

SUBMISSION OF NOTIFICATION ON CONCENTRATION PURSUANT TO A LETTER OF INTENT OR IN OTHER MANNER WHEN UNDERTAKINGS DEMONSTRATE A GENUINE INTENT FOR CONCLUDING AN AGREEMENT

Every undertaking utilizing the option of submitting the notification on concentration pursuant to a genuine intent of concentration, that is, conclusion of agreement, may do so within any deadline following the formal expression of such intent (by signing a letter of intent, memorandum, consenting minds or in other manner that precedes the act from Article 63(1) of the Law on Protection of Competition). In those cases, the applicant of notification shall not be imposed the measure of procedural penalty when submitting the notification on concentration within the deadline set in Article 63(1) of the Law.

The Commission emphasizes that document potentially representing a legal basis in the abovementioned examples, i.e., the act on concentration, must be the result of consenting minds of all undertakings in the planned concentration, meaning that all concentration participants must sign it.

The Commission points that when submitting the notification on concentration pursuant to a genuine intent, undertakings take over the risk of all consequences that may occur due to the implementation of concentration following the conclusion of agreement, that is, the act representing the finite legal basis for implementing concentration. If the letter of intent (or other act in which the genuine intent for implementation of concentration is stated) differs from the finite agreement concluded following the enactment of decision by the Commission approving the notified concentration, the concentration participants face the risk of implementing concentration contrary to the enacted decision of the Commission.

That means that in the case of amended letter of intent and its non-compliance against the finite agreement in terms of facts based on which the Commission founded its decision (concentration participants, type of concentration, manner of the acquisition of control, relevant market, market shares, etc.), concentration participants must submit a new notification. The Commission at the same time emphasizes that in the case of any alteration in the implementation of concentration encompassed by the letter of intent, exists no possibility of amending the enacted decision in accordance with the new circumstances. Thereby, all of the above-mentioned does not refer only to the submission of notification pursuant to the letter of intent, but also in all other cases relating to the implementation of approved concentration.

Undertakings that exercise the right of submitting the notification on concentration subsequent to the expressed genuine intent of concentration, may propose to the Commission to postpone the publishing of decision in summary procedure enacted upon the notification on concentration, pursuant to the Decision on manner of publication of acts and replacing or omitting (anonymization) data in the acts of the Commission for Protection of Competition.

Also, the Commission emphasizes that its practice requires that the request for protection of data need to be submitted to the Commission in a timely manner, that is, prior to enacting the decision on the permissibility of concentration (immediately with the submission of notification, or in shortest reasonable time-frame following the submission of notification). If the request is

submitted following the enactment of the decision, the Commission shall not bear responsibility for possible damage caused due to the publishing of the decision in which data are not replaced or omitted (anonymized). The Commission on this occasion also emphasizes that the request for protection of data may be submitted pursuant to Article 45 of the Law, in all cases relating to submitting the notification on concentration regardless of the type of acts on concentration.