

Decision by the Ministry of Trade and Industry on the Obligation to Notify a Concentration

(499/1998)

Section 1 - Obligation to notify

In a notification referred to in section 11c of the Act on Competition Restrictions (480/1992), the information specified in the Annex to this decision shall be given. One original and four copies of the notification and its annexes shall be delivered to the Finnish Competition Authority.

In individual cases, the Finnish Competition Authority may grant derogations to the obligation to notify if the effects of a concentration for competition are likely to be minor or if the information provided to be given is unnecessary, in certain parts, for the evaluation of a concentration.

Section 2 - Entry into force

This decision enters into force on 1 October 1998.

Annex

Notification of a concentration

The information provided in the concentration notification shall be given using the numbering and headings of this Annex.

With respect to a party to the concentration, as referred to in section 11b(1) of the Act on Competition Restrictions, entities or foundations part of the same group of companies as the party shall comprise of all those entities and foundations that are in such a relation to the said party as referred to under section 11b(1)1-4, and with respect to the object of the acquisition, the entities and foundations in such a relation to it as referred to under section 11b(3).

1. Party obliged to notify

For each party obliged to notify:

- 1.1. Name;
- 1.2. The industries wherein the party obliged to notify operates;
- 1.3. Address;
- 1.4. Telephone and telefax number;

- 1.5. Liaison (name, position, telephone and telefax number);
- 1.6. Appointed representative (name, position, company, address, telephone and telefax number).

2. Other party to the concentration

For each object of acquisition:

- 2.1. Name;
- 2.2. Industries wherein the party operates;
- 2.3. Address;
- 2.4. Telephone and telefax number;
- 2.5. Liaison (name, position, telephone and telefax number);
- 2.6. Appointed representative (name, position, company, address, telephone and telefax number).

3. Seller

Information on the seller of each object of acquisition (insofar as this is known by the party obliged to notify):

- 3.1. Name;
- 3.2. Industries wherein the seller operates;
- 3.3. Address;
- 3.4. Telephone and telefax number;
- 3.5. Liaison (name, position, telephone and telefax number);
- 3.6. Appointed representative (name, position, company, address, telephone and telefax number).

4. Concentration

- 4.1. The legal form of the concentration (cf. section 11(1) of the Competition Act).
- 4.2. A brief description of the concentration arrangement (economic and financial structure; timetable; description of the business activities affected by the concentration arrangement; the structure of ownership and control preceding and following the arrangement) and a brief description of the events which led to the arrangement. Any business secrets contained in the description shall be clearly identified.
- 4.3. In case of founding a joint venture:
 - 4.3.1. the planned operating period of the joint venture;
 - 4.3.2. a description of the economic and other resources of the joint venture;
 - 4.3.3. a description of the forthcoming business operations of the joint venture in Finland;
 - 4.3.4. the main customers and suppliers of the joint venture;
 - 4.3.5. a description of the continuity and operational independence of the joint venture, and
 - 4.3.6. a description of the decision-making system and administration of the joint venture.

5. Information on turnover

See sections 11a and 11b of the Act on Competition Restrictions and the decision by the Ministry of Trade and Industry (498/1998) on the calculation of turnover of the parties to the concentration.

- 5.1. The combined worldwide turnover of each party to the concentration and the entities and foundations part of the same group of companies as the party.
- 5.2. The combined turnover accumulated from within Finland of each party to the concentration and the entities and foundations part of the same group as the party.
- 5.3. An account on the grounds of adjustment if the turnover has been mathematically adjusted because the accounting period has differed from 12 months or because a party to the concentration has carried out a concentration after the most recent profit and loss account has been drawn up.
- 5.4. Public financial support received for the ordinary activities of each party to the concentration and the entities and foundations part of the same group during the past accounting period. The nature and amount of the support and an account of whether the support is included in the turnover of the recipients.
- 5.5. A detailed description of the acquisitions of business operations and control made during the two years preceding the acquisition, through which the turnover accumulated has been included in the turnover of the object of the acquisition, as laid down in section 11b(4) or (5) of the Act on Competition Restrictions.
- 5.6.

6. Information on ownership and control

- 6.1. With respect to each party to the concentration, a list of all the entities and foundations that belong to the same group of companies. If these entities or foundations engage in business in the relevant markets referred to in point 7.1. below, the nature of the relation of control and the means of execution thereof between each entity and foundation and the party to the concentration.
- 6.2. A detailed account of the shares obtained, during the two years preceding, by each party to the concentration and the entities and foundations part of the same group of companies, in such entities and foundations that are active in some of the relevant markets referred to in point 7.1. below.
- 6.3. With respect to each party to the concentration, any ownership, which either separately or jointly entitle to a minimum of a ten per cent share of share capital or voting rights in an entity or foundation active in the relevant markets referred to in point 7.1. below.
- 6.4. A list of the members of the governing bodies or operative management of each party to the concentration and the entities and foundations part of the same group also holding a similar position in some other entity or foundation active in the relevant markets referred to in point 7.1. below. The name of each entity or foundation and the position of the person named.

7. Affected markets

- 7.1. Relevant markets
 - 7.1.1 All the relevant product markets wherein a minimum of two parties to the concentration or entities and foundations part of the same group of

companies, respectively, conduct business and wherein their combined market share is a minimum of 15 per cent in Finland or a relevant part therein.

- 7.1.2. All the relevant product markets wherein a party to the concentration or an entity or a foundation part of the same group operates and which are upstream or downstream of the manufacturing chain or the distribution channel of a product in relation to the markets where some other party or an entity or foundation part of its group of companies operates. The information shall be given if the combined market share of the party to the concentration and the entity or foundation part of the same group in some of the markets is a minimum of 20 per cent in Finland or a relevant part therein.
- 7.1.3. Other relevant product markets not referred to in point 7.1.1. or 7.1.2. above, but which are closely related to them irrespective of whether a party to the concentration or an entity or foundation part of the same group engages in business in these markets. Reasons for not including the products of these markets in the markets named in points 7.1.1. or 7.1.2 above.

7.2. Market information

If the relevant geographical markets are wider than Finland, the information provided in this point shall be given for both Finland and the relevant geographic market insofar as it is known by the party obliged to notify.

7.2.1. Size of market

- 7.2.1.1. An estimate of the size of the market referred to in points 7.1.1 and 7.1.2. above in terms of sales value (Finnmarks) and volume (units) for each three years preceding and an estimate of how the said markets will develop during the next three years.
- 7.2.1.2. An estimate of the size of the market described in point 7.1.3. above in terms of sales value (Finnmarks) and volume (units) for each three years preceding and an estimate of how the said markets shall develop compared with the other markets named in point 7.1. above.
- 7.2.1.3. The basis and sources of calculation on which these estimates are based. Copies of the source material if available.

7.2.2. Sales volume and value and market share

- 7.2.2.1. The value (Finnmarks) and volume (units) of the sales of each party and each entity or a foundation part of the same group, and an estimate of their market shares in the markets referred to in points 7.1.1. and 7.1.2. above. The information shall be given for each three years preceding. If the sales or market shares are consistently different in various parts of Finland, an account of the reasons for the variation and an estimate of the extent of the variation.
- 7.2.2.2. An estimate of the market shares of each party and the entities or foundations part of the same group of companies in the markets referred to in point 7.1.3. above. The information shall be given for each three years preceding.
- 7.2.2.3. In case of a concentration in the electricity market, an estimate of the national share of the transmission operations of each party and each entity or foundation part of the same group of companies of the amount of electricity transferred at 400 V in

- the transmission grid.
- 7.2.2.4. The basis and sources of calculation on which the estimates presented are based. Copies of source material if available.
- 7.2.3. Main competitors
 - 7.2.3.1. Five main competitors and an estimate of their market shares for each three years preceding. The name, address and telephone and telefax number of each competitor, and the name and position of a liaison.
 - 7.2.3.2. The basis and sources of calculation on which the estimates presented are based. Copies of source material if available.
- 7.2.4. Main customers and suppliers
 - 7.2.4.1. Five main customers who are not part of the same group of companies as the party to the concentration, in each relevant market referred to in point 7.1. above. The name, address, telephone and telefax number of each customer and the name and position of a liaison. The share of purchases of each customer of the combined turnover of the parties to the concentration and the entities and foundations part of the same group of companies in each relevant market. The information shall be given for each three years preceding.
 - 7.2.4.2. The five main suppliers who are not part of the same group as the party to the concentration, in each relevant market referred to in point 7.1. above. The name, address and telephone and telefax number of each supplier and the name and position of the liaison. The share of each supplier of the total purchases of the parties and the entities or foundations part of their groups of companies. The information shall be given for each three years preceding.
- 7.2.5. Importance of foreign trade
 - 7.2.5.1. An estimate of the value (Finnmarks) and volume (units) of imports and exports in each market referred to in points 7.1.1 and 7.1.2. above, divided by country of origin and target country. An estimate of the share of such imports and exports carried out by the parties or their groups of companies. The information shall be given for each three years preceding.
 - 7.2.5.2. An estimate of how quotas, tariffs, import fees and other regulatory factors related to the import business and transportation costs or other costs affect the imports.
 - 7.2.5.3. Basis and sources of calculation on which the estimates presented are based. Copies of source material if available.
- 7.2.6. Market entry, market exit and the affecting factors
 - 7.2.6.1. Those conducting business known by the party obliged to notify who, within the past three years, have commenced business operations in the markets referred to in points 7.1.1. or 7.1.2. above, or who have exited therefrom during that time, and the contact information of these.
 - 7.2.6.2. The main factors affecting the ease of market entry or exit or the profitability of business operations.
- 7.2.7. Other market information
 - 7.2.7.1. An account of the circumstances of the markets referred to in points

7.1.1 and 7.1.2. above. In the account, the importance of the factors mentioned in point a-1 shall be assessed, firstly in view of the business operations that are the target of the concentration arrangement, and more generally, in view of the business operations in the markets referred to in points 7.1.1. and 7.1.2. above. The effects of the concentration arrangement shall also be assessed, in relevant parts, with respect to the factors referred to in points a-l below:

- a) the stage of development of the market and the estimated development of the supply during the next three years (the life cycle of the markets);
- b) the modes of operation prevalent in the supply of products, including distribution channels, vertical integration and the supply of products with other products;
- c) the importance of the preferences and consumption habits of the customers;
- d) the segmentation of the customers to different, clearly distinct groups and their main characteristics;
- e) the importance of the public sector as a customer;
- f) the degree of concentration of the customers and suppliers and its importance for the operational freedom of those conducting business in the relevant market;
- g) the importance of R&D and its share of turnover in the markets in general and for the business operations involved in the concentration arrangement;
- h) the importance of exclusive distribution and other agreements;
- i) the extent and importance of the co-operation networks (networking) in the market;
- j) the importance of the various after-sales and other maintenance services as competitive factors and the competitive conditions with respect to these services;
- k) an estimate of the price level of the relevant markets named in points 7.1.1. and 7.1.2. in relation to geographically adjacent markets; and
- l) other circumstances possibly prevailing in the markets which may have an effect for the appraisal of the acceptability of a concentration.

8. Views of the party obliged to notify on the effects of the concentration

- 8.1. If the party obliged to notify wishes to claim efficiencies, an account shall be provided of those to be gained from the concentration and the way these are transmitted to the Finnish market.
- 8.2. An estimate of the total effects of a concentration in the relevant markets and the grounds as to why a notified concentration should be approved.

9. Trade associations

The information provided under this point shall be given only with respect to the markets referred to in point 7.1. above.

- 9.1. Domestic and foreign trade associations where a party to the concentration or an entity or foundation part of the same group of companies is a member.

- 9.2. Domestic and foreign trade associations where
- a) the customers or
 - b) suppliers of a party to the concentration or an entity or foundation part of the same group of companies are members.
- The name, address, telephone and telefax number of each trade association referred to in points 9.1. and 9.2. and a liaison.

10. Ancillary restrictions of the concentration

The ancillary restrictions of a concentration refer to such competition restraints which are directly related to the concentration and are imperative to its fulfilment. The ancillary restrictions of a concentration are examined as an integral part of the concentration.

Competition restraints which the party obliged to notify considers as ancillary restrictions of the concentration and the grounds as to why these shall be considered ancillary shall be provided.

11. Notifications of the concentration to other authorities

11.1. Foreign competition authorities and

11.2. Finnish authorities and courts,

to whom the parties to the concentration have notified or shall notify the concentration or from whom the parties have sought or shall seek permission for the concentration. The name, address, telephone and telefax number of each authority and the date of issue of the notification or application or the planned date.

12. Other issues related to the concentration

Other information that those obliged to notify consider necessary for the appraisal of the concentration.

13. Annexes to the notification

The notification shall contain the following annexes:

- an extract from the trade register for each party to the concentration;
- the documents concerning and relating to the concentration, such as agreements concerning or relating to the concentration and public bids;
- studies made or commissioned by the party obliged to notify concerning or relating to the concentration;
- the latest annual report of each party to the concentration and each entity or foundation part of the same group of companies, and the latest profit and loss account drawn up; and
- the written authorisation of appointed representatives.

The information given in the notification may be supplemented by other annexes and specified by tables and diagrams. All the annexes must be original or certified copies. The notification shall contain a list of the annexes.

14. Date and signature

The notification shall be dated and signed.