

GUIDELINE¹
ON THE FORM OF NOTIFICATION OF THE CONCENTRATION

Pursuant to Law No. 9121, dated 28.7.2003, titled "On protection of competition", and the Regulation" On the implementation of procedures for the concentration of enterprises",

THE COMPETITION COMMISSION

DECIDED:

1. Purpose of the guideline

This guideline clarifies the type of information to be provided and the manner it should be provided by the notifying party in the case of the notification of a concentration, for the purpose of obtaining and authorization from the Competition Commission.

A concentration as defined in Article 10 of Law No. 9121 "On Protection of Competition" (hereinafter referred as the "Law"), if meets, cumulatively, the condition of the threshold of the total turnover as specified in Article 12, paragraph 1, letters a) and b) of the Law, must be notified at the Competition Authority by the parties participating in the concentration.

2. Who should notify?

In the cases of concentration, in terms of section 10 of the Law, have the obligation to report:

- In case of joining or obtaining control, the purchaser or company that acquires control, or their legal and authorized representatives;
- In the case of the creation of a joint venture, the participants in the creation of the joint venture;
- In case of the publication of the public bidding, the bidder or their legal and authorized representatives;

Each of the parties making the notification is responsible for the accuracy of information provided.

3. The request for a report accurate and complete

All information requested in the Notification Form attached to this guideline, (Complete or Simplified Form) must be accurate and complete. The information requested should be provided in the relevant section of the Form.

In particular the following should be observed:

- a. the implementation deadlines set forth in the Law and that deal with the notification of the concentration and the authorization by the Commission.
- b. If a notification is incomplete, the Authority in accordance with Article 54, shall notify in writing without delay the notifying parties, or their representatives, to determine the timetable for its completion. The

¹ Adopted by Decision No. .82 / Dated 23/06/ 2008, issued by the Competition Authority.

review procedure of the notification of the concentration begins on the date on which the Secretariat of the Competition Authority will give the confirmation that the notification is complete according to Article 11 of the Regulation "On the implementation of procedures for the concentration of enterprises".

- c. The notifying parties during the preparation of the notification must verify that the names of contact persons and phone numbers / fax, e-mail address written on the form are correct, functional and updated as incorrect information may be cause to declare incomplete notification by the Authority.
- d. According to Article 73 paragraph 1 (b) of the Law, submission of incomplete and fraudulent information, either done on purpose, or for negligence, shall result in imposition of fines on the notifying parties at the amount of up to 1% of total turnover of the preceding year. Pursuant to Article 46, letters (c) of the Law, the Commission may revoke its decision on a notified concentration, when it results to have been on incorrect information for which one of the companies participating in the concentration is responsible.
- e. The parties may request from the Competition Authority a written confirmation that the report is complete, despite not providing any piece of information that is required, because that information is not available in whole or in part for good cause and / or that information is not necessary for the review of the submission.
- f. The Secretariat, after evaluating the arguments of the notifying party (ies) can accept them and may exempt the parties from the obligation to provide any specific information requested in Form (Complete or Simplified Form), including documents when it deems that such information is not necessary for the review of the submission.

4. How is done the notification?

- a) The notification must be completed in Albanian language.
- b) The information requested on this form must be submitted to the relevant sections and paragraphs of the Form, by signing a declaration, as foreseen under Section 11. To the Notification Form notice is enclosed the relevant accompanying documentation.
- c) For transparency, the supporting documentation is placed in the annexes enclosed to the Form. However, it is important that the most important parts of the information, particularly information on market shares for the parties and their biggest competitors should be presented in the Notification Form.
- d) the accompanying documents must be submitted in Albanian language. If these documents are in foreign languages they must be accompanied by a translated and notarized copy in the Albanian language.
- a) The enclosed documents should be originals or notarized copies.
- b) The notification may be submitted at the following address:

Autoriteti i Konkurrencës

Rruga "Sami Frashri", Nr 4, Kati IV
Tiranë - Shqipëri.

a) The parties may download the guideline and forms (simplified or complete) from the official website of the Competition Authority, at: www.caa.gov.al, under the voice: "Concentrations".

b) The notification may be submitted at the Competition Authority every day, within working hours, which is published in the official website of the Competition Authority.

c) The procedure for control of concentrations is opened against payment of the fee stipulated on the Regulation "On determining the procedures for tracking expenditures at the Competition Authority, at the institution's bank account:

I. The start of the procedure is issued upon the payment of a fee at the amount of 15,000 lek.

II. The authorization "To accomplish temporary concentration" is issued upon the payment of a fee at the amount of 300,000 lek.

III. The authorization "For the realization of concentration" is issued upon the payment of a fee at the amount of 500,000 Lek.

5. Confidentiality

In accordance with the legislation in effect, the Regulation "On the functioning of the Competition Authority", the Code of Conduct, the employees of the Competition Authority are obliged not to disclose any information that they have obtained in the course of their professional duty, and preserve confidentiality in relation to the notifying parties .

If the notifying parties believe that their interests would be damaged if a piece of information that they have been asked to submit through the Notification Form to the Competition Authority, will be published or disclosed to other parties, they must submit such information by having each page clearly marked "Secret of economic activity", and giving the reasons why such information should not be declared or published.

6. Definitions for the purposes of this form

Notifying party or parties: in cases when a notification is submitted by only one company that is party to the concentration, the term "notifying parties" is used to refer only to the company that actually presents the notification.

The party (ies) participating in the concentration: these terms relate to the acquiring and acquired parties, or merging parties, including all companies in over which control is obtained, or that are subjected to a public offer.

Unless otherwise specified, the terms notifying party (ies) and party (ies) in the concentration, include all enterprises belonging to the same groups as those parties.

Year: all references to the word "year" in this form must be understood as calendar year, unless otherwise specified. All information requested in this form, unless otherwise specified, should be up to the year preceding that of the notification.

The financial data required to be completed in the simplified, or complete form of notification should be expressed in Albanian Lek, at the average official exchange rate of the year or other relevant periods published by the Bank of Albania.

7. Criteria to be met in using the Simplified Form

The Simplified Form determines the information to be given by the notifying parties when they notify a concentration to the Competition Authority and when this concentration has no impact on the competition in the relevant market.

Pursuant to Article 9, paragraph 1 of the Regulation "On the implementation of enterprise concentration procedures", the Simplified Form is completed by all the notifying parties.

Pursuant to point 2 of Article 9 of the Regulation, the Secretariat argues in writing if the following criteria are met for the Simplified Form, (excluding the complete notification form):

- a) In the case of transactions that produce a concentration, the economic activity of the enterprise resulting out of the concentration is exercised in a local geographic and product market, within the territory of Albania;
- b) The parties participating in the concentration operate in different relevant product and geographic markets (there is no horizontal overlapping).
- c) When the parties to the concentration are engaged in economic activities at the same relevant product and geographic market level (horizontal relationships), provided that their combined market share at the horizontal level is less than 15%, or the combined part of the market at the vertical level is not more than 25%;
- d) A single party acquires sole control on an enterprise, over which it has had joint control.

8. Notification made on the basis of Complete Notification Form

1. The Competition Authority, when finds that the conditions for the use of the Simplified Form are not met, requires the parties participating in the concentration to make use of the Complete Notification Form.
2. A The Competition Authority, when finds that the concentration causes concern for competition, regardless of whether conditions are met for notification in simplified form, requires the parties participating in the concentration to make use of the Complete Notification Form.
3. The completion of the Complete Form of Notification is also required in case of a party that acquires sole control of a joint stock company in which it has already joint control, if the benefiting party and the joint stock company together have a strong position in the market, or the joint stock company and the benefiting party have strong positions in vertically integrated markets.

Examples of the necessity to use the Complete Form of Notification, are those concentrations where it is difficult to determine the relevant markets, for example:

- emerging markets;
- When a party is a new entry or potential entry, or an important patent holder;
- when it is not possible to define accurately market shares of the parties;
- in markets with high barriers to entry,
- in markets with a high degree of concentration or with known problems with competition;

- when at least two parties to the concentration are present in closely related neighboring markets, and;
- in concentrations that allow coordination of market behavior of enterprises.