REGULATION
on notifications and procedures pertaining to mergers

CHAPTER I

Scope and definition of a merger

Article 1

The provisions of these Regulations and their Annexes apply to notifications to the Competition Authority of the merger of companies which fall under Items a–e of Article 17(g) of the Competition Act No. 44/2005 and Article 62(b) of the Media Act No. 38/2011.

Article 2

A merger according to the first paragraph of Article 17 of the Competition Act is deemed to have taken place when there has been a permanent change in control:

a. due to the merger of two or more previously independent companies or parts thereof;
b. when a company takes over another company;
c. because one or more parties, who already control at least one company, or one or more companies, acquire direct or indirect control, in whole or in part, over one or more additional companies through the purchase of securities or assets, by means of an agreement or in some other manner;
d. through the creation of a joint venture that permanently takes over all operations of an independent economic unit.

Article 3

Control within the meaning of Article 2 of these Regulations, cf. Article 17 of the Competition Act, arises from rights, by means of an agreement or in some other manner which either separately or collectively, and taking account of applicable facts or legal aspects, which enable a party to have decisive influence over a company, in particular through:

a. ownership or right to use a company's assets, in whole or in part;
b. rights or agreements which grant decisive influence over the structure, voting or decisions of a company's units.

Control is obtained by parties that:

a. are right holders or are entitled to a right pursuant to agreements in this respect, or
b. despite not being right holders or being entitled to a right pursuant to such agreements, are in a position to exercise such right.

CHAPTER II
Leadup to the notification of a merger and status meetings

Article 4

In addition to providing the parties involved in mergers with general guidelines, the Competition Authority is permitted to remain in contact with the parties during the leadup to the merger notification. The reason for such communications is to prepare for the possible merger process and ensure that all the appropriate information held by the parties is available at the beginning of the process. In addition, such discussions can relate to other issues, such as possible information provision obligations, marketing definitions and possible competitive problems and solutions thereto. The goal is that such preparations will lead to speedier and a higher quality of merger processing.

Communications between parties to a possible merger and the Competition Authority in the leadup to a merger notification, according to Paragraph 1 of this Article, include, as a rule, criteria to ensure that the Authority can grant exemptions from the requirements made as regards information on merger notifications, cf. Paragraphs 2 and 4 of Article 10 of this Regulation, on the notification of mergers.

If requested, the Competition Authority may grant the parties to a possible merger confidentiality and anonymity in such negotiations.

Article 5

In cases that require further investigation, cf. Paragraph 3 of Article 12 of this Regulation, the Competition Authority may call the parties to the merger to a meeting, or meetings, where they will be notified of the status of the investigation of the relevant deadline and, as appropriate, the initial assessment of the Authority as regards individual aspects of the case.

The reason for such status meetings is to increase transparency and to ensure better quality and efficiency in decision making as regards mergers. Such meetings provide an opportunity for discussing a range of important matters, such as marketing definitions, possible competitive issues and how they can be resolved as well as any objections that may be put forward.

CHAPTER III
Notification of a merger

Article 6

The Competition Authority must be notified of a merger that meets the following criteria:

a. the joint total turnover in Iceland of the companies concerned is ISK 3 billion or more;
b. at least two of the companies involved in the merger each have an annual turnover in Iceland of at least ISK 300 million.

Turnover under the first paragraph shall include the turnover of parent companies and subsidiaries, companies within the same corporate group and companies over which the parties to the merger have direct or indirect control.

Turnover according to this Article shall be that of the most recent accounting year or, if appropriate, turnover during the 12 months preceding the merger.

Article 7

The Competition Authority shall be notified about a merger before it becomes effective but after a merger agreement has been reached, or before a takeover bid is announced publicly or control over a company is acquired. A merger that falls under the provisions of the Competition Act and these Regulations shall not become effective while it is being considered by the Competition Authority.

An agreement within the interpretation of Paragraph 1 of this Article refers to a final agreement that leads to a change in ownership of the company or companies in question. This means, as a rule, that mergers are to be notified once binding agreements have been reached and it is clear that the transaction will be finalised once the approval of the Competition Authority has been gained. On notification, information must be provided on any reservations contained in the agreement.

The Competition Authority may, on request, grant an exemption from a merger not becoming effective while the Competition Authority considers it, provided that it is demonstrated that a delay in the merger becoming effective may cause damage to the company concerned or its customers and endanger competition. The request shall be in writing and reasoned. An exemption may be conditional for the purpose of ensuring effective competition.

Article 8

A company that submits a merger notification pursuant to Paragraph 1 of Article 17 shall pay a merger fee of ISK 500,000 for each merger notification. A company that submits a merger notification pursuant to Paragraph 6 of Article 17 shall pay a merger fee of ISK 200,000 for each merger notification. A company that submits notification according to the decision of the Competition Authority on the basis of Paragraph 3 or Article 11 of this Regulation, cf. Paragraph 3 of Article 17 of the Competition Act, shall not pay a merger fee. The merger fee is payable at the time of submission of the merger notification and shall accrue to the Competition Authority.

The timeframe to investigate a merger does not begin to pass until after the merger fee has been paid.

Article 9

A merger notification shall provide information thereto, the companies involved, the market concerned and other aspects necessary for an examination of the merger's effects on competition. A merger notification shall include the information, including documents, that are requested in the information file in Annexes I–II to these Regulations (merger file). The information shall be

correct and satisfactory, *and the merger fee must have been paid.* If a written notification is delivered, a copy of the notification must also be sent in an electronically readable format. Electronically readable format refers to computer documents from which text and numbers can be copied and edited. At the same time, a copy of the merger document and attachments (non-confidential) to it are to be delivered, as provided for in the rules on the Competition Authority's procedures.

The Competition Authority shall send the parties concerned written confirmation that the notification has been received by the Authority.

Article 10

A shorter merger notification may be submitted when one of the following conditions are satisfied:

a. The markets where the effects of the merger are felt are not connected.
b. Two or more parties to the merger operate in the same product or geographical market (horizontal merger), and their combined market share is less than 20%.
c. The parties to the merger do not operate in the same sales stage (horizontal merger), and their market share is less than 40%.
d. At issue is a merger within the meaning of Item 2(d) of Article 2 of these Regulations, cf. Item d of Article 17 of the Competition Act, which has limited effects in this country.
e. A party that, together with others, had control over a company acquires full control over it.

The Competition Authority may allow the parties to the merger to provide notification of the merger by means of a shorter notification even if the merger does not fulfil the conditions of Items a–d of Paragraph 1, cf. Paragraph 6 of Article 17(a) of the Competition act. The prerequisite of such authorisation centres for the most part on the fact that the parties have been in consultation with the Authority before such notification is issued, as provided for in Article 4 of this Regulation.

The shorter notice of a merger notification shall at least include the information, including documents, which is requested in the information file in Annex II to this Regulation.

The Competition Authority may grant exemptions from the substance of the content of shorter notifications according to Annex II to this Regulation, cf. Paragraph 17(a) of the Competition Act. The prerequisite of such authorisation centres for the most part on the fact that the parties have been in consultation with the Authority before such notification is issued, as provided for in Article 4 of this Regulation.

Article 11

In the case of a merger between two or more previously independent companies or parts thereof within the meaning of Item a of Article 2 of these Regulations, cf. Item a of the first paragraph of Article 17 of the Competition Act, or the acquisition of joint control within the meaning of Item c of Article 2 of these Regulations, cf. Item c of the first paragraph of Article 17 of the Competition

Act, the parties to the merger or those who acquire joint control, as applicable, shall jointly prepare a merger notification.

If a company acquires a controlling share in another company, the company behind the takeover shall prepare a merger notification. In the case of a takeover bid for a company, the bidder shall prepare a notification.

If in the view of the Competition Authority, there is substantial probability that a merger which has already taken place but does not meet the conditions of Item a and Item b of Article 6 of these Regulations, cf. Item a and Item b of the first paragraph of Article 17(a) of the Competition Act may substantially reduce effective competition, the Authority may demand a notification by the merger parties if the joint annual turnover of the companies concerned is more than ISK 1.5bn. Once such a demand has been made, the time limit pursuant to Article 12 of these Regulations, cf. Article 17(d) of the Competition Act, commences on the first business day after receipt by the Competition Authority of a notification which meets the conditions of these Regulations, cf. Article 17(a) of the Competition Act.

If the parties to a merger which does not meet the conditions of Item a and Item b of Article 6 of these Regulations, cf. the first paragraph of Article 17(a) of the Competition Act, advise the Competition Authority in writing that the merger has taken place, the Competition Authority shall, within 15 business days, decide whether to exercise the authority granted under the third paragraph of this Article, cf. the third paragraph of Article 17(b) of the Competition Act.

In other respects, the Competition Authority's intervention procedure and authorisations in the case of a merger for which notification is required are governed by the provisions of Article 17(a) to Article 17(e) of the Competition Act.

Article 12

The Competition Authority shall, within 25 business days, notify the party that has sent a merger notification to the Authority if it considers it necessary to examine further the merger's effects on competition. The commencement of this time limit begins on the first business day after receipt by the Competition Authority of a notification which meets the conditions of Paragraph 5 of Article 17(a) of the Competition Act and these Regulations. If notice by the Competition Authority pursuant to the first sub-paragraph of this paragraph is not received within the prescribed time limit, the Competition Authority cannot nullify the merger.

If information, including documents, accompanying a notification is unsatisfactory, the commencement of the above time limit begins according to the first item of Paragraph 1 of this Article the day satisfactory information is received. The Competition Authority shall inform the parties to the merger whether their notification is unsatisfactory.

A decision to nullify a merger shall be taken no later than 90 business days after a notice according to the first sub-paragraph of Paragraph 1 of this Article has been sent to the party that notified the merger. In the event that the parties to the merger who request negotiations with the Competition Authority put forward possible conditions for the merger on the 55th working day

after a notification according to the first sentence was sent to the party responsible for submitting the merger, or later, the deadline for investigating the merger will be extended automatically by 15 days. In the event that the parties to the merger so request, the Competition Authority may extend this time limit by up to 20 business days.

If a shorter merger notification is received, the Competition Authority can, within 15 business days of its receipt, demand a longer notification if the conditions of the first paragraph of Article 10 of these Regulations, cf. Paragraph 6 of Article 17(a) of the Competition Act, are not met or it is considered necessary in order to assess the merger's effects on competition. In such instances, the time limit pursuant to Paragraph 1 of this Article commences on the first working day after the longer notification is received.

If the Competition Authority does not decide on the nullification of a merger or imposition of conditions for a merger within time limits according to this Article, the Authority can neither nullify the merger nor impose conditions on it.

Time limits according to this provision begin to enter into effect on the first working day after the limit stated.

If important changes occur in the grounds for information set forth in the notification and the companies concerned are aware of them, they must notify the Competition Authority about the changes without delay. In circumstances where such important changes can have substantial effects on a merger's assessment, the time limit pursuant to this Article, cf. Article 17(d) of the Competition Act, is halted the day the merger parties become aware of the changes. When satisfactory information about the changes has been received by the Competition Authority, the time limit commences anew.

Article 13

If the Competition Appeals Committee or a court of law nullifies a decision not to approve a merger or to impose conditions on it because of a procedural error in the handling of the case, the Competition Authority may review the merger again. If market conditions have changed, the parties to the merger shall immediately submit a new merger notification to the Competition Authority. If there have been no such changes, they shall so advise the Competition Authority without delay. The Competition Authority shall decide on the rejection of a merger, or the imposition of conditions for a merger, in a case that has been re-opened no later than 30 business days after a final conclusion on nullification of the Authority's decision has been reached.

If the Competition Authority has concluded that a merger has not disrupted competition or authorised a merger with conditions imposed, the Competition Authority can withdraw such a decision if:

a. the decision is based on incorrect information for which one of the parties to the merger is responsible or it has been obtained through misrepresentations, or
b. the companies concerned violate conditions that have been imposed for a merger.

If a decision is withdrawn pursuant to Paragraph 2 of this Article, cf. Paragraph 3 of Article 17(e) of the Competition Act, the Competition Authority shall make a new assessment of the merger in question and apply the authorisations of Article 17(c) of the Competition Act if that is deemed necessary. The Act's provisions on procedure and time limits do not apply in such a case.

Article 14

In the event that a lawyer, or other consultant, is granted power of attorney in accordance with the rules of the Competition Authority, then the power of attorney shall accompany the merger file if the parties wish to be represented by the lawyer in procedures relating to a merger case.

CHAPTER IV
Negotiations

Article 15

According to Article 17 of the Competition Act, the Competition Authority may finalise merger investigations by means of reaching an agreement with the parties concerned. A prerequisite for finalising a case positively is that the parties to the merger request that the Competition Authority mediate negotiations and provide comprehensive proposals for terms that are intended to acceptably resolve possible competitive problems which would otherwise result from the merger.

The Competition Authority will assess, on a case-by-case basis, whether there is reason to begin formal negotiations on possible conditions. Such assessment will, among other things, take into account whether it is likely that the proposals of the parties to the merger will be able to address the competitive problems that the Authority has found. Conditions that relate to the type of market, do not call for continuous monitoring and which permanently resolve competitive problems generally weigh more heavily in the Authority's final opinion.

Proposals for possible conditions should be submitted as early as possible during the processing of a case. In the event that the parties to the merger put forward possible conditions for the merger on the 55th working day after a notification according to Paragraph 3 of Article 12 of this Regulation or later, the deadline for investigating the merger will be extended automatically by 15 days. If the parties to the merger submit proposals for conditions on the 70th day of the investigation (i.e. cf. the above) or later, the Competition Authority will not accept such proposals for material examination unless special circumstances so demand and that such proposals can be examined adequately.

Before formal settlement negotiations between parties to a merger begin, such parties must sign a statement to the effect that they understand the legal effects that the finalisation of the issue through settlement will have on merger conditions.

The Competition Authority may, on having been requested by the parties or on its own initiative, reopen proceedings in cases that have been concluded by settlement, cf. Paragraph 3 of Article 17(f) of the Competition Act:

a. in the event of significant changes to the facts of the case that were the basis for the initial decision,
b. if the companies in question do not fulfil their obligations, or
c. if the decision is based on insufficient, incorrect or misleading information provided by the parties.

CHAPTER V
Sanctions and entry into force

Article 16

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

Article 17

These Regulations are adopted on the basis of Paragraph 2 of Article 8 and Paragraph 5 of Article 17(a) and Paragraph 4 of Article 17(f) of the Competition Act No. 44/2005 and enter into force immediately. At the same time, Regulation No. 684/2008 as amended shall cease to apply.

The Competition Authority, 21 December 2020.

Páll Gunnar Pálsson

ANNEX 1

List of information which must be set forth in a notification to the Competition Authority about a merger of companies (merger file)

Introduction

A. Objectives.

A list of information about a merger of companies (merger file) specifies the information which companies are required to provide when they notify the Competition Authority about a merger of companies as detailed further in this Annex.

B. The need for information to be correct and satisfactory.

All information required for the merger file according to this Annex shall be correct and satisfactory to the compiler's best knowledge. All who submit a notification are responsible for the information therein being correct. Item g of Article 37 of the Competition Act provides for fines imposed on parties who violate the notification requirements pursuant to Article 17(a), Paragraph 3 of Article 17(b) and Paragraph 2 of Article 17(e). According to Article 41 of the Competition Act, anyone who provides incorrect reports to the competition authorities shall be subject to fines or imprisonment of up to two years.

C. Confidentiality and obligation to provide information.

Article 34 of the Competition Act obligates those who act on behalf of administrative authorities in the implementation of the Competition Act to refrain from revealing any matters of which they become aware in their work and are to be kept confidential. The obligation of confidentiality remains in effect after termination of employment.

Concerning the Competition Authority's authority to demand information from companies in connection with its examination of mergers, reference is made to Paragraphs 3 and 5 of Article 17(a), Paragraph 3 of Article 17(b) and Article 19 of the Competition Act.

If there is reason to believe that the interests of a party concerned will be damaged if information requested is published or otherwise made available to other parties, such information shall be specifically sent with each document clearly marked "Confidential". In addition, the reasons why the information shall not be made available to others or published must be specified. A merger notification without confidential information must be delivered. In connection with merger investigations, such a copy may be sent to possible stakeholders for comment or published on the website of the Competition Authority.

When two or more companies are jointly responsible for a merger notification, it is permissible to send trade secrets separately in a sealed envelope or special computer files to the Competition Authority and specify the nature of such information in the notification as an annex.

D. Definitions and instructions for preparing a merger file.

Affected markets: Chapter 7 of this file requests that the parties to the merger define the product markets concerned and specify also which of these markets are likely to be affected by the merger. This definition of affected markets serves as a basis for many questions in the file which need to be answered. In the file, the concept of "an affected market" refers to markets defined by the parties to the merger. This concept may refer to the product or services markets concerned.

Year: All references to the term "year" in this file denote a calendar year unless otherwise stated. All information requested in the form shall apply to the most recent calendar year unless otherwise stated.

Amounts shall be stated in millions of ISK (Icelandic krónur), with one decimal place, unless requested otherwise or if an alternative presentation is appropriate.

If amounts in ISK need to be converted, use shall be made of the other currency's average exchange rate over the period to which the amounts apply.

Ratios shall be stated with one decimal place unless otherwise specified.

List of information to be included in a merger notification

CHAPTER I

Brief description of the merger

A summary description of the merger, including the names and activities of the parties to the merger, the nature of the merger, its purpose and a description of the markets in which the activities of the parties to the merger overlap or, alternatively, a description of the principal activities of the parties to the merger.

A condensed description of a merger or the merger file in its entirety, excluding confidential information, may be published on the website of the Competition Authority.

CHAPTER II

Basic information on parties to the merger

Information about the parties to the merger. State for each party:

a. name and address of company;
b. the nature of the company's activities;
c. contact (name, address, telephone number, fax number and/or e-mail address as well as position). The Competition Authority will direct its communications to the parties to the

merger to the contact specified. If the contact is an independent lawyer, or consultant, a power of attorney must be submitted.

CHAPTER III
Information on the merger

3.1 Detailed information about the antecedents to the merger.

3.2 Detailed information about the purpose and objective of the merger.

3.3 A brief account of the nature of the merger. In this connection, state:

a) the legal aspects of the merger, such as whether the planned merger is a full legal merger and whether the parties enter into the merger undivided;
b) brief description of the manner in which the economic and financial structure of the merged company will be arranged;
c) the envisaged or expected date of important steps leading to a final merger;
d) the types of ownership and control which may be expected following the merger;
e) whether one of the parties has received public financial assistance[1] and the nature and extent of the assistance.

3.4 The economic sectors involved in the merger shall be specified.

3.5 The purchase price or extent of assets purchased or merged depending on the nature of the merger.

3.6 For each company involved[2], the following information shall be provided for the most recent accounting year:

a) information about turnover in Iceland;
b) information about turnover in foreign markets (may be specified in the currency of the country concerned).

3.7 Specify possible benefits of the merger, synergistic effects and/or the business criteria underlying the merger.

CHAPTER IV
Ownership and control[3]

For each (both) party to the merger, provide a list of all companies within the same group of companies. The list shall include as a minimum:

4.1 All companies or individuals who control the parties to the merger directly or indirectly;

4.2 All companies which are directly or indirectly under the control of:

a. a party to the merger;
b. another company specified in Item 4.1.

For each specified company, the nature and the manner of control shall be stated, e.g. whether it is based on ownership, agreements and/or something else.

Information in this section may be explained graphically with organisation charts or diagrams to show the structure of ownership and control of the companies.

Information shall also be provided about:

4.3 Formal or informal business collaboration which may exist between the parties to the merger and companies which operate in the same or related market, together with copies of all contracts and other documentation relating to such collaboration.

CHAPTER V

Personal and financial connections and previous takeovers

For parties responsible for the merger and for each company and individual noted in answers to questions in Chapter 4, information shall be provided about:

5.1 The identity of all other companies that are active in affected markets (see Chapter 7 for a definition of affected markets) where the companies, or individuals, in the group of companies control singly or jointly at least 10% of voting rights, issued shares or other securities. In each instance, the percentage share concerned and its owner shall be specified.

5.2 Specification, for each company individually, of those who are seated on the Board (Executive Board or Company Board) and who are also seated on the Board of another company that is active in affected markets. In each instance, the name of the other company shall be specified, as shall the position of the party concerned within it.

5.3 Detailed information is to be provided on takeovers by the above group of companies (Chapter 4) during the past three years of companies engaged in business in affected markets as they are defined in Chapter 7.

This information may be explained graphically with organisation charts or diagrams for purposes of clarification.

CHAPTER VI

Definitions of markets

Assessment of the market strength of the new entity created by the merger will be based on the product and services markets and geographical markets concerned.

The parties to the merger are required to provide the information requested having regard to the following definitions:

1. The product markets concerned.

The product market concerned means a market for goods and/or services which consumers view as substitute goods or services due to their characteristics, price and envisaged use. A market is a sales area for goods and substitute goods and/or a sales area for services and substitute services,

cf. Article 4 of the Competition Act. A substitute good and a substitute service is a good or service which can serve fully or in substantial part as a substitute for another.

Among factors which are relevant for an assessment of the market concerned is an analysis of why the good or service concerned belongs to this market and why another good or service does not belong to it according to the above definition and taking account of, among other things, whether the good or service may be used as a substitute good or a substitute service, competitive position, price, price fluctuations due to demand or other factors which are relevant for a definition of the market.

2. Geographical markets concerned.

A geographical market includes the area where the companies concerned engage in supply and/or demand for the good or service concerned, where the competitive conditions are sufficiently similar and which can be distinguished from neighbouring areas, especially because the competitive conditions in those areas are distinctly different.

Among factors which are relevant for an assessment of the geographical market concerned are the nature and characteristics of the good or service concerned, possible barriers to entry or consumer habits, appreciable differences in the market shares of companies in this area and neighbouring areas or substantial price differences.

3. Affected markets.

In preparing the merger file, the product markets concerned in Iceland or in the applicable geographical area shall be considered affected markets:

a. if two or more companies which are involved in the merger are active in the same product market;
b. if one or more companies involved in the merger are active in a product market which is upstream or downstream[5] relative to a market in which another party to the merger is active.

On the basis of the above information and reference limits for market share, the following information shall be provided:

6.1 Specify and describe each affected market in the meaning of Section 3.

4. Markets related to markets which are affected in the meaning of Section 3.

6.2 Describe the concerned product or service markets and geographical markets where one or more merger companies are active in markets which are involved in the merger and are related to an affected market/markets (markets upstream or downstream or neighbouring markets at the same sales level) yet are not considered affected markets within the meaning of Section 3.

5. Non-affected markets.

6.3 When the parties to the merger are active in non-affected markets within the meaning of Section 3, the product- and area-specific characteristics of these markets shall be described.

It should be noted that descriptions and information shall be provided about all markets in which the parties to the merger are active.

CHAPTER VII

Information about affected markets

For every product market covered by Section 3 of Chapter VI and for each of the most recent accounting years and:

a. for Iceland,
b. and for a geographical market concerned, if it is other than Iceland in the opinion of the parties to the merger, information shall be provided about:

7.1 estimated total size of the market in amounts, e.g. relative to revenue or sales value, and quantity (in number of units) – explain the premises of these calculations and provide supporting documentation if possible;

7.2 market share in amounts, percentages and quantity for each company involved in the merger, based on the same criteria as are set forth in Item 8.1.;

7.3 list containing all of the names of competitors operating in the market; estimated market share (in amounts, percentages and quantity) for all competitors that control at least 10% of the market which is being considered – provide supporting documentation, if possible;

7.4 the estimated total value and total quantity and origins of imports, specifying also:
   a. the share in such imports of the groups of companies which are part of the merger,
   b. estimated effects of quotas, import duties or trade barriers other than import duties;
   c. estimated effects on these imports of transport costs and other costs.

7.5 how companies involved in the merger produce and sell goods and services; for example, whether production/services are localised or whether sales are through local distribution systems;

7.6 comparison of prices offered by the parties to the merger in Iceland and in other countries;

7.7 the nature and extent of vertical integration[6] for each party to the merger individually relative to main competitors;

7.8 itemisation of total revenue presented in the Annual Accounts by main product categories and/or service factors in the operations of the parties. A comparable itemisation shall be provided for quantity (in number of units) if applicable. If any party operates on more than one sales level, these shall be shown separately in the itemisation of revenue and quantity. In the event that information about revenue and/or quantity does not provide a good picture

of the operations of the parties to the merger, information shall be provided from the balance sheet regarding the magnitude of the most important items in the operations of the parties;

7.9 information on main cost factors and the cost structure of the parties to the merger.

CHAPTER VIII

General conditions in affected markets

8.1 Specify the five principal independent suppliers[7] of the parties to the merger and the share of each in procurements from each of these suppliers (purchases of raw materials or goods used in the production of the products concerned). In addition, information on contact persons, telephone numbers and e-mail addresses are to be included.

Supply conditions in affected markets.

8.2 Describe the main distribution channels and service systems in the affected markets. In this connection, take account of the following factors as applicable:

a. the most common distribution systems in the market and their importance. To what extent is distribution handled by third parties and/or a company within the same group as the parties mentioned in Chapter IV?

b. the most common service systems and their importance in these markets. To what extent are the services handled by third parties and/or a company within the same group as the parties mentioned in Chapter IV?

8.3 Where applicable, submit an assessment of total capacity during the past three years. How large a share of this capacity has each party to the merger considered itself to have had during this period, and how have they, individually, utilised this capacity?

8.4 If other supply aspects are viewed as important in this connection, they should be specified here.

Structure of demand in affected markets?

8.5 Specify the names of the ten largest independent customers of the parties to the merger in each affected market and how large a share of wholesale transactions, etc. by the party concerned each of these customers has during the time period in question. In addition, information on contact persons, telephone numbers and e-mail addresses are to be included.

8.6 Describe the structure of demand in each market in respect of:

a. the market's development, e.g. whether it is in an initial stage, expanding, saturated or declining, and predict how rapidly demand will increase;

b. the weight of customer preferences[8] in respect of brand name loyalty, product differentiation and the full range of product availability;

c. concentration or dispersion of consumers;

d. the break-down of consumers into different groups and a description of a "typical customer" in each group;
e. the weight of agreements on exclusive distribution and other kinds of long-term agreements;
f. the weight of demand by public authorities, government agencies, state enterprises or similar parties.

Market access.

8.7 Have new companies been able to make a significant entry into affected markets during the past five years? If the answer is yes, the name of each company shall be provided and an estimate made of their respective market shares.

8.8 Do the parties to the merger consider that there are companies, including foreign companies, which are likely to enter and establish themselves in the market? If the answer is yes, explain why, estimate when this will occur and provide the names of the companies.

8.9 Describe the various factors, both geographical and those relating to the product/service, which influence access to affected markets in this instance. In this respect, take account of the following factors, as applicable:

a. total cost associated with making a significant entry into the market concerned (preliminary cost, research and development, establishment of distribution systems, sales campaigns, advertisements, services, etc.) and achieving sales comparable to those of a potential strong competitor, and indicate the market share of such a competitor;
b. legal or regulatory barriers to access, such as government licensing or any kind of official standards;
c. the extent to which market access is limited by brand name loyalty, patents, know-how or other intellectual property rights in these markets and restrictions created by the licensing of such rights;
d. the extent to which each individual party to the merger is a licensee or licensor of patents, know-how or other rights in the markets concerned;
e. the weight of economies of scale in operations in affected markets;
f. access to supplies, such as the supply of raw materials;
g. access to any kind of facilities or co-operation required in order to be in a position to provide services in the market concerned. Provide information about costs and possible barriers that would face a new entrant to the market in this connection.

Research and development

8.10 Outline the importance of research and development for a company to be competitive in the long run in the market concerned. Describe the nature of research and development carried out by the parties to the merger in affected markets. In this connection, take account of the following factors as applicable:

a. the policy and extent of research and development[9] in the markets concerned and by the parties to the merger;
b. technical development which has taken place in the markets concerned over an appropriate period (including development of products and services, development of production methods, distribution systems, etc.);
c. the main innovations which have emerged in these markets and the companies responsible for these innovations;
d. the development process for innovations in these markets and how the parties to the merger are positioned in respect of that process;
e. the extent to which market access may be limited by agreements currently in force that involve exclusion effects, e.g. through provisions concerning exclusive purchase, exclusive sales or exclusive distribution or long-term validity periods.

Partnership agreements.

8.11 To what extent are partnership agreements (horizontal and/or vertical) prevalent in affected markets?

8.12 Describe the most important partnership agreements entered into with others by the parties to the merger in affected markets, for example agreements relating to research and development, licenses, joint production/services, specialisation, distribution and exchange of information.

Trade associations.

8.13 Concerning trade associations in affected markets, any associations to which the merger companies belong shall be specified. Provide the names of all the above trade associations and their purview.

CHAPTER IX

Effects on consumers and intermediaries

Describe possible effects of the planned merger on the interests of consumers and intermediaries and on the development of economic and technological progress. If it is argued that a merger is legitimate because it will entail technological and economic progress which will benefit consumers and not disturb competition, it shall be specified:

a. how the planned merger will benefit consumers and how the parties to the merger will ensure that such benefits will materialise – the description shall be detailed, and all possible benefits for consumers shall be specified;
b. how extensive the benefits at issue are for consumers and when they will materialise – this shall be reasoned specifically, and calculations shall be submitted in further support of the envisaged extent of the benefits;

c. whether it is possible to realise the same benefits in another manner. If that is not possible, that conclusion shall be reasoned specifically.

The burden of proof that a merger is beneficial for consumers rests on the parties to the merger and will not be examined specifically unless the above information is provided.

CHAPTER X

Co-operative effects of a joint venture[10]

In case of a merger within the meaning of Item d of Article 2 of these Regulations, cf. Item d of Paragraph 1 of Article 17 of the Competition Act, the following questions shall be answered:

a. Will two or more companies which are involved in the joint venture (parent company), continue significant activity in the same market as that of the joint venture or in a market upstream or downstream relative to the market in which the joint venture operates, or in a closely related market?

   If the answer is yes, the following shall be specified for each market noted here:

   — the turnover of each parent company in the most recent accounting year,

   — the economic importance of the joint venture's operations relative to this turnover;

   — the market share of each parent company.

   If the answer is no, reasons for it must be given.

b. If the answer to Item a is yes and it is the assessment of the parties that the establishment of a company for the joint venture will not entail co-ordination between independent companies which impedes competition within the meaning of Article 10 of the Competition Act, reasons for the answer must be given.

CHAPTER XI

Ancillary restraints[11]

If parties to a merger and/or other concerned parties (including seller and minority shareholders) enter into an agreement about ancillary restraints which are directly connected to the merger and necessary for the merger to be carried out, the competitive effects thereof may be assessed in connection with the merger itself.

a. Specify all ancillary restraints in agreements provided with a merger notification, an assessment of which is requested in connection with the merger; and

b. explain why these restraints are directly connected to the merger and necessary for its implementation.

CHAPTER XII

Declaration

The notification to the Competition Authority shall be concluded with the following declaration, signed by or on behalf of all the notifying parties:

The undersigned declare that information provided in this notification is true, correct and satisfactory to the best of their knowledge and belief, that complete copies of documents required for the file have been provided, that all assessments are identified as such and are their best estimates of the underlying facts and that all opinions are set forth in good faith. The undersigned have acquainted themselves with Article 41(b) of the Competition Act.

CHAPTER XIII

Attached documents

In addition to what is noted elsewhere in this file, the parties to a merger shall provide the following supporting documents:

13.1 copy of a final or most recent version of all documents relating to the merger;

13.2 copies of the Annual Accounts for the two preceding years of the companies involved in the merger;

13.3 copy of the report of the Board of Directors, or other communications between management, discussing the merger.

13.4 When at least one affected market is specified: copies of all analyses, reports, research, surveys, memoranda or similar documentation which in some manner relates to the merger or its preparation;

13.5 copies of analyses, reports, research, surveys, memoranda or similar documentation which the parties to the merger have prepared or have had prepared during the past two years in respect of their possible plans to initiate or increase activity in markets where previously they have had limited or no activity.

13.6 copy of merger notification and non-confidential attachments.

13.7 copy of merger notification and attachments in electronically readable format. Electronically readable format refers to computer documents from which text and numbers can be copied and edited during processing.

13.8 copy of payment receipt for the merger fee according to Article 8 of this Regulation.

[1] Cf. the first paragraph of Article 61 of the EEA Agreement.
[2] A concerned company means parties to the merger, their parent companies and subsidiaries, companies within the same group of companies and companies over which the parties to the merger have direct or indirect control, cf. Article 3 of these Regulations and Paragraphs 1 and 2 of Article 17(a) of the Competition Act.
[3] See definition of control in Article 3 of these Regulations, cf. also Paragraphs 1 and 2 of Article 17(a) of the Competition Act.
[4] See definition of affected markets in Chapter VI of this Annex.
[5] In English “upstream or downstream”.
[6] In English, “vertical integration”.
[7] That is to say, suppliers that are not subsidiaries or other related companies. In addition to these five independent suppliers, suppliers within the group of companies may be specified if that is considered necessary to arrive at a correct assessment. The same applies in Item 9.5 about customers.
[8] In English, “customer preferences”.
[9] Scope of research and development is defined as costs of research and development as a ratio of turnover.
[10] In English, “joint venture”.
[11] In English, “ancillary restraints”. Examples of such ancillary restraints are contract provisions that preclude a seller of a company from competing with the buyer for a certain period of time and other measures which aim at maintaining the value of that which is sold.

ANNEX II

List of information which must be set forth in a shorter notification to the Competition Authority about a merger of companies (merger file)

Introduction.

A. Object.

A list of information which must be set forth in a shorter notification specifies the information which companies are required to provide when they notify the Competition Authority about a merger of companies which fall under Paragraph 6 of Article 17(a) of the Competition Act No. 44/2005.

B. The need for information to be correct and satisfactory.

All information required for the merger file according to this Annex shall be correct and satisfactory to the compiler's best knowledge. All who submit a notification are responsible for the information therein being correct. According to Article 37(g) of the Competition Act, anyone who violates the notification obligation pursuant to Paragraph 3 of Article 17(a) and Paragraph 2 of Article 17(e) shall be fined. According to Article 41(b) of the Competition Act, however, a person who provides incorrect reports to the competition authorities shall be subject to fines or imprisonment of up to two years unless more severe penalties apply according to other laws.

C. Confidentiality and obligation to provide information.

Article 34 of the Competition Act obligates those who act on behalf of administrative authorities in the implementation of the Competition Act to refrain from revealing any matters of which they become aware in their work and are to be kept confidential. The obligation of confidentiality remains in effect after termination of employment.

Concerning the Competition Authority's authority to demand information from companies in connection with its examination of mergers, reference is made to Paragraphs 3 and 5 of Article 17(a), Paragraph 3 of Article 17(b) and Article 19 of the Competition Act.

If there is reason to believe that it will damage the interests of a party concerned for information requested to be published or otherwise made available to other parties, such information shall be specifically sent with each document clearly marked "Confidential". In addition, the reasons why the information shall not be made available to others or published must be specified. A merger notification without confidential information must be delivered.

When two or more companies are jointly responsible for a merger notification, it is permissible to send trade secrets separately in a sealed envelope or special computer files and specify the nature of such information in the notification as an annex.

List of information to be included
in a shorter merger notification

The following information shall be submitted with a shorter merger notification pursuant to Article 8 of these Regulations, cf. Paragraph 6 of Article 17(a) of the Competition Act:

a. Overview of the companies which the parties to the merger have indirect or direct control.
b. Description of the product or service markets and geographical markets affected by the merger and a reasoned assessment of the market share the merged companies have in these markets. In describing markets, account may be taken of, among other things, the definitions in Chapter VII in Annex I regarding product and service markets and of a geographical market. In Chapter VIII of Annex I, there is a discussion of how information about estimated market shares are to be presented. Further reasoning might be provided, for example, by submission of a market share assessment, preparatory documentation or memoranda relating to the merger, market research, surveys or other documentation which might provide support for the assessment.
c. A reasoned assessment of the merger's effects on competition. In this respect, the number of market participants may be specified as well as the structure of supply and demand for goods. It might also be appropriate to give an account of possible barriers to entry to the market.
d. Copies of all agreements and other instruments which serve as basis for the merger together with Annual Accounts of those companies that are parties to the merger.
e. Copy of merger notification and non-confidential attachments.
f. Copy of merger notification and attachments in electronically readable format. Electronically readable format refers to computer documents from which text and numbers can be copied and edited during processing.
g. Copy of payment receipt for merger fee according to Article 8 of this Regulation.

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