

Antimonopoly Office of the Slovak Republic

Guidelines on Pre-notification Contacts in the Procedure of the Assessment of Mergers

July 1-st, 2013

GUIDELINES OF ANTIMONOPOLY OFFICE OF THE SLOVAK REPUBLIC ON PRE-NOTIFICATION CONTACTS IN THE PROCEDURE OF THE ASSESSMENT OF MERGERS

1. Pre-notification contacts represent an important part of the whole merger review process. Within pre-notification contacts parties to merger have an opportunity to discuss intended merger informally with representatives of the Antimonopoly Office of the Slovak Republic (hereinafter referred to as "the Office"), prior to its notification under the article 10, par. 9, or article 10, par. 10 of the Act No. 136/2001 Coll. on Protection of Competition and on Amendments and Supplements to Act of the Slovak National Council No. 347/1990 Coll. on Organization of Ministries and Other Central Bodies of State Administration of the Slovak Republic as amended (hereinafter referred to as "the Act").
2. Based on the Office's experience, the parties to merger are highly recommended to initiate contacts prior to notification, in all merger cases even in non-problematic ones. In addition, pre-notification contacts raise efficiency of procedures and help prevent situations when merger notifications are incomplete.

Subject of pre-notification contacts

3. Pre-notification contacts are based on voluntary and direct cooperation of interested parties. Within pre-notification contacts parties to merger may discuss with the Office for example:
 - a) partial procedural and other legal issues (e.g. fulfilment of turnover criteria; whether the transaction can be deemed as the intention of merger; identification of parties to merger, etc.),
 - b) draft of merger notification and its individual particulars in terms of completeness¹,
 - c) issues regarding definition of relevant markets,
 - d) possibility to reduce scope of required information with regards to special nature of each merger²,
 - e) possible competition concerns connected to merger (if they are identified at this stage), and information and documents that are required by the Office with regards to the issue,
 - f) conditions and obligations proposed in order to eliminate competition concerns, connected to merger (if competition concerns have been identified),
 - g) possibility to be granted an exemption from restriction to exercise rights and obligations resulting from merger³,
 - h) possibility to refer a case from competition authority in EU Member State to the European Commission or vice versa⁴,and other facts according to type of subjected merger.
4. Pre-notification contacts do not include the binding opinion of the Office on whether merger significantly infringes efficient competition on relevant market, mainly by creating and strengthening dominant position, and whether coordination of competition behaviour is prohibited pursuant to the article 4, par. 1 of the Act, i.e. within pre-notification contacts the Office shall not pre-render any final decision.

1 See the article 10, par. 12 of Act and the Decree of the Office No. 204/2009 Coll. laying down details of particulars of a notification of merger as amended (hereinafter referred to as "the Decree").

2 Notifying parties to merger may seek unbinding opinion from the Office whether some information and/or documents required pursuant to the article 10, par.12 of the Act and the Decree are necessary for assessment of merger and whether request for reduction of scope of documents and information would be accepted.

3 See the article 10, par. 7 of the Act.

4 Within the meaning of Council Regulation (EC) No. 139/2004 Coll. on the Control of Concentrations between Undertakings.

Confidential nature of pre-notification contacts

5. Pre-notification contacts have strictly confidential nature. Information and documents submitted within pre-notification contacts are available only to the Office and parties that provided information and documents. All employees of the Office, who are familiar with information and documents, are bound by confidentiality obligation⁵. Information and documents submitted within pre-notification contacts may be accessed by third parties only with prior approval of notifying party.
6. Documents and information submitted during pre-notification contacts become part of case file to merger administrative proceedings only with prior approval of notifying party. Otherwise, the Office will return the documents and information to parties of pre-notification contacts (if they so request).
7. If after realization of pre-notification contacts, merger notification is not submitted to the Office, the Office will return submitted documents and information to notifying party upon its request.

Parties to pre-notification contacts

8. During pre-notification contacts parties to merger may be represented by legal representatives, as well as employees, who are familiar with functioning of concerned markets and economic reasons for merger. Participation of employees may contribute to a better understanding of the functioning of the concerned markets and nature of assessed transaction.

Documents and information required within pre-notification contacts

9. Within pre-notification contacts parties to merger should provide the Office at least with the following documents and information:
 - a) description of the transaction, the characteristics and position of the parties to merger,
 - b) brief description of the areas and markets affected by the merger,
 - c) brief description of the likely impact of the merger on competition on the above mentioned markets.In case that within the pre-notification contacts the undertakings require discussing only certain partial issue, the Office shall only ask for such information that is necessary for the Office in order to provide its opinion on the subjected partial issue to the undertakings
10. At the same time, parties to merger are recommended to provide within pre-notification phase the Office with all other available information relating to all markets, which may be affected by merger, and specify their opinions on the markets` definition in both their product and geographic dimension.
11. It is also highly recommended that parties to merger shall indicate whether according to their opinion there are any competition concerns related to the merger. If so, parties to merger may submit documents and information on these competitive concerns to the Office and may also submit their draft proposal of conditions and obligations in order to eliminate them.
12. Within pre-notification phase the Office also recommends the notifying parties to submit analyses, reports, studies, surveys or other documents prepared for the purpose of evaluation or analysis of merger, mainly with respect to competition conditions, market shares, the existing or potential competitors, sales growth potential or expansion growth potential into other product relevant markets or other geographic relevant markets related to merger, economic rationale of merger and indicate the importance of competition or market context in which the merger is realized.

13. As a basis for further discussion with the Office, notifying parties may deliver draft of merger notification⁶ before an initial meeting or at any stage of pre-notification contacts.
14. If notifying parties proceed in accordance with these guidelines, the Office will generally be prepared to provide them with an opinion on whether the information submitted is complete or inform them, alternatively on the deficiencies in notification draft. However, this does not affect in any way the right of the Office to declare that the submission to initiate the proceedings is incomplete if upon the notification the Office identifies other facts, about which the Office was not informed of during the pre-notification contacts and which affect the completeness of notification, alternatively if undertaking did not include information and documents, upon which it agreed with the Office during the pre-notification contacts, in the notification.
15. If within formal merger notification phase undertakings submit to the Office the same information and documents (with same wording), upon which they agreed with the Office during the pre-notification contacts, the Office will be prepared to evaluate the completeness of merger notification in administrative proceedings faster and more efficiently.

Process and form of pre-notification

16. Pre-notification contacts may be initiated by e-mail, phone or written submission⁷.
17. Pre-notification contacts shall be initiated at least two weeks prior to merger notification to the Office. In more complex cases, it is recommended to reserve longer period of time for pre-notification contacts.
18. Pre-notification contacts may be realized on condition that parties to merger and the Office have at their disposal the minimum of documents and information mentioned in paragraph 9 of the guidelines.
19. Relevant documents and information may be delivered to the Office by e-mail or by written submission. Any e-mail or written submission should be delivered to the Office within a reasonable time period prior to the pre-notification meeting to enable the parties to be prepared sufficiently in advance for efficient discussion. The Office initiates the first pre-notification meeting (alternatively in case of pre-notification contacts initiated by e-mail, the first statement of the Office in this form) no later than 5 working days after the delivery of submission (unless undertaking suggests later date). In case of huge submissions and complicated cases this period of time may be appropriately longer.
20. Preferred methods for pre-notification contacts are informal e-mail communications or other communications by phone or in person. Mail communication within the pre-notification contacts may be realized only if notifying parties request to do so.

⁶ i.e. information and documents pursuant to the article 10, par.12 of the Act and the Decree, composed according to the Decree.

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21. If party to pre-notification contacts requests to do so, meeting minutes shall be drawn up from their personal meeting. The meeting minutes shall obviously include the subject of the pre-notification meeting (e.g. addressing some partial issue, etc.).
22. Pre-notification contacts will be finalized by written conclusion that may be drawn in form of minutes of last meeting. Content of subjected document is a brief summary of the issues that were subjects of pre-notification discussions and the discussion outcome with the announcement that pre-notification contacts have been finalized. Content of the document may also include an agreement between the Office and the parties to pre-notification contacts upon the submission of reduced scope of information and documents within formal merger notification.
23. Finalization of pre-notification contacts by written conclusion does not exclude the ability of undertaking to subsequently turn to the Office even prior to formal merger notification if they additionally find another issue that needs to be discussed.
24. In cases when the merger is subject to approval by national competition authorities from more countries, regardless of the fact whether they are EU Member States or not, it is advised that parties to merger shall coordinate the timing of the pre-notification contacts. Parallel pre-notification contacts and proceedings on merger in other countries are prerequisite for a consistent procedure of the competition authorities.

Conclusion

25. This document shall have no binding effect. However, the Office declares its willingness to act in accordance with the content of this document. Depending on the specific circumstances of the case, it may require variance of these general rules.
26. Realization of pre-notification contacts is not a prerequisite for subsequent merger notification. According to the Office's practice, it is obvious that pre-notification contacts significantly contribute to an efficient course of merger proceedings and support the predictability of merger proceedings for undertakings.