

Commission for Protection of Competition pursuant to article 28 paragraph (3), in relation to article 25 of the Law on Protection of Competition (Official Gazette of the Republic of Macedonia no. 145/10 and 136/11) and Regulation on the form and content of the notification of concentration and the necessary documentation to be submitted together with the notification (Official Gazette of the Republic of Macedonia no..44/12) on its session held on 02.07.2015 adopted the following

Guidelines on how to submit and complete a concentration notification¹

- (1) Chapter three of the Law on Protection of Competition (The Law) that regulates concentrations foreseen mandatory notification of concentrations to the Commission for Protection of competition (Commission) prior to their implementation, if the conditions stipulated in the Law are fulfilled.
- (2) The notifying party is obliged to obtain and submit to the Commission all the data and evidence necessary for the evaluation of the concentration for which the notification is submitted in terms of the provisions of the law and Regulation on the form and content of the notification of concentration and the necessary documentation to be submitted together with the notification (Regulation).
- (3) Annex 1 of these Guidelines is the Form of the first page of the concentration notification submitted to the Commission. The Form is determined in accordance with obligation of article 4 (2) of the Law on obtaining and exchanging evidence and data on official duty (official gazette of RM no.79/13)

Notifying party

- (3)The concentration notification is submitted by the parties to the concentration, that is:
- 1) merging undertakings - in case of merger of undertakings or parts of undertakings;
 - 2) the acquirer of a majority of shares or a majority of voting rights - in cases of purchase of securities or property;
 - 3) the acquirer of control or decisive influence - in the case of acquiring control or decisive influence over undertaking in any other way;
 - 4) all participants in the creation of a joint venture submit a joint notification or the participant authorized by the other participants as their joint representative - in the case of a joint venture;
 - 5) the bidder - in case of acquisition of control or decisive influence on the basis of a public offer for the redemption of securities or a series of securities transactions, including those that are convertible into other securities intended for trading on the market in accordance with law;

¹ This Guidelines are harmonized with Commission Regulation (EC) No. 802/2004 of 7 April 2004 implementing Council Regulation (EC) No. 139/2004 on the control of concentration between undertakings, OJ L 133, 30.4.2004, p. 1–39,

- 6) upon acquisition of joint control, all participants submit a joint notification or the participant authorized by the other participants as their joint representative - in case of acquisition of joint control.

Submission of notification

- (4) The notification together with the attachments shall be submitted in written and electronic form. The notification is submitted on A4 format paper.
- (5) The notification, attachments and all documents submitted with the notification shall be submitted in the Macedonian language. If the notification, attachments and documents submitted are in a foreign language, the notifying party is obliged to submit, in addition to originals, a translation into Macedonian by an authorized translator.
- (6) The following attachments and documents to be submitted to the notification: the legal matter that is the basis of the concentration, the financial statements for the parties to the concentration for the business year preceding the concentration and an extract from the trade register or other register of legal entities from which are visible the data on the company, the headquarters and the object of operation of the parties to the concentration, are submitted in original or a certified copy.
- (7) The notification and all attachments are submitted in one copy. As an exception, the Commission may, in certain cases, request that one or more copies of the entire notification and all attachments, which do not have to be certified, be submitted.

Filling the notification

- (8) Notifying party fills out the notification in the following way:
 - 1) each data from Article 3, that is, Article 4 of the Regulation, must be recorded on a separate sheet, with the possibility of adding as many sheets as necessary for that piece of information to be exhaustively and completely presented;
 - 2) the serial number and exact name of each individual piece of data, according to the order in which that data is specified in Article 3, that is, Article 4 of the Regulation, is written in a visible manner at the top of the sheet;
 - 3) under the number and name of the data, recorded in the manner described in paragraph (8) point 2, the applicant:
 - records data, that is, gives an exhaustive and complete description of the circumstances relating to the concentration;
 - records that the data is not relevant for the assessment of the concentration and states the reasons for this;
 - in the cases referred to in paragraph (13) of these Guidelines, states from whom and when he tried to obtain this data, the reasons for which he could not obtain the data and where and from whom the Commission can obtain the missing data;
 - 4) behind the text that refers to individual data, lists the documents, evidence, analyses, diagrams or other documents that prove the individual allegations, which are submitted as attachments to the notification;
 - 5) if necessary, states other data and descriptions that it considers could help the Commission in evaluating the notified concentration;

6) at the end of the notification, on a separate sheet, clearly writes "Attachments to the notification", under which lists all the documents and written evidence, analyzes and diagrams that are attached to the notification.

Content of the notification, article 3 of the Regulation:

(9) In the notification, in accordance with Article 3 of the Regulation, the following data and documents are submitted

- 1) A brief summary of the notification containing: name, registered office and the nature of the business of the parties to the concentration, the nature of the concentration (for example, merger, acquisition, joint control, etc.) and the markets to which the concentration refers. ***This brief summary shall be published on the Commission's website and it should not contain business secrets.***
- 2) Name, registered office and the nature of the business of the notifying party; Data is provided only for the participant who de facto notifies the concentration;
- 3) Name, registered office and the nature of the business of all parties to the concentration; Data is provided for all parties to the concentration, i.e. for the undertaking/s that acquire control and for the undertaking/s over which control is acquired, i.e. for the undertakings that merge, including all undertakings in which control is acquired or to which a certain public offer is referred. The term parties to the concentration also includes all related undertakings belonging to the same group;
- 4) Authorization of the representative or proxy who submits the notification as a representative of the notifying party; The representative or the proxy who submits the notification is indicated by specifying contact details – name and surname/title, address, telephone number and fax e-mail address;
- 5) Name, address, telephone number, fax number and e-mail address of the person designated by the person submitting the notification as the person in charge of contacts and cooperation with the Commission, if different from the person submitting the notification;
- 6) a detailed description of the nature of the concentration, that is, whether it occurs by merger of the parties, by acquiring partial or full control, joint control, joint venture, within the meaning of article 13 paragraph (4) of the Law, or the concentration occurs on the basis of an agreement or other means of acquiring direct or indirect control in the meaning of Article 13 paragraph (2) of the Law;
- 7) specifying the legal basis of the concentration (name of the document, business number, name of the party in the specific legal matter, place and date of signing the legal document), and in particular:
 - merger agreement,
 - merger agreement or appropriate decisions of the bodies of the undertaking,
 - agreement specifying the acquisition of shares and stocks,

- undertaking's management agreement,
 - profit transfer agreement,
 - decisions to amend statutes, undertaking's agreement or any other act that gives one of the participants decision powers,
 - a property lease agreement on which one of the participants has decision powers,
 - public takeover bid,
 - joint venture agreement;
- 8) Inventory of financial reports for the year preceding the concentration (balance sheet, profit and loss account, notice of change of main asset, data on the amount of premiums paid to insurance undertakings), as well as other reports showing the financial situation of the parties to the concentration to be submitted together with the notification;

9) The total annual income of the parties to the concentration. According to article 16 of the Law The aggregate turnover shall comprise the revenues generated from the sale of goods produced within the regular operation of an undertaking, as well as the revenues generated from the services that the undertaking provides within its regular operations, which were realized during the business year preceding the concentration, after deduction of the sales rebates (discounts) and of the Value Added Tax and other public taxes directly related to the revenues. If one of the participants is a related undertaking within the meaning of the provisions of this Law, all undertakings related in such a manner shall be regarded as one undertaking When calculating the aggregate turnover of the related undertakings, the revenues generated from the sales of goods and/or provision of service among them shall not be taken into consideration. In cases when a concentration relates to the acquisition of a part or parts of the assets of one or more undertakings, regardless whether those parts are established as separate legal entities, when calculating the turnover generated by the undertaking selling those assets, only the revenues of the asset subject to acquisition shall be taken into consideration.

10) Determination of relevant product markets and the respective relevant geographic markets in which the parties to the concentration and their related enterprises operate and assessment of their market shares (calculated by volume and value of sales) before and after the implementation of the concentration and submission of information regarding factors relevant to determine the definition of a relevant market and analyses why goods or services in those markets are covered and others are excluded using the definition of a relevant market

The relevant product market and the relevant geographic market determine the scope in which the market power of the new entity that will result from the concentration will have to be assessed².

The notifying party must submit the requested data, taking into account the following definitions:

“Relevant product market” shall mean a market of all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of their characteristics, their prices and their intended use. A relevant product market may, in some cases, consist of multiple individual products and/or services that present largely identical physical or technical characteristics, and that are substitutable.

² See Commission Guidelines on definition of relevant market for the purposes of the Law on Protection of Competition

Factors relevant to the assessment of a relevant product market include analyses of why products or services in those markets are covered and others are excluded using the above definition, and taking into account, for example, substitutability, conditions of competition, prices, cross-price elasticity of demand or other factors relevant to defining product markets (e.g. supply-side substitutability in some cases).

“Relevant geographic market” shall mean a market on the area in which the undertakings concerned are involved in the supply and demand of products and/or services, in which the conditions for competition are sufficiently homogenous, and which can be distinguished from neighbouring areas, according to the conditions for competition which are considerably different in those areas;

Factors relevant to the assessment of the relevant geographic markets include, among others, the nature and characteristics of those products or services, the existence of entry barriers, consumer preferences, notable differences in the market share of undertakings between neighboring geographic areas, or significant price differences.

When determining relevant markets, the following markets are listed:

- *Markets on which the concentration may have a significant impact;*
- *Other markets on which the concentration may have a significant impact and*
- *Markets on which the concentration may have an impact.*

Markets on which the concentration may have a significant impact are the markets in which:

- *two or more participants in the concentration are engaged in business activities related to the same product market and geographic market (horizontal relations), with their joint market share being 15% or more;*
- *one or more participants in the concentration are engaged in business activities in a product market that is an upstream or downstream market in relation to the product market in which any other participant in the concentration participates (vertical relations), whereby their individual or joint market shares amount to 25% or more regardless of whether or not there is any kind of supplier/consumer relationship between the participants in the concentration³.*

Other markets on which the concentration may have a significant impact:

Based on the above definitions, describe the coverage in terms of product market and geographic market, of markets other than the markets on which the concentration may have a significant impact identified above, and on which the notified concentration may still has a significant impact, for example, in cases where:

- *any of the participants in the concentration has a market share greater than 25% and any other participant in the concentration is a potential competitor in that market. The participant in*

³ For example, if one participant in the concentration has a market share greater than 25% in a market that is an upstream market of the market in which the other participant is active, then both markets (upstream and downstream) are markets in which the concentration can have a significant impact . Similarly, if a vertically integrated enterprise merges with another enterprise active in a downstream market, and this merger results in a joint downstream market share of 25% or more, then both markets (upstream and downstream) are markets in which concentration can have a significant impact.

the concentration may be considered to be a potential competitor, especially if he has plans to enter the market or has developed or implemented such plans in the past two years;

- any of the participants in the concentration has a market share greater than 25% and any other participant in the concentration is the owner of important intellectual property rights for that market;

- any of the participants in the concentration is present in a product market, which is an neighbour market, closely related to the product market in which any other participant in the concentration is involved, and the individual or joint market share of the participants in any of these markets is 25% or more. Product markets are closely related neighbour markets when the goods are complementary⁴ to each other or when they belong to an assortment of goods that are usually purchased by the same group of buyers for the same end use⁵.

Markets on which the concentration may have an impact are all relevant product markets and relevant geographic markets, as well as all possible alternatively defined product markets and geographic markets in which:

- two or more participants in the concentration are engaged in business activities related to the same product market and geographic market (horizontal relations);

- one or more participants in the concentration are engaged in business activities in a product market that is an upstream or downstream market in relation to the product market in which any other participant in the concentration participates (vertical relations), whether or not there is any supplier/consumer relationship between the participants in the concentration.

Information on the markets

For each of the above, for each of the last financial year, the following data are provided:

- assessment of the total size of the market in terms of value realized through sales (in euros) and volume (units⁶). The bases and sources for the calculations are stated, and documents are submitted, if they are available, as support for these calculations;

- sales in value and volume, as well as an assessment of the market share for each of the participants in the concentration. It is also stated whether there have been significant changes in sales and market shares in the last three years;

11) Inventory and assessment of the market shares of the main competitors of the participants in the concentration on the relevant market; An estimate of the market share in value (and

⁴ Product (or services) are called complementary when, for example, the use (or consumption) of one product essentially implies the use (or consumption) of some other product, such as, for example, staplers and staplers, computer printers and printer ink. , etc.

⁵ Examples of products falling within such a product range would begin and whiskey sold in bars and restaurants, and various packaging materials for a particular category of products sold to manufacturers of those products.

⁶ The value and volume of the market should reflect production minus exports plus imports for the geographic area under consideration

- volume, where appropriate) of the three largest competitors (including importers) shall be provided;
- 12) Structure of the holders of shares and stakes in the undertaking over which control is acquired, i.e. decision powers, before and after the implemented concentration (expressed in percentage);
 - 13) A list of other undertakings in the relevant market in which the participants in the concentration individually or collectively hold 10% or more shares in the basic capital, i.e. 10% or more voting rights, with a brief description of the basic activities of those undertakings;
 - 14) A list of all undertakings in the relevant market in which members of the management or supervisory boards are simultaneously members of the management or supervisory boards of the participants in the concentration, with a brief description of the basic activity of those undertakings;
 - 15) Listing other bodies authorized to assess the concentration outside the territory of the Republic of Macedonia to which a request for the assessment of the same concentration has been submitted or there is an intention to submit such a request;
 - 16) A detailed description of the organization of the distribution network and the retail sale of goods and/or services in the relevant market, with a separate description of the distribution and retail network used by the participants in the concentration (own, contractual, etc.);
 - 17) A description of performed or planned research and investments in development of the participants in the concentration (form and type of investment or research, their significance for the production and turnover of goods and/or services on the relevant market, the amount of funds invested for that purpose or plans to invest, etc.);
 - 18) The strategic and economic reasons for the concentration;
 - 19) A description and detailed explanation of expected benefits that will result from the implementation of the concentration for consumers, and in particular:
 - reducing the prices of goods and/or services,
 - increasing the quality of goods and/or services,
 - introducing innovations,
 - increasing and expanding the possibilities of choice of goods and/or services for consumers;
 - 20) Signature of the notifying party or of the person authorized to represent the notifying party;
 - 21) A statement signed by or on behalf of all participants in the concentration submitting the notification in which the notifying party/(es) declares that, in his/her opinion and belief, the information provided in the notification is true, correct and complete, that it has been provided truthfully and complete original documents have been submitted, i.e. copy(s) of the documents required pursuant to the Law and the Regulation, that all assessments have been made as such and are his/her best assessments of the factors listed and that all opinions expressed are honest, as well as that they are fully familiar with the provisions of Article 61 paragraph (2) of the Law (Annex 2), and
 - 22) Place and date of submission of the notification.
- (10) Pursuant to Article 4 of the Regulation, the Commission may also request submission of other data and documents that it considers could help it in assessing the concentration. . The Commission may request these additional data and documents in particular in cases

where two or more participants in the concentration are engaged in business activities related to the same product market and geographic market (horizontal relations), whereby their joint market share is greater than 15% and when one or more participants in the concentration are engaged in business activities in a product market that is an upstream or downstream market in relation to the product market in which any other participant in the concentration participates (vertical relations), whereby their individual or joint market shares amount to 25% or more.

Accuracy and completeness of data and complete notification

(11) The data specified in the notification and the attachments submitted in addition to the notification must be correct and complete. The notification is considered complete if it contains all the data specified in Article 3 of the Regulation and the necessary documentation that is submitted together with the notification (attachments) specified in Article 5 of the Regulation. If the notification is complete, the Commission, in accordance with Article 15 paragraph (5) of the Law, issues a separate certificate to notifying party.

(12) If the notification does not contain all the data specified in Article 3 of the Regulation and the necessary documentation that is submitted together with the notification (attachments) specified in Article 5 of the Regulation, it will be considered that the notification is incomplete and the Commission in writing (by letter or in electronic form) will inform the notifying party.

(13) In the case that the notifying parties, for justified reasons and despite the efforts made, was not able to obtain some of the mandatory data or attachments from Article 3, i.e. Article 5 of the Regulation, shall specify this in writing at the appropriate place in the notification with listing:

- from whom and when he tried to obtain the data,
- the reasons for which he could not obtain the data, i.e. the attachments,
- where and from whom should the Commission obtain the data, i.e. the missing attachments

(14) In addition, the Commission may request the notifying party, instead of the missing data, for which he acted in accordance with paragraph (13) of these Guidelines, to submit in writing his analyzes and assessments of the conditions and the situation to which the missing data refer.

(15) Material changes in the facts contained in the notification coming to light subsequent to the notification which the notifying parties know or ought to know, or any new information coming to light subsequent to the notification which the parties know or ought to know and which would have had to be notified if known at the time of notification, shall be communicated to the Commission without delay. In such cases, when these material changes or new information could have a significant effect on the appraisal of the concentration, the notification may be considered by the Commission complete on the date on which the relevant information is received by the Commission; the Commission shall inform the notifying parties or their representatives of this in writing and without delay.

Annex 1

To: Commission for Protection of Competition
St. St Kiril and Metodija no.54 Skopje

Number: _____

Date: _____

Concentration notification

(write the name and registered office of the notifying party)

Having in mind the obligation stipulated in article 15 of the Law on protection of competition („Official Gazette of RM“ no.145/10 and 136/11), and due to fulfilment of conditions laid down in article 12 and 14 of the Law, submits this notification for concentration between

(write the name and registered office of the acquirer of the control and name and registered office of the undertaking over which the control is acquired)

In addition this notification contains all the data determined in article 3 of the Regulation on the form and content of the notification of concentration and the necessary documentation to be submitted together with the notification („Official Gazette of RM“ no.44/12), completed according these Guidelines.

Required documentation to be submitted together with the notification according to article 5 of the Regulation on the form and content of the notification of concentration and the necessary documentation to be submitted together with the notification:

- 1) an extract from the Trade Register within the Central Register or other registers of legal entities from which the information on the name, registered office and nature of business of the notifying party are visible;
- 2) an extract from the Trade Register within the Central Register or other registers of legal entities, from which the information on the name, registered office and nature of business of all participants in the concentration are visible;
- 3) power of attorney if the notice is submitted through a power of attorney;

- 4) a copy of the original of the legal matter that is the basis of the concentration or a certified transcript, with a certified translation into Macedonian language;
- 5) detailed annual financial reports for the participants in the concentration for the business year preceding the concentration;
- 6) all available analyses, studies, presentations and other reports prepared by or for any member of the management, supervisory board or the chairman and/or members of the shareholders' meeting whose subject is the assessment and analysis of the concentration from the point of view of competition, the growth potential of sales or expansion into other commodity markets and other geographic markets, as well as assessments and analyses of general market conditions;
- 7) a graphic presentation (diagram) of the organizational structure of the participants in the concentration and the related undertakings;

- 8) a report on the strategic and economic reasons for the concentration and
- 9) decisions of other bodies authorized to assess the concentration outside the territory of the Republic of Macedonia to which a request for an assessment of the concentration has been submitted, i.e. proof that such notification has been submitted.

(If the document listed in point 1, 2 and 5 for the undertakings participants in the concentration that are registered in Republic of Macedonia, are not submitted with the notification, will be obtained by the Commission according to the Law on obtaining and exchanging evidence and data on official duty (official gazette of RM no.79/13). According to article 5 of the Law on obtaining and exchanging evidence and data on official duty, the Commission will charge the fee for the issued document on behalf and for the account of the Central Registry in the amount determined in the tariff of the Central Registry⁷

⁷ Payment details can be obtain from the Commission for Protection of Competition

Statement

Wet, he notifying party/es states that in my/our opinion and belief, the information provided in the notification is true, correct and complete, that it has been provided truthfully and complete original documents have been submitted, i.e. copy(s) of the documents required pursuant to the Law on Protection of Competition and the Regulation, that all assessments have been made as such and are my/our best assessments of the factors listed and that all opinions expressed are honest.

We state that we are fully familiar with the provisions of Article 61 paragraph (2) of the Law on Protection of Competition

Date and place:

Signature:

Name/s, and position held:

On behalf of: