

Annex II

REPUBLIC OF ALBANIA COMPETITION AUTHORITY REGULATION ON APPLICATION OF CONCENTRATION PROCEDURES FOR UNDERTAKINGS

CHAPTER I GENERAL PROVISIONS

Article 1 Purpose

The purpose of this Regulation is to apply the procedures on control of concentrations of undertakings, compliant to Law no 9121 of 28.7.2003 “On the Competition Protection” (as amended).

Article 2 Scope of Application

This Regulation is applied for all the concentrations in the form of legal or factual mergers of two or more undertakings, gaining of control on one or more undertakings, establishment of a joint undertaking, as provided for in Article 10, which meet conditions of Article 12 (1) of the Law.

Article 3 Definitions

In this Regulation, the following terms mean as below:

1. “Law” means Law no 9121 of 28.07.2003 “On Competition Protection” (as amended).
2. “Working day” means all the days, except for Saturday, Sunday and official holidays.
3. “Party of parties in concentration” refers to the acquiring party and to the selling party, to the merging parties, or to the party that is subject to a public offer.

Article 4 Burden of proof

The party submitting the notification for concentration has to provide the Authority with all the data and necessary evidence on which it basis its claims.

Article 5 Appraisal of concentration

1. For appraising concentrations, the Commission takes into account the need to protect and develop free and effective competition in the market, having regard to considerations on the market structure and the actual or potential competition of the undertakings operating in the field.
2. The Commission, compliant to Article 56 of the Law authorizes a concentration which does not substantially limit effective competition, in particular as a result of establishment or strengthening of a dominant position in the internal market and in sensitive parts of the market.

CHAPTER II

Notifications and relevant documentation

Article 6

Consultations prior to notification

1. If the undertakings show an interest in reaching an agreement which leads to the establishment of a concentration, they can inform and consult with the Competition Authority.
2. The Secretary General, following notification about a potential concentration, consults with the parties on further procedures, asking for a written information.
3. The information shall contain data on the participating parties, such as:
 - a) Name and address of the undertaking;
 - b) Nature of the economic activity of the undertaking;
 - c) Name of the contact person or of the representative of the undertaking, address, telephone/fax number, e-mail;
 - d) Form and object of the transaction;
 - e) Full financial data (turnovers) to show that the claimed transaction satisfies or not the criteria provided for in Article 12 of the Law.
4. The Secretariat can lift the obligation of delivering some special information by a party, when such information is owned by the Authority.
5. The parties inform the Authority in case of non-satisfaction of the agreement or notification of the public offer.

Article 7

Obligation for notifying the concentration

If parties have reached an agreement for the merging, control, establishment of a joint undertaking, or have notified a public offer for sale or gaining of control, they shall notify the action to the Authority, according to Article 12 and 53 (2) of the Law.

Article 8

Persons authorized to submit notification

1. Notifications shall be submitted by the undertakings party in a concentration, their representatives, upon submission of relevant authorization, or by the legal representatives having a power of attorney.
2. In case of mergers or control, notification is made by the buyer, controller, whereas in case of publication of the public offer, notification is made by the bidder.
3. Joint notifications shall be handed over in a standard form. Notifications can be made by a joint representative, who has a power of attorney, containing the rights of representation on the account of the party undertakings.
4. Notifying parties or their representatives provide the Authority with an address for communication within the territory of the Republic of Albania, where all the correspondence can be mailed.

Article 9 **Submission of notifications**

1. Notifications shall be filled out as per the requests of the Form on Notification of Concentrations (simplified form), according to the relevant Instruction of the Competition Authority.
2. The Secretariat provides reasons and assesses in writing whether the criteria for filling out the simplified form of the concentration notification are met, according to the relevant Instruction of the Competition Authority. In case such criteria are not met, it asks the Parties to use the full concentration notification form.
3. The notifying parties or their representatives shall, in a separate document, clearly determine the information they consider of containing a business secret.
4. The Information shall be accurate and complete.

Article 10 **Documentation hand-over**

1. Two authentic copies, or copies certified with the original of each notification and of the attached documents (mentioned in the notification form) shall be handed over to the Archive/Protocol Office of the Competition Authority.
2. The notification shall end with a descriptive list of the attached documents and with the number of relevant pages.
3. In case the relevant documentation is in a foreign language, the notifying party submits a copy of the document accompanied by the translation in the Albanian language, and a public notary certificate on the accuracy of this translation.
4. Acceptance of the notification and of the attached documents shall be made during the office hours, at the address: Competition Authority, Rruga "Sami Frashëri" Nr 4, kati IV, Tirana, Albania.

Article 11
Date when notification becomes effective

1. Notifications become effective the date they are handed over to the sector responsible for keeping the Archive and Protocol of the Competition Authority.
2. The Secretariat, pursuant to Article 54 of the Law confirms in writing to the undertakings or their representatives if the notification is complete or not. If the notification is complete, the timing provided for in Article 56 of the Law starts with the subsequent working day of the written notification for undertakings or their representatives.
3. In case the notification is not complete, the Secretariat notifies the notifying parties or their representatives in writing, with no delay, setting a time limit of not less than 15 working days for providing a complete information. In such cases, the deadline provided for in this Article (2) starts with the date the Authority has received the complete information.
4. The Secretariat, pursuant to Article 55 (1) of the Law, can ask for additional data and information from the notifying parties, their representatives or third interested parties, at any time of the notification procedure within a term determined by it, necessary for appraising the notified concentration.
5. The notifying parties or their representatives shall notify the Authority on any change of information and documents attached to the notification about which they are aware or might be aware. In such cases, when such changes can have an important effect on examining of the concentration, the deadline provided for in the Article 56 of the Law starts at the date the Authority has been notified of the changes.
6. The incomplete or non-accurate information is considered incomplete information, pursuant to Article 33 of the Law and is a cause of imposing fines, according to the Article 73 of the Law.

CHAPTER III
Examination of the notification, start of procedures and deadlines

Article 12
Informing the Commission

The Secretariat informs the Commission in writing about launching of the procedure for the concentration control. The information contains the accurate date of the notification delivery and of the other attached documents, kind of the form of notification filled out by the notifying parties or their representatives, as well as the date of the notification confirmation.

Article 13
Publication of the preliminary procedure

The Secretariat publishes the start of the concentration control procedure in the official web page of Competition Authority at www.caa.gov.al. The publication act contains data of participating parties, their place of origin, form of concentration,

involved sectors of economy, invitation by the Competition Authority to interested parties to express comments and deadline for expressing such comments.

Article 14 **Start of deadlines**

1. The two-month deadline for the preliminary procedure set forth in Article 56 of the Law starts from the working day after the notification confirmation day.
2. The 3-month deadline for completing the in-depth procedure, as provided in Article 57 of the Law, starts from the working day after the date the Commission takes a decision on launching an in-depth procedure.

Article 15 **End of deadline**

1. The two-month deadline for the preliminary procedure shall end the following day of same date of the second month as the date the calculation of the deadline has started in the previous month. If that month does not have that date, then the deadline shall end the day after the last day of the month.
2. The three-month deadline for performing the in-depth procedure shall end the following day of the date of the third month in continuation which is the same date as the date the procedure was launched.
3. When the last day of a deadline is a week-end or an official holiday, the deadline shall end the working day following the week-end or the official holiday.

Article 16 **Official holidays**

In case the deadline calculated according to Article 14 of the present Regulation has ended and if the official holidays or other holidays fall within the terms referred to in Article 56 and 57 of the Law, the same amount of days shall be added to these periods.

Article 17 **Suspension of deadline**

1. Periods of time referred to in Article 57 of the Law shall be suspended when the Commission, pursuant to Article 33 (2) of the Law, shall take a decision because:

The information required by the Secretariat, pursuant to Article 55 of the Law, from one of the notifying parties or other interested parties has not been delivered, or has been incomplete within the deadline set by the Secretariat;

One of the notifying parties or other interested parties has refused to issue information for or to cooperate with the Secretariat to ensure that information required according to Article 55, which is considered important by the Secretariat;

The notifying parties fail to inform the Authority about change of facts contained in the notification.

2. Deadlines set forth in Article 57 of the Law shall be suspended:

- in the cases referred to in item 1 (a) and (b) of this Article, for the period between the deadline set in the request for information and receiving of a full and accurate information as required upon the Commission Decision;
- in the cases referred to in item 1 (c) of this Article, for the period between the change of facts and receiving of the accurate and full information required upon a Commission Decision.

3. Suspension of the deadline starts with the subsequent day of the relevant Commission Decision. Suspension ends when obstacles causing it are removed.

Article 18 **Meeting of deadlines**

Deadlines referred to in Article 56 and 57 of the Law shall be considered as being met if the Competition Commission has taken a decision before the end of these deadlines.

CHAPTER IV **Decision-making procedures**

Article 19 **Hearing of Parties**

1. Prior to taking a decision, while meeting the conditions of Article 56 (2) (57) of the Law, and pursuant to Article 39 of the Law, the Committee gives the notifying parties as well as the third parties related to the notified concentration the possibility to be heard.

2. The right to be heard, except for the parties referred to in Article (8), (2) of this Regulation, is also entitled to the following:

- (a) other involved parties, apart from the notifying parties, such as the seller and the undertaking that is object of the concentration;
- (b) third interested parties that can be physical or legal persons, including the customers, suppliers, competitors, and in particular members of the administrative or managerial bodies of the undertaking in question or representatives of trade unions of these undertakings.
- (c) parties against which the Competition Commission thinks of taking a decision pursuant to Article 73, 74 and 76 of the Law.

Article 20 **Hearing sessions**

1. The Commission offers possibilities to notifying parties and other interested parties to submit their arguments in a hearing session, if so required in their written comments and if they have an interest in doing so. The Commission shall give the parties the possibility to express their views verbally even in other cases, if so deemed reasonable.
2. The Commission, by a written notice, invites the parties to be heard to participate in the hearing session at the dates set for it.
3. Parties invited to take part in a hearing session shall be present in person or shall be represented by an authorized representative. The undertakings and the association of undertakings can also be represented by a jointly authorized person.
4. As a rule, the hearing sessions are held under closed doors and are recorded. The Commission can also decide to hold open sessions for the public.
5. Any party can be heard separately or in the presence of other parties invited to attend, taking into account the legitimate interest of undertakings for protecting their business secret and other confidential information.

Article 21

Decisions for authorization of temporary concentration authorization

1. In those cases the Commission thinks of taking a decision pursuant to Article 60 of the Law that has got consequences for one or more parties, it notifies notifying parties in writing, as well as the other involved parties about its remarks and sets a deadline within which they shall issue their claims in writing and in a hearing session.
2. If notifying parties and other interested parties have submitted their claims, the Commission takes a decision about this concentration.
3. In case of failure of parties to appear in hearing sessions and/or failure to submit their written claims within deadlines stipulated in this Article (1), the Commission notifies in writing of the decision taken, by five days from taking the decision.

Article 22

Deadlines of commitments

1. Commitments proposed to the Authority by the parties, as per stipulations of Article 56 (2) of the Law, which parties think of serving as a basis for the decision, shall be submitted to the Authority no later than one month from taking the notification.
2. Commitments proposed to the Authority by the participating parties, as per Article 57 (2) of the Law, which the parties think that can serve as the basis for the decision, shall be submitted to the Authority no later than two months from the date the in-depth procedure has been launched.
3. Definitions of item 1 and 2 of this Article shall be applied compliant to the present Regulation.

Article 23

Procedure of commitments

1. An authentic copy of commitments proposed for the Authority by the undertakings, according to Article 56, 57 of the Law shall be submitted to the Authority, in its official address.
2. Any party proposing commitments to the Authority, shall clearly identify every document (or data) that is considered confidential, shall give issues for this qualification and ensure another non-confidential version, as per the deadline set by the Authority.

Article 24

Decision-making and hearing of parties

1. If the Commission is of the opinion of taking a decision, as per Article 56 (1), it gives notifying parties and other interested parties, or their representatives for the issue at stake the possibility to be heard.
2. The Commission issues its remarks in writing to the notifying parties, other interested parties or their representatives and sets a deadline within which they can submit their claims in writing.
3. The parties which have received the Commission's remarks or the ones that are notified of these remarks, within the set deadline, issue their claims in writing and attach any potential documents to certify them. The Parties shall propose the Commission to hear the persons that can verify such claims.
4. Procedures set in item 2 and 3 of this Law are applied to parties according to provisions of Article 19 (2) (c) of this Regulation.

Article 25

Commission decisions

1. If the Commission takes a decision that the notified transaction is not a concentration, according to the provision of Article 10 and 12 of the Law, the Authority shall notify in writing the notifying parties or their representatives, as per the deadline stipulated in Article 56 of the Law.
2. If the Commission identifies that the notified concentration does not establish or strengthen the domination position, it authorizes it, according to Article 56 (1), in the understanding of the first sentence of this Law.
3. If the Commission identifies that the notified concentration expresses signs of establishment or strengthening of the dominant position, pursuant to Article 56 (1) of the Law, in the context of the second sentence, it decides on launching in-depth procedures of concentration control or authorization of the concentration upon conditions and obligations.
4. If the Commission observes that the concentration of undertakings is made in breach of the obligation for notification, upon its initiative, it decides on launching procedures of controlling the concentration.

Article 26

Publication of decisions

Decisions of the Commission are published in the Official Gazette and in the web page of the Competition Authority.

CHAPTER V

Other provisions

Article 27

Submission of documents

Documents and invitations from the Authority to the addressee shall be sent in one of the following ways:

- registered letter with the addressee confirmation;
- fax with a request for confirmation by the addressee;
- e-mail with a request for confirmation by the addressee
(përqendrim@caa.gov.al).

Article 28

Deadlines

1. While setting the deadlines, the Authority shall take into consideration the time needed for preparing the forms and urgency of the issue.
2. These deadlines shall be set as per the calendar basis, taking into account the official holidays.

Article 29

Repeal

The Regulation “On Approval of the Undertaking Concentration Procedures”, approved at the Decree no 7 of 1. 6. 2004 of the Competition Commission is repealed.

Article 30

Entry into force

This Regulation enters into force 15 days after its approval by the Competition Commission.