

**Guidelines of the Antimonopoly Office
of the Slovak Republic
on the pre-notification contacts
in the procedure of merger assessment**

1 July 2014

1. Pre-notification contacts are important part of merger assessment procedure. Within these contacts the undertakings concerned may informally discuss the merger with the representatives of the Antimonopoly Office of the Slovak Republic (hereafter referred to as “the Office”) prior to its notification to the Office pursuant to the article 10 par. 7 or article 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 Organisation of Ministries and Other Central Bodies of State Administration of the Slovak Republic as amended as amended (hereinafter referred to as “the Act”).
2. Based on recent experiences the Office recommends the undertakings concerned to initiate the pre-notification contacts even in seemingly unproblematic cases. Pre-notification contacts increase the efficiency of proceedings and prevent from situations when the merger notification is not complete.

Subject of pre-notification contacts

3. Pre-notification contacts are based on mutual voluntary and open cooperation of participating parties. Within these contacts the undertakings concerned may discuss with the Office mainly the following:
 - a) partial procedural and other legal issues (for example fulfilment of turnover criteria; whether the transaction might be considered as intention of merger; identification of undertakings concerned etc.),
 - b) draft of the merger notification and its requirements in the view of their complexity¹
 - c) definition of relevant markets,
 - d) opportunity to reduce the amount of required information regarding the specificity of each merger²,
 - e) potential competition concerns connected with merger (if they are identifiable already at this stage) and information and documents which the Office requires in this connection,
 - f) conditions and obligations proposed for elimination of competition concerns connected with merger (if the competition concerns were identified),
 - g) opportunity to grant an exemption from the prohibition to exercise the rights and obligations resulting from a merger³,
 - h) opportunity of referral of the case from the national competition authority to the European Commission or vice versa⁴, and other facts depending on nature of the merger concerned.
4. The object of the pre-notification contacts is not a binding statement of the Office on the fact whether the merger significantly impede competition in the relevant market, particularly through the creation or strengthening of dominant position and whether the coordination of competitive behaviour is not prohibited pursuant to the article 4 par. 1 of the Act, it means the Office does not prejudice the final decision within the pre-notification contacts.

¹ See article 10 par. 9 of the Act and Decree of the Office No. 170/2014 Coll. laying down details of requirements of a notification of concentration (hereafter referred to as „the Decree“).

² Persons notifying merger may ask the Office for the unbinding statement whether certain information and/or documents required pursuant to the article 10 par. 9 of the Act are necessary for merger assessment, thus whether their reasonable request for reduced amount of documents and information will be satisfied.

³ See article 10 par. 14 of the Act.

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

Confidentiality of pre-notification contacts

5. Pre-notification contacts have strictly confidential nature. Information and documents submitted within the pre-notification contacts are available only to the Office and to the undertaking that provided them. All employees of the Office who get acquainted with these documents and information are subject to confidentiality requirement⁵. Information and documents submitted within the pre-notification contacts may be disclosed to the third parties only with the prior consent of the subject that provided them.
6. Documents and information submitted within the pre-notification contacts become part of the file on administrative proceedings in the matter of concentration only with the prior consent of the undertaking that provided them. If the consent or request on it is not given, the Office returns these documents and information to parties to the pre-notification contacts (on their request).
7. If the merger is not notified to the Office after the pre-notification contacts, the Office returns the submitted documents and information based on request by the parties to the pre-notification contacts to undertaking that provided them.

Parties to the pre-notification contacts

8. Authorized legal representatives and employees informed on issue of the functioning of markets affected by merger and on economic reasons of merger may participate to the pre-notification contacts on behalf of undertakings concerned. Participation of these employees may significantly contribute to better understanding of the functioning of markets concerned and to better understanding of nature of assessed transaction.

Documents and information required within the pre-notification contacts

9. Within the pre-notification contacts the undertakings concerned should provide the Office with at least the following documents and information:
 - a) description of transaction, nature and position of undertakings concerned,
 - b) brief description of areas and markets affected by merger,
 - c) brief description of presumed impacts of merger on competition in the aforementioned markets.If within the pre-notification contacts the undertakings require to discuss only a partial issue, the Office requires information from undertakings according to which it is possible to give view on given partial issue.
10. Undertakings concerned are also recommended to provide the Office within the pre-notification contacts with all other available information relating to all markets which might be affected by merger and to give their view on definition of these markets in the product and geographic views.
11. It is also appropriate that the undertakings concerned indicate if the merger is connected with competition concerns. If yes, undertakings concerned may provide the Office with documents and information on these competition concerns and at the same time they may submit the draft of conditions and obligations for their elimination.

⁵ See article 41 par. 2 of the Act.

12. The Office also recommends the notifying parties within the pre-notification contacts to provide the Office with the analysis, reports, surveys, reviews or other documents completed in order to assess or analyse merger, particularly regarding the competition conditions, market shares, existing competitors or potential competitors, potential of sale growth or potential of expansion to other product relevant markets or to other geographic relevant markets relating to merger and economic basis of this merger. Notifying parties are also recommended to indicate the competition importance or market relations in which the merger takes place.
13. As the basis for next discussion with the Office the notifying parties may deliver the draft of the merger notification prior to the initial meeting or whenever during the pre-notification contacts⁶.
14. If the persons notifying concentration would proceed according to these guidelines, the Office is prepared to provide them the statement whether information submitted to the Office within the draft of the merger notification is complete, or to inform them on deficiencies of the prepared draft. However, it does not affect the right of the Office to declare that the submitted draft is incomplete, if following the submission of merger notification the Office finds new facts, which it was not informed on during the pre-notification contacts and which affect the complexity of notification, or if the undertaking has not included into notification those information and documents, which he agreed to submit to the Office within the pre-notification contacts.
15. If within the formal merger notification the undertakings provide the Office with the same documents and information (in the same wording) which they agreed to provide within the pre-notification contacts, the Office would be prepared within the administrative proceedings to declare the complexity of notification in the matter of subjected merger even faster and more effectively.

Process and form of pre-notification contacts

16. Pre-notification contacts may be initiated by e-mail, telephone or by written submission⁷.
17. Pre-notification contacts should be initiated at least two weeks before notification of merger to the Office. In more complicated cases it is recommended to reserve more time for pre-notification contacts.
18. Pre-notification contacts can be realized if undertakings concerned and the Office have a minimum of documents and information listed in point 9 of these guidelines.
19. Subjected documents and information could be delivered to the Office by e-mail or by written submission. Each e-mail or written submission should be delivered to the Office in

⁶ it means information and documents harmonized with the article 10, par. 7 of the Act set by the decree, structured according to the form, template of which is listed as enclosure No. 1 or No. 2 to the decree

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reasonable advance prior to meeting, what would enable the participating parties to be prepared for the discussion sufficiently in advance. First pre-notification merger discussion with the Office (or in case of pre-notification contacts by e-mails, first statement of the Office in this form) shall take place 5 working days following the delivery of submission at the latest (if the undertakings does not propose later date). In case of very extensive submissions and in complicated cases, this period could be appropriately prolonged.

20. Preferred form of pre-notification contacts is informal e-mail communication or other communication by telephone or personally. Communication through letters takes place within the pre-notification contacts only if the persons notifying concentration explicitly require it.
21. If the party to the pre-notification contacts asks for it, a short minutes is done from the personal meeting, explicitly indicating the subject of pre-notification meeting (for example dealing with the certain partial issue etc.).
22. Pre-notification contacts will be concluded in written, what could be done also in the form of minutes from the last meeting. Subjected document will contain the brief summary of facts which have been subject to pre-notification meetings, the result of these meetings and the announcement that the pre-notification contacts have been terminated. This document may also include the agreement between the Office and the parties to the pre-notification contacts that within the formal merger notification they would submit a reduced range of documents and information.
23. Termination of pre-notification contacts through written conclusion does not preclude the possibility of undertaking to contact the Office, if additional findings were discovered which should be discussed, even prior to submission of formal merger notification.
24. If the merger is subject to approval by more national competition authorities, regardless from the EU Member States or not, it is appropriate that the undertakings concerned coordinate the timing of pre-notification contacts. Parallel pre-notification contacts and proceedings on mergers in other states are prerequisites for consistent procedure of these competition authorities.

Conclusion

25. This document has no binding effect. However, the Office expresses its will to proceed according to its content. Particular case may require derogations from these general rules depending on specific circumstances of a case.
26. Realization of pre-notification contacts is not a prerequisite for consequent merger notification. However, praxis of the Office proved that the pre-notification contacts significantly contribute to efficient proceedings on mergers and support the predictability of proceedings on mergers for undertakings.