

**POSITION OF THE COMMISSION FOR PROTECTION OF COMPETITION ON THE
APPLICATION OF ARTICLE 61 OF THE LAW ON PROTECTION OF
COMPETITION**

Obligation to notify concentration

Article 61

Concentrations are to be notified to the Commission if:

- 1) the aggregate worldwide annual turnover of all the parties to the concentration in the preceding financial year exceeds 100 million euro, provided that the turnover of at least one party to the concentration on the market of the Republic of Serbia exceeds ten million euro;*
- 2) the aggregate domestic annual turnover of at least two parties to the concentration in the preceding financial year exceeds 20 million euro, provided that the turnover of each of at least two parties to the concentration on the market of the Republic of Serbia exceeds one million euro in the same period.*

When calculating the aggregate annual turnover referred to in paragraph 1 hereof, the turnover generated by participating undertakings in a reciprocal exchange shall not be taken into account.

Concentrations implemented through a takeover bid within the meaning of regulation governing takeover of joint stock companies must be notified even if the requirements referred to in paragraph 1 hereof are not met.

Parties to the concentration

In case of concentration referred to in Article 17, paragraph 1, item 1) of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13 – hereinafter, the Law), all undertakings involved in status change are considered to be the parties to the concentration.

In case of concentration referred to in Article 17, paragraph 1, item 2) of the Law, the parties to the concentration are considered to be an undertaking acquiring direct or indirect control (acquirer of control or notifying party under Article 63, paragraph 3 of the Law) and an undertaking or a part of an undertaking over which the control is acquired. In reference to the application of said article or establishment of the obligation to notify concentration, the acquirer of control is the entire group of companies within which the notifying party operates and to which it belongs within the meaning of Article 5 of the Law.

The acquired entity may be a group of companies (target group) or target company (undertaking over which the control is acquired) or target operations (a part of an undertaking over which the control is acquired). The seller is not a party to the concentration unless it retains joint control.

In case of concentration referred to in Article 17, paragraph 1, item 3) of the Law, the parties to the concentration are considered to be all undertakings acquiring joint control and an undertaking or a part of an undertaking over which the control is acquired. All undertakings taking part in a joint venture to create a new undertaking are considered to be the parties to the concentration (each notifying party or founder of a new joint venture company).

In case of concentration referred to in Article 17, paragraph 2 of the Law, the parties to the concentration are considered to be an acquiring undertaking and undertakings or parts of an undertaking over which the control is acquired in all individual transactions/concentrations between the same undertakings.

Turnovers as financial thresholds that trigger a notification requirement

The aggregate annual turnover represents the sum of operating, financial and other income before taxes for the financial year preceding the year in which the proceedings under Article 7 of the Law is instituted¹.

In cases of affiliated undertakings within the meaning of Article 5 of the Law, the aggregate annual turnover is calculated as the sum of the combined total turnovers (consolidated income) of undertakings considered affiliated and which belong to the same group as the notifying party (acquirer of control).

Turnovers of the target group of companies (group of affiliated undertakings over which the control is acquired) or target company (undertaking over which the control is acquired) or target operations as the object of control, are to be calculated as turnovers of that target group only (consolidated income) or that company or target operations only.

Where the control over a part of an undertaking is acquired by implementing the concentration, the combined aggregate annual turnover of the parties to the concentration is to be calculated as the sum of the turnover of the acquirer of control (taking account of the total annual turnovers of all undertakings to which the acquirer of control is considered affiliated within the meaning of Article 5 of the Law) and turnover of only that part of an undertaking over which the control is acquired (i.e. target operations as the object of control).

The aggregate annual worldwide turnover of all the parties to the concentration in the preceding financial year (exceeding 100 million euro) within the meaning of Article 61, paragraph 1, item 1) of the Law, also contains (implies) the turnover achieved on the market of the Republic of Serbia, regardless of whether a domestic or foreign company (group) acts as the notifying party. The second cumulatively set requirement referred to in Article 61, paragraph 1, item 1) of the Law is that the turnover of least one party to the concentration (any of the parties to the concentration) on the market of the Republic of Serbia (through registered subsidiaries or placement of goods and/or services on the market of the Republic of Serbia) exceeds ten million euro.

¹ In this text, the term 'turnover' refers to aggregate annual turnover as described in this paragraph.

When calculating the aggregate annual turnover, the turnover generated by the parties to the concentration in a reciprocal exchange will not be taken into account.

When establishing the existence of the obligation to notify concentration, the Commission will apply items 1) and 2) of paragraph 1, Article 61 of the Law as alternative thresholds.