GUIDELINE[1] ON
THE EVALUATION OF NON-HORIZONTAL AND CONGLOMERATE AGREEMENTS

I. Introduction

1. The Competition Authority evaluates all those concentrations that are in compliance with the object of (hereinafter refererred as the Law) and the Regulation “On the implementation of procedures of concentration of undertakings”. In this context, the Authority evaluates whether a concentration inhibits or not effective competition, in particular if that comes as a consequence of the creation or strengthening of a dominant position in the internal market, or a significant part of it.

2. The purpose of this Guideline is to explain how the Competition Authority evaluates a concentration in the cases when the participating undertakings are effective or potential competitors in different markets. In this Guideline, these concentrations shall be called “non-horizontal agreements”

3. We distinguish two types of non-horizontal concentrations:
   a) Vertical concentrations , and;
   b) Conglomerate concentrations.

4. Vertical concentrations are those concentrations where participating companies operate at different levels of the product chain. For example, when a manufacturer of a product (in the upstream markets) joins one of its distributors (located in the lower course of the market).

5. Conglomerate concentrations occur when companies participating in the concentration have neither horizontal relationship (as competitors in the same relevant market) nor vertical (as producers and customers). In this guideline, the emphasis will be placed on those concentrations between participating companies, which exercise in closely related markets with relevant markets, such as a concentration that includes manufacturers of comlementary products or products of the same line.

6. General explanations given in "Guidelines on horizontal concentrations" may also apply for non-horizontal concentrations. The purpose of this guideline is to focus on competition issues that are appropriate in cases of non-horizontal concentrations. As a result, this guide will come to the assistance of the Competition Authority to assess market share and the threshold of total turnover in reviewing cases of concentrations.

7. . In practice, concentrations cause horizontal and not horizontal effects. This may be the case, when the companies participating in a concentration have not only a vertical or conglomerate relationship, but are also current or potential competitors of one another, in one or more relevant markets in question. In such cases, the Authority considers the horizontal, vertical and / or

[1] Guideline on the evaluation of non-horizontal agreements in accordance with the regulation of the council for the control of concentrations (2008/C 265/07).

conglomerate effects in accordance with the definitions explained in this guideline.

II. GENERAL CONSIDERATIONS

8. Effective competition brings benefits to consumers, such as: reduction in price, higher quality products, greater opportunities of choice and invention. Through control of concentrations, the Competition Commission prohibits those concentrations that create or significantly strengthen the market power of companies participating in them, by depriving consumers of these benefits. With "*increased market power*" is meant the ability of one or more companies to benefit from increased prices, reduced production, reduced possibilities of choice, reduced quality of goods and services, reduced invention or negative impacts on the parameters of competition.

9. Non-horizontal concentrations generally have less opportunity to significantly limit effective competition than horizontal concentrations:

a. First, unlike horizontal concentrations, vertical and conglomerate concentrations do not cause loss of direct competition between companies participating in a conentration and that operate in the same relevant market. As a result, the vertical and conglomerate concentrations' the main cause of anti-competitive effects in comparison with horizontal concentrations is missing.

b. Second, vertical and conglomerate concentrations provide real opportunities for efficiencies. A characteristic of vertical and conglomerate concentration is that economic activities and / or products of participating companies, are complementary to each other. The integration of economic activities or complementary products within a single company, can cause significant efficiencies and produce pro-competition effects. In this context, in a vertical relationship, as a result of additional products, a discount to market prices in the upstream markets would lead to increased demand in the upstream market. A part of the benefits of this increased demand, will go to providers in the upstream market. The integrated enterprise should take into account these benefits. In this way vertical integration affects the incentive to seek price reductions and increased production for the integrated enterprise can provide a greater share of benefits. Similarly, other efforts to increase sales at a level (e.g. improving services or tendency to engage in inventions) may provide a greater reward for an integrated enterprise, rather than benefits that would be added to other levels.

10. . Integration can lead to reduction of transaction costs and allows a better coordination in terms of product design, organization of production processes and the methods used to sell products. Likewise, concentrations that include products of the same line and that in general are sold to the same group of customers (whether or not these are complementary products) can bring immediate benefits (one stop shopping) for clients.

11. In certain circumstances, non-horizontal concentrations can significantly restrict effective competition, in particular by creating or strengthening a

dominant position. This is important because such a non-horizontal concentration can change the ability and incentive to compete by the companies participating in concentration and their competitors, by causing harm to consumers.

12. In the context of the right to compete, the term "*customer*" includes intermediate and final customers. When intermediate customers are current or potential competitors of the parties in a concentration, the Authority in his analysis focuses attention on the effects caused after the concentration of two categories: a) customers of the concentrated unit, and b) the customers of the competitors who sell their products . Consequently, the fact that a concentration affects competitors, in itself is not a problem, because the essence of the problem is the impact on effective competition and not just the impact on competitors in several levels of the supply chain. In particular, the fact that competitors may suffer from a concentration that creates efficiencies, does not mean that it in itself causes problems for competition.

13. There are two main ways in which non-horizontal concentrations can significantly impede effective competition:

e) non-coordinated effects, and
f) Coordinated effects.

14. Non-coordinated effects may mostly exist when non-horizontal concentrations cause an exception from the market. In this guide, the term "*market exception*" will be used to describe all cases where the entry of actual or potential competitors to advertise or market products, is damaged or restricted as a result of concentration and thus reduces the ability and/or the incentive of the company. As a result of such an exemption, the companies participating in concentration, but also some of its competitors are more likely to benefit from price increases at the expense of consumers. These cases cause significant barriers to effective competition, which hereinafter will be considered as being "*anti competitive exceptions*".

15. Coordinated effects are caused if a concentration changea the nature of competition in such a way that companies that previously did not coordinate their behavior, now have more opportunities to significantly coordinate their actions regarding the price increase or, stated differently, by effectively undermining competitiveness. A concentration may also make coordination easier, more stable and more effective for companies that have coordinated their behavior before the concentration.

16. In assessing the competitive effects of a concentration in the relevant market, the Authority compares the conditions that would result from the authorization of a concentration, with conditions that would exist in that concentration would not be realized. In the majority of the cases, the competition conditions that exist at the time of the concentration constitute a suitable comparison for the evaluation of the effects of the concentration. In certain cases, the Competition Authority may consider future changes in the market, which may be reasonably predictable. In particular, and in order to perform a suitable comparison, the Competition Authority may consider the possibility of market entry and exit of enterprises, if the concentration will not be realized up to that moment. Moreover, the Competition Authority may consider

future changes in the market that result from the inevitable changes in the regulatory framework.

17. In his assessment, the Authority evaluates possible anti-competitive and pro-competitive effects derived from the proven efficiencies obtained by customers. The Competition authority considers different levels of causes and effects to make sure which of these are more likely to occur. The earlier and the more directly are perceived anti competitive effects of a concentration, the more possible is for the Competition Authority to resolve competition problems. Also, the more immediate and directly are perceived pro-competitive effects of a concentration, the more feasible is for the Authority to reveal to what extent they counteract to any anti-competitive effect.

18. The Guideline includes the main scenarios of damage to competition and efficiency resources in the context of vertical and conglomerate concentrations.

III. MARKET SHARE AND CONCENTRATION LEVELS

19. Non-horizontal concentrations do not constitute a threat to effective competition, only if the concentrated unit has a considerable degree of market power in at least one of the relevant markets, but this does not mean that the concentrated unit should enjoy a dominant position. The Competition Authority will analyze this issue during the preliminary procedure stage in order to assess the impact of this concentration at the level of competition.

20. The market shares and concentration levels provide the necessary first indicators of market power and the importance of competition with regard both to the parties involved in concentration as well as their competitors.

21. The Competition Authority is unable to detect problems with non-horizontal concentrations, whether or not coordination effects are involved, in those cases when market shares of new entries, after the concentration in each of the markets concerned is below 25% and the HHI after the concentration is below 1800.

22. In practice, the Authority will not investigate such concentrations, except when one or more of the following factors are present:

a. A concentration includes an undertaking that could expand significantly in the near future, for example, because of a recent invention;
b. There is a significant overlapping on the market between the shareholders or management boards of the participating enterprises;
c. One of the concentrated enterprises is a company which has a great opportunity to disrupt the coordination of behavior;
d. There are indications of coordination of behavior in the past, or they are current, or are present practices for the facilitation of market behaviour for the participating parties.

The Competition Authority will use the market share indicator and the HHI index threshold discussed earlier in this Guideliene, as initial indicators of problems related to the level of competition. However, these elements can not serve as a basis to presume breach of competition. The Competition Authority estimates that

the market shares and the level of market concentration expressed above are not sufficient to presume breach of competition. The Competition Authority also considers that the existence of a significant degree of market power in at least one of the relevant markets is a necessary condition for the violation of competition but this is not a sufficient condition.

IV. VERTICAL CONCENTRATIONS

23. This section presents the analytical framework in relation to vertical concentrations. The analysis will take into consideration the possible anti competitive effects arising from vertical concentrations, as well as possible effects of pro-competitive effects that are a by-product of efficiencies, as they will be demonstrated by the parties.

A. Non-coordinated effects: Exlusion

24. A concentration is thought to lead to exclusion, if the entry of potential or current competitors for bids or markets is hampered or eliminated as a result of this concentration, reducing the ability and / or motivation of these companies to compete. One such exclusion could prevent entry or expansion of competitors or to prevent their exit from the market. Exclusion may also be present when excluded competitors are not forced to leave the market. When competitors are at a disadvantage, it leads to a less effective competition. One such exlusion is seen as not competitive if concentrated companies - and possibly also some of the competitors - are able to benefit from increased prices at the expense of consumers.

25. Two forms of exclusion can be identified:

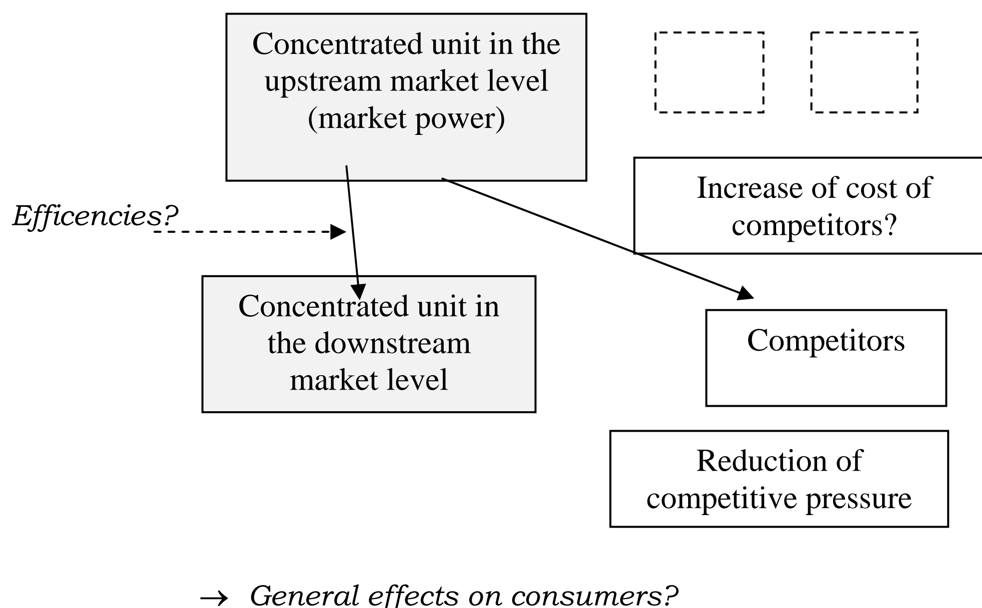
a. The first is when a concentration is expected to increase the cost of market competitors in the downstream market by limiting their access to the market of an important input. *(Exlusion of inputs)*

b. The second is when a concentration is expected to exclude competitors in the upstream market by limiting their access to a sufficient number of customers. *(Exlusion of clients).*

1. EXCLUSION OF INPUTS

26. 1. The exclusion of inputs is achieved if the new entity resulting after concentration, is likely to restrict access to products or services, by increasing the costs of competitors in the downstream market and by hampering the provision of input offers at prices and conditions similar to what would be offered in the absence of this concentration. In this situation, the concentrated enterprise will benefit from increased prices at the expense of consumers, thus causing a significant obstacle to effective competition. Despite this, it is not necessary that rival companies of the concentrated enterprise be bound to leave the the market. This comparison is relevant if increased input costs will cause higher prices for consumers. However, any efficiency resulting from the concentration can lead the concentrated enterprise to lower prices thus making possible that impact on consumers be neutral or positive. (The graphical presentation of this mechanism is shown in Figure 1).

Figure 1 ***Exclusion of inputs***



→ *General effects on consumers?*

27. In evaluating a possible scenario of anti-competitive exclusion of inputs, in a post-concentration situation, the Authority considers the following:

a. The possibility of the concentrated unit to exclude access to inputs,
b. if the entity has incentive to do so; and
c. if the unit has a strategy of exclusion with harmful effects on competition in the downstream market.

In practice, these factors are often examined together, since they operate in an integrated manner.

A. Ability to exclude market access to inputs

28. The exclusion of inputs may occur under various forms. The concentrated unit may decide not to cooperate with its potential or current competitors with which is connected to a vertical market relationship. The concentrated company may decide to restrict the bidders / manufacturers and / or to raise prices at the expense of bidding competitors and / or create less favorable conditions in the supply market from those that would occur before the concentration took place. The concentrated unit may choose a particular technology option within the new unit, which is not in compliance with the technology chosen by rival companies. Exclusion can also occur in more sophisticated forms as, for example, by reducing the quality of the offered input.

29. The exclusion of inputs may lead to competition problems if the input in the upstream market has an important impact on the product of downstream market. This is the case, for example, when the input represents a significant cost factor on the price of the product of downstream market. Apart from its cost, an input can be quite important for other reasons. For example, an input may become a critical component without which the product of downstream market could not be produced or sold in the market effectively. Also it may represent an important source of product differentiation for product of

downstream market. This can happen because the cost exchange of alternative for inputs is relatively high.

30. In order that excluded inputs become source of problems, vertically integrated enterprises resulting from the concentration must have a significant market power in upstream markets, which significantly affects the conditions of competition at this market level and that is reflected in bid prices and market conditions of the downstream markets.

31. The concentrated unit may have the ability to exclude competitors in the downstream market, only if the reduction of entry for its products or services upstream, adversely affects the availability of inputs in the downstream market in terms of lower prices or quality. This may be the case when the remaining providers in the upstream market (i) are less efficient, (ii) provide less preferable alternatives, (iii) lack the ability to expand output in response to limitation of supply and that can be, for example, because they have to cope with supply constraints or are generally dealing with a low rate of return. Also, the presence of exclusive contracts between concentrated entities and independent providers of inputs, may limit the ability of competitors in the downstream market to have an adequate access to inputs in the upstream market.

32. If in a market where competition is oligopolistic, the decision of the concentrated unit to restrict access to its inputs causes the reduction of competitive pressure on the remaining providers of inputs and in turn, allows them to increase the inputs price at the expense of non-integrated competitors in the downstream market. In essence, the exclusion of inputs by the concentrated unit may put its downstream competitors in a position that does not allow them to integrate vertically proportionally to their market power. How much smaller is the measure of product differentiation between the concentrated unit and the other upstream providers, the greater would be the market power of third parties, and so will be level of concentration in the upstream market. However, the tendency to raise the price of inputs may fail if the independent providers of inputs face a reduction in demand for their products, by responding with much more aggressive prices.

B. Motivation to exclude market access to inputs

33. Motivation to exclude depends on to what extent this exclusion will be profitable. Vertically integrated companies should consider how their inputs offers for downstream competitors will affect not only on the benefits of separation at the upstream level of market, but also on the separation in the downstream market. The concentrated unit should face a contrariety between: lost of the benefit of upstream market (due to reduction of input that is sold to actual or potential competitors) and obtaining the gains in short term or long term (from expansion of sales in the downstream market or as appropriate, when they are able to raise prices for consumers).

33. This trade-off depends on the level of profit that the concentrated unit provides upstream and downstream. The smaller the margin at the upstream marlet level, the less shall be the loss by the restriction on the sale of inputs. Conversely, the higher is the margin in the downstream level, the higher is the

added gain by obtaining increased market share in the downstream market at the expense of excluded competitors.

34. The motivation of integrated enterprises to increase further the cost of competitors, depends on the measure in which demand in the downstream market can be further diverted by excluding competitors. The higher is this ratio, the smaller the chance that the concentrated unit poses limitations with regard to the exclusion of the products of the cmpetitors in the downstream market level in favour of its own products and those of the excluded competitors that are close substitutes. The effect on downstream market demand will be higher if the affected inputs represent a significant portion of the cost of competitors in the downstream market, or if these affected inputs represent a critical component product of downstream market level.

35. The motivation to exclude actual or potential competitors may also depend on the extent to which the downstream layer of integrated enterprises is expected to benefit from high price levels in the downstream market, as a result of the strategy used to increase the cost of competitors. The higher is the market share of the concentrated unit in the downstream market level, the greater will be the sales basis on which is achieved the margin increase.

36. An upstream monopolist, who is fully capable of extracting all the benefits available in vertically related markets, may not have any incentive to exclude competitors who follow a vertical concentration. The ability to draw benefits available from the consumers is not immediately followed by the largest part of the market. Such findings may require more thorough analysis of current and future constraints under which the monopolist operates. When all the benefits available can not be drawn, a vertical concentration- even when involving an upstream monopolist- may give the concentrated unit the incentive to increase the cost of competitors in the downstream market. So, are reduced the restrictions on competition on the concentrated unit in the downstream market level.

37. In his assessment of the expected incentives of the concentrated enterprises, the Competition Authority may take into account the prevailing structure of the concentrated enterprises, the type of strategies adopted in the market in the past or the content of strategic documents such as business plans.

38. If the adoption of a particular course of conduct by the concentrated enterprise is an essential step for the exemption, the Competition Authority examines both incentives to adopt such behaviors, as well as factors responsible for the reduction or elimination of these incentives, including the possibility that the behavior may be incompatible with competition law enforcement at national or European level. In particular, the Competition Authority will consider the following factors, based on its analysis of the situation:

(i) the possibility that this behavior is clearly evidenced and that inconsistency with the law is significant;
(ii) the possibility that this illegal behavior can be detected, and
(iii) sanctions that could be applied in relation to it.

C. The possibility of overall impact on effective competition

39. In general, a concentration causes problems to competition due to the exclusion of input or when it may cause the increase in market prices in the downstream level, thus significantly undermining effective competition.

a. First, anti-competitive exclusion can occur if a vertical concentration allows parties involved in to increase the cost of competitors in the downstream market level, preceded by a growing pressure on their sales prices. Significant damage of effective competition normally requires that excluded companies play a very important role in the process of competition in the downstream market level. The higher is the number of competitors who would be excluded from the downstream market level, the more likely that the concentration resulst in a significant increase in market prices at the downstream market level, and consequently, leads to restriction of effective competition . Despite the small market share compared with the respective other players, a particular enterprise can play a competitive role compared with other players if it is a close contender (complementary) of the vertically integrated company, or in particular if it is an aggressive competitor.

b. Second, effective competition may be hindered significantly by raising entry barriers for potential competitors. A vertical concentration may exclude potential competition in the downstream market level if the concentrated enterprise will not have the opportunity to approach potential entries, or that that opportunity would be much smaller compared to the situation before the concentration. The possibility that the concentrated enterprise is able to maintain an exclusion strategy after the concentration, may create a strong effect on potential entrants. Effective competition in the downstream market level can be significantly impeded by raising barriers to entry, particularly if the excluded input could force potential competitors to enter both levels, upstream and downstream in order to compete effectively in each market level.

40. If in the downstream market level the number of remaining competitors is sufficient to create the belief that costs in this market are not expected to rise, (for example because they themselves are vertically integrated or they are able to share their alternative inputs), the competitive pressure exerted by these companies can be considered as a sufficient restriction to the concentrated unit, thus impeding output prices rise above levels before the concentration.

41. The effect on competition in the downstream market level should be evaluated in the presence of counteractive factors such as the presence of purchasing power or ability to access upstream market level, which can maintain effective competition.

42. The effect on competition in the downstream market level should be evaluated from the standpoint of anti-balancing factors such as the purchasing power or ability to maintain effective competition through entries in the upstream market level. The Competition Authority may decide that, as a result of efficiencies that are brought in through the concentration, there is no room to

declare the concentration as incompatible with the relevant market. This is the case when the Competition Authority is in the position to decide on the basis of sufficient data, whether the efficiencies generated by the concentration are expected to increase capacity and motivate the concentrated units to act in a pro-competitive fashion to the benefit of customers. In this way are counterbalanced the adverse effects on competition that the concentration may cause.

43. A vertical concentration allows the concentrated unit to entertain a double increase on prices as a result of being able to set prices independently from the other parties participating in the market before the concentration. Based on market conditions, by reducing the combination of price increases, (ie according to the situation where decisions on prices at both market levels are not on the same line) can be allowed that the vertically integrated company develops at its own benefit the output in the downstream market level.

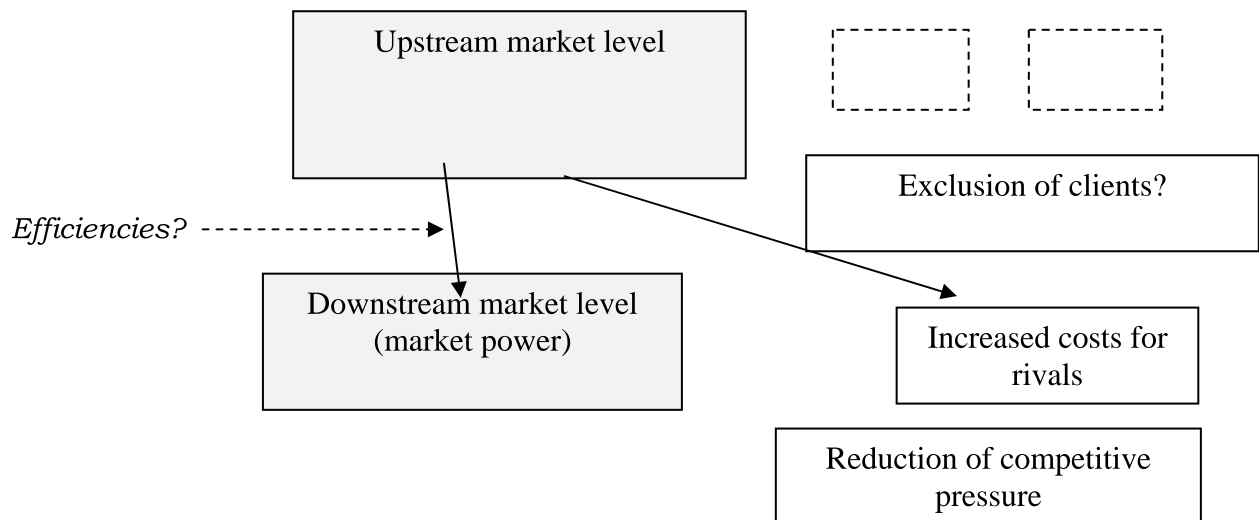
44. A vertical concentration may allow parties to better coordinate production and distribution processes and maintain a fixed cost of products.

45. More generally, a vertical concentration can lead to incentives of the parties regarding investment in other products, new production processes and marketing of products. For example, if we compare the behavior of a distribution company in the downstream market level before and after concentration it can be stated that before the concentration, the enterprise may not be willing to invest for advertising and to inform consumers about the quality of products sold in the upstream market level, although it has benefited from an investment made by other companies in the same market, thus increasing the number of sales. In a situation of post-concentration, the concentrated enterprise may decide otherwise.

2. **Exclusion of clients**

46. The exclusion of customers is achieved if a supplier is integrated with an important downstream client. Because of this presence in the downstream market, the new entity resulting after concentration, is likely to restrict access to a significant base of clients and potential or actual competitors that are positioned in the upstream market (input market) and by doing so reduces their ability or motivation to compete. This may increase the cost of products of the upstream competitors thus making difficult their ability to provide input offers at prices and conditions similar to what would be offered in the absence of this concentration. In this situation, the concentrated enterprise will benefit from increased prices in the downstream market. However, any efficiency resulting from the concentration can lead the concentrated enterprise to lower prices thus making possible that impact on consumers be neutral or positive. Despite this, just as in the case of exclusion of clients, it is not necessary that rival companies of the concentrated enterprise be bound to leave the the market. A suitable comparison is the case of increased input costs that causes higher prices for consumers. (The graphical presentation of this mechanism is shown in Figure 2).

Figure 2. **Exclusion of clients**



General effect on consumers?

47. In evaluating a possible scenario of anti-competitive exclusion of clients by the concentrated enterprise the Competition Authority considers the following:

a. First, if the concentrated enterprise has the ability to exclude entry into downstream level markets, by reducing its purchases from upstream competitors;

b. Secondly, if there is motivation to reduce its purchases of lower flow, and

c. Thirdly, if the strategy of exclusion would have a harmful effect on core customers in the downstream market level.

A. The ability to exclude entry into downstream market level

48. A vertical concentration may affect competition because it may increase the entry cost of clients in downstream market level, or by limiting access to a significant customer base. Exclusion of clients may take different forms. For example, the concentrated enterprise can supply all products required by the upstream market division and as a result, may prohibit purchases from competitors in upstream market level. It also may reduce its purchases from upstream market competitors or unfavorable purchases from these rivals, to a larger extent than what may have been in the situation before the concentration.

49. In taking into account the possibility whether the concentrated enterprise has the ability to exclude market access in downstream market, the Competition Authority examines whether there are sufficient economic alternatives in the downstream market, so that the competitors (actual or potential) of upstream market level may be able to sell their products. Exclusion of clients is a concern when vertical concentrations include a company which is an important customer that has a significant effect on the downstream market level. The opposite

occurs if there is a broad base of customers, already present or anticipated, that are likely to change independent providers. In this case, competition is not disturbed.

50. The exclusion of customers can lead to higher input prices, especially if exist significant economies of scale or scope in input markets, or when demand is characterized by network effects. This happens mostly in such circumstances when the ability of competitors (actual or potential) to compete in upstream market level is weakened.

51. For example, the exclusion of clients can lead to high prices of inputs when existing competitors upstream market are operating at, or near the minimum efficient scale. The extent of exclusion of clients and the corresponding loss of output for upstream competitors increases the variable cost of the product, resulting in upward pressure on prices at the expense of their clients, who operate in the downstream level of the market.

52. In the presence of economies of scale or scope, the exclusion of customers can bring the entry in downstream market of potentially unattractive enterprises, thus significantly reducing the expected income. When the exclusion of clients effectively results in a restriction of access, input prices may remain at higher levels than what had been before. This is the case of rising costs of providing input to competitors in the downstream market level of the concentrated enterprise.

53. When the exclusion of clients primarily affects the income of upstream competitors, it can significantly lower their ability to invest in cost reduction, quality of product and research and development. This may reduce their ability to compete in the long run and possibly even cause thei exit from the market.

54. In his assessment the Competition Authority may consider the existence of different markets responsible for the different uses of inputs. If a significant portion of the downstream market level is excluded, an upstream provider can fail to achieve efficient scale and also can operate with higher costs in other markets. Conversely, an upstream provider, may continue to operate effectively if it finds users or secondary markets for its inputs, without incurring substantially higher costs.

55. In his assessment based on information available, the Competition Authority considers whether there are effective and timely counter-strategies to be implemented by rival companies. Such counbter-strategies include the possibility that upstream competitors set prices more aggressively to maintain sales levels in the downstream market level, in order to ease the effects of exclusion.

A. Motivation to exclude entry in downstream market

56. The incentive to exclude depends on profitability. The concentrated enterprise faces a contrariety (trade off) between the associated potential costs of the non-procured products of upstream competitors and the potential profits resulting from the completion of this, when it allows the concentrated enterprise to raise prices in upstream or downstream markets.

57. Associated costs arising by the reduction of purchases from supply competitors in the upstream market level, are higher if the upstream division of the integrated enterprise is less efficient than the exclude providers. Such costs are also higher if the upstream division of the concentrated enterprise is limited by the capacity or the products of competitors which are more attractive due to product differentiation.

58. The incentive to deal with the exclusion of clients depends on the measure at which the division at the upstream market level of the concentrated enterprise benefits from higher price levels in the upstream market as a result of exclusion of upstream competitors. This incentive is higher the greater is the separation at the downstream level of integrated enterprises that are expected to benefit from higher price levels as a result of the exclusion strategy. In this context, the greater is the market share of the concentrated enterprise, the greater is the volume of sales that is based on the increase of the margin.

59. In cases where the adoption of a particular behavior by the concentrated enterprise is an important step in the exlusion, the Competition Authority examines the incentives to adopt such behaviors, as well as examines factors responsible for reduction or even elimination of these incentives (including the possibility that the behavior is illicit.)

B. Expected impact on effective competition

60. The exclusion of competitors in the upstream market may have an adverse impact in downstream market level and may hurt consumers. By refusing the competitive entry of an important customer base and with regard to the exclusion of the products of competitors upstream, the concentration may reduce their ability to compete in the future. As a result, competitors in the downstream market level risk to be positioned in a competitive dis-advantage, for example in the form of rising input costs. This may allow the concentrated enterprise to benefit from increased prices and reduce the overall output in the downstream market level.

61. The negative impact on consumers takes time to materialize, when the initial impact of the exclusion of clients concerns the flow of revenue of upstream market competitors. In this way are reduced their incentives to invest in cost reduction, product quality or other competitive dimensions, in order to remain competitive.

62. Only when a sufficient portion of the output in the upstream market level is affected by the reduction of revenue resulting from the vertical concentration, the concentration can effectively prevent substantial competition in upstream markets. If in the upstream market remains a number of competitors that are not affected the competitiveness of these enterprises may be enough to prevent price hikes in the upstream market and consequently the downstream market level. Sufficient competition from these companies, which are not excluded from the downstream market level, requires that they do not face barriers to expansion of capacity or product differentiation. When the reduction of competition in upstream markets affects a significant part of the utput in downstream markets, the concentration is expected to increase the level of market prices in the downstream level and consequently impede effective competition (just as with the exclusion of inputs).

63. Effective competition in upstream markets can be significantly impeded by raising barriers to entry for potential competitors. This can happen particularly if the exclusion of clients, complies with the need of some potential competitors to enter the market at its two levels (upstream and downstream) in order to compete effectively in each market level. In this context, the exclusion of clients and the exclusion of inputs, can become part of the same strategy. Concern for raising barriers to entry is particularly suitable in those industries that are open to competition, or expected to do so in the future.

64. The competitive effect should be assessed by taking into account counteractive factors such as the presence of countervailing power of buyers or the possibility that entry can hold effective competition in upstream and downstream market levels. Furthermore, the effect on competition needs to be assessed taking into account the real efficiencies of the concentrated parties.

B. Other uncoordinated effects

65. The vertically integrated concentrated enterprise, can gain access to trading information pertaining to the activities of competitors in the upstream and downstream market levels. For example, by becoming a supplier of competitors in the downstream market level, a company can obtain information which allows it to set prices less aggressively in the downstream market level to the detriment of consumers. Also, it may pose its competitors at a competitive dis-advantage, by changing their mind on market entry or the expansion of the market.

C. Coordinated effects

66. A concentration may change the nature of competition in such a way that the enterprises which in the past had not engaged in coordinated behavior, now have more opportunity to coordinate and increase their prices, which undermine effective competition. A concentration may make coordination easier, more stable or more effective for companies that have been coordinating before the concentration.

67. Market coordination can be achieved when competitors are able to identify and explore common goals (without entering into an agreement or in a coordinated practice) by avoiding competition from the pressure of a coherent system with implied threats. Within the context of a normal competition, every enterprise has an incentive to constantly compete. This incentive keeps prices low and prevents companies from maximization of their joint profits. Coordination is considered the starting point of normal competitive conditions in the sense that companies are able to keep prices in excess of the level that the maximization of short-term benefits would have resulted. Enterprises will avoid the resuction of high prices set by their competitors in a coordinated fashion, because they participate in a behavior that can bring coordination in the future. To show the coordinated effects, itr is necessary that the profits that the enterprise realizes as a result of an aggressive competition in the short term, are smaller than the expected reduction of income that comports the same behavior in the long run, as well as an aggressive response from competitors (a penalty).

68. Coordination is the most likely to appear in markets where it is easy to reach an agreement on coordination. Three conditions are necessary for coordination to be sustainable.

a. First, coordinated enterprises should be able to observe a sufficient degree of coordination if the [coordination] conditions are applied.
b. Secondly, if there is some mechanisms that can be activated when a deviation is detected.
c. Thirdly, current and future competitors not participating in the coordination, as customers will not be able to jeopardize the results expected from coordination.

Achievement of coordination conditions

69. A vertical concentration makes the enterprises in the upstream and downstream market to reach a consensus with regard to coordinating their behaviour.

70. For example, when a vertical concentration leads to disqualification, it brings a reduction in the number of effective competitors in the market. Generally, a reduction in the number of players, makes it easier coordination between players left in the market.

71. Vertical concentrations may also increase the degree of equality between companies active in the market. This can increase the possibility of coordination. Also, vertical integration can increase the level of market transparency, making it easier coordination between players left in the market.

72. A concentration may include the elimination of rebel elements (maverick) in the market. A *rebel element* is a provider that for its own reasons is unwilling to accept the results of coordination and thus maintains an aggressive competition. Vertical concentration of the rebel element can change its incentives to the point that coordination can not be prevented.

Monitoring of deviations

73. Vertical concentration can facilitate coordination by increasing the level of market transparency between companies and through access to sensitive information to competitors, making it easier to monitor prices. Such a problem could arise if the level of price transparency is higher in downstream than in the upstream market level. This is the case when the final consumer prices are made public, while the intermediate market transactions are confidential. Vertical integration can give producers upstream control over final prices and ability to more effectively monitor deviations.

I*nsurance mechanisms*

74. 74. Vertical concentrations cause that coordinated companies respect the terms of coordination. For example, a vertically integrated company may be in a position to effectively punish the rival company because it is a key client or their provider, when it deviates from the terms of coordination.

Reaction of enterprises outside the concentration

75. Verical concentrations may destabilize coordination through rising entry barriers or restriction of opportunities for competition for enperprises that operate outside the concentration nexus, thus decresasing their ability to operate in the market.

76. A vertical concentration can also include eliminating a disruptive buyer in the market. If upstream companies consider sales of a particular buyer very important, in trying to protect their business can be attracted to deviate from the terms of coordination. Similarly, a significant buyer may be able to provoke coordinated enterprises deviate from these conditions. So in this way the buyer focuses a large part of its requirements on a single provider or provides long-term contracts.

V. Conglomerate concentrations

77. Conglomerate concentrations are concentrations between undertakings which are in a relationship which is neither horizontal (if being competitors in the same relevant market) nor vertical (if being providers and clients). In practice, the focus is on the concentrations between undertakings which are active in closely related markets (eg, concentrations that include providers of complementary products or products that belong to the same line, which is generally purchased by the same group of clients for the same final use).

78. While it is accepted that conglomerate concentrations in most cases do not cause competition problems in certain cases they may harm competition. In making its assessment, the Competition Authority takes into consideration the possible anti-competitive effects caused by conglomerate concentrations, as well as those that are pro-competitive and arise from proven efficiencies.

A. Non-coordinated effects. Exemption

79. The main problem with the conglomerate concentrations is that of exclusion from the market. The combination of products in related markets, may provide to the concentrated enterprise the opportunity and motivation to promote a strong market position from one market to another through the practices of other conditional or exemptive practices (related). Related practices or conditional trading are common practice and as such often do not have anti-competitive effects. Enterprises areolved in these practices in order to provide their customers the best products or offer them other ways to lower costs. In certain circumstances, these practices can lead to a reduction in the ability or motivation of current or potential competitors to compete. This can reduce the competitive pressure on the concentrated enterprise allowing it to raise prices.

In evaluating such a possible scenario, the Competition Authority examines whether the concentrated enterprise abides by the following:

a. has ability to exclude its competitors;
b. has economic incentive to do so, and
c. whether the applied strategy of exclusion can have a detrimental effect on competition, causing harm to consumers.

In practice these factors are often considered together, because they act jointly.

A. Ability to exclude

80. The fastest way in which the concentrated enterprise can be able to use its market power to exclude competitors in that market or another market, is through conditioning sales in order to link products together in separate markets. This is realized by the implementation of joint or conditioned sales practices.

81. "Practice grouped / bundled sales" refers to methods used by the concentrated enterprise on providing products and setting prices. In this respect, we can distinguish between clean grouped sales practice and mixed sales practice. In the first case, the products are sold only together, at fixed proportion. In mixed practices, products can be sold separately, but the sum of rpices of each separate product is greater than the sales price of the bundle of products. Discounts can be considered as a form of mixed practices in the cases when they are applied subject to purchasing of other products.

82. Practice grouped / bundled sales" refers to situations when clients that buy a product (the bundling product) are required by the producer to purchase another product (the bundled product). The conditioning maybe based on technical or contractual grounds. For example, the technical conditioning occurs when the bundling product is designed so that it works only if associated with the bundled product 9and not withj alternatives offered by competitors). The contractual conditioning requires that the client who buys the bundling product is bound by contract to buy the bundled product offered by the same seller, and not alternative products of competitors.

83. Specific characteristics of products may be relevant to determine whether any of these sales practices between separate markets are made available by the concentrated enterprise. The implementation of the accompanying practices is unlikely to happen in practice if, for example, products are not acquired simultaneously, or are not acquired by the same clients. Similarly, the practice of conditional sales based on technical grounds is an option only in some industries.

84. In order for the concentrated unit to be able to exclude a competitor, it must have a substantial degree of market power, but not necessarily be in a dominant position in the markets concerned. The effects of the above practices are expected to be significant when at least one of the products of the parties to the concentration, is considered by many clients as very important and as such that has no substitutes. (For example due to product differentiation or by the limited capacity of competitors).

85. In order that exclusion really becomes a potential problem, there must be many clients for each relevant product. The more clients tend to buy the products together (instead of buying just one product) the greater is the demand for individual products affected by the implementation of these practices in the sales process. Such behavior by the buyers is most likely to be vulnerable when such products are complementary.

86. In general, the exclusive effects of conditional or joint sales practices at a given moment have a dynamic impact on future market supply conditions in industries where economies of scale and patterns of demand can be observed. It

can be noted that when a provider of substitute products has market power on one of the products (product A), the decision to implement conditional or joint sales practices could result in a reduction of sales of non-integrated providers of the complementary product (product B). Furthermore, if there exist external networks in the game, it will reduce significantly in the future the ability of the competitors to expand sales of product B. Alternatively, when market entries for complementary products are foreseen to happen through potential entrants, the decision to concentrate sales by the concentrated unit may have a braking effect of such entries. Limited availability of complementary products, which can be combined, could discourage potential entrants to enter the market of product A.

87. It should be emphasized the fact that tendencies to exclude are smaller when the parties participating in the concentration can not engage in a single long-term strategy to implement conditional or joint sales practices. (For example, this happens when the implementation of conditional or joint sales practices are costly to change.

88. In his evaluation, the Competition Authority, according to the relevant information obtained, takes into consideration whether competing companies can provide an effective countervailing strategy at the right time. The mechanism of joint sales practices leading to exclusion from the market if the company buys joint products and then sales them as separate items, by taking advantage from the price difference. Moreover, competitors may decide to apply a more aggressive price policy to maintain their market shares, taking into account the reduction of the effects of exclusion.

89. Customers can have a strong motive to buy a variety of products in question from a single source (one stop shopping) than by taking advantage of the many providers and so reduce transaction costs. The fact that the concentrated unit will be providing a variety of products, does not create problems for competition.

B. Motivation to exclude

90. The motivation to excludecompetotirs through the employment of practices of conditioned or joint sales depends on the level of profitability that the said sales strategy yields. The concentrated unit should put in equilibrium between the associated costs of the implementation of practices of conditioned or joint salesof its own products and the potential to benefit from its market expansion in the relevant markets.

91. Clean or conditioned, or joint sales practices can cause losses to the concentrated company. For example, if a significant number of customers is not interested in acquiring the product in the package (the attached product), but prefers to buy only one product (e.g. the product used as a handler), then sales of the product (included in package) could fall significantly. Also, losses may occur even if customers before concentration, "mixed and mergeed" their preferences for this type of product of a concentrated party with that of another enterprise, decide to buy only the attached product offered by the competitors or not buy at all.

92. In this sense, it is convenient to make the assessment of the relative value of different products. The concentrated unit is ready to withdraw from the sales in a market with greater benefit, in order to gain market share in another market where turnover is relatively low and the benefits are modest.

93. However, the decision to implement conditional or joint sales practices can increase the benefits from the preservation or increase of market power in conditioned product markets or a combination of both.

94. In assessing the possible incentives of the concentrated unit, the Competition Authority may consider other factors such as the ownership structure of the concentrated unit, the type of strategy adopted in the past in the market or the content of strategic documents such as business plans.

95. When adopting a particular behavior by the concentrated unit is an important step in the exclusion of the market, the Competition Authority also considers the motivation (such motivations include the possibility that the behavior is illegal) to adopt such behaviors and factors responsible for reduction or even elimination.

C. General, expected impact on prices and choices

96. Implementation of conditional or joint sales practices may result in a significant reduction of sales prospects that competitors of a single component on the market are faced with. Reduction of sales from competitors, is not a problem in itself. However, in some specific industries, if the reduction is significant can lead to a reduction in motivation or ability of competitors to compete. This could allow the concentrated unit to gain market power and / or maintain market power by selling these products consistently.

97. Market exclusion practices can inhibit the entry of potential competitors. T his can occur in a particular market, for example by reducing sales demand of potential competitors operating in that market at a lower level of competition that does not allow them to survive in the market. In the case of complementary products, the concentrated unit practices, through conditional or joint sales in a market, is able to prevent entry into another market only if the application of these sales practices requires the entry of potential competitors in both product markets at the same time rather than subsequently. The latter may significantly affect, in particular in those industries where the structure of demand in a given moment has repercussions in the future for supply conditions in the market.

98. Only when a large part of the product market is affected by the exclusion resulting from the concentration, then we say that this concentration has a significant impact on effective competition in that market. A conglomerate concentration is likely to harm competition in the market, if in any of the markets remain effective actors of the only product available. Also, competition in the market is not impaired, even though the remaining number of competitors of the single product is small, since they have the ability and motivation to expand their product.

99. To assess the effects on competition, must be taken into account other controversial factors, such as the presence of the countervailing power of buyers or the possibility that the entry will maintain effective competition in upstream and downstream markets.

100. . Also, the effects on competition must be evaluated in light of the proven efficiency of the parties participating in the concentration. In this context, many

of efficiencies identified in the vertical concentrations apply also in the case of conglomerate concentrations that include complementary products.

101. . When producers of complementary products set their prices independently, they do not take into account the positive effect of decreased price of their product reflected in the sales of another product. Depending on market conditions, a concentrated company can use this effect and may have a certain motivation to reduce margins in general if it brings higher benefits. (This motivation is often referred to as "Cournot effect"). In most cases, the concentrated company will utilize this effect as a mixed sales tool. For example, a concentrated company sets a reduced price condition despite whether the customers buy both products launched by this company.

102. . A particular feature of conglomerate concentrations, is that they can reach lower cost in realizing economies of scope (from the production and consumption standpoint), which constitutes a significant advantage in providing joint products rather than separate products. For example, it maybe more efficient that several ingredients are marketed together than separately. Greater compliance and quality assurance are two elements that brings a greater benefit to the client. However, such economies of scope are a necessary, but not sufficient condition to ensure an efficient justification resulting from the implementation of conditional or joint sales. In fact, the gains from economies of scope can often be achieved without implementing the joint sales practices on technical or contractual basis.

B. Effects of coordination

105. Conglomerate concentrations, may in certain cases facilitate the anti-competitive coordination in the market although there maybe no coordination agreement or practice in the sense of Article 3, Paragraph 4 of the Law. Specifically, coordination is most likely to occur in those markets where it is easy to identify the conditions of coordination and where such coordination is stable.

106. One way in which a conglomerate concentration could result in a coordination in a given market, is by lowering the number of effective competitors, to the extent that a tacit coordination agreement is a real possibility. However, when competitors are not excluded from the market, their situation easily vulnerable. As a result, the excluded competitors have the possibility of choice: a) not to oppose the situation of coordination b) prefer to survive in a market situation rised price levels.