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Guidelines for Submission of Notices of Concentration

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The Regulation is established on the basis of subsection 26 (5) of the Competition Act.

Chapter 1 General Provisions

§ 1. Scope of application

This Regulation provides for the guidelines for submission of notices of concentration (hereinafter notices).

§ 2. Form of notice

(1) A notice is submitted in full or in an abbreviated form.

(2) A notice is submitted in an abbreviated form to notify of concentrations which comply to one of the conditions of subsection 26 (2) of the Competition Act.

(3) The Competition Board may demand the submission of a full notice if, in the course of the proceeding, a need arises to investigate possible problems relating to competition and, above all, if:

- 1) it is difficult to define the goods markets (for example, in new and developing goods markets or if no established practices exist);
- 2) a party to the concentration is entering the goods market for the first time or is likely to enter the goods market, or holds a patent essential for operating in the goods market;
- 3) market shares cannot be identified;
- 4) the goods markets have high entrance barriers, they are highly concentrated or have known problems related to competition;
- 5) at least two parties to the concentration or undertakings belonging to the same group with them operate in goods markets which are directly related;
- 6) control is acquired of a jointly controlled undertaking and the undertaking acquiring control and the joint venture together have a strong position on the goods market or they have a strong position on vertically related markets;
- 7) the objective or result of the concentration is the co-ordination of the behaviour of undertakings specified in subsection 22 (2) of the Competition Act.

§ 3. Notifying parties

Notification of concentration shall be carried out by:

- 1) the undertakings jointly if previously independent undertakings merge within the meaning of the Commercial Code or parts of undertakings are merged;
- 2) the undertaking who acquires control of the whole or a part of another undertaking, or of several undertakings or parts thereof;
- 3) the undertakings jointly who acquire control of the whole or a part of another undertaking, or of several undertakings or parts thereof;
- 4) the natural person who acquires control of the whole or a part of another undertaking, or of several undertakings or parts thereof, provided that the natural person is already controlling at least one undertaking;
- 5) the natural persons jointly who acquire control of the whole or a part of another undertaking, or of several undertakings or parts thereof, provided that such natural persons are already controlling at least one undertaking;
- 6) the undertakings jointly or natural persons jointly upon establishment of a joint venture by the undertakings or natural persons, provided that the natural persons already have control of at least one undertaking;
- 7) the bidder in the case of a public bid to acquire control of an undertaking.

Chapter 2

Contents of Notices Submitted

§ 4. Information on persons

(1) Persons with a notification obligation specified in § 3 of this Regulation shall submit the following information concerning themselves and other parties to the concentration:

- 1) business name (name) and registry code;
- 2) areas of activity;
- 3) address;
- 4) telephone number, fax number and e-mail address;
- 5) representative (name, title, address, telephone number, fax number and e-mail address);
- 6) contact person (persons) or authorised person (persons) (name, title, address, telephone number, fax number and e-mail address) to whom the documents and decisions of the Competition Board shall be forwarded.

(2) The following information shall be submitted concerning the undertaking or natural person surrendering control of another undertaking or part thereof:

- 1) business name (name) and registry code;
- 2) areas of activity;
- 3) address;
- 4) telephone number, fax number and e-mail address;
- 5) representative (name, title, address, telephone number, fax number and e-mail address);
- 6) contact person or authorised representative (name, title, address, telephone number, fax number and e-mail address).

§ 5. Description of concentration

(1) A short summary of the concentration which does not contain any business secrets shall be submitted, specifying the parties to the concentration, the type of concentration (e.g. merger, acquisition or establishment of a joint venture), areas of activity, affected goods markets and the strategic and economic reasons for the concentration. The submitted summary shall be published at the home page of the Competition Board.

(2) The following information shall be submitted concerning a concentration:

- 1) the economic and financial structure of the concentration;
- 2) the schedule for the concentration;
- 3) a description of the business activities related to the concentration;
- 4) the structure of ownership relations and control before and after the transaction (taking account of direct or indirect control based on ownership of shares or based on a transaction, the statutes or in any other manner, specifying the size of the holding or the basis for other control);
- 5) sectors of economy related to the concentration;
- 6) an overview of the circumstances leading to the concentration and the objectives and economic reasons for the concentration.

(3) Upon the foundation of a joint venture, the following data shall be added to the information specified in subsection (2):

- 1) the proposed or expected period of activity of the joint venture;
- 2) a description of the business activities of the joint venture;
- 3) the most important buyers and suppliers of the joint venture;
- 4) a description of the independent and lasting business activities of the joint venture;
- 5) a description of the managing of the joint venture.

(4) The value of the transaction shall be set out in the form of the purchase price or the value of the assets linked to the transaction.

§ 6. Turnover of parties to concentration

(1) The following information shall be submitted concerning turnover:

- 1) the aggregate turnover of the parties to the concentration during the preceding financial year in Estonia;
- 2) the turnovers in Estonia of each of the parties to a concentration during the preceding financial year;
- 3) the worldwide turnover of each of the parties to the concentration during the previous financial year in order to evaluate the overall financial soundness of the undertakings.

(2) Turnover shall be calculated pursuant to § 24 of the Competition Act and the guidelines for the calculation of turnover established by a regulation of the Minister of Economic Affairs and Communications.

§ 7. Holdings and control

(1) For each of the parties to a concentration, a list of all undertakings which belong to the same group as the party to the concentration shall be provided. If these undertakings are active in the goods markets specified in subsections 8 (3) or (4) of this Regulation, information on the nature and means of control between each undertaking and party to the concentration shall be specified. The list shall include all undertakings and natural persons who have direct or indirect control over the parties to the concentration as well as all the undertakings

active in the goods markets specified in subsection 8 (3) of this Regulation which are directly or indirectly controlled by the parties to the concentration. Such information may be illustrated by way of schemes and diagrams.

(2) Unless the notice is submitted in an abbreviated form, the following information shall be submitted in addition to the information specified in subsection (1):

1) each of the parties to a concentration and undertakings which belong to the same group as a party to the concentration which, within the preceding two years, have obtained control of any undertaking which is active in the goods markets specified in subsection 8 (3) of this Regulation;

2) each of the parties to a concentration and undertakings which belong to the same group as a party to the concentration which own at least a 10% holding in any undertaking which is active in the goods markets specified in subsection 8 (3) of this Regulation;

3) members of the directing bodies of each of the parties to a concentration and of undertakings which belong to the same group as a party to the concentration who are also members of the directing bodies of any other undertaking which is active in the goods markets specified in subsection 8 (3) of this Regulation.

(3) The notice shall set out the business name of each undertaking specified in subsection (1) or (2) and the name and position of each member of a directing body specified in clause (2) 3).

§ 8. Information concerning goods markets

(1) Upon submission of the notice, the goods markets in which the parties to the concentration and the undertakings belonging to the same group with them operate shall be specified which enables the determination of the goods which compete or are likely to compete with the goods manufactured, bought or sold by the parties to the concentration.

(2) The goods markets are defined based on the definition of "goods market" as provided by § 3 of the Competition Act whereas the area where the goods circulate (geographical goods market) shall include the area in which the parties to the concentration engage in the sale and purchase of goods.

(3) The notice shall set out the goods markets which are affected by the concentration (hereinafter affected markets) in the following manner:

1) each goods market where two or more of the parties to a concentration or undertakings which belong to the same group as the parties to the concentration are engaged in business activities and where the concentration will lead to a combined market share of 15 % or more (horizontal relationships);

2) each goods market where one or several of the parties to a concentration or undertakings which belong to the same group as the parties to the concentration are engaged in business activities which precedes or follows the market, in which another party to the concentration or an undertaking belonging to the same group with the party operates if the individual market share of a party to the concentration or the joint market share of the parties to the concentration is at least 25 per cent regardless of whether or not they are actually the seller and the buyer (vertical relations).

(4) Other goods markets which may be significantly affected by the concentration and which are related to the goods markets provided in subsection (3) (hereinafter related markets) shall be set out for example, if:

1) the market share of a party to the concentration exceeds 25 % and the other party to the concentration is a potential competitor at such goods market;

2) the market share of a party to the concentration exceeds 25 % and the other party to the concentration owns significant intellectual property rights at such goods market;

3) a party to the concentration operates on a goods market which is directly related to a goods market in which another operates, and the individual or joint market shares of the parties are at least 25 %.

Reasons should be indicated as to why the goods within such goods markets should not be taken into account in the goods markets specified in subsection (3).

(5) The total size of each affected market in terms of sales value (returns) and volume during the last three years shall be assessed for each year separately and an estimate shall be provided concerning possible developments in each affected market during the following years. The import of goods shall be deducted from and the import of goods shall be added to the size of the market. The sources of the calculations and where possible, any documents in proof of the calculations shall be appended to the document.

(6) The total size of each related market in terms of sales value (returns) and volume during the last three years shall be assessed for each year separately and an estimate shall be provided concerning possible developments in each market during the following years. The sources of the calculations and where possible, any documents in proof of the calculations shall be appended to the document.

(7) Information shall be provided concerning the volume of sales of each of the parties to a concentration and undertakings which belong to the same group as a party to the concentration in each affected market in terms of sales value (returns) and volume, and the market share of each of the parties to the concentration and each undertaking belonging to the same group in each affected market shall be assessed for each of the last three

years separately. The sources of the calculations and where possible, any documents in proof of the calculations shall be appended to the document.

(8) An estimate shall be given concerning the market share and where possible, also the sales volume of all competitors who have a market share of at least 5 % at each affected market, including importers. Where available, the business name, address, telephone number, fax number, e-mail address, and the name and title of a contact person shall be indicated for each competitor. The sources used for calculating the market shares and where possible, any documents in proof of the calculations shall be appended to the document.

(9) Information shall be provided concerning the structure of demand in each affected market, among other:

- 1) information concerning the five most important buyers in each affected market which do not belong to the same group as a party to the concentration. The business name, address, telephone number, fax number, e-mail address, and the name and title of a contact person shall be indicated for each buyer. Information concerning the share of the purchases of each buyer in the returns as defined in subsection (7) shall be provided for each of the three last years separately.
- 2) the development phase of the goods market and the prognosis for demand and supply;
- 3) the importance of buyer preferences and consumption patterns;
- 4) the significance of transfer costs (e.g. time-related or financial cost) to the buyer in the case of change of supplier;
- 5) segmentation of buyers into different groups and characteristic traits of each group;
- 6) the level of concentration or dispersion of buyers and its effect to the freedom of activity of the party to the concentration;
- 7) the existence and significance of exclusive distribution contracts and other types of long-term contracts;
- 8) the extent to which the public sector is important as a buyer.

(10) Information shall be provided concerning the five most important suppliers of the party to the concentration in each affected market which do not belong to the same group as a party to the concentration. The business name, address, telephone number, fax number, e-mail address, and the name and title of a contact person shall be indicated for each buyer. Information shall also be provided concerning the importance of each of the listed suppliers in the purchase transactions of the party to the concentration.

(11) Information shall be provided concerning the general conditions in each affected market, including:

- 1) the distribution networks and service networks most often used on the goods market and their importance as well as the extent to which third parties and undertakings belonging to the same group with the party to the concentration engage in distribution and provision of services;
- 2) a comparison of current price levels in each affected market and price levels in geographically close goods markets;
- 3) an assessment of the potential competition on each affected market. In making the prognosis, the goods being developed by the parties to the concentration and their competitors likely to be placed on the market in the near future as well as intended sales and market shares during the next three years shall be taken into account;
- 4) other information relevant to the bid.

(12) Information shall be provided concerning the factors influencing entry into and departure from goods markets, including:

- 1) information known to a notifying party concerning undertakings which have commenced business activities in the affected markets during the last three years and undertakings which have left the markets during the same period;
- 2) information concerning factors influencing entry into and departure from the goods market.

(13) Research and development on affected markets and research and development work carried out by the parties to the concentration shall be described.

(14) Information on the importance of exchange of goods with other countries shall be provided including a separate evaluation for each country of origin and destination of the value of imported and exported goods in terms of sales value (returns) and volume on each affected market, indicating the importance of the party to the concentration and undertakings belonging to the same group in the import and export of goods. Information shall be provided concerning each of the last three years separately. An estimate shall be given of the extent to which any quotas, tariffs, transportation costs and other factors affect the import of goods. Documents which constitute the basis for such information shall be annexed thereto.

(15) Detailed information shall be provided on the co-operation agreements of the parties to the concentration on affected markets (e.g. agreements in the area of research and development, licensing, production specialisation, long-term supply or exchange of information) including, where necessary, the copies of such agreements.

(16) The information specified in subsections (3)-(15) shall not be included in a notice submitted in an abbreviated form.

(17) A notice submitted in an abbreviated form shall contain the following information:

- 1) information on each goods market where two or more of the parties to a concentration or undertakings which belong to the same group as the parties to the concentration are engaged in business activities (horizontal relationships);

2) each goods market where one or several of the parties to a concentration or undertakings which belong to the same group as the parties to the concentration are engaged in business activities which precedes or follows the market, in which another party to the concentration or an undertaking belonging to the same group with the party operates regardless of whether or not they are actually the seller and the buyer (vertical relations);

3) an evaluation on the volume of the goods markets specified in clauses 1) and 2) in terms of sales value (returns) and volume during the preceding financial year. The sources of the calculations and where possible, any documents in proof of the calculations shall be appended to the document;

4) information concerning the volume of sales of each of the parties to a concentration and undertakings which belong to the same group as a party to the concentration in the goods markets specified in clauses 1) and 2) in terms of sales value (returns) and volume, and an evaluation of the market share of each of the parties to the concentration and each undertaking belonging to the same group in such markets during the preceding financial year. Any significant changes in the sale and market share during the three preceding years shall be pointed out;

5) an evaluation of the market share (and if possible, sales volume) of the three most significant competitors on each of the goods markets specified in clauses 1) and 2). Where available, the business name, address, telephone number, fax number, e-mail address, and the name and title of a contact person shall be indicated for each competitor. The sources for the prognosis of the market shares shall be indicated.

§ 9. Effect of joint venture to cooperation

(1) In order to apply subsection 22 (2) of the Competition Act, information and justified positions shall be provided as to whether two or more undertakings who have created a joint venture will continue, to a material extent, their activities on the same goods market as the joint venture, or on the previous or following affected market, or on another market related to such goods market.

(2) If two or more undertakings who have created a joint venture continue, to a material extent, their activities on the same goods market as the joint venture, or on the previous or following market, or on another market related to such goods market and in the opinion of the parties to the concentration, the formation of the joint venture does not lead to the co-ordination of the behaviour of undertakings which leads or may lead to competition within the meaning of subsection 4 (1) of the Competition Act, the parties to the concentration shall provide justification to such effect. Concerning each of the goods markets specified in this subsection, information shall be provided on the parent undertakings' turnovers of the preceding years, the economic importance of the activities of the joint venture relevant to such turnovers and the market shares of the parent undertakings.

(3) For an integrated evaluation of the concentration by the Competition Board, the parties to the concentration shall provide proof of meeting the requirements provided in subsection 6 (1) of the Competition Act.

(4) If two or more undertakings who have created a joint venture will not continue their activities in the same goods market as the joint venture, or in the previous or following affected market, or in another market related to such goods market, corresponding justification shall be provided.

§ 10. Effect of concentration on goods markets

(1) An evaluation of the effect of the concentration to the affected markets and to the markets specified in clauses 8 (17) 1) and 2) shall be provided.

(2) An assessment shall be provided of the concentration together with the reasons why permission to concentrate should be given.

§ 11. Membership in associations of undertakings

(1) Associations of undertakings in which the parties to a concentration which are active in the affected market are members shall be identified.

(2) The name, address, telephone number, fax number, e-mail address and contact person of trade associations specified in subsection (1) shall be indicated.

§ 12. Restrictions on competition related to concentration

(1) The notice shall set out any restrictions on competition which are directly related to and necessary to give effect to the concentration and are contained in the agreements or other documents which are the basis for giving effect to a concentration together with the reasons for applying such restrictions.

(2) Above all, the following are deemed to be restrictions which are directly related to and necessary to give effect to a concentration:

1) restrictions closely related to the concentration (the main transaction) which enable transfer to the post-concentration structure;

2) restrictions which are necessary for the concentration due to the fact that if not applied, concentration would be impossible or it would be less secure or more costly, time consuming and complicated;

3) restrictions which protect the value of the assets to be transferred, maintain the continuity of supply or enable the commencement of operation of a new unit.

(3) Reasons must be provided to justify the need to apply, upon concentration, the restrictions directly connected to and necessary to give effect to a concentration, including the necessity of their duration, content and geographical area of application.

§ 13. Obligations related to concentration

(1) If concentration significantly restricts competition on the goods market, above all by creating or strengthening a dominant position, the parties to the concentration shall submit proposals on assuming obligations in order to improve the competition situation and to prevent the restriction of competition.

(2) The obligations shall be proposed such that the Competition Board would be able to assess, within the term provided in subsections 27 (1) and (2) of the Competition Act, the proposed obligations and to make the relevant decision.

(3) The parties to the concentration must provide proof that assuming the obligations will prevent the restriction of competition on the goods market.

§ 14. Other circumstances related to concentration

A list of competition authorities of other states who have been or will be notified of the concentration shall be provided.

Chapter 3 Submission of Notice

§ 15. Submission of notice

(1) A notice and the documents appended thereto shall be submitted to the Competition Board in a single copy.

(2) The notice shall contain accurate and complete information pursuant to the provisions of Chapter 2 of this Regulation.

(3) Upon submission of inaccurate or incomplete information, the director general of the Competition Board or his or her deputy shall prescribe, based on subsection 26 (6) of the Competition Act, a term for elimination of the deficiencies. If the parties to the concentration fail to eliminate the deficiencies by the prescribed term, the notice is deemed to be not submitted pursuant to subsection 26 (8) of the Competition Act.

(4) Documents annexed to a notice of concentration shall be the following originals or certified copies thereof:

- 1) registry extracts concerning the parties to the concentration who have been entered in the registers of other countries;
- 2) the documents on the basis of which the concentration is put into effect;
- 3) the annual reports and annual accounts of the parties to the concentration for the financial year preceding the concentration;
- 4) a document certifying the authority of the person submitting the notice;
- 5) information concerning payment of the state fee;
- 6) analyses, reports, researches, reviews and other similar documents prepared by authorised persons for evaluation or analysis of the concentration in relation to market shares, competition conditions, possible increase in sales or expansion into other markets, or general market conditions;
- 7) a list of the documents annexed to the notice of concentration.

(5) The notice and annexed documents shall be submitted in Estonian. By agreement with the Competition Board, the documents annexed to the notice may be submitted in another language. If copies are submitted, the parties to the concentration shall provide proof of their accuracy and completeness.

(6) The Director General of the Competition Board or his or her deputy may, pursuant to subsection 26 (9) of the Competition Act, release the party to a concentration from the obligation to submit some of the documents or information if such documents or information are not necessary for the proceedings concerning the concentration.

(7) A notice shall contain the date of submission of the notice and the signature of the person submitting the notice. If the notice is signed by the representatives of natural persons or undertakings, they shall provide written certification of their authorities.

(8) Upon joint notification, a single notice shall be submitted and the parties to the concentration shall authorise a common representative to represent them.

§ 16. Terms

(1) A notice is deemed to have been submitted on the date of its arrival at the Competition Board, which shall be documented in the document register of the Competition Board.

(2) If a notice and the annexed documents do not meet the requirements provided for in subsections 26 (1)–(4) of the Competition Act or in these Guidelines, the director general of the Competition Board or his or her deputy shall prescribe a term for elimination of the deficiencies in the notice of concentration. In such case, the term provided in subsections 27 (1) and (2) of the Competition Act shall start to run as of the date of elimination of the deficiencies.

(3) If the parties to the concentration fail to eliminate the deficiencies by the prescribed deadline, the notice is deemed not to have been submitted and the running of the terms provided in subsections 27 (1) and (2) of the Competition Act shall be suspended until the information or materials are submitted.

(4) The Competition Board shall be immediately informed of any changes to the facts contained in a notice which occur after the submission thereof. If such changes may significantly influence the assessment of a concentration, the Competition Board may deem the notice to have been submitted as of the date on which the Competition Board received the information concerning the changes.

§ 17. Business secrets contained in notices

(1) Without the agreement of the notifying party, an official of the Competition Board does not have the right to disclose any business secrets contained in a notice and annexed documents to any other person or to make such business secrets public, unless otherwise provided by the Competition Act.

(2) The notifying party shall determine and specify the information which the notifying party has good reason to deem to be a business secret by using a corresponding notation or submitting such information separately as an annex. The following is not deemed to be business secrets:

- 1) the concentration itself;
- 2) the information provided in clauses 26 (1) 1) and 4) of the Competition Act;
- 3) information subject to or already disclosed to the public;
- 4) a decision or precept by the director general of the Competition Board or his or her deputy from which business secrets have been excluded;
- 5) a document prepared by the director general of the Competition Board, his or her deputy or other official from which business secrets have been excluded.

Chapter 4 Implementing Provisions

§ 18. Repeal of Regulation

Regulation No 3 of the Minister of Economic Affairs and Communications of 6 November 2002 "Guidelines for Submission of Notices of Concentration" (RTL 2002, 128, 1867) is repealed.