

## INTERNATIONAL MERGER CONTROL

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### INTRODUCTION

One by-product of globalization and the dramatic increase in cross-border mergers and acquisitions has been a rapid increase in the number of countries that have enacted merger control statutes. More than 90 jurisdictions have now enacted merger control statutes, and the number continues to grow. Most of these statutes provide for mandatory notification of mergers, even those consummated between foreign corporations. As a result, mergers between multinational corporations frequently trigger merger control requirements in multiple jurisdictions, particularly in those countries where merging parties have substantial operations, subsidiaries or registered offices, or where their sales or market shares exceed statutory thresholds. Significantly, many jurisdictions mandatory requiring pre-merger notification also suspend the transaction or impose waiting periods, prohibiting the parties from closing the transaction until after clearance has been granted or waiting periods have elapsed.

Governmental authorities, the business community and competition lawyers continue their vigorous debate about harmonizing, simplifying or unifying multinational merger control without a resolution. Thus, compliance with this complex array of regulatory regimes will, for the foreseeable future, continue to impact on the timing and cost of transactions and, in certain cases, affect the outcome of the transaction itself. Navigating the merger review process on parallel courses in the United States, Canada and the European Union (or in individual E.U. Member States if the jurisdictional thresholds of the European Commission's Merger Regulation are not satisfied) is commonly an integral part of many transactions. Just as importantly, in a growing number of transactions, additional jurisdictions may well be central to the strategy for obtaining all necessary regulatory approvals.

### MOVING TOWARDS GLOBAL CONVERGENCE

Just as divergence in competition policy had for many been the watchword of international merger control in 2001 and in the wake of the divisive *GE/Honeywell* transaction, convergence was the predominant theme of 2002. Of the various multilateral forums that have been established to help promote convergence in global competition policy, the International Competition Network is the most significant. The ICN was officially launched at the October 2001 Fordham Law Institute by 14 prominent antitrust regulators acting in their individual capacities. Since that time, more than 70 merger control agencies have joined the ICN, making it the most prominent multilateral competition forum. While the ICN is active in several areas that impact the broad category of competition policy, the mergers group has already set forth eight

Guiding Principles and three sets of Recommended Practices designed to promote consensus on a broad range of merger control policies.<sup>1</sup> In these initial statements, the ICN has condemned merger control regulations that capture transactions that are unlikely to have any local effect, and has endorsed those that trigger notification only over transactions that are likely to have significant, direct, and immediate economic consequence within that jurisdiction. The ICN also condemned thresholds not based on objectively quantifiable data or on data that is not readily maintained in the ordinary course of business and the practice of imposing unreasonable short deadlines on parties to submit notifications. Critically, however, the ICN has no authority to bind its members, but rather seeks to promote “soft” convergence, information sharing and cooperation. It therefore remains to be seen whether the principles set forth in the ICN will be adopted in law or practice.

### **SIGNIFICANT REFORMS IN EUROPEAN MERGER CONTROL**

At the close of 2002, the European Commission proposed significant reforms to the EC Merger Regulation, which sets forth both the procedures and standards by which the Commission evaluates proposed market concentrations. The proposed reforms to the ECMR can be roughly categorized as reform to (1) the allocation of jurisdictional authority between the Commission and the Member States, (2) the substantive standards that govern such review by the Commission, and (3) the procedures by which the Commission reviews “concentrations.” These changes will become effective in May 2004 and will coincide with the accession of 15 new Member States to the EU at that time.

#### *Proposed Reforms to the Allocation of Jurisdictional Authority*

The existing ECMR provides for two thresholds by which the Commission is allocated exclusive jurisdiction within the European Union over transactions. While these jurisdictional thresholds are designed to allocate all concentrations which present a “Community dimension” to the exclusive jurisdiction of the Commission, practice has demonstrated that the thresholds fail to capture all such concentrations. The result of this under-inclusion has been to subject many transactions to multiple merger control filings in Europe, the very thing that the ECMR was designed to prevent.

The Commission has therefore designed a flexible system of cross-referrals to compensate for existing limitations of the ECMR. The main elements of the proposed system are the following enhancements to the current referral mechanism provide for in Articles 9 and 22 of the ECMR:

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<sup>1</sup> These documents are available from the ICN website:  
<http://www.internationalcompetitionnetwork.org>.

- providing for referrals both by Member States to the Commission and by the Commission to the Member States;
- extending the application of Articles 9 and 22 to the pre-notification stage, by which the notifying parties will have the exclusive right to request referral of the case either to the Commission or to the Member States;
- conferring exclusive jurisdiction on the Commission if at least three Member States with jurisdiction to review a concentration agree to refer a case to the Commission that currently falls under the ECMR thresholds; and
- providing the opportunity for the Commission to invite Member States either to make voluntary referrals to the Commission or to accept the voluntary referral of a case by the Commission.

Collectively, these reforms are designed to allow for the efficient referral of concentrations within the Community to the regulatory authority that is in the best position to evaluate the competitive concerns presented. Notably, these reforms permit the parties to initiate inter-Community referrals in the pre-notification stage and, further, give the Commission the authority to initiate such referrals *sua sponte*. The Commission believes that unlike the relatively crude 3+ system<sup>2</sup> proposed in the Green Paper that launched the revision process, this flexible system of referrals benefits from precisely targeting those concentrations presenting a Community dimension for review by the Commission, while allocating the balance to the Member States.

*Proposed Reforms to Substantive Standards Governing EC Review*

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<sup>2</sup> The “3+ system” would allocated exclusive jurisdiction to the Commission in all concentrations where merger control filings were required in three or more Member States.

The proposed amendments to the ECMR do not incorporate many of the substantive reforms initially proposed by the Green Paper. Most notably, the Commission has decided not to replace the governing standard for anticompetitive harm from the current “creation or strengthening of a dominant position” (the “dominance” standard) to the “substantial lessening of competition” (the “SLC” standard) pioneered by the United States and recently adopted by, among others, the United Kingdom and Ireland. In short, the Commission determined that more subtle reforms would close whatever gaps in enforcement that existed between current EC practice and jurisdictions applying the SLC standard without sacrificing the precedent developed over the last decade by the Commission and the European Courts under the dominance standard.

The proposed amendments, therefore, clarify, rather than replace, the existing dominance standard provided in Article 2 of the ECMR. These clarifications make clear that the concept of “collective dominance” encompasses situations where a concentration in an oligopolistic market would result in the ability of one or more members of the oligopoly to influence the parameters of competition, even without actual coordination between the members of the oligopoly. Moreover, the proposed amendments provide that such concentrations would violate the dominance standard even if the creation of market power does not lie in the merged entity itself, but rather in a third party competitor in the market.

The other significant substantive change to the ECMR resolves the so-called “multiple transaction” issue. Under the current ECMR, a transaction that occurred in several stages could, depending upon the structure, be considered several concentrations for EC merger control purposes. The “multiple transaction” problem has resulted, in practice, in multiple filings, both to the Commission or to the Member States in cases where the small transactions comprising the full transaction do not satisfy the ECMR jurisdictional thresholds. The proposed amendments to Article 3(4) of the ECMR would eliminate the “multiple transaction” problem by providing that transactions which are conditional on one another or transactions that are closely connected in their economic rationale will be treated as a single concentration under the ECMR. This proposal will eliminate both the need for multiple merger control filings at the Commission, and make it easier for transactions to qualify for exclusive Commission jurisdiction.<sup>3</sup>

Finally, as discussed below in the context of the proposed Horizontal Merger Guidelines, the Commission reaffirmed its stance that because Article 2(1)(b) of the existing ECMR already requires the Commission to take into account the efficiencies created by a proposed concentration, there was no need to further amend the ECMR in this regard.

#### *Proposed Procedural Reforms*

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<sup>3</sup> Notably, this reform brings EC practice more in line with current U.S. merger control practice.

For the vast majority of future transactions, the impact of the proposed amendments to the ECMR will most keenly be felt in the amendments made to the procedural rules governing the practice of EC merger control investigations. These proposed procedural rules will both provide flexibility in the timing of EC merger control investigations and enhance the Commission's ability to coordinate the timing of many investigations with their counterparts in the United States and Canada, but may also significantly lengthen the waiting periods for EC regulatory clearance for many transactions. The most significant procedural reforms proposed by the Commission are as follows:

- allowing transacting parties to notify a transaction upon demonstration to the Commission of a good-faith intention to conclude a binding agreement between the transacting parties; heretofore, transacting parties could only notify a transaction to the Commission after such an agreement had been concluded;
- eliminating the one-week deadline from the signing of an agreement for submitting a notification to the Commission;
- enlarging Phase I of the investigation in general, and by approximately one-week in the event that the parties submit undertakings to the Commission to remedy perceived competitive concerns posed by the concentration;<sup>4</sup>
- enlarging Phase II by 15 working days should the parties submit undertakings before the 55<sup>th</sup> working day of the merger investigation; and
- providing for the possibility to extend Phase II by up to 20 working days in complex cases upon the unilateral request of the parties, or by the Commission with the consent of the parties.<sup>5</sup>

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<sup>4</sup> Unlike the current ECMR, the proposed amendments also convert all deadlines to working days. The proposed Phase I deadline in all merger investigations is 25 working days, which approximates the current one-month deadlines. Should the parties offer undertakings to the Commission, the Phase I deadline is extended to 35 days under the proposed amendments, approximately a one-week extension from the prior six week deadline.

<sup>5</sup> The proposed amendments require the parties to make a request to extend the Phase II deadline no later than 15 working days into the Phase II investigation. The Commission, however, can request that the parties agree to extend Phase II at any time. The amendments further provide that while the parties may require the Commission to extend Phase II only once, the Commission can request multiple extensions of the Phase II deadlines.

While these proposals will greatly enhance the flexibility of the parties and the Commission to resolve any perceived competitive threats posed by a transaction, these proposals also threaten to inhibit the parties' ability to achieve a timely resolution of the EC investigation in complex cases.

Moreover, the Commission, in light of the recent reversals of its decisions by the Court of First Instance (the "CFI"), has also clarified the procedures parties must follow in the event the CFI or the European Court of Justice (the "ECJ") annuls in whole, or in part, future Commission decisions. The proposed amendments to Article 10(5) require parties to submit either a new or supplemental notification to the Commission "without delay" following reversal of a Commission decision in the CFI. Thus, in the event that parties are successful in overturning, even in part, a Commission decision in the European courts, the parties will face a *de novo* Phase I and potentially another Phase II investigation.<sup>6</sup>

Finally, the proposed amendments enhance the Commission's discovery and enforcement powers, as well as the fines that compel compliance with them. First, the proposed amendments confirm the Commission's power to compel interviews of natural persons during merger investigations and, with the interviewee's consent, record such oral examinations for use as evidence in future proceedings.<sup>7</sup> Second, the Commission clarified its powers to enforce its decisions in cases where mergers have already been implemented. Under Article 8(4) of the proposed amendments to the ECMR, the Commission is expressly given the authority to take whatever actions are necessary in order to restore the competitive *status quo ante* to the market. Thus, the Commission may, under the proposed amendments, order any appropriate interim measures, in addition to a complete rescission of the transaction, to restore the competition that was distorted by virtue of the prohibited concentration. Such remedial measures may include hold separate orders and the cessation of the exercise of joint control, among other remedial interim measures. The proposed amendments to Article 8(5) also grant the Commission widespread power to remedy the competitive harm caused by concentrations implemented in contravention of Article 7 of the ECMR or of an undertaking given by the parties and upon which the Commission's decision clearing the transaction was conditioned.

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<sup>6</sup> Unlike, for example, the American system, which entrusts final authority over merger control policy to the Courts, the European system gives final authority over merger control policy to the Commission. Thus, while a final adverse ruling in an American court leaves U.S. regulators without recourse to enjoin the consummation of a transaction, the EC may, at its discretion, re-review any transaction in which its decision has been overturned.

<sup>7</sup> However, the Commission refused to extend its investigatory powers in merger investigations to include either sector inquiries or home searches.

The Commission greatly increased the potential fines for failure to fully cooperate with the Commission's investigation or comply with its decisions. For example, the proposed amendments increase the fine for providing incorrect, incomplete, or misleading information in a notification or in an oral interview from €50,000 to a maximum of 1% of the turnover of the notifying party. The proposed amendments also enhance the periodic fines designed to compel full and complete disclosures to the Commission to a maximum of a daily fine of 5% of the daily aggregate turnover of the relevant party. Equivalent fines are provided for noncompliance with Commission decisions.

## US REGULATORS MOVE TO COMBAT GUN JUMPING

In 2002, the DOJ announced the settlement of its gun-jumping complaint against Computer Associates and Platinum Technology, which alleged that serious antitrust violations occurred during the pre-closing activities undertaken by the merging parties. *Computer Associates* did not expand the range of impermissible pre-closing activities, but serves as a textbook example of gun jumping, and provides guidance to companies as they work towards integrating businesses in anticipation of closing.

At the core of the DOJ's complaint were certain operating covenants in the merger agreement that effectively ceded control, before both the expiration of the HSR waiting period and the consummation of the transaction, of Platinum Technology (the seller) to Computer Associates (the buyer). Specifically, the merger agreement

- ceded pricing control of the seller's products to the buyer by requiring that all contracts providing for discounts in excess of 20% (when such discounts were common for both the seller and the industry as a whole) must be approved in advance by the buyer;
- ceded day-to-day control of the seller's business to the buyer by providing that a vice-president of the buyer would work at the seller's headquarters pre-closing to review and approve all customer contracts and participate in other business decisions; and
- prohibited the seller from entering into contracts for a term of more than 30 days if the contract specified a fixed or capped price for its services.

The DOJ alleged that the seller pre-closing had altered substantially its ordinary discounting and contracting practices. Moreover, the buyer, by virtue of its unfettered pre-closing access to the seller, systematically collected competitively sensitive information relating to the seller's competitive bids, including the identity of the customer, products and services offered, pricing, and proposed discounts. The DOJ further alleged that the buyer passed much of this information on to its own staff to enhance its competitive position in negotiations. The DOJ sought \$1.3

million in fines for the exchange of competitively sensitive information and the exercise of premature control by the buyer over the seller during the 58-day period between the date the parties signed the merger agreement and the date the waiting period expired under the HSR Act.

Among the cooperative conduct *not* challenged by the DOJ in *Computer Associates* were:

- restrictions on the seller's ability to assume new debt or financing;
- restrictions on the seller's ability to issue new voting securities; and
- restrictions on the seller's ability to sell assets.

These restrictions do not inhibit the seller's ability to conduct its business in the ordinary course prior to closing. Thus, while parties may plan for the integration of their assets and businesses, implementation of those plans must await the consummation of the transaction.

In February 2003, in a further sign of the importance the government attaches to "gun-jumping," the DOJ sued Gemstar and TV Guide for agreeing to stop competing for customers, jointly deciding on prices and offer terms and jointly managing their interactive television program guide businesses during the HSR Act pre-merger waiting period. To settle the charge, Gemstar assumed premature control over TV Guide in violation of the HSR Act. The parties paid \$5.67 million in civil penalties.

## US REGULATORS' EFFORTS TO SIMPLIFY THE HART-SCOTT PROCESS

### *DOJ Merger Review Initiative*

In early 2002, the DOJ announced an initiative designed to make more efficient use of the first 30-day waiting period of the HSR Act by getting to the core antitrust issues quickly, so that the staff and the parties may reach closure on most or all issues before the end of this initial waiting period. The initiative did not create new formal procedures, but signals a commitment to find practical ways to identify, address, and resolve issues within the initial 30-day waiting period or, if closure is not reached, to narrow the scope of any Second Request which may follow.

Specifically, the staff is encouraged to tailor its investigative plans and strategies to the specific issues posed by each transaction, rather than relying on standardized procedures or boilerplate models. Parties may expect the DOJ to be more proactive during the initial 30-day waiting period, and may find it to their advantage to reciprocate by proffering key documents beyond those required by a HSR Act filing, anticipating requests for information, and availing themselves of opportunities to meet with staff to discuss issues raised by their transaction. While the practical effectiveness of the initiative remains to be seen, it is clear that its success is



dependent on the willingness of both the DOJ and the parties to engage in candid discussions during the initial 30-day period.

*Federal Trade Commission's New Procedures*

*Decisions in Cases Involving Second Requests*

In one of the more significant changes to its merger review procedure in some time, the FTC announced in 2002 that it would issue written decisions in all cases in which a Second Request was issued, but no enforcement action was taken. The FTC hopes that these decisions will provide additional transparency into its merger analysis. Indeed, FTC's statement justifying its decision to close two investigations of mergers in the cruise industry helped to correct the misperception that these cases represented a shift in enforcement policy. While many commentators suggested that the FTC in these cases had abandoned the policy of opposing mergers in highly concentrated industries (here, from four to two competitors), the FTC's statement argued that its decision resulted from a straightforward application of the Horizontal Merger Guidelines.

*FTC "Best Practices" Guidelines for Second Requests*

In December 2002, the FTC issued a set of procedural guidelines aimed at improving the efficiency and quality of the merger review process. In particular, the FTC has proposed to eliminate several requirements that place heavy, and expensive, burdens on parties responding to Second Requests.

Among other things, the FTC has proposed changes in its requests for the production of electronic documents. First, the FTC proposes various methods by which parties can actually produce documents electronically, such as in searchable .pdf format. Second, the FTC proposes guidelines for the use of "term" searches of electronic databases to find responsive documents. Third, the FTC proposes to limit the need to produce archived electronic documents in many cases, and vastly restrict the scope of production if eventually required in a case. Finally, the FTC suggests limiting the scope of email production via the use of term searches and date limits.

**SUMMARY OF FILING REQUIREMENTS BY JURISDICTION**

The following chart provides a brief summary of the most important merger control provisions in a number of jurisdictions. The chart is not intended to be a comprehensive analysis of all merger control regulations or to provide legal advice. Statutory sources are often ambiguous and local practice may affect the application of statutory provisions in important respects in the context of a specific transaction. Counsel should be consulted for advice concerning particular transactions.

**JURISDICTION WITH MANDATORY PRE-MERGER FILINGS AND FIXED FILING DEADLINES**

| <b>Jurisdiction</b> | <b>Antitrust agency</b>                            | <b>Filing deadline</b>   | <b>Notification thresholds<sup>8</sup></b>  | <b>Clearance deadline</b>  | <b>Suspension Effects<sup>9</sup></b> |
|---------------------|--|--|---|--|---------------------------------------|
| <b>Argentina</b>    | National Commission for the Defense of Competition | Within one week of execution of an agreement, announcement of a bid or acquisition of control.<br><br>In some cases, the parties may be able to make a post-merger filing. | Aggregate Argentine turnover of the parties exceeds ARS 200 million.  | 45 business days from date filing is complete.   | Yes, if a pre-merger filing is made.  |
| <b>Belgium</b>      | Ministry of Economic Affairs                       | Within one month of the earliest of (a) the conclusion of the agreement, or (b) the announcement of a public bid or (c) the acquisition of a controlling interest.         | Aggregate Belgian turnover of the parties exceeds €40 million and (ii) Belgian turnover of at least two parties exceeds €15 million each. | Initial decision within 45 days of notification. Maximum of 60 days for further investigation.                 | Yes.                                  |
| <b>Brazil</b>       | Administrative Council of Economic Defense         | Within 15 working days after execution of the agreement.   | Resulting market share of at least 20% in the relevant market or worldwide turnover of one party exceeds over BRL 400 million.            | The Economic Policy Secretariat of the Ministry of Finance (SEAE) has 30 days (from date of filing) to issue a |                                       |

<sup>8</sup> The thresholds indicated in these charts reflect only the basic jurisdictional tests. In many jurisdictions, statutory or course of practice exemptions may apply.

<sup>9</sup> Suspension effects imposed in some jurisdictions may prohibit the parties from closing the transaction until they obtain clearance from the appropriate authority in those jurisdictions. Some jurisdictions may permit the parties to close the transaction prior to clearance if the parties hold separate their assets and businesses within that jurisdiction. Other jurisdictions may permit the parties to file a written petition requesting permission to close the transaction prior to clearance. Other jurisdiction-specific exceptions or exemptions may apply.

| Jurisdiction          | Antitrust agency   | Filing deadline   | Notification thresholds <sup>8</sup>  | Clearance deadline   | Suspension Effects <sup>9</sup> |
|-----------------------|--|---|---|--|---------------------------------|
|                       | (CADE)   |   | The local effects test is satisfied if either party possesses any amount of Brazilian assets or has any Brazilian turnover, even if there is no increase in market share.   | report. The Economic Law Office of the Ministry of Justice (SDE) then has 30 days to issue a report. CADE then has 60 days to issue a report. Any agency can send an “official letter” to a party, competitor, or customer, which restarts the agency’s response period. |                                 |
| <b>Cyprus</b>         | Competition and Protection of Consumers Services, of the Ministry of Commerce, Industry and Tourism. | Must file within one week of the earliest of (1) the conclusion of the agreement (2) the tender offer or (3) the acquisition of a controlling interest. | Worldwide turnover of at least two parties exceeds 2 million Cyprus pounds each and at least one party engages in commercial activity within Cyprus and at least 2 million Cyprus pounds of the total turnover results from sales within Cyprus.  | Stage one: 1 month.<br><br>Stage two: 4 months.  |                                 |
| <b>Czech Republic</b> | State Office for Economic Competition  | Within one week of the execution of agreement.  | Aggregate worldwide turnover of the parties exceeds CZK 5 billion; or<br>Aggregate Czech turnover of the parties exceeds CZK 500 million and at least two parties have a worldwide turnover of at least CZK 200 million each.   | In general, 30 days but may be extended to up to 5 months.   | Yes.                            |
| <b>Denmark</b>        | Competition Council  | One week after the earliest of (1) the conclusion of the agreement, (2) the announcement of a public bid, or (3) acquisition of a controlling interest. | Aggregate Danish turnover of the parties exceeds DKK 3.8 billion and the Danish turnover of each of at least two parties exceeds DKK 300 million; or<br>The Danish turnover of one of the parties exceeds DKK 3.8 billion and the worldwide turnover of one of the other parties exceeds DKK 3.8 billion. | Stage 1: four weeks.<br><br>Stage 2: three months from complete notification.  | Yes.                            |
| <b>Estonia</b>        | Competition  | Within 7 days of entering   | Aggregate worldwide turnover of the   | Stage 1: 30 days   | Yes.                            |

| Jurisdiction             | Antitrust agency                             | Filing deadline   | Notification thresholds <sup>8</sup>   | Clearance deadline   | Suspension Effects <sup>9</sup> |
|--------------------------|--|---|--|--|---------------------------------|
|                          | Board  | into a binding agreement.   | parties exceeds 500 million kroons and worldwide turnover of two parties exceeds 100 million kroons and the commercial activity of at least one party is conducted in Estonia.   | Stage 2: 4 months  |                                 |
| <b>EU<sup>1011</sup></b> | Merger Task Force of the European Commission | One week from the conclusion of a binding agreement, the announcement of a public bid, or acquisition of control (whichever is earliest), though in practice, the Merger Task Force regularly grants extension. | Aggregate worldwide turnover of all parties exceeds €5 billion and EU-wide turnover of at least two parties exceeds €250 million euros, unless each of the parties achieves more than 2/3 of the EU turnover in one and the same Member State;<br>or<br>Aggregate worldwide turnover of all parties exceeds €2.5 billion, EU-wide turnover of at least two of the parties exceeds €100 million each, the combined turnover in each of at least three Member States exceeds €100 million, and turnover in each of those three Member States by each of at least two of the parties exceeding €25 million, unless each of the parties achieves more than 2/3 of the EU turnover in one and the same state. | Stage 1: one month from notification or six weeks from notification where the parties have submitted commitments intended to form the basis of a clearance decision.<br><br>Stage 2: up to four additional months. | Yes.                            |
| <b>Finland</b>           | Finnish Competition Agency (“FCA”)           | Within one week of triggering event (e.g. acquisition of control, announcement of public bid, signing of an agreement to merge,   | Aggregate worldwide turnover of the parties exceeds FMk 2 billion and the aggregate worldwide turnover of at least two of the parties exceeds FMk 150 million.   | Generally, one month. The waiting period can be extended for further 3 to 5 months if the FCA proposes to the Competition Council that the transaction be blocked.   | Yes.                            |

<sup>10</sup> If the EU thresholds are met, no merger filing needs to be made in the EU Member States (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Portugal, The Netherlands, the United Kingdom, Spain, and Sweden).

<sup>11</sup> The United States has entered into a bilateral cooperation agreement with the European Union.

| Jurisdiction     | Antitrust agency                         | Filing deadline   | Notification thresholds <sup>8</sup>   | Clearance deadline   | Suspension Effects <sup>9</sup> |
|------------------|--|---|--|--|---------------------------------|
|                  |  | founding of joint venture).   |  | Competition Council must issue decision within 3 months of FCA proposal.   |                                 |
| <b>Greece</b>    | Competition Commission                   | Within 10 working days from (a) the conclusion of agreement, (b) announcement of public bid or (c) acquisition of a controlling interest.                       | The acquisition or increase of a market share in Greece of at least 35%;<br>or<br>The aggregate Greek turnover of the parties exceeds €150 million and at least two parties have Greek turnover exceeding €15 million. | Stage 1: one month from filing (or 15 days in urgent cases).<br><br>Stage 2: no longer than 3 months from complete filing.   | Yes.                            |
| <b>Hungary</b>   | Economic Competition Office              | Within 30 days from the earlier of (a) the publication of a tender offer, (b) the conclusion of an agreement, or (c) the acquisition of the controlling rights. | Aggregate Hungarian turnover of the parties exceeds HUF 10 billion and either (a) at least 2 parties with Hungarian turnover of HUF 500 million or (b) the Hungarian turnover of the target is HUF 500 million.        | 90 days (President of Competition Board can extend deadline for a maximum of 60 days).<br><br>If Competition Board makes data request, then 90-day period starts over.       |                                 |
| <b>Ireland</b>   | Minister of Enterprise and Employment    | Within one month of an offer capable of acceptance having been made.  | Worldwide turnover of at least two parties exceeds €40 million each and at least one party has Irish turnover exceeding €40 million.   | Stage 1: one month from notification (may be extended by information request).<br><br>Stage 2: four months from notification (may be extended by Stage 1 information report) | Yes.                            |
| <b>Latvia</b>    | Competition Council                      | Within 7 days of entering into an agreement.  | Aggregate turnover of the parties exceeds 25 million lats and at least one party has market share greater than 40%.  | 60 days from receipt of complete notification.   |                                 |
| <b>Lithuania</b> | Competition Council                      | Within 7 days of entering into an agreement   | Aggregate Lithuanian turnover of the parties exceeds 30 million litas and the Lithuanian turnover of at least two parties exceeds 5 million litas.   | Stage 1: 30 days<br><br>Stage 2: 3 months  | Yes.                            |
| <b>Poland</b>    | Office for the Protection of Competition | Within 7 days from the date of an agreement or other action leading to  | Aggregate worldwide turnover of the parties exceeds €50 million and the target must have derived at least €10  | Two months (may be extended if the President of the Office is waiting for  | Yes.                            |

| Jurisdiction           | Antitrust agency                         | Filing deadline   | Notification thresholds <sup>8</sup>   | Clearance deadline  | Suspension Effects <sup>9</sup> |
|------------------------|--|---|--|---|---------------------------------|
|                        | and Consumers                            | merger.   | million in Poland in each of the last two fiscal year prior to notification.   | deficiencies to be remedied).   |                                 |
| <b>Romania</b>         | Competition Council                      | Within 7 days of making a tender offer; otherwise, before implementation.   | Aggregate Romanian turnover of the parties exceeds ROL 25 billion.   | In general, 30 days. Concentrations posing serious concerns may be investigated for an additional 4 months.   | Yes.                            |
| <b>Slovak Republic</b> | Antimonopoly Office                      | Within 30 days from the date of announcement of a public offer, execution of an agreement or acquisition of control.  | Aggregate worldwide turnover of the parties exceeds SKK 500 million and at least two parties have worldwide turnover exceeding SKK 150 million each;<br>or<br>Either party has a 25% market share in Slovakia.   | 60 days, but can be extended by up to an additional 90 days.  | Yes.                            |
| <b>Slovenia</b>        | Office for the Protection of Competition | Within one week of the earliest of (a) the conclusion of the agreement, or (b) the announcement of a public bid or (c) the acquisition of a controlling interest. | The aggregate Slovenian turnover of the parties exceeds 8 billion tolar in each of the last two years;<br>or<br>A combine market share exceeding 40% in a market affected by the transaction.  | Stage 1: 30 days<br><br>Stage 2: 90 additional days   | Yes.                            |
| <b>South Africa</b>    | Competition Commission                   | Within 7 days of the earliest of announcement of a public offer, execution of an agreement or acquisition of control,   | Intermediate merger: if either: (i) the combined annual South African turnover (in the immediately preceding financial year) of the "target firm" and the "acquiring firm" equals or exceeds SAR 50 million; or (ii) the value of the combined South African assets of the acquiring and the target firms equals or exceeds SAR 50 million; or (iii) the aggregate of the South African turnover of the acquiring firm and the South African assets of the target firm equals or exceeds SAR 50 million, or (iv) the aggregate of the South African assets of the acquiring firm and the | Intermediate merger: The Commission, within 20 business days of certifying that an application is complete, must approve or prohibit the merger, but may extend the period by 40 additional days<br><br>Large merger: The Commission has 40 days to refer the case to the Tribunal, a date for hearing must be set within 15 business days of the matter being referred. A certificate of approval or | Yes.                            |

| Jurisdiction       | Antitrust agency             | Filing deadline   | Notification thresholds <sup>8</sup>   | Clearance deadline   | Suspension Effects <sup>9</sup> |
|--------------------|------------------------------|---|--|--|---------------------------------|
|                    |                              |   | <p>South African turnover of the target firm equals or exceeds SAR 50 million; and (v) the annual South African turnover or South African asset value (whichever is the greater) of the target firm equals or exceeds SAR 5 million.</p> <p>Large merger: if either: (i) the combined South African annual turnover of the acquiring and target firms equals or exceeds SAR 3.5 billion; or (ii) the combined value of the South African assets of the acquiring and target firms equals or exceeds SAR 3.5 billion; or (iii) the aggregate of the South African turnover of the acquiring firm and the South African assets of the target firm equals or exceeds SAR 3.5 billion; or (iv) the aggregate of the value of the South African assets of the acquiring firm and the South African turnover of the target firm equals or exceeds SAR 3.5 billion; and (v) the annual South African turnover or South African asset value (whichever is the greater) of the target firm equals or exceeds SAR 100 million.</p> | prohibition must be issued within 15 days of the end of the hearing and reasons must be provided within 30 days of the issue of the certificate. |                                 |
| <b>South Korea</b> | Korean Fair Trade Commission | <p>Within 30 days from the date the agreement was signed.</p> <p>In some cases, the parties may be able to make a post-merger filing.</p> | <p>Filing is mandatory if:</p> <p>(1) the acquisition of all or a major portion of the business or assets of a target company, if the acquirer or the target company has assets or revenues (including those of the affiliates prescribed by the FTL) which are equal</p>  | 30 days (may be extended by up to 60 days).  | Yes.                            |

| Jurisdiction | Antitrust agency | Filing deadline | Notification thresholds <sup>8</sup>   | Clearance deadline | Suspension Effects <sup>9</sup> |
|--------------|------------------|-----------------|--|--------------------|---------------------------------|
|              |                  |                 | <p>to or exceed 100 billion Won. A major portion of the business is deemed to be acquired if the purchase price is not less than (i) 10% of the target company's total assets as stated in the financial statement of the most recent fiscal year or (ii) five billion Won, whichever is lower; and</p> <p>(2) the purchase of the existing or new shares of an existing company, if the acquirer company or the target company has assets or revenues (including those of the affiliates prescribed by the FTL) which are equal to or exceed 100 billion Won and the acquirer intends to effect a transaction as a result of which the acquirer becomes a shareholder holding 20% (15% if a KSE-listed or KOSDAQ-registered company) or more of the voting shares of another company; and</p> <p>(3) a merger between companies one of which has assets or revenues (including those of the affiliates prescribed by the FTL) which are equal to or exceed 100 billion Won; and</p> <p>(4) the concurrent holding of a position as an officer of a target company by an officer or an employee (other than an officer) of an acquirer company, if the acquirer company or the target company owns two (2) trillion Won or more in total consolidated assets or total annual consolidated sales.</p> |                    |                                 |

**JURISDICTIONS WITH MANDATORY PRE-MERGER FILING REQUIREMENTS**



**BUT NO FIXED FILING DEADLINES**

| <b>Jurisdiction</b>                          | <b>Antitrust Agency</b>                                  | <b>Filing deadline</b> | <b>Notification thresholds</b>  | <b>Clearance deadline</b>   | <b>Suspension Effects</b> |
|--|--|------------------------|---|---|---------------------------|
| <b>Austria</b>                               | Cartel Court   | Pre closing.           | Aggregate worldwide turnover of the parties exceeds €300 million, aggregate Austrian turnover exceeds €15 million, and at least two parties have worldwide turnover of €2 million each.   | Stage 1: One month.<br><br>Stage 2: Additional 4 months.  | Yes.                      |
| <b>Canada (Competition Act)<sup>12</sup></b> | Canadian Competition Bureau                              | Pre closing.           | Merger pre-notification is mandatory if (i) parties have combined assets or revenues of at least C\$400 and (ii) target has Canadian assets or revenues of at least C\$35 million.<br><br>Revenues include sales in, from or into Canada as generated by Canadian assets or businesses. | A 14 or 42 days waiting period depending on whether a short or long form filing is elected (subject to the right of the Commissioner to extend the period in the case of a short form).   | Yes.                      |
| <b>Colombia</b>                              | Superintendent of Industry and Trade                     | Pre closing.           | Transactions that result in a concentration in a Colombian market must be notified only if the transaction results in a market share greater than 20% or if the combined Colombian assets of the parties will exceed 50,000 times the minimum wage.                                     | 30 working days from date of filing to accept or reject proposed merger. If SIC does not object within 30 days then merge clears. SIC may request additional information and such a request starts a new 30 working day period. | Yes.                      |
| <b>Croatia</b>                               | Croatian Agency for the Protection of Market Competition | Pre closing.           | Aggregate worldwide turnover of the parties exceeds HRK 700 million; or<br>At least two parties have worldwide turnover exceeding HRK 90 million.   | 90 days.  | Yes.                      |

<sup>12</sup> The United States has entered into a bilateral cooperation agreement with Canada.

| Jurisdiction                 | Antitrust Agency                 | Filing deadline | Notification thresholds   | Clearance deadline  | Suspension Effects |
|------------------------------|----------------------------------|-----------------|---|---|--------------------|
| <b>France</b>                | Ministry of Economic Affairs     | Pre closing.    | Aggregate worldwide turnover of the parties exceeds €150 million and at least two parties have French turnover exceeding €15 million each.  | Stage 1: 8 weeks maximum.<br><br>Stage 2: up to 5 additional months.  | Yes.               |
| <b>Germany</b> <sup>13</sup> | Federal Cartel Office            | Pre closing     | Aggregate worldwide turnover of the parties exceeds €500 million and at least one party has German turnover exceeding €25 million, unless one of the following de minimis exemptions applies: (i) one party to the merger is an independent company with a worldwide turnover of less than €10 million or (ii) the relevant market (which must be in existence for at least 5 years) had a total annual value of less than €15 million. | Stage 1: one month from notification.<br><br>Stage 2: three additional months.  | Yes.               |
| <b>Israel</b>                | Israeli Antitrust Authority      | Pre closing.    | Aggregate Israeli turnover of the parties exceeds NIS 150 million, provided that each of at least two parties have Israeli turnover of at least NIS 10 million each;<br>or<br>Aggregate market share above 50%;<br>or<br>One of the parties is a monopolist.  | Commissioner must rule on the merger within 30 days of filing of Notices; period may be extended.   | Yes.               |
| <b>Italy</b>                 | Competition and Market Authority | Pre closing     | Aggregate Italian turnover of the parties exceeds €387 million<br>or<br>Target's Italian turnover exceeds €39 million.  | Stage 1: 30 days from notification (15 days if a public takeover bid).<br><br>Stage 2: 45 additional days (extendible by a further 30 days where insufficient |                    |

<sup>13</sup> The United States has entered into a bilateral cooperation agreement with Germany.

| Jurisdiction      | Antitrust Agency               | Filing deadline | Notification thresholds  | Clearance deadline  | Suspension Effects |
|-------------------|--------------------------------|-----------------|--|---|--------------------|
|                   |                                |                 |  | information).   |                    |
| <b>Japan</b>      | Japanese Fair Trade Commission | Pre closing.    | <p>Notification of share acquisitions may be required upon the acquisition of voting rights exceeding either 10, 25, or 50 percent. Notification is required where the acquiring party has more than ¥10 billion of assets and the target has more than ¥1 billion of assets (Japanese target) or ¥1 billion of Japanese turnover (foreign target).</p> <p>Notification of statutory mergers may be required if one party has assets exceeding ¥10 billion and the other party has assets exceeding ¥1 billion. Foreign-to-foreign mergers may not be notifiable unless one party has Japanese turnover exceeding ¥10 billion and the other party has Japanese turnover exceeding ¥1 billion.</p> <p>Notification of asset transfers may be required if the transferred assets exceed ¥1 billion and the transferee has assets exceeding ¥10 billion. If the transferor is a foreign entity, the transaction is not reportable unless the transferred business has Japanese turnover exceeding ¥1 billion.</p> | Generally, 30 days, unless extended or shortened by the JFTC. | Yes.               |
| <b>Kazakhstan</b> | Antimonopoly Committee         | Pre closing.    | Transactions resulting in a combined entity with more than 35% market share in Kazakhstan must be notified. Also, notifications should be made for (1) acquisitions of more  | Initial waiting period is 30 days.                            |                    |

| Jurisdiction           | Antitrust Agency               | Filing deadline | Notification thresholds   | Clearance deadline  | Suspension Effects |
|------------------------|--------------------------------|-----------------|---|---|--------------------|
|                        |                                |                 | <p>than 20% of the voting stock in a company having a dominant position (35%) in a Kazak market, (2) acquisitions of more than 10% of the assets of a company with a dominant position in a Kazak Market, or (3) acquisitions of rights permitting the acquiring party to make important strategic or business decisions for a company with a dominant position in a Kazak market.</p> <p>Foreign-to-foreign transactions are not notifiable.</p>   |   |                    |
| <b>Mexico</b>          | Federal Competition Commission | Pre closing.    | <p>Notification required for an acquisition of a Mexican target worth about 12 million times the prevailing minimum wage or more; or (2) an acquisition of 35% or more of a firm with Mexican assets or Mexican sales of more than 12 million times the prevailing minimum wage; or (3) if the parties' have combined Mexican assets or Mexican sales of more than 48 million times the prevailing minimum wage and the transaction results in an accumulation of assets or shares of stock in excess of 4.8 million times the prevailing minimum wage.</p> | FCC has 20 days from date of filing to request additional info which must be supplied by parties within 15 days; FCC has 45 days to issue resolution which can be extended for an additional 60 days. | Yes.               |
| <b>The Netherlands</b> | Competition Authority          | Pre closing     | <p>Aggregate worldwide turnover of the parties exceeds €113.45 million and at least two parties have turnover in the Netherlands that exceeds €30 million each.</p>   | Within four weeks the Director General must decide whether a license is required. If so, an application for a license must be made and the  | Yes.               |

| Jurisdiction       | Antitrust Agency   | Filing deadline   | Notification thresholds  | Clearance deadline  | Suspension Effects |
|--------------------|--|---|--|---|--------------------|
|                    |  |   |  | Director General must decide within 13 weeks.   |                    |
| <b>Portugal</b>    | Directorate-General for Trade and Competition                    | Pre closing   | Creation or strengthening of a combined market share in Portugal greater than 30%;<br>or<br>Aggregate Portuguese turnover of the parties exceeds €149.64 million.  | Stage 1: 40 days (or 90 days if the authorities initiate the procedure <i>ex officio</i> ).<br><br>Stage 2: Up to 45 additional days. | Yes.               |
| <b>Russia</b>      | Ministry for Antimonopoly Policy and Support of Entrepreneurship | Pre closing: no deadline<br><br>Post closing: within 15 days of closing | Aggregate worldwide assets of the parties exceeds approximately US\$317,250 (pre-merger notification) or approximately US\$158,600 (post-merger notification);<br>or<br>Any of the parties has a Russian market share exceeding 35%. | Generally 30 days, but the MAP may extend waiting period by up to 15 additional days.   | Yes.               |
| <b>Spain</b>       | Service for the Defense of Competition                           | Pre closing   | Aggregate Spanish turnover of the parties exceeds €240.4 million and Spanish turnover of two parties exceeds €60.1 million each;<br>or<br>Acquisition of or increase in a share of 25% or more in a “product” or “service” market.   | Stage 1: one month from notification.<br><br>Stage 2: three months from notification<br><br>Stage 3: four months from notification    | Yes.               |
| <b>Sweden</b>      | Competition Authority  | Pre closing   | Combined total turnover of over SEK 4 billion and each of at least two of the undertakings concerned has a Swedish turnover exceeding SEK 100 million.   | Stage 1: 25 working days from notification.<br><br>Stage 2: three months (may be extended).   | Yes.               |
| <b>Switzerland</b> | Competition Commission   | Pre closing   | Aggregate worldwide turnover of the parties exceeds Swfr 2 billion or Swfr 500 million in Switzerland and the Swiss turnover of at least two parties exceeds Swfr 100 million each.  | Stage 1: one month.<br><br>Stage 2: four months.  | Yes.               |
| <b>Taiwan</b>      | Taiwanese Fair   | Pre closing   | The market share of the merged   | 2 months  | Yes.               |

| Jurisdiction         | Antitrust Agency   | Filing deadline | Notification thresholds  | Clearance deadline   | Suspension Effects |
|----------------------|--|-----------------|--|--|--------------------|
|                      | Trade Commission   |                 | entity exceeds 33%, or one party has a market share exceeding 25%, or Taiwanese turnover of one party exceeds TWD 5 billion.   |  |                    |
| <b>Tunisia</b>       | Ministry of Trade  | Pre closing     | Aggregate Tunisian market share of the parties exceeds 30% and the parties aggregate worldwide turnover exceeds TND 3 million.   | 3 months.  | Yes.               |
| <b>Turkey</b>        | Turkish Competition Board                                      | Pre closing     | The parties' combined market share in Turkey is greater than 25%;<br>or<br>The aggregate Turkish turnover of the parties exceeds TRL 25 trillion.  | Stage 1: 30 days.<br>Stage 2: 6 months.  | Yes.               |
| <b>Ukraine</b>       | Antimonopoly Committee of Ukraine                              | Pre closing     | Aggregate worldwide assets or worldwide turnover of the parties exceeds €12 million where either (a) two parties have €1 million of worldwide assets or worldwide sales each or (b) one party has Ukrainian sales or assets of €1 million.   | Stage 1: 1 month.<br>Stage 2: 3 months.  | Yes.               |
| <b>United States</b> | Pre Merger Notification Office of the Federal Trade Commission | Pre closing     | (1) One party must have net sales or total assets of \$100 million or more and the other party has annual net sales or total assets of \$10 million or more ( <i>i.e.</i> , the "size of person threshold"); and<br><br>(2) The "acquiring person" acquires voting securities and/or assets of more than \$50 million ( <i>i.e.</i> , the "size of transaction threshold"); <u>or</u><br><br>(3) The acquiring person acquires voting securities and/or assets of the acquired person having a value of more than \$200 million, regardless of | Stage 1 clearance: 30 days from filing (15 days in the case of cash tender offers and bankruptcy matters)<br><br>Stage 2: 30 days from substantial compliance with second request. | Yes.               |

| Jurisdiction | Antitrust Agency | Filing deadline | Notification thresholds  | Clearance deadline | Suspension Effects |
|--------------|------------------|-----------------|--------------------------|--------------------|--------------------|
|              |                  |                 | whether test (1) is met. |                    |                    |

**VOLUNTARY FILING JURISDICTIONS**

| <b>Jurisdiction</b>                 | <b>Antitrust Agency</b>                        | <b>Filing Deadline</b> | <b>Notification thresholds</b>  | <b>Clearance Deadline</b>  | <b>Suspension Effects</b>                 |
|-------------------------------------|--|------------------------|---|--|---|
| <b>Australia</b> <sup>14</sup>      | Australian Competition and Consumer Commission | None.                  | No formal thresholds. The ACCC will generally only investigate a merger where the merger will either: (i) result in a post-merger market share of the four (or fewer) largest firms of greater than 75%, with the merged firm supplying at least 15% of the market; or (ii) regardless of the other firms in the market, result in the merged firm supplying 40% or more of the market. | Informal clearance: generally, 2 to 4 weeks, but can extend to 6 to 12 weeks for more complex cases.<br><br>Formal clearance: 30 days (complex matters, 45 days) | Yes (only if formal clearance is sought). |
| <b>Chile</b>                        | Ministry of Economy                            | None.                  | No thresholds.  | None.  |   |
| <b>New Zealand</b>                  | Commerce Commission                            | None                   | No formal thresholds. Will generally only investigate merged entities possessing more than 40% market share.  | Clearance process: 10 business days.<br><br>Authorization process: 60 business days.   | Yes.                                      |
| <b>Norway</b>                       | Norwegian Competition Authority                | None                   | No formal thresholds. Will generally only investigate merged entities possessing more than 40% market share.  | If voluntary filing made: 3 months.<br><br>If no voluntary filing made: 6 months to one year.  |   |
| <b>United Kingdom</b> <sup>15</sup> | Office of Fair Trading and the Competition     | None                   | UK turnover of the target exceeds £45 million or the merger would result in the creation or enhancement of at   | The Office of Fair Trading has 20 days (may be extended in some cases by   | Yes.                                      |

<sup>14</sup> The United States has entered into a bilateral cooperation agreement with Australia.

<sup>15</sup> The Enterprise Act of 2002 received the Royal Assent and became law on 7 November 2002. The thresholds cited herein are expected to begin to come into effect in the summer of 2003.



| Jurisdiction     | Antitrust Agency   | Filing Deadline | Notification thresholds  | Clearance Deadline   | Suspension Effects |
|------------------|--|-----------------|--|--|--------------------|
|                  | Commission   |                 | least a 25% share in the UK.   | an additional 10 days) to decide to refer a merger exceeding the thresholds to the Competition Commission.<br><br>If the OFT refers a transaction to the CC, the CC has up to 32 weeks to investigate. |                    |
| <b>Venezuela</b> | Superintendency for the Promotion and Protection of Free Competition | None            | Aggregate amount of sales exceeds the equivalent of US\$2.2 million.<br><br>Foreign-to-foreign mergers with an impact on competition in Venezuela may be reviewed. | Four months. May be extended by a further two months.  |                    |