

III. FORMS FOR NOTIFICATION UNDER ART. 11 AND ART. 24 OF THE LAW ON THE PROTECTION OF COMPETITION

Where the undertakings submit notifications containing requests for authorisation under art. 11 and art. 24 of the Law on the Protection of Competition, they shall be obliged to fill in forms 1 and 2, attached to this Methodology, in compliance with the accompanying instructions.

FORM 1

COMMISSION FOR THE PROTECTION OF COMPETITION

Notification Under Art. 11 of the Law on the Protection of Competition in Respect of Agreements, Decisions and Concerted Practices Under Art. 9, Subsection 1

1. Applicant undertaking.

Name, head office and registered address, particulars about the undertaking's court registration, objects, telephone, fax, telex.

2. Other undertakings parties to the agreement, decision or concerted practice.

Name, head office and registered address and a brief description of the other participants in the agreement, decision or concerted practice.

Measures taken to inform these undertakings about the current notification.

3. Legal form of the agreement, decision or type of concerted practice.

4. The relevant market, determined in accordance with this Methodology.

5 Aggregate market share of the undertakings - parties to the agreement, concerted practice or decision.

6. Request for exemption from prohibition provided for in art. 9 of the Law on the Protection of Competition.

7. Grounds for exemption.

8. Other relevant information - at the applicant's discretion.

I declare that the particulars in this notification are correct. I am aware that any false statement will render me liable under art. 60 (2) of the Law on the Protection of Competition and art. 313 of the Penal Code and that an authorisation granted on grounds of false statements may be revoked or amended pursuant to art. 13 (4) (3) of the Law on the Protection of Competition.

Signature:
(of the person who submits the notification or
of a representative)

**Instructions on Filling in FORM 1 on the Notification
Under Art. 11 of the Law on the Protection of Competition**

On items 1 and 2

Where the parties to the agreement, decision or concerted practice are connected or associated undertakings in the meaning of #1 (2) and (3) of the Additional Provision of the Law on the Protection of Competition, full information shall be provided about the undertakings, including their ownership and possibility to exercise effective control over its management or activities. Control is expressed in terms of acquisition of rights, conclusion of contracts or other means - art. 21 (2) of the Law on the Protection of Competition. Where control is established by means of a contract, a copy of it shall be attached.

Where the notification is submitted by a representative, it must be accompanied by a power of attorney bearing the signature of the represented person. The power of attorney must contain the representative's first, second and third name, civil registration number, accurate address and telephone number,

On item 3

Where a written agreement or decision exists, a duly certified copy shall be attached. Where the agreement or decision contains a commercial or another protected secret, the applicant shall indicate the data which constitute such secrets. They shall be confidential pursuant to art. 51 (3) of the Law on the Protection of Competition and may be used only for the purposes of the study.

Where the agreement or decision are not in a written form, the applicant shall provide a detailed description of their content.

Where a concerted practice exists, the specific form of coordination shall be indicated (action or omission) accompanied with a description.

In all cases involving agreements, decisions or concerted practices, detailed explanation shall be provided on clauses which may lead to the prevention, restriction or distortion of competition in the relevant market in the meaning of art. 9 (1) (1), (2), (3), (4) and (5). The following particulars shall also be provided:

- date of the agreement, decision or concerted practice;
- date of coming into effect;
- term of effectiveness;
- purpose of the agreement, decision or concerted practice;
- penalties to be imposed on the participating undertakings in the event of breaching the agreement, decision or concerted practice.

On item 4

A description is provided of the product and geographical market which will be affected by the agreement, decision or concerted practice, supplemented by a brief analysis of the market structure - number of participants, assessment of the competitive environment, barriers to entry, etc. The description shall be made in compliance with the Methodology.

Where the applicant is familiar with some market surveys, it shall be useful to attach them or to indicate the source of information.

On item 5

The market share of each participant in the agreement, decision or concerted practice shall be indicated. Data about the three previous years shall be provided.

The aggregate market share of the participating undertakings shall be computed in accordance with the procedure provided for in the Methodology.

On item 6

The grounds shall be indicated - art. 11 (3) of the Law on the Protection of Competition.

Where an exemption is sought for an agreement, decision or concerted practice involving small and medium-sized undertakings, reference shall be made also to the provision of art. 13, (2) of the Law on the Protection of Competition. Evidence about the nature of the undertakings shall be provided as well.

On item 7

In the request for exemption from prohibition under art. 13, the applicant shall substantiate in what way the agreement, decision or concerted practice contributes to the:

- increase and improvement of the production of goods and the provision of services;
- technical and economic development;
- enhancement of competitiveness in foreign markets;
- provision of a fair share of the benefits received to the consumers.

The applicant shall also substantiate that the level of prevention, restriction or distortion of competition in the relevant market does not exceed the above-mentioned economic benefits, and that therefore an exemption should be granted.

On item 8

Any other accessible information shall be applied, which the applicant may consider of assistance to the Commission in establishing the existence of restrictions in the agreement or of benefits which may justify them.

NB: Any undertaking which is uncertain how to fill in the notification or which needs some explanations shall feel free to contact the Commission for the Protection of Competition.

Where the applicant is unable to provide the required information, he shall explain the reasons for that. In this case, he shall indicate alternative sources from which the Commission for the Protection of Competition can obtain that information.

Where the participants in the agreement, decision or concerted practice consider that their interests might be encroached if the information they have provided is published or disclosed, they may put together and send that information separately, marking each page with the inscription 'protected secret'. It is necessary to give the reason why that information shouldn't be published or disclosed.

FORM 2

COMMISSION FOR THE PROTECTION OF COMPETITION

Notification Under Art. 24 of the Law on the Protection of Competition of the Intention to Carry out a Concentration Under Art. 21 of the Law on the Protection of Competition

1. Applicant - the undertakings participating in the concentration.

Name, head office and registered address, particulars about the undertakings' court registration, objects, telephone, fax, telex.

2. Nature and legal form of the concentration.

3. Type of goods and services covered by the concentration.

4. Undertakings in respect of which the participants in the concentration exercise control in the meaning of Art. 21 (2) of the Law on the Protection of Competition.

5. Aggregate market share and aggregate turnover of the undertakings participating in the concentration.

6. Major competitors, suppliers and buyers.

7. Request for authorisation to carry out the concentration.

8. Arguments that the consequences envisaged in art. 28 (1) of the Law on the Protection of Competition will not occur.

In case there are data about occurrence of the consequences under art. 28 (1) - arguments on the anticipated favourable consequences of the concentration (consistent with art. 28 (2) of the Law on the Protection of Competition).

9. Other relevant information - at the applicant's discretion.

I declare that the particulars in this notification are correct. I am aware that any false statement will render me liable under art. 60 (2) of the Law on the Protection of Competition and art. 313 of the Penal Code and that an authorisation granted on grounds of false statements may be revoked or amended.

Signature:
(of the person who submits the notification or
of a representative)

Instructions on Filling in FORM 2 on the Notification Under art. 24 of the Law on the Protection of Competition

On item 1

Where the concentration of economic activity is carried out pursuant to art. 21 (1) (1), the notification shall be submitted jointly by the undertakings, which are going to merge or fuse, whereas in the cases under (2) - by those who through purchasing of securities, stakes or property, by means of a contract or in any other way, shall acquire direct or indirect control in the meaning of art. 21 (2) of the Law on the Protection of Competition.

Every undertaking, which has participated in the preparation of the notification, shall be responsible for the accuracy of the information it has provided.

Where the notification is submitted by a representative, it must be accompanied with a power of attorney bearing the signature of the represented undertaking. The power of attorney must contain the three names, civil registration number, accurate address and telephone number of the represented person.

On item 2

The nature and the legal form of the concentration shall be described. Both horizontal and vertical concentrations shall be subject to notification. Horizontal concentration exists among undertakings which produce identical or substitutable products, i.e. among competitors. Vertical concentration exists among undertakings which operate at different stages of the production and sale of products, i.e. ranging from the raw materials through finished products to the end user (e.g., a concentration between a leather producing undertaking and a shoe-making undertaking). The manner in which the concentration is to be carried out shall be indicated:

- a) merger or fusion - art. 21 (1);
- b) establishment of control - art. 21 (2), by means of:
 - acquisition of rights (right of ownership or right of use on the assets of the undertaking which is the subject of control, share or quota participation, securities, etc.);
 - conclusion of contracts (obligation or other contracts), which confer a possibility of exercising a decisive economic or legal influence on the undertaking which is the subject of control;
 - other ways of exercising a decisive economic or legal influence on the undertaking which is the subject of control;
 - creation of a joint venture under art. 22 of the Law on the Protection of Competition.

Under this item, the following information shall be provided for each participant in the concentration (except the applicant who provides data under item 1):

- name, head office and registered address, objects, telephone, fax, telex;
- structure of ownership, direct or indirect control of the undertaking. This information may be accompanied with organisational charts and diagrams in respect of the ownership and control;
- turnover of goods and services which are the subject of concentration (computed pursuant to the Methodology);
- market share of the goods and services, which are the subject of concentration (computed pursuant to the Methodology).

Information shall be provided also on:

- whether the subject of concentration is a whole undertaking (whole undertakings) or parts thereof;
- what the economic and financial structure of the concentration will be;
- what the structure of ownership or of control will be after the concentration is carried out;
- what type and amount of financial or other aid (including from state authorities) any participant in the concentration gets;
- other markets which will be affected by the concentration.

Where a concentration is carried out by means of setting up a joint venture in the meaning of art. 22 of the Law on the Protection of Competition, information shall be provided also on whether the undertakings participating in the concentration will preserve, and to what an extent, their relative share in the market of the joint venture or in the markets vertically connected to it.

On item 3

Under this item a description is given of the relevant product and geographical market (the market where services are provided). The applicant shall point out which of the relevant markets might be affected by the proposed concentration. The questions related to the nature of the market shall be formulated on the basis of the definition of the market given by the applicant.

The relevant market shall be defined pursuant to the Methodology by defining:

- a) the product market;
- b) the geographical market;
- c) the markets of the “supplier-producer-distributor” vertical line, which will be affected by the concentration.

These markets shall be described in brief by pointing out:

- the five biggest suppliers of the participating undertaking;
- the five biggest clients of the participating undertaking;
- the conditions of entry in the markets;
- whether there are any horizontal (among competitors) or vertical (among undertakings in the vertical “supplier-producer-distributor” line) agreements;
- whether there is an association of undertakings in any form (branch unions, associations, etc.).

If the applicant is familiar with any market surveys, it would be useful to attach them or to point out the source of information.

On item 4

Under this item, for each undertaking participating in the concentration, a list shall be drawn up of all the undertakings belonging to that group. This list shall comprise:

- undertakings or persons who exercise direct or indirect control over the undertaking participating in the concentration;
- undertakings which participate in the markets of the vertical “supplier-producer-distributor” line;
- undertakings over which the undertaking participating in the concentration has direct or indirect control in the meaning of art. 21 (2) of the Law on the Protection of Competition.

This information may be accompanied with organisational charts and diagrams of ownership and control (ref. chart on p. 71 of the Methodology)

On item 5

The applicant shall present data about the aggregate turnover and the aggregate market share of the participants in the concentration.

The aggregate market share of the participating undertakings is made up of the sum of their individual market shares.

NB: Before submitting a notification under art. 24, it would be advisable for the applicant to consult the Commission for the Protection of Competition concerning the volume of information it should contain. Since different volumes of information are required for different types of investigations, a prior consultation would benefit both the applicant and the Commission. The time limit within which the Commission has to issue an authorisation shall counted as of the moment when when full information under this form is received.

Where the applicant is unable to provide the required information, he shall explain the reasons for that. In this case, he shall indicate alternative sources from which the Commission for the Protection of Competition can obtain that information.

Where the applicant or the participants in the concentration consider that their interests might be encroached if the information they have provided is published or disclosed, they may put together and send that information separately, marking each page with the inscription 'protected secret'. It is necessary to give the reasons why that information shouldn't be published or disclosed.

Where the notification is compiled by more undertakings, the documents containing protected secrets for each one of them shall be submitted in separate folders as attachments to the notification.

The undertakings shall enclose certified copies of the documents containing information used in the calculation of market shares and turnover and shall indicate its source. They shall enclose also copies of the reports, analyses and market surveys they have conducted in relation to the pending concentration, and copies of the undertakings' most recent accounting statements and reports (balance sheet, profit and loss account, equity account, reports relating to jointly controlled undertakings, reports by certified accountants, etc.).

Any undertaking which is uncertain how to fill in the notification or which needs some explanations shall feel free to consult the Commission for the Protection of Competition.