



The Competition Authority
An tÚdarás Iomaíochta

**Notice in respect of certain terms used in Part
3 of the Competition Act 2002**

(As amended 12 December 2006)

Decision No. N/02/003

Date: 12 December 2006

Notice in respect of certain terms used in Part 3 of the Competition Act 2002

(As amended, 12 December 2006)

Article 1.

Introduction

This Notice is published by the Competition Authority, 14 Parnell Square, Dublin 1 pursuant to the function conferred on it by section 30(1)(d) of the Competition Act 2002 (“the Act”). Its purpose is to give guidance to business and to legal practitioners concerning certain terms used in Part 3 of the Act. It is not and does not purport to be an interpretation of the law.

Article 2.

“Undertakings involved in the merger or acquisition”

(1) Section 18(1) of the Act makes provision for the notification of proposed mergers and acquisitions to the Competition Authority. Subject to sub-articles (2) and (3) of this Article, for the purposes of the calculation of turnover and of assessing whether business is carried on in any part of the island of Ireland, the Competition Authority understands the phrase “undertakings involved in the merger or acquisition” as used in that subsection to mean the entire group of undertakings to which an undertaking party to a proposed transaction belongs.

(2) Notwithstanding the provisions of sub-article (1) of this Article, in the case of the acquisition of part (“the target”) of an undertaking (“the vendor”), the turnover only of the target (whether or not it is constituted as a separate legal entity) shall be taken into account on the vendor’s side of the transaction.

(3) Notwithstanding the provisions of sub-article (2) of this Article, in the case of an asset acquisition of the kind specified in section 16(1)(c) of the Act, that part of the turnover of the vendor that is generated from the assets the subject of the transaction, shall be taken into account.

Article 3.

“Carries on business in any part of the island of Ireland”

(1) Section 18(1)(a)(ii) sets out a criterion whereby a proposed merger or acquisition is notifiable (subject to the turnover thresholds) if each of 2 or more of the undertakings involved in the merger or acquisition carries on business in any part of the island of Ireland. The Competition Authority understands this phrase to include undertakings that either –

- (a) have a physical presence on the island of Ireland (including a registered office, subsidiary, branch, representative office or agency) AND make sales and/or supply services to customers on the island of Ireland,

OR,

- (b) have made sales into the island of Ireland of at least €2 million in the most recent financial year

Article 4.

“Turnover in the State”

(1) Section 18(1)(a)(iii) sets out a threshold in respect of turnover in the State. The Competition Authority understands “turnover in the State” to comprise sales made or services supplied to customers within the State.

Article 5

“Within 1 month after”

(1) Section 18(1) prescribes that each of the undertakings involved in a merger or acquisition to which the subsection relates must, “within 1 month after” the conclusion of the agreement or the making of the public bid, notify the Competition Authority of the proposal to put the merger or acquisition into effect. Section 21(2) prescribes that in respect of a notification received by it, the Competition Authority shall “within 1 month after” the appropriate date, inform the undertakings concerned, together with any persons or undertakings from whom submissions have been received, of the determination it has made.

(2) The Interpretation Act 2005 provides that a month means “a calendar month”.

(3) Section 18(h) of the Interpretation Act 2005 provides:

“Where a period of time is expressed to begin on or be reckoned from a particular day, that day shall be deemed to be included in the period and, where a period of time is expressed to end on or be reckoned to a particular day, that day shall be deemed to be included in the period”

(4) The Competition Authority understands the phrase “within 1 month after” to have the same meaning as “within 1 month from”. In accordance therefore with section 18(h) of the Interpretation Act 2005, the period of 1 calendar month in section 18(1) of the Act will include the date on which the agreement was concluded or the public bid made, and the period of 1 calendar month in section 21(2) will include the “appropriate date”. This means that the calendar month will end the day before the corresponding date in the following month. For example, if an agreement is concluded, a bid is made, or the “appropriate date” falls on 12 April, one calendar month after will end on 11 May.

(5) An exception to the above rule occurs where an agreement is concluded, a bid made, or the “appropriate date” falls on 29th, 30th or 31st of January in any given year, in which case, the calendar month will end on 28th February or, in a leap year, where the agreement is concluded, the bid made or the appropriate date falls on 30th or 31st January, the calendar month will end on the 29th February.

For the Competition Authority

William Prasifka

Chairperson

12 December 2006