MERGER NOTIFICATION AND PROCEDURES TEMPLATE

South Africa

May 2009

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.

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

A. Notification provisions	The Competition Act, No 89 of 1998, as amended (the "Competition Act or Act"). Chapter 3 deals with merger control. See: http://www.comptrib.co.za/legislation/theact.htm.
B. Notification forms or information requirements	The Competition Commission Rules, enacted pursuant to the Act, specify the notification forms in terms of which parties are required to submit information. These forms are: (i) A Merger Notice; Form CC4(1) and (ii) A Statement of Merger Information; Form CC4 (2). The Competition Commission's merger forms can be found at www.compcom.co.za/forms.asp.
C. Substantive merger review provisions	Competition Act, Section 12 A. The substantive test is a substantial prevention or lessening of competition (see sections 12A. (1) and 12A. (2) of the Act). Additionally, there is also a public interest test that is limited to four issues (see section 12A. (3) of the Act.)
D. Implementing regulations	Competition Commission Rules, Part 6 ("Merger Procedures"). Where proceedings are before the Competition Tribunal additionally the Competition Tribunal Rules, Division C ("Merger Proceedings"). The Competition Commission's Rules can be found at www.compcom.co.za and the Competition Tribunal's Rules can be found at www.comptrib.co.za/legislation/Tribunal/Rules.htm.
E. Interpretive guidelines and notices	The Competition Commission has not issued any merger guidelines at this stage. However, it makes available nonbinding advisory opinions to merging parties on request. These advisory opinions are not made public. However, the Competition Commission issues practitioners' notes from time to time on specific topics. A number of these notes have been published. See: http://www.compcom.co.za/resources/publications_newsletters_practioner.asp

2. Authority or authorities responsible for merger enforcement.	
A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	Two separate bodies, i.e. the Competition Commission and the Competition Tribunal, are responsible for merger enforcement. The Competition Commission exercises investigative functions in respect of so-called "large" mergers and makes recommendations to the Competition Tribunal regarding the said mergers. The Competition Commission exercises both investigative and adjudicative functions in respect of so-called "small" and "intermediate" mergers. See 4 below, for the definition of small, intermediate and large mergers). Also see section 11 of the Competition Act. The Competition Tribunal exercises adjudicative functions in respect of "large" mergers. The Tribunal also has appellate jurisdiction ion respect of decisions by the Competition Commission regarding "small" and "intermediate" mergers The Competition Appeal Court exercises appellate jurisdiction in respect of decisions of the Competition Tribunal.
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	Competition Commission: Block C, Mulayo Building, 77 Meintjies Street, Sunnyside, Pretoria. Private Bag X 23, Lynnwood Ridge, 0040 Telephone: 027 12 394 3200 / 3332 Facsimile: 027 12 394 0166 / 4332 ccsa@compcom.co.za http://www.compcom.co.za Language: English Competition Tribunal: Telephone: 027 12 394 3300 Facsimile: 027 12 394 0169 ctsa@comptrib.co.za http://www.comptrib.co.za Private Bag X24, Sunnyside, 0132 Language: English Competition Appeal Court: Telephone: 027 12 394 3355 Facsimile: 027 12 394 0169 cac@comptrib.co.za
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	Yes. The Manager Mergers & Acquisitions Division Competition Commission Telephone: 027 12 394 3295

3. Covered transactions	
A. Definitions of potentially covered transactions (*i.e.*, concentration or merger)	Section 12 of the Competition Act defines a merger as: (1)(a) For purposes of this Act, a merger occurs when one or more firms directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another firm. (b) A merger contemplated in paragraph (a) may be achieved in any manner, including through- (i) purchase or lease of the shares, an interest or assets of the other firm in question; or (ii) amalgamation or other combination with the other firm in question.
B. If change of control is a determining factor, how is control defined?	Section 12 of the Competition Act provides that control may be achieved in any manner, including through purchase or lease of shares, an interest or assets of the other firm in question or amalgamation or other combination with the other firm in question. However, the central issue that is considered by the competition authorities is whether the acquiring firm has in fact acquired control over the target firm(s), described as the transferred firm(s) in the Rules. Section 12 (2) then sets out the various examples of situations where a firm may be deemed to have acquired control in terms of the Act. In terms of section 12(2) of the Competition Act, a person controls a *firm* if that person— (a) beneficially owns more than one half of the issued share capital of the *firm*; (b) is entitled to vote a majority of the votes that may be cast at a general meeting of the *firm*, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person; (c) is able to appoint or to veto the appointment of a majority of the directors of the *firm*; (d) is a holding company, and the *firm* is a subsidiary of that company as contemplated in section 1(3)(a) of the Companies Act, 1973 (Act No. 61 of 1973); (e) in the case of a *firm* that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust; (f) in the case of a close corporation, owns the majority of members' *interest* or controls directly or has the right to control the majority of members' votes in the close corporation; or

	(g) has the ability to materially influence the policy of the *firm* in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f).
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	Yes. Under Section 12 of the Competition Act, partial stock acquisitions may trigger the notification requirements if the acquiring firm gains de facto control of the acquired firm. In order to determine whether a partial stock acquisition constitutes a merger as defined in the Competition Act, the Commission takes into account inter alia the structure of the shareholding within the target company, voting pool arrangements, shareholders agreements, veto rights and any other peculiar arrangements that the parties may have entered into.
D. Do the notification requirements cover joint ventures? If so, what types (*e.g.*, production joint ventures)?	Yes. Provided that the joint venture transaction satisfies the definition of a merger as articulated in the Competition Act.

4. Thresholds for notification

A. What are the general thresholds for notification?	There are two general thresholds for the determination of the notifiability of mergers. See General Notice, Notice 216 of 1009, Department of Trade and Industry published 6 March 2009. <u>"Intermediate" mergers</u> The lower threshold required to be determined in terms of section 11 of the Act is reached in respect of a merger if the value of that merger equals or exceeds both of the South African Rand values set out in paragraphs (a) and (b), below: (a) Either – (i) The combined annual turnover in, into or from the Republic of the acquiring firms and the target firms is valued below R 560 million; or (ii) The combined assets in the Republic of the acquiring firms and the target firms are valued at less than R 560 million; or (iii) The annual turnover in, into or from the Republic of the acquiring firms plus the assets in the Republic of the target firms are valued at less than R 560 million; or (iv) The annual turnover in, into or from the Republic of the target firms plus the assets in the Republic of the acquiring firms are valued at less than R 560 million. AND

	(b) Either – (i) The annual turnover in, into or from the Republic, of the target firms is less than R 80 million; or (ii) The asset value of the target firm is less than R 80 million. "Large" mergers The higher threshold required to be determined in terms of section 11 of the Act is reached in respect of a merger if the value of that merger equals or exceeds both of the values set out in paragraphs (a) and (b) below: (a) Either – (i) The combined annual turnover in, into or from the Republic of the acquiring firms and the target firms is valued at or above R 6,6 billion; or (ii) The combined assets in the Republic of the acquiring firms and the target firms are valued at or above R 6,6 billion; or (iii) The annual turnover in, into or from the Republic of the acquiring firms plus the assets in the Republic of the target firms are at or above R 6,6 billion; or (iv) The annual turnover in, into or from the Republic of the target firms plus the assets in the Republic of the acquiring firms are at or above R 6, 6 billion. (b) Either — (i) The annual turnover in, into or from the Republic, of the target firms is valued at or above R 190 million; or (ii) The asset value of the target firm is valued at or above R 190 million. "Small" mergers The provisions of the Act regarding a "small merger" apply to a merger that falls below either value of the lower threshold for "intermediate" mergers. See section 13 of the Act regarding the requirements for notification of small mergers. These mergers are not always notifiable, but parties may voluntarily file or the Competition Commission may require parties to file if the merger may substantially prevent or lessen competition or if the merger cannot be justified on public interest grounds.
B. To which entities do the	The entire acquiring family is regarded as the acquiring firm; 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?	vehicle through which the group does the acquisition is the primary acquiring firm. In order to determine whether a company is part of the group, recourse must be had to the issue of control. Section 12(2) of the Competition Act deals with the issue of control (see question 3.B. above).
C. Are the thresholds subject to adjustment: (*e.g.* annually for inflation)? If adjusted, state on what basis and how frequently.	There is no automatic adjustment of the thresholds annually or for inflation. The thresholds have been changed effective 1 April 2009.
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)?	The thresholds relate to the annual financial statements for the preceding financial year.
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?	The asset and turnover values must be calculated in accordance with South African Generally Accepted Accounting Practice ("GAAP"). Refer to the Schedule to Notice 254 of 2001, "Method of Calculation". Please refer to 4.A. above, for a detailed explanation of the calculation of asset and turnover values. The turnover threshold refers to the combined annual turnover in, into or from the Republic of the acquiring firms and the transferred firms. The assets threshold refers to the combined assets in the Republic of the acquiring firms and the transferred firms.
F. Describe methodology for calculating exchange rates.	The methodology for calculating exchange rates must be done in accordance with GAAP. The practice is that the average published exchange rate is used or the exchange rate at the date of publication of the financial statements.
G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?	The turnover thresholds are only applicable to revenue generated from, in and into South Africa. Therefore, domestic activity as well as import and export activity is included when determining annual turnover. The asset value threshold refers only to assets in South Africa.
H. Can a single party trigger the notification threshold (*e.g.*, one party's sales, assets, or market share)?	Yes. If the target firm's annual turnover or asset value exceed the thresholds for notification See 4.A. above for further details of the relevant threshold values.
I. How is the nexus to the jurisdiction determined	The parties to merger will have to generate turnover from, in and into South Africa or possess assets in South Africa that meet the

(*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?	threshold requirements. There is no requirement of local presence. Import sales into South Africa are sufficient to meet the threshold requirements.
J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	National sales are relevant. Both the location of the seller and customer is relevant.
K. If market share tests are used, are there guidelines for calculating market shares?	Not applicable. No market share related threshold is used.
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)?	No.
M. Are any sectors excluded from notification requirements? If so, which sectors?	No. However, the Commission's jurisdiction can be withdrawn in the case of bank mergers by the Minister of Finance. In such a situation the Commission may only play a role as an adviser to the Minister of Finance.
N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?	No. The Competition Act draws no distinction between local and international mergers. No party to a merger is entitled to consummate a notifiable merger prior to receiving the competition authorities' approval.
O. Does the agency have the authority to review transactions that fall	Yes. Section 13 of the Competition Act makes provision for a category

below the thresholds?	of mergers known as "small" mergers. These are transactions that fall below the minimum thresholds for "intermediate" mergers and are, therefore, generally not notifiable. However, these transactions may be notified to the Commission in two ways: (1) where the parties voluntarily file the transaction for assessment by the Competition Commission and (2) where the parties are required to notify the transaction pursuant to Section 13(3) of the Act. The Commission is entitled, within 6 months after a "small" merger is implemented, to require parties to notify in this regard only if it is of the opinion that the transaction in question (i) may substantially prevent or lessen competition or (ii) cannot be justified on public interest grounds. The Commission has also recently published guideline indicating which small mergers the Commission is likely to call on parties to notify.

5. Notification requirements and timing of notification	
A. Is notification mandatory pre-merger?	Yes. Parties are required to notify and obtain approval for a merger prior to implementation of the same. All transactions that fall within the stipulated thresholds of "intermediate" and "large" mergers must be notified to the Competition Commission. However, parties to a "small" merger are not necessarily obliged to notify their transaction unless the Competition Commission requires them to do so in terms of the Competition Act or if they voluntarily chose to notify. The thresholds for what constitutes a small merger are set out in the response to question 4.A above.
B. Is notification mandatory post-merger?	No, “intermediate’ and ‘large” mergers must be notified pre-merger. Post-merger notification would only occur where the parties implemented the transaction prior to securing the competition authorities' approval. In such a case the parties can expect an administrative fine to be imposed on them by the Competition Tribunal. Also see response to 12.A below. The issue of "small" merger notification post merger has already been discussed in 4.A. above.
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	Yes, in the case of "small" mergers – see response to 4.A. above.
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?)?	A transaction may be notified at any time prior to implementation as long as all documents required can be provided. The Rules require the parties to file their latest merger agreement in respect of the transaction. However, a memorandum of understanding has been accepted at the Commission's discretion in the past on condition that the final agreement will not alter the substance thereof.
E. Must notification be made within a specified period	No, no triggering event applies. Approval must be obtained prior

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?	to implementation.
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.	Not applicable.

6. 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 responses, etc.).	Although the Competition Commission Rules do not provide for any simplified procedures for transactions that raise no competition concerns, the Commission has published a list of categories of transactions that may be reviewed on an expedited basis at the Competition Commission's discretion. See the response to the questions below regarding review periods for a description of the criteria used to expedite the investigation of cases.

7. Documents to be submitted

A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).	The parties must provide all of the following documents: (1) the most recent version of all documents constituting the merger agreement; (2) a document assessing the transaction with respect to the competitive conditions; (3) any document including minutes, reports, presentations and summaries, prepared for the Board(s) of Directors regarding the transaction; (4) the most recent annual reports; (5) the most recent business plans; and (6) the most recent report(s) submitted to the Securities

	Regulation Panel. If any of the above documents are not available, then parties to transaction must provide a signed affidavit to this effect. The documents numbered (1) and (2) must however always be submitted. Where a required document is translated, a certificate of the translator may be requested. Also see the response to 1.B above. regarding the relevant forms that have to be submitted together with the abovementioned documents.
B. Are there any document legalization requirements (e.g., notarization or apostille)?	Affidavits need to be commissioned before a commissioner of oaths.
C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?	No.

8. Translation

A. In what language(s) can the notification forms be submitted?	Any official language of South Africa. However, English is the preferred language, since documents in other languages would have to be translated.
B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	Documents that are not in English would have to be translated. All documents must be in an official language of South Africa.

9. Review periods	
A. Describe any applicable review periods following notification.	"Intermediate" mergers Within 20 business days after all parties to an intermediate merger have fulfilled all their notification requirements in the prescribed manner and form, the Competition Commission may extend the period in which it has to consider the proposed merger by a single period not exceeding 40 business days and, in that case, must issue an extension certificate to any party who notified it of the merger. "Large" mergers After receiving notice of a large merger, the Competition Commission must, within 40 business days after all parties to a large merger have fulfilled all their prescribed notification requirements, forward its recommendation to the Competition Tribunal and the Minister. The Competition Tribunal may extend the period for making a recommendation in respect of a particular "large" merger upon an application by the Competition Commission, but the Tribunal may not grant an extension of more than 15 business days at a time.
B. Are there different rules for public tenders (*e.g.* open market stock purchases or hostile bids)?	No. The waiting periods described above are applicable to all transactions, including public tenders. Competition Commission Rule 28 prescribes a procedure for dealing with separate merger notification, for example in the case of hostile takeovers. This Rule allows the filing party to request special filing directions from Commission if the circumstances justify a departure from normal requirements.
C. What are the procedures for an extension of the review periods, if any (*e.g.*, suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?	As already indicated in 9A above, the Competition Commission may extend an investigation beyond the initial review period in respect of "intermediate" mergers. The Competition Commission may apply to the Tribunal for an extension of time in respect of "large" mergers. In the event that the Commission has found that the parties have provided it with false or misleading information the Commission may issue a Form CC13(4) in terms of Rule 32 of the Commission Rules which if issued will result in the review period being stopped. The review period will only commence once the corrected information is provided.
D. What are the procedures for accelerated review of non-problematic transactions, if any?	The Commission has made an undertaking to expedite and finalise non-problematic, "intermediate" mergers within 20 days if the following conditions are met: • Jurisdiction is clear and uncontested. • Filings are complete and correct and responses to questions are timeous.

- The transaction is categorised as an “intermediate” merger requiring a ‘phase 1’ investigation (see relevant criteria for phase 1 cases discussed below).
- There are no significant public interest concerns arising from the proposed transaction.
- Regarding the effect of the proposed transaction on employment, more specifically, the filing must be accompanied by comfort letters from the relevant trade union(s) and/or employee’s representative(s). Where these are not available on the date of filing, they should be submitted within 10 business days of filing.

The following criteria would ordinarily be used to determine if a particular case is a ‘phase 1’ transaction:

Horizontal overlap

a) No overlap exists between the activities of the parties in regards to the relevant product market(s) in question.

b) No overlap exists between the activities of the parties in regards to the relevant geographic market(s) in question.

c) Where the parties are active in the same relevant product and geographic market(s), but the market share(s) of the merged entity in all these relevant markets is/are 15% or less.

d) Where the parties are active in the same relevant product and geographic market(s), but the market share(s) of the merged entity in one or more of these relevant markets is/are above 15%, the case could still be a ‘phase 1’ if:

   - The post-acquisition Herfindahl-Hirschman Index (HHI) is below 1000 points.
   - The post-merger HHI is between 1000 – 1800 points, but the increase in the HHI (delta) is below 100 points.
   - The post-merger HHI is above 1800 points, but the increase in the HHI (delta) is less than 50 points.

e) Transactions where one of the parties is an altogether new entrant into the relevant product market.

f) Management buy-out transactions.

Vertical markets

g) In the case of vertical transactions there are two relevant product markets that are in a vertical relationship to one another (a so-called upstream and downstream market). Both these markets must be analysed. If the market share of the merged entity is 15% or below in <u>both</u> these relevant product markets post merger, then the case would qualify as a ‘phase 1’ transaction.

10. Waiting periods / suspension obligations.	
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.	Notifiable mergers may not be implemented prior to approval by the South African competition authorities.
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	No, not applicable.
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.)	The Competition Act makes no distinction between local and international transactions. The Commission has not accepted the proposal of ring-fencing the South African subsidiaries in the case of international mergers, except where the parties have excluded the aforesaid subsidiaries by a legally enforceable agreement. For such an agreement to be acceptable to the Commission, the parties must show that title will not pass from the seller to the purchaser in respect of the South African subsidiaries before the competition authorities approve the transaction.

D. Are parties allowed to close the transaction if no decision is issued within the statutory period?	“Intermediate” mergers Yes, in the case of “intermediate” mergers. In terms of Section 14 (1)(b) of the Act, the Commission must issue a certificate in the prescribed form (i) approving the merger; (ii) approving the merger subject to any conditions; or (iii) prohibiting implementation of the merger. Where the Commission does not issue an extension certificate on or before the expiry of the initial review period of 20 business days, the transaction would be deemed to have been approved. “Large” mergers In the case of “large” mergers any party to the merger may apply to the Tribunal to begin the consideration of the merger without a recommendation from the Competition Commission if the Competition Commission has neither forwarded a recommendation to the Tribunal nor applied for an extension of the review period upon the expiry thereof.
E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.	Not applicable. There are no waiting periods. Approval must be granted prior to implementation.
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. There are no waiting periods. Approval must be granted prior to implementation.
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).	No such provision exists. In view of the fact that the implementation of a transaction prior to approval is prohibited in terms of the Act, the parties would risk being prosecuted and fined for contravening the Act.

11. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?	Both parties bear the responsibility of complying with the notification requirements. The parties must do a joint filing. Any of the primary firms may make the aforesaid filing.
B. Do different rules apply to public tenders (*e.g.* open market stock purchases or hostile bids)?	Competition Commission Rule 28 allows any of the parties to approach the Commission for direction in this regard. A separate filing may be allowed by the Commission in these circumstances. One of the parties may file certain documents on behalf of the other where that other has failed to comply with any requirements of the Commission.
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.
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?	There are no special rules for foreign representatives of firms. Representation has to be indicated on the relevant forms to be submitted with every merger notification (see response to question 1.B.)

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)?	The filing fees are fixed and they are based on the category of the merger, which is determined through the parties' annual turnover or asset values. No fees are required for filing for "small" mergers. For "intermediate" mergers a fee of R100 000 For "large" mergers a fee of R350 000 Refer to Competition Commission Rules 10(5) and 10(9).
B. Who is responsible for payment?	It is entirely up to the parties to decide who will be responsible for the payment of the filing fee.
C. When is payment required?	Payment is required on or before the day of the filing. Where the filing fee is not received on the day of the filing, the review period will not start until such time that the fee has been paid in full.

D. What are the procedures for making payments (*e.g.*, accepted forms of payment, proof of payment required, wire transfer instructions)?	The forms of payment specified by Competition Commission Rule 10 are the following: Cheque, money order, direct deposit or electronic transfer.

13. Confidentiality

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?	The Commission is allowed by the Act to make public the fact that a particular filing was made. However, the contents of the notification remain restricted information until the matter is finalized by the competition authorities, i.e. when a decision has been made in terms of an "intermediate" merger or a "large" merger has been referred to the Tribunal. All other information identified as confidential by the parties would not be made available to third parties unless the aforesaid third parties obtain an order from the Tribunal compelling the Competition Commission to disclose such information.
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	Any information received by the Commission is restricted information until the matter is finalized by the Commission. If an adverse decision is to be taken in a merger filing the Commission releases information it received from third parties subject to any confidentiality claims by third parties.
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	Only if an order of the Tribunal compels the Commission to disclose such information would third parties have access to confidential information. This typically occurs in contested cases. Third parties must apply to the Tribunal, which will make a decision on disclosure. The Minister of Trade and Industry as a matter of course gets access to all notification materials, as does the Minister of Finance in the case of bank mergers.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	The fact of notification may not be treated as confidential. However, notification materials may be treated as confidential if the parties identify such information and submit the requisite confidentiality form together with reasons for designating such information as confidential. "Confidential information'" is defined in section 1 of the Act as "trade, business or industrial information that belongs to a firm, has a particular economic value, and is not generally available to or known by others".

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?	No.
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?	Yes, the Commission has in the past on agency-per-agency basis shared information with the consent of the parties.

14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	Both the Commission and the Tribunal publish annual reports and hard copies can be obtained from the relevant institution. The Tribunal's annual reports are also available at: http://www.comptrib.co.za/publications.htm
B. Does the agency publish press releases related to merger policy or investigations?	Yes, the Commisssion regularly releases press statements on completion of investigations. The Tribunal also issues press releases from time to time.
C. Does the agency publish decisions on why it cleared / blocked a transaction?	The Competition Commission publishes reasons for its decisions in the case of conditional approvals and prohibitions of mergers. The Tribunal publishes all its merger decisions.

15. Sanctions/penalties

A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?	Parties who fail to notify a transaction or implement a transaction prematurely run the risk of being prosecuted by the Competition Commission before the Competition Tribunal. On successful prosecution, an administrative penalty may be imposed by the Tribunal. Section 59(2) states that an administrative penalty imposed by the Tribunal may not exceed 10% of the parties' annual turnover or asset value. In determining an appropriate penalty, the Tribunal is required to consider several factors including the nature, duration, gravity and extent of the contravention, loss or damage suffered as a result of the contravention, the behaviour of the respondent, the level of profit derived from the contravention. The Tribunal may in terms of Section 60 of the Act also order the divestiture of assets.

B. Which party/ies are potentially liable?	All parties to the transaction are potentially liable.
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.	Refer to 15A above.

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.	As already indicated, the Competition Commission enjoys both investigative and adjudicative powers in respect of intermediate and small mergers. Parties to these transactions are, however, entitled to appeal to the Competition Tribunal against the Commission's decision. The appeal must be filed within 10 business days of the Commission's decision. The Tribunal must, within 10 days of the filing of the appeal, either hear the appeal or hold an informal hearing to request further information from the parties. Appeals to the Tribunal are not confined to the record of the Commission's proceedings and the parties and the Commission may present de novo evidence. All decisions of the Tribunal can be appealed to the Competition Appeal Court, a specialist division of the High Court. An appeal to the Appeal Court must be made within 20 days after the decision by the Tribunal and is confined to the record. There is no time period for the Appeal Court to hear an appeal, but typically the Court will hear an appeal within 3- 5 months of the filing of the appeal. Review proceedings, i.e. those that go to the fairness of the procedure of the decision maker as opposed to the substance of decision, may be handled by the ordinary courts. There are no time periods for the bringing of such a review but the requirement is that it is brought within a 'reasonable time'.

17. Additional filings

Are any additional filings/clearances required for some types of transactions, *e.g.,* sectoral regulators, securities regulator?	Certain sector regulators have to assess and clear mergers in certain industries, for example the financial services, telecommunications and gambling sectors. These sector regulators have concurrent jurisdiction with the Competition authorities.

18. Closing deadlines	
When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?	No.

19. Post merger review of transactions	
Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	No. The Commission may, however, revoke its decision in terms of Section 15 of the Act if the decision was based on incorrect information for which a party to a merger is responsible, the approval was obtained by deceit or a firm concerned has breached an obligation attached to the decision. The merging parties may then notify the Commission anew. There is no time limit within which a revocation must take place.