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OF CYPRUS

83(I) of 2014

**THE CONTROL OF CONCENTRATIONS  
BETWEEN UNDERTAKINGS LAW, 2014**

*(English translation)*

**Office of the Law Commissioner**

**Nicosia.**

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However useful the English translation of the Law is in practice, it does not replace the original text of the Law since only the text published in the Official Gazette of the Republic is authentic.

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**Number 83(I) of 2014**

**A LAW TO PROVIDE FOR THE CONTROL OF  
CONCENTRATIONS BETWEEN UNDERTAKINGS  
FOR THE PURPOSE OF PROTECTION  
OF EFFECTIVE COMPETITION**

The House of Representatives enacts as follows:

**PART I  
INTRODUCTORY PROVISIONS**

1. This Law may be cited as the Control of Concentrations Between Undertakings Law, 2014. Short title.

2. In this Law, unless the context otherwise requires— Interpretation.

"affected markets" means the markets defined in Schedule I; Schedule I.

"Commission" means the Commission for the Protection of Competition which was established and operates in accordance with the provisions of the Protection of Competition Law, as from time to time amended or substituted;

"control" in relation to an undertaking has the meaning assigned to it by subsection (2) of section 6;

"Competition Authority" means the authority or authorities of the member states responsible for the protection of competition and which have been designated as such by the member states pursuant to Article 35 of Regulation (EC) No. 1/2003, as from time to time amended or substituted;

"Court" means a competent district court;

"dominant position" in relation to an undertaking includes the position of economic strength enjoyed by an undertaking which enables it to prevent the preservation of an effective competition in the relevant market and which affords it to behave to a substantial extent,

independently from its competitors, customers and ultimately from the consumers;

"European Commission" means the Commission of the European Union;

"European Economic Area" means the European Economic Area as defined in Article 217 of the Treaty on the Functioning of the European Union;

"group of undertakings" means two or more undertakings the commercial activities of which are under joint control;

"investment company" means a company having as its exclusive object the acquisition of participation in other undertakings and the management and exploitation of this participation, without direct or indirect involvement in the management of these undertakings, but subject to the rights it has as a shareholder or partner;

"member state" means a member state of the European Union and includes the states which form contracting parties to the Agreement on the European Economic Area;

"Minister" means the Minister of Energy, Commerce, Industry and Tourism;

"person" means any natural or legal person;

"Regulation (EC) No. 1/2003" means the Regulation (EC) No. 1/2003 of the Council of the 16<sup>th</sup> December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty as from time to time amended or substituted;

Official Journal of the European Union: L1, 4.1.2003, p.1.

"Regulation (EC) No. 139/2004" means the Regulation (EC) No. 139/2004 of the Council of the 20<sup>th</sup> January 2004 on the control of concentrations between undertakings ("The EC Merger Regulation"), as from time to time amended or substituted;

Official Journal of the European Union: L24, 29.1.2004, p.1.

"Republic" means the Republic of Cyprus;

“part” in relation to an undertaking, means any part of an undertaking, the commercial activity of which may be carried out independently of the rest of its parts;

"participating undertakings" means the undertakings involved in a concentration, i.e. a merger, acquisition of control or joint venture according to subsection (1) of section 6; in a merger , participating undertakings are all the merging entities; in the case of acquisition of control, participating undertakings is the acquiring undertaking and the target undertaking; in the case of a joint venture, participating undertakings are deemed to be all the undertakings acquiring joint control of the joint venture;

"The Protection of Competition Law" means the Protection of Competition Laws, 2008 and 2014, as from time to time amended or substituted; 13(l) of 2008  
41(l) of 2014.

"Service" means the Service of the Commission, whose staff, operation and competences are prescribed by or under the Protection of Competition Law as from time to time amended or substituted;

"subsidiary undertaking" means an undertaking the commercial activity of which is under the control of another undertaking;

"undertaking" includes a group of undertakings or a part of an undertaking.

## **PART II**

### **MEANING OF UNDERTAKING AND SCOPE OF APPLICATION**

**3.–(1)** This Law shall apply to all concentrations of major importance, as defined in subsection (2). Scope of application.

(2) For the purposes of application of this Law, an act of concentration of undertakings shall be of major importance where–

- (a) (i) the aggregate turnover achieved of each of at least two of the participating undertakings is more than three million, five hundred thousand (3.500.000) euros, and
- (ii) at least two of the participating undertakings achieve turnover within the Republic, and
- (iii) at least three million, five hundred (3.500.000) euros out of the aggregate turnover of all the participating undertakings is achieved within the Republic, or
- (b) it is declared as such by Order of the Minister under section 5 of this Law.

(3) For the purposes of this section the turnover shall be calculated in accordance with the provisions of Schedule II.

Schedule II.

(4) This Law shall not apply in cases where a concentration falls within the scope of application of Regulation (EC) No. 139/2004 as from time to time amended or substituted.

**4.–(1)** The Council of Ministers may, following a reasoned opinion of the Commission, amend from time to time the minimum turnovers referred to in subsection (2) of section 3, by Order published in the Official Gazette of the Republic.

Amendment of minimum turnovers.

(2) In such a case subsection (2) of section 3 of this Law shall be deemed to include the amounts prescribed by the Order in force for the time being.

**5.** The Minister may, even if in relation to a specific concentration of undertakings the conditions of subsection (2) of section 3 are not satisfied, declare by Order, on the basis of the reasons for which he may issue an Order under section 35, that the said concentration is of major importance and in such a case the provisions of this Law shall apply, in relation to this concentration.

Declaration of a concentration as of major importance by the Minister.

6.–(1)(a) Subject to the provisions of subsections (2) to (4), a concentration of undertakings shall be deemed to arise where a change of control on a lasting basis results from –

Meaning of concentration.

- (i) the merger of two or more previously independent undertakings or parts of undertakings, or
- (ii) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.

(b) The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of subparagraph (ii) of paragraph (a).

(2) Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by -

- (a) ownership or the usufruct of all or part of the assets of an undertaking, or/and
- (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

(3) Control is acquired by persons or undertakings which –

- (a) are holders of the rights or entitled to rights under the contracts concerned, or
- (b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.

(4) A concentration shall not be deemed to arise where:

- (a) Credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of third parties, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies can show that the disposal was not reasonably possible within the period set,
- (b) control is acquired by an office- holder, according to the law relating to liquidation, bankruptcy or other analogous proceedings,
- (c) the operations referred to in subparagraph (ii) of paragraph (a) of subsection (1) are carried out by investment companies, provided however that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only



to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings,

(d) property is devolved due to death by will or intestate succession.

7. For the purposes of section 6, two (2) or more legal acts constitute only one concentration, if they result in the acquisition of a direct or indirect control on the activities of one or more other undertakings. Concentration taking place by interrelated acts.

8. A concentration of undertakings which took place by stages, within a period of time not exceeding four (4) years, and which resulted in the acquisition of the control of an undertaking from another, shall be considered to fall within the scope of application of this Law and deemed to have occurred on the occurrence of the final event as a result of which the said control was acquired. Concentration taking place by stages.

9. This Law shall not apply to a concentration of two or more undertakings, each of which is a subsidiary of the same undertaking. Subsidiary undertakings.

### **PART III**

#### **SUBMISSION AND EXAMINATION OF THE NOTIFICATION OF CONCENTRATION**

10.–(1) The acts of concentration of major importance to which this Law applies, shall be notified to the Service in writing prior to their implementation and following the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest. Notification of concentrations.

(2) Notification may also be made where the participating undertakings demonstrate to the Commission a good faith intention to conclude an agreement or, in the case of a public bid, where they have

announced an intention or final decision to make such a bid, provided that the intended agreement or bid would result in a concentration of a major importance.

(3) The acts of concentration which must be notified in accordance with subsections (1) and (2), and constituting a merger within the meaning of subparagraph (i) of paragraph (a) of subsection (1) of section 6 or acquisition of joint control within the meaning of subparagraph (ii) of paragraph (a) of subsection (1) of section 6, shall be notified jointly or separately by those who participate in these acts; in all other cases the obligation of notification in accordance with subsections (1) and (2) shall be borne by the person or undertaking acquiring control.

(4) (a) Where an act of concentration is notified to the Service, the Service shall publish the fact of the notification in the Official Gazette of the Republic indicating the names of the participating undertakings, the nature of the concentration and the economic sectors involved.

(b) In so doing under paragraph (a), the Service shall take into account, as far as possible, the legitimate interest of the affected undertakings in the protection of their business secrets.

**11.-(1)** Subject to the provisions of section 31, it is prohibited for a concentration, which falls within the scope of application of this Law, to be implemented, until: Time of implementation of concentration.

(a) the notifying party receives a notice of approval from the Service, or

(b) the application of the provisions of section 24 and subsection (2) of section 29, concurs.

(2) The validity of any transaction carried out in contravention of

subsection (1) shall be dependent on a decision taken pursuant to paragraph (b) of subsection (1) of section 22 or paragraph (a) of subsection (1) of section 28 or on a presumption pursuant to section 24 and subsection (2) of section 29.

(3) This section shall, however, have no effect on the validity of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, unless the buyer and seller knew or ought to have known that the transaction was carried out in contravention of subsection (1).

**12.**-(1) Upon the submission of the notification of a concentration a fee shall be paid, as is set out in subparagraph (a) of paragraph 11 of Schedule III. Notification fee. Schedule III.

(2) The notifications of concentrations for which the Commission decided to initiate the full investigation proceedings pursuant to paragraph (c) of subsection (1) of section 22, are subject to a fee set out in subparagraph (b) of paragraph 11 of Schedule III. Schedule III.

(3) The Minister may, with an Order published in the Official Gazette of the Republic, amend the notification fees referred to in subsections (1) and (2), after a reasoned opinion of the Commission.

**13.** Where a concentration which must be notified in accordance with section 10 is not notified but comes to the knowledge of the Service in another way, the Service shall— Briefing of those who have the obligation to notify.

(a) immediately inform those who have the obligation to notify under section 10 about their obligation to notify which is imposed by this Law, and

(b) on receipt of the notification, proceed as if the conditions of subsections (1), (2) and (3) of section 10 had from the start been met, provided that for the purposes of calculating

further time-limits the actual date of receipt of the notification is taken into account.

**14.** The notifications of concentrations shall contain the information referred to in Schedule III. The document of the notification shall be submitted in one of the official languages of the Republic.

Content of notifications.  
Schedule III.

**15.** The notifications of concentrations shall be examined by the Service in order to ascertain whether they comply fully with the conditions of Schedule III and, if it is ascertained that a notification does not comply fully with such conditions, the Service shall immediately request the additional information required for securing compliance with Schedule III:

Additional information.

Schedule III.

Provided that, the Service shall commence the examination of the notifications of concentrations on condition that the notification fee has previously been paid, which is provided in subsection (1) of section 12.

**16.** The Service shall inform the Minister in relation to the concentration as soon as the relevant notification is received.

Briefing of Minister.

**17.** The Service shall examine the notification as soon as it is received and after ascertaining that the notification fully complies with the conditions of Schedule III, it shall carry out a preliminary evaluation and shall prepare a written report to the Commission in which it shall include its reasoned opinion, as follows:

Preliminary evaluation and report.

Schedule III.

- (a) The concentration notified does not fall within the scope of application of this Law, or/and within the meaning of concentration, or
- (b) the concentration notified, despite falling within the scope of application of this Law and within the meaning of concentration, does not raise serious doubts as to its compatibility with the functioning of competition in the market and it can be declared as being compatible with the

functioning of competition in the market, or

- (c) the concentration notified falls within the scope of application of this Law and the meaning of concentration, raises serious doubts as to its compatibility with the functioning of competition in the market and it is recommended to initiate the full investigation proceedings.

**18.-(1)** The participating undertakings may revoke the notification of concentration provided that they submit to the Commission a request for revocation.

Revocation of concentration.

(2) The Commission shall publish its decision of approval of the request for revocation of concentration in the Official Gazette of the Republic and shall, at the same time, inform the Minister.

#### **PART IV**

### **APPRAISAL OF CONCENTRATION AND ISSUING OF THE COMMISSION'S DECISION**

**19.-(1)** In making its appraisal, the Commission shall take into account -

Criteria taken into account in the appraisal of concentrations.

- (a) the need to maintain and develop conditions of effective competition within the relevant markets in view of, among other things, the structure of the affected markets, the structure of other markets where the notified concentration might have significant implications and the actual or potential competition from undertakings located either within or outwith the Republic;
- (b) the market position of the participating undertakings and of the undertakings connected with them in one of the ways

referred to in Schedule II, the economic and financial power of the said undertakings, the alternative supply sources of the products and services which are the commercial object in the affected markets or/and in other markets where the notified concentration might have significant implications and their substitutes, the supply and demand trends for all the products and services, any barriers to entry in the affected markets or/and in other markets where the notified concentration might have significant implications, the interests of the intermediate and ultimate consumers of the relevant products and services, and the contribution on the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.

(2) To the extent that the creation of a joint venture constituting a concentration pursuant to paragraph (b) of subsection (1) of section 6 has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria of sections 3 and 4 of the Protection of Competition Law, as from time to time amended or substituted, with a view to ascertaining whether or not the operation is compatible with the functioning of the competition in the market.

(3) In making the appraisal of subsection (2), the Service shall take into account in particular :

(a) Whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market;

(b) whether the coordination which is the direct consequence

of the creation of the joint venture affords the participating undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

**20.** A concentration which would significantly impede effective competition in the Republic or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared incompatible with the functioning of competition in the market.

Concentration which is incompatible with the functioning of competition in the market.

**21.** A concentration which would not significantly impede effective competition in the Republic or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared compatible with the functioning of competition in the market.

Concentration which is compatible with the functioning of competition in the market.

**22.-(1)** Taking into account the written report referred to in section 17, the Commission shall examine the notification as soon as it is received, and -

Decision of the Commission after the Service's report.

(a) where it concludes that the concentration notified does not fall within the scope of application of this Law or/and within the meaning of concentration, it shall make a decision to that effect, or

(b) where it finds that the concentration notified, although falling within the scope of application of this Law and within the meaning of concentration, does not raise serious doubts as to its compatibility with the functioning of competition in the market, it shall decide not to oppose it and shall declare that it is compatible with the functioning of competition in the market, or

(c) where it finds that the concentration notified falls within the scope of application of this Law and the meaning of concentration and raises serious doubts as to its

compatibility with the functioning of competition in the market, it shall decide to initiate the full investigation proceedings and shall invite the undertakings which have the obligation for notification, to pay the notification fee provided in subsection (2) of section 12.

(2) The Commission shall inform the participating undertakings and the Minister of its decision, without delay.

(3) Subject to the provisions of section 48, the Commission's decision shall be published in the Official Gazette of the Republic.

**23.-(1)** The Service shall, accordingly, inform in writing the notifying party or the persons who have the obligation for notification –

Notice to notifying parties.

- (a) in the case of paragraph (a) and paragraph (b) of subsection (1) of section 22, that the concentration may be implemented, or
- (b) in the case of paragraph (c) of subsection (1) of section 22, that the concentration is going to be fully investigated, or
- (c) in the cases where the Minister has issued an Order under sections 5 or 35.

(2) (a) Subject to the provisions of subsection (3), the Service shall forward to the notifying party the notice referred to in subsection (1) within one (1) month from the date of receipt of the notification from the Service or, as the case may be, from the date on which the Service receives the additional information which is necessary for securing compliance of the notification with the conditions of Schedule III.

Schedule III.

(b) In case where the notification fee provided in subsection (1) of section 12 has not been paid, the time-limit defined in paragraph (a) will commence to count from the date on which the notification fee is paid.



(3) Where due to the exceptional volume or complexity of the information forwarded in the relevant notification, the Service ascertains that the time-limit provided in subsection (2) cannot be kept, it has the obligation, without delay and, in any case, within seven (7) days at the latest before the expiry of the said time-limit, after consultation with the Chairperson of the Commission, to inform the notifying party that the said time-limit is extended by fourteen (14) days.

**24.** When the time-limit provided in subsection (2) of section 23 or, as the case may be, the time-limit extended in accordance with subsection (3) of section 23 expires, without the notice having been forwarded by the Service to the notifying party, the concentration in question is considered to have been declared compatible with the market.

Compatible concentrations.

## **PART V**

### **FULL INVESTIGATION OF THE NOTIFICATION OF CONCENTRATION**

**25.** Where the Commission makes a decision to initiate the full investigation proceedings, under paragraph (c) of subsection (1) of section 22, it instructs the Service to carry out a full investigation in relation to the concentration and, in such a case, the Service shall as soon as possible—

Full investigation of concentration.

- (a) obtain from the notifying party or from other participants in the concentration or from other third persons, any additional information which it deems necessary for the completion of the investigation,
- (b) notify the participating undertakings that they may modify the concentration or offer commitments, in order for the doubts as to the compatibility of the notification with the requirements of market to be removed; the modifications and commitments suggested by the undertakings concerned by

the concentration shall be submitted to the Service within the time-limit defined by the Service, according to Schedule IV,

Schedule IV.

(c) in the light of the additional information it may have obtained in accordance with the provisions of paragraph (a) and any suggested modifications or/and commitments in accordance with paragraph (b), examine:

(i) whether and to what extent the doubts referred to in paragraph (c) of subsection (1) of section 22 have been removed, and

(ii) if these doubts have not been removed, the Service may, if it finds any differentiations or modifications in the circumstances under which the concentration has been established which may result in the removal of the doubts, commence negotiations with the participating undertakings.

**26.** In the case of a concentration for which a full investigation is carried out under section 25, the Service may, following an application by persons who may be affected directly by the decision of the Commission but who do not participate in the concentration, afford to them a suitable opportunity of expressing their views regarding the concentration in such a manner and at such time as not to violate the time-limit of section 27.

Views of interested persons.

**27.-(1)** On completion of its actions in accordance with the provisions of sections 25 and 26, the Service shall prepare a report of findings to be submitted to the Commission making reference to its findings regarding:

Report of findings to be submitted to Commission.

(a) whether the doubts referred to in paragraph (c) of subsection (1) of section 22 have been removed or may be removed as a result of:

(i) additional information that may have been obtained in accordance with the provisions of paragraph (a) of section 25, or/and any amendments to the concentration or/and the suggested commitments in

accordance with the provisions of paragraph (b) of section 25, or/and

(ii) any negotiations undertaken in accordance with the provisions of subparagraph (ii) of paragraph (c) of section 25, or

(b) whether the doubts referred to in paragraph (c) of subsection (1) of section 22, continue to remain.

(2) (a) Subject to the provisions of subsection (3) of section 23 and section 30, the Service shall submit to the Commission the report of findings referred to in subsection (1) within three (3) months at the latest from the date of receipt of the notification from the Service or, as the case may be, from the date on which the Service received the additional information which is necessary for securing compliance with the conditions of Schedule III,

Schedule III.

(b) In case where the notification fee provided in subsection (2) of section 12 has not been paid, the time-limit defined in paragraph (a) will commence to count from the date on which the notification fee is paid.

**28.-(1)** The Commission shall examine the report of findings of the Service referred to in section 27 and, then shall–

Decision of Commission following report of findings of Service.

(a) either declare the concentration in question as compatible with the functioning of competition in the market subject to any specific terms and relevant commitments made by the participants in the concentration for the observance of these terms, or

(b) declare the concentration in question as incompatible with the functioning of competition in the market.

(2)(a) Before taking any decision and pursuant to paragraph (b) of section (1), the Commission shall compile a report with the objections ascertained in relation to the incompatibility of the concentration with the functioning of competition in the market, for informing the participating undertakings.

(b) The report referred to in paragraph (a) shall be communicated to the participating undertakings or to a duly authorised person in accordance with the provisions of section 45 of the Protection of Competition Law, as from time to time amended or substituted.

(3) The Service shall inform the Minister about the decision of the Commission, without delay.

(4) Subject to the provisions of section 48, the Commission's decision shall be published in the Official Gazette of the Republic.

**29.-**(1) (a) Subject to the provisions of subsection (3) of section 23 and section 30, the decision of the Commission after the completion of the full investigation proceedings shall be forwarded to the notifying party within four (4) months at the latest from the date of receipt of the notification by the Service or, as the case may be, from the date of receipt by the Service of the additional information which is necessary in order to secure compliance of the notification with the conditions of Schedule III.

Notice of decision of Commission.

Schedule III.

(b) In case where the notification fee provided in subsection (2) of section 12 has not been paid, the time-limit defined in paragraph (a) will commence to count from the date on which the notification fee is paid.

(2) Subject to the provisions of section 30, if the time-limits of subsection (1) are not met in relation to a specific concentration, this concentration shall be considered to be compatible with the functioning of

competition in the market.

**30.-**(1) Where due to the exceptional volume or complexity of the information forwarded in the relevant notification, the Service ascertains that the time-limit provided in subsection (2) of section 27 cannot be met, it has the obligation, without delay and, in any case, within seven (7) days at the latest before the expiry of the time-limit provided in subsection (2) of section 27, after consultation with the Chairperson of the Commission, to inform the notifying party that the said time-limit is extended by fourteen (14) days.

Extension of time-limits.

(2) If any delay in the fulfilment by the Service or the Commission of any of the obligations referred to in sections 25, 26, 27, 28, 29 and 33 is due to an omission on behalf of any of the participants in the specific concentration or any representative thereof, the time-limits defined in sections 27 and 29 shall be subject to such extension as in the opinion of the Commission is reasonably necessary for the fulfilment of the said obligations.

**31.-**(1) In the case of paragraph (b) of subsection (1) of section 23, the Commission may, on request by one or more of the undertakings concerned by the concentration, which is notified simultaneously to all the undertakings concerned by the concentration, grant a derogation from the obligations imposed in section 11.

Temporary approval of concentrations.

(2) The request for a temporary approval of the concentration must be reasoned and it must prove that the undertakings which submit the request are likely to suffer serious damages due to further delay in the materialisation of the concentration.

(3) In deciding on the request, the Commission shall take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

(4) The Commission shall communicate its decision to the undertakings concerned by the concentration and in case the Commission grants the derogation, such derogation may be made subject to conditions and obligations imposed by the Commission in order to ensure conditions of effective competition.

(5) The Service shall inform the Minister about the decision of the Commission without delay.

**32.** The temporary approval of a concentration under section 31 shall not affect the decision made subsequently under sections 22 and 28.

Validity of acts done after temporary approval.

## **PART VI HEARINGS**

**33.**-(1) Before taking any decision under section 28 and subject always to the time-limits defined in section 29, the Commission may, if it considers expedient, carry out negotiations, hearings or discussions with any person who, at the discretion of the Commission, may help at the appraisal of the concentration.

Right to a hearing before the Commission.

(2) Before taking any decision under subsection (1) of section 28, there shall appear before the Commission, upon a written request, to develop their arguments in the context of an oral hearing-

- (a) the representatives of the participating undertakings, in person or by proxy or in person and with proxy or/and
- (b) any interested or other persons who may be affected directly by the decision of the Commission.

**34.**-(1) (a) In case of any infringements of the provisions of this Law, the Commission shall prepare a statement of objections and shall issue a summons to the persons against whom

Examination of infringements.

the statement of objections has been addressed and to any person who, at the discretion of the Commission, may help at the examination of the infringement requiring them to appear before it for a hearing.

(b) A statement of objections shall be communicated to the persons against whom it has been addressed in accordance with the provisions of section 45 of the Protection of Competition Law, as from time to time amended or substituted.

(c) The Commission may communicate the statement of objections to any other person summoned to appear before it for a hearing under paragraph (a).

(2) (a) The persons referred to in subsection (1), to whom the statement of objections has been communicated, shall be given every possible opportunity of submitting written observations on the statement of objections of the Commission, and to this effect, a reasonable time-limit shall be set, which may be justifiably extended; the Commission shall not be bound to take into account written observations submitted after the expiry of the set time-limit.

(b) When submitting the written observations the persons referred to in paragraph (a) shall define clearly any confidential information and/or any business secrets, analyzing the reasons why they should not be published or disclosed as well as the reasons why their disclosure will damage the undertakings, submitting at the same time the non-confidential version of their written observations.

(3) In case where the persons to whom the statement of objections

has been communicated, omit and/or refuse to submit any written observations in relation to the statement of objections of the Commission within the time-limit set, the Commission may proceed to the taking of a decision.

(4) The aforementioned persons summoned shall have, within the context of the written observations submitted by them, the right to request the development of their arguments in the context of an oral hearing before the Commission; the Commission may, by its decision, set a time-limit for the development of the arguments of the persons summoned in the context of the oral hearing before it.

(5) In the context of the proceedings of this section:

(a) The Commission shall not be bound to communicate to the person to whom the statement of objections has been addressed the whole file formed by the Commission on the concentration, however, it shall be bound to communicate to this person all of those documents of the file, that will be used by the Commission as evidence for the compilation of the statement of objections and then for the taking of its decision, with the exception of those documents constituting business secrets; or if those documents are already accessible to the said person, it shall indicate them to him in writing, so that this person or other third person concerned be informed in due course of all the documents that will be used by the Commission,

(b) the Commission shall not be allowed to base its decision on a document that has not been communicated or indicated to a person to whom the statement of objections has been addressed, according to paragraph (a),



(c) during the proceedings before the Commission, if the Commission intends to base its decision on a document that it has not communicated or indicated to a person to whom the statement of objections has been addressed, according to paragraph (a), the Commission shall be bound to communicate the said document to the said person and shall grant to it reasonable time to examine the said document.

## **PART VII**

### **POWERS OF THE MINISTER**

**35.** The Minister may, prior to the decision of the Commission referred to in section 22, declare by a reasoned Order that a notified concentration shall be deemed to be of major public interest as regards the effect it may have on the public security, the pluralism of the media and the principles of sound administration.

Declaration of concentration as being of major public interest.

**36.-(1) (a)** Where the Minister issues an Order under sections 5 or 35, the Commission shall submit its decision to the Minister in relation to the compatibility of the concentration with the functioning of competition in the market.

Submission of decisions of Commission to Minister.

(b) The decision of the Commission shall be published in the Official Gazette of the Republic and shall be communicated to the notifying party.

(2) In case where the Commission considers that the notified concentration is compatible with the functioning of competition in the market, the Service shall so inform the notifying party and the provisions of sections 24 and 29 shall not apply to the specific concentration.

**37.** In case where the Commission, in the context of its decision taken pursuant to section 36, considers that the notified concentration is compatible with the functioning of competition in the market, the Minister, within fifteen (15) days from the communication of the said decision to him, weighing the reasons of public interest referred to in section 35 and the need for the protection of competition in the market, shall-

Examination by Council of Ministers of decision of Commission.

(a) either state in writing that he agrees with the decision of the Commission and the Commission communicates this written statement to the notifying party as soon as possible and in any case within seven (7) days at the latest after the date of communication of the written statement of the Minister to the Commission; or

(b) in case where he disagrees with the decision of the Commission, it refers this decision to the Council of Ministers, as soon as possible, for examination, in the light of the reasons referred to in section 35.

**38.**-(1) When the decision of the Commission is referred by the Minister to the Council of Ministers for examination in accordance with section 37, the Council of Ministers shall decide without delay, weighing the reasons of public interest referred to in section 35 and the need for the protection of competition in the market, whether it will approve or not the concentration and, then, shall issue a relevant reasoned Order.

Decision of Council of Ministers.

(2) The Order of the Council of Ministers issued under subsection (1), shall, subject to the provisions of section 48 of this Law, be published in the Official Gazette of the Republic and be forwarded by the Commission to the notifying party as soon as possible and, in any case, within seven (7) days at the latest after the date of communication of the Order to the Commission by the Council of Ministers.

(3) Both the written statement of the Minister under paragraph (a) of

section 37 and the Order issued by the Council of Ministers under subsection (1) may be challenged by recourse in accordance with Article 146 of the Constitution.

(4) In cases where the Commission considers by its decision taken pursuant to section 36 that the notified concentration is compatible with the functioning of competition in the market, this concentration shall not apply, unless:

(a) either the written statement of the Minister that he does not object to the decision of the Commission is communicated to the notifying party , or

(b) the reasoned Order of the Council of Ministers by which it approves the concentration is communicated to the notifying party.

**39. When –**

(a) the Minister states in writing that he agrees with the decision of the Commission, according to paragraph (a) of section 37 or the Council of Ministers issues a reasoned Order, according to section 38, and

(b) the Commission applies the provisions of section 46,

the Commission shall communicate its decision under section 46 to the Minister or to the Council of Ministers, as the case may be.

Briefing of  
Minister and  
Council of  
Ministers in case  
of dissolution or  
partial  
dissolution of  
concentration.

**PART VII**  
**ADMINISTRATIVE SANCTIONS**

**40.**–(1) The Commission may impose the following administrative sanctions on the participants in the concentration or on an undertaking or undertakings or associations of undertakings, natural or legal persons or private entities infringing or omitting to comply with the following provisions of this Law:

Administrative sanctions.

(a) An administrative fine not exceeding ten per cent (10%) of the total turnover of the undertaking which has the obligation for notification, as defined in Schedule II, in the financial year immediately preceding the concentration, in case the concentration is partially or completely implemented by infringement of the provisions of section 11 and in addition an administrative fine not exceeding eight thousand (8.000) euros for every day during which the infringement continues,

Schedule II.

(b) an administrative fine not exceeding fifty thousand (50.000) euros for the supply of false or misleading information in the course of compliance with an obligation imposed by any provision of this Law,

(c) an administrative fine not exceeding fifty thousand (50.000) euros in case of omission to provide information pursuant to an obligation imposed by any provision of this Law,

(d) an administrative fine not exceeding ten per cent (10%) of the total turnover of the undertaking which has the obligation for notification, as defined in Schedule II, in the financial year immediately preceding the concentration, in case the concentration is implemented without the fulfilment of a condition imposed by the Commission in accordance with paragraph (a) of subsection (1) of section 28 and an administrative fine not exceeding eight thousand (8.000) euros for every day during which the infringement continues,

Schedule II.

(e) an administrative fine not exceeding ten per cent (10%) of the

total turnover of the undertaking which has the obligation for notification, as defined in Schedule II, in the financial year immediately preceding the concentration, in case of omission to comply, within the time-limit defined in subsection (5) of section 46, with any measure ordered by the Commission under subsections (1), (2) and (3) of section 46 and in addition an administrative fine not exceeding eight thousand (8.000) euros for every day during which the infringement continues.

Schedule II.

(2) In case of -

(a) refusal to comply with the order of the Commission for an inspection, according to section 43, or

(b) intentional or negligent provision of incomplete or altered evidence sought, that is mentioned in paragraph (b) of subsection (1) of section 43,

the Commission may impose an administrative fine not exceeding fifty thousand (50.000) euros.

(3) In addition to the sanctions provided for in subsections (1) and (2), the Commission may impose on the undertaking an administrative fine not exceeding seventeen thousand (17.000) euros for each day of its omission to comply with an order of the Commission for conducting an inspection, according to section 43.

(4) The administrative sanctions provided for in subsection (1) shall be imposed by a duly reasoned decision and after taking into account the gravity and the duration of the infringement, in any case, and after the party affected is given the opportunity to be heard.

**41.** In case of omission to pay the administrative sanctions imposed by the Commission under this Law, the Commission shall-

Judicial and other measures for the collection of administrative fines imposed by

(a) take judicial measures and collect the sum due as a civil debt owed to the Republic, and/or

(b) take any other measures that may by its order prescribe.

## PART IX MISCELLANEOUS PROVISIONS

**42.-(1)** (a) The Commission may collect information that is necessary for the exercise of its competences, powers and duties under this Law, by addressing a relevant to that effect written request to undertakings, other natural or legal persons or public or private entities.

The Commission's powers to collect information.

(b) For the purpose referred to in paragraph (a), the person or the undertaking or the entity to which the request by the Commission has been addressed shall be bound to provide promptly, in full and accurately the required information within the time-limit set.

(2) When sending a request, the Commission shall specify the required information, the provisions of this Law or of the European Union Competition Law on which the request is based, the reasoning of the request, a reasonable time-limit within which the information is to be provided and the possible administrative sanctions in the event of non compliance with the above obligation for the provision of information.

(3) In case of submission of a request by the Commission for the provision of information pursuant to section 15 and paragraph (a) of section 25,

(a) all the members of the managerial or administrative board or committee arranging the affairs of the legal person,

(b) the general manager or director or managing director of the legal person, and

(c) the persons who, according to the law or articles of association, are authorised to represent companies or associations having no legal personality,

shall be bound to provide promptly, in full and accurately the required information on behalf of the undertaking, within the time-limit set.

(4) Representatives duly authorised may supply on behalf of their clients all the information required:

Provided that, the natural and legal persons who are bound to provide information, within the time-limit set, by virtue of subsections (1) to (3) shall remain fully responsible for the full and in a timely manner provision of the said information.

(5) Public entities may refuse the supply of the required information in case where their supply would conflict with a provision of the law of the European Union or with any law or secondary legislation, aiming at the harmonization with the law of the European Union.

(6) The person, the undertaking or association of undertakings, the public or private entity, to which the request of the Commission is addressed, with the provision of the required information, indicates documents, statements and any material it considers to contain confidential information and/or business secrets, justifying its opinion, and provides a separate, non-confidential version within the time-limit set by the Commission for the notification of his/its opinion:

Provided that, if the person, the undertaking or association of undertakings or private entity does not exercise the above right conferred on it, the Commission may consider that the respective documents, statements and the rest of the material do not contain confidential information or business secrets.

**43.-(1)** In order to exercise its competences, powers and duties under this Law, the Commission may conduct all necessary inspections of undertakings or associations of undertakings and for this purpose –

The  
Commission's  
powers of  
inspection.

- (a) enter any office, premises, land and means of transport of undertakings and associations of undertakings, as well as any other business premises, with the exemption of residences;
- (b) examine any kind of records, books, accounts, and other records of business activity, irrespective of the medium on which they are stored;
- (c) receive or acquire irrespective of their form, copies of or extracts from records, books, accounts, and other records of business activity, irrespective of the medium on which they are stored and wherever they are stored;
- (d) seal any office, premises, land, means of transport and any other business premises, as well as those referred to in paragraph (b) for the period of the inspection and to the extent necessary for this inspection;
- (e) ask any person referred to in subsection (3) of section 42 or member of the staff of the undertakings or association of undertakings questions or explanations on facts or data relating to the subject-matter and purpose of the inspection and record the answers.



(2) (a) At the request of the Commission, competent officers of the Service shall exercise the relevant powers under subsection (1).

(b) If deemed necessary by the Commission, the said officers shall be accompanied by other officers, namely public officers and/or officers of the wider public sector, and/or persons with expert knowledge who may be employed by the Commission.

(3) The Commission's request shall be in writing and shall accurately specify the subject-matter and the purpose of the inspection, fix the date on which it is to begin, the provision on which this power of the Commission is based and the possible administrative sanctions where the undertaking or association of undertakings refuses to comply with the Commission's request.

(4) Inspections shall be conducted without prior notification of the participating undertakings, unless the Commission deems that notification will assist the inquiry.

(5) The undertaking in which the inspection is conducted may consult its legal adviser during the inspection, but his presence shall not constitute a prerequisite for the validity of the inspection and/or defence in the event of defective or non-compliance with the Commission's request.

(6) The Commission shall request, where appropriate, the assistance of the Police in order to become capable to exercise its powers according to the provisions of this section.

(7) The information obtained by the Commission in the exercise of its powers under this section may be used only for the purpose for which the inspection is allowed, with the exemption of those cases where this

proves necessary for the application of the European Union competition law.

(8) Every undertaking which is subject to an inspection pursuant to this section and every person to whom questions are submitted or from whom explanations are requested pursuant to paragraph (e) of subsection (1), shall have the obligation to provide the competent officer, as long as the latter reasonably demands, with–

(a) any facilitation,

(b) any information, and/or

(c) any statement on whether the information he provides to the competent officer is true.

(9) Any person who–

(a) refuses or omits to comply with any obligation imposed on him by subsection (8); and/or

(b) conceals, destroys or falsifies information, a record, a book, an account or other document of business activity, which is the subject of an inspection pursuant to this Law, or provides the Commission or its competent officer, false, incomplete, inaccurate or misleading information, statement, record, book, account or other document of business activity, or refuses or omits to provide the Commission or its competent officer information, statement, record, book, account or other document of business activity required in the exercise of the powers granted by this Law,

commits a criminal offence, and is liable to imprisonment for a term not exceeding one (1) year or to a fine not exceeding eighty-five thousand euros (€85.000) or to both such penalties.

(10) In case of prosecution for an offence pursuant to subsection (9)–

(a) in relation to refusal or omission to comply with any obligation imposed by virtue of subsection (8), it shall be a defence for the accused to prove that he had reasonable cause for the said refusal or omission;

(b) in relation to the provision of false, incomplete, inaccurate or misleading information or other evidence referred to in paragraph (b) of subsection (1) it shall be a defence for the accused to prove that he provided the said information and evidence in good faith and without knowing the fault of the said information and evidence.

**44.**-(1) The Commission may conduct inspections in any residence and any other premises, land and means of transport other than those provided for in section 43, only upon the issue of a duly reasoned judicial warrant.

Inspections under a judicial warrant.

(2) The Commission may apply to the Court for an order, by which the conduct of an inspection is allowed, as long as there are reasonable suspicions that in that place the evidence referred to in paragraph (b) of subsection (1) of section 43 or other evidence relating to the investigation of the case may be found.

(3) The Court shall make an Order allowing the Commission to exercise, *mutatis mutandis*, the powers referred to in paragraphs (a), (b), (c), (d) and (e) of subsection (1) of section 43, during the conduct of an inspection in residences and in any other premises, land and means of transport; the above order shall be made if the Court is satisfied that the application submitted according to subsection (2), is justified by the facts.

(4) The proceedings of the submission and hearing of the application shall be governed by a rule of court made by the Supreme Court, but until such rule is made, the application should be supported by an affidavit of an authorised officer.

(5) Every inspection warrant shall be under the hand of the Judge issuing the same, shall bear the date and time of issue, as well as a declaration of the Judge that he has been justifiably satisfied on the need for the issue of the said warrant.

(6) Subsections (2), (4), (5), (6), (7) and (8) of section 43 shall apply *mutatis mutandis* and in cases of inspection pursuant to this section.

(7) In case of non-compliance with the judicial warrant referred to in subsection (3), a criminal offence pursuant to subsections (9) and (10) of section 43 is committed.

**45.** The Commission may, at any time, revoke any decision taken in relation to the compatibility of any concentration with the functioning of competition in the market or may amend the terms of the decision if it ascertains—

Revocation or amendment of decision of Commission in relation to compatibility of concentration.

(a) that false or misleading information has been supplied or that necessary information relating to this concentration has been withheld by the notifying party or by any other participant in the concentration or by any interested person, or

(b) that any term imposed on the participants in the concentration by the said decision has not been satisfied or has ceased to be satisfied.

**46.-(1)** The Commission may, after the conduct of a due investigation and the submission of the relevant report of the Service, order the dissolution or partial dissolution of a concentration, in order to secure the

Partial or total dissolution of concentration.

restoration of the functioning of competition in the market, when it:

(a) exercises the powers granted under section 45 and subject to the provisions of section 39, or

(b) ascertains that a concentration has been implemented in violation of its obligation for notification provided for in section 10 or in violation of subsection (1) of section 11.

(2) The dissolution or partial dissolution of a concentration shall be accomplished—

(a) by the deprivation of any participations, shares, assets or rights acquired by anyone who participated in the concentration, or

(b) by the cancellation of any contracts which created the conditions of the concentration or which arose from it, or

(c) by a combination of the ways described in paragraphs (a) and (b) above or with other ways as the Commission deems necessary.

(3) Regulations issued under section 55 may regulate in particular the ways and conditions of dissolution or partial dissolution of a concentration of undertakings.

(4) Any measures imposed by the Commission under this section shall not exceed those which are reasonably necessary for the restoration of the functioning of competition in the market.

(5) Where any measures are imposed under this section, the Commission shall fix a reasonable period of time within which these measures must be implemented by the participating undertakings, taking into account the nature and extent of the relevant measures.

(6) Where the Commission orders the taking of any measures in accordance with this section, the Service shall immediately notify in writing the participants in the concentration and any other interested party and shall take all the necessary measures to ensure compliance therewith.

**47.** In case of omission to comply with the terms of a notice served in accordance with subsections (1), (2) and (3) of section 46 within the time-limit set, the Service shall be bound as soon as possible to inform the Commission, which shall immediately proceed, under section 34 and impose such penalties, as provided by section 40.

Omission to comply with and penalties.

**48.-(1)** The Chairperson, the members and the substitute members of the Commission, the officers of the Service, other public officers, other persons employed by the Commission who by reason of their post or in the performance of their official duties obtain information on business secrets and information of a confidential nature, shall be under a duty of confidentiality and shall be bound not to communicate and/or publicise such information, except in so far as is necessary—

Duty of confidentiality for the protection of business secrets and confidential information.

(a) to prove any infringement of this Law,

(b) for the implementation of the provisions of this Law.

(2) Under the duty of confidentiality referred to in paragraph (1) is any other natural or legal person who takes cognisance of such information in applying this Law, according to the proceedings provided for in this Law.

(3) A violation of the duty of confidentiality under this section shall constitute, in the case of public officers, a disciplinary offence punishable under the relevant disciplinary provisions.

(4) Nothing in this Law contained shall prevent the communication and/or publication of information for purposes of applying the European Union

competition law.

(5) Any person who violates the duty of confidentiality pursuant to subsection (1) of this section commits a criminal offence punishable with imprisonment for a term not exceeding six (6) months or with a fine not exceeding one thousand five hundred (1.500) euros or with both such penalties.

**49.** Subject to the provisions of this Law and the Regulations made thereunder, the Chairperson, the members and the substitute members of the Commission, the officers of the Service and the persons employed by the Commission shall have no liability for any act done or omitted to be done, or any opinion expressed or report or other document made by them in the *bona fide* exercise of their duties, competences or powers pursuant to this Law or/and the Regulations made thereunder.

Responsibility of the Chairperson, members and substitute members of the Commission, members of the Service and others.

**50.** In cases where a particular concentration is being examined simultaneously by another Competition Authority of a member state, the participating undertakings may submit with the notification a statement of voluntary waiver of the right of confidentiality for the purpose of supplying confidential information or/and business secrets, according to Schedule V.

Waiver of a right.

Schedule V.

**51.-(1)** The Service shall be responsible for the keeping of a Register of Concentrations, in which all the notified acts shall be recorded.

Keeping of Registers.

(2) The Service shall be responsible for the keeping of a Register of Decisions, in which there shall be registered–

(a) the decisions of the Commission on matters falling within the provisions of this Law, and

(b) the judgments of the Supreme Court on the same matters.

(3) Subject to the provisions of section 48, the Registers referred to in

subsections (1) and (2) shall be public.

**52.** The Commission shall prepare and submit to the Minister and the House of Representatives an annual report of its activities. Annual Report of activities of the Commission.

**53.** If in the context of its revisional jurisdiction pursuant to Article 146 of the Constitution, the Supreme Court annuls in whole or in part a decision of the Commission issued pursuant to this Law or a written statement of the Minister issued pursuant to this Law or an Order of the Minister or of the Council of Ministers issued pursuant to this Law, the time-limits defined in this Law shall apply anew as from the date upon which the decision was pronounced, but they shall be suspended if an appeal is made before their expiry and in case of dismissal of the appeal or of the decision on the appeal which does not result in the complete lifting of the annulment, they shall apply anew as from the date upon which the decision on the appeal, was pronounced. Suspension of time-limits.

**54.** The Commission shall cooperate with the European Commission and the Competition Authorities of the member states for issues relating to the control of concentrations between undertakings. Cooperation of the Commission with other Competition Authorities.

**55.-(1)** The Council of Ministers may, if it deems it expedient, issue Regulations to be published in the Official Gazette of the Republic, for the better carrying into effect of the provisions of this Law. Regulations.

(2) The Regulations shall be issued after the prior reasoned opinion of the Commission.

**56.** The Minister may, after the reasoned opinion of the Commission, with an Order published in the Official Gazette of the Republic, amend or replace the Schedules to this Law. Orders.

**57.** From the date of the entry into force of this Law, the Control of Concentrations Between Undertakings Laws, 1999 to 2000, shall be Repeal. 22(I) of 1999 107(I) of 1999 154(I) of 2000.



repealed.

**58.**-(1) All Orders and Regulations made under the Control of Concentrations Between Undertakings Laws, 1999 to 2000, shall, in so far as they are not inconsistent with the provisions of this Law, continue in force as if they had been made under this Law, until amended or repealed. Transitional provisions.

(2) Whenever in any Law other than this or in a regulatory administrative act or individual administrative act reference is made to the Control of Concentrations Between Undertakings Laws, 1999 to 2000, such reference shall be construed, *mutatis mutandis*, as reference to this Law.

(3) The procedure for the dispatching of cases and examination of notifications which on the date of the entry into force of this Law are pending before the Commission pursuant to the Control of Concentrations Between Undertakings Laws, 1999 to 2000, shall be deemed to be pending before the Commission pursuant to the provisions of the Control of Concentrations Between Undertakings Laws, 1999 to 2000.

**59.** This Law shall come into force upon its publication in the Official Gazette of the Republic. Entry into force of this Law.

## **SCHEDULE I**

### **(Section 2)**

#### **DEFINITIONS OF THE RELEVANT MARKET**

The relevant product markets and geographic markets determine the scope within which the market power of the participating undertakings must be assessed. The undertakings which have the obligation for the notification of concentration, must provide the data requested in accordance with the following definitions:

#### **RELEVANT PRODUCT MARKETS**

1. (a) A relevant product market comprises all those products and/or services, which are regarded as interchangeable or substitutable by the consumer by reason of their characteristics, prices and intended use.

(b) A relevant product market may, in certain cases, be composed of specific individual products and/or services which present to a large extent identical physical or technical characteristics and are interchangeable.

(c) Factors relevant to the assessment of the relevant product market include, amongst others, the analysis of the reasons for which certain products or services are included in these markets and why others are excluded on the basis of the abovementioned definition and taking into consideration, for example, the possibility of substitutability of products and services, the prices, the cross-price elasticity of demand or other relevant factors (for example, the possibility of substitutability from the demand side in appropriate cases).

#### **RELEVANT GEOGRAPHIC MARKETS**

2. (a) The relevant geographic market comprises the area in which the participating undertakings are involved in the supply and demand of relevant products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring geographic areas because, in particular, conditions of competition are appreciably different in those areas.

(b) Factors relevant to the assessment of the relevant geographic market are, indicatively, the nature and characteristics of the relevant products or services, the existence of entry barriers into the market, the consumer preferences, the substantial differences in the undertakings' market shares between neighbouring geographic areas and substantial price differences.

### **AFFECTED MARKETS**

3. Affected markets consist of all the relevant product markets and geographic markets as well as the plausible interchangeable relevant product markets and geographic markets in the territory of the Republic, where:

(a) two or more of the parties to the concentration are engaged in business activities in the same product market (horizontal relationship), and where the concentration will lead to a combined market share of fifteen per cent (15%) or more; or

(b) any of the parties to the concentration are engaged in business activities in a product market which is upstream or downstream of a product market in which any other party to the concentration is engaged (vertical relationship) and provided any of the individual or combined market shares of these undertakings is twenty five per cent (25%) or more regardless of whether there is or is not any existing supplier-customer relationship between the parties to the concentration.

### **OTHER MARKETS IN WHICH THE NOTIFIED CONCENTRATION MAY HAVE SIGNIFICANT IMPLICATIONS**

4. On the basis of the definitions of paragraphs 1 and 2 above, further to the affected markets, the notified concentration may have significant implications in other markets as well, for example when:

(a) Any of the participating parties has a market share of more than twenty five per cent (25%) and any other participating party is a potential

competitor in the said market. An undertaking may be considered as a potential competitor, particularly, if it plans to enter into the market or if it has developed or pursued such plans during the last three (3) years;

(b) any of the participating parties has a market share of more than twenty five per cent (25%) and any other participating party holds important intellectual property rights in the said market;

(c) any of the participating parties is active in a neighbouring product market which is closely related to a product market, which is a neighbouring market closely related to a product market in which any other participating party is active, and the individual or combined market shares of the parties in any of the said markets is at least twenty five per cent (25%). The product markets are closely related neighbouring markets, if the products are complementary to each other or if they belong in a spectrum of products which are generally purchased by the same group of clients for the same end use.

**SCHEDULE II**  
**[Sections 3(3), 19(1)(b), 40(1)(a)(d)(e)]**  
**CALCULATION OF TURNOVER**

1. (a) The aggregate turnover referred to in subsection (2) of section 3 shall comprise the amounts derived from the sale of products and the provision of services by the undertakings concerned during the preceding financial year and corresponding to the ordinary activities of the undertakings, after deduction of sales rebates, of value added tax and other taxes directly related to turnover.

(b) The aggregate turnover of a participating undertaking shall not include internal transactions carried out between any of the undertakings referred to in paragraph 4 of this Schedule.

2. By way of derogation from paragraph 1 of this Schedule, where the concentration consists of the acquisition of parts of one or more undertakings, whether or not constituted as legal entities, only the turnover relating to the parts which are the subject of the transaction shall be taken into account with regard to the seller or sellers.

3. In place of turnover the following shall be used:

(a) for a bank or other credit institution, the one tenth of the balance sheet of the last financial year,

(b) for an insurance company the value of the gross premiums during the last financial year which shall comprise all amounts received or receivable in respect of insurance contracts concluded by it or on its behalf, including outgoing reinsurance premiums and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

4. Without prejudice to the provisions of paragraph 2 of this Schedule, the turnover of a participating undertaking, in accordance with subsection (2) of section 3 of this

Law, shall be calculated by adding together the respective turnover of the following undertakings:

- (a) the undertakings concerned,
- (b) those undertakings in which the undertaking concerned directly or indirectly:
  - (i) owns more than half the capital or business assets, or
  - (ii) has more than half of the voting rights, or
  - (iii) has the power to appoint more than half the members of the supervisory or administrative board or the bodies legally representing the undertakings concerned, or
  - (iv) has the right to manage the affairs of the undertakings,
- (c) those undertakings which have in the undertaking concerned the rights or powers referred to in subparagraph (b) of this paragraph,
- (d) those undertakings in which an undertaking as referred to in subparagraph (c) of this paragraph has the rights or powers referred to in subparagraph (b) of this paragraph,
- (e) those undertakings in which two or more undertakings as referred to in subparagraphs (a) to (d) of this paragraph jointly have the rights or powers referred to in subparagraph (b) of this paragraph.

**5.** Where undertakings participating in the concentration jointly have the rights or powers listed in subparagraph (b) of paragraph 4, in calculating the turnover of the participating undertakings within the meaning of subsection (2) of section 3 of this Law-

- (a) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each one of the participating undertakings or any other undertaking connected with any one of them, within the meaning of subparagraphs (b) to (e) of paragraph 4 of this Schedule;
- (b) account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and any

third undertaking. The said turnover shall be apportioned equally amongst the undertakings concerned.

**6.** The financial data requested in the notification form is expressed in Euros and on the basis of the average exchange rate for the years or other periods of reference.

### **SCHEDULE III**

**[Sections 12(1) and (2), 14, 15, 17, 23(2)(a), 27(2)(a), 29(1)(a)]**

#### **INFORMATION REQUIRED TO BE INCLUDED IN THE NOTIFICATION OF A CONCENTRATION**

1. The person who has the obligation for notification—
  - (a) The person who has the obligation for notification shall state in relation to every participating undertaking—
    - (i) the name and address of the undertaking,
    - (ii) the nature of the commercial activity in which the undertaking is engaged,
    - (iii) the name, address, telephone number and fax number of the person through whom one may communicate with this undertaking and the position the said person holds in it.
  - (b) When one or more representatives (whether those referred to in subparagraph (a)(iii) above or other persons) have been authorised to sign the notification on behalf of one or more of the participating undertakings, the notification must be accompanied by the relevant receipt and each one of the representatives shall be identified by his name, address, telephone number and fax number and the passport or ID number as follows:

#### **AUTHORISATION**

“I, the undersigned [Full name], citizen of [State], with Passport No. [number], or with ID number [number] on behalf of [name of natural or legal person who has the obligation for notification], hereby authorise Mr/Ms [full name] citizen of [State], with Passport No. [number] or with ID number [number], address [address], telephone number [telephone number], and fax number [fax number] in order to:



1. Proceed and sign the Final Declaration of the Notification of Concentration [Title of Notification of Concentration] in accordance with section 14 and Schedule III of the Control of Concentrations Between Undertakings Law.
2. The contact person with the Commission for the Protection of Competition Law of the Republic of Cyprus in relation to the above mentioned Notification of Concentration, is [name of the person who has the obligation for notification].”

[Place of Signing], [Date]

(Signature) .....

[Name and position of the signing person concerning the person who has the obligation for notification].”

## 2. Supporting Documents–

- (a) The completed notification must be accompanied by the following:
  - (i) copies of the final or most recent documents bringing about the concentration, whether by agreement or following a public announcement of the intention or final decision of acquisition proposal,
  - (ii) in the case of final decision of acquisition proposal, a copy of the public announcement and of the offer document, if this is available, and in the case of a public bid, a copy of the public announcement of the intention of a bid. If those documents are not available at the time of notification, then, copies of those documents should be submitted as soon as possible and, in any case, not later than when they are posted to those to whom they must be sent,
  - (iii) copies of the most recent annual reports and audited financial statements of all the parties to the concentration,

- (iv) copies of reports or analyses prepared for the purposes of the concentration from which information has been acquired for the fulfilment of the conditions of paragraphs 3 to 6 below,
  - (v) a list and a short description of the contents of all the other analyses, reports, studies and surveys prepared by or for any of those who have the obligation for notification for the purpose of assessing or analysing the proposed concentration with respect to the conditions of competition, the competitors (actual and potential) and the market conditions. Each document in the list must include the name and position held by its author.
- (b) The notification shall be submitted in one of the official languages of the Republic. The supporting documents may also be submitted in English. If these documents have been written in original language other than these languages, the document shall be submitted both in the original language as well as in translation into one of the official languages of the Republic. The supporting documents may be originals or copies of the originals. In the latter case, the notifying party shall confirm that the said copies are true and complete.
- (c) The person who has the obligation for notification must submit to the offices of the Commission in print (two (2) copies) and in electronic form all the documents of the notification.
- (d) The copy of the agreement required for the purposes of this Law shall be stamped, unless the agreement was concluded in a country where the national legislation does not require the stamping of agreements.

### 3. Details of the concentration:

- (a) The nature and scope of the concentration must be described summarily, including details of the following:
  - (i) which of the instances referred to in sections 3 and 6 of the

Law created the circumstances from which the concentration arose,

- (ii) whether the whole or parts of the undertakings are subject to the concentration,
- (iii) in the case of a public tender, whether the tender for the shares of one party by another party has the support of the administrative board or of the legal representative of the former party.

- (b) Explanation of the purpose of the concentration.
- (c) To be stated whether the concentration has been notified to other Competition Authorities of the member states. If yes, to which, when, and whether it has received approval.
- (d) The financial and structural details of the concentration must be described, including–
  - (i) any financial or other support received from any source (including public authorities) by any of the participants in the concentration,
  - (ii) the proposed structure of ownership and control after the completion of the concentration,
  - (iii) the proposed or expected date of appearance of any major events designed to bring about the completion of the concentration.
- (e) The person who has the obligation for notification–
  - (i) provides details for each of the undertakings regarding the turnover in the Republic and world-wide turnover, in accordance with the provisions of Schedule II;
  - (ii) provides details for every participant in the concentration regarding profits before the deduction of taxes and the number of persons employed within and outside the Republic.

#### 4. Ownership and control

For each of the parties to the concentration referred to in paragraph 3 above, details must be given about all undertakings belonging to the same group in any of the ways referred to in subparagraphs (b) to (e) of paragraph 4 of Schedule II, mentioning in each case the nature of the controlling interest and the ways in which it has been acquired. In such a case, the relevant undertakings must collectively hereinafter be referred to as "groups of undertakings".

#### 5. Personal and economic links

For each group of undertakings details must be given about any other undertakings which are active in the affected markets (as defined in Schedule I):

- (a) in which the group holds, either alone or together with other groups, at least ten per cent (10%) of the shares or voting rights,
- (b) which have as members of their boards of directors the members of the boards of directors of this group, mentioning in each case the names of the members concerned.

6. A description and analysis of all the relevant product markets and relevant geographic markets as well as of all the reasonable alternative definitions of relevant product and geographic markets concerning the concentration, in accordance with the definitions of Schedule I.

7. A description and analysis of the affected markets and other markets where the notified concentration might have significant implications, as defined in Schedule I.

On the basis of the definitions given for every affected market and for every other market where the notified concentration might have significant implications the person who has the obligation for notification shall take the following actions:

- (a) Mention or estimate, where necessary–
  - (i) the value of the turnover in the market and, when it is deemed expedient, the volume in production units (excluding exports

but including imports). The basis and the sources of calculations and, where available, documents for the confirmation of these calculations shall be mentioned,

- (ii) the expected development of demand,
  - (iii) the turnover of each group of undertakings,
  - (iv) the market share of each one of the competitors of each of the parties to the concentration and the name, address, telephone and fax numbers of each one of these competitors (where known),
  - (v) pursuant to subparagraph (iv), by estimation, the HHI index, before and after the concentration, and the difference between the two ( $\Delta$ ) and the percentage of the market shares used as a basis for the calculation of the HHI,
  - (vi) the value of the imports into this market and their origin, including the proportion of these imports which is effected by the groups referred to in subparagraph (iii),
  - (vii) the tariff and non-tariff barriers to imports,
  - (viii) the importance of economies of scale for the production or distribution of the products in the affected markets,
  - (ix) the way that the planned concentration might affect the interests of intermediate and ultimate consumers.
- (b)
- (i) State whether there has been any significant entry of any undertaking in the market in the last five (5) years and whether any such entry is likely in the following five (5) years,
  - (ii) describe the factors which affect the entry into the market, taking into account—
    - the cost of entry on a viable production scale,
    - the need for government authorization or compliance with specific legal or institutional standards or controls,
    - the access to raw materials, and

- the existence and importance of patents or agreements on technical know-how in the market.
- (c) Describe the importance of research and development to the extent that they affect the ability of the undertaking operating in the market to compete in the long term and explain the nature of the research and development in the market carried out by groups of undertakings, and–
- (i) estimate the cost of research and development as a percentage of the turnover,
  - (ii) describe the major innovations that have been resulted from the research and development in the last five (5) years and mention the undertakings which brought about these innovations in the market, and
  - (iii) describe the extent to which the groups of undertakings or the undertakings included therein are franchisers or holders of patents or participate in know-how agreements which affect the market.
- (d) Explain the distribution systems and the services networks that exist on the market, mentioning in particular any undertakings constituting part of the groups of undertakings mentioned in paragraph (d) above and providing distribution or maintenance services to a significant extent.
- (e) (i) Describe the structure of supply and demand mentioning in particular–
- any easily definable categories of suppliers or customers, and
  - the extent to which public authorities, government services or state undertakings are suppliers or customers,

- (ii) provide details of the five (5) largest suppliers of the parties to the concentration and of their individual shares as regards the supplies purchased by these parties,
  - (iii) provide details of the five (5) largest customers of the parties to the concentration and of their individual shares as regards the sales of the parties to the concentration to these customers.
- (f) Record the names, addresses and telephone and fax numbers of the main commercial contacts in the market.

**8. Joint Venture:**

(a) In case the notified act falls within the context of paragraph (b) of subsection (1) of section 6 of this Law, it must be answered whether two or more parent undertakings retain to a significant extent activities in the same market with the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market.

In case of an affirmative answer, please indicate for each one of the said markets:

- (i) The turnover of each parent undertaking in the preceding year,
- (ii) the economic significance of the activities of the joint venture in relation to this turnover,
- (iii) the market share of each parent undertaking.

If the answer is negative, please justify this answer.

(b) If the answer in subparagraph (a) is affirmative, it shall be justified why the creation of the joint venture does not lead to coordination between independent undertakings that restricts competition within the meaning of section 3 of the Protection of Competition Law, as from time to time amended or substituted.

(c) Without prejudice to subparagraphs (a) and (b) and in order for the Commission to be in position to conduct a complete appraisal of the case,

it must be explained why the criteria of section 4 of the Protection of Competition Law, as from time to time amended or substituted, are satisfied.

## **9. Confidentiality**

Where any of the information included in the notification is considered as confidential or as a business secret by the parties concerned by the concentration because its disclosure will damage the undertakings concerned by the concentration, this must be clearly marked as confidential or as a business secret and the reasons justifying why this information should not be published or disclosed must be mentioned. Such information may, in exceptional cases, be submitted in a separate envelope and due reference must be made in the text of the notification.

## **10. Final statement**

All the persons referred to in subparagraph (b) of paragraph (1) of this Schedule must attach to the notification a signed statement by them certifying that all the information included in this notification is to the best of their knowledge and belief true, that all estimates are the best that may be given and ascertained, that all the opinions expressed are sincere and that they are aware of the administrative sanctions imposed in accordance with section 40 of this Law.

## **11. Notification fees**

(a) The notification shall be accepted subject to the payment of a fee of one thousand (1.000) euros.

(b) The full investigation proceedings will commence upon the payment to the Commission of a fee of six thousand (6.000) euros.



**SCHEDULE IV**  
**[Section 25(b)]**  
**COMMITMENTS NOTIFICATION FORM**  
**PURSUANT TO SECTION 25(b)**

**1. Introduction**

This form specifies the information and documents to be simultaneously submitted by the participating undertakings when offering commitments pursuant to paragraph (b) of section 25 of this Law.

**2. Description of the commitment**

(a) Provide detailed information on :

- (i) The object of the commitments offered, and
- (ii) the conditions for their implementation.

(b) In cases where the commitments offered consist in the divestiture of a business there shall be prescribed in paragraph 5 of this Schedule the specific information required.

**3. Suitability to remove competition concerns**

Provide evidence proving the suitability of the commitments offered to remove the significant impediment of effective competition identified by the Commission.

**4. Summary of commitments**

Provide a non-confidential summary of the nature and scope of the commitments offered and why, in your view, they are suitable to remove any significant impediment to effective competition. The Commission may use this summary for the market test of the commitments offered with third parties.

**5. Information on a business to be divested**

In case the commitments offered consist in the divestiture of a business, please provide the following information and documents:

- (1) General information on the business to be divested.

There shall be required the following information as to the current operation of the business to be divested as well as changes already planned for the future:

(a) A description of the business to be divested, in general, including the entities belonging to it, their seat and place of management, other locations for production or provision of services, the general functional structure and any other relevant information relating to the administrative structure of the business to be divested.

(b) A report and description of any legal obstacles for the transfer of the business to be divested or the assets to be sold, including third party rights and administrative authorisations required.

(c) A list and description of the products manufactured or services provided, in particular their technical and other characteristics, the brand names involved, the turnover generated with each of these products or services, and any innovations or new products or services planned.

(d) A description of the level on which the essential functions of the business to be divested are operated if they are not operated on the level of the business to be divested itself, including such functions as research and development, production, marketing and sales, logistics, customers, suppliers, IT systems, etc. The description should contain the role performed by those other levels, the relations with the business to be divested and the resources (personnel, assets, financial resources, etc.) involved in the function.

(e) A description in detail of the links between the business to be divested and other undertakings controlled by the notifying parties (irrespective of the direction of the link), such as:

(i) supply, production, distribution, service or other contracts,

(ii) shared tangible or intangible assets,

(iii) shared or seconded personnel,

(iv) shared IT systems or other systems, and

(v) shared customers.

(f) A description, in general terms, of all relevant tangible and intangible assets used and/or owned by the business to be divested, including, in any case, IP rights and brand names.

(g) An organisational chart mentioning the number of personnel currently working in each of the functions of the business to be divested and a list of those employees who are indispensable for the operation of the business to be divested, describing their functions.

(h) A description of the customers of the business to be divested, including a list of customers, a description of the corresponding records available, provision of the total turnover generated by the business to be divested with each of these customers (in euro and as percentage of the total turnover of business to be divested).

(i) The financial data for the business to be divested, including the turnover and the Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA) achieved in the last two years, and the forecast for the next two years.

(j) Identification and description of any changes that have occurred in the last two years, in the organisation of the business to be divested or in the links with other undertakings controlled by the notifying parties.

(k) Identification and description of any changes, planned for the next two years, in the organisation of the business to be divested or in the links with other undertakings controlled by the notifying parties.

(2) General information on the business to be divested as described in the commitments.

A description of the areas where the business to be divested as set out in the commitments offered differs from the nature and scope of the business as currently operated.

(3) Acquisition by a suitable purchaser.

Analysis of the reasons why, the business will be acquired by a suitable purchaser in

the time-frame proposed in the commitments offered.

**SCHEDULE V**  
**(Section 50)**  
**OFFICIAL STATEMENT OF VOLUNTARY WAIVER OF THE RIGHT OF**  
**CONFIDENTIALITY**

Commission for the Protection of Competition

[Date]

Subject: Voluntary waiver of the right of confidentiality

As an appointed proxy of [COMPANY A], I confirm that [COMPANY A], agrees to waive the confidentiality right which prevent the Commission for the Protection of Competition (hereinafter the "Commission") to disclose confidential information to the European Commission (hereinafter the "European Commission") or to any other Competition Authority of a member state (hereinafter the "Competition Authority"), concerning the suggested concentration of [COMPANY A] with [COMPANY B], under the terms and conditions referred to in this document. In particular, [COMPANY A] gives its consent to the Commission to forward to the European Commission or to a Competition Authority of a member state [THE FOLLOWING IS TO BE INSERTED]: any documents, statements, data and information of [COMPANY A] and the written report prepared by the Commission or/and the Service of the Commission for the Protection of Competition which may contain or refer to [COMPANY A's] confidential information which could not have been disclosed due to the duty of confidentiality binding the personnel of the Commission, pursuant to section 48 of the Law.

The waiver of the right of confidentiality shall be granted only with respect to disclosure of data to the European Commission or to a Competition Authority of a member state under the condition that this information will be treated as business secrets by the European Commission or the Competition Authority of a member state. This agreement shall not constitute a waiver by [COMPANY A] of its confidentiality rights against the direct or indirect disclosure of information to any third party other than the European Commission or the Competition Authority.

[COMPANY A] submits this waiver under the condition that any information forwarded by the Commission to the European Commission or the Competition

Authority of a member state will continue to remain confidential and that the European Commission or the Competition Authority of a member state are bound, according to the duty of confidentiality, not to disclose any information to third parties.

A copy of this letter will be sent to [REPRESENTATIVE of the European Commission or the Competition Authority of a member state in the context of the cooperation pursuant to section 54 of the Control of Concentrations Between Undertakings Law, as from time to time amended or substituted].

Sincerely,

[APPOINTED PROXY OF COMPANY]