

Pursuant to Article 15 paragraph (6) of the Law on the Protection of Competition (“Official Gazette of the Republic of Macedonia” No. 145/10 and 136/11), the Government of the Republic of Macedonia on its session held on 23.03.2012, adopted

**Regulation on the form and content of the notification of concentration and the necessary documentation to be submitted together with the notification (\*)**

**Article 1**

**General provision**

This Regulation regulates the form and contents of the notification of concentration referred to in Article 15 paragraph (1) of the Law on the Protection of Competition (hereinafter referred to as: the Law), as well as the necessary documentation to be submitted together with the notification.

**Article 2**

**Form of notification**

The notification together with the documentation shall be submitted in written and electronic form.

**Article 3**

**Mandatory content of the notice**

- (1) The notification must contain the following information:
- 1) A brief summary of the notification containing: name, registered office and the nature of the business of the participants in 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 by the Commission on its website and it should not contain business secrets;
  - 2) name, registered office and the nature of the business of the notifying party;
  - 3) name, registered office and the nature of the business of all participants in the concentration;
  - 4) authorization of the representative or proxy who submits the notification as a representative of the notifying party;
  - 5) name, address, telephone number, fax number and e-mail address of the person designated by the person submitting the notification as the person

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\* This Regulation is 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, CELEX no. 32004R0802.

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 acquiring full or partial control, joint control, joint venture, etc.;
- 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 participants in the concentration to be submitted together with the notification;
- 9) the total annual income (business income, financial income, extraordinary income) of the participants in the concentration after deducting the sales rebates and the value added tax and other public expenses directly related to the income, in the sense of Article 16 of the Law, expressed separately for each participant in the concentration in the world market and the market in the Republic of Macedonia;
- 10) determination of relevant product markets and the respective relevant geographic markets in which the participants in the concentration and their related undertakings 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 the assessment of the relevant market

definition and analyses of why goods or services in those markets are covered and others are excluded using the relevant market definition;

- 11) inventory and assessment of the market shares of the main competitors of the participants in the concentration on the relevant market;
- 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 on Protection of Competition and this 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 on Protection of Competition, and
- 22) place and date of submission of the notification.

#### **Article 4**

##### **Other information in the notification**

- (1) In addition to the mandatory information specified in Article 3 of this Regulation, the Commission may request the submission of other information and documents that it considers could help it in assessing the concentration, and in particular:
  - 1) information on the number of employees in the undertakings participating in the concentration and the number of employees in the related undertakings, in the year preceding the concentration;
  - 2) a list of the five largest suppliers of each of the participants in the concentration, including the value of purchases made in the year preceding the concentration;
  - 3) a list of the five largest buyers of each of the parties to the concentration for each relevant market separately, including the value of sales in the year preceding the concentration;
  - 4) information on the value and volume of sales expressed in denars that the participants in the concentration made by selling goods and/or services on the relevant market in the last three years preceding the concentration, separately for each year;
  - 5) an estimate of the total size of each market, calculated by value and volume, indicating the sources of the information used and the necessary documents confirming these estimates, for the last three years preceding the concentration, separately for each year;
  - 6) assessment of the total imports indicating: the share of imports achieved by the participants in the concentration, assessment of the degree of influence of quotas or other barriers to the possibility of imports and

assessment of the degree of influence of transport costs on the possibility of imports, for the last three years that precede the concentration, separately for each year;

- 7) explanation of the way in which the participants in the concentration produce the goods, determine the price of the goods and/or services and the way they distribute them, i.e. whether the production, price determination and distribution are carried out at the local or national level, for the last three years that precede the concentration, separately for each year;
- 8) an explanation of the nature and degree of vertical integration of each participant in the concentration compared to its competitors, for the last three years preceding the concentration, separately for each year;
- 9) an explanation of the distribution channels and service networks that exist in the relevant markets;
- 10) information on the total capacity of the participants in the concentration and the degree of its utilization in the last three years;
- 11) explanation of the structure of demand, such as: the importance of preferences that buyers have, the role of product differentiation, the role of costs when switching to another supplier, the degree of concentration or dispersion of buyers, the segmentation of buyers into different groups, the importance of exclusive distributor contracts and other types of long-term contracts and to what extent state authorities, institutions, public undertakings and other entities that make purchases in accordance with the Law on Public Procurement appear as a source of demand and/or
- 12) information on whether in the last five years there has been a significant entry in any of the relevant markets, whether, according to the knowledge of the participants in the concentration, a new entry is expected in any of the relevant markets, as well as a description of the factors affecting the possibility of entering them.

## **Article 5**

### **Required documentation to be submitted together with the notification**

The necessary documentation that is submitted together with the notification shall include:

- 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, such as:
- 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 that gives one of the participants in the concentration decision powers,
  - public takeover bid,
  - joint venture agreement.
- 5) detailed annual financial reports for the participants in the concentration for the business year preceding the concentration, with information on the total income of all undertakings participating in the concentration achieved by the sale of goods and/or services, after deducting sales rebates and value added tax, and other public duties directly related to income on the world market and on the market in the Republic of Macedonia;
- 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, which clearly states the following in particular:
- the relations among the participants in the concentration and the related undertakings,
  - the shares that the controlling undertakings have in the basic capital of the related undertakings, that is, which the subsidiary undertakings have in other subsidiary undertakings within the related undertakings (expressed in percentages);

- 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.

## **Article 6**

### **Termination of validity**

With the entry into force of this Regulation, the Regulation on the closer criteria for evaluating concentrations and on the contents and the form of the notification (“Official Gazette of the Republic of Macedonia” No. 91/05) shall cease to be valid.

## **Article 7**

### **Entry into force**

This Regulation shall enter into force on the eighth day following the day of its publication in the “Official Gazette of the Republic of Macedonia”.