



The Competition Authority
An tÚdarás Iomaíochta

MERGER NOTIFICATION FORM

Competition Act 2002

**Form for the notification of mergers and acquisitions pursuant
to sections 18(1) and 18(3) of the Competition Act 2002**

Effective from 1st September 2005

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INTRODUCTION

The purpose of the Merger Notification Form

The Merger Notification Form ("Notification Form") provides a framework for supplying the Competition Authority ("the Authority") with the information required to review proposed mergers, acquisitions or joint ventures ("proposed transaction(s)") as notified under Part 3 of the Competition Act, 2002 ("the Act") by the undertakings which have agreed to or are involved in the proposed transaction.

The Authority encourages all notifying parties to a proposed transaction to make a joint notification, though they are not legally obliged to do so. Where separate notifications are made, the date of commencement of the review period of the proposed transaction (the "appropriate date" as defined in section 19(6) of the Act) shall be the date of receipt of the latest notification, as provided in section 19(8) of the Act.

In addition to Part 3 of the Act, the attention of notifying parties is drawn to the Competition Authority's publications '*Procedures of the Competition Authority in the review of Mergers and Acquisitions*' and '*Guidelines for Merger Analysis*'.

The need for a correct and complete notification

The Authority requires a hard copy of the Notification Form with signatures of the notifying parties. Where it is not possible to submit original signatures on the Notification Form, a faxed copy of the signatures is acceptable when followed up in the next five days with the original signature page. All information supplied must be accurate and complete. By virtue of sections 18(1) and 18(3) of the Act, "full details" of the proposed merger or acquisition must be provided. The Authority understands "full details", as requiring that the Notification Form be completed fully.

By virtue of section 18(12) of the Act, a notification shall not be valid where any information provided is false or misleading in a material respect, and any determination made by the Authority on foot of such a notification is void. Where any documents which the notifying parties are required to submit with their notification are in a language other than English or Irish, the notifying parties must make available translations to the Authority. Notifications should be submitted by 5.30 p.m., Irish time, at the latest to the following address:

Mergers Division
The Competition Authority
Parnell House
14 Parnell Square
Dublin 1

In addition to the hard copy, the Notification Form and as many of the other notification documents as are capable of being supplied electronically should

be so supplied. The appropriate address for such e-documents is mergers@tca.ie.

Who should notify?

Section 18(1) of the Act requires that notification be made by each of the undertakings involved in the merger or acquisition within one month after the conclusion of an agreement or the making of a public bid. The Act does not define what are the “undertakings involved”. However, the Authority’s Notice in Respect of Certain Terms Used in Section 18(1) of the Competition Act 2002 sets out the Authority’s understanding of this term for the purposes of calculation of turnover and assessing whether business is carried on in the island of Ireland. Further guidance on what are the “undertakings involved” is to be found in the EU Commission’s Notice on the concept of undertakings concerned.

In relation to acquisitions within the meaning of section 16(1)(c) (“asset acquisitions”), whilst the vendor is not required to notify, by virtue of section 18(2)(c)(ii), the target business itself is an undertaking involved for the purposes of the competition analysis. Therefore information on the target business as an “undertaking involved” should be included in the Notification Form in relation to these types of acquisitions.

Public bids

Since the Act requires that notification be made within a month after the *making* of a public bid, it is clear that the Act contemplates a situation where a bid can be notified before it has been accepted. If a bid is notified before it has been accepted, there is at that stage only one undertaking involved in the merger, namely, the purchaser. Therefore, only the purchaser is required to notify. Insofar as the purchaser is able, it should provide as much detail as is in its possession in relation to the activities of the target business.

Where the public bid has been accepted prior to notification, then the target is also an undertaking involved.

Notifying parties

Section 1 of the Notification Form seeks information in respect of the notifying parties whereas the remainder of the Notification Form refers to the “undertakings involved”. The notifying party is usually the undertaking which is most directly involved with the transaction. For example in an acquisition, the notifying party on the buyer’s side is the purchasing company and the notifying party on the target’s side is the target company. The exception to this is the instance of a section 16(1)(c) type acquisition, in which case there is no notifying party on the target’s side by virtue of section 18(2)(c)(ii). Contact details for the target business, including name of authorised representative, should nevertheless be provided in the cover letter or elsewhere.

Where the actual purchaser is purely an acquisition vehicle specifically established for the purpose of acquiring the target, then the notifying parties

on the buyer's side are the parent companies of the acquisition vehicle, since these are the undertakings involved, not the acquisition vehicle.¹

Requests for further information

At all times in the review of the proposed transaction, the Authority retains its power to require any undertaking involved to supply to it, within a specified period, specified information, in accordance with section 20(2) of the Act ("a formal request"). The Authority may also make a request for information, which does not involve exercising its powers under section 20(2) of the Act ("an informal request"). The Authority has ultimate discretion in whether to make a formal request or an informal request.

Confidentiality

Where an undertaking involved believes that information furnished on foot of a notification is commercially sensitive and should remain confidential, such information should be clearly marked, and clear reason given as to why the information should be classed as confidential. The Authority will decide whether to accede to the request and that decision will be final. In the case of a joint notification, such confidential information may be furnished under separate cover by the respective undertakings involved.

Completion of the Notification Form

It is not necessary to complete section 4 of the Notification Form (Overlapping products and/or services) where there is no overlap, either horizontal or vertical, between the activities of the undertakings involved on the island of Ireland. Horizontal overlap occurs where a good or service produced, supplied or distributed by one undertaking involved may be considered as the same, similar to or broadly substitutable with a good or service produced, supplied or distributed by one or more other undertakings involved. Vertical overlap occurs where one or more undertakings involved produces, supplies or distributes a good or service in relation to which another undertaking involved carries on a business upstream or downstream. **The description of overlap is a separate issue from the description of what the undertakings involved consider to be the relevant product market(s).** If there is any issue as to whether or not overlap exists, this should be raised in pre-notification discussions with the Authority. If the Authority considers that there is overlap which the notifying parties have not disclosed, it may seek further information which could delay consideration of the matter. Where overlap is *de minimis*, the undertakings involved may discuss with the Authority, in pre-notification discussions, whether they may be exempted from completing some or all of section 4.

It may be the case that an undertaking involved is a potential competitor to one or more of the other undertakings involved, or that it holds important intellectual property rights relating to a market in which another undertaking involved operates, or that it provides goods or services which are closely related to the goods or services of another undertaking involved. In such situations, the undertakings involved should bring this to the Authority's attention in pre-notification discussions and the Authority may require the undertakings involved to complete some or all of section 4.

¹ See further paragraph 28 of the Commission Notice on the concept of undertakings concerned.

NOTIFICATION FORM

1. General Information

- 1.1 Provide an executive summary of the proposed transaction, specifying the undertakings involved in the proposed transaction, their areas of activity and the nature of transaction (e.g., merger, acquisition or joint venture).
- 1.2 Provide the legal name, business address, telephone number, fax number and web site of each notifying party and state the jurisdiction in which it is incorporated.
- 1.3 Provide the name, position, telephone number, fax number and e-mail address of a contact person for each notifying party.
- 1.4 Provide the name and contact details of the authorised legal representative, for each notifying party and an address for service of correspondence. Indicate to whom acknowledgement of receipt of the notification fee of €8,000 should be sent.
- 1.5 Indicate whether the notification is made under section 18(1)(a), section 18(1)(b) or section 18(3) of the Act.
- 1.6 Indicate whether the notifying parties are making a joint notification.

2. Description of the Proposed Transaction

- 2.1 Describe whether the transaction is a merger, an acquisition of sole or joint control, an acquisition of assets or a joint venture within the meaning of section 16(4) of the Act.
- 2.2 Describe whether the whole or parts of the undertakings involved are subject to the proposed transaction.
- 2.3 Describe the structure of ownership and control of the undertakings involved both before and after the proposed transaction.
- 2.4 State the industry sector or sectors involved.
- 2.5 Provide the date on which an agreement within the meaning of the Act was concluded or the date of making of the public bid.
- 2.6 Provide details of the consideration exchanged in relation to the proposed transaction.
- 2.7 Provide details of the commercial objectives sought to be achieved by the proposed transaction.
- 2.8 List the competition authorities in other jurisdictions to which the proposed transaction has been or will be notified and the proposed timing of such notifications. Where the proposed transaction has a wider context (e.g. world wide/European wide), describe this.

3. Details on the Undertakings Involved

- 3.1 With respect to each undertaking involved, list the undertakings in the group and the person or persons controlling these directly or indirectly. This information may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the undertakings.
- 3.2 Provide the turnover of each undertaking involved, both worldwide and in the State for the last financial year for which such information is available and for any available interim period in the current year.
- 3.3 Describe the goods or services supplied by each undertaking involved, both worldwide and in the State.

4. Overlapping Products and/or Services

- 4.1 *Horizontal area(s) of overlap:* With respect to the island of Ireland, specify each good or service produced, supplied or distributed by each undertaking involved, which may be considered as the same, similar to or broadly substitutable with a good or service produced, supplied or distributed by one or more other undertakings involved.
- 4.2 *Vertical area(s) of overlap:* With respect to the island of Ireland, specify each good or service produced, supplied or distributed by each undertaking involved, in relation to which one or more other undertakings involved carries on a business upstream or downstream.
- 4.3 For each area of overlap, specify the geographic regions within the island of Ireland where these occur and state the whereabouts of all major production, supply or distribution facilities of each undertaking involved.
- 4.4 For each area of overlap, provide details of the following:
 - the extent to which each undertaking involved is vertically integrated;
 - the characteristics of the industry sector in which the proposed transaction occurs (e.g., whether mature or innovative) and the typical distribution and supply systems prevailing in the sector;
 - the nature of the products or services concerned. Indicate whether they are homogenous, characterised by brand loyalty and close substitutes with each other. Indicate the distribution methods and sources and methods of supply of the undertakings involved;
 - the extent of switching costs for customers changing from one supplier to another;
 - the importance and extent of customer preferences and the types and general location of customers and
 - the manner in which the undertakings involved price and sell their goods and/or services.

- 4.5 For each area of overlap, identify any important agreements or categories of agreement relating to distribution, supply, purchasing, joint development, research and development (R&D) or any other co-operative arrangements or alliances, whether horizontal or vertical, in which each undertaking involved has entered into or is involved. Provide details of the type of the agreement(s), the subject matter, the other parties and the duration.
- 4.6 For each area of overlap, identify any shareholdings of more than 10% held by each undertaking involved in a competitor or potential competitor. A potential competitor can be regarded as an undertaking operating upstream or downstream in an area of overlap or an undertaking which has plans to enter the area of overlap, or has developed or pursued such plans in the past two years.
- 4.7 For each area of overlap, identify any trade association(s), regardless of whether one or more of the undertakings involved is a member of the association(s). Provide the names, descriptions and telephone number of contact persons within such associations.
- 4.8 For each area of overlap, list the five customers worldwide with the largest account and the five customers in the State with the largest account for each undertaking involved. Provide a contact name, description of position within the organisation and telephone number for each customer mentioned.
- 4.9 For each area of overlap list the five suppliers worldwide receiving the highest payment and the five suppliers in the State receiving the highest payment from each undertaking involved. Provide a contact name, description of position within the organisation and telephone number for each supplier mentioned.
- 4.10 For each area of overlap list the five largest worldwide competitors and the five largest competitors in the State of each undertaking involved. Provide a contact name, description of position within the organisation and telephone number for each competitor mentioned.
- 4.11 For each area of overlap provide the turnover in the State of each undertaking involved. Provide also estimates of competitors' turnover in the State for each area of overlap.

5. Views of the Undertakings Involved

- 5.1 Provide a description of what you consider to be the relevant product and geographic market or markets relating to the proposed transaction and reasons for your assessment. Provide a description of broader and/or narrower product and geographic markets.
- 5.2 Provide estimates of the shares of each undertaking involved on the market or markets described by you above. Provide also estimates of the shares of competitors in these markets and explain the origins of these estimates.
- 5.3 Provide your views as to why you consider that the proposed transaction will not lead to a substantial lessening of competition in markets for goods or services in the State.

6. Ancillary Restraints

- 6.1 Provide details of any arrangements constituting restrictions which you believe are directly related and necessary to the implementation of the proposed transaction.

7. Further Information and Supporting Documentation

- 7.1 Provide a copy or copies of the agreement, or, where a public bid has been made, a copy of the offer document relating to the proposed transaction. List all other agreements relating to the transaction.
- 7.2 Provide a copy of the most recent annual report for each undertaking involved.
- 7.3 Where there is overlap in the activities of the undertakings, provide copies of all surveys, reports, analyses and studies, whether or not in electronic format, analysing the proposed transaction with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into and state the name and title of each individual who prepared each such document.
- 7.4 List all documents withheld on the basis of a claim of legal privilege, which would otherwise be supplied pursuant to the Notification Form.
- 7.5 Furnish details of any Internet websites or other sources of which you are aware, which may contain information relevant to the assessment of the proposed transaction.
- 7.6 Provide any other information which you consider relevant.

8. Declaration, Signature and Power of Attorney

8.1 Provide the following signed declaration in respect of each notifying party:

The undersigned declare that the information given herein and in the appendices and attachments hereto is, to the best of their knowledge and belief, accurate and complete, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

First notifying party

Second notifying party

Signed:

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Name:
(Print)

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Position:

.....

Date:

.....

Any other notifying parties

Signed:

.....

Name:
(Print)

.....

Position:

.....

Date:

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8.2 In circumstances where an authorised representative has been appointed by the notifying party to sign the Notification Form on its behalf, provide a Power of Attorney identifying the authorised representative and confirming the authorisation of same to sign the Notification Form.