

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Competition Council of the Republic of Lithuania

26-02-2021

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

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

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

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]
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Statutory Laws

A. Notification provisions	The basic notification provisions are set in Article 8 - 13 of the Law on Competition of 23 March 1999 No VIII-1099 (last amendment on 25 June 2020, available in Lithuanian and English: http://kt.gov.lt/en/legislation)
B. Substantive merger review Provisions	The substantive test is whether the proposed concentration “will establish or strengthen a dominant position or substantially restrict competition in a relevant market” (Art. 12(1) of the Law on Competition).
C. Implementing regulations	The CC regulation “On the Approval of Merger Notification and Examination Procedure” (last amendment on 27 December 2017, available in Lithuanian: http://kt.gov.lt/en/legislation)

¹ Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

<p>D. Notification forms or information requirements</p>	<p>The principal information requirements are set out in Article 9 of the Law on Competition:</p> <p>Art. 9(3) of the Law on Competition: A notification of concentration shall provide information determined in the notification form, established by the Competition Council, including this information:</p> <ol style="list-style-type: none"> 1. the registration data of the undertakings participating in concentration; 2. the reasons and purposes of concentration; 3. a description of the manner of concentration; 4. the annual financial accounts of the preceding financial year of each undertaking participating in concentration; 5. the data on the enterprises owned by each undertaking participating in concentration or the controlling persons as well as data on the enterprises the holders of interests or member shares of which they are; 6. a relevant market share evaluation of each undertaking participating in concentration; 7. a list of main competitors in the relevant markets of each undertaking participating in concentration. <p>Art. 9(4) of the Law on Competition: Where a notification of intended concentration with the participation of the undertaking belonging to a group of associated undertakings is submitted, the data on all the undertakings belonging to the group of associated undertakings shall be submitted pursuant to the requirements of paragraph 3 of this Article.</p> <p>Notifications are submitted according to a Standard Form of the Notification of Concentration (thereafter, "Standard Form"), adopted by the Competition Council Resolution No 1S-82 of 11 August 2015 – Merger Notification and Examination Procedure, Annex 1.</p>
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Interpretative Guidelines and Notices

E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	<p>Apart from the above-mentioned regulations, the Competition Council of the Republic of Lithuania adopted the following interpretive guidelines and notices:</p> <ul style="list-style-type: none"> - On December 3, 2019 Resolution No. 1S-150 (2019) “Explanations of the Competition Council on the definition of a relevant market”, available in Lithuanian only: https://kt.gov.lt/lt/; - On April 7, 2020 Resolution No. 1S-44 (2020) “Explanations of the Competition Council Concerning Definition of the Dominant Position”, available in Lithuanian only: https://kt.gov.lt/lt/.
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	None
G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	No.
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency’s decision-making process	January 30, 2017 Resolution No. 1S-8 ‘Procedure regulating the fee paid for the examination of concentration and requests to carry out individual concentration actions’

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	The Competition Council of the Republic of Lithuania.
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	<p>Address: Jogailos str. 14, Vilnius, LT-01116, Lithuania Tel. (370-5) 212 7608 Fax. (370-5) 212 6492 E-mail: taryba@kt.gov.lt Website: https://kt.gov.lt/ (available in English and Lithuanian)</p>

C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	Interested parties may enter into jurisdiction/filing consultations with the Competition Council. Contact points – Tel. +370 5 262 2617 E-mail: taryba@kt.gov.lt
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3. Covered transactions	
A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]	Pursuant to Art. 3(5) of the Law on Competition, ‘potentially covered transactions’ include: <ul style="list-style-type: none"> – a merger, when one or more undertakings which terminate their activity as independent undertakings are joined to the undertaking which continues its operations, or when a new undertaking is established out of two or more undertakings which terminate their activity as independent undertakings; – acquisition of control, when the same natural person or persons already controlling one or more undertakings, or one or more undertakings, by agreement, jointly set up a new undertaking (except the cases when such new undertaking does not perform the functions of an independent undertaking) or gain control over another undertaking by acquiring an enterprise or a part thereof, all or part of the assets of the undertaking, shares or other securities, voting rights, by contract or by any other means.
B. What is the geographic scope of transactions covered?	The Republic of Lithuania.
C. If change of control is a determining factor, how is control defined and interpreted in practice?	‘Control’ means any rights arising from the laws or transactions of the Republic of Lithuania or other states which entitle a legal or natural person to exert a decisive influence on the activity of the undertaking, including: 1) the right of ownership to all or part of the assets of the undertaking or the right to use all or part of the assets of the undertaking; 2) other rights which permit exertion of a decisive influence on the decisions

	<p>of the bodies of the undertaking or the composition of its personnel. (Art. 3(9) of the Law on Competition)</p> <p>‘Controlling person’ means a legal or natural person having or acquiring the right of control over an undertaking. A controlling person may be a citizen of the Republic of Lithuania, a foreign national or a stateless person, or an undertaking, as well as public administration entities. Spouses, parents and their minor children (adopted children) shall be considered as one controlling person. Where two or more legal or natural persons, by agreement, acquire control over an undertaking which is subject to concentration, each of these legal or natural persons shall be considered a controlling person. (Art. 3(10) of the Law on Competition)</p> <p>‘Decisive influence’ means a situation when the controlling person implements or is in the position to implement his decisions in relation to the economic activity of the controlled undertaking, the decisions of its bodies or the composition of its personnel. (Art. 3(11) of the Law on Competition)</p> <p>The CC regulation “On the Approval of Merger Notification and Examination Procedure” provides definitions of joint and sole control, including specific provisions concerning the circumstances under which a concentration shall not be deemed to arise.</p>
<p>D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</p>	<p>Yes, as long as the transaction is a concentration and meets the notification requirements according to the Law on Competition.</p>

4. Thresholds for notification

<p>A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]</p>	<p>The intended concentration must be notified to the Competition Council and its permission must be obtained where combined aggregate income of the undertakings concerned in the Republic of Lithuania is more than EUR 20 million in the business year preceding concentration and the aggregate income in the Republic of Lithuania of each of at least two undertakings concerned is more than EUR 2 million in the business year preceding the concentration. (Art. 8(1) of the Law on Competition)</p>
<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>Pursuant to Art. 8(2) of the Law on Competition, merger notification thresholds apply to undertakings participating in the concentration. Art 8(3) states that in case the participant in the concentration is an undertaking which belongs to a group of associated undertakings, the aggregate income shall be calculated as the total amount of aggregate income of all the undertakings belonging to the group of associated undertakings.</p> <p>The entities that are included in determining relevant undertakings are determined by the rules set in the CC regulation “On the Approval of Merger Notification and Examination Procedure”, Chapter IV, “Identification of Undertakings Participating in the Concentration” of the Procedure.</p> <p>A group of associated undertakings is understood as referred to in Art. 3(18) of the Law on Competition.</p>
<p>C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</p>	<p>Nexus is determined on the basis of income received from the sale of products and services in the Republic of Lithuania. Location of the customer is the principal determining factor; however, in accordance with the explanations laid down in the European Commission’s Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, the Competition Council applies other nexuses as appropriate (for instance, the location where the product or service is delivered).</p>

D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?	No.
E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?	No.
F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?	Pursuant to Art. 8(3) of the Law on Competition, if the participant in the concentration: 1) is an insurance undertaking, the value of gross insurance premiums shall be calculated instead of the aggregate income; 2) is collective investment undertakings or management companies managing them, the aggregate income shall be calculated as the total amount of aggregate income of all the undertakings under the control of the management enterprise, closed-ended investment company or investment company with variable capital, the management of the assets whereof has not been transferred to the management enterprise.
G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]	No special rules apply. Foreign-to-foreign transactions are notified to the Competition Council if the parties to a concentration receive income from the sale of products and services in the Republic of Lithuania meeting the established thresholds.
H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]	Yes, according to Art.13 of the Law on Competition, the CC may impose an obligation on undertakings to submit a notification on concentration and <i>mutatis mutandis</i> apply the concentration control procedure even though the aggregate income indicators established in Article 8(1) of this Law are not exceeded where it is likely that concentration will result in the creation or strengthening of a dominant position or a substantial restriction of competition in a relevant market.

	The Competition Council may adopt a separate resolution to apply the concentration control procedure only in cases where no more than 12 months have passed from the implementation of the concentration in question.
I. Are current notification criteria catching relevant transactions related to digital markets?	Current notification criteria make no exception to transactions related to digital markets. If respective transactions trigger established thresholds, they shall be notified to the Competition Council.

Calculation Guidance and related issues

J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required: <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe). 	<p>The Competition Council in its activity follows a provision that aggregate turnover, as an indicator of economic activity, has to reflect, as precisely as possible, the economic capacity and status of the undertakings participating in concentration.</p> <p>The concept of aggregate turnover is understood as a sum of money derived from sale of goods (provision of service) in the Republic of Lithuania. The aggregate turnover of the undertakings participating in concentration should reflect an ordinary course of economic activity.</p> <p>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 transaction shall be taken into account with regard to the seller or sellers.</p> <p>However, two or more such transactions 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 transaction.</p> <p>More detailed provisions on the calculations on the relevant turnover can be found in Chapter V of the CC regulation 'On the Approval of Merger Notification and Examination Procedure'.</p>
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K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?	If a collective investment undertaking or management companies managing them participate in concentration, the aggregate income shall be calculated as the total amount of aggregate income of all the undertakings under the control of the management enterprise, closed-ended investment company or investment company
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	with variable capital, the management of assets whereof has not been transferred to the management enterprise. (Art. 8(3)(2) of the Law on Competition)
L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?	Yes.
M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].	The Competition Council uses the methodology laid down in European Commission's Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings for the purpose of currency conversion. The annual turnover of a company should be converted at the average rate for the twelve months concerned.
5. Pre-notification	
A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].	The Competition Council offers pre-notification consultations on the rules for submission of notifications both in writing responding to inquiries and verbally. Such consultations are not mandatory but regarded very seriously since they facilitate and shorten the procedures for the review of concentrations. The draft of the notification can be submitted to the CC for review. The CC provides feedback on the compliance of the information provided in draft notification with the requirements for the merger notification set in the Law on Competition.
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	Not applicable.
6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	Notification is mandatory pre-merger.

B. If parties can make a voluntary merger filing when may they do so?	Not applicable.
C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)	Pursuant to Art. 9(2) of the Law on Competition, notification of concentration must be submitted to the Competition Council prior to the implementation of the concentration. The notification of concentration shall be submitted after the submission of the proposal to conclude an agreement or acquire the shares or assets, an instruction to conclude the agreement, conclusion of the agreement, acquisition of the right of ownership or the right to dispose of certain assets. The notification of concentration may also be submitted in case of a good faith intention to conclude the agreement or to make a public bid to buy up shares.
D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	Pursuant to Art. 9(2) of the Law on Competition, a notification of concentration must be submitted to the Competition Council prior to the implementation of the concentration. No other deadlines are set.
E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.	Not applicable.

7. Simplified Procedures

A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	No special procedures apply. Transactions that do not raise competition concerns <i>de facto</i> have a shorter examination period and require less information to be provided. The notifying parties may submit a duly grounded request to the Competition Council not to provide certain type of information.
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	Not applicable.

8. Information and documents to be submitted with a notification	
A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).	Notification shall contain the information and supporting documents required in the Standard Form (see question 1D).
B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]	Not applicable.
C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]	Not applicable.
D. What information is required in case the target company is experiencing financial insolvency?	Generally, notification shall contain the information and supporting documents required by the Standard Form. There is no specific information required, additional necessary information can be requested by the Competition Council on a case-by-case basis.
E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?	No.

<p>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</p>	<p>There are no document legalization requirements issued by the Competition Council. Regular document legalization requirements of the Republic of Lithuania are applicable.</p>
<p>G. What are the agency's rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</p>	<p>No exemptions.</p>
<p>H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</p>	<p>When examining notifications of concentration, the Competition Council is entitled to obtain from undertakings, controlling persons and public administration entities any information, oral and written clarifications necessary for making a decision on the concentration (Art. 11(5), Law on Competition).</p> <p>Within 10 business days from announcement of information about the proposed concentration on Competition Council's website, unless Competition Council sets another period, all interested parties are invited to submit reasoned opinions on the possible effects of the concentration on competition to the Competition Council (Art. 40, The Procedure).</p>
<p>I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</p>	<p>Yes.</p>
<p>J. Are there different forms for different types of transactions or sectors?</p>	<p>No.</p>

<p>K. With respect to investment funds:</p> <p>i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?</p> <p>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</p> <p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	<p>i) There is no rule explicitly requiring this, but in practice the Competition Council requests such statement during the notification admission stage.</p> <p>ii) Yes, such funds are considered part of the transaction and market information shall be provided.</p> <p>iii) There are no deviations from the standard notification procedure with respect to investment funds. However, as mentioned above, in case there are no markets relevant to the concentration, the notification form requirements are lesser than in cases of horizontal and/or vertical overlap.</p>
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<p>9. Translation</p>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>Lithuanian.</p>
<p>B. Describe any requirements to submit translations of documents:</p> <p>i) with the initial notification; and</p> <p>ii) later in response to requests for information.</p> <p>In addition:</p> <p>iii) what are the categories or types of documents for which translation is required;</p>	<p>The supporting documents shall be submitted in the language in which they are written together with the initial notification form. If the supporting documents are not written in Lithuanian, the translation must be attached with the approval of its authenticity. Documents written in English can be submitted without translation; however, the Competition Council reserves the right to demand their translation if necessary.</p>

<p>iv) what are the requirements for certification of the translation;</p> <p>v) which language(s) is/are accepted; and</p> <p>vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted?</p>	
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10. Review Periods	
<p>A. Describe any applicable review periods following notification.</p>	<p>Pursuant to Art 11 of the Law on Competition, the Competition Council shall examine the notifications of concentration submitted in accordance with the requirements established by the Competition Council and adopt the resolutions referred to in Article 12 (1) of this Law not later than within four months, unless this term is suspended pursuant to paragraph 6 or extended pursuant to paragraph 7. This period begins on the day following the receipt of the notification of the concentration that complies with the requirements set by the Competition Council.</p> <p>If the notification of the concentration does not comply with the requirements established by the Competition Council, the Competition Council within 7 working days shall inform the persons who submitted the notification thereof in writing. The Competition Council initiates the examination procedure of a concentration notification only after receiving a notification of the concentration that complies with the established requirements.</p> <p>Within one month from the receipt of the notification, the Competition Council shall adopt a resolution to allow the implementation of the concentration in accordance with the submitted notification or to allow the implementation of the concentration in accordance with the conditions and obligations. Otherwise, the Competition Council adopts a resolution to further examine the notification, that is to extend the notification review period for another three months.</p>

	The Competition Council, intending to adopt a resolution pursuant to Art. 12(1)(2) of the Law, may, upon a reasoned request of the undertaking that submitted the notification of concentration, extend the term for examination of the notification of concentration by one more month.
B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?	Undertakings and controlling persons participating in the concentration may, without the permission of the Competition Council to carry out individual concentration actions, make a public offer to buy up shares and make transactions on transferable securities admitted to trading on a regulated market, provided that no later than seven days after these actions a notification is submitted to the Competition Council and the acquirer of the securities does not exercise the voting rights granted by the securities. (Art. 10(4) of the Law on Competition)
C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?	Pursuant to Art. 11(7) of the Law on Competition, the Competition Council may decide to extend the review period if the consent of the undertakings notifying the concentration to extend this term has been obtained or if the undertakings, controllers or public administration entities provide additional information less than 20 days before the expiry of the total review period necessary for the adoption of the decisions referred to in Art. 12(1) of the Law, and if for objective reasons it is not possible to examine the notification of the concentration within the term specified in the Law. Undertakings participating in the concentration shall be notified in writing within 2 working days from the date of the decision and the reasons for the extension of the term.
D. Is there a statutory or other maximum duration for extensions?	The total duration of the extension under Art. 11(7) may not exceed one month.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	According to Art. 11(6) of the Law on Competition: "Competition Council, while reviewing notification of concentration, may suspend the notification review period provided in part 2 of this article if at least one of undertakings participating in concentration or associated undertakings fail to provide additional

	<p>information required for reviewing the notification of concentration or fail to provide all such information during the period set by the Competition Council which should not be shorter than one business day. No later than 7 days from the end of the period to provide information, Competition Council adopts a motivated decision to suspend the notification review period and informs undertakings participating in concentration about it in writing. The suspension of the term is counted from the next business day when the period set for provision of the requested information finishes to the day when the Competition Council receives all information that was requested. No later than 7 business days from the date of receipt of all information, Competition Council makes a decision on the termination of suspension period and informs all undertakings participating in concentration about it in writing. If overall duration of suspension of period for reviewing the concentration based on this part is longer than 3 months, the procedure for reviewing notification of concentrations is terminated, undertakings participating in concentration are informed about the termination of the review procedure of concentration in writing and it is deemed that notification of concentration was not submitted.”</p>
<p>F. What are the time periods for accelerated review of non-problematic transactions, if any?</p>	<p>Not applicable. However, pursuant to Art. 10(3) of the Law on Competition the Competition Council, taking into account the consequences of the suspension of concentration on the persons concerned and the projected influence of concentration on competition may permit to exercise individual actions of concentration.</p>
<p>G. If remedies are offered, do they impact the timing of the review?</p>	<p>If remedies are offered, upon a duly grounded request of undertaking notifying the concentration, the review term of notification may be extended in accordance to the term provided in The Law of Competition, Art. 11(4) (Art. 49 The Procedure)</p>
<p>11. Waiting periods / suspension obligations</p>	
<p>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from</p>	<p>Pursuant to Art. 10(1) of the Law on Competition, the undertakings or controlling persons participating in the concentration shall have no right to implement concentration until</p>

<p>implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</p>	<p>the resolution of the Competition Council is passed. Any transactions and actions related to concentration performed during the suspension period shall be held invalid and not creating any legal consequences, unless the Competition Council permits to exercise individual actions of concentration.</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>Yes, pursuant to Art. 10(3) of the Law on Competition “upon a justified request of the parties to a concentration or the controlling person, the Competition Council, taking into account the consequences of the suspension of concentration on the persons concerned and the envisaged effect of concentration on competition, may adopt a resolution to permit the performance of individual actions of concentration. The permission of the Competition Council to perform individual actions of concentration may be granted subject to certain conditions and obligations necessary to ensure effective competition.”</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency’s jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency’s jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</p>	<p>The applicable waiting periods are not limited to aspects of the transaction that occur within the jurisdiction. They apply to the proposed concentration as a whole.</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>According to Art. 12(4) If the Competition Council does not within the term specified in the Law adopt the resolutions referred to in paragraph 1 of this Article, undertakings or controlling persons shall have the right to implement concentration in accordance with the conditions formulated in the notification of concentration.</p>
<p>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>The Competition Council, intending to pass a resolution in accordance with Article 12(1)(2), upon a justified request of the person who has submitted the notification, may extend the term for the examination of the concentration referred to in paragraph 2 of this Article by one month. (Art. 11(4) of the Law on Competition)</p>

	<p>The Competition Council may suspend the period for the examination of concentration if, at least one of the undertakings participating in concentration does not provide additional information necessary to examine the concentration or provides only part of the required information. The suspension period lasts until the required information is provided. (Art. 11(6) of the Law on Competition)</p> <p>Extension of the period dedicated to examination of concentration is possible for a maximum term of <u>one</u> month if the Competition Council receives the consent of the undertakings involved in the concentration or if, less than 20 days before expiry of four month period, controlling persons or public administration entities provide additional information, necessary for the adoption of the resolutions referred to in Article 12(1), and if, for objective reasons, it is not possible to examine the notification within the time limit referred to in paragraph 2. (Art. 11(7) of the Law on Competition)</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>Having regard to Art. 10(3) of the Law on Competition the person who submits a notification may submit a duly grounded request for permission to implement individual actions of concentration pending the final decision.</p>
<p>G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>There are no provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted.</p>

<p>12. Responsibility for notification / representation</p>	
<p>A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?</p>	<p>A notification on concentration shall be submitted by:</p> <ul style="list-style-type: none"> – undertakings participating in concentration in cases of mergers; – the acquiring persons in cases of acquisitions. <p>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, depending</p>

	on the case. In other cases, the notification shall be submitted by the person or undertaking acquiring control of the whole or parts of one or more undertakings.
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	No special rules apply.
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)?	Where the notification is signed by representatives of undertakings or natural persons such representatives shall submit written evidence of the authorization for such action.
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?	Power of attorney must be submitted. There are no special rules for foreign representatives or firms. A power of attorney must be notarized, legalized or apostilled in accordance with usual practice depending on foreign state.

13. 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)? [Please provide the amount in local currency and in USD as of December 31st, 2020]	Yes. The flat fee in 2020 was equal to EUR 9 000 (USD 10 932.3) (11 000 Eur as of 1 st of March, 2021)
B. Who is responsible for payment?	The notifying party(ies) is responsible for payment.
C. When is payment required?	The notification to the Competition Council shall be accompanied by documents, confirming that the undertakings concerned have paid the fee for examination of the Notification (Art. 55.8, The Procedure).

D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	The respective fees shall be paid by persons submitting the notification to the bank account of the Competition Council. Documents confirming that the fee for the examination of notification has been paid shall be submitted with the notification.
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14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
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A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?	In general, the Competition Council firstly assesses which markets are affected by the concentration and defines the product and the geographic markets. Once the markets affected by the concentration are defined, the Competition Council analyses whether, as a result of concentration, dominant position will be established or strengthened or competition will be substantially restricted in a relevant market. The Competition Council can request further information from the parties as well as third parties (e.g. competitors, customers etc.). Requests for information are generally issued in complex initial examination phases as well as in in-depth investigations.
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B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?	The Competition Council employs a twofold test: whether the proposed concentration will establish or strengthen a dominant position or substantially restrict competition in a relevant market (Art. 12(1)(3) of the Law on Competition).
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C. What theories of harm does the agency consider in practice?	Horizontal merger: loss of competition between the merging firms; creation or strengthening of dominant position; elimination of important competitive constraints, etc.; Vertical merger: input foreclosure; customer foreclosure, etc.; Conglomerate merger: non-coordinated effects may arise from the merged entity's ability and incentive to leverage a strong market position in one market to another by means of tying and bundling.
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<p>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</p>	<p>When evaluating whether the intended concentration will establish or strengthen a dominant position in a relevant market, the Competition Council first and foremost defines the relevant market, determines the undertakings operating in that market as well as other market conditions. The principles and criteria for the definition of the relevant market are detailed in the Competition Council Resolution and European Commission's Notice on the definition of the relevant market. Subsequently, the Competition Council determines the size of the market shares of the respective undertakings, barriers of entry into the relevant market, buyer power and other market criteria, whilst taking into account the distinctive characteristics of the market in question. Ultimately, it is evaluated whether the intended concentration will establish or strengthen dominant position or substantially restrict competition in a relevant market and whether any additional obligations should be imposed on the undertakings in order to ensure effective competition.</p>
<p>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</p>	<p>No.</p>
<p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p>	<p>As laid down in Art. 12(1) of the Law on Competition, the review can result in:</p> <ol style="list-style-type: none"> 1) unconditional clearance; 2) conditional clearance (in accordance with conditions and obligations determined by the Competition Council); 3) prohibition.
<p>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</p>	<p>Remedies have to be sufficient to eliminate competition concerns, comprehensive and suitable to be implemented in the shortest possible period of time (Art. 50, The Procedure).</p> <p>Remedies might be either behavioural or structural – there is a preference for structural remedies by the Competition Council. Remedies can be offered at any stage of concentration by the parties participating in concentration (even submitted together with the notification) up until the deadline for review of four months.</p>

	Remedies are proposed to the Competition Council which might suggest modifications if necessary. Once remedies are acceptable to the Competition Council and the parties participating in the concentration, remedies are submitted for public consultation. Afterwards, the final decision is made – the remedies are either accepted or the concentration is prohibited.
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15. Confidentiality	
A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?	Having received notification of concentration complying with the requirements set out in legislation, the Competition Council shall publish an announcement in its website www.kt.gov.lt , indicating the date of notification, the manner of concentration and the parties concerned. The Competition Council shall also publish a summary about the concentration which is provided by the notifying party(ies) in the Standard Form.
B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?	Before adopting the prohibition decision, the Competition Council shall provide the undertakings participating in the concentration reasoned conclusions on the examination of the concentration notification in writing and at that time shall give access to the files of the merger except for internal documents and information constituting commercial and professional secrets of other economic entities. Undertakings or controlling persons participating in the concentration have the right to access the material of the Notification File, except for documents of internal use and information constituting commercial and professional secrets of other undertakings. Access to the notification examination material shall be granted from the moment of submission of the notification examination conclusions.
C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?	As a general rule, third parties do not have access to notification materials.

<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>No confidential treatment can be granted with regard to the fact of the notification after the official submission of the complete notification.</p> <p>Pursuant to Art. 21(1) of the Law on Competition, The Competition Council and its administrative staff must protect commercial and professional secrets that they became aware of in the course of exercising control over compliance with this Law and, in the absence of the consent of the undertaking, may use it only for the purposes it was provided.</p> <p>If the information (notification, documents, and clarifications) submitted to the Competition Council contains commercial secrets, such information shall not be disclosed in public or to other persons, except the cases provided by laws or with written consent of the person to full or partial disclosure of the information, which constitutes a commercial secret of such a person. In case of necessity, the Competition Council may request to submit an extract from the documents containing no commercial secrets.</p>
<p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>Yes. Documents or other information submitted by an undertaking shall not be recognized as a trade secret if such information is public or was publicly available before the submission of such information to the Competition Council or does not meet other trade secret criteria. More information on protection of commercial secrets and confidential information can be found in Art. 21 of the Law on Competition.</p> <p>Any decisions or actions of the Competition Council and its administration can be challenged by the parties if they think that their rights have been violated. A complaint must be submitted within the period of 10 days upon becoming aware of alleged misconduct.</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>In cases when the decisions of Competition council contain information constituting commercial secrets, a non-confidential version of the decision is produced.</p>

16. Transparency	
A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.	Yes, the reports can be found at: https://kt.gov.lt/en/administrative-information/annual-reports-1
B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?	Yes, at https://kt.gov.lt/en/promotion-of-activities/press-releases . They are published for each merger decision.
C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.	Yes, at: https://kt.gov.lt/lt/teisine-informacija/nutarimai (only available in Lithuanian) However, detailed decisions are published only in phase-two investigations.
E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]	Yes, can be found here: http://kt.gov.lt/en/administrative-information/annual-reports-1 .

17. Cooperation	
A. Is the agency able to exchange information or documents with international counterparts?	Yes, subject to agreements.
B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?	EU member states, ECA (in accordance with the decision made at the ECA meeting on 20 April 2001), Georgia (Memorandum on Partnership in the Field of The Competition Law Enforcement between the Competition Council of the Republic of Lithuania and the Competition Agency of Georgia, 16 December 2015), Kazakhstan (Agreement of 2010 between the Competition Council of the Republic of Lithuania and the Agency of the Republic of Kazakhstan for Competition Protection (Antimonopoly Agency) Concerning Cooperation in the Area of Competition Policy and Law), 2 August 2010).

<p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.</p>	<p>Yes, the consent is needed. No model waiver is available.</p>
<p>D. Is the agency able to exchange information or documents with other domestic regulators?</p>	<p>Depending on a situation and information.</p>

<p>18.Sanctions/penalties</p>	
<p>A. What are the sanctions/penalties for:</p> <ul style="list-style-type: none"> i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency? 	<p>Pursuant to Art. 35 of the Law on Competition, upon establishing that undertakings have performed actions prohibited under this Law or have otherwise violated this Law, the Competition Council, following the principles of impartiality and proportionality, shall have the right:</p> <ol style="list-style-type: none"> 1) to oblige the undertakings to terminate illegal activity, to perform actions restoring the previous situation or eliminating the consequences of the violation, including the obligation to terminate, amend or conclude contracts, also to set the time limits and conditions for meeting the above obligations; 2) to oblige the undertakings or controlling persons who have implemented concentration resulting in the establishment or strengthening of a dominant position or a substantial restriction of competition in a relevant market without notifying the Competition Council or getting its permission, also in the cases provided for in Article 14(2) of this Law, to perform actions restoring the previous situation or eliminating the consequences of concentration, including obligations to sell the enterprise or part thereof, the assets of the undertaking or part thereof, shares or part thereof, to reorganise the enterprise, to terminate or amend contracts, also to set the time limits and conditions for meeting the above obligations.

	<p>Upon receipt of the authorisation of Vilnius Regional Administrative Court, the Competition Council may by its resolution impose restrictions on economic activity of undertakings failing to comply with the imposed sanctions referred to in paragraph 1 of this Article: temporary suspension of export and import operations, banking operations, an authorisation (license) to engage in respective economic activity. The resolutions of the Competition Council shall be binding on the institutions which may apply such restrictions and must be implemented forthwith. The restrictions shall be lifted after the implementation of the sanctions imposed by the Competition Council.</p> <p>For failure to file a notification, observe a waiting period/suspension obligation, implementation of transaction despite the prohibition from the agency or breach of interim measures, the Competition Council imposes fines of up to 10 percent of the gross worldwide annual income of the preceding business year for the undertaking concerned. For incorrect/misleading information in a notification or failure to comply with information requests, a fine of up to 1 percent of gross worldwide annual income of the preceding business year is imposed for the undertaking concerned. For failure to observe or delay in implementation of remedies, the respective undertaking is fined for each day when misconduct continues and up to 5 percent of the average daily gross worldwide income for the previous business year. (Art. 36 of the Law on Competition)</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>The parties who failed to provide notifications or information.</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 Competition Council can impose sanctions/penalties directly.</p>
<p>D. Are there any recent or significant fining decisions?</p>	<ul style="list-style-type: none"> • A fine of EUR 947 700 to “Kauno grūdai” for acquiring around 51% of shares of “Vievio paukštynas” without notifying the Competition Council, information available in Lithuanian only: https://kt.gov.lt/lt/naujienos/ab-kauno-grudai-skirta-

	<p>beveik-1-mln-eur-bauda-igijus-ab-viewio-paukstynas-kontrole-be-konkurencijos-tarybos-leidimo;</p> <ul style="list-style-type: none"> • A fine of EUR 16 500 to Concretus Materials, UAB, UAB „GG Investment” and UAB „Vilniaus betonas” for not providing full and providing inaccurate information required to review the concentration, information available in Lithuanian only: https://kt.gov.lt/lt/naujienos/uab-nbsp-concretus-materials-uab-gg-investment-ir-uab-vilniaus-betonas-trukde-tinkamai-ivertinti-koncentracija; • A fine of EUR 5 000 to Lindo, UAB for acquiring 100 % of shares of Kauno skalbykla, UAB and UAB „Aglaja” without notifying the Competition Council and not obtaining permission from it, available in Lithuanian only: https://www.kt.gov.lt/lt/dokumentai/del-lindo-uab-veiksmu-atitikties-lietuvos-respublikos-konkurencijos-istatymo-9-straipsnio-2-dalies-ir-10-straipsnio-1-dalies-reikalavimams.
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19. Independence	
<p>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?</p>	No.
<p>B. What are the grounds for such ministerial intervention?</p>	Not applicable.
<p>C. Please provide any description or guidance regarding the ministerial intervention process and procedures [if applicable]</p>	Not applicable.

20. Administrative and judicial processes/review

A. Describe the timetable for judicial and administrative review related to merger transactions.

Pursuant to Art. 33 of the Law on Competition, undertakings and other persons who believe that their rights protected by this Law were violated shall have the right to appeal to Vilnius Regional Administrative Court against the Competition Council's resolutions which complete the examination of the notification of concentration.

An appeal shall be filed in writing no later than one month after the receipt of the resolution of the Competition Council or the date of publication depending on what happens first.

Unless the Vilnius Regional Administration Court decides otherwise, the lodging of a complaint shall not suspend the implementation of the resolutions of the Competition Council.

Decision of the Court (Art. 34 of the Law on Competition).

Upon hearing the appeal against the resolution of the Competition Council, the court shall adopt one of the following decisions:

- to uphold the resolution and reject the appeal;
- to revoke the resolution or its individual sections;
- to amend the resolution on concentration, application of sanctions or interim measures.

According to Art. 14 of the Law on Competition, If an effective court decision cancels all or part of the resolution of the Competition Council, undertakings must submit to the Competition Council the revised notification of concentration on the current market situation. If undertakings do not perform these actions, *mutatis mutandis*, consequences provided for in Article 10(2) of this Law arise as far as they comply with the effective court decision.

The revised notification must be submitted to the Competition Council no later than within one month after the day of the effective court decision. The Competition Council shall examine the revised notification of concentration and adopt one of the resolutions referred to in Article 12(1) of this Law. In this case, the term referred to in Article 11(2) of this Law shall start from the day on which the undertakings submit a revised notification of concentration.

<p>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</p>	<p>The Competition Council and its administration must protect commercial and professional secrets that they became aware of in the course of exercising control over compliance with this Law and, in the absence of the consent of the undertaking, may use it only for the purposes it was provided. More information on the treatment of confidential information can be found in Art. 21 of the Law on Competition.</p>
<p>C. Are there any limitations on the time during which an appeal may be filed?</p>	<p>An appeal shall be filed in writing no later than within one month after the receipt of the resolution of the Competition Council or the date of publication depending on what happens first.</p>

<p>21. Additional filings</p>	
<p>A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?</p>	<p>According to separate legal provisions, some types of transactions should be also notified to other governmental authorities (regulators).</p>

<p>22. Closing Deadlines</p>	
<p>A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?</p>	<p>No formal time limit is set.</p>

<p>22. Post Merger review of transactions</p>	
<p>A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</p>	<p>Yes, pursuant to Art. 14 of the Law on Competition, the Competition Council has the right to amend or repeal its resolutions on concentration where such a resolution was adopted based on incorrect or incomplete information submitted by the parties to a concentration or by the controlling persons and that had a decisive influence when adopting the resolution, or where the undertakings or controlling persons have violated the conditions and obligations of the implementation of concentration.</p>

B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?

No.