

Pursuant to Article 63(4) of the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/09 and 95/13) and Article 42(1) of the Law on Government (“Official Gazette of the RS”, no. 55/05, 71/05-corr., 101/07, 65/08, 16/11, 68/12 – CC, 72/12, 7/14 – CC and 44/14),

The Government enacts the following

## **REGULATION**

### **on the content and manner of submitting notification on concentration**

“Official Gazette of the RS”, no. 5, January 25, 2016

#### Article 1

This Regulation shall more closely regulate the content and manner of submitting notification on concentration.

#### Article 2

Notification on concentration shall consist of:

- 1) business name, head office address and description of the scope of operations of the applicant and other participants in concentration, in addition to the excerpt from register in which these data are registered;
- 2) business name, address, telephone number, facsimile number, e-mail address and function of applicant’s representative or proxy;
- 3) if a contact person is selected, business name, address, telephone number, facsimile number, e-mail address and function of the said person, in addition to forwarding address for submission of all relevant documentation and acts of the Commission for Protection of Competition (hereinafter: the Commission), whereby the contact person must be authorized for the receipt of such acts;
- 4) business name, address, telephone number, facsimile number, e-mail address and original power of attorney if notification is submitted via an attorney, and in the case of multiple attorneys, authorization for the receipt of Commission’s documentation and acts shall be determined;
- 5) graphic display (diagram) of a group and/or list of affiliated concentration participants and affiliated companies structure prior to implementation of concentration, clearly and specifically demonstrating the following:

- (1) connections between concentration participants and affiliated companies,
- (2) shares that control (holding) companies have in affiliated (subordinated) companies equities, i.e. shares that subordinated companies have in other subordinated companies within the group of affiliated undertakings (expressed in percentage);
- 6) list of other undertakings registered in the Republic of Serbia that are not considered to be affiliated undertakings in regards to the applicant, in which concentration participants have individually or jointly 10% or more of equity shares, i.e. 10% or more of voting shares, with a brief description of those undertakings core activity;
- 7) list of all undertakings registered in the Republic of Serbia that are not considered to be affiliated undertakings in regards to the applicant, in which concentration participants managing or supervisory board members are concurrently managing or supervisory board members of the said undertakings, with a brief description of those undertakings core activity;
- 8) ownership structure and forms of control (individual or joint control) of concentration participants, subject to the acquisition or change of controls, prior and subsequent to implementation of concentration;
- 9) detailed description of the form of concentration and expected deadline for implementation of concentration;
- 10) copy of the act on concentration, and in particular:
  - (1) act on execution or intent to execute some form of statutory changes,
  - (2) act on acquisition or intent to acquire a direct or indirect control, or
  - (3) act on implementation or intent to implement a joint venture, or to acquire a joint control over existing undertaking;
- 11) financial statements of concentration participants for the accounting year preceding the year of notification on concentration;
- 12) total annual revenue of each concentration participant generated on the international market and in the Republic of Serbia (individually presented for international and market of the Republic of Serbia), VAT and other taxes free that are directly related to concentration participants, for a period of three years preceding the year of notification on concentration, and for each year individually;
- 13) list of top five products, i.e. service suppliers on the relevant market of each concentration participant, including the value (in EUR and RSD currency) and volume of procurement for a

period of three years preceding the year of notification on concentration, and for each year individually;

14) list of top five products, i.e. service buyers on the relevant market of each concentration participant, including the value (in EUR and RSD currency) and volume of sales for a period of three years preceding the year of notification on concentration, and for each year individually;

15) proposal for defining the relevant product market in which concentration participants are active, in accordance with regulation more closely stipulating the criteria in defining relevant market;

16) for each relevant market, the following data presented separately for three years preceding the notification on concentration:

(1) for each concentration participant: actual activity, main active outlets, main brands, names of main products, i.e. main protected trademarks utilized on each of those markets,

(2) estimate of total market size in terms of production and sales achieved value (in EUR and RSD currency) and their volume (in quantitative terms), whereby the sources used for calculation of total market size shall be given,

(3) volume and value of sales (in EUR and RSD currency), in addition to market share estimate for each concentration participant,

(4) market share estimate of competitors (including importers), per value and volume, that have a market share of minimum 5% on the relevant market in the Republic of Serbia, subject to a review, whereby the sources used for calculation of mentioned market shares shall be given,

(5) if any concentration participant is active in the field of production, the estimate of total production capacity at the level of the Republic of Serbia and the data on specified share capacity related to each concentration participant, percentage of capacity utilization for each concentration participant, in addition to the production line location and capacity in the relevant market, presented for each concentration participant individually.

17) detail description of products, i.e. services distribution and retail network organization on the relevant market in the Republic of Serbia, containing specific description of the network for distribution and retail utilized by concentration participants (own, contracted, etc.); description of existing aftermarkets (for example, maintenance and services) and their importance in such markets, containing specific description of concentration participants aftermarkets; data on the extent to which listed services are provided by third parties, i.e. undertakings belonging to the same group as concentration participants.

18) brief description of the demand structure for each relevant market, specifically listing the data on markets in reference to the formation, expansion, maturity and weakening of markets, as

well as forecasting the levels of demand grow;

19) available data on the entry and exit from the relevant market, and in particular:

(1) whether significant entries on the relevant market occurred during last three years; if that was the case, such undertakings shall be listed and the estimate of current market share for each of them shall be submitted,

(2) as per applicant's opinion, information on undertakings, including those currently exclusively operating outside the market of the Republic of Serbia, that could enter some of the covered markets,

(3) whether relevant market exit occurred during last three years; if that was the case, the undertaking that exited the market shall be listed;

20) if applicant suggests the Commission to take into particular consideration the importance of research and development for long-term competitiveness of relevant market participants – explanation of the nature of research and development activities of concentration participants in covered markets, whereby, as per need, the following shall also be taken into consideration:

(1) trends and intensity of the research and development on the relevant market, particularly for concentration participants,

(2) direction of technological development for relevant market in corresponding period (including frequency of new products, i.e. services introduction, new products, i.e. services development, manufacturing processes, systems of distribution, etc.),

(3) research plans and priorities of concentration participants for the following three years;

21) business names of associations where the concentration participants are members;

22) if applicant suggests the Commission to take into particular consideration whether the increase of efficiency due to the implementation of concentration shall enhance the ability and encourage undertaking, a result of implementation of concentration, to operate in such a manner encouraging the competition for the benefit of customers – the description of effects on efficiency of concentration participants' operations and expected benefits forecasted by the concentration participants to be achieved as a result of implementing concentration on each relevant market, both for concentration participants and customers, including reducing costs, lowering products, i.e. services prices, increasing products, i.e. services quality, introducing innovations, increasing and expanding products, i.e. services selection;

23) in the case of a joint venture caused concentration, the statement on whether holding companies shall keep the current level of their activities on the market in which the joint venture company operates as well, or on the estimate that the scope will be reduced or increased, in addition to the estimate on joint venture company's operations impact on holding company's

revenues;

24) information on whether the notification is submitted to competition authorities in other countries and/or the European Commission, i.e. information on the intent to submit such notification.

Submission of data from Paragraph 1, Item 20 and 22 of this Article is voluntary and does not represent a mandatory content of notification on concentration, while the Commission can request from a concentration participant to subsequently submit such data if they are found important for investigation of concentration effects on competition and estimate on the permissibility of concentration.

In addition to data and documentation from Paragraph 1 of this Article, the applicant can also submit other data and documentation considered potentially important for an estimate of notification on concentration.

Following Commission's request, the applicant is obliged to submit necessary data for additional explanation or specification of data submitted in accordance with this Article.

### Article 3

Notification on concertation in summary form consists of:

- 1) business name, head office address and description of the scope of operations of the applicant and other participants in concentration, in addition to the excerpt from register in which these data are registered;
- 2) business name, address, telephone number, facsimile number, e-mail address and function of applicant's representative or proxy;
- 3) if a contact person is selected, business name, address, telephone number, facsimile number, e-mail address and function of the said person, in addition to forwarding address for submission of all relevant documentation and acts of the Commission, whereby the contact person must be authorized for the receipt of such acts;
- 4) business name, address, telephone number, facsimile number, e-mail address and original power of attorney if notification is submitted via an attorney, and in the case of multiple attorneys, authorization for the receipt of Commission's documentation and acts shall be determined;
- 5) graphic display (diagram) of a group and/or list of concentration participants structure (group's holding, regardless of headquarters, in addition to affiliated participants in the Republic of Serbia) prior to implementation of concertation;
- 6) detailed description of the form of concentration and anticipated deadline for implementation

of concentration;

7) copy of the act on concentration, and in particular:

(1) act on execution or intent to execute some form of statutory changes,

(2) act on acquisition or intent to acquire a direct or indirect control, or

(3) act on implementation or intention to implement a joint venture, or to acquire a joint control over existing undertaking;

8) financial statements of concentration participants for the accounting year preceding the year of notification on concentration;

9) total annual revenue of each concentration participant generated on the international market and in the Republic of Serbia (individually presented for international and market of the Republic of Serbia), VAT and other taxes free that are directly related to concentration participants, for the year preceding the notification on concentration;

10) list of top five products i.e. service suppliers on the relevant market of each concentration participant in the Republic of Serbia, including the value of procurement for the year preceding the notification on concentration;

11) list of top five products, i.e. service buyers on the relevant market of each concentration participant in the Republic of Serbia, including the value of sales for the year preceding the notification on concentration;

12) proposal for defining the relevant product market in which concentration participants are active, in accordance with special regulation more closely stipulating the criteria in defining relevant market;

13) for each relevant market, the following data for the year preceding the notification on concentration:

(1) for each concentration participant: actual activity, main active outlets, main brands, names of main products, i.e. main protected trademarks used on each of those markets,

(2) estimate of total market size in terms of production and sales achieved value (in EUR and RSD currency) and their volume (in quantitative terms) in the Republic of Serbia, whereby the sources used for calculation of total market size shall be given,

(3) volume and value of sales (in EUR and RSD currency), in addition to market share estimate for each concentration participant in the Republic of Serbia,

(4) market share estimate of competitors (including importers), per value and volume, that have a market share of minimum 5% on the relevant market in the Republic of Serbia, subject to a

review, whereby the sources used for calculation of mentioned market shares shall be given,

14) detail description of products, i.e. services distribution and retail network organization on the relevant market in the Republic of Serbia, containing specific description of the network for distribution and retail utilized by concentration participants (own, contracted, etc.); description of existing aftermarkets (for example, maintenance and services) and their importance in such markets, containing specific description of concentration participants aftermarkets; data on the extent to which listed services are provided by third parties, i.e. undertakings belonging to the same group as concentration participants.

15) in the case of a joint venture caused concentration, the statement on whether holding companies shall keep the current level of their activities on the market in which the joint venture company operates as well, or on the estimate that the scope will be reduced or increased, in addition to the estimate on joint venture company's operations impact on holding company's revenues;

Following Commission's request, the applicant is obliged to submit necessary data for additional explanation or specification of data submitted in accordance with this Article.

#### Article 4

Notification on concentration from Articles 2 and 3 of this Regulation shall be submitted in the paper of A4 format and in e-version.

The applicant shall be obliged to fulfill the notification in the following manner:

1) in addition to notification, a short description of notified concentration shall be submitted, listing the reasons for its implementation;

2) data listed in Article 2 and 3 of this Regulation shall be entered on a separate sheet, by listing the number and the exact title of each separate group of data, according to the order in which these data are stipulated. As per possibility, as many sheets as necessary can be added for presenting a correct and complete overview, interpretation or explanation of requested data; In the case of unavailability to obtain some of the requested data, it shall be stated when and from whom such data could not have been obtained by the applicant, in addition to the reasoning for such an event. All indications made by the applicant shall be evidenced by proofs, analysis, graphs, diagrams and other documentation;

3) each separate sheet shall be initiated by applicant's proxy or attorney, i.e. the applicant, if the applicant is a natural person without an attorney;

4) as appendix to the notification and on a separate sheet shall be given the list of all evidences, analysis, graphs, diagrams attached to the notification, signed by applicant's proxy or attorney, i.e. the applicant, if the applicant is a natural person without an attorney, listing the place and

time of the submission of notification.

#### Article 5

Notification on concentration from Articles 2 and 3 of this Regulation shall be composed in Serbian language and submitted in one copy. Documents attached to the notification shall be submitted as copies.

If some necessary document is originally in a foreign language, the applicant shall be obliged to submit the original document's copy with authenticated translation to Serbian language.

The applicant shall be held liable for the accuracy and completeness of data contained in the notification.

#### Article 6

Notification on concertation shall be submitted in summary form in manner prescribed in Articles 4 and 5 of this Regulation:

1) if two or more undertakings merge, or one or more undertakings acquire individual or joint control over other undertaking or its part, conditioned that no participant in concentration performs operations on the same relevant products market and relevant geographic market, or on relevant products market on which any other concentration participant operates in different phases of production and trade cycle;

2) if two or more undertakings merge, or one or more undertakings acquire individual or joint control over other undertaking or its share, and following criteria are fulfilled:

(1) joint market share of all concentration participants operating on the same relevant products market and relevant geographic market (horizontal relation), is less than 20%,

(2) individual or joint market share of all concentration participants on the relevant products market and relevant geographic market on which any other concentration participant operates that is in different phases of production and trade cycle, is less than 30%;

3) if applicant acquires the individual control in case of undertaking over which it already has a joint control;

4) if the joint market share of all concentration participants that are in horizontal relation is less than 40%, whereby the change (delta) of Herfindahl-Hirschman Index, the result of concentration, is less than 150.

The Herfindahl-Hirschman Index (hereinafter: the HH Index) represents a degree of concentration on the relevant market and represents the sum of the squares of individual shares of all undertakings on the relevant market. The change (delta) of HH Index represents a double

product of concentration participants' market shares, i.e. the change in the value of HH Index following the implementation of concentration against its value prior to the implementation of concentration.

#### Article 7

In the case when notification on concentration in summary form cannot be submitted in a manner as prescribed in Article 6 of this Regulation, the applicant is obliged to, in additional period, submit documentation pursuant to Article 2 of this Regulation.

#### Article 8

In the case when notification on concentration in summary form can be submitted in a manner as prescribed in Article 6 of this Regulation, and circumstances of the case point to the failure to fulfill conditions for the permissibility of concentration, the applicant shall submit documentation pursuant to Article 2 of this Regulation.

- 1) in the absence of Commission's practice of defining specific relevant market;
- 2) when is needed to define relevant market or determine market shares of concentration participants and their competitors in the emerging markets;
- 3) when concentration participant just enters or could potentially enter the market;
- 4) when relevant market is highly concentrated ( $HH\ Index \geq 2000$ ), and change ( $\Delta$ ) of HH Index  $\geq 150$ ;
- 5) when in the case of a joint venture occurs a change implying the move from joint to individual control in a manner where the joint venture is integrated into a group, i.e. the network of an undertaking that has gained the individual control, thus removing previous limitations that were the consequence of joint venture members' various interests, implying strengthening of undertaking's strategic position that has gained the individual control, as well as in the case when the Commission did not investigate previous acquisition of a joint control.

In the case when applicant explicitly requests an assessment of limitations that are necessary for the implementation of concentration and are directly related to one, the applicant shall submit a notification in accordance with Article 2 of this Regulation.

#### Article 9

In reference to the protection of business and other data contained in the notification on concentration, the provisions of law regulating protection of competition shall be implemented.

#### Article 10

As from the date this Regulation comes into force, the Regulation on the content and manner of

submitting notification on concentration (“Official Gazette of the RS”, no. 89/09) shall cease to apply.

Article 11

This Regulation shall enter into force on the eighth day from the date of publication in the “Official Gazette of the Republic of Serbia”.

05 number 110-14183/2015

In Belgrade, January 23, 2016

**The Government**

Prime Minister,

**Aleksandar Vučić**, sgd.