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Republic of Latvia

Cabinet

Regulation No. 800

Adopted 29 September 2008

Procedures for the Submission and Examination of a Full-form and Short-form Notification Regarding a Merger of Market Participants

*Issued pursuant to
Section 15, Paragraph five
of the Competition Law*

I. General Provisions

1. These Regulations prescribe the procedures by which a full-form and short-form notification regarding a merger of market participants (hereinafter – notification) shall be submitted and examined by the Competition Council (hereinafter – the Council), as well as the conditions for the calculation of turnover of market participants.
2. Within the meaning of these Regulations the affected market shall be:
 - 2.1. the relevant market in which the market participants involved in a merger operate;or
 - 2.2. a market, in which one of the market participants involved in a merger operates, vertically related to the relevant market, in which another market participant involved in the merger operates.

II. Submission of a Notification

3. A notification regarding the merger specified in Section 15, Paragraph one, Clause 1 of the Competition Law shall be submitted by the merging market participants, however, a notification regarding the merger specified in Section 15, Paragraph one, Clause 2 shall be submitted by the market participant acquiring another market participant. A notification regarding the merger specified in Section 15, Paragraph one, Clause 3 and 4 of the Competition Law shall be submitted by natural persons or market participants which obtain a decisive influence or the assets (a portion thereof or all the assets) of another market participant or other market participants, or the right to use them. The notification shall be submitted in writing.
4. The day of receipt of a notification shall be the day when a full-form or short-form notification, conforming to the requirements of these Regulations, is received at the Council. If the full-form or short-form notification does not conform to the requirements of these

Regulations, the Council shall, within five working days, inform in writing the submitter of the notification (hereinafter – submitter) thereof.

5. The submitter shall inform the Council without delay regarding changes in circumstances or facts, which become known after the submission of the notification. If the relevant changes may affect the evaluation of a merger, the Council may determine that the date of the submission of the notification is the day when complete information regarding the relevant changes is received and shall, within five working days, inform the submitter in writing thereof.

6. One or several such transactions, which take place among the same market participants within a time period of two years and in the result of which one market participant obtains assets (a portion thereof or all the assets) of two or more other market participants or the right to use them, shall be deemed one merger occurring on the day when the last transaction takes place.

III. Calculation of Turnover

7. In calculating the total turnover of the participants of a merger pursuant to Section 15, Paragraph two of the Competition Law, the total turnover of the market participants shall be taken into account.

8. The net turnover of a market participant shall be calculated by adding the income from the activities, the sale of goods and the provision of services of the market participant in the territory of Latvia during the previous financial year, and deducting from the amount obtained a sales discount and other allocated discounts, as well as the value added tax and other taxes directly related to turnover.

9. Both the net turnover of a participant of a merger and the net turnover of the market participants referred to in Sub-paragraphs 13.2, 13.3, 13.4 and 13.5 of these Regulations shall be taken into account when calculating the total turnover of a market participant. The turnover from the goods sold or the services provided to such market participants that are referred to in Sub-paragraphs 13.2, 13.3, 13.4 and 13.5 of these Regulations shall not be included in the total turnover of a market participant. The double calculation of turnover shall not be permitted.

10. If a merger occurs in accordance with Section 15, Paragraph one, Clause 3 of the Competition Law, the turnover of such market participants, in which the relevant natural person has any of the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations, shall be taken into account in the calculation of turnover of a natural person when calculating the total turnover of the market participants.

11. If a merger takes place in accordance with Section 15, Paragraph one, Clause 3 or 4 of the Competition Law, when obtaining a direct or indirect decisive influence on another market participant or other market participants, the net turnover of the market participant who loses its decisive influence after the merger shall not be taken into account when calculating turnover.

12. If a merger takes place in accordance with Section 15, Paragraph one, Clause 3 or 4 of the Competition Law, when acquiring assets (a portion thereof or all the assets) of another market

participant or other market participants, or the right to use such assets, turnover shall be calculated by adding the net turnover of the acquirer and such net turnover, which has been obtained by using such assets in economic activity.

13. The total turnover of a market participant shall be calculated by adding the net turnover:

13.1. of the merger participant;

13.2. of such market participants, in which the merger participant, directly or indirectly, has at least one of the following rights or opportunities:

13.2.1. control over more than a half of the capital assets or economic activity, including property rights;

13.2.2. the opportunity to exercise more than a half of the voting rights;

13.2.3. the opportunity to appoint more than half of the members of the administrative bodies or rights-holders (unions thereof), which legally represent the market participants; and

13.2.4. the right to manage the affairs of the market participant, not restricting oneself only to the management of the economic activity of the market participant;

13.3. of such market participants, which hold the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations in the relevant merger participant;

13.4. of such market participants, in which the market participants referred to Sub-paragraph 13.3 of these Regulations hold the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations; and

13.5. of such market participants, in which two or more market participants referred to in Sub-paragraphs 13.1, 13.2, 13.3 and 13.4 of these Regulations jointly hold the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations.

14. If the market participants jointly hold the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations when calculating the total turnover of the referred to market participants:

14.1. the turnover resulting from the sale of goods or the provision of services between the market participant subject to a joint decisive influence and each of the market participants which have the joint decisive influence, or any other market participant, which is related to any of such market participants, which have a joint decisive influence pursuant to Sub-paragraphs 13.2, 13.3, 13.4 or 13.5 of these Regulations, shall not be taken into account; and

14.2. the turnover resulting from the sale of goods or the provision of services between the market participant subject to a joint decisive influence and any third market participant, shall be taken into account. The turnover obtained shall be divided proportionately among the market participants, which have a joint decisive influence.

15. The net turnover of credit institutions shall be calculated, taking into account the sum of the referred to income:

15.1. income from interest;

15.2. income from securities;

15.3. commission remuneration received;

15.4. net profit acquired from financial operations; and

15.5. income from other operations.

16. Income included in the annual reports and consolidated annual reports of credit institutions shall be included in the turnover of credit institutions.

17. The turnover of insurance companies shall be calculated, taking into account the gross value of signed premiums which includes all sums received and to be received for insurance contracts (also reinsurance premiums) entered into by an insurance company or entered into on behalf thereof, deducting the tax payments and fees or mandatory payments, which are imposed on an insurance premium or the total amount of premiums.

IV. Content of a Short-form Notification

18. The following information shall be indicated in a notification:

18.1. regarding each submitter:

18.1.1. name, registration number in the Commercial Register or – for foreign merchants – in a register equivalent to the Commercial Register. A natural person shall indicate their given name, surname and personal identity number;

18.1.2. legal address, telephone and fax number, e-mail address, the given name, surname and position of the contact person who is competent to deal with the issues related to the merger. The natural person shall indicate the address of their declared place of residence, telephone and fax number and e-mail address;

18.1.3. present and planned types of activities;

18.2. regarding the other merger participants:

18.2.1. name, legal address, telephone and fax number, e-mail address, the given name, surname and position of the contact person who is competent to deal with the issues related to the merger;

18.2.2. present and planned types of activities;

18.3. the given name, surname, position, correspondence address, telephone and fax number, e-mail address, address of the website of the person authorised by a merger participant.

19. The following shall be indicated (may be indicated schematically) regarding each merger participant (also outside the territory of Latvia) in a notification:

19.1. the market participants or natural persons (and types of activities thereof) who directly or indirectly have the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations within the merger participant;

19.2. the market participants (and types of activities thereof), in which the merger participant directly or indirectly has the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations, and the types of activities of such market participants;

19.3. the market participants (and types of activities thereof), in which the participants referred to in Sub-paragraph 19.1 of these Regulations directly or indirectly have the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations, and the types of activities of such market participants; and

19.4. the market participants (and types of activities thereof), in which two or more market participants referred to in Sub-paragraph 19.1, 19.2 or 19.3 of these Regulations jointly have the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations.

20. The net turnover of the last financial year and the total turnover of a market participant in the territory of Latvia shall be indicated in a notification regarding each merger participant in conformity with the requirements of Chapter III of these Regulations.

21. The following shall be indicated in a notification in relation to the legal, financial and economic aspects of a merger:

21.1. the type of merger pursuant to Section 15, Paragraph one of the Competition Law;

21.2. most significant intended stages of the merger and the time periods thereof; and

21.3. restrictions of competition, which are directly related to and necessary for implementation of the merger, the types and time periods thereof.

22. The following shall be indicated in a notification in relation to relevant markets in the territory of Latvia:

22.1. the markets, in which a merger participant operates;

22.2. an evaluation regarding the markets affected as a result of the merger in the preceding year:

22.2.1. the size of the market according to turnover (in lats) and according to amount (in units) if such information is available;

22.2.2. the market share of each merger participant in percentage according to turnover and amount.

23. The following documents shall be appended to a notification:

23.1. powers of attorney. The right of the authorised person to represent one or all the participants of a merger during submission and examination of the notification shall be indicated in the power of attorney;

23.2. articles of association of each merger participant;

23.3. copies of the reports of the last financial year of each market participant;

23.4. a certification of the veracity of the submitted information; and

23.5. copies of contracts between the merger participants, copies of decisions of administrative institutions, copies of the minutes of agreements, a copy of a proposal to participate in a tender or copies or other such documents, which are adopted in relation to the merger and confirm the progress of the merger process according to a joint agreement of the merger participants involved therein.

24. Persons with the right of signature shall sign a notification and indicate the date and place of completion of the notification.

V. Content of a Full-form Notification

25. The following information shall be indicated in a notification:

25.1. regarding each submitter:

25.1.1. name, registration number in the Commercial Register or – for foreign merchants – in a register, which is equivalent to the Commercial Register. A natural person shall indicate their given name, surname and personal identity number;

25.1.2. legal address, telephone and fax number, e-mail address, the given name, surname and position of the contact person who is competent to solve the issues related to the merger. The natural person shall indicate the address of the declared place of residence, telephone and fax number and e-mail address;

25.1.3. present and planned types of activities;

25.2. regarding other merger participants:

25.2.1. name, legal address, telephone and fax number, e-mail address, the given name, surname and position of the contact person who is competent to solve the issues related to the merger;

25.2.2. present and planned types of activity;

25.3. the given name, surname, position, correspondence address, telephone and fax number, e-mail address, address of the website of the person authorised by a merger participant.

26. The following shall be indicated (may be indicated schematically) regarding each merger participant (also outside the territory of Latvia) in a notification:

26.1. the market participants or natural persons (and types of activities thereof) who directly or indirectly have the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations within the merger participant;

26.2. the market participants (and types of activities thereof), in which the merger participant directly or indirectly has the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations;

26.3. the market participants (and types of activities thereof), in which the participants referred to in Sub-paragraph 26.1 of these Regulations directly or indirectly have the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations;

26.4. the market participants (and types of activities thereof), in which two or more market participants referred to in Sub-paragraph 26.1, 26.2 or 26.3 of these Regulations jointly have the rights or opportunities referred to in Sub-paragraph 13.2 of these Regulations;

26.5. the market participants (and types of activities thereof), members of administrative institutions of which also operate in the administrative institution of the merger participant. In addition, the given name, surname, position, address, telephone and fax number of such members of the administrative institutions shall be indicated; and

26.6. the market participants in affected markets, in which the merger participants and the market participants referred to in Sub-paragraphs 26.1, 26.2, 26.3 of these Regulations individually or jointly have more than 10% of the voting rights, capital share or securities (the respective percentage is specified).

27. Net turnover of the last financial year and the total turnover of a market participant in the territory of Latvia shall be indicated in a notification regarding each merger participant in conformity with the requirements of Chapter III of these Regulations.

28. The following shall be indicated in a notification in relation to the legal, financial and economic aspects of a merger:

28.1. the type of merger pursuant to Section 15, Paragraph one of the Competition Law;

28.2. the economic objective and justification;

28.3. the economic and financial profile of the merger;

28.4. most significant intended stages of the merger and the time periods thereof;

28.5. restrictions of competition, which are directly related and necessary for implementation of the merger, the types and time periods thereof; and

28.6. the intended structure of the property, the right of use and control after the merger.

29. The following information shall be indicated in a notification regarding relevant markets:

29.1. the market (markets) affected by the merger;

29.2. an evaluation of the last three financial years in each affected market:

29.2.1. the size of the market according to turnover (in lats) and according to amount (in units);

29.2.2. the turnover (in lats) and amount (in units) of each merger participant and the market participant indicated in Sub-paragraphs 26.1, 26.2 and 26.3 of these Regulations;

29.2.3. the market share of each market participant in percentage according to the turnover and amount;

29.2.4. the market share of foreign goods in percentage according to the turnover and amount (specify the state);

29.2.5. the market share in percentage according to the turnover (if possible, also according to the amount) of such competitors whose market share exceeds 10%; and

29.2.6. the effect of quotas, tariffs and other barriers, as well as transport and other expenses on imports;

29.3. the supply structure in each affected market:

29.3.1. the five largest suppliers of each merger participant; and

29.3.2. a description of the supply structure;

29.4. the demand structure in each affected market:

29.4.1. the five largest customers of each merger participant; and

29.4.2. a description of the demand structure;

29.5. obstacles to entrance into each affected market.

30. The following shall be indicated in a notification in relation to the objective of a merger and the possible consequences:

30.1. the possible positive and negative consequences, especially in relation to competition;

30.2. the impact on the production or distribution of goods, technical or economic development; and

30.3. the compliance of the merger with the interests of customers, consumers and society in general.

31. If a merger is an establishment of such a market participant, which is subject to joint decisive influence, the following shall be additionally indicated in a notification:

31.1. which market participants obtaining joint decisive influence will continue significant activity in the same market as the market participant subject to joint decisive influence, or in markets vertically related to such market;

31.2. the turnover of the previous financial year of each market participant obtaining joint decisive influence;

31.3. the economic significance of the activities of a market participant subject to joint decisive influence in relation to the turnover of the previous financial year of the market participant obtaining joint decisive influence;

31.4. the market share of each market participant obtaining joint decisive influence; and

31.5. a justification if the market participants obtaining joint decisive influence will not continue activity in the same market as the market participant subject to joint decisive influence, or in markets vertically related to such market.

32. The following documents shall be appended to a notification:

32.1. powers of attorney. The right of the authorised person to represent one or all participants of a merger during submission and examination of the notification shall be indicated in powers of attorney;

32.2. articles of association of each merger participant;

32.3. copies of reports of the last financial year of each market participant;

32.4. a certification of the veracity of the submitted information; and

32.5. copies of contracts between merger participants, copies of decisions of administrative institutions, copies of the minutes of agreements, a copy of a proposal to participate in a bid or copies of other documents, which are accepted in relation to the merger and confirm the progress of the merger process upon a joint agreement of the merger participants involved therein.

33. Documents reflecting information regarding relevant markets, as well as the markets affected in relation to competition conditions, the existing and potential competitors and market conditions, may be appended to a notification.

34. Persons with the right of signature shall sign a notification and indicate the date and place of completion of the notification.

VI. Examination of a Notification

35. The Council shall, within three working days after receipt of the notification, publish information on the website <http://www.kp.gov.lv> regarding receipt of a notification and specify the participants of a merger and the date of receipt of the notification.

36. In order to ensure hearing of opinions of market participants regarding the impact of a merger on competition, the Council may publish an invitation for the market participants to provide a justified opinion regarding the impact of the merger on competition on the website <http://www.kp.gov.lv> after commencement of the additional examination of the merger. The merger participants, the type of merger, the economic sectors, which are affected by the merger, the deadline for the submission of the opinion and type thereof shall be indicated in the invitation. The Council may ignore an opinion that is received without respect to the deadline indicated in the invitation.

37. Each merger shall be evaluated, taking into account whether the dominating position emerges or consolidates as a result of the merger, as well as whether competition in any relevant market may be significantly reduced. In performing research of the merger, the following may be taken into account:

37.1. the structure of the relevant market, the competition created by the market participants, as well as the necessity to maintain and develop competition in the market of Latvia;

37.2. restrictions of competition, which are directly related to the implementation of the merger, the types and time periods thereof;

37.3. the economic and financial situation of the market participants, the availability of alternative markets for suppliers and consumers, administrative and other barriers for entry into the relevant market, the trends of supply and demand of the particular goods, the interests of intermediaries and consumers, the development of technical and economic progress and the possible obstacles to competition;

37.4. the position of the market participants in the international market and the export possibilities of the products and services thereof; and

37.5. the potential social or economic gain for consumers and society.

38. If a market participant will be subject to joint decisive influence after a merger and the consequences or objective of such establishment of a market participant subject to joint decisive influence are, or may be, the co-ordination of the activity of the market participants

obtaining joint decisive influence, such a merger shall be evaluated, also taking into account Section 11, Paragraphs one and three of the Competition Law.

39. When examining the mergers referred to in Paragraph 38 of these Regulations, special attention shall be paid to the following:

39.1. whether the market participants obtaining joint decisive influence perform significant economic activity in the same market as the market participant subject to joint decisive influence, as well as in markets related to such market; and

39.2. whether the co-ordination of a competing activity, which may be a direct effect of the establishment of a market participant subject to joint decisive influence, will provide an opportunity to significantly reduce competition in a considerable portion of the market of the relevant goods or services.

40. The requirements of Section 26.¹ of the Competition Law shall be applied for specification of restricted access information included in a notification.

41. During examination of a notification the Council shall obtain the additional information necessary for the taking of a decision from participants of a merger and other market participants, conforming to the requirements referred to in Section 9, Paragraph five, Clauses 1, 2 and 3 of the Competition Law.

VII. Closing Provision

42. Cabinet Regulation No. 897 of 26 October 2004, Procedures for the Submission and Examination of a Notification regarding a Merger of Market Participants (*Latvijas Vēstnesis*, 2004, No. 173) is repealed.

Prime Minister

I. Godmanis

Minister for Economics

K. Gerhards