Notice of the Office for the Protection of Competition on the pre-notification contacts with merging parties

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I. Purpose, object and nature of pre-notification contacts

1. The purpose of the Notice on the pre-notification contacts with merging parties (thereinafter referred to as "the Notice") is (i) definition of a commitment of the Office for the Protection of Competition (thereinafter reffered to as "the Office") to lead, under conditions mentioned further on, pre-notification consultations with undertakings planning to notify a merger pursuant to Article 12 and subsequent of the Act No. 143/2001 Coll., on the Protection of Pompetition and on amendment of certain acts, as amended (thereinafter referred to as "the Act") and (ii) definition of rules governing substance and procedure of pre-notification dealings.

2. The Office regards the pre-notification contacts with merging undertakings as an important part of the whole process of the merger review; it is useful also in cases in which the merger seems non-problematic at first sight. The merging parties[1] may always ask the Office for informal and private consultation on a planned merger. The pre-notification dealings are initiated and conducted on the basis of a voluntary request by the merging parties; the Office commits itself to lead the pre-notification dealings while fulfilling the conditions mentioned further on. The realization of the pre-notification consultation on a prepared merger is, however, not a precondition for the subsequent submission of proposal for the merger approval.

3. The aim of the pre-notification contacts is to help a fluent process of the subsequent proceedings on the merger approval. In case the pre-notification dealings between the Office and the merging undertakings proceed in a way this Notice expects, the delays in the merger review process should be minimized. The delays may be invoked by the need to submit further documents and data necessary for the assessment of possible impacts of the merger and for the issuance of the merger approval.

4. In order to achieve this aim, the Office defines possible issues which may be dealt with during the pre-notification phase.

5. During the pre-notification phase the Office and the merging parties discuss procedural issues, particularly those relating to the establishment of the Office's scope of powers to the review of the given transaction (thus the fulfillment of the notification criteria pursuant to Article 12 and Article 13 of the Act), and issues connected with the planned transaction. In exceptional cases preliminary concerns about the distortion of the competition in the market may be also dealt with during the pre-notification consultation. Moreover, the pre-notification consultation may cover the completeness of the merger notification and the individual details it should contain[2], particularly the questionnaire for the merger review.

6. On the other hand, the pre-notification contacts cannot lead to a final or binding opinion of the Office to the question, whether the given transaction may have an impact and of what kind on the competition in the market. The outcomes of the

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[1] Those who have pursuant to Article 15 of the Act the obligation to submit the proposal for merger approval, and other undertakings concerned by the merger.

[2] The details of the merger notification are stipulated in Article 15, paragraph 3, letter b) of the Act in connection with the decree of the Office No. 368/2001 Coll., stipulating details relating to the notification of a concentration of undertakings.

pre-notification consultation do not influence the decision-making process of the Office on the given transaction in the subsequent administrative proceeding.

7. The dealings in the pre-notification phase are of a strictly confidential nature and the Office's representatives are subject to the obligation to maintain secrecy pursuant to Article 24 of the Act. Information and documents which are submitted by the merging undertakings in the course of the pre-notification dealings are available only to the Office and the merging undertakings and do not form a part of the file for the subsequent administrative proceeding. Such information and documents may be made available to third parties only upon a written approval by the merging undertakings.

8. The aim of the pre-notification contacts will be achieved only if they are based on voluntariness and openness, and the parties concerned should thus fully cooperate in the course of the dealings.

II. The participants of the pre-notification consultation

9. The Office regards as advisable that both the attorneys of the merging undertakings and the employees of the merging undertakings, who are acquainted with the markets that should be affected by the transaction in question, and who are acquainted with the economic background and the reasons leading to the realization of the transaction, take part in the pre-notification consultation. The Office is during the pre-notification consultation usually represented by its employees who will be dealing with the case after the submission of the notification of the merger. The Office is further represented by the director of the Merger Department, and eventually by the director of the Competition Section. The participation of the above mentioned representatives of the merging parties and the Office is a prerequisite for efficient pre-notification contacts.

III. The course of the pre-notification consultation

10. The pre-notification contacts may be initiated upon the proposal of the merging undertakings as soon as they are ready to provide the Office with relevant information about the nature of the transaction and information relating to the markets which may be affected by the intended transaction. The Office recommends initiate the pre-notification consultation at least two weeks before the submission of the notification of the merger. The duration and scope of the pre-notification consultation depend on the complexity of the case.

11. In cases where the merger is a subject to approval by more competition authorities from different countries, regardless of their EU membership, it is advisable that the merging undertakings coordinate the timing of the merger notification, but also of the pre-notification contacts. The parallel course of the pre-notification dealings and the proceedings on the merger approval in the countries concerned is a prerequisite for a consistent approach by the competition authorities.

12. The request for the pre-notification consultation must contain (i) a short description of the transaction, (ii) a short description of the areas and markets where the impacts of the transaction will appear, and (iii) a short description of the possible impacts of the transaction on competition in the above mentioned markets. In addition the request for the pre-notification consultation may contain a filled in draft of the notification questionnaire.

13. The Office handles the request for the pre-notification consultation in two ways. In easier cases it notifies the applicants (the merging parties) of its remarks and comments in writing; in more difficult cases it arranges, after consulting it with the applicants, a meeting with the merging undertakings, even repeatedly, if needed.

14. It is necessary that the merging parties sent the documents to the Office in a sufficient time before the meeting or other contact (usually five to seven working days in advance), for the members of the working team set up for the review of the given transaction to study the provided data and prepare for the meeting. A proposal which contains data of a substantial volume is necessary to be delivered appropriately longer time in advance.

15. If needed, the Office announces its remarks and comments to the merging undertakings sufficiently in advance (two days minimum) before the date of the meeting or other contact, so that the undertakings can prepare for the meeting the remarks and comments relate to.

16. It is advisable that the merging undertakings continuously provide the Office with a draft of the questionnaire for the merger approval, which will be part of the merger notification. The Office will thus be able to check, whether the questionnaire is complete and recommend the merging undertakings which further information should be submitted.

IV. Submitted information

17. The merging undertakings should be prepared to provide the Office with all the available information relating to the markets which may be affected by the merger, and information relating to the possible concerns about the distortion of competition in these markets. The merging undertakings notify the Office of their opinion on the definition of relevant markets. The Office then gives the merging parties its opinion on the possible definition of the relevant market, based on its previous decision-making practice, the decision-making practice of the European Commission, or on the decision-making practice of the EU Member States, and on the courts' judicature. This procedure facilitates a timely survey of the market affected by the merger and reduces the possibility that the Office asks the merging parties to submit further information in the course of the proceeding on the approval of the merger.

18. In the pre-notification phase the merging parties provide on request the Office with internal documents (analysis, studies, bulletins, economic reasons leading to the given transaction and its importance for the competition environment in the market which may be affected by the transaction), which are relating to the transaction in question and its impact on competition in the affected markets. Naturally in case these documents are available to the merging parties. Furthermore, the merging parties name and give reasons for possible efficiencies resulting from the merger.

19. While discussing the scope of information that should be contained in the proposal for the merger approval the merging parties may ask the Office for an exemption from the obligation to provide some information and documents, which are not necessary for review of the given transaction. The undertakings may be exempted particularly in case of the obligation to provide translations of contracts establishing the merger and translations of annual reports and final accounts of the merging parties. The Office must inform the parties to the proceeding before the submission of the merger notification about the exemption, including its scope.

V. Completeness of the merger notification

20. As the merger approval proceeding is not formally initiated till the day when the Office receives the complete proposal for the merger approval containing all the essential details in accordance with Article 15, paragraph 3, letter b) of the Act and the Office´s decree, the Office recommends the merging parties to pay an appropriate attention to the preparation of the information provided.

21. In case the merging parties obey the rules mentioned in this Notice, the Office is usually prepared for informal confirmation that all the details contained in the merger notification under preparation are sufficient, or for an advice on how the notification should be completed. This fact does not exclude the possibility for the Office to pronounce that the merger notification submitted to the Office is not complete.

VI. Procedural issues

22. Among the procedural issues which may be discussed in the framework of the pre-notification consultation is particularly an assessment whether the transaction is subject to the Office's review under the Act. The Office may assess this matter only when the merging parties submit sufficient information.

23. The merging parties may be also instructed by the Office about the possibility to refer the case from the Member State´s national competition authority to the European Commission or vice versa. This possibility is stipulated by the Council Regulation (EC) No. 139/2004, on the control of concentrations between undertakings[3], and on functioning of the referral of the cases. For this purpose the Office welcomes already in the pre-notification phase information as to whether the given transaction is a subject to the notification obligation in other EU Member States[4].

[3] Article 4, paragraph 4, Article 4, paragraph 5, Articles 9 and 22 of the Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

[4] Point 9.3 of the merger notification questionnaire which is an appendix of the decree of the Office No. 368/2001 Coll., stipulating details relating to the notification of a concentration of undertakings.