

**INFORMATION NOTICE REGARDING A CONCENTRATION PURSUANT TO
REGULATION [●]**

1. INTRODUCTION

1.1 The purpose of the Information Notice

The Information Notice specifies the information that must be provided by the notifying parties when submitting a notification to the European Commission of certain proposed mergers, acquisitions or other concentrations that satisfy at least one of the conditions for use of the “super simplified” procedure specified in [●].

In completing this Information Notice, your attention is drawn to Council Regulation [●] (hereinafter referred to as “the Merger Regulation”), and Commission Regulation [●] (hereinafter referred to as “the Implementing Regulation”) to which this Information Notice is annexed. The text of those Regulations, as well as other relevant documents, can be found on the Competition page of the Commission’s Europa website. Your attention is also drawn to the corresponding provisions of the Agreement on the European Economic Area (hereinafter referred to as “the EEA Agreement”).¹

The Information Notice may be used for the purpose of notifying concentrations, only if one or more of the following conditions is met:

1. **Joint ventures with no (or limited) EEA presence:** Where two or more undertakings acquire joint control of a joint venture, the joint venture has no, or negligible, actual or foreseen activities within the territory of the European Economic Area (EEA); such cases occur where:
 - (a) the turnover of the joint venture and/or the turnover of the contributed activities is less than [EUR 100 million] in the EEA territory at the time of notification; and
 - (b) the total value of assets transferred to the joint venture is less than [EUR 100 million] in the EEA territory at the time of notification.

2. **Conglomerate mergers:** Two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, and none of the parties to the concentration:
 - (a) are engaged in business activities in the same product and geographic market;
or

¹ See in particular Article 57 of the EEA Agreement, point 1 of Annex XIV to the EEA Agreement, Protocols 21 and 24 to the EEA Agreement, as well as Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (hereinafter referred to as the “Surveillance and Court Agreement”). Any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the EEA Agreement. As of 1 May 2004, these States are Iceland, Liechtenstein and Norway.

- (b) in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged.
- 3. **Moves from joint to sole control:** A party is to acquire sole control of an undertaking over which it already has joint control.
- 4. **Concentrations only notifiable by virtue of the transaction value threshold:** The concentration has a Union dimension by virtue of Article [●] of the Merger Regulation and does not meet the criteria of [Articles 1(2) or (3)] of the Merger Regulation.

The Commission will always require a Form CO (or Short Form CO) where:

- it appears that the conditions for using the Information Notice are not met; or
- exceptionally, where they are met, the Commission determines that a notification under a Form CO (or Short Form CO) is necessary for an adequate investigation of possible competition concerns.

Examples of cases where a notification under a Form CO (or Short Form CO) may be necessary are concentrations where it is difficult to define the relevant markets (for example, in emerging markets or where there is no established case practice); where a party is a new or potential entrant, or an important patent holder, where it is not possible to adequately determine the parties' market shares; in markets with high entry barriers, with a high degree of concentration or known competition problems; where at least two parties to the concentration are present in closely related neighbouring markets;² and in concentrations where an issue of coordination arises, as referred to in [Article 2(4)] of the Merger Regulation.

1.2 Reversion to notification under the Form CO (the regular procedure) or the Short Form CO (simplified procedure)

In assessing whether a concentration may be notified under the Information Notice, the Commission will ensure that all relevant circumstances are established with sufficient clarity. In this respect, the responsibility to provide correct and complete information rests with the notifying parties.

If, after the concentration has been notified using the Information Notice, the Commission within 10 working days considers that the case is not appropriate for notification under the Information Notice, the Commission may require notification under either the Form CO (or Short Form CO). This may be the case where:

- it appears that the conditions for using the Information Notice are not met;
- although the conditions for using the Information Notice are met, exceptionally a notification under either the Form CO (or Short Form CO) appears to be necessary for an adequate

² Product markets are closely related neighbouring markets when the products are complementary to each other or when they belong to a range of products that is generally purchased by the same set of customers for the same end use; see Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p.11), paragraph 91.

investigation of possible concerns or to establish that the transaction is a concentration within the meaning of [Article 3] of the Merger Regulation; or

- the Information Notice contains incorrect or misleading information.

In such cases, the notification may be treated as being incomplete in a material respect pursuant to [Article 5(2)] of the Implementing Regulation. The Commission will inform the notifying parties or their representatives of this in writing and without delay. The notification will only become effective on the date on which all information required is received.

1.3 Who must notify

In the case of a merger within the meaning of [Article 3(1)(a)] of the Merger Regulation or the acquisition of joint control of an undertaking within the meaning of [Article 3(1)(b)] of the Merger Regulation, the Information Notice must be completed jointly by the parties to the merger or by those acquiring joint control, as the case may be.³

In the case of the acquisition of a controlling interest in one undertaking by another, the acquirer must complete the Information Notice.

In the case of a public bid to acquire an undertaking, the bidder must complete the Information Notice.

Each party completing the Information Notice is responsible for the accuracy of the information which it provides.

1.4 The information to be provided

The parties to the transaction should complete all sections of the Information Notice.

For the avoidance of doubt, it should be noted that the fact that the Commission may have accepted that any particular information requested by this Information Notice was not necessary for the completion of a concentration (using the Information Notice), does not in any way prevent the Commission from requesting the information at any time, in particular by way of a request for information pursuant to [Article 11] of the Merger Regulation.

1.5 The requirement for a correct and complete notification

All information required by this Information Notice must be correct and complete. The information required must be supplied in the appropriate Section of this Information Notice.

In particular you should note that:

- In accordance with [Article 10(1)] of the Merger Regulation and [Article 5(2) and (4)] of the Implementing Regulation, the time-limits of the Merger Regulation linked to the notification will not begin to run until all the information that must be supplied with the notification has

³ See [Article 4(2)] of the Merger Regulation.

been received by the Commission. This requirement is to ensure that the Commission is able to assess the notified concentration within the strict time-limits provided by the Merger Regulation.

- The notifying party or parties must verify, in the course of preparing the Information Notice, that contact names and numbers, and in particular e-mail addresses, provided to the Commission are accurate, relevant and up-to-date.⁴
- Incorrect or misleading information in the Information Notice, including missing, incomplete and inaccurate contact details, will be considered to be incomplete information ([Article 5(4)] of the Implementing Regulation).
- If an Information Notice is incomplete, the Commission will inform the notifying parties or their representatives in writing and without delay. The Information Notice will only become effective on the date on which the complete and accurate information is received by the Commission ([Article 10(1)] of the Merger Regulation, [Article 5(2) and (4)] of the Implementing Regulation).
- Under [Article 14(1)(a)] of the Merger Regulation, notifying parties who, either intentionally or negligently, supply incorrect or misleading information, may be liable to fines of up to 1% of the aggregate turnover of the undertaking concerned. In addition, pursuant to [Article 6(3)(a) and Article 8(6)(a)] of the Merger Regulation the Commission may revoke its decision on the compatibility of a notified concentration where it is based on incorrect information for which one of the undertakings is responsible.
- You may request in writing that the Commission accept that the notification is complete notwithstanding the failure to provide information required by this Information Notice, if such information is not reasonably available to you in part or in whole (for example, because of the unavailability of information on a target company during a contested bid). The Commission will consider such a request, provided that you give reasons for the unavailability of that information, and provide your best estimates for missing data together with the sources for the estimates. Where possible, indications as to where any of the requested information that is unavailable to you could be obtained by the Commission should also be provided.

1.6 How to notify

The Information Notice must be completed in one of the official languages of the European Union. This language will thereafter be the language of the proceedings for all notifying parties. Where an Information Notice is made in accordance with Article 12 of Protocol 24 to the EEA Agreement in an official language of an EFTA State which is not an official language of the Union, the notification must simultaneously be supplemented with a translation into an official language of the Union.

⁴ Any personal data submitted in this Information Notice will be processed in compliance with Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data (OJ L8, 12.1.2001, p. 1).

The information requested by this Information Notice is to be set out using the sections and paragraph numbers of the Information Notice, signing a declaration as provided in Section 5, and annexing supporting documentation. The original of the Information Notice must be signed by persons authorised by law to act on behalf of each notifying party or by one or more authorised external representatives of the notifying party or parties.

[One original and the required number of copies of the Information Notice and the supporting documents must be submitted to the Commission's DG Competition. The Commission has published the required number and format (paper or electronic) of copies in the *Official Journal of the European Union* as well as on DG Competition's website.]

[The notification must be delivered to the address referred to in [Article 23(1)] of the Implementing Regulation. This address is published in the *Official Journal of the European Union* and available on DG Competition's website. The notification must be delivered to the Commission on working days as defined by [Article 24] of the Implementing Regulation during the opening hours indicated on DG Competition's website. The security instructions given on DG Competition's website must be adhered to.]

All electronic copies of the Information Notice and supporting documents must be provided in a useable and searchable format as further specified on DG Competition's website.

1.7 Confidentiality

Article 339 of the Treaty on the Functioning of the European Union ("TFEU") and [Article 17(2)] of the Merger Regulation as well as the corresponding provisions of the EEA Agreement⁵ require the Commission, the Member States, the EFTA Surveillance Authority and the EFTA States, their officials and other servants not to disclose information they have acquired through the application of the Regulation of the kind covered by the obligation of professional secrecy. The same principle must also apply to protect confidentiality between notifying parties.

If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.

In the case of mergers or joint acquisitions, or in other cases where the notification is completed by more than one of the parties, business secrets may be submitted under separate cover, and referred to in the notification as an annex. All such annexes must be included in the submission in order for a notification to be considered complete.

1.8 Definitions and instructions for purposes of this Information Notice

⁵ See, in particular, Article 122 of the EEA Agreement, Article 9 of Protocol 24 to the EEA Agreement and Article 17(2) of Chapter XIII of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (ESA Agreement).

Notifying party or parties: in cases where a notification is submitted by only one of the undertakings who is a party to an operation, "notifying parties" is used to refer only to the undertaking actually submitting the notification.

Party(ies) to the concentration or parties: these terms relate to both the acquiring and acquired parties, or to the merging parties, including all undertakings in which a controlling interest is being acquired or which is the subject of a public bid.

Except where otherwise specified, the terms notifying party(ies) and party(ies) to the concentration include all the undertakings which belong to the same groups as those parties.

Year: all references to the word year in this Information Notice must be read as meaning calendar year, unless otherwise stated. All information requested in this Information Notice must, unless otherwise specified, relate to the year preceding that of the notification.

The financial data requested must be provided in euros at the average exchange rates prevailing for the years or other periods in question.

All references contained in this Information Notice are to the relevant articles and paragraphs of the Merger Regulation, unless otherwise stated.

1.9 Provision of information to employees and their representatives

The Commission would like to draw attention to the obligations to which the parties to a concentration may be subject under Union and/or national rules on information and consultation regarding transactions of a concentrative nature vis-à-vis employees and/or their representatives.

1. SECTION 1: INTRODUCTORY INFORMATION

1.1 Contact details

Please provide (i) your name, (ii) the name of your company/law firm, (iii) your telephone number and (iv) your email address.

1.2 Proposed case language

CS – DA – DE – ET – EL – EN – ES – FR – IT – LV – HU – MT – NL – PL – PT – SK – SL – FI – SV (please choose)

1.3 Is case linked with or related to any other current or previous case?

If yes, please provide the relevant case number.

1.4 Companies involved, country of origin, role and turnover

Companies	Country	Role ⁶	Turnover (million EUR)		Year of turnover ⁷
			World	EU	

1.5 Main product(s) / economic activities

Name of product(s)/activities	NACE code

1.6 Qualification for super-simplified treatment

- Joint venture with no (or limited) EEA presence (transaction falls within the scope of [point 5(a)] of the Commission's Notice on a simplified procedure for treatment of certain concentrations under Council Regulation [●])
- Conglomerate merger (transaction falls within the scope of [point 5(b)] of the Commission's Notice on a simplified procedure for treatment of certain concentrations under Council Regulation [●])

⁶ A/P = Acquirer/Parent(s)
A = Acquirer
T = Target
NC = Newly created company constituting a JV
MP = Merging Party

⁷ If fiscal year does not fall together with calendar year, indicate end of fiscal year in full date format (dd/mm/yyyy).

- Move from joint to sole control (transaction falls within the scope of [point 5(d)] of the Commission's Notice on a simplified procedure for treatment of certain concentrations under Council Regulation [●])
- Concentration only notifiable by virtue of the transaction value threshold (transaction has a Union dimension by virtue of Article [●] of Council Regulation [●] and does not meet the criteria of [Articles 1(2) or (3)] of that Regulation)

2. SECTION 2: DESCRIPTION OF THE CONCENTRATION

- 2.1 Provide an executive summary of the concentration, specifying the parties to the concentration, the nature of the concentration (for example, merger, acquisition, or joint venture), the areas of activity of the parties to the concentration, and the strategic and economic rationale for the concentration.
- 2.2 Provide a non-confidential summary (up to 500 words) of the information provided under Section 2.1. It is intended that this summary will be published on the Commission's website following the date of notification. The summary must be drafted so that it contains no confidential information or business secrets.

3. SECTION 3: INFORMATION ABOUT THE PARTIES

- 3.1 For each notifying party as well as for each other party to the concentration⁸ provide:
 - (A) name of undertaking;
 - (B) name, address, telephone number and e-mail address of, and position held by, the appropriate contact person; the address given must be an address for service to which documents and, in particular, Commission decisions and other procedural documents may be notified, and the contact person given shall be deemed to be authorised to accept service;
 - (C) an indication of the internet address, if any, at which the most recent annual reports and accounts of all the parties to the concentration are available;
 - (D) if one or more authorised external representatives of the undertaking are appointed, the representative or representatives to which documents and, in particular, Commission decisions and other procedural documents may be notified:
 - (i) name, an address for service, telephone number and e-mail address of, and position held by, each representative; and

⁸ This includes the target company in the case of a contested bid, in which case the details should be completed as far as is possible.

- (ii) the original of written proof that each authorised external representative is authorised to act (based on the model Power of Attorney available on DG Competition's website).

4. SECTION 4: DETAILS OF THE CONCENTRATION, OWNERSHIP AND CONTROL⁹

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

4.1 Describe the nature of the concentration being notified. By reference to the relevant criteria of the Merger Regulation and the Commission Consolidated Jurisdictional Notice:¹⁰

- (A) Identify the undertakings or persons solely or jointly controlling each of the undertakings concerned, directly or indirectly, and describe the structure of ownership and control of each of the undertakings concerned before the completion of the concentration.
- (B) Explain whether the proposed concentration is:
 - (i) a full merger;
 - (ii) an acquisition of sole or joint control;
 - (iii) a contract or other means of conferring direct or indirect control within the meaning of Article 3(2) of the Merger Regulation;
 - (iv) if the concentration consists of the acquisition of joint control in a full-function joint venture within the meaning of Article 3(4) of the Merger Regulation, explain the reasons for which the joint venture is considered to be full-function.¹¹
- (C) Explain how the concentration will be implemented (for example by conclusion of an agreement, by the launch of a public bid, etc.).
- (D) By reference to [Article 4(1)] of the Merger Regulation explain which of the following have taken place at the time of notification:
 - (i) an agreement has been concluded;
 - (ii) a controlling interest has been acquired;

⁹ See [Articles 3(3), 3(4) and 3(5) and Article 5(4)] of the Merger Regulation.

¹⁰ See Commission Consolidated Jurisdictional Notice under the Merger Regulation (OJ C 95, 16 April 2008, p.1).

¹¹ See section B IV of the Consolidated Jurisdictional Notice.

- (iii) (the intention to launch) a public bid has been announced; or
 - (iv) the undertakings concerned have demonstrated a good faith intention to conclude an agreement.
- (E) Indicate the expected date of any major events designed to bring about the completion of the concentration.
- (F) Explain the structure of ownership and control of each of the undertakings concerned after the completion of the concentration.
- 4.2 Describe the economic rationale of the concentration.
- 4.3 State the value of the transaction (the purchase price (or the value of all the assets involved as the case may be); specify whether this is in the form of equity, cash, or other assets).
- 4.4 Describe any financial or other support received from public authorities by any of the parties and the nature and amount of this support.

5. SECTION 5: DECLARATION

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

“The notifying party or parties declare that, to the best of their knowledge and belief, the information given in this Information Notice is true, correct, and complete, that true and complete copies of documents required by the Information Notice have been supplied, 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 14(1)(a)] of the Merger Regulation.