

**REGULATION ON NOTIFICATION AND CRITERIA FOR  
ASSESSMENT OF CONCENTRATIONS OF  
UNDERTAKINGS**

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## Regulation on Notification and Criteria for Assessment of Concentrations of Undertakings

Based on Article 25, paragraph (1), item a) of the Act on Competition (Official Gazette of BiH, No. 48/05, 76/07 and 80/09) the Council of Competition on the 104<sup>th</sup> session, held on March 23, 2010 has adopted

### **REGULATION ON NOTIFICATION AND CRITERIA FOR ASSESSMENT OF CONCENTRATIONS OF UNDERTAKINGS**

#### **I GENERAL PROVISIONS**

##### **Article 1 (Subject)**

This Regulation defines the parties who are obliged to notify the concentration intention of economic entities, the manner of filing, content and form of notification, documentation and information to be submitted with the notification, form and content of notification on acquisition of stocks and shares in economic entities and criteria for assessment the permissibility of the concentration of economic entities in proceedings led by Council of Competition under the provisions of the Act on Competition (hereinafter: the Act).

#### **II SUBMISSION OF NOTIFICATION**

##### **Article 2 (Obligation of notifying)**

Intended concentration of economic entities, referred to in Article 12 of the Act, must be reported by the participants to the concentration, if:

- a) economic entities are headquartered and have residence abroad and conditions referred to in Article 14, paragraphs a) and b) of the Act are fulfilled, and
- b) economic entities are headquartered and have residence in Bosnia and Herzegovina and conditions referred to in Article 14, item b) of the Act are fulfilled.

##### **Article 3 (Applicant)**

- (1) The obligation of submitting a notification, with the fulfilment of conditions of Article 14 of the Act, rests on:
  - a) entity who takes over in the consolidation process, or joint economic entities who participate in the merger;

- b) acquirer of control or dominant influence (or more economic entities - acquirers) over the other, or over a number of other economic entities or part of another economic entity, or parts of other economic entities;
  - c) acquirer of majority of shares or share capital or voting rights, or otherwise in accordance with the provisions of the Act;
  - d) all participants in the joint venture on a long term basis or a participant in a joint venture who is appointed by the other participants as their joint representative, in the creation of joint ventures on a long term basis (joint venture);
  - e) bidder, in the event of acquiring control or dominant influence based on public offer (especially in the way to acquire majority of shares or share capital or voting rights).
- (2) Obligation of submitting the notification have all participants to the concentration, in cases that are not covered by paragraph (1) of this Article, who submit a joint notification, or the participant who is appointed by the other participants in the concentration as their common representative.

**Article 4**  
**(Deadline for submission of notification)**

- (1) Economic entities, the concentration participants are obliged to submit a notification of intended concentration to the Council of Competition in the manner prescribed in this Regulation, within a period not exceeding 15 days from the date of signing contract/agreement, the publication of a public offer of shares or acquisition of control, depending on what occurs earlier, in the sense of Article 16, paragraph (1) of the Act.
- (2) The notification of concentration may be submitted to the Council of Competition after the participants have proved their intention to concentrate by conclusion of agreement in principle, memorandum of understanding, letter of intent or the public announcement of intent to bid purchase.

**III THE FORM OF THE NOTIFICATION**

**Article 5**  
**(The form and method of filling a notification)**

- (1) Together with the notification, submitted in writing on paper format A4, it should be submitted a notification in electronic form as well as the supplements.
- (2) The applicant fills the notification as follows:

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- a) all information referred to in Articles 8 and 9 this Regulation should be written on a separate sheet, with the ability to add as many sheets as necessary for detailed and fully exposition of the information;
- b) the ordinal number and exact name of each data, according to the sequence of data given in Articles 8 and 9 of this Regulation, should be written to the top of the page;
- c) below the number and name of data:
  - writes data, and gives a detailed and complete description of the circumstances related to the reported concentration;
  - indicates that the data is not relevant for the assessment of concentration and cites the reasons for this;
  - in the cases referred to in Article 14, paragraph (2) of this Regulation, states by whom and when the data is tried to be collected, the reasons why the data could not be collected and where the missing information should be collected by the Council of Competition;
- d) following the text that refers to particular information, lists the evidence, analysis, charts or other documents evidencing the statements along single points, which are submitted enclosed to the notification;
- e) if it is required, lists the other data and descriptions that could help to the Council of Competition to decide in the assessment of the notified concentration;
- f) at the end of the notification, on a separate sheet, writes “supplements to the notification”, where lists all the documents, written evidence, analysis and diagrams that are supplements to the notification.

### **Article 6 (Evidences)**

The applicant shall obtain and furnish all information, documents and evidence necessary to assess the admissibility of notified concentration in terms of the provisions of this Regulation.

### **Article 7 (Language of the notification and the number of copies)**

- (1) Notification, supplements and other documents submitted with the notification shall be submitted in one of the official languages in use in Bosnia and Herzegovina and in one copy.
- (2) If the original notification, attachments to the notification or documents submitted with the notification are in a foreign language, the applicant shall required, along with original or certified copy of the original, to submit its certified translation into one of the official languages in use in Bosnia and Herzegovina.
- (3) The Council of Competition, in particular cases may require submitting along with the original notification and attachments one or more copies of the entire notification and all attachments that do not have to be verified.

### **Article 8 (Authenticity of data and business secret)**

- (1) The information referred to in the notification must be true and complete.

- (2) The applicant is required to mark clearly the data of any information in the notification, attachments and evidences, to which the provisions on business secrets from Article 38, paragraph (2) of the Act are applied.
- (3) The data in the notification shall not be considered business secret if they are not marked in the way described in paragraph (2) of this Article, as same as all data that are marked as secret or confidential pursuant to paragraph (2) of this Article, for which the Council of Competition has found that have been in some way published or publicly known.

## **IV CONTENTS OF NOTIFICATION**

### **Article 9 (Obligatory content of the notification)**

The notification must contain the following information:

- a) the name (or name of economic entity), address and business of the applicants;
- b) the name (or name of economic entity), address and business of all parties to the concentration;
- c) the name and powers of a representative or authorized person who submits a notification as representative of the applicant;
- d) the name, address, telephone number, fax number and e-mail address of the person that is appointed by the applicant as the person responsible for contacts and cooperation with the Council of Competition, if it is other person than the person submitting the notification;
- e) a detailed description of the legal form of concentration;
- f) the legal basis of concentration (name of the document, business number, name or company of the parties in this legal case, place and date of execution of legal case), for example:
  - contract/agreement on merger;
  - acquisition contract/agreement or the appropriate decisions of authorities of economic entities;
  - contract/agreement of merger or acquisition in principle;
  - Memorandum of understanding;
  - a letter of intent signed by all participants to the concentration;
  - contract/agreement on acquiring the stocks or shares;
  - contract/agreement on the conduct of the business;
  - contract/agreement on transfer of profit;
  - decision on amendments on the statute, the decision (or contract) on the establishment of economic entity or any other act which gives to a participant a dominant influence;
- g) contract/agreement to lease the property which affords to one of the participants the dominant influence;
- h) public takeover bid;
- i) publicizing the intent for the bid purchase of stocks;
- j) contract/agreement on the joint venture;
- k) the annual financial statements for the year preceding the concentration (balance sheet and income statement, statement of profit/loss, cash flows, changes in equity, accounting policies and notes to financial statements, information on the amount of

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- premiums paid to insurance companies) as well as other reports from which it is clear the financial situation of the parties to the concentration;
- l) total annual income (operational revenues, financial revenues, extraordinary and other revenues) of participants to the concentration after deduction of value added tax, other taxes directly related to traffic and rebate, within the meaning of Articles 14 and 15 of the Act, that is stated separately for each participant to the concentration:
    - at the world level;
    - in the market of Bosnia and Herzegovina.
  - m) determining the relevant market in which the participants to the concentration operate, as well as economic entities under their control or economic entities who control them, and estimates of their market shares, before and after the implementation of concentration;
  - n) list and estimate of market shares of major competitors participants to the concentration in the relevant market;
  - o) structure of the owners of stocks and/or shares in economic entity, over which a control or dominant influence is acquired, before and after the implementation of the concentration (expressed as a percentage);
  - p) list of other economic entities in the relevant market in which the concentration participants solely or jointly hold 10% or more shares, or 10% or more voting rights, with a brief description of the main activities of these economic entities (related companies);
  - q) list of all economic entities in the relevant market in which members of management or supervisory board of concentration participants are at same time members of management or supervisory board, along with a brief description of the main activities of these economic entities;
  - r) list of other authorities competent for assessment of concentrations outside the territory of Bosnia and Herzegovina to which the request for assessment of the same concentration is submitted or intends to be submitted;
  - s) detailed description of the organization of distribution and retail network of products and/or services in the relevant market, with specific descriptions of network of distribution and retail that is used by the concentration participants (own, contracting, etc.);
  - t) description of the realized or intended research and investment in the development of the participants to the concentration (the form and type of investments or research, their importance for the production and sale of products and/or services in the relevant market, the amount that have been invested for that purpose or are intended to be invested etc.);
  - u) the reasons by which the concentration is explained legally and economically;
  - v) description and a detailed explanation of the expected benefits that will arise from implementation of the concentration from the standpoint of consumer interests, such as in particular:
    - decreasing the price of goods and/or services;
    - Increasing product quality and/or services;
    - the introduction of innovations;
    - enhancing and expanding the choices possibility of products and/or services to consumers.
  - w) a signature of the person responsible for the accuracy and truthfulness of the information in the notification;
  - x) place and date of filing of the notification.

**Article 10**  
**(Other required information to notification)**

- (1) The Council of Competition may request submission of other information, besides those specified in Article 9 of this Regulation, which may help in assessing the concentration, particularly:
- a) information about the number of employees in economic entities the concentration participants and number of employees in all economic entities members of the concern, whose members are parties to the concentration;
  - b) list of the five largest suppliers and/or five largest customers of each of the parties to the concentration, including the value of procurement;
  - c) information on the value and volume of sales denominated in convertible marks or number of pieces or measuring units that parties to the concentration achieve by selling products and/or services in the relevant market.
- (2) The information referred to in paragraph (1) of this Article shall be submitted for the year preceding the concentration.

**Article 11**  
**(Obligatory supplements to the notification)**

The applicant is obliged to submit the original or certified copies of certain documents or other written evidences, in particular:

- a) extract from the registry of the court or other register where are visible the information on the company, address and business of the applicant;
- b) extract from the registry of the court or other register where are visible the information on the company, address and business of all parties to the concentration;
- c) valid power of attorney if the notification is submitted by an authorized person;
- d) an original or certified copy of the legal basis of the concentration from Article 8 of this Regulation, with a certified translation into one of the official languages in use in Bosnia and Herzegovina, where the original is in foreign language;
- e) the basic annual financial statements for the parties to the concentration of the financial year preceding the concentration, with data on total income of all economic entities the parties to the concentration achieved by selling products and/or services after deduction of value added tax, other taxes directly related to trade and rebate:
  - at the world level;
  - the market of Bosnia and Herzegovina.
- f) all available analysis, studies, presentations or other reports prepared for any member of management, supervisory board or the chairman and/or members of shareholders with subject of assessment and analysis of the concentration from the standpoint of the state of competition, conditions, and the existence of actual and potential market competitors in the relevant market;
- g) graphical presentation (diagram) of the organizational structure of the parties to the concentration and affiliates from which is clearly visible:
  - interconnections between participants to the concentration and related companies;



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- shares that are held by the dominant companies in shares capital of the subsidiaries, or by daughter companies in other daughter companies within the group or the concern (expressed in percentages);
- h) a management report by which the concentration is explained legally and economically;
- i) decisions of other authorities competent for assessment of concentrations outside the territory of Bosnia and Herzegovina (if those decisions are already made), or the applicant shall indicate whether he has submitted or will submit a notification for assessment of the concentration;
- j) a receipt of paid the administrative taxes (Regulation on amount of administrative taxes relating to the practices before the Council of Competition –“Official Gazette of BiH”, No. 30/06).

### **Article 12 (Other supplements to the notification)**

Council of Competition, besides the attachments listed in Article 10 of this Regulation, may request information that deems useful in assessing the notified concentration, in particular:

- a) basic annual financial statements for the parties to the concentration of three consecutive financial years that preceded the concentration with the data on the total turnover of all economic entities the parties to the concentration achieved by selling products and / or services after deduction of value added tax, other taxes directly related to the trade and rebate:
  - at the world level;
  - the market of Bosnia and Herzegovina.
- b) the value and volume of production and/or sales denominated in convertible marks, i.e. in the number of pieces or units, which the parties to the concentration achieve by selling products and/or services in the relevant market in three consecutive.

## **V PROVISIONS IN CASES OF ACQUISITION OF STAKES OR SHARES IN BANKS, INSURANCE COMPANIES AND OTHER FINANCIAL INSTITUTIONS**

### **Article 13 (The form and content of notification)**

- (1) Banks, insurance companies and other financial institutions, in cases under Article 12, paragraph (3) of the Act, shall notify in writing of any acquisition of stakes or shares in other economic entities which occurred in the ordinary course of business of these institutions, which includes transactions and dealing in securities for its own account or for third parties (hereinafter: the applicant of the notification).
- (2) Written notification particularly includes the following information:
  - a) the company and seat of the applicant of the notification;

- b) the company, address and business or the name and address of a person for whom the applicant acquires the stocks or shares;
  - c) the company, seat and business of companies whose stocks or shares the applicant has acquired;
  - d) the structure of stakes or shares of economic entities whose stakes or shares the applicant has acquired (after the acquisition);
  - e) the time limit within which the applicant intends to sell the acquired stakes or shares.
- (3) With the written notification, the following shall be submitted:
- a) the applicants' statement that the acquired stakes or shares are held temporarily with the intention of reselling them;
  - b) the applicants' statement that the acquired stakes or business shares will not be used in a way to enable any impact on the competitive behaviour of economic entities whose stakes or shares are acquired;
  - c) the applicant's statement that the right to vote would be realized only for the purpose of preparing the sale of the whole economic entities whose stakes or shares are acquired or sale of a part of that economic entity (in case that the applicant has the right to vote);
  - d) the applicant's statement that the rights arising from acquired stakes or shares will not be used in a way that in any way distort, restrict or prevent market competition and will not take any measures in this direction.

#### **Article 14** **(Request for extension of time limit)**

- (1) The applicant must submit a request for extension of time limit, from Article 12, paragraph (3), item a) of the Act, the latest fifteen (15) days before expire of the time limit which he has stated in the notification (Article 12, paragraph (2), item e) of this Regulation).
- (2) The request shall be submitted in writing and include:
- a) the reasons why a sale of stakes or shares could not be conducted during a stated time limit;
  - b) time limit for which the extension is requested, within which the sale will be conducted, and which can not be longer than six (6) months.
- (3) Council of Competition shall adopt a separate resolution on the submitted request for an extension of time limit.

## **VI CHECKING THE NOTIFICATION**

#### **Article 15** **(Completeness of notification)**

- (1) Council of Competition following the receipt of the notification determines whether the notification is filed by an authorized person, whether it contains prescribed information and attachments, certified copies and translations into one of the official languages of Bosnia and Herzegovina.
- (2) In the case that the applicant, for justified reasons, and despite the exerted efforts, is not able to collect certain data or documents of the compulsory contents of the notification, it will be written on the appropriate place of the notification, stating:
  - a) by whom and when the information or documents were tried to be obtained;
  - b) the reasons why the information or documents could not be collected;
  - c) where the Council of Competition can collect the missing information or documents.
- (3) The Council of Competition, in a case described in paragraph (2) of this Article, may ask the applicant to submit in writing, instead of the missing data, his own analysis and assessment of conditions and situations to which the missing data pertains.
- (4) The notification of concentration with the all data referred to in Article 8 of this Regulation and corresponding supplements of Article 10 of this Regulation shall be deemed to be a complete notification.

**Article 16**  
**(Acknowledgment of notification)**

- (1) When finds that notification is complete, the Council of Competition shall issue an acknowledgment to the applicant in terms of Article 30, paragraph (3) of the Act.
- (2) An acknowledgment under paragraph (1) of this Article shall particularly contain:
  - a) the number and issue date of the acknowledgment;
  - b) the name of economic entity or the name of the applicant or authorized person;
  - c) the names of economic entities the parties to the concentration;
  - d) the date of submission of the notification to the Council of Competition;
  - e) instructions, in the meaning of Article 18, paragraph (9) of the Act, that concentration will not be implemented before the Council of Competition issues a decision which confirms the compatibility of concentration with Articles 12 and 14 of the Act;
  - f) instruction that time limit shall commence on the basis of Article 18 and 41 of the Act;
  - g) the signature of the President of the Council of Competition.

**VII CRITERIA FOR ASSESSMENT OF CONCENTRATION**

**Article 17**  
**(Criteria for the assessment of concentration)**

Council of Competition when assessing the intended concentration primarily analyzes the effects that result in significant distortion of market competition.

## **VIII DECISION ON CONCENTRATION**

### **Article 18 (Decision on concentration)**

In the case that Council of Competition within 30 days pursuant to Article 18, paragraph (5) of the Act, from the date of issuance of an acknowledgment, does not issue a conclusion on initiation of proceedings for assessment of the concentration, concentration is deemed to be approved.

### **Article 19 (Decision on the request)**

In the case that decision on notification of concentration has not been issued in terms of Article 18, paragraph (5) and Article 41 of the Act, Council of Competition shall issue, at the request of the applicant, a decision declaring the concentration compatible.

## **IX FINAL PROVISIONS**

### **Article 20 (The scope of applicability)**

This Regulation applies to all concentrations stipulated in Article 12 of the Act.

### **Article 21 (The expiry of a previous Regulation)**

On the effective date of this Regulation, the Regulation on the notification and the assessment criteria for the concentrations of economic entities ("Official Gazette of BH" No. 95/06) shall become void.

### **Article 22 (Publication and entry into force)**

This Regulation shall enter into force eight days after publication in the "Official Gazette of BH" and it will be announced in the official Gazettes of the Entities and Brcko District of Bosnia and Herzegovina.

**C.C. Number: 01-01-50-180-I/10**

**President of  
Council of Competition**

**Sarajevo, 23<sup>rd</sup> March 2010**

**Stjepo Pranjić, Phd**