) they supply incorrect or misleading information in a submission, certification, notification or supplement thereto; (b) they supply incorrect or misleading information in response to a simple information request; (c) in response to an information request made by decision, they supply incorrect, incomplete or misleading information or do not supply information within the required time limit; (d) they produce the required books or other records related to the business in incomplete form during on-site inspections, or refuse to submit to an inspection ordered by decision; (e) in response to a question asked during an on-site inspection to any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject matter and purpose of the inspection <ul style="list-style-type: none"> – they give an incorrect or misleading answer,
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	<ul style="list-style-type: none"> – they fail to rectify within a time limit set by the EFTA Surveillance Authority an incorrect, incomplete or misleading answer given by a member of staff, or – they fail or refuse to provide a complete answer on facts relating to the subject matter and purpose of an on-site inspection ordered by a decision; <p>(f) seals affixed during an on-site inspection by officials or other accompanying persons authorized by the EFTA Surveillance Authority have been broken.</p> <p>Article 14(2) provides that the Authority by decision may impose fines not exceeding 10% of the aggregate turnover of the undertakings concerned or the persons acquiring control where, either intentionally or negligently, they:</p> <ul style="list-style-type: none"> (a) fail to duly notify a concentration prior to its implementation, unless they are expressly authorized to do so by the rules described above in Section 10; (b) implement a concentration in breach of the suspension obligation; (c) implement a concentration declared incompatible with the functioning of the EEA Agreement or do not comply with any measure ordered by decision to restore effective competition; (d) fail to comply with a condition or an obligation imposed by decision. <p>Other consequences:</p> <p>Pursuant to Articles 6(3) and 8(4) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, the EFTA Surveillance Authority may revoke a clearance decision it has taken where this decision is based on incorrect information for which one of the undertakings is responsible or where this decision has been obtained by deceit, or where the undertakings concerned commit a breach of an obligation attached to the decision.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>The persons referred to in Article 3(1)(b) of the act referred to in point 1 of Annex XIV to the EEA Agreement (ECMR), undertakings or associations of undertakings.</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>The EFTA Surveillance Authority can impose the sanctions discussed in Section 15.A above directly.</p>

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 legality of decisions adopted by the EFTA Surveillance Authority can be reviewed by the EFTA Court pursuant to Article 108 of the EEA Agreement, the Surveillance and Court Agreement Articles 27 - 41 and Protocol 5 of the Surveillance and Court Agreement on the Statute of the EFTA Court.

The procedure before the EFTA Court shall consist of two parts: written and oral. As soon as a case is pending before the EFTA Court it shall notify the Governments of the EFTA States, the EFTA Surveillance Authority, the Community and the EC Commission. Within two months of this notification, the EFTA States, the EFTA Surveillance Authority, the Community and the EC Commission shall be entitled to submit statements of case or written observations to the EFTA Court. There is no explicit timetable for judicial review or other rights of appeal/review of decisions on merger notification taken by the EFTA Surveillance Authority, but an appeal to the EFTA Court must be filed within a period of two months, cf Article 36(3) of the Surveillance and Court Agreement.

Pursuant to Article 10(5) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement, where the EFTA Court annuls the whole or parts of an EFTA Surveillance Authority decision in merger notification, the periods laid down in Chapter XIII of Protocol 4 to the Surveillance and Court Agreement shall start again from the date of the judgment.

Further information about the EFTA Court is available on the Court's website:

<http://www.eftacourt.lu/>

17. Additional filings

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

Article 57(2)(b) of the EEA Agreement provides that the control of concentrations by the EFTA Surveillance Authority is without prejudice to the competence of the EC Member States.

Article 21(4) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement provides that the EFTA States may take appropriate measures to protect legitimate interests other than those taken into consideration by the said act and Chapter XIII of Protocol 4 to the Surveillance and Court Agreement and compatible with the general principles and other provisions as provided for, directly or indirectly, under the EEA Agreement.

Public security, plurality of the media and prudential rules shall be regarded as such legitimate interests.

	Any other public interest must be communicated to the EFTA Surveillance Authority by the EFTA State concerned and shall be recognized by the Authority after an assessment of its compatibility with the general principles and other provisions as provided for, directly or indirectly, under the EEA Agreement before the measures referred to above may be taken. The Authority shall inform the EFTA State concerned of its decision within one month of that communication.
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18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?	No.
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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?	<p>Articles 6(3) and 8(6) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement provides that the EFTA Surveillance Authority may revoke a clearance/conditional clearance decision where:</p> <p>(a) the decision is based on incorrect information for which one of the undertakings is responsible or where it has been obtained by deceit; or</p> <p>(b) the undertakings concerned commit a breach of an obligation attached to the decision.</p> <p>There is no time limit prescribed for the adoption of revocation decisions.</p>
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