

Rules on the notification of mergers

Chapter I **Scope and definition of merger**

Article 1

The provisions of these Rules and annexes apply to notifications to the Competition Authority concerning mergers of undertakings falling within the scope of Article 17 of the Competition Act No. 44/2005.

Article 2

A *merger* according to the Competition Act is regarded as having taken place when:

- a. Two or more previously independent undertakings are combined;
- b. An undertaking takes over another undertaking;
- c. Owners controlling one or more undertakings acquire direct or indirect control of one or more additional undertakings; or
- d. Undertakings create a joint venture that performs on a lasting basis all the functions of an autonomous economic entity which does not give rise to coordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture.

Article 3

Control according to these rules shall mean control which confers on a party the possibility of exerting a decisive influence on the operation and management of an undertaking, either separately or in combination with others, whether this influence stems from the fact that the party can:

- a. Influence the appointment of the board, voting or decisions of the undertaking; or
- b. Use or dispose of the assets or part of the assets of the undertaking.

CHAPTER II

Notification of merger

Article 4

Notification of the Competition Authority is required in the case of mergers meeting the following conditions:

- a. The combined turnover of the undertakings in question in Iceland is ISK 1 billion or more; and
- b. At least two of the undertakings participating in the merger have a minimum annual turnover of ISK 50 million each in Iceland.

Turnover pursuant to Paragraph 1 shall include the turnover of the parent undertakings and subsidiaries of the undertakings involved in the merger, undertakings

within the same group of undertakings, and the turnover of undertakings directly controlled by parties to the merger.

Turnover pursuant to this Article shall be determined based on the preceding fiscal year, or, as applicable, the 12 months preceding the merger,

Article 5

The Competition Authority should be notified of a merger falling within the scope of Article 4 hereof no later than one week after the conclusion of a merger agreement, or the announcement of a public takeover bid, or the acquisition of a controlling interest in an undertaking. The deadline is counted from the time that any of the above events has occurred.

In the event of a merger in the understanding of Article 2(a) hereof, or the obtainment of joint control in the understanding of Article 2(c) hereof, the parties to the merger, or the parties obtaining control, as applicable, shall jointly prepare the notification of the merger.

If an undertaking acquires a controlling share in another undertaking, the undertaking initiating the takeover shall prepare the notice of the merger. In the event of a takeover bid for an undertaking, the bidder shall prepare the notice.

Article 6

The notice of a merger shall contain the information, including documents, requested in the information file in the Annex hereto (merger file). The information shall be correct and adequate. The written notice shall be delivered to the Competition Authority.

The Competition Authority shall promptly send to the parties in question written confirmation that the notice has been delivered to the Authority.

Article 7

The Competition Authority may exempt the parties from the obligation to submit certain information requested in the Annex if the Authority is of the opinion that under the circumstances the information is not necessary for the investigation of the merger in question.

A reasoned request for exemption pursuant to Paragraph 1 shall be submitted before the obligation to notify pursuant to Article 5 hereof is activated.

Article 8

The thirty-day time limit granted by the Competition Authority pursuant to Paragraph 4 of Article 17 of the Competition Act begins when the Authority receives a notification of a merger, subject to Paragraphs 2, 3 and 3 of this Article.

If any information, including documents, attached to the notice is inadequate in material respects, the Competition Authority shall promptly notify the undertakings involved in writing and provide a reasonable deadline to rectify. In such an event the time limit pursuant to Paragraph 4 of Article 17 of the Competition Act begins on the day that adequate information is received.

False or misleading information is treated as inadequate information.

In the event of material changes in the basis of the information supplied in the notice, and the undertakings in question are aware of the changes, the undertakings shall promptly notify the Competition Authority. In cases where such material changes may have a significant impact on the assessment of a merger, the deadline pursuant to Paragraph 4 of Article 17 of the Competition Act is counted from the day that the information concerning the changes is received by the Competition Authority. The Competition Authority shall promptly notify the undertakings in question of this fact in writing.

CHAPTER V

Sanctions and entry into effect

Article 9

Violations of these rules are subject to sanctions pursuant to Chapter IX of the Competition Act No. 44/2005.

Article 10

These Rules are adopted as authorised in Paragraph 3 of Article 17 and paragraph 2 of Article 8 of the Competition Act No. 44/2005 and shall enter into force on their publication. At the same time, Rules No. 930/2001 are repealed.

Reykjavík x September 2005

Gunnar Páll Pálsson

ANNEX

INFORMATION FILE TO BE INCLUDED IN NOTICES TO THE COMPETITION AUTHORITY CONCERNING MERGERS OF UNDERTAKINGS (MERGER FILE)

INTRODUCTION

A. Purpose of this file

This file specifies the information to be provided by undertakings when notifying the Competition Authority of a merger of undertakings.

B. The importance of correct and adequate information

All information required in this file shall be correct and adequate to the best knowledge of the submitting party. All the parties submitting the notice are responsible for the correctness of the information it contains.

Pursuant to Article 42 of the Competition Act, a party submitting false information to the competition authorities shall be subject to sanctions pursuant to Chapter XV of the Penal Code.

C. Confidentiality and obligation to notify

According to Article 34 of the Competition Act, persons acting on behalf of administrative authorities in implementing the Competition Act are prohibited from disclosing information on confidential matters obtained by them in the course of their functions. This confidentiality shall remain in force even if employment is terminated.

As regards the authorisation of the Competition Authority to call for information from undertakings in the course of investigations of mergers, reference is made to Paragraph 3 of Article 17 and Article 19 of the Competition Act.

If there is reason to believe that the publication of the requested information, or its disclosure to other parties, may prejudice the interests of the party in question, such information shall be sent separately and each document shall be clearly labelled “Confidential”. The reasons shall also be specified as to why the information should not be disclosed or published.

When two or more undertakings jointly send in a notice of merger, they are permitted to send business secrets separately in a sealed envelope and refer to them in the notice as annexes.

D. Definitions and instructions for filling out this form

Affected market. In Chapter 6 of this file it is requested that the parties to the merger define the relevant product markets and, furthermore, that they specify which of the relevant markets are likely to be affected by the merger. This definition of the affected markets forms the basis for many of the questions in the file that need to be answered. The term “affected markets” in the file refers to the markets defined by the parties to the merger. This term may refer to the relevant markets for products or services.

Year: All references to “year” in this file refer to the calendar year, except as otherwise specified. All information required in the form shall apply to the preceding calendar year, except as otherwise specified.

Amounts shall be supplied in ISK million to one decimal point if another presentation is not requested

Ratios shall be presented to one decimal point unless otherwise indicated.

CHAPTER 1

Basic Information

1.1. Information on nature of merger
Specify for each party:

- 1.1.1. Name and postal address of undertaking;
- 1.1.2. Nature of undertaking's economic operation;
- 1.1.3. Contact (name, postal address, telephone number, fax number and/or e-mail address, together with position).

CHAPTER 2

Information concerning the merger

- 2.1. Precise details of the background of the merger.
- 2.2. Precise details of the objectives of the merger.
- 2.3. Describe briefly the nature of the merger. In this context, specify:
 - a) The legal procedure of the merger, e.g. whether the proposed merger is a complete merger by law and whether the parties will enter undivided into the merger;
 - b) Brief account of the economic and financial structure of the merged undertaking;
 - c) Proposed or anticipated dates of important stages leading up to the final merger;
 - d) The type of ownership or control to be anticipated following the merger;
 - e) Whether any of the parties has been the recipient of state aid¹ and the nature and extent of the aid.
- 2.4. Specify the sectors relevant to the merger.
- 2.5. For each relevant undertaking² the following information should be provided for the preceding fiscal year.
 - a) Information on turnover in Iceland;
 - b) Information on turnover in overseas markets.

CHAPTER 3

Ownership and control³

¹ See Paragraph 1 of Article 61 of the EEA Agreement.

² “Relevant undertaking” refers to the parties to the merger, their parent companies and subsidiaries, undertakings within the same group, and undertakings over which the parties to the merger have direct or indirect control, cf. Article 4 of the Rules on the Notification of mergers and Paragraph 2 of Article 17 of the Competition Act.

³ See definition of *control* in Article 2 of the Rules on the Notification of Mergers, cf. also Article 4 of the Competition Act.

For each party to the merger, all undertakings within the same group of undertakings shall be specified.

The following should be included:

- 3.1. All undertakings or individuals controlling the parties to the merger by direct or indirect means;
- 3.2. All undertakings which are engaged in commercial activities in the affected market⁴ and which are directly or indirectly controlled by:
 - a) The parties to the merger;
 - b) Any other undertaking specified in Section 3.1.

For each specified undertaking, specify the nature and form of the control, e.g. whether based on ownership, agreements and/or otherwise.

The information in this section may be explained graphically by means of organisation charts or illustrations to show the structure of the ownership and control in the undertakings.

Furthermore, information shall be provided on:

- 3.3. Formal and informal business co-operation which the parties to the merger may have with undertakings operating in the same or a related market, together with copies of all agreements and other data which may relate to such co-operation.

CHAPTER 4

Personal and financial relations and previous mergers

For parties involved in the merger, and for each undertaking or individual referred to in the responses to questions in Chapter 3:

- 4.1. Specify all other undertakings engaged in commercial activities in the affected markets (see definition of affected markets in Chapter 6) where the undertakings, or individuals, in groups of undertakings control, alone or jointly, a minimum of 10% of the votes, issued shares or other securities.

In each instance, the percentage involved shall be specified as well as its owners;

- 4.2. Specify, for each undertaking, the persons serving on the board (executive board or board of directors) and also serving on the board of another undertaking operating commercial activities in the affected markets;

In each instance, the name of the other undertaking and the position of the person in question within the undertaking shall be specified;

⁴ See definition of *affected markets* in Chapter 6 of this file.

- 4.3. Provide further information on the taking over by the above groups of undertakings (Chapter 3) in the preceding three years of undertakings engaged in commercial activities in affected markets, as defined in Chapter 6.

Such information may be explained by graphic means using organisation charts or illustrations for clarification.

CHAPTER 5

Attached documents

In addition to those specified elsewhere in this file, the parties to a merger shall include the following documents:

- 5.1. Copies of the final or most recent version of all documents relating to the merger;
- 5.2. Copies of the annual financial reports of the undertakings involved in the merger for the two preceding years;
- 5.3. When at least one affected market is specified:
copies of analyses, reports, studies, surveys, memoranda etc. which are in any way connected with the merger;
- 5.4. Copies of analyses, reports, studies, surveys, memoranda etc. prepared or commissioned by each of the parties to the merger in the two preceding years regarding their potential plans to begin or increase commercial activities in markets where they have had little or no previous commercial activities.

CHAPTER 6

Definitions of markets

Relevant markets for goods or services and geographical markets are used as a basis for assessing the market power of the new units created by the merger.

The parties to a merger are required to provide the requested information based on the following definitions:

I. Relevant product markets

Relevant product market refers to a market for products and/or services which consumers regard as substitute products or substitute services by reason of their characteristics, price and intended use. Market refers to the area within which products and their substitute products, and/or services and their substitute services, are sold, cf. Article 4 of the Competition Act. Substitute products and substitute services shall mean products or services which may, completely or to a significant extent, take the place of other products or services.

Among the factors which are significant for the assessment of a relevant market is an analysis of why the relevant products or services pertain to this market, and why other products and services do not pursuant to the definition above and with reference, *inter*

alia, to whether the products or services can serve as substitute products or substitute services, competitive position, price, price fluctuations resulting from demand, or other factors which are significant for the definition of the market.

II. *Relevant geographical markets*

A relevant geographical market comprises the area in which the undertakings concerned are involved in the supply of and/or demand for the relevant products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring regions, principally because the conditions of competition are clearly different in those regions.

Among the factors which are significant for the assessment of a relevant geographical market are the characteristics of the relevant products or services, potential barriers to access or consumer preferences, clear differences in the market shares of undertakings in the region and neighbouring regions or a significant price difference.

III. *Affected markets*

When responding to questions in this file the relevant markets for goods in Iceland or in the defined relevant region shall be regarded as affected markets

- a) If two or more undertakings engaged in a merger conduct their operations in the same market for goods and their merger would result in a 15% joint market share or more. This is known as a horizontal relationship;
- b) If two or more undertakings participating in a merger are engaged in commercial activities in an upstream or downstream market for goods where one of the parties is engaged in commercial activities and the market share of each of them, or their combined market share, in any area amounts to 25% or more, without regard to whether a supplier/customer relationship exists between the merging undertakings or not. This is known as a vertical relationship.

On the basis of the above information and market share reference limits the following information should be supplied:

- 6.1. Specify and describe each affected market, in the understanding of Section III.

IV. *Markets which are related to affected markets in the understanding of Section III*

- 6.2. Describe the relevant product or service markets and geographical markets where one or more merging companies are engaged in commercial activities in markets to which the merger is relevant and which are related to affected market(s) (upstream or downstream markets or neighbouring horizontal markets), but which are not affected markets in the understanding of Section III.

V. *Markets which are not affected*

- 6.3. When the parties to the merger operate in markets which are not affected in the understanding of Section III, the product and regional characteristics of those markets should be described.

Note that a description and information should be provided on all markets in which the parties to the merger operate pursuant to Sections III, IV or V above.

CHAPTER 7

Information on affected markets

For each relevant product market and for each of the preceding three fiscal years and

- a) for Iceland,
- b) and for the relevant geographical market, if other than Iceland in the opinion of the parties to the merger,

information should be provided on:

- 7.1. The estimated aggregate size of the market in amounts, e.g. based on revenues or sales value and volume (in number of units). Explain the criteria underlying these calculations and submit documents confirming them, if possible;
- 7.2. Market share in amounts, percentages and volume for each undertaking engaged in the merger, based on the same criteria as those specified in Section 7.1;
- 7.3. Estimated market share (in amounts, percentages and volume) of all the competitors controlling a minimum of 10% of the market under investigation. Submit documents in confirmation, if possible, and include the names of these competitors;
- 7.4. Estimate of total value and total volume and origin of imports, specifying:
 - a) The share of the groups of undertakings to which the merging parties pertain in such imports;
 - b) Assessment of the impact of quotas, tariffs or trade barriers other than tariffs on such imports;
 - c) Assessment of the impact of shipping costs and other costs on such imports.
- 7.5. How the undertakings involved in the merger produce and sell products and services, e.g. whether the production/service is local or whether the sales are conducted through a local distribution system;
- 7.6. Comparison of the price offered by the parties to the merger in Iceland and in other states;
- 7.7. Nature and scope of vertical integration for each party to the merger in comparison with the principal competitors.

CHAPTER 8

General conditions in affected markets

- 8.1. Specify the five principal independent⁵ suppliers of the parties and the share of each party in procurement from these suppliers (procurement of raw material or products used for the production of the products in question):

The supply side in the affected markets

- 8.2. Describe the principal distribution routes and service systems in the affected markets. In this respect, take account of the following, as applicable:
- a) The most common distribution systems and their significance. To what extent is distribution handled by third parties and/or undertakings within the same group as the parties referred to in Chapter 3.
 - b) The most common service systems and their significance in these markets. To what extent is the service handled by third parties and/or undertakings within the same group as the parties referred to in Chapter 3.
- 8.3. Where applicable, an assessment should be provided of the total capacity over the preceding three years. How large a share of this capacity has each party to the merger regarded itself as possessing during this period and how has each of them used this capacity.
- 8.4. If other aspects of supply are regarded as relevant in this context, they should be specified here.

The demand side in the affected markets

- 8.5. Provide the names of the ten largest independent customers of the parties in each affected market and the size of the share in the total sales etc. of the parties in question that each of these customers has had in the relevant period.
- 8.6. Describe the demand side in each market as regards:
- a) Market trends, e.g. whether it is at the initial stage, expanding stage, mature stage or declining stage, and project the pace of growth in demand.
 - b) The significance of customer preference as regards brand loyalty, product differentiation and total product range;
 - c) Concentration or distribution of consumers;

⁵ I.e. suppliers who are not subsidiaries or other related undertakings. In addition to these five independent suppliers, suppliers within the group of undertakings may be specified if regarded as necessary to obtain a correct assessment. The same applies in Section 8.5 on customers.

- d) Division of customers into different classes and description of “typical customer” in each class;
- e) The significance of exclusive distribution contracts and other long-term contracts;
- f) The significance of demand from public authorities, government agencies, state undertakings or other similar parties.

Market access

- 8.7. Have new undertakings been able to enter the affected markets to a significant extent over the past five years? If the response is “yes” include the name of each undertaking and estimate the current market share of each.
- 8.8. Do the parties to the merger believe that there are undertakings, including foreign undertakings, which are likely to enter the market? If the response is “yes”, explain why, estimate when this will take place, and include the names of the undertakings.
- 8.9. Describe the various factors, both geographical and relating to the product/service, which in this case have an impact on access to the affected markets. In this respect, take account of the following, as applicable:
 - a) The total cost of entering the market in question (preparation costs, research and development, establishment of distribution systems, sales campaigns, advertising, servicing etc.) and achieving sales comparable to a potential strong competitor and indicate the market share of such a competitor;
 - b) Barriers to entry in legislation and regulations, e.g. government licensing or any official standards;
 - c) To what extent market access is restricted by licences, know-how and other intellectual property rights in these markets and the granting of such licences;
 - d) To what extent each party to the merger possesses or provides licenses, know-how or other rights in the relevant markets;
 - e) The significance of economies of scale in the affected markets;
 - f) Access to supplies, e.g. supply of raw material;
 - g) Access to any kind of facilities or co-operation which is necessary in order to be able to provide a service in the relevant market. Indicate the cost and possible barriers that a new entrant in the market would confront in this respect.

Research and Development

8.10. Give an account of the long-term significance of research and development as regards the competitiveness of an undertaking in the relevant market. Describe the nature of the research and development engaged in by the merging parties in the affected markets.

In this respect, take account of the following, as applicable:

- a) Trends and scope of research and development⁶ in the relevant markets and among the parties to the merger;
- b) Technological development which has occurred in the relevant markets over a reasonable period of time (including product and/or service development, development of production methods, distribution systems etc.);
- c) The principal innovations that have emerged in these markets and the undertakings that have introduced such innovations;
- d) The progress of development in these markets and the position of the merging parties in the progress.

Co-operation agreements

8.11. What is the extent of co-operation agreements (horizontal and/or vertical) in the affected markets?

8.12. Describe important co-operation agreements entered into by the merging parties with other parties in the affected markets, e.g. agreements on research and development, licences, joint production/services, specialisation, distribution and exchange of information.

Trade associations

8.13. As regards trade associations in affected markets, the associations to which the merging companies belong should be specified.

Provide the names of all such trade associations and their functions.

CHAPTER 9

Impact on consumers and intermediaries

9.1. Describe the potential impact of the proposed merger on the interests of consumers and intermediaries and the trend of economic and technological progress.

⁶ The scope of research and development is defined as the cost of research and development as a ratio of turnover.

CHAPTER 10

Impact of joint venture on co-operation

10. In the case of mergers in the understanding of Article 2 of the Rules on the notification of mergers, cf. Article 4 of the Competition Act, a response should be provided to the following questions:
- a) Will the two or more undertakings involved in the joint venture (parent companies) continue significant activities in the same market as the joint venture or in a market which is upstream or downstream from the market in which the joint venture will operate, or in a closely related market?

If the response is “yes”, specify for each market in question:

- The turnover of each parent undertaking during the preceding fiscal year;
- The economic significance of the activities of the joint venture based on this turnover;
- The market share of each parent undertaking.

If the response is “no”, this should be supported by reasoning.

- b) If the response to Sub-section (a) is “yes” and it is the assessment of the parties that the establishment of the joint venture will not result in anti-competitive concerted practices between independent undertakings in the understanding of Article 10 of the Competition Act, the response should be reasoned.

CHAPTER 11

Ancillary restraints⁷

- 11.1. If the parties to a merger and/or other parties involved (including seller and minority shareholders) enter into an agreement on ancillary restraints which are directly connected with the merger and necessary for the implementation of the merger their competitive impact may be assessed in connection with the merger itself.
- a) Specify all ancillary restraints in any agreements which are attached to the notification and for which an assessment is sought in connection with the merger; and

⁷ Ancillary restraints: Examples of ancillary restraints are contractual provisions whereby the seller of an undertaking will not engage in competition with the buyer for a specific time and other actions intended to preserve the value of the sold asset.

- b) Explain why these restraints are directly connected with the merger and necessary for its implementation.

12. CHAPTER IV

STATEMENT

A notice to the Competition Authority should conclude with the following statement, signed by, or on behalf of, all the parties to the notice.

The undersigned warrant that the information given in this notification is true, accurate and complete to the best of our knowledge, that unabridged copies of documents required in the file are attached, that all estimates are identified as such and submitted to the best of our knowledge of the facts of the case, and where an opinion is stated, such opinion is stated in good faith. The undersigned have acquainted themselves with the provisions of Paragraph 2 of Article 42 of the Competition Act.
