

Issuer: Minister of Economic Affairs and Communications  
Type: regulation  
In force from: 01.01.2011  
In force until: In force  
Translation published: 22.04.2016

## **Guidelines for Calculation of Turnover of Parties to Concentration**

Passed 17.07.2006 No. 68  
RTL 2006, 59, 1061  
Entry into force 29.07.2006

Amended by the following acts

Passed	Published	Entry into force
22.12.2010	RT I, 29.12.2010, 13	01.01.2011

The Regulation is established on the basis of subsection 24 (8) of the Competition Act.

### **§ 1. Turnover of parties to concentration**

(1) The turnover of a party to a concentration is comprised of the returns on the goods sold by the party to a concentration during the financial year preceding the concentration, which includes the returns on the goods sold or services provided but does not contain commercial rebates, value added tax or other taxes directly related to turnover.

Upon sale of goods, all commercial transactions shall be determined which involve the transfer of the right of ownership.

(2) The turnover of a party to a concentration includes the goods sold to buyers within the territory of Estonia. The place of supply is determined according to the location of the buyer at the time of concluding the transaction.

(3) The worldwide turnover of a party to a concentration includes the goods sold to buyers located in all countries, including Estonia.

(4) The turnover of a party to a concentration does not include the sale of goods between undertakings which are connected through control.

(5) The turnover of a natural person is defined as the total turnover of the natural person and of undertakings under his or her control.

(6) The turnover of a credit or financial institution is deemed to comprise the total amount of the following income items after deduction of value added tax and income tax:

- 1) interest income;
- 2) income on financial investments;
- 3) income on fees;
- 4) income on financial transactions;
- 5) other operating income.

(7) The turnover in Estonia of credit and financial institutions consists of the income earned by a credit or financial institution established in Estonia, or an Estonian branch of a foreign credit or financial institution.

(8) The turnover of an insurer is deemed to comprise the value of the gross insurance premiums which includes all insurance premiums received and receivable in respect of insurance contracts issued by or on behalf of the insurer, including outgoing reinsurance premiums after deduction of the taxes and other fees and payments to be paid on individual insurance premiums or the total volume of insurance premiums.

## § 2. Calculation of turnover

(1) Turnover shall be calculated on the basis of the audited annual report of the previous financial year unless the concentration takes place during the first months of a financial year. If the audited annual reports concerning the previous year are not accessible in their entirety, then upon calculation of turnover, the audited reports of the year before the last financial year together with un-audited reports from the last financial year of the party to the concentration shall be taken as the basis, and the representative of the undertaking shall verify the correctness of such information by a signature.

(2) If the actual reporting period of the undertaking is not twelve months, the turnover created during the reporting period shall be divided by the number of months in the reporting period and then multiplied by twelve.

(3) If the undertaking has transferred or acquired business activities during a concentration after the end of the reporting period, the returns for the reporting period shall be adjusted by subtracting the turnover of business activities transferred and adding the turnover of business activities acquired after the end of the turnover period.

(4) If the audited annual report of the undertaking does not include the geographical division of the sale of goods, the party to a concentration is required to provide the best accessible data concerning such matter pursuant to subsection 1 (3).

(5) If an acquiring undertaking or an undertaking acquiring control is connected to other undertakings through control, the turnover of all undertakings under the control of the acquiring undertaking or undertaking acquiring control and of all undertakings controlling the acquiring undertaking or undertaking acquiring control shall be added to the turnover thereof.

Upon calculating the turnover of an acquiring undertaking or a party to a concentration set out in clauses 20 2) and 3) of the Competition Act, the turnovers of the following undertakings shall be added together:

- 1) party to the concentration
- 2) an undertaking or undertakings controlled by the party to the concentration;
- 3) an undertaking or undertakings controlling the party to the concentration;
- 4) an undertaking or undertakings controlled by an undertaking specified in clause 3) of this subsection;
- 5) an undertaking or undertakings jointly controlled by two or more of the undertakings specified in clauses 1)-4) of this subsection.

(6) Upon calculating the turnover of an undertaking being acquired (or a part thereof) or an undertaking over which control is being acquired, only the turnovers of the undertaking being acquired (or the part thereof), or only the turnover of such undertaking and undertakings under its control shall be taken into account

(7) If control over a part of an undertaking is acquired in a manner provided for in clauses 19 (1) 2)–5) of the Competition Act, the turnover of the undertaking shall be calculated by taking into account the turnover of only such part of the undertaking which is the subject of the transaction.

(8) If during the course of a two year period, the same natural persons or undertakings acquire control of parts of one or several undertakings by two or more transactions, the turnover of the parts which were the subject of the transactions during the previous two years shall be taken into account upon calculating the turnover of such parts. At the same time, the turnover of the corresponding parts shall not be taken into account upon calculating the turnover of the natural persons or undertakings acquiring control.

Two or more transactions conducted between the same natural persons or undertakings during a two-year period are deemed to be one concentration which takes place at the date of the last transaction and if the turnover thresholds have been exceeded, such concentration must undergo inspection pursuant to subsection 21 (1) of the Competition Act.

(9) If within the two years preceding concentration, one and the same undertaking has acquired control of undertakings which operate in Estonia in one and the same economic sector, the turnover of the undertakings over which control has been acquired within the two years preceding the concentration shall be added to the turnover of the undertaking of which control is acquired as the result of the concentration.

(10) If concentration takes place by way of formation of a joint venture, the undertakings who form the joint venture are deemed to be the parties to the concentration and the turnover of the group of each party to the concentration shall be calculated separately.

(11) If the parties to a concentration jointly control an undertaking, the turnover created between the undertaking and parties to the concentration and undertakings connected to them through control shall be subtracted upon calculation of the turnover of the undertaking. Turnover of a joint venture which is obtained from transactions with third parties shall be taken into account, and the turnover of the joint venture shall be divided equally between the undertakings exercising joint control.

(12) If the parties to a concentration share joint control of an undertaking with another undertaking, the turnover of the joint venture shall be divided equally between all the undertakings in joint control.

(13) If an acquiring undertaking or a party to a concentration acquiring control is a credit institution, the revenue earned in Estonia by the entire group shall be taken into account upon calculation of its turnover.

(14) If an acquiring undertaking or a party to a concentration acquiring control is an insurer, the premiums and revenue provided in subsection 1 (8) received in Estonia by the entire group shall be taken into account upon calculation of its turnover.

(15) In addition to the above, the turnover of an insurer shall include the financial investments by which the insurer is able, pursuant to subsection 2 (4) of the Competition Act, to directly or indirectly influence another undertaking. In such event, upon calculation of the turnover of the insurer, the turnovers of the undertakings related to the insurer through control (e.g. the returns of undertakings engaged in production, etc) shall be added to the turnover of the insurer.

(16) In the case of insurers, income derived from investments on shares, securities, immovables, etc is not deemed to be turnover, as such undertakings are required to form conforming technical provisions which enable the payment of claims. In addition to the above, financial investments made to acquire and take possession of holdings in other undertakings in order to maintain the value of an investment are also not deemed to be turnover of an insurer, provided that the voting rights connected to the holdings are not used in order to influence, directly or indirectly, the behaviour of the undertakings as specified in subsection 2 (4) of the Competition Act.

(17) The turnover of financial institutions, including financial holding companies and management companies received in Estonia by the entire group shall be calculated, as the general rule, pursuant to subsection 1 (6).

(18) If the objective of a financial institution or financial holding company is to acquire and take possession of holdings in other undertakings which enables it to influence, directly or indirectly, the behaviour of the undertakings as specified in subsection 2 (4) of the Competition Act, then the turnover of the financial institution or financial holding company shall be calculated based on subsection 1 (6) and the turnovers of the other undertakings shall be added to it pursuant to subsection 2 (5).

(19) If the state or a local government controls an undertaking, such undertaking shall not be deemed to be related through control to other undertakings controlled by the state or local government. The turnover of other undertakings controlled by the state or local government shall not be added to the turnover of such undertaking. If such undertakings are jointly managed by a holding company established for such purpose or their economic activities are directed jointly in another manner, the turnovers of such undertakings shall be added together in the manner described in subsection (6).

(20) State aid within the meaning of § 30 of the Competition Act received by an undertaking shall be taken into account upon calculation of its turnover if the state aid is directly connected to the sale of goods or provision of services and as a result, is reflected in the price of the goods or services.

(21) The turnover of an undertaking given in a foreign currency shall be converted into Estonian kroons using the average daily exchange rate of the currency as quoted by the Bank of Estonia during the reporting period.

### **§ 3. Implementing Provision**

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[Annex](#)