

NOTICE ON CERTAIN PROCEDURAL ASPECTS REGARDING MERGERS/ACQUISITIONS PURSUANT TO LAW No. 287 OF 10 OCTOBER 1990*

Section 16(1) of Law 287 of 10 October 1990 (*Competition and Fair Trading Act*) requires the notification of mergers and acquisitions, defined by section 5 of the Law, to be served in advance to the Competition Authority in the event that they exceed certain turnover thresholds¹.

Section 16(4) of the Law provides that if the Authority considers that a merger or acquisition could be prohibited, it shall begin the examination within 30 days of receiving formal notification or of being otherwise informed of it. Subsection (7) provides that the Authority may commence the investigation after the deadline if the information supplied by the companies concerned is seriously inaccurate, incomplete or and untruthful.

In this Communication, drawing on its experience controlling mergers and acquisitions, the Authority wishes to provide further information to all the parties concerned regarding mergers and acquisitions notices.

Firstly, the Authority wishes to make it clear that all the parties involved must fully co-operate in the phase prior to the formal notification of a merger or acquisition.

Secondly, the Authority wishes to hold the broadest possible consultations with the market relating to formally notified mergers and acquisitions.

The Authority believes that in this first phase the following provisions must apply, on an experimental basis, to mergers and acquisitions in which certain thresholds for the purposes of communication provided by section 16(1) of the Law, are exceeded. However, the Authority reserves the right periodically to review the types of operations that may be of relevance to this Communication.

This Communication will be published in the Competition Authority's Bulletin and posted on its website, and will come into force on 1 July 2005.

A. THE PHASE PRIOR TO THE FORMAL NOTIFICATION OF MERGERS AND ACQUISITIONS

The Authority's experience over the years has shown that the parties involved sometimes need to consult the Authority before formally notifying a merger or acquisition. However, following the formal notification of a merger or acquisition, the Authority has, on several occasions, also had to request further information from the parties to supplement the original formal notification, consequently interrupting the period provided by section 16(4) of the Law for completing its assessment.

It has therefore been considered appropriate to introduce a procedure that will enable the parties to consult during the phase prior to the formal notification of acquisitions and mergers,

*Notice modified on 25 September 2006 (Bulletin No. 35-36/2006) and 27 December 2010 (Bulletin No. 48/2010)

¹ Save where otherwise indicated, the following terms shall have the following meanings:

The '**Law**' is the 'Competition and Fair Trading Act', Law No. 287 of 10 October 1990, published in the Official Gazette No. 240 on 13 October 1990.

The '**Authority**' is the Competition Authority, as defined in section 10 of the Law.

while reducing the need for the Authority to interrupt the statutory evaluation period, thereby streamlining the procedure and enabling the Authority to issue its determinations more promptly.

The Authority's Offices are therefore at the parties' disposal to discuss any problems prior to the formal notification of mergers and acquisitions, in cases where the second threshold for mandatory notification pursuant to section 16(1) of the Law has been exceeded.

Parties intending to use this procedure may submit an informal communication to the Authority at least 15 days before the date on which they intend to serve formal notification, preferably the following information:

- the identity of the parties to the acquisition or merger;
- a short description of the acquisition or merger procedures;
- an indication of the relevant markets;
- the shares of the parties on these markets;
- whether or not the operation must be notified to the authorities in any other country.

In the latter case, the Parties are requested to specify: a) if the information supplied in that phase can be the subject of an exchange of information with the competent authorities in order to evaluate operation in the other Member States; b) if the information on operation is to be considered public, requiring in the contrary case authorisation to divulge same information to the other competent authorities; c) the times that are forecasted for notification to the other competent authorities.

The issues raised in the informal document relating to the preparation of subsequent notification will be examined jointly with the Authority as and when agreed with the parties. Where necessary, the Authority may acquire further information in this prior phase.

The phase prior to formal merger or acquisition notification, relating particularly to the contents of the informal document, shall be strictly confidential. Should the Parties authorise the Authority to exchange information with the competent authorities in order to evaluate operation in the other Member States, it must be specified that same information shall only be transmitted when the competent authority undertakes to guarantee the same confidentiality treatment conceded by the Authority.

When submitting the informal document, the parties shall take note of the fact that the deadline provided by section 16(4) of the Law shall to be counted as from the date of service of the formal notification pursuant to section 16(1) of the Law using the appropriate Form, accompanied by all the necessary supporting information.

In view of the experimental nature of the new procedure, this preliminary phase does not prevent the Authority from seeking further information under section 16(7) of the Law, if considered necessary.

B. ADVISORY TO THE MARKET REGARDING FORMALLY COMMUNICATED MERGERS AND ACQUISITIONS

In order to take the decisions provided by section 16(4) of the Law, the Authority deems it Interested third parties may submit comments to the Authority within five working days of the date of publication of the notice.

necessary to consult widely with the market in relation to formally notified mergers and acquisitions under section 16(1) of the Law in which both thresholds provided for the obligation to submit article 16(1) notification have been exceeded.

The Authority will therefore post a notice on its website (www.agcm.it) announcing that a section 16(1) communication has been submitted for these mergers and acquisitions. The notifying companies must give prior consent for the publication of this notice when they submit the formal communication.

The notice, which is intended to solicit comments from third parties, will state the names and the registered office of the parties to the merger, a brief description of the intended procedure, an indication of the relevant economic sectors, and the parties' market shares.