PANAMA	
MERGER REVIEW PROCEDURES	
Narrative Description of Merger Review Process	There is no mandatory pre-merger control in Panama for the approval of mergers and other forms of economic concentrations. Law 45 of 2007 (the "Competition Law") establishes a voluntary notification system for potential mergers or economic concentrations with the Authority of Consumer Protection and Defense of Competition (the "Authority"). The transaction is notified to the Authority for verification prior to consumation. The Law defines an "economic concentration" as the merger, acquisition of control, or any other act pursuant to which corporations, associations, shares, trusts, establishments or any other kind of assets are combined, and which occurs between suppliers or potential suppliers, customers or potential customers, and other competing or potentially competing economic agents. The Competition Law prohibits economic concentrations whose effects may unreasonably restrict or harm free competition. It applies to any acts or practices whose effects take place in Panama, regardless of where those acts have been carried out or perfected. Notwithstanding the above, economic concentrations with restrictive effects on competition may obtain clearance from the Authority if the restrictive effects of the concentration are outweighed by its contribution to obtaining further efficiencies, such as: ▪ improvements in commercialization and production systems; ▪ fostering technical and economic progress; ▪ improvements in the competitiveness of the industry; and ▪ contributions to consumer interests. The following concentrations are not considered prohibited economic concentrations under the Competition Law: ▪ accidental associations that are formed for a definite time period to develop a particular project; ▪ concentrations between competitors or non-competitors that do not have harmful effects on competition and the market; and

	▪ economic concentrations involving an economic agent that is insolvent, so long as the insolvent economic agent can show that it has unsuccessfuly sought purchasers that are not competitors. The Competition Law states that the notification for verification of a potential merger or economic concentration is made by the "interested economic agent" to the Authority. In practice, the notification to the Authority is a collaborative process in which the target entitity and the potential purchaser furnish information. The Authority has up to 60 calendar days from the date the notification is filed, or if requests for further information are made, the date of reciept of all further information, to make a formal decision in which it approves or rejects the economic concentration. If the Authority does not make a decision within that timeframe, the economic concentration is deemed approved. If the Authority rejects the economic concentration, the decision may be appealed. If advance verification for the economic concentration is sought and it is approved, the economic concentration cannot be subsequently challenged. If no advance verification is sought, and after the consumation of the transaction the Authority considers the economic concentration to unreasonably restrict or harm free competition, the Authority may file a lawsuit with a specialized superior court, seeking that certain conditions be imposed on the parties to ensure competitiveness in the marketplace, and/or seeking a partial or complete divestiture of the concentration.
Procedural Details Not Included in the ICN Materials, If Any	
Current Legal Developments	Executive Decree No. 8-A dated of January 22, 2009, enacts Regulations for the Competition Law (the "Regulations"). In general, the Regulations develop in more detail certain matters outlined in the Competition Law. For instance, the Regulations list the documents that must be provided by the parties seeking verification of an economic concentration, they set forth the elements to be taken into account by the Authority for the economic analysis of a concentration, and the conditions that the Authority may impose for the approval of the same.

	The Regulations clarify that any agreements, combinations or acts that generate an increase in "economic efficency" and do not harm consumers do not restrict or harm free competition. The Regulations also set forth the elements which may constitute an increase in "economic efficency," which include, among others: ▪ improvements in the conditions of competition, production, processes, distribution, supply, commercialization or consumption of products and services; and ▪ fostering technical or economic progress. Additionally, the foregoing elements must fulfill all of the following requirements: ▪ they can only be obtained through an economic concentration; ▪ they do not impose restrictions on the interested parties which are considered non-essential in obtaining the stated objectives; ▪ they can be maintained in the long term; ▪ they do not result in a significant price increase, in a decrease of supply in the market, or in an important inhibition on the degree of innovation in the market or a significant decrease in options for consumers, which translates into a decrease in their benefits; ▪ they do not allow an entity the possibility of eliminating the competition with respect to a substantial part of the products and services at issue; and ▪ they compensate, at least, the possible negative effects to free competition. The Regulations also provide examples of what constitute improvements in the conditions of competition, production, processes, distribution, supply, commercialization or consumption of products and services, which include, among others: ▪ price reductions; ▪ increases in quality of products or services without a corresponding price increase; ▪ decreases in distribution, administrative and transaction costs; ▪ decreases in the cost of production or commercialization as a result of the expansion in infrastructure or distribution channels; and ▪ the transfer of production technology or knowledge of the market. In 2002, the Authority issued Guidelines for the Control of Economic Concentrations (the "<u>Guidelines</u>"), which

	correspond to the previous competition law. The Authority is working on new Guidelines for the Competition Law, but while these are drafted, it continues to utilize the 2002 Guidelines. It is uncertain when the new Guidelines will be in final form.
Recent Cases or Illustrative Precedents	
Frequently Asked Questions	**Is there a mandatory merger control process in Panama? Are there mandatory thresholds for notification?** In Panama there is no obligation for an economic concentration to seek prior approval from the Authority as the process is entirely voluntary. What follows from the above is that there are no mandatory thresholds triggering the need for prior approvals before the consummation of an economic concentration. **What is the main advantage for seeking prior verification of an economic concentration?** The main advantage of seeking prior approval from the Authority is that, if the economic concentration is approved, neither the Authority nor any other person can challenge the economic concentration on grounds that it violates the Competition Law, unless the approval was granted on the basis of false or incomplete information. **Can the economic concentration be challenged by the Authority?** Yes, by filing a lawsuit with a specialized superior court. **Who has standing for challenging an economic concentration?** Any person, including the Authority. **How long does the verification process usually take?** Between 3 and 6 months, approximately. The Competition Law provides that the Authority, following receipt of a complete request for verification, has up to 20 calendar days to request additional information from the interested parties. Once the parties have furnished the Authority with all additional information, the Authority has up to 60 calendar days to make a determination. Failure by the Authority to decide the case within said term results in the

	automatic approval of the economic concentration.
SUBSTANTIVE MERGER REVIEW LAW	
Description of Substantive Legal Provisions	The substantive legal provisions dealing with the verification and/or judicial challenges of economic concentrations are found in the Competition Law, the Regulations and the Guidelines. As previously mentioned, the Authority is working on new Guidelines for the Competition Law, but while these are drafted, it continues to utilize the 2002 Guidelines. It is uncertain when the new Guidelines will be in final form. In general, the Competition Law does not prohibit all economic concentrations but only those whose effects may unreasonable restrict or harm competition. In addition, the Competition Law expressly provides that the following business combinations shall not be deemed prohibited economic concentrations: (i) joint ventures formed for a definite period of time to carry out a particular project, which is also contemplated in other jurisdictions; (ii) economic concentrations among competitors that do not have harmful effects on competition and the market; and (iii) economic concentrations involving an economic agent that is insolvent, if certain conditions are met, which is, roughly speaking, equivalent to the so called "failing company exemption" found in other countries. Under the Guidelines, an analysis of an economic concentration involves the following steps: 1. Determination of whether or not the concentration is within the scope of the Competition Law and its Regulations. 2. Determination of whether or not the transaction whose verification is sought shall be considered an economic concentration within the meaning of the Competition Law. In this step, the Authority considers, among other things, the extent to which the economic concentration could fall within one of the exempted concentrations described above, such as the joint venture exemption or the failing company exemption. In this stage, the Authority also analyzes if the economic concentration is horizontal or vertical. 3. Economic analysis of the economic concentration. In this phase, the Authority defines the relevant

market and evaluates the effects of the economic concentration. The identification of the relevant market has two dimensions, the product market and the geographic market. In defining the relevant market, the Authority must take into account a variety of factors such as the elasticity of the demand and supply, the impact of transportation and transaction costs, the importance of imported goods in the market, identification of other competitors, among others. Once the relevant market is defined, the Authority studies the configuration of the relevant market before and after the consummation of the economic concentration in order to determine, among other things, if as a result of the concentration, the resulting entity would have the power to unilaterally set the prices in the relevant market. In this stage, the Authority also evaluates the degree of concentration of the relevant market before and after the consummation of the transaction through the use of indexes such as the Herfindahl-Hirschman and the Dominance Index. Also, the existence of entry barriers for new competitors in the relevant market is also considered.

4. Analysis of economic efficiencies. Once the Authority has determined what the relevant market is, the market share composition before and after the economic concentration and the other factors described above, the Authority proceeds to evaluate the economic efficiencies arising from the concentration which may include economies of scale, reductions in fixed costs, increases in productivity, reductions in transaction costs, and incorporation of new technologies, among others.

5. Analysis of the effects of the economic concentration. Finally, once the Authority has considered all the factors implied in the previous 4 steps, it has to determine whether or not the economic concentration could fall among those presumed to be prohibited. An economic concentration is presumed to run afoul of the Competition Law if: (i) it confers the resulting entity the power to unilaterally set the prices or to restrict the supply in the relevant market without the other competitors being able to challenge such power; (ii) it displaces existing or potential competitors; or (iii) it substantially facilitates the exercise of anticompetitive practices to the parties to the economic concentration.

	If the Authority determines that the economic concentration meets the elements of a concentration presumed to be prohibited, the concentration still could past muster if, in the Authority's opinion, the economic efficiencies generated with the concentration outweighs its anticompetitive effects.
Current Legal Developments	As of May, 2009, the Authority is working on a draft of revised/new Guidelines because the existing ones were approved under the previous competition law. A draft of the new Guidelines is expected to be released sometime during 2009.
Recent Cases or Illustrative Precedents	HSBC – Banistmo Concentration In 2006, the HSBC Group launched a tender offer to acquire up to 100% of the shares of Grupo Banistmo, a leading financial group in Panama and Central America. The Authority approved the economic concentration but conditioned it upon HSBC's undertaking not to enforce the clauses included in the target bank's residential mortgage loan agreements, which prohibited borrowers the early repayment of their loans.
Frequently Asked Questions	**What is the Statute of Limitation for challenging an economic concentration?** Three (3) years following the date in which the economic concentration took place.
MERGER REMEDIES	
Types of Remedies	If notification for verification of a potential merger or economic concentration is sought, and the Authority rejects the economic concentration, the Authority's decision may be appealed through the judicial system. Additionally, if no prior verification was sought, the Authority may challenge the economic concentration for a period of three (3) years from the date of the merger and file suit against the surviving company seeking a partial or complete divestiture. The courts may reverse a decision from the Authority that rejects an economic concentration, authorize the concentration subject to certain conditions (described below) or concur with the Authority's decision (or their challenge if no verification was sought) and order a partial or complete divestiture of the economic concentration.

	The Authority may also impose fines on economic concentrations whose effects unreasonably restrict or harm free competition. The following are some of the conditions the courts or the Authority may impose in order to authorize an economic concentration: ▪ abstention from carrying out a determined activity; ▪ selling certain tangible or intangible goods or equity interests, which may result in a divestiture; ▪ modifying, transfering or eliminating a certain line of production; ▪ modifying or eliminating clauses from contracts to be executed; and ▪ offering the entity's production capacity or logistics capacity to third parties. If a merger involves entities operating in a regulated industry, and prior governmental approval for a merger is required and not obtained, the relevant governmental agency may impose fines and/or order a partial or complete divestiture.
Recent Cases or Illustrative Precedents	None.
Frequently Asked Questions	**Can the court order divestiture in the case of a prohibited economic concentration?** Yes. There are, however, other less restrictive measures that could be ordered by the court as well.
PRIVATE ENFORCEMENT ACTIONS	
Standing to Challenge a Transaction	Transactions that create economic concentrations can be challenged by any person including the Authority.
Third-Party Actions and Rights of Appeal	Possible. The Competition Law states that any lawsuit to challenge an economic concentration on the grounds that it violates the Competition Law must be filed with the Third Superior Tribunal of the First Judicial District.
Recent Cases or Illustrative Precedents	None.
Frequently Asked Questions	**Is it possible for a third party to challenge an economic concentration?**

	Yes.
STATISTICS	
Statistics on Mergers Notified, Extended Reviews, Required Remedies and Prohibited Transactions	In 2004, there was 1 filing for prior verification of an economic concentration with the Authority, which concentration was authorized. In 2005, there were no filings for prior verification of an economic concentration with the Authority. In 2006, there were 2 filings for prior verification of an economic concentration with the Authority, of which 1 was granted during 2006 and reported by the Authority. Since 2006, no other reports have been published by the Authority so we do not have statistical information for the years 2007-2008.
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Useful Web Sites	www.autoridaddelconsumidor.gob.pa

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