

## Form for the notification of concentrations

### A. How to use this Form: General information

Notifications of concentrations shall contain all material information required for assessing the concentration; unspecified references to information annexed in the form of supporting documents shall not be sufficient.

Information supplied in the notification, as well as documents that contain business secrets, shall be clearly marked as such. A non-confidential version of the notification of concentration shall be supplied for filing in the archives.

The information contained in Chapters 4, 5 and 8 of the notification shall be supported to the maximum possible extent by suitable documents.

If certain information cannot be furnished, full reasons shall be given. The same shall apply to the submission of documents.

If the notification does not comply with the provisions of Section 68a KartG (*Cartel Act*), it shall be rejected by the Cartel Court.

### B. Notification in short form

The present Form must be filled in completely only if:

1. the domestic turnover of at least 2 of the enterprises involved in the operation exceeded EUR 1 mill. each in the last financial year preceding the concentration, or
2. one or several markets within the meaning of Chapter 5 of this Form are affected, or
3. it is a case of a media concentration (Section 42 c KartG).

If none of the conditions listed above are applicable, only the information pursuant to 1.1, 2.1. to 2.3, 4.1., 4.2. and 4.4 to 4.6 shall be furnished.

## Chapter 1 Background information

*Information supplied in accordance with 1.1 below shall be entered in the Cartel Register, which is why, in addition to information furnished pursuant to Section 42a para 3 of the Cartel Act, it shall include such statements as are required for ascertaining the identity of the concentration within the meaning of Section 73 para 1. In addition, they shall be submitted in a separate annex to be filed in the archives of the Cartel Register. Moreover, the information shall serve as a basis for the public announcement of the concentration in the Wiener Zeitung.*

- 1.1. Give a short description of the concentration being notified, including the names of the enterprises involved, the type of operation and the affected lines of business, to be used for publicising in the Wiener Zeitung.

## Chapter 2 Information relating to the enterprises involved

- 2.1. Name and address of all enterprises involved, the nature of their business, Company Register number, and contact person in the enterprises involved, including position held, address, e-mail, telephone and fax number.

- 2.2. Describe the ownership structure of the enterprises involved and provide a listing of all enterprises associated with the enterprises involved within the meaning of Section 41 of the Cartel Act (parent, daughter, sister companies etc.)
- 2.3. State why the operation is not of Union-wide significance within the meaning of Article 1 paras 2 and 3 of the Merger Control Regulation; list the turnover of the enterprises involved within the meaning of Section 2a KartG in the last financial year preceding the concentration,
  - a) world-wide
  - b) domestically.
- 2.4. State whether, and where applicable, what kind of business relations the enterprises involved were having before the concentration.

### Chapter 3 Description of the operation

- 3.1. The structure of the concentration according to company law and the proposed structure of ownership and control after the formation of the concentration.
- 3.2. Information on the notification of other competition authorities of the proposed concentration.

### Chapter 4 Market definition

*Pursuant to Section 3 of the Cartel Act, all goods (services) covering the same demand under the existing market conditions shall be deemed a specific good (service) within the meaning of this Federal Act. The relevant product market shall thus be identified according to the relevant market concept, with the crucial point being the functional interchangeability of the products and/or services from the point of view of the opposite market side (Reich-Rohrwig/Zehetner Kartellrecht I E.1.).*

*The information shall be provided for each relevant product and geographic market.*

#### **Part 1 : General information**

- 4.1. Definition of the relevant product market including a description of the products / services as well as their use and (where applicable) production.
- 4.2. Definition of the relevant geographic market.
- 4.3. Basis for the selected market definitions (e.g., studies, decisions of the Cartel Court, of the European Commission, of other competition authorities).

#### **Part 2 : Information on the non-affected (within the meaning of Chapter 5 of this Form) product market.**

- 4.4. Total size of the market in terms of turnover value (€) and units for the last financial year preceding the concentration.
- 4.5. Turnover achieved in the last financial year preceding the concentration in terms of value

and units for each of the enterprises involved in the concentration.

- 4.6. For the 3 major independent
- a) competitors,
  - b) customers
- of the enterprises involved, provide the names and addresses as well as – where available – internet addresses.
- 4.7. Estimate of the market shares of each of the enterprises involved in the concentration and of the enterprises associated with the enterprises involved in the concentration within the meaning of Section 41 of the Cartel Act, for the last financial year preceding the concentration, and of the three major competitors.

## Chapter 5 Information on affected markets

*Affected markets within the meaning of this Form shall be relevant product and geographic markets, provided that:*

1. *the concentration will create or strengthen a dominant market position in this market within the meaning of Section 34 KartG, or if the presumptions of Section 34 KartG 1a are found to be true, or*
2. *two or more of the enterprises involved are engaged in business activities in the same product market, and the concentration will lead to a combined market share of 15% or more (horizontal relationships), or*
3. *the enterprises involved in the concentration are (also) engaged in business activities in various relevant product markets which are upstream or downstream of each other, with their market share in those markets being 25% or more, regardless of whether there are supplier or customer relationships (vertical relationships) between the parties involved.*

*The information shall be provided for each affected market.*

- 5.1. Total size of the market in terms of turnover value (€) and units for the last three financial years preceding the concentration.
- 5.2. Turnover in terms of value and units and the estimated market shares of each of the enterprises involved in the concentration and of the enterprises associated with the enterprises involved in the concentration within the meaning of Section 41 KartG, for the last three financial years preceding the concentration.
- 5.3. An estimate of market shares in terms of value (and, where appropriate, volume) of all competitors (including importers) holding a share of at least 5% in the geographic market concerned, for the last three financial years preceding the concentration.
- 5.4. Description of the demand market.
- 5.5. Information on essential neighbouring upstream or downstream markets.
- 5.6. For each of the 5 major independent
- a) competitors
  - b) customers
  - c) suppliers
- of the enterprises involved, a contact person, with position held, e-mail address, telephone and fax number.

- 5.7. Information on the scope of imports/exports and the significance of transportation costs and other barriers to trade.
- 5.8. Information on the structure of distribution and demand, and of the significance of distribution and cooperation agreements.
- 5.9. Information on market entries during the last five years, as well as impending or expected market entries, with name and address of the enterprise and a contact person with position held, telephone and fax number.
- 5.10. Information on relevant foreseeable developments in the markets.
- 5.11. Stakes acquired in the affected markets by the enterprises involved over the last 3 years.

## Chapter 6 **Reasons for justification**

In the event that the concentration creates or strengthens a market dominating position within the meaning of Section 34 KartG, state the reasons why, in the view of the notifying parties, this constitutes a reason for justification pursuant to Section 42b para 3 KartG.

## Chapter 7 **Cooperative effects of a joint venture**

In the event that a joint venture pursuant to Section 41 para 2 KartG is being established:

- 7.1. Explain whether and to what extent the parent companies of the joint venture are engaged in business activities in the same market as the joint venture, in an upstream or downstream market, or in a neighbouring market.
- 7.2. Provide information on whether the parent companies of the joint venture will withdraw from the market (markets) where the latter is doing business.
- 7.3. Identify the relationships that will exist between the joint venture and its parent companies.

## Chapter 8 **Media concentrations**

In the event of a media concentration within the meaning of Section 42c KartG:

- 8.1. Provide a list of all media products (not merely those directly affected by the concentration), (in the event of licensable or notifiable media, identify the licenses issued, notifications made and the competent authorities), classified by media (as defined by Section 42c KartG) published by the concentration applicants or the enterprises associated with them and/or created through their media support companies (including the media not produced primarily for the Austrian market), as well as a list and/or description of all services performed by the enterprises affected by the concentration in connection with the production and distribution

of media products<sup>1</sup>. For media services (including broadcasting frames), identify the enterprises that are being supplied.

- 8.2. Provide a list of essential competing titles of media products ad 8.1., classified by media, indicating company name, address, telephone number, e-mail of the producer and/or of the media support companies involved, stating the major indices on the basis of surveys customary in this line of business (circulation, coverage and market shares according to MA, ÖAK, Radiotest, Teletest, Austrian Internet Monitor).
- 8.3. Indicate the appropriate actually achieved and technically possible coverages and market shares and/or degrees of supply of the media listed under 8.1. (indices from MA, ÖAK, Radiotest, Teletest, AIM) of the last three years. Identify the circulation paths and the relevant concluded contracts<sup>2</sup>.
- 8.4. Where available, provide references to decisions of a regulating authority with regard to market definition, degree of coverage and range.
- 8.5. Provide information on cooperation agreements outside the editorial area with other media enterprises, media services or media support companies<sup>3</sup>.
- 8.6. Provide information on essential exclusive rights (e.g. broadcasting rights for major events), as well as other exclusive agreements that might lead to a considerable impairment of the competitive situation<sup>4</sup>, number of published authors.
- 8.7. State whether and why, or why not, from the point of view of the notifying parties, an impairment of media diversity is to be expected as a result of the notified operation. In the event of media diversity being impaired by the concentration: specify whether, and why, the concentration is necessary for the maintenance or improvement of the international competitiveness of the enterprises involved and is economically justified (Sections 42c para 5 in connection with 42b para 3 Z 2 KartG).

## Chapter 9 Documents to be submitted

The following documents shall be annexed to the notification:

- 9.1. Year-end reports and/or annual financial statements of the enterprises involved for the last completed financial year.
- 9.2. Business plan for the acquired enterprise / the acquired operations or the joint venture as well as for the acquiring enterprise with respect to the affected markets.
- 9.3. Up-to-date brochures with product descriptions and price list.

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<sup>1</sup> e.g., marketing, distribution/subscription management, delivery and/or programme circulation, technical services, advertisement management, call center, cash management, event organisation and marketing, advertising brokerage and the like.

<sup>2</sup> e.g., doorstep delivery, cable coverage, satellite broadcasting etc.

<sup>3</sup> e.g., cooperation related to contents, marketing, distribution/subscription management, delivery and/or programme circulation, technical services, advertisement management, call center, cash management, event organisation and marketing, advertising brokerage and the like.

<sup>4</sup> e.g., long-term exclusive agreements with stars or well-known moderators/presenters, long-term sponsor agreements etc.

## ANNEX

### Important provisions of the Cartel Act - KartG

#### **Federal Act of October 19, 1988, Federal Law Gazette 1988/600, on Cartels and Other Restrictive Trade Practices**

**(as amended by Federal Law Gazette 1993/91, 1993/140 (VfGH / Constitutional Court), 1993/532, 1993/693, 1995/520, 1998/143, 1999/126, 98/2001, 62/2002 and 131/2002)**

#### **Calculation of Market Shares**

Section 2. In applying this Federal Act, market shares shall be calculated pursuant to the following principles:

1. a specified good or service (Section 3) shall be determined;
2. enterprises that are associated as described in Section 41 shall be deemed a single enterprise;
3. In calculating shares in the domestic market, the domestic market shares of foreign entrepreneurs shall be taken into account.

#### **Calculation of Turnover**

Section 2a. In applying this Federal Act, turnover shall be calculated in accordance with the following principles:

1. Enterprises that are associated as described in Section 41 shall be deemed a single enterprise; turnover from deliveries and services between these enterprises (internal turnover) shall not be included in the calculation;
2. In the case of banks and building and loan associations, turnover shall be replaced by the sum of the following income items:
  - a. Interest income and similar proceeds,
  - b. Income from shares, other equity interests and non-fixed-interest securities, income from stakes, and income from shares in associated enterprises,
  - c. Commission income,
  - d. Net income from financial transactions, and
  - e. Other operating income;
3. In the case of insurance companies, turnover shall be replaced by the premium income.

#### **Market-Dominating Entrepreneurs**

##### **Definition**

Section 34. (1) An entrepreneur shall be deemed market-dominating within the meaning of this Federal Act which, as supplier or demander (Section 2):

1. is exposed to no or only insignificant competition, or
2. has, in relation to the other competitors, a superior position in the market;

In particular, due regard shall be given to financial strength, relations with other entrepreneurs, access to the procurement and sales markets, as well as circumstances limiting market access for other entrepreneurs.

(1a) If an entrepreneur as supplier or demander in the entire domestic market or another relevant geographic market,

1. holds a share of at least 30%, or

2. holds a share in excess of 5% and is exposed to the competition of no more than two entrepreneurs, or
  3. holds a share in excess of 5% and belongs to the four largest entrepreneurs in this market, which hold a combined share of at least 80%,
- it shall have to prove the non-existence of conditions pursuant to para 1.

(2) An entrepreneur shall also be deemed market dominating if it has, in relation to its customers or suppliers, a superior position in the market; such particularly exists if the latter are dependent on the maintenance of the business relationship if they are to avoid severe business disadvantages.

## **Concentrations**

### **Definition**

Section 41. (1) Within the meaning of this Federal Act, the following shall be deemed concentrations:

1. the acquisition of an enterprise, in whole or in substantial part, by an entrepreneur, in particular through merger or transformation,
2. the acquisition by an entrepreneur of a right to the operational facility of another entrepreneur through company surrender agreements or business management agreements,
3. the direct or indirect acquisition of shares of a company that is an entrepreneur, by another entrepreneur, both in the event of achieving or exceeding a stake of 25%, and in the event of achieving or exceeding a stake of 50%,
4. causing at least half of the members of the management bodies or the supervisory boards of two or several companies that are entrepreneurs to be identical,
5. any other combination of enterprises, on the basis of which an entrepreneur can directly or indirectly exercise a dominating influence on another enterprise.

(2) The establishment of a joint venture shall also be deemed a concentration, provided that it:

1. permanently fulfils all functions of an independent economic unit, and
2. does not entail any coordination of the competitive behaviour of the founding enterprises in relation to each other or in relation to the joint venture.

(2a) The conclusion of contractual obligations by banks within the meaning of Section 30 para 2a BWG (*Banking Act*) shall also be deemed a concentration.

(3) If all enterprises involved are part of a corporate group (Section 15 of the 1965 Stock Corporation Act (*Aktiengesetz*), Federal Law Gazette No 98, Section 115 of the Act Governing Limited Liability Companies (*Gesetz über Gesellschaften mit beschränkter Haftung*), Imperial Law Gazette No 58/1906), this shall not be deemed a concentration.

### **Concentrations subject to notification**

Section 42a. (1) Concentrations shall be subject to notification of the Cartel Court, if the entrepreneurs or enterprises involved, in the last financial year preceding the concentration, have achieved at least the following turnover:

1. a total of EUR 300 million world-wide,
2. a total of EUR 15 million domestically
3. at least two entrepreneurs or enterprises worldwide, EUR 2 million each.

(2) Each of the entrepreneurs involved in the concentration shall have the right of notification.

(3) The Cartel Court shall promptly publicise the notification in the “Amtsblatt zur Wiener Zeitung”. The notice shall state the names of the parties involved, a short description of the type of concentration, the affected lines of business and any other circumstances relevant for the proper execution of the concentration. Similarly, any change in the notification which affects facts required to be publicised shall be publicised.

(3a) Each entrepreneur whose legal or economic interests are affected by the concentration, may submit to the Cartel Court a written statement within 14 days of publication pursuant to para 3; mention of this shall be made in the publication. The intervener shall not be entitled to any specific treatment of the statement.

(4) The implementation of concentrations subject to notification shall be prohibited before the issuance of a confirmation pursuant to Section 42b para 1 or 5, or before the unappealable statement of the Cartel Court that the concentration is not prohibited (Section 42b paras 3 to 5). Contracts shall be void if they violate this prohibition.

(5) Upon application, the Cartel Court shall determine whether a concentration was implemented in a prohibited way. The following parties shall be entitled to apply:

1. the official parties (Section 44),
2. associations that represent economic interests of entrepreneurs, if these interests are affected by the concentration,
3. each entrepreneur whose legal or economic interests are affected by the concentration,
4. the Austrian Economic Chamber,
5. the Federal Chamber of Labour,
6. the Presidential Conference of the Austrian Chambers of Agriculture
7. Authorities established by federal laws to regulate specific economic sectors (regulators).

### **Examination of concentrations**

Section 42b. [..]

(3) Notwithstanding the existence of the conditions for prohibition pursuant to para 2, the Cartel Court shall state that the concentration is not prohibited, if:

1. it is to be expected that the concentration will also lead to improvements in the conditions of competition that outweigh the disadvantages caused by the domination of the market, or
2. the concentration is necessary for the maintenance or improvement of the international competitiveness of the enterprises involved and is economically justified.

[..]

### **Media concentrations**

Section 42c. (1) A concentration shall be deemed a media concentration if at least two of the entrepreneurs or enterprises involved belong to one of the following categories:

1. Media enterprises or media services (Section 1 para 1 Z 6 and 7 Media Act),
2. Media support companies (para 2), or
3. Enterprises that individually or jointly, indirectly or directly hold a stake of at least 25% in a media enterprise, media service, or media support company.

(2) The following enterprises shall be deemed media support companies within the meaning of this Federal Act:

1. Publishing houses, provided that they are not media enterprises,
2. Printing houses and enterprises of the pre-printing stage (reproduction and typesetting offices),
3. Enterprises procuring or brokering advertising orders,
4. Enterprises that handle the distribution of media products on a large scale,
5. Film rental businesses.

(3) A concentration shall also be deemed a media concentration if only one of the enterprises involved belongs to the enterprises enumerated in para 1 Z 1 to 3, and if one or several media enterprises, media services or media support companies, indirectly or directly, jointly hold a stake of at least 25% in at least one other enterprise involved in the concentration.

(4) In applying Section 42a para 1 Z 1 and 2 to media concentrations, the turnover of media enterprises and media services shall be multiplied by 200, the turnover of media support companies – by 20.

(5) A media concentration shall also be prohibited pursuant to Section 42b if it is to be expected that media diversity will be impaired by the concentration. Section 42b para 3 Z 2 shall also be applicable to this case.