

Guidelines for complete notification of a concentration

See Section 18, third and fourth paragraphs, of the Competition Act, and Sections 4 to 6 of the Regulation on the notification of concentrations.

Updated 1 July 2008

PART 1 – INTRODUCTION

The Competition Authority carries out its control of concentrations in accordance with Chapter 4 of the Competition Act. For more information on the Competition Authority's control of concentrations, see the [fact sheet](#) on the Authority's website.

These guidelines deal only with complete notification of concentrations.

The Competition Authority has issued separate [guidelines for standardized notifications of concentrations](#). The content requirements for a complete notification are considerably more comprehensive than for a standardized notification.

A complete notification provides information about the concentration to the Competition Authority. This enables the authority to determine whether to intervene in the case on the basis of Section 16, first or second paragraph, of the Competition Act. The Competition Authority must give notice that it may intervene within 25 working days after the complete notification has been received. Working days means that Saturdays, Sundays and public holidays are not counted. The 25-working day period begins on the first working day after receipt. If the notice is not issued before the deadline, the case is closed.

The Competition Authority has published forms for submitting a complete notification:

- Form to be filled-out and submitted electronically can be found at www.altinn.no
- Alternatively, print out the [form](#) from the Competition Authority's website.

There are no formal requirements for the notification and use of the form is voluntary. Complete notifications must be submitted in Norwegian. Relevant documents in English may be found at www.konkurransetilsynet.no

The Competition Authority may in individual cases relax the requirements for a complete notification. Notifying party(ies) may contact the Authority to clarify whether there are grounds for relaxing the requirements. If the notifying party(ies) wish to discuss or meet with the Competition Authority before submitting the notification, the Authority can be contacted. However, the deadlines for the Competition Authority's examination do not begin until the notification is received.

The Competition Authority is required to [publish](#) certain information about every notification on the Authority's website www.konkurransetilsynet.no

A proposal for a public version of the notification or a clear statement of which information in the notification is regarded by the notifying party(ies) as business secret must be submitted at the same time as the notification.

Implementation of the concentration is prohibited, until the Norwegian Competition Authority has processed the case. The prohibition of implementation applies to all concentrations notified to the Norwegian Competition Authority through a standardized notification, until

expiration of the 15 working days deadline for ordering the parties to submit a complete notification. If the Norwegian Competition Authority orders the submission of a complete notification, the prohibition of implementation continues to apply until the Authority notifies that intervention may be required. The Authority may also decide that the prohibition of implementation applies in full until the case is finally settled. Infringement of this prohibition will normally be sanctioned with an administrative fine. The same holds for providing incorrect or incomplete information in the notification.

PART 2 – THE COMPLETE NOTIFICATION

1. The order from the Competition Authority

The Competition Authority may order a complete notification on the basis of a standardized notification. The Authority may also order complete notification even if no standardized notification has been submitted in the case. The reasons why a standardized notification would not have been submitted may be that the concentration is exempt from the obligation to submit a standardized notification, that the standardized notification does not comply with the relevant requirements or is not yet complete.

2. Voluntary notification

A complete notification may be voluntarily submitted to the Competition Authority. This course of action would be relevant if the notifying party(ies) wishes to submit a complete notification directly without first submitting a standardized notification, or if the concentration is exempt from the standardized notification obligation. A voluntary notification must satisfy the requirements for a complete notification.

3. Notification of an acquisition of a minority of an undertaking

The acquisition of part of an undertaking that does not lead to control of the undertaking (minority acquisition) is not subject to the standardized notification obligation. However, the Competition Authority shall, under the same conditions as for an acquisition of control, intervene against such transactions, see Section 16, second paragraph of the Competition Act. On the basis of Section 18, third paragraph of the Competition Act, the Authority may order a complete notification of an acquisition of an undertaking. The Competition Authority must issue the order for a complete notification within 3 months after the agreement is final. The undertaking can choose to voluntarily submit a notification of the acquisition of a minority of an undertaking. The notification must satisfy the requirements for a complete notification.

4. Who must submit a notification?

Who must submit a notification, and whether one undertaking (or person) alone or several undertakings (or persons) jointly are obliged to submit such a notification, depends on the nature of the concentration:

- In the case of mergers, the obligation to notify normally rests with the merging parties jointly.
- If two or more undertakings acquire joint control over one or more other undertakings, the obligation to notify rests with the acquiring undertakings jointly.
- If a single undertaking acquires control over one or more other undertakings, the obligation to notify rests with the acquiring undertaking.

- The seller of an undertaking or of parts of an undertaking does not have an obligation to notify.

5. Time of notification

If the Competition Authority has ordered the submission of a complete notification, there is no deadline for submitting the notification. However, the prohibition of implementing the concentration continues to apply until the Authority notifies that intervention may be required. The Authority may also decide that the prohibition of implementation applies in full until the case is finally settled.

The 25-working day period for the Competition Authority's examination of the concentration begins on the first working day after the Authority receives the complete notification.

Similar to submission of standardized notification, there is no deadline for submission if the notifying parties chose to voluntarily submit a complete notification instead of a standardized notification. Reference is made to Part 2, point 3 of the Guidelines for a standardized notification of a concentration which applies correspondingly to a voluntary notification.

PART 3 – CONTENT OF THE NOTIFICATION

The requirements for a complete notification follow from Section 4, first paragraph of the regulation. A complete notification should give the Competition Authority detailed information on the concentration and the effect on competition in the affected markets.

If a notification does not fulfil the content requirements, the Competition Authority must no later than 15 working days inform the notifying party(ies) that the notification is incomplete. In addition to the content requirement set forth in the regulation, notifying party(ies) may voluntarily submit additional information important to the Competition Authority when deciding whether intervention may take place. Even if the notification satisfies the content requirements, the Competition Authority may require additional information of importance for assessing the concentration pursuant to Section 24 of the Competition Act. Deadlines are suspended should any of the undertakings concerned fail to comply with written requests to provide information by a specific date. The deadline continues to run once the Competition Authority has received the information, see section 20 fifth paragraph of the Competition Act.

On the basis of the requirements for a complete notification in Section 4, first paragraph, letters a through k, of the regulation, the Competition Authority provides the following guidelines on the specific content of a complete notification:

1. Contact information for the parties to the merger or the party or parties that are acquiring control.

Provide the name, undertaking registration number, address, telephone number, fax number and email address of the notifying party(ies).

Provide the name, job title, address, telephone number, fax number and email address of the contact person(s) or representative(s) of the notifying party(ies).

2. Information on the other undertaking(s) concerned.

Provide the name and undertaking registration number of the other undertakings(s) concerned.

3. Description of the concentration.

3.1 Provide a description of the notified concentration and how it was established. The description should *inter alia* contain an account of the strategic and economic rationale for the transaction, an overview of the ownership structure after the concentration and the timing for carrying it out. If the concentration involves a partial acquisition, the description shall give an overview of the ownership structure or the part of the activities that is being acquired. The main documents prepared by or for the board of directors related to the concentration, including protocols/minutes, should be part of the notification.

3.2 Describe factual and legal circumstances that are of importance for the possibility to exercise decisive and lasting influence (control) over the undertaking's activities. The description shall *inter alia* contain an account of ownership rights or rights to use the undertaking's assets, or the rights and arrangements that give decisive influence over the undertaking's governing bodies (see Section 17, third and fourth paragraphs of the Competition Act).

3.3 If the concentration leads to the establishment of a joint venture (see Section 17, second paragraph of the Competition Act), the following information shall be provided:

- how the joint venture will perform, on a lasting basis, all of functions that are carried out by an autonomous economic entity, and
- the degree to which any of the founding companies will continue to engage in activities in the same or up- or downstream markets as the joint venture.

4. Description of the undertaking concerned and undertakings in the same corporate group.

4.1 Provide a description of the legal and organisational structure of the undertakings concerned, and their business activity. The description shall include undertakings in the same corporate group as that of the undertaking(s) acquiring control.

4.2 Provide an overview of the ownership interests the undertaking concerned has outside of the corporate group but within the business activities that are affected by the concentration.

4.3 State the turnover and operating profits in Norway of the undertakings concerned in the most recent accounting year. For undertakings acquiring control, include the figures for other undertakings in the same corporate group.

4.4 Provide the name of any trade associations of which the undertakings concerned are members.

5. Description of the markets that are affected by the concentration.

5.1 Provide a description of the product markets that are affected by the concentration, and state the geographic scope of the respective markets.

A market is considered affected by the concentration if:

- two or more of the undertakings concerned are engaged in business activities there, or

- one or more of the undertakings concerned is engaged in business activities there and it is upstream or downstream from the market in which one or more of the other undertakings concerned is/are engaged in business activities

Business activity in the relevant market by other undertakings in the same corporate group as the undertaking acquiring control shall be counted with the activity of the undertakings concerned.

5.2 Provide an overview of adjacent product markets, that is, product markets that contain substitutes to the products in the affected markets. Provide an explanation for why the adjacent markets are not considered to be part of the respective affected product markets.

6. Description of the market structure of the affected markets.

6.1 Provide an estimate of the total size of the market (in annual value of sales and annual unit volume) for each of the affected markets, together with information on which this estimate is based.

6.2 For each undertaking concerned, state its annual value of sales, annual unit volume, and estimated market share, for each of the affected markets. Include corresponding information for each undertaking in the same corporate group as the undertaking(s) acquiring control that is active on the affected markets.

6.3 Give an overview of the most important distribution networks in the affected markets. The overview shall *inter alia* include an account of the most important distribution networks in terms of turnover. Describe also to what extent distribution is performed by third parties and/or undertakings in the same corporate group as the undertakings concerned.

6.4 Give an overview of the most important cooperative agreements (horizontal or vertical) in which the undertakings concerned or undertakings in the same corporate group are part of in the affected markets. In these context cooperative agreements includes, *inter alia*, agreement on joint production, specialization, information exchange, distribution, licensing or long term supply.

6.5 Give an overview of the structure of demand in the affected markets. The overview shall *inter alia* contain an account of:

- what phase the market is in (is it in take-off, expansion, maturity or decline),
- what influences customer choice among products or suppliers in the affected markets, for example quality and product differentiation,
- the degree to which customers switch suppliers or brands,
- the strength of negotiation of customers or groups of customers,
- the extent to which exclusive distribution agreements and other types of long-term supplier agreements are used.

6.6 Describe the importance of research and development for product development in the affected markets.

6.7 Describe the expected effect of the concentration on the market structure in the affected markets.

7. Information on the most important competitors, customers and suppliers of the undertakings concerned for the affected markets.

7.1 Provide a list of the five most important competitors of each of the undertakings concerned, for each of the affected markets, together with each competitor's estimated market share. Describe the effect the concentration is expected to have on the competitors of the undertakings concerned.

7.2 Provide a list of the five largest customers of each of the undertakings concerned for each of the affected markets, and the share of total sales of each of the undertakings concerned accounted for by each of these customers. Describe the effect the concentration is expected to have on the customers of the undertakings concerned.

7.3 Provide a list of the five largest suppliers to each of the undertakings concerned for each of the affected markets, and the share of total inputs to each of the undertakings concerned accounted for by each of these suppliers. Describe the effect the concentration is expected to have on the suppliers to the undertakings concerned.

8. Account of any barriers to entry into the affected markets.

8.1 Describe any barriers to entry for entities who wish to enter the affected markets. The description should *inter alia* contain an account of the public regulations that make entry difficult, licensing rights that are necessary to enter the market, and an estimate of the investments needed for entry.

8.2 Estimate total production capacity and the rates of capacity utilisation in the affected markets.

8.3 Describe entry of any new actors into the affected markets over the past three years.

9. Account of possible efficiency gains.

Give an account of possible efficiency gains resulting from the concentration. The account can *inter alia* contain a description of the socio-economic cost savings expected from economies of scale, rationalisation or co-production savings. Explain how the alleged efficiency gains are the result of the concentration and why they cannot be realised by means other than the concentration.

10. Information on control of the concentration by other competition authorities.

10.1 State, if applicable, which other national competition authorities have jurisdiction over this concentration, including those authorities that are or will be notified.

10.2 State which licenses/permits the concentration must obtain pursuant to other Norwegian laws.

11. Enclosures to the complete notification.

- **The agreement on the concentration with annexes.**

If the agreement is not final when the notification is submitted, the latest version of the agreement shall be enclosed.

- **The latest annual report and annual accounts of the undertakings concerned.**

The documents shall be enclosed even if they are publicly available. If companies in the same corporate group as the undertaking concerned have activities in the affected markets, then include also the latest annual reports and annual accounts for the companies in the corporate group.