

Pursuant to Article 19 paragraph (4) of the Competition Act (Official Gazette, No 122/2003), the Government of the Republic of Croatia in its session held on 15 April 2004, adopted the following

## **REGULATION ON NOTIFICATION AND ASSESSMENT OF CONCENTRATIONS**

### **I GENERAL PROVISIONS**

#### *Subject Matter of the Regulation*

##### **Article 1**

This Regulation shall stipulate the undertakings obliged to submit a prior notification of concentration, the method of submittal, the content and form of the notification, the documentation and data which are to be enclosed to the notification, the form and content of the announcement on acquisition of shares or share capital falling within the normal activities of the banks, insurance companies and other financial institutions, and the assessment criteria of the compatibility of concentrations of undertakings in the proceedings carried out by the Competition Agency (hereinafter: the Agency) within the meaning of the provisions stipulated by the Competition Act (hereinafter: the Act).

#### *Scope of Application*

##### **Article 2**

The Regulation shall apply to all concentrations deemed to arise as regards Article 19 of the Act.

### **II OBLIGATORY NOTIFICATION**

#### *Notifying Party*

##### **Article 3**

(1) The parties to the concentration shall be obliged to submit the notification of the intended concentration of undertakings (hereinafter: notification), if the conditions laid down in Article 22 of the Act are fulfilled.

(2) The obligation to notify the Agency of the proposed concentration, shall depending on the legal form of the concentration fall on:

- a) the acquiring undertaking or the newly established undertaking, in the case of merger association of undertakings;
- b) the acquirer of the majority of shares or share capital or voting rights, in the case of acquisition of the majority of shares, share capital or voting rights;
- c) the controlling undertaking or the undertaking with decisive influence, in the case of acquiring control or decisive influence;
- d) all undertakings - participants in the joint venture, whereby they may notify jointly or appoint an undertaking from the joint venture as their joint representative, in the case of the creation of joint venture;

- e) the bidder, in the case of acquiring control or decisive influence on the basis of a public bid (particularly in the case of acquisition of the majority of shares, or share capital, or voting rights).

(3) In the cases not covered by paragraph (2) of this Article, the obligation to notify shall fall on all undertakings - parties to the concentration submitting a joint notification, or on their commonly appointed representative - party to the concentration.

#### *Burden of Proof*

##### Article 4

(1) The notifying party shall be obliged to collect and submit all relevant data, documentation and evidence necessary for the assessment of the compatibility of the notified concentration to the Agency within the meaning of the provisions of the Act and this Regulation.

#### *Time Limit for Notification*

##### Article 5

The parties to the concentration shall notify the Agency of the intended implementation of concentration in compliance with the provisions of this Regulation within the time limit set in Article 22 paragraph (2) of the Act.

### III THE FORM OF THE NOTIFICATION

#### *How to Notify-Form and Content*

##### Article 6

(1) The notification shall be submitted to the Agency in writing. The written notification shall be accompanied by both the electronic version of the notification and the supporting documentation.

(2) There is no prescribed notification form laid down for the notification.

(3) The notification shall be submitted on an A4 - sheet of paper.

(4) Font Arial 11 shall be used in the notification. The notifying party shall notify in the following way:

- a) all required data as stated in Article 11 and 12 of this Regulation shall be written on a separate sheet of paper, providing for the possibility of adding as many sheets as necessary for a comprehensive and complete presentation;
- b) the ordinal number and the exact name of each data, according to the sequence provided for in Article 11 and 12 of this Regulation, shall be entered clearly on the top of the page;
- c) following the ordinal number and the name of the data as described under item b) hereof, the notifying party shall:

- enter the data, i.e. give a comprehensive and complete description of the circumstances relating to the concentration in question;
  - state if the data fail to be relevant for the assessment of the concentration in question, indicating the reasons thereof;
  - in the cases laid down in Article 17 paragraph (2) of this Regulation, state when and where the data were required, and if they were not available, name the reasons and supply the Agency with the indication where the missing information may be obtained;
- d) following the text referring to particular information, the notifying party shall state documentation, evidence, analyses, diagrams and other documents illustrating or proving the listed statements, which are to be supplied in the supplement to the notification;
- e) as the case may be, the notifying party shall supply other information, which it finds may be of assistance to the Agency in the assessment procedure;
- f) at the end of the notification "Supporting documentation" shall be clearly entered as a heading on a separate sheet of paper, followed by the list of all supporting evidence, analyses and diagrams enclosed.

#### *Language of the Notification*

##### Article 7

The notification, supporting and other documentation shall be submitted in Croatian. If the original notification, the supporting documentation or other documentation is submitted in a foreign language, they are to be translated into Croatian by a certified translator. The notifying party shall deliver the certified translation enclosed to the original copy or a certified photocopy of the original document (in the original language).

#### *Number of Copies*

##### Article 8

(1) The notification and all supporting documentation shall be submitted in one copy respectively.

(2) The Agency may, as an exception, in particular cases, request for the original notification and its supporting documentation to be submitted accompanied by any number of photocopies of the notification and supporting documentation that do not need to be certified.

#### *Accuracy and Completeness of Data*

##### Article 9

The data stated in the notification must be true and complete.

## *Confidentiality of Data*

### Article 10

(1) Regarding the fact that the decisions of the Agency on the assessment of concentrations shall be published, it is the obligation of the notifying party to clearly and noticeably point out any data in the notification that may be considered confidential, i.e. where the provisions on official and business secrecy under Article 51 paragraph (2) of the Competition Act shall apply. The same shall apply to the supporting and other documents and evidence which are submitted to the Agency by the notifying party or other undertakings.

(2) It shall be considered that all data in the notification which have not been marked as an official secret as laid down in paragraph (1) of this Article, as well as all data in the notification which have been marked as secret or confidential within the meaning of paragraph (1) hereof, but for which the Agency has established that they had been previously published or otherwise divulged to the public, may be made public.

## IV CONTENT OF THE NOTIFICATION

### *Obligatory Content*

### Article 11

The notification of concentration shall contain the following data:

1. the name, address and the registered business activity of the notifying party;
2. the name, address and the registered business activity of all undertakings - parties to concentration;
3. the name and authority of the agent or representative, who represents the notifying party in submitting the notification;
4. the name, address, telephone and fax number and E-mail address of the contact person appointed by the notifying party for the contacts and cooperation with the Agency, if this person is different from the notifying person;
5. the detailed description of the legal form of the concentration;
6. the legal basis for the concentration (the name of the document, class number, the names of the parties engaged in the legal transaction in question, the place and date of the legal transaction), such as for example:
  - the merger (amalgamation) contract,
  - the merger contract (when an undertaking is absorbed by another one) or the corresponding decisions of the relevant bodies of the undertakings,
  - the contract on acquisition of shares or share capital;
  - the management contract,
  - the profit transfer agreement,
  - decisions on amendments on the statute, social contract or other acts that ensure the decisive influence to any of the parties,
  - the contract on the lease of property ensuring the decisive influence to any party,
  - the takeover public bid, or
  - the joint-venture agreement;
7. the list of principal annual financial reports for the preceding year (balance sheet, profit and loss account, cash-flow statement, statement on changes of

- shareholder's equity, accounting policies and notes to the annual accounts, for the insurance companies the value of total premiums paid) as well as other reports giving an insight into the financial state of the parties to the concentration which are to be enclosed to the notification;
8. the total annual turnover (operational revenues, financial revenues, extraordinary revenues) of the parties to the concentration after the deduction of the value added tax, other taxes directly relating to the turnover and discounts, within the meaning of Article 22 paragraph (4) of the Act, calculated separately for each party to the concentration:
    - worldwide,
    - in the Croatian market;
  9. the definition of the relevant markets in which the parties to the concentration and the controlled undertaking or the controlling undertakings operate, as well as the estimates of their market shares, before and after the concentration has been put into effect;
  10. the list and estimates of the market shares of the main competitors of the parties to the concentration in the relevant market;
  11. the structure of ownership of the shareholders or holders of share capital in the undertaking over which the control is acquired or decisive influence gained, before and after the concentration has been put into effect (expressed in percentage);
  12. the list of other undertakings in the relevant market in which the parties to the concentration solely or jointly hold 10% or more of the share capital, i.e. 10% or more voting rights, accompanied by a brief description of the prevailing business activity of the undertakings in question;
  13. the list of all undertakings in the relevant market in which the members of the management or the supervisory board of the parties to the concentration are at the same time the members of the management or the supervisory board, accompanied by a brief description of the prevailing business activity of the undertakings in question;
  14. the indication of other authorities competent for assessment of concentrations outside the territory of the Republic of Croatia which have been submitted the request for assessment of the relevant concentration or if there is an intention to do so;
  15. the detailed description of the distribution and retail network of the goods and/or services in the relevant market, accompanied by a separate description of the distribution and retail network used by the parties to the concentration (own, contractual or alike);
  16. the description of the realized or intended research and development investments of the parties to the concentration (the form and nature of the investment or research, their influence on the production and distribution of the goods and/or services in the relevant market, the amount of the investments in question realized or planned and alike);
  17. the description of the legitimate and economic reasons of the relevant concentration;
  18. the detailed argumentation of the resulting benefit for the consumers directly deriving from the implementation of concentration, particularly:
    - decrease in prices of goods and/or services,
    - increase in quality of goods and/or services,
    - innovative features introduced,
    - increase in the selection and the range of goods and/or services for

- consumers;
19. the signature of the authorised person responsible for the accuracy and authenticity of the information in the notification;
  20. the place and date of the submittal of the notification.

#### *Other Data in the Notification*

#### Article 12

Apart from the obligatory content of the notification laid down under Article 11 hereof, the Agency may request the submittal of other data that it considers relevant in the assessment of concentration, and in particular:

1. the number of employees in the undertakings - parties to the concentration, and the number of employees in all undertakings members of the group, the members of which take part in the concentration concerned, in the year preceding the year of the concentration;
2. the list of five main suppliers of any of the parties to the concentration, including the purchase value in the year preceding the year of the concentration;
3. the list of five main customers of any of the parties to the concentration, including the sales value in the year preceding the year of the concentration;
4. the figures on sales value and sales volume calculated in HRK, i.e. the number of units or other measure, realized in the sales of goods and/or services by the parties to the concentration in the relevant market in the year preceding the year of the concentration.

#### *Obligatory Supporting Documentation*

#### Article 13

Enclosed to the notification the notifying party shall provide particular documents and other written evidence, and particularly:

1. the excerpt from the commercial court register or other register supplying the evidence on the name, address and the business activity of the company - notifying party;
2. the excerpt from the commercial court register or other register supplying the evidence on the name, address and the business activity of all parties to the concentration;
3. a valid authorisation if the notification is submitted by the authorised person;
4. a copy of the original or certified photocopy of the legal basis for the concentration, enclosed to the certified translation in Croatian, such as any of the following:
  - the merger (amalgamation) contract,
  - the merger contract (when an undertaking is absorbed by another one) or the corresponding decisions of the relevant bodies of the undertakings,
  - the contract on acquisition of shares or share capital;
  - the management contract,
  - the profit transfer agreement,
  - decisions on amendments on the statute, social contract or other acts which ensure the decisive influence to any of the parties,
  - the contract on the lease of property ensuring the decisive influence to any of the parties;

- the takeover public bid, or
  - the joint-venture agreement;
5. the principal annual financial reports of the parties to the concentration for the financial year preceding the year of the implementation of concentration, consisting of the data on the total turnover of all the parties to the concentration realized in the sales of goods and/or services after the deduction of the value added tax, other taxes directly relating to the turnover and discounts:
    - worldwide, and
    - in the Croatian market;
  6. all available analyses, studies, presentations or other reports prepared for any member of the management, supervisory board or the chairman and/or members of the shareholders' meeting, dealing with the estimation and analysis of the concentration from the viewpoint of the market position, market conditions and the existence of any actual and potential competitors in the relevant market;
  7. the graphic presentation (diagram) of the organizational structure of the parties to the concentration and joint companies particularly giving an insight into:
    - the relations between the parties to the concentration and joint companies,
    - the shares held by the controlling companies in the share capital of the controlled companies, i.e. the shares held by the daughter companies in other daughter companies within the group (expressed in percentage);
  8. the report of the management giving the legal and economic basis for the concentration;
  9. the decisions of other authorities competent for assessment of concentrations outside the territory of the Republic of Croatia, which have been submitted the request for assessment of the concentration concerned, i.e. the evidence proving that such a request has been made.

#### *Other Supporting Documentation*

#### Article 14

Beside the supporting documentation indicated under Article 13 hereof, the Agency may request the submittal of other supplements containing the information which it considers relevant in the assessment of the notified concentration, particularly such as:

1. basic annual financial reports for the parties to the concentration in the period of three subsequent years preceding the year when the concentration was put into effect, accompanied by the data on the total turnover of all the parties to the concentration realized by the sales of goods and/or services after the deduction of the value added tax, other taxes directly relating to the turnover and discounts:
  - worldwide,
  - in the Croatian market;
2. the production and/or sales value and production and/or sales volume, calculated in HRK, i.e. the number of units or other measures, realized in the sales of goods and/or services by the parties to the concentration in the relevant market in the period of three subsequent years preceding the year when the concentration was put in effect.

V SEPARATE PROVISIONS STIPULATING THE ACQUISITION OF SHARES OR  
SHARE CAPITAL IN THE NORMAL COURSE OF BUSINESS OF BANKS,  
INSURANCE COMPANIES AND OTHER FINANCIAL INSTITUTIONS

*Form and Content of the Notice*

Article 15

- (1) Referring to the cases under Article 21 paragraph (1) of the Act, the banks, insurance companies and other financial institutions shall communicate to the Agency the acquisition of shares or share capital in other undertakings, carried out in their normal course of business which includes transactions and dealing with securities, for their own account or for the account of third parties (hereinafter: the notifying party).
- (2) The notice shall be submitted in writing.
- (3) The language of the notice and the number of copies shall be regulated in accordance with the provisions under Articles 7 and 8 of this Regulation relating to the notification of concentration.
- (4) The notice shall consist of the following data, in particular:
- a) the name, address of the notifying party;
  - b) the name, address and business activity, or the name and address of the person for the account of which the notifying party has acquired the shares or share capital;
  - c) the name, address and business activity of the undertaking whose shares or share capital the notifying party has acquired;
  - d) the structure of shares or the structure of share capital of the undertaking whose shares or share capital the notifying party has acquired (after the acquisition concerned);
  - e) the time limit foreseen by the notifying party to resell the acquired shares or share capital.
- (5) The notice shall be accompanied by:
- a) the statement of the notifying party confirming that it shall hold the acquired shares on a temporary basis with the view of reselling them;
  - b) the statement of the notifying party confirming that it shall not use the acquired shares or share capital in any way that could make it possible to influence the competitive behaviour of the undertaking, the shares or share capital of which it has acquired;
  - c) the statement of the notifying party confirming that it shall exercise the voting rights for the sole purpose of disposal of the whole undertaking, the shares or the share capital of which it has acquired, or the disposal of the part of the undertaking in question (in the case it exercises the voting rights);
  - d) the statement of the notifying party confirming that it shall neither exercise the voting rights originating from the acquired shares or share capital in any way that could prevent, restrict or distort the competition, nor undertake any operation with this objective.

## *Extension of Period*

### Article 16

- (1) The request for extension of period within the meaning of Article 21 paragraph (2) of the Act shall be submitted by the notifying party fifteen (15) days before the period indicated in the notice referred to under Article 15 paragraph (4), item e) of this Regulation, i.e. the period laid down under Article 21 paragraph (1) of the Act.
- (2) The request shall be submitted in writing. It shall contain:
  - a) the reasons why the transaction of shares or share capital has not been possible within the period set;
  - b) the period for which the period set should be extended to carry out the transaction in question, which cannot be extended for more than six (6) months.
- (3) The Agency shall pass a separate resolution on the request for the extension of the period.

## VI EXAMINATION OF THE NOTIFICATION

### *Examination of the Completeness of the Notification*

#### Article 17

- (1) After the Agency has received the notification of the proposed concentration it shall make sure, whether the notification has been submitted by the authorised person, whether it has been submitted in the adequate number of copies, whether it contains all original data and supporting documentation as regulated, and whether they have been submitted as originals, certified photocopies or certified translations in Croatian.
- (2) In the case that the notifying party for a justifiable reason and despite the efforts involved, fails to collect certain data or documents which have been stipulated by the provisions to constitute the obligatory content of the notification, it shall be stated so in writing in the appropriate part of the notification. These statements shall cover the following information:
  - a) who from and when the notifying party tried to collect the data concerned;
  - b) the reasons why the relevant data could not be collected;
  - c) where the Agency could collect the missing data.
- (3) In place of the missing data in the case described under paragraph (2) hereof, the Agency may request from the notifying party to supply in writing its own analyses and estimations relating to the missing data.
- (4) The notification of concentration consisting of the data laid down under Article 11 hereof and the supporting documentation as stipulated under Article 13 hereof, shall be considered a complete notification.

## *Receipt for the Notification*

### Article 18

- (1) As soon as the Agency establishes the completeness of the notification within the meaning of Article 17 paragraph (4) of this Regulation, it shall issue a special receipt to the notifying party thereof.
- (2) The receipt under paragraph (1) of this Article shall particularly contain:
- a) the class number, register number and the date of the receipt;
  - b) the name of the notifying party, i.e. the authorised person;
  - c) the names of the parties to the concentration;
  - d) the date of the submittal of the notification to the Agency;
  - e) the date when the notification was declared complete within the meaning of Article 17 paragraph (4) hereof;
  - f) the notice of the Agency that the date of the submittal of the notification within the meaning of Article 22 paragraph (3) of the Act shall stand for the prohibition of any further implementation of concentration for all the parties to the concentration, as long as the Agency has taken its final decision authorising it, or until the expiry of the period set out in Article 26 paragraph (1) and (3), also Article 56 paragraph (5) of the Act;
  - g) the statement declaring the notification complete;
  - h) the notice informing of the time limit that shall start within the meaning of Article 26 paragraph (1) of the Act on the date of the submittal of the notification, and of the fact that the concentration in question shall be deemed compatible, unless the Agency within 30 days following the submittal of the notification issues the procedural order on the initiation of the assessment proceedings of the concentration in question;
  - i) the signature of the authorised person who examined the notification.

## VII CRITERIA FOR ASSESSMENT THE COMPATIBILITY OF CONCENTRATIONS

### *Criteria*

### Article 19

In the course of the assessment of the compatibility of concentration the Agency shall pursuant to Article 25 paragraph (2) of the Act take into consideration all possible benefits and effects that may occur in the case of implementation of the notified concentration, as well as possible barriers to entry, and in particular:

- a) the structure of the relevant market;
- b) actual and potential competitors in the relevant market;
- c) supply and potential market supply;
- d) risks, technical, economic and legal conditions necessary to enter or to withdraw from the relevant market;
- e) possible effects of the concentration concerned on competition in the relevant market;
- f) market shares and market position, market and financial power, and business activities of the undertakings operating in the relevant market;

- g) internal and external advantages for the parties to the concentration in relation to their actual and potential competitors;
- h) possible changes in business operations and business plans of the parties to the concentration following the implementation of concentration;
- i) the effects of the concentration on other undertakings, especially relating to the consumer benefit, as well as other objectives and effects of the proposed concentration, such as in particular:
  - decrease in prices of goods and/or services;
  - lowering of transportation and/or distribution costs;
  - shorter distribution channels;
  - other benefits directly deriving from the implementation of concentration.

## VIII TRANSITIONAL AND FINAL PROVISIONS

### *Cessation of the Validity of the Ordinance on Keeping the Register on Concentrations*

#### Article 20

The Ordinance on Keeping the Register on Concentrations (Official Gazette No 30/97) shall cease to be in effect on the day of entry into force of this Regulation.

#### *Entry into Force*

#### Article 21

This Regulation shall enter into force on the eighth day following the day of publication in the Official Gazette.

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Zagreb, 15 April 2004

Prime Minister

Ivo Sanader