

**REPUBLIC OF ALBANIA**  
**-COMPETITION AUTHORITY-**  
**Competition Commission**

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**D E C I S I O N**

**No. 7, Dated 01. 06. 2004**

Pursuant to Article 24, letters "d" and "dh", and Article 84, letter "c" of Law No. 9121, dated 28.07.2003, titled "On Protection of Competition", the Competition Commission,

**DECIDED:**

1. The approval of Regulation On Implementation of Procedures for the Concentration of Undertakings"
1. This decision enters immediately into effect.

**THE COMPETITION COMMISSION**

**Franc Zhupa**  
(\_\_\_\_\_)   
**Member**

**Lush Perpali**  
(\_\_\_\_\_)   
**Member**

**Teuta Shkenza**  
(\_\_\_\_\_)   
**Member**

**Zef Preci**  
(\_\_\_\_\_)   
**Member**

**REPUBLIC OF ALBANIA**  
**-COMPETITION AUTHORITY-**  
**Competition Commission**

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**Regulation**

**"On the Implementation of Procedures Related to the Concentration of Undertakings"**

Pursuant to Article 24, letter "dh", and Article 84, letter "c", of Law No. 9121, dated 28.07.2003, titled "On Protection of Competition", the Competition Authority issues the Regulation on the Implementation of Procedures for the Concentration of Undertakings.

**CHAPTER I**  
**NOTIFICATIONS**

**Article 1**  
**Obligation for the notification of concentration**

The notifications shall be made by the undertakings that are defined under Article 53, paragraph 1 of the Law.

In the case that the notification, which fulfills the conditions expressed under Article 54 of the Law, is not undersigned by the legal representative of the undertaking, but by the person authorized by the latter, then the authorized person must have a written authorization where is confirmed his/her right of representation.

In case when the notification is made jointly, it must be undersigned by a joint representative, who has the right to communicate and obtain documentation on behalf of the notifying parties. Such right must be confirmed through a written authorization, issued by the notifying parties.

In the case when the notifying parties or their representatives do not operate in the Republic of Albania, they must obtain a mailing address in the Republic of Albania, where the Competition Authority may address the relevant correspondence.

**Article 2**  
**Submission of notifications**

The notifications must be submitted by fulfilling the Notification Form, which is enclosed with the Guidelines on the Form of Notification of the Concentration and the Option for Simplified Notification, (which hereinafter shall be called the Guidelines). The joint notifications must be submitted by filling in one single Form.

Each notification and the enclosed documentation (which is defined in the Notification Form) must be submitted in three copies, to the Notifications Office of the Competition Authority, at the address shown under the Guidelines. Such submission must be made during the business hours of the Notifications Office,

and against a written certification of the receipt of the documentation, issued by the Notifications Office.

At least one of the copies of the [set of] documents enclosed with the Notification Form (the needed documentation is defined in the Notification Form) must be original or notarized copy. The Competition Authority may, at any time, require additional documents, which must be either originals or notarized copies. Every enclosed document must have printed clearly the name of the party that makes the notification.

The notification must be submitted in Albanian language, despite whether the juridical or physical persons that makes the notification is not resident in Albania, or does not have a representation office. The Competition Authority may authorize the notifying parties to submit the notification in English language.

The [set of] documents enclosed with the Notification must be submitted in the official language. If the official language is not Albanian or English, then a notarized translation into Albanian language must be submitted along with the Notification.

### **Article 3**

#### **Provision of required documentation and information**

The notification must contain the information as required in the Notification Form attached to the Guidelines. The information must be accurate and complete.

If the Competition Authority deems that a given piece of information is not necessary for the review of the question under consideration, it may free [any notifying party] from the obligation to submit any such specific information required in the Notification Form, to include documents.

Upon receipt of the notification, and any other documents delivered in response to the requirement made by the Competition Authority, the latter must immediately notify, in writing, the notifying parties on the receipt of such documentation.

### **Article 4**

#### **Effective date of the notification**

The notifications become effective on the date when they are received by the Notification Office of the Competition Authority.

In case when the information contained in the notification package is incomplete, the Competition Authority, in compliance with Article 54 of the Law, within 5 (five) days, must inform, in writing, the notifying parties or their representatives on the fact and establish a deadline for the completion of the information. In such cases, the notification shall become effective on the date when the Notification Office of the Competition Authority shall receive the complete information.

Any changes in the information contained in the notification, that the notifying parties deem necessary to make, must be communicated to the Competition Authority within 10 (ten) days [of the receipt of the notification by the latter]. In the cases when such changes may have an important impact on the evaluation of the

concentration, the Competition Authority may decide that the notification becomes effective on the date when the Competition Authority has received the changes on the information. In such a case, within 10 (ten) days, the Competition Authority must inform, in writing, the notifying parties or their representatives.

Pursuant to Article 33, paragraph 2 of the Law, inaccurate or distorted information shall be considered as incomplete information.

When the Competition Authority publishes a notification, in compliance with Article 64 of the Law, it must also publish the date of the receipt of the notification. If the effective date of the notification is a date latter than the date specified in such publication, the Competition Authority must issue another publication where the later date is stated as the effective date.

## **Article 5 Response to the notification**

In all cases when the Competition Commission decides that the notified transaction does not constitute a concentration in the meaning of Articles 10 and 12 of the Law, the Competition Authority must notify the notifying parties, or their representatives, in written form and in compliance with the time limits defined under Article 56 of the Law.

## **CHAPTER II TIME LIMITS**

### **Article 6 Start of time period**

The start of the 2-month period for the implementation of the preliminary procedure determined under Article 56 of the Law shall be the business day immediately subsequent to the effective date of the notification.

The start of the 3-month period for the implementation of the In-Depth procedure determined under Article 57 of the Law shall be the business day immediately subsequent to the date when the Competition Commission has made the decision to start the in-depth procedure.

### **Article 7 End of time period**

The end of the 2-month period for the implementation of the preliminary procedure shall be the day of the second subsequent month, which has the same date as the start date. If such month does not have that date number, then such period shall end on the date immediately subsequent to the end date of that [second] month.

The end of the 2-month period for the implementation of the In-Depth procedure shall be the day of the third subsequent month, which has the same date as the

start date. If such month does not have that date number, then such period shall end on the date immediately subsequent to the end date of that [third] month. If the end date of the period is not a business day, then the period shall end on the immediately subsequent business day.

## **Article 8 Holidays**

If the time periods defined under Article 7 of this Regulation have expired, and if, within such periods have occurred official and other holidays, then an equal number of business days shall be added to the periods referred in Articles 56 and 57 of the Law.

## **Article 9 Suspension of time periods**

1. The time period referred in Articles 56 and 57 of the Law shall be suspended by the Competition Authority, in compliance with Article 33, paragraph 2 of the Law. The Competition Authority must make such a decision in the event of one of the following:
  - a. If the information requirements of the Competition Authority, made in compliance with Article 55 of the Law, and addressed to any of the notifying parties and/or other interested parties, has not been provided or has not been provided complete, within the deadline(s) determined by the Competition Authority;
  - b. If the information requirements of the Competition Authority, which are made in compliance with Article 55 of the Law, and addressed to any of the third parties has not been provided or has not been provided complete, within the deadline(s) determined by the Competition Authority;
  - c. If any of the notifying parties and/or other parties involved has refused to undergo, or to cooperate during an investigation procedure, which the Competition Authority has deemed necessary to implement pursuant to Article 55;
  - d. If the notifying parties have failed to inform the Competition Authority on the changes regarding the facts contained in the notification;
2. The time limits defined under Articles 56 and 57 of the Law shall be invalidated in the following cases:
  - a. cases referred under points 1(a) and (b) of this Article, for the time period between the expiry date of the deadline defined in the request for information made by the Competition Commission, and the receipt of complete and accurate information.
  - b. cases referred under point 1(c) of this Article, for the time period between the unsuccessful effort to implement the investigation

proceedings and the termination date of the investigation authorized by the Competition Commission;

- c. cases referred under point 1(d) of this Article, for the time period between the changes in the information and the receipt of complete and accurate information required by the Competition Commission, or the termination date of the investigation authorized by the same.
3. Suspension of the time period shall commence on the date immediately subsequent to the date of the event that became the cause for the suspension. The suspension shall terminate at the end of the day when the reason for suspension has ceased to exist. If such day is not a business day, then the termination shall occur on the immediately subsequent business day.

### **Article 10 Compliance with time limits**

The time limits defined under Articles 36 and 27 of the Law, shall be considered as complied with, if the Competition Authority has made the relevant decision prior of the expiry of such time limits.

## **CHAPTER III THE HEARING OF THE PARTIES**

### **Article 11 The parties enjoying the right to express opinions**

Pursuant to Article 39 of the Law, the parties enjoying the right to express opinions, include the following:

- The notifying parties, which are the persons or undertakings that have submitted a notification pursuant to Article 53 of the Law;
- Other interested parties, different from the notifying parties, which are those parties that are part of the concentration plan, such as the seller and the undertaking which is the object of concentration;
- Third interested parties, which can be physical and/or juridical persons, to include consumers, suppliers, competitive parties, and in particular, the members of administrative and/or managerial bodies of the undertakings included in the concentration, as well as the representatives of the trade unions of these undertakings.
- The parties, in relation to which the Competition Commission considers the opportunity to make a decision, pursuant to Articles 73, 74 and 76 of the Law.

### **Article 12 Decisions for the authorization of temporary concentration**

In cases when the Competition Commission considers to make a decision pursuant to Article 60 of the Law, and such decision implies adverse consequences for one or more parties, the Commission must notify, in writing, the notifying parties as well as the other parties involved, in relation to its reservations and shall also determine a time limit, within which the parties can submit their opinions in regard.

In cases when the Commission, pursuant to Article 60 of the Law, has made a preliminary decision in compliance with paragraph 1 of this Article, without, however, granting the opportunity to the notifying parties, or other parties involved to present their opinion, the Commission, within five (5) days, must submit to such parties the text of the preliminary decision and determine a time limit, within which the parties can submit their opinions in regard.

Subsequent to the time when the notifying parties, and/or other interested parties shall have submitted their opinions, the Commission shall make the final decision, by invalidating, amending or confirming the preliminary decision. If the notifying parties, and/or other interested parties shall decline to submit their opinions within the determined time limit, the preliminary decision of the Commission shall become the final decision.

The notifying parties, and/or other interested parties may submit their opinions in written form, or in verbal form, within the determined time limit. They may also confirm in writing their opinions, previously expressed in verbal form.

### **Article 13** **Decision-making**

In cases when the Competition Commission considers making a decision pursuant to Article 56, paragraph 1 of the Law, the Commission shall hold hearings with the notifying parties.

The Commission presents, in written form, its reservations to the notifying parties, and determines a time limit, within which the notifying parties may submit to the Competition Authority, in written form, their opinions in regard.

In addition, the Commission notifies, in writing, on such reservations, the other interested parties and determines a time limit within which such parties may submit to the Commission, in written form, their opinions in regard.

Upon presentation of its reservations to the notifying parties, and upon request forwarded by the latter, the Commission allows such parties to access the files, in order to facilitate them the exercise of the right to defend themselves.

Upon request forwarded by the other interested parties that have been notified on the reservations, the Commission grants the right to access the documentation, in compliance with the deadlines determined by the same.

The parties, to which the Commission has communicated its reservations, are eligible to submit to the Commission their opinion on such reservations. Such submission must be done within the determined deadline, in written form and the parties may present all their reasons in relation to the issue under discussion and enclose any documents they deem necessary to present as evidence in support of

the facts they state in their submission. In addition, the parties may propose to the Competition Authority to hold hearing sessions with persons who may confirm such facts.

Prior to making a decision pursuant to Articles 73, 74 and 77 of the Law, the Commission must hear the parties subjected to such decision, in compliance with the procedures determined under paragraphs 2, 3 and 4 of the Article.

#### **Article 14 Hearings**

The Competition Authority must give the notifying parties the opportunity to present, in verbal form, their arguments, by organizing a hearing session, if the notifying parties have forwarded such request in writing and if they are interested to do so. The Competition Authority may grant the parties the opportunity to present their arguments verbally, also in other cases that the Authority deems necessary.

The Competition Authority must give the interested parties the opportunity to present, in verbal form, their arguments, by organizing a hearing session, if the interested parties have forwarded such request in writing and if they are interested to do so. The Competition Authority may grant the parties the opportunity to present their arguments verbally, also in other cases that the Authority deems necessary.

The Competition Authority must give the parties, which are under consideration to be imposed a fine pursuant to Articles 73 and 74, or a periodical fine pursuant to Article 76, the opportunity to present, in verbal form, their arguments, if such parties have forwarded such request in writing. The Competition Authority may grant the parties the opportunity to present their arguments verbally, also in other cases that the Authority deems necessary.

The Competition Authority sends a written invitation to the persons that shall take part in the hearing sessions, to be organized at the specified dates.

#### **Article 15 Organization of hearings**

The hearing sessions must be chaired by the inspector in charge.

The persons invited to participate in the hearing sessions, must come either in person, or through a legal representative. The undertakings or the groups of undertakings may be represented by an authorized person.

The persons who will express their opinion during the hearing session, may be assisted by their legal representatives or other qualified persons that have previously been recognized by the inspector in charge.

The hearing sessions are not open to the public. Each participating person may be heard privately, or in the presence of other persons invited, by taking into consideration the preservation of business secret and other confidential information.



The declarations made by every person are taped. Upon request, the registration of the hearing session is made available to the persons participating in the hearing. In doing so, it is taken into consideration the legitimate interest of the undertakings to preserve their business secret and other confidential information.

### **Article 16** **Third party hearings**

If any parties, other than those mentioned under Article 14 of this Regulation, address the Competition Authority with a written request to hold a hearing session, the Competition Authority notifies, in writing, such parties on the nature of the proceeding and establishes a date, within which such parties may submit their opinions in writing.

If the parties defined under paragraph 1 of this article, present their opinions in writing, and within the defined date, the Competition Authority may offer them the opportunity to express their views verbally in a hearing session, if such thing is deemed necessary by the deem necessary the Competition Authority.

The Competition Authority may grant the parties the opportunity to present their arguments verbally, also in other cases that the Authority deems necessary.

In the same fashion, The Competition Authority may grant any other third party the opportunity to express their opinion.

### **Article 17** **Confidentiality**

The Competition Authority shall not disclose or make available information, to include any documentation, for as long as it contains business secrets, or any other confidential information regarding any person or undertaking, to include the notifying parties, other interested parties and third parties, or indeed any other confidential information that the Competition Authority does not consider necessary to support the proceedings.

Any party, which expresses its opinions pursuant to the preceding articles of the Chapter, shall clearly identify any material that considers as confidential, provide the reasons for that, and also make available a non-confidential version, distinct from the confidential one, within the deadline determined by the Competition Authority.

## **CHAPTER IV** **ENGAGEMENTS RELATED TO THE ELIGIBILITY OF THE CONCENTRATION**

### **Article 18** **Time limits for the engagements**

The engagements proposed to the Competition Authority by the undertakings, pursuant to Article 56, paragraph 2, of the Law, and which the parties believe can

serve as a basis for the decision, must be submitted to the Competition Authority, no later than 1 (one) month from the date when was made the decision.

The engagements proposed to the Competition Authority by the undertakings in question, pursuant to Article 57, paragraph 2, of the Law, and which the parties believe can serve as a basis for the decision, must be submitted to the Competition Authority, no later than 2 (two) months from the date of the start of the in-depth procedure.

The provisions made under paragraphs 1 and 2 of this Article shall be implemented in compliance with Articles 6 and 9 of this Regulation.

### **Article 19**

#### **Proceedings for the engagements**

An original copy of the engagements proposed to the Competition Authority by the undertakings, pursuant to Articles 56 and 57 of the Law must be submitted to the Competition Authority, at the address shown under the Notification Form enclosed with the Guidelines.

Any party, which proposes an engagement to the Competition Authority, shall clearly identify any documentation or information that considers as confidential, provide the reasons for that, and also make available a non-confidential version, distinct from the confidential one, within the deadline determined by the Competition Authority.

## **CHAPTER V**

### **GENERAL DISPOSITIONS**

#### **Article 20**

##### **Delivery of documentation**

The delivery of documentation and invitations by the Competition Authority, to the addressees, shall be performed in one of the following manners:

1. Hand delivery [by courier];
2. Registered letter, implying the confirmation of receipt by the addressee;
3. By fax, with a request to confirm receipt by the addressee;
4. Telex
5. Electronic mail, with a request to confirm receipt by the addressee;

Except for the cases when stated otherwise, the notifying parties, other interested parties and third parties, in submitting the documentation to the Competition Authority, shall employ the manner expressed under paragraph 1.

In cases when a document is sent by telex, fax or electronic mail, it is presumed that it is received on the day on which is sent.

#### **Article 21**

##### **Receipt of documentation by the Competition Authority**

1. Pursuant to the dispositions of Article 4(1) of this Regulation, the notification must be submitted to the Competition Authority at the address printed on the Notification Form enclosed with the Guidelines, or at the address printed on the letter sent Competition Authority, prior to the expiry of the defined time limit.

Additional information required to complement the notification made pursuant to Articles 4(2) and (4) of this Regulation, or to complement the notification pursuant to Article 5, must be submitted to the Competition Authority at the address as indicated above, or at the address of the letter sent by the Competition Authority. In all cases such communications must be made prior to the expiry of the defined time limit.

Written comments on the communications made by the Competition Authority pursuant to Articles 12(1) and (2), 13(2) and 16(1) of this Regulation, must be submitted to the Competition Authority at the address as indicated above, or at the address of the letter sent by the Competition Authority. In all cases such communications must be made prior to the expiry of the defined time limit.

In case when the last day of the defined time limit for the submission is not a business day, the time limit shall expire on the first subsequent business day.

## **Article 22**

### **Establishment of time limits**

As a rule, in establishing the time limits, the Competition Authority shall hold in consideration the time necessary to prepare the forms, as well as the degree of emergency of the case in question.

Such time limits shall be established on a calendar basis and by taking into consideration the official holidays.

## **Article 23**

### **Definition of business days**

The expression “business days” in this Regulation shall mean all week days, except Saturdays, Sundays and official holidays.

## **Article 24**

### **Effective date of the Regulation**

This Regulation shall enter immediately into effect.

**Zef PREÇI**

**CHAIRMAN**  
**THE COMPETITION AUTHORITY**