

**BOSNA I HERCEGOVINA**  
*Konkurencijsko vijeće*



**БОСНА И ХЕРЦЕГОВИНА**  
*Конкуренијски савјет*

**BOSNIA AND HERZEGOVINA**  
*Council of Competition*

**REGULATION  
ON NOTIFICATION AND CRITERIA FOR ASSESSING A CONCENTRATION**

**Sarajevo  
October 2006**

Pursuant to Article 25, paragraph (1), item a) of the Act on Competition («Official Gazette of BH», No. 48/2005), the Council of Competition in its 34th (thirty-fourth) session held on 12 October 2006 has adopted

**REGULATION  
ON NOTIFICATION AND CRITERIA FOR ASSESSMENT A CONCENTRATION  
OF UNDERTAKINGS**

**I. GENERAL PROVISIONS**

**Article 1.  
(Subject matter)**

This Regulation shall stipulate the applicants obliged to submit a prior notification of concentration of undertakings, the method of submission, the contents and form of the notification, the documentation and data which are to be enclosed to the notification, the form and contents of the announcement on acquisition of shares or share capital of the undertakings and the assessment criteria of the compatibility of concentrations of undertakings in the proceedings carried out by the Council of Competition within the meaning of the provisions stipulated by the Act on Competition (hereinafter: the Act).

**II. SUBMISSION OF NOTIFICATION**

**Article 2.  
(Notifying Party)**

- (1) The notification is to be submitted, in a case when the conditions laid down in Article 14 of the Act are fulfilled, by the following party:
- a) the acquiring undertaking participating in the merger or joint undertakings participating in the merger;
  - b) the one or more undertakings (acquirer) acquiring a control or decisive influence on one or more undertakings, or on more another undertaking or on a part of another undertaking or on parts of another undertakings;
  - c) acquirer of the majority of shares or share capital or voting rights, or any other way within the meaning of the provisions stipulated by the law;
  - d) all the participants in the joint venture on a long-term basis or a participant in the joint venture appointed by the other participants as their joint representative in a case of creation of a joint venture on long-term basis (joint venture);
  - e) the bidder, in a case of acquiring a control or decisive influence on the basis of a public bid (particularly in the case of acquisition of the majority of shares or share capital or voting rights).
- (2) In cases not covered by paragraph (1) of this Article the obligation to notify shall fall on all parties to the concentration submitting a joint notification or on their commonly appointed party to the concentration.

**Article 3.  
(Time Limit for Notification)**

The undertakings-parties to the concentration are obliged to notify the intended concentration to the Council of Competition in compliance with the provisions of this Regulation within the time limit not longer than 8(eight) days of the conclusion of the agreement, the announcement of a public bid or acquisition of controlling interest, depending on what action takes place the first, pursuant to Article 16, paragraph (1) of the Act.

### **III. THE FORM OF NOTIFICATION**

#### **Article 4. (How to Notify-Form and Way)**

- (1) The notification, submitted in writing on an A4-sheet of paper, shall be accompanied by both by electronic version of the notification and the supporting documentation.
- (2) The notifying party shall notify in the following way:
  - a) all required data as stated in Articles 8 and 9 of this Regulation shall be written on a separate sheet of paper, providing for the possibility of adding as many sheets as necessary for a comprehensive and complete presentation;
  - b) the ordinal number and exact name of each data, according to the sequence provided for in Article 8 and 9 of this Regulation, shall be entered clearly on the top of the page;
  - c) after the ordinal number and the name of the data, the following shall be entered:
    - the data, i.e. a comprehensive and complete description of the circumstances relating to the concentration in question;
    - a statement that the data is failed to be relevant for the assessment of the intended concentration, indicating the reasons thereof;
    - in the case laid down in Article 14, paragraph (2) of this Regulation, state when and where the data were required, and name the reasons if they were not available, indicating where the missing data may be obtained by the Council of Competition.
  - d) following the text referring to particular information, the notifying party shall state documentation, evidence, analyses, diagrams and other documents proving the listed statements, which are to be supplied in the supplement to the notification;
  - e) as the case may be, the notifying party shall supply other information and descriptions, which it finds may be of assistance to the Council of Competition in the assessment procedure;
  - f) at the end of the notification the «Supporting documentation» shall be clearly listed on a separate sheet of paper, followed by the list of all supporting evidences, analyses and diagrams enclosed.

#### **Article 5. (Burden of Proof)**

The notifying party shall be obliged to collect and submit all relevant data, documentation and evidences necessary for the assessment of the notified concentration within the meaning of the provisions of the Act and this Regulation.

#### **Article 6. (Language of the notification and number of copies)**

- (1) The notification, supporting and other documentation shall be submitted in one of the official languages of Bosnia and Herzegovina and in one copy.
- (2) If the original notification, the supporting documentation and other documentation are submitted in a foreign language, the notifying party is obliged to submit the certified translation in one of the official languages in use in Bosnia and Herzegovina, enclosed to the original copy or a certified photocopy of the original document.

- (3) The Council of Competition may, in particular cases, request for the original notification and its supporting documentation to be submitted accompanied by any number of photocopies of whole notification and all supporting documentation that do not to be certified.

**Article 7.**  
**(Accuracy of Data and Official Secret)**

- (1) The data stated in the notification must be true and complete.
- (2) The notifying party is obliged to clearly point out any data in the notification, supporting documentation and other evidences where the provisions on the business secrecy under Article 51, paragraph (2) of the Act shall apply.
- (3) The data in the notification which are not pointed out in the way described in paragraph (2) of this Article and all data which are pointed out in the notification as business secret and confidential in a sense of paragraph (2) of this Article but for which the Council of Competition has established that they had been previously published and known to the general public shall not be considered a business secret.

**IV. CONTENTS OF THE NOTIFICATION**

**Article 8.**  
**(Obligatory Contents of Notification)**

The notification must contain the following data:

- a) the name (or undertaking), address and business activity of the notifying party;
- b) the name (or undertaking), address and business activity of all parties to the concentration;
- c) the name and authority of the agent or representative who represents the notifying party in submitting the notification;
- d) the name, address, telephone and fax number and e-mail address of the contact person appointed by the notifying party for the contacts and cooperation with the Council of Competition, if this person is different from the notifying person;
- e) the detailed description of the legal form of the concentration;
- f) the legal basis for the concentration (the name of the document, class number, the name or undertaking of the parties engaged in the legal transaction in question, the place and date of the legal transaction) such as for example:
  - merger contract /agreement
  - merger contract /agreement or the corresponding decisions of the relevant bodies of the undertakings;
  - the contract /agreement by means of which the shares or share capital is acquired;
  - the contract /agreement on management;
  - the contract /agreement on the profit transfer;
  - decisions on amendments on the statute, decisions ( or contract) on foundation of the undertaking or any other act that gives the decisive influence to any of the parties;
  - the contract /agreement on the lease of property which gives the decisive influence to any party;
  - the takeover public bid;
  - the contract /agreement on the joint venture.
- g) the annual financial report for the year preceding the concentration (balance sheet,

- profit/ loss account, cash-flow statement, statement on changes of shareholder's equality, accounting policies and notes to the annual accounts, for the insurance companies the value of total premiums paid ) as well as other reports giving an insight into the financial state of the parties to the concentration;
- h) the total annual income (operational revenues, financial revenues, extraordinary revenues) of the parties to the concentration after the deduction of the value added tax, other taxes directly relating to the turnover and rebates, within the meaning of Article 14 and 15 of the Act, calculated separately for each party to the concentration:
    - worldwide level,
    - in the market of Bosnia and Herzegovina;
  - i) the definition of the relevant market in which the parties to the concentration and the controlled undertakings or the controlling undertakings operate, as well as the estimates of their market shares, before and after the implementation of the concentration;
  - j) the list and estimates of the market shares of the main market competitors of the parties to the concentration in the relevant market;
  - k) the structure of shareholders and/ or share in the undertaking over which the control or decisive influence is acquired , before and after the implementation of the concentration ( expressed in percentage);
  - l) the list of other undertakings in the relevant market in which the parties to the concentration solely or jointly hold 10% or more of the share capital , or 10% or more voting rights, accompanied by a brief description of the prevailing business activity of the undertakings in question (connected associations);
  - m) the list of all undertakings in the relevant market in which the members of the management or the supervisory board of the parties to the concentration are at the same time the members of the management or the supervisory board , accompanied by the brief description of the prevailing business activity of the undertakings in question;
  - n) the record containing the other authorities competent for assessment of concentrations outside of the territory of Bosnia and Herzegovina which have been submitted the request for assessment of the concentration concerned or to which the notification is intended to be submitted;
  - o) the detailed description of the distribution and retail network structure of the products and/or services in the relevant market, accompanied by the separate description of the distribution and retail network used by the parties to the concentration (own, contractual and alike);
  - p) the description of the realized or intended research and development investments of the parties to the concentration (the form and the nature of the investment or research, their influence on the production and distribution of the products and /or services in the relevant market, the amount of the investments in question realized or planned and alike);
  - q) the description of the legitimate and economic reasons of the concentration;
  - r) the detailed description and argumentation of the resulting benefits for the consumers directly derived from the implementation of concentration, particularly:
    - decrease in prices of products and /or services,
    - increase in quality of products and /or services,
    - innovative features introduced,
    - increase in the selection and the range of products and /or services for consumers;
  - s) the signature of the authorized person responsible for the accuracy and authenticity of the information in the notification;
  - t) the place and date of the submission of the notification.

**Article 9.**  
**(Other Data in the Notification)**

- (1) Apart from the obligatory contents of the notification laid down under Article 8 of this Regulation, the Council of Competition may request the submission of other data which is considered relevant in the assessment of the concentration and in particular:
- a) the number of employees in the undertakings –parties to the concentration and the number of employees in all undertakings members of the concern, the members of which take part in the concentration;
  - b) the list of five main suppliers and / or five main buyers of each party to the concentration, including the supply value;
  - c) the figures on sales value and sales volume calculated in convertible marks, that is the number of units or other measures, realized in the sale of products and / or services by the parties to the concentration in the relevant market;
- (2) All submitted data laid down under paragraph (1) of this Article are to relate to the year preceding that of the concentration.

**Article 10.**  
**(Obligatory Supporting Documentation)**

The notifying party is obliged to provide accompanied to the notification a copy of the original document or certified photocopy of particular documents/identifications and other written evidences, and particularly:

- a) the excerpt from the court register or other register supplying the evidence on the name, address and the business activity of the notifying party;
- b) the excerpt from the court register or other register supplying the evidence on the name, address and the business activity of all parties to the concentration;
- c) a valid authorization if the notification is submitted by the authorized person;
- d) a copy of the original or certified photocopy of the legal basis for the concentration laid down under Article 8 of this Regulation, enclosed to the certified translation in one of the official languages in use in Bosnia and Herzegovina, in case when the original document is in foreign language;
- e) principal annual financial reports of the parties to the concentration for the financial year preceding the year of implementation of the concentration , consisting of the data on the total income of all the parties to the concentration realized in the sales of products and /or services after deduction of the value added tax, other taxes directly relating to the turnover and rebate:
  - worldwide level,
  - in the market of Bosnia and Herzegovina;
- f) all available analyses and studies, presentations or other reports prepared for any member of the management, supervisory board or the chairman and /or members of the shareholders` meeting, dealing with estimation and analysis of the concentration from the viewpoint on the market position, market conditions and the existence of any actual and potential competitors in the relevant market;
- g) the graphic presentation (diagram) of the organizational structure of the parties to the concentration and connected associations, where it can be seen:
  - the relations between the parties to the concentration and connected associations;
  - the shares hold by the controlling companies in the share capital of the controlled companies, that is the shares hold by the daughter companies within the group or concern (expressed as percentages);
- h) the report of the management giving the legal and economic explanation for the concentration;

- i) the decisions of other authorities competent for assessment of concentration outside the territory of Bosnia and Herzegovina ( when it has been already made) or to note obligatory whether it has already submitted or shall submit the request for assessment of the concentration ;
- j) the receipt on the paid administration taxes (Regulation on Amount of Administration Taxes relating to the Practices before the Council of Competition-«Official Gazette of BH», No.30/06).

**Article 11.**  
**(Other Supporting Documentation)**

Beside the supporting documentation stated under Article 10 of this Regulation, the Council of Competition may request the submission of other supplements containing the information which it considers relevant in the assessment of the notified concentration, particularly such as:

- a) principal annual financial reports for the parties to the concentration in the period of three subsequent years preceding the year when the concentration is being implemented, accompanied by the data on the total income of all the parties to the concentration realized by the sales of products and/or services after the deduction of the value added tax, other taxes directly relating to the turnover and discounts:
  - worldwide level,
  - in the market of Bosnia and Herzegovina;
- b) the production and /or sale value and production and /or sales volume, calculated in convertible marks, i.e. the number of units or other measures, realized in the sales of products and/or services by the parties to the concentration in the relevant market in the period of three subsequent years preceding the year when the concentration is implemented.

**V. SEPARATE PROVISIONS STIPULATING THE ACQUISITION OF STOCKS OR SHARES IN THE BANKS, INSURANCE COMPANIES AND OTHER FINANCIAL INSTITUTIONS**

**Article 12.**  
**(Form and Contents of the Notice)**

- (1) The banks, insurance companies and other financial institutions, referring to the cases under Article 12, paragraph (3) of the Act, are obliged to notify in writing of the acquisition of the stocks or shares in other undertakings acquired in the normal course of business of those institutions, including the securities transaction and brokerage services for their own account or for the account of third parties (hereinafter: the notifying party).
- (2) The notice in writing shall consist of the following data, in particular:
  - a) the company and address of the notifying party;
  - b) the company, address and business activity, or the name and address of the person for the account of which the notifying party has acquired the stocks or shares;
  - c) the company name, address and business activity of the undertakings whose stocks or shares the notifying party has acquired;
  - d) the structure of stocks or the structure of the business shares of the undertakings whose shares or business shares the notifying party has acquired (after the acquisition concerned);
  - e) the time limit foreseen by the notifying party to resell the acquired stocks or shares.
- (3) The notice shall be accompanied by:
  - a) the statement of the notifying parties confirming that they shall hold the acquired stocks or shares on a temporary basis with the view of reselling them;

- b) the statement of the notifying party confirming that it shall not use the acquired stocks or shares in any way that could make it possible to influence the competitive behavior of the undertaking, the stocks or business shares of which it has acquired;
- c) the statement of the notifying party confirming that it shall exercise the voting rights for the sole purpose of sale of the whole undertaking, the stocks or business shares of which it has acquired, or the sale of the part of the undertaking in question ( in the case it exercises the voting rights);
- d) the statement of the notifying party confirming that it shall neither exercise the rights originating from the acquired stocks or shares in any way that could prevent, restrict or distort the competition, nor undertake any operation with this objective.

**Article 13.**  
**(Extension of Period)**

- (1) The request for extension of the period set out in Article 12, paragraph (3), item a) of the Act shall be submitted by the notifying party at least fifteen (15)days before the period indicated in the notice expired (Article 12,paragrag (2), item e) of this Regulation).
- (2) The request shall be submitted in writing and it shall contain:
  - a) the reason why the transaction of stocks or share capital has not been possible within the period set;
  - b) the period for which the period set should be extended for transaction in question to be carried out, which cannot be extended for more than six (6) months.
- (3) The Council of Competition shall pass a separate resolution as response to the request for extension of the period.

**VI. EXAMINATION OF THE NOTIFICATION**

**Article 14.**  
**(Examination of the Completeness of the Notification)**

- (1) Upon receiving the notification the Council of Competition shall make sure whether the notification has been submitted by the authorized person, whether it contains all original data and supporting documentation as regulated, certified photocopies and certified translations in one of the official languages of Bosnia and Herzegovina.
- (2) In the case that the notifying party for a justifiable reasons and despite the efforts involved, fails to collect certain data or documents which have been stipulated by the provisions to constitute the obligatory contents of the notification, it shall be stated so in the appropriate part of the notification, stating:
  - a) who from and when the notifying party tried to collect the data concerned;
  - b) the reasons why the relevant data were not collected;
  - c) where the Council of Competition should collect the missing data.
- (3) In the case described under paragraph (2) of this Article, the Council of Competition may request from the notifying party to supply in writing its own analysis and estimations of the conditions and situation relating to the missing data
- (4) The notification of concentration consisting of the data laid down under Article 8 of this Regulation and the supporting documentation as stipulated under Article 10 of this Regulation shall be considered a complete notification.



**Article 15.**  
**(Receipt for the Notification)**

- (1) The Council of Competition, when establishes the completeness of the notification, shall issue a receipt within the meaning of Article 30, paragraph (3) of the Act.
- (2) The receipt under paragraph (1) of this Article shall particularly contain:
- a) register number and the date of the issuance of the receipt;
  - b) the name (company) or name of the notifying party, that is the authorized person;
  - c) the name (company) or names of the parties to the concentration;
  - d) the date of submission of the notification to the Council of Competition;
  - e) the instruction, within the meaning of Article 18, paragraph (8) of the Act, that the concentration may not be implemented as long as the Council of Competition takes its final decision declaring the concentration compatible in the sense of Article 12 and 14 of the Act;
  - f) the notice informing that the time limits start pursuant to Article 18 and 41 of the Act;
  - g) the signature of the president of the Council of Competition.

**VII. THE CRITERIA FOR ASSESSMENT OF CONCENTRATION**

**Article 16.**  
**(Criteria for the Assessment of Concentration)**

In the course of the assessment of the intended concentration, the Council of Competition shall primarily analyze the positive and negative effects, that is to say whether the concentration concerned creates or strengthens a dominant position which will result in the significant prevention, restriction and distortion of the market competition.

**VIII. DECISION ON THE CONCENTRATION**

**Article 17.**  
**(Decision on the Concentration)**

In the case when the Council of Competition does not pass a Resolution on initiation of the assessment procedure within sixty (60) days starting from the date of the receipt issuance, within the meaning of Article 18, paragraph (5) of the Act, the concentration shall be deemed compatible.

**Article 18.**  
**(Decision on the Request)**

In the case when a decision on the Notification of intended concentration is not issued within the time limits laid down in Article 18, paragraph (5) and Article 41 of the Act, the Council of Competition shall upon the request of the notifying party issue a decision declaring the concentration concerned compatible.

**IX. FINAL PROVISIONS**

**Article 19.**  
**(Scope of the Application)**

This Regulation shall apply to all concentrations defined in Article 12 of the Act.

**Article 20.**  
**(Entry into Force)**

This Regulation shall enter into force on the day of adoption, and it shall be published in the «Official Gazette of BH» and in official gazettes of Entities and Breko District of Bosnia and Herzegovina.

**C.C. No.: 01-01-50-858-I/06**

**President**

**Sarajevo, 12 October 2006**

**Gordan Raspudić**