



Title:	Best Practices on the conduct of merger control proceedings	Issue date: 12.08.2009
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Contents

1	PURPOSE OF THE BEST PRACTICES	2
2	CONTACTS PRIOR TO NOTIFICATION (PRE-NOTIFICATION CONTACTS).....	2
3	REVIEW PROCESS AFTER SUBMISSION OF THE NOTIFICATION	3
3.1	OVERVIEW	3
3.2	SUBMISSION OF THE NOTIFICATION AND OTHER INFORMATION GATHERING MATTERS	3
3.3	PUBLIC VERSIONS OF THE CASE DOCUMENTS	4
4	CONCENTRATIONS NOTIFIED BY WAY OF A STANDARDIZED NOTIFICATION	4
4.1	GENERAL	4
4.2	CASES BROUGHT TO A CLOSE WITHOUT AN ORDER FOR THE SUBMISSION OF A COMPLETE NOTIFICATION	4
5	CONCENTRATIONS NOTIFIED BY WAY OF A COMPLETE NOTIFICATION	5
5.1	PRE-NOTIFICATION CONTACTS IN CASE OF A COMPLETE NOTIFICATION	5
5.2	CASE-TEAM	5
5.3	MEETINGS WITH THE COMPETITION AUTHORITY	5
5.4	PRINCIPLES FOR THE CONDUCT OF THE MEETINGS.....	5
5.5	REMEDIES PROPOSALS	6
5.6	ACCESS TO THE FILE	6
5.7	CASES BROUGHT TO A CLOSE WITHOUT A FORMAL DECISION	6



Title:	Best Practices on the conduct of merger control proceedings	Issue date: 12.08.2009 Pages: 2 of 7 Unofficial English translation
--------	--	---

1 Purpose of the Best Practices

- (1) The purpose of these Best Practices (“Best Practices”) is to offer a better understanding on the way the Competition Authority conducts merger control proceedings pursuant to Chapter 4 of the Competition Act¹. These Best Practices intend to contribute to a higher degree of predictability for the parties and a good co-operation during the review period in order to achieve an efficient review process.
- (2) The Best Practices are built on the experience of the Competition Authority in the conduct of merger control proceedings. The Competition Authority has also received replies to a consultation letter of 6 November 2008. The Competition Authority’s practice will develop in light of experience, and the Best Practices may be amended accordingly.
- (3) The Best Practices offer guidance and do not have any binding effect on the way the Competition Authority will handle a case. The Best Practices do not create or alter any rights or obligations of the notifying party or other involved parties.
- (4) The Best Practices should not be taken as a comprehensive account of the law relating to the control of concentrations, and should be read in conjunction with the rules on control of concentrations as set out in Chapter 4 of the [Competition Act](#), the rules on processing of investigations and inspections as set out in Chapter 6 of the Competition Act, the [Regulation on Notification of Concentrations](#), and the general rules on the handling of cases pursuant to the [Public Administration Act](#) and the [Freedom of Information Act](#). The previous practice of the Competition Authority and its Guidelines can offer further guidance, see the Competition Authority’s [Guidelines on standardized notification of concentrations](#) and the [Guidelines on complete notification of concentrations](#), and further information on the control of concentrations available on the Competitions Authority’s website.

2 Contacts prior to notification (pre-notification contacts)

- (5) Pre-notification contacts are normally not required in non-problematic cases.
- (6) Pre-notification contacts may be appropriate in cases which could raise competition concerns. Pre-notification contacts may also be appropriate where the concentration in question involves a complicated company structure or complicated markets, or where referral of the case to the European Commission may be relevant. The need for pre-notification contacts and possible meetings can be discussed with the Competition Authority in the individual case.
- (7) The main purpose of pre-notification contacts is to identify problematic procedural and/or substantial issues that the concentration may raise in order for the further examination of the case to be planned in an appropriate way.
- (8) Pre-notification contacts aim as well at establishing whether it is appropriate to submit more information in the notification than what is required by law. This could include information relating to alternative market definitions, reports and other documentation enabling the Competition Authority to get a good overview of the case at an early stage.

¹ Act of 5 March 2004 No. 12 on competition between undertakings and control of concentrations (the Competition Act).



Title: Best Practices on the conduct of merger control proceedings	Issue date: 12.08.2009 Pages: 3 of 7 Unofficial English translation
---	---

- (9) Whether the Competition Authority may ease the information requirements in the case at hand may also be discussed during pre-notification contacts.
- (10) Pre-notification contacts should be initiated at least 10 working days before the expected day of notification. An enquiry should be followed up with a written statement, describing the concentration and any specific issues it may raise. It is important that the statement objectively describes the affected markets and possible competition concerns. The extent and format of the pre-notification contacts will depend on the complexity of the particular case, to be agreed with the Competition Authority in the individual case. It may be appropriate to submit a draft notification as a basis for pre-notification contacts.
- (11) In case the concentration is not publicly known, information provided during the pre-notification contacts will normally not be subject to public disclosure, see section 13 of the Freedom of Information Act and section 13 first paragraph (b) [business secrets] of the Public Administration Act. The information could, however, be subject to public disclosure at a later stage if the conditions for non-disclosure pursuant to the aforementioned legislation are no longer present.

3 Review process after submission of the notification

3.1 Overview

- (12) The review process after submission of the notification will be different depending on whether the concentration was notified by way of a standardized notification (section 18 first paragraph of the Competition Act), or by way of a complete notification (section 18 third or fourth paragraph of the Competition Act). The Best Practices deal separately with concentrations notified by way of a standardized notification (Chapter 4 below) and concentrations notified by way of a complete notification either voluntarily or after order (Chapter 5 below). General issues which are common for all cases are dealt with here (Chapter 3).

3.2 Submission of the notification and other information gathering matters

- (13) The date of receipt of the notification by the Competition Authority will appear on the [Competition Authority's website](#), and no other formal confirmation thereof will be provided.
- (14) During the review process the Competition Authority may need information additional to that contained in the notification. The notifying party should be prepared to answer requests for information fast. At an early stage of the review process additional information could be necessary to clarify whether the case at hand raises competition concerns or whether it can be closed without an order for submission of a complete notification.
- (15) It is a general duty pursuant to section 24 of the Competition Act to provide the Competition Authority with information necessary for the Competition Authority to perform its duties under the law. If the notifying party does not comply with a request for information within the deadline set by the Competition Authority, the deadlines that apply to processing by the Competition Authority pursuant to section 20 of the Competition Act may be suspended, see section 20 fifth paragraph. Providing incorrect or incomplete information to the Competition Authority may be subject to an administrative fine pursuant to section 29 or penalty pursuant to section 30.
- (16) It may also be necessary to request further information from third parties. Third parties who typically may be contacted are customers, suppliers and competitors.



Title:	Best Practices on the conduct of merger control proceedings	Issue date: 12.08.2009 Pages: 4 of 7 Unofficial English translation
--------	--	---

3.3 Public versions of the case documents

- (17) The notifying party should submit a proposal for a public version of the notification together with the notification, or clearly indicate what information is considered to be business secrets.² If such information is not provided, the notification may be considered incomplete and the deadlines referred to in section 18 third paragraph and section 20 second paragraph of the Competition Act, respectively, will first start to run once the notification is complete.³
- (18) The Competition Authority will in relation to other case documents normally request the sender to indicate what information the sender considers to be business secrets. Where the Competition Authority sets deadlines for the submission of a public version of a document, it is important for the efficient handling of the case that this deadline is met.
- (19) The sender should justify why particular information should be kept confidential when submitting information. The Competition Authority will as far as possible liaise with the sender of the document when assessing its confidential character, but it should be emphasised that the final decision will be taken by the Competition Authority.

4 Concentrations notified by way of a standardized notification

4.1 General

- (20) Extensive contact with the Competition Authority will normally not be necessary in cases that do not raise competition concerns.
- (21) If the Competition Authority considers to issue an order for the submission of a complete notification, the Competition Authority will normally contact the notifying party in advance.

4.2 Cases brought to a close without an order for the submission of a complete notification

- (22) If the Competition Authority does not order the submission of a complete notification, the case is deemed as closed after the expiry of the 15 working days deadline pursuant to section 18 third paragraph of the Competition Act. The Competition Authority receives a considerable number of standardized notifications every year and is not in position to issue an official closing letter in every case. Upon request after the expiry of the 15 working days deadline (midnight), the Competition Authority may inform whether a case has been closed or not.
- (23) A case cannot be closed before the expiry of the 15 working days deadline pursuant to section 18 third paragraph of the Competition Act, among other things because third parties shall have the opportunity to forward any comments they may have in relation to the case once the concentration has been announced on the Competition Authority's website.

² See Regulation No. 673 of 28 April 2004 on the Notification of concentrations section 1 second paragraph and section 4 second paragraph.

³ See Regulation No. 673 of 28 April 2004 on the Notification of concentrations section 1 third paragraph and section 4 fourth paragraph.



Title:	Best Practices on the conduct of merger control proceedings	Issue date: 12.08.2009 Pages: 5 of 7 Unofficial English translation
--------	--	---

5 Concentrations notified by way of a complete notification

5.1 Pre-notification contacts in case of a complete notification

- (24) Before the submission of a voluntary complete notification pursuant to section 18 fourth paragraph of the Competition Act, it may be appropriate to initiate pre-notification contacts with the Competition Authority, see Chapter 3 above. Where the Competition Authority orders the submission of a complete notification pursuant to section 18 third paragraph of the Competition Act, the Competition Authority will normally be open for having a meeting with the notifying party after the order has been issued. The principles on pre-notification contacts described above in Chapter 3 will apply as appropriate.

5.2 Case-team

- (25) The case-team will normally consist of a leader (head of section/senior adviser) and one or more handling officers. The leader will be responsible for the case on behalf of the Competition Authority and will normally be the person to be contacted within the Competition Authority. All enquiries related to the case should as far as practically possible be addressed to such person, unless otherwise agreed.

5.3 Meetings with the Competition Authority

- (26) After submission of a complete notification it may be appropriate with meetings between the Competition Authority and the notifying party at the following points:
1. approximately ten working days after receipt of the complete notification;
 2. approximately ten working days after the unreasoned preliminary decision on intervention was presented;
 3. approximately ten working days before the reasoned preliminary decision on intervention, and
 4. approximately five working days after receipt of the notifying party's reply to the reasoned preliminary decision on intervention.
- (27) The complexity of the case at hand will determine whether more or fewer meetings than those mentioned above in paragraph (26) should be held. The meetings may take the form of attendance meetings or meetings by telephone or videoconference, depending on what the Competition Authority considers appropriate in the individual case.

5.4 Principles for the conduct of the meetings

- (28) The objective of the meetings is to ensure an effective and transparent review process. The meetings shall contribute to the clarification of the factual and legal issues of the case, and give the opportunity to the notifying party to make its points of view known.
- (29) The Competition Authority expresses formally its opposition to the concentration through the reasoned preliminary decision on intervention, but will to the extent possible also point out its preliminary views on what competition concerns the case raises in the meeting. Such preliminary comments should not be expected at an early stage of the review process as the Competition Authority's main focus at this stage is information gathering. It should be noted that the Competition Authority is at liberty to raise further and/or other competition related issues at any stage of the review.



Title:	Best Practices on the conduct of merger control proceedings	Issue date: 12.08.2009 Pages: 6 of 7 Unofficial English translation
--------	--	---

- (30) An important objective of the meetings is also to initiate discussions in relation to a possible remedy proposal by the notifying party, see further on this matter section 5.5 below.
- (31) As preparation for the meetings, the Competition Authority will in collaboration with the notifying party normally prepare an agenda in advance. Case documents and documents the notifying party is requested to submit, or want to submit voluntarily, should be sent to the Competition Authority well in advance in order for the case team to be able to prepare for the meeting.
- (32) The notifying party should be represented by internal or external representatives who are capable to participate in the discussions which are expected to take place. Where the notifying party is represented by a lawyer, it should be arranged that the Competition Authority can also confront directly and pose questions to the persons responsible for the undertakings involved.
- (33) If formal minutes of the meeting are produced, these will be sent to the notifying party for comments, and the notifying party will be requested to propose a public version of the agreed minutes.

5.5 Remedies proposals

- (34) The notifying party can offer remedy proposals pursuant to section 20 third paragraph fourth point of the Competition Act. Where remedy proposals are offered, the offer must also be included in a publicly available document.
- (35) The Competition Authority encourages the notifying party to contact the Competition Authority in relation to remedy proposals as early as possible during the review process, and at the latest when submitting its reply to the reasoned preliminary decision on intervention, see section 20 third paragraph second sentence of the Competition Act. Remedy proposals can be discussed during all the meetings mentioned above in section 5.3.
- (36) In addition to the Competition Authority's own practice, the European Commission's [Notice on Remedies](#) can provide guidance on appropriate types of commitments. The remedies proposals should be as precise and complementary as possible. The European Commission's [form RM relating to remedies](#) can give guidance on the formulation of the commitments.
- (37) The Competition Authority will normally examine the effect of the remedy proposals on the market unless this is not considered appropriate in the particular case.

5.6 Access to the file

- (38) The notifying party can request the Competition Authority to provide it with a list of the documents in the case (the case log) on a weekly basis. The notifying party may then file a request for access to particular documents.
- (39) Whether third parties should be given access to the case documents is determined by applicable law concerning access to file and freedom of information. The notifying party will to the extent possible be given the opportunity to express its views on confidentiality of the information prior to disclosure.

5.7 Cases brought to a close without a formal decision



Title:	Best Practices on the conduct of merger control proceedings	Issue date: 12.08.2009 Pages: 7 of 7 Unofficial English translation
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- (40) If the Competition Authority does not adopt a decision to intervene pursuant to section 16 of the Competition Act, the case will be deemed closed once one of the processing deadlines of section 20 of the Competition Act has expired. In cases where an order for submission of a complete notification has been issued, the Competition Authority may upon request after the expiry of the processing deadlines (midnight) inform whether the case has been closed, and send a written confirmation thereof. If the Competition Authority decides to close the case before the expiry of the processing deadlines, the Competition Authority will inform the notifying party accordingly.