

# THE NOTIFICATION FORM OF A CONCENTRATION

## SECTION 1

### Background information

#### 1.1. Information on notifying party (or parties)

Give details of:

1.1.1. Name and address of undertaking;

1.1.2 Nature of the undertaking's business;

1.1.3. Name, address, telephone number, fax number and/or telex of, and position held by, the appropriate contact person.

#### 1.2. Information on other parties to the concentration.

For each party to the concentration (except the notifying party or parties) give details of:

1.2.1.name and address of undertaking;

1.2.2.nature of undertaking's business;

1.2.3.name, address, telephone number, fax number and/or telex of, and position held by the appropriate contact person.

#### 1.3. Address for service

Give an address (in Tirana if available) to which all communications may be made and documents delivered.

#### 1.4. Appointment of representatives

Where notifications are signed by representatives of undertakings, such representatives must produce written proof that they are authorized to act.

If a joint notification is being submitted, has a joint representative been appointed ?

If yes, please give the details requested in Sections 1.4.1 to 1.4.4.

If no, please give details of information of any representatives who have been authorized to act for each of the parties to the concentration, indicating whom they represent:

1.4.1.name of representative;

1.4.2.address of representative,

1.4.3.name of person to be contacted (and address, if different from 1.4.2);

1.4.4.telephone number, fax number and/or telex.

## SECTION 2

### Details of the concentration

#### 2.1. Describe the nature of the concentration being notified. In doing so state:

(a) whether the proposed concentration is a full legal merger, an acquisition of sole or joint control, a full-function joint venture or a contract or other means of conferring direct or indirect control within the meaning of Article 10, point (1) of the Law.

(b) whether the whole or parts of parties are subject to the concentration;

- (c) a brief explanation of the economic and financial structure of the concentration;
  - (ç) whether any public offer for the securities of one party by another party has the support of the formers supervisory boards of management or other bodies legally representing that party;
  - (d) the proposed or expected date of any major events designed to bring about the completion of the concentration;
  - (e) the proposed structure of ownership and control after the completion of the concentration;
  - (f) any financial or other support received from whatever source (including public authorities) by any of the parties and the nature and amount of this support.
- 2.2. List the economic sectors involved in the concentration.
- 2.3. For each of the undertakings concerned by the concentrations provide the following data for the last financial year:
- 2.3.1. world-wide turnover;
  - 2.3.2. domestic turnover
- 2.4. The information mention above should be „/////”. Provide the following with respect to the last financial year:

### **SECTION 3**

#### **Ownership and control**

3. For each of the parties to the concentration provide a list of all undertakings belonging to the same group.

This list must include:

- 3.1. All undertakings or persons controlling these parties, directly or indirectly;
- 3.2. All undertakings active on any affected market that are controlled, directly or indirectly:
  - (a) by these parties;
  - (b) by any other undertaking identified in 3.1. of this form

For each entry listed above (a and b), the nature and means of control should be specified.

The information sought in this section may be illustrated by the use of organization charts or diagrams to show the structure of ownership and control of the undertakings.

### **SECTION 4**

#### **Personal and financial links and previous acquisitions**

With respect to the parties to the concentration and each undertaking or person identified in response to Section 3, provide:

- 4.1. a list of all other undertakings which are active on affected markets (affected markets are defined in Section 6) in which the undertakings, or persons, of the group hold individually or collectively 10% or more of the voting rights, issued share capital or other securities;

In each case identify the holder and state the percentage held;

- 4.2. A list for each undertaking of the members of their boards of management who are also members of the boards of management or of the supervisory boards of any other undertaking which is active on affected markets; and (where applicable) for each undertaking a list of the members of their supervisory boards who are also members of the boards of management of any other undertaking which is active on affected markets;

In each case identify the name of the other undertaking and the positions held;

- 4.3. Details of acquisitions made during the last three years by the groups identified above (Section 3) of undertakings active in affected markets as defined in Section 6.

Information provided here may be illustrated by the use of organization charts or diagrams to give a better understanding.

## **SECTION 5**

### **Supporting documentation**

Notifying parties must provide the following:

- 5.1. Copies of the final or most recent versions of all documents bringing about the concentration, whether by agreement between the parties to the concentration, acquisition of a controlling interest or a public bid;
- 5.2. In a public bid, a copy of the offer document; if it is unavailable at the time of notification, it should be submitted as soon as possible and not later than when it is posted to shareholders;
- 5.3. Copies of the most recent annual reports and accounts of all the parties to the concentration;
- 5.4. Where at least one affected market is identified:

Copies of analyses, reports, studies and surveys submitted to or prepared for any member(s) of the board of directors, the supervisory board, or the shareholders' meeting, for the purpose of assessing or analyzing the concentration with respect to competitive conditions, competitors (actual and potential), and market conditions.

## **SECTION 6**

### **Market definitions**

The relevant product and geographic markets determine the scope within which the market power of the new entity resulting from the concentration must be assessed.

The notifying party or parties must provide the data requested having regard to the following definitions:

#### **I. Relevant product markets**

A relevant product market comprises all those products and/or services, which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use. A relevant product market may in

some cases be composed of a number of individual products and/or services which present largely identical physical or technical characteristics and are interchangeable. Factors relevant to the assessment of the relevant product market include the analysis of why the products or services in these markets are included and why others are excluded by using the above definition, and having regard to, for example, substitutability, conditions of competition, prices, cross-price elasticity of demand or other factors relevant for the definition of the product markets.

## **II. Relevant geographic markets**

The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of relevant products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighboring geographic areas because, in particular, conditions of competition are appreciably different in those areas.

Factors relevant to the assessment of the relevant geographic market include the nature and characteristics of the products or services concerned, the existence of entry barriers, consumer preferences, appreciable differences in the undertakings' market shares between neighboring geographic areas or substantial price differences.

## **III. Affected markets**

For purposes of information required in this Form, affected markets consist of relevant product markets where, in the Albanian territory:

- (a) two or more of the parties to the concentration are engaged in business activities in the same product market and where the concentration will lead to a combined market share of 15% or more. These are horizontal relationships;
- (b) one or more of the parties to the concentration are engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and any of their individual or combined market shares is 25% or more, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration. These are vertical relationships.

On the basis of the above definitions and market share thresholds, provide the following Information, and

Identify each affected market within the meaning of Section 6, paragraph III (a), (b)

## **IV. Markets related to affected markets within the meaning of paragraph III**

- 6.1 Describe the relevant product and geographic markets concerned by the notified operation, which are closely related to the affected market(s) (in upstream, downstream and horizontal neighboring markets), where any of the parties to the concentration are active and which are not themselves affected markets within the meaning of paragraph III.

## **V. Non-affected markets**

6.2 In case there are no affected markets in the meaning of Section 6.1, describe the product and geographic scope of the markets on which the notified operation would have an impact.

### **SECTION 7 Information on affected markets**

For each affected relevant product market, for each of the last three financial years:

- (a) for the Albanian territory;
- (b) where in the opinion of the notifying parties, the relevant geographic market is different;

provide the following:

- 7.1. an estimate of the total size of the market in terms of sales value (in ecus) and volume (units). Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;
- 7.2. the sales in value and volume, as well as an estimate of the market shares, of each of the parties to the concentration;
- 7.3. an estimate of the market share in value (and where appropriate volume) of all competitors (including importers) having at least 10 % of the geographic market under consideration. Provide documents where available to confirm the calculation of these market shares and provide the name, address, telephone number, fax number and appropriate contact person, of these competitors;
- 7.4. an estimate of the total value and volume and source of imports from outside the Albanian territory and identify:
  - (a) the proportion of such imports that are derived from the groups to which the parties to the concentration belong;
  - (b) an estimate of the extent to which any quotas, tariffs or non-tariff barriers to trade, affect these imports, and
  - (c) an estimate of the extent to which transportation and other costs affect these imports;
- 7.5. the extent to which trade among Albanian and other states is affected by:
  - (a) transportation and other costs; and
  - (b) other non-tariff barriers to trade;
- 7.6. the manner in which the parties to the concentration produce and sell the products and/or services; for example, whether they manufacture locally, or sell through local distribution facilities;
- 7.7. the nature and extent of vertical integration of each of the parties to the concentration compared with their largest competitors.

**SECTION 8**  
**General conditions in affected markets**

8.1 Identify the five largest independent<sup>16</sup> suppliers to the parties and their individual shares of purchases from each of these suppliers (of raw materials or goods used for purposes of producing the relevant products). Provide the name, address, telephone number, fax number and appropriate contact person, of these suppliers.

**Structure of supply in affected markets**

8.2. Explain the distribution channels and service networks that exist on the affected markets. In so doing, take account of the following where appropriate:

(a) the distribution systems prevailing on the market and their importance. To what extent is distribution performed by third parties and/or undertakings belonging to the same group as the parties identified in Section 3?

(c) the service networks (for example, maintenance and repair) prevailing and their importance in these markets. To what extent are such services performed by third parties and/or undertakings belonging to the same group as the parties identified in Section 3?

8.3. Where appropriate, provide an estimate of the total wide Albanian territory and/or geographic relevant market for the last three years. Over this period what proportion of this capacity is accounted for by each of the parties to the concentration, and what have been their respective rates of capacity utilization.

8.4. If you consider any other supply-side considerations to be relevant, they should be specified.

**Structure of demand in affected markets**

8.5. Identify the five largest independent customers of the parties in each affected market and their individual share of total sales for such products accounted for by each of those customers. Provide the name, address, and telephone number; fax number and appropriate contact person, of each of these customers.

8.6. Explain the structure of demand in terms of:

(a) the phases of the markets in terms of, for example, take-off, expansion, maturity and decline, and a forecast of the growth rate of demand;

(b) the importance of customer preferences, in terms of brand loyalty, products differentiation and the provision of a full range of products;

(c) the degree of concentration or dispersion of customers;

(c) segmentation of customers into different groups with a description of the “typical customer” of each group;

(d) the importance of exclusive distribution contracts and other types of long-term contracts;

(d) the extent to which public authorities, government agencies, State enterprises or similar bodies are important participants as a source of demand.

### **Market entry**

- 8.7. Over the last five years, has there been any significant entry into any affected markets? If the answer is “yes”, where possible provide their name, address, telephone number, fax number and appropriate contact person, and an estimate of their current market shares.
- 8.8. In the opinion of the notifying parties are there undertakings (including those at present operating only in extra-Albanian markets) that are likely to enter the market? If the answer is “yes”, please explain why and identify such entrants by name, address, telephone number, fax number and appropriate contact person, and an estimate of the time within which such entry is likely to occur.
- 8.9. Describe the various factors influencing entry into affected markets that exist in the present case, examining entry from both a geographical and product viewpoint.

In so doing, take account of the following where appropriate:

- (a) the total costs of entry (R&D, establishing distribution systems, promotion, advertising, servicing, etc.) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor;
- (b) any legal or regulatory barriers to entry, such as government authorization or standard setting in any form;
- (c) any restrictions created by the existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights;
- (c) the extent to which each of the parties to the concentration are licensees or licensors of patents, know-how and other rights in the relevant markets;
- (d) the importance of economies of scale for the production of products in the affected markets;
- (e) access to sources of supply, such as availability of raw materials.

### **Research and development**

- 8.10. Give an account of the importance of research and development in the ability of a firm operating on the relevant market(s) to compete in the long term. Explain the nature of the research and development in affected markets carried out by the parties to the concentration.

In so doing, take account of the following, where appropriate:

- (a) trends and intensities of research and development<sup>17</sup> in these markets and for the parties to the concentration;
- (b) the course of technological development for these markets over an appropriate time period (including developments in products and/or services, production processes, distribution systems, etc.);
- (c) the major innovations that have been made in these markets and the undertakings responsible for these innovations;

- (c) the cycle of innovation in these markets and where the parties are in this cycle of innovation.

### **Cooperative Agreements**

- 8.11. To what extent do cooperative agreements (horizontal or vertical) exist in the affected markets?
- 8.12. Give details of the most important cooperative agreements engaged in by the parties to the concentration in the affected markets, such as research and development, licensing, joint production, specialization, distribution, long term supply and exchange of information agreements.

### **Trade associations**

- 8.13. With respect to the trade associations in the affected markets:
- (a) identify those in which the parties to the concentration are members;
  - (b) identify the most important trade associations to which the customers and suppliers of the parties to the concentration belong.

Provide the name, address, telephone number, fax number and appropriate contact person of all trade associations listed above.

## **SECTION 9**

### **General market information**

#### **Market data on conglomerate aspects**

Where any of the parties to the concentration hold individually a market share of 25% or more for any product market in which there is no horizontal or vertical relationship as described above, provide the following information:

- 9.1. a description of each product market and explain why the products and/or services in these markets are included (and why others are excluded) by reason of their characteristics, prices and their intended use;
- 9.2. an estimate of the value of the market and the market shares of each of the groups to which the parties belong for each product market identified in 9.1. for the last financial year:
- (a) for the Albanian territory as a whole and, where different,
  - (b) for the for the relevant geographic market.;

#### **Overview of the markets**

- 9.3. Describe the world wide context of the proposed concentration, indicating the position of each of the parties to the concentration outside of the EEA territory in terms of size and competitive strength.
- 9.4. Describe how the proposed concentration is likely to affect the interests of intermediate and ultimate consumers and the development of technical and economic progress.

## **SECTION 10**

### **Cooperative effects of a joint venture**

10. For the purpose of Article 10, point (1), letter c of the Law please answer the following questions:

- (a) Do two or more parents retain to a significant extent activities in the same market as the joint venture or in a market, which is downstream or upstream from that of the joint venture, or in a neighboring market closely related to this market?

If the answer is affirmative, please indicate for each of the markets referred to here:

- the turnover of each parent company in the preceding financial year;
- the economic significance of the activities of the joint venture in relation to this turnover;
- the market share of each parent.

If the answer is negative, please justify your answer.

- (b) If the answer to (a) is affirmative and in your view the creation of the joint venture does not lead to coordination between independent undertakings that restricts competition within the meaning of Article 4 of the Law, give your reasons.
- (c) Without prejudice to the answers to (a) and (b) and in order to ensure that a complete assessment of the case can be made by the Authority, please explain how the criteria of Articles 5, 6, 7 of the Law.

## **SECTION 11**

### **General matters**

#### **Ancillary restraints**

11.1 If the parties to the concentration, and/or other involved parties (including the seller and minority shareholders), enter into ancillary restrictions directly related and necessary to the implementation of the concentration, these restrictions may be assessed in conjunction with the concentration itself :

- (a) Identify each ancillary restriction in the agreements provided with the notification for which you request an assessment in conjunction with the concentration; and
- (b) explain why these are directly related and necessary to the implementation of the concentration.

#### **Conversion of notification**

11.2. In the event that the Commission finds that the operation notified does not constitute a concentration within the meaning of Article 10 of the Law, do you request that it be treated as an application for negative clearance from, or a notification to obtain an exemption from Article 4 of the Law?

**SECTION 12**  
**Declaration**

Where notifications are signed by representatives of undertakings, such representatives must produce written proof that they are authorized to act. Such written authorization must accompany the notification.

The notification must conclude with the following declaration, which is to be signed by or on behalf of all the notifying parties:

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct, and complete, that complete copies of documents required by this Form, have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

They are aware of the provisions of Article 73, point 1, letter b of the Law.

Place and date:

Signatures:

Name/s:

On behalf of: