

Decree N° 268, Laying Down Details of Particulars of a Notification of Concentration.

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DECREE N° 268

of the Antimonopoly Office of the Slovak Republic

of 21 April 2004

laying down details of particulars of a notification of concentration

Pursuant to Article 43 (b) of 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 (hereafter referred to as "the Act"), the Antimonopoly Office of the Slovak Republic stipulates the following:

Article 1. Basic Information on Parties to Concentration ➔

1. Basic information on a party to a concentration, which submits a notification of the concentration according to Article 10 (11) of the Act, shall include the following:
 - a. the legal name or designation; legal entities shall state their registered office, sole traders shall state their name, surname, legal name, place of business, and permanent residence;
 - b. the subject matter of the undertaking's activities in the case of undertakings under special legislation,¹ or description of the undertaking's activities in the

- case of undertakings under Article 3 (2) of the Act, which are not undertakings under special legislation;1)
- c. the name, surname, and permanent residence of persons who are its statutory bodies or members of its statutory body; and
 - d. the name, surname, permanent residence, address for delivery of documents, telephone number, fax number, and email address, if available, of the person authorized to represent the party to the concentration for the purpose of proceedings at the Office; if this person is a lawyer, also of another person who will act as a contact person for the purpose of proceedings at the Office.
2. Basic information on a party to a concentration, which does not submit a notification of the concentration according to Article 10 (11) of the Act, shall include information referred to in paragraph 1 (a) to (c).
 3. A notification of concentration submitted jointly by the parties to the concentration according to Article 10 (11) of the Act shall contain the name, surname, permanent residence, address for delivery of documents, telephone number, fax number, and email address, if available, of the joint representative for delivery if the parties to the concentration have appointed this representative.
 4. If a notification of concentration is submitted by a representative of a party to the concentration (Article 25 (4) of the Act), this representative shall submit to the Office a written power of attorney granted by the party to the concentration, indicating the extent to which the representative is authorized to act on his/her behalf.

Article 2. Description of Concentration ➔

A description of concentration shall contain the following information:

- a. information on the form of the concentration and whether the concentration has arisen:
 1. according to Article 9 (1) (a) of the Act through a merger or amalgamation of two or more separate undertakings;
 2. according to Article 9 (1) (b) of the Act through the acquisition of:
 - 2a. direct control or indirect control;
 - 2b. control by an undertaking or several undertakings;
 - 2c. control over the entire undertaking or part of another undertaking or undertakings;
 3. by the establishment of a joint venture according to Article 9 (5) of the Act;
- b. if the concentration has arisen through the establishment of a joint venture according

to Article 9 (5) of the Act:

1. explanation of whether the joint venture will act as an independent participant in the market, separately from the founders, and perform all functions that are normally performed by companies operating in the same market;
 2. the period for which the joint venture has been established;
 3. information on how the joint venture will ensure access to financial resources, human resources, and raw materials;
 4. description of the management and decision-making system of the joint venture;
- c. if control over part of an undertaking is acquired according to Article 9 (3) of the Act:
1. which organizational units or which assets represent part of the undertaking according to Article 9 (3) of the Act;
 2. whether turnover can be attributed to assets and how;
- d. description of the method of financing the concentration and related rights and obligations;
- e. information on the proposed ownership structure or assumed ownership structure and the method of exercising control after the completion of the concentration process;
- f. the proposed date or the expected date of all relevant facts related to the completion of the concentration process;
- g. information on any financial assistance according to Article 10 (4) of the Act provided to the individual parties to the concentration or undertakings referred to in Article 3 (1) (a) and (b) for the last three years prior to the establishment of the concentration, as well as information on the character, amount, and the provider of this assistance according to Article 10 (5) of the Act;
- h. with respect to each party to the concentration, information on the following:
1. total turnover according to Article 10 (2) of the Act attained in the Slovak Republic for the closed accounting period preceding the establishment of the concentration;
 2. total worldwide turnover for the closed accounting period preceding the establishment of the concentration;
- i. identification of all competition authorities of other countries, which have been or will be notified of the concentration, and the date of notification of the concentration;
- j. explanation of why the concentration does not have a Community dimension. ²

Article 3. Information on the Connection Through Assets, Finances and Personnel ➔

1. Information on the connection through assets and finances shall contain the following:
 - a. a list of all undertakings directly or indirectly controlling the parties to the concentration;
 - b. a list of all undertakings directly or indirectly controlled by the party to the concentration or undertaking referred to in (a);
 - c. a list of all other undertakings operating in the affected markets according to Article 4 (1) (a) and (b), in which the party to the concentration or undertaking referred to in (a) or (b) holds, individually or jointly, at least a 10-percent ownership interest in share capital or voting rights, indicating the amount and the holder of this ownership interest;
 - d. information on whether undertakings referred to in (a) and (b) are controlled jointly or exclusively and the connections based on which they are controlled through assets and personnel;
 - e. description of the organizational structure of the companies of all parties to the concentration, indicating their territorially separated units and organizationally separated units, specifying their independence in decision-making, financial independence, and legal independence.
2. Information on the connection through personnel shall contain the following with respect to each party to the concentration and undertaking referred to in paragraph 1 (a) and (b):
 - a. a list of persons who are its statutory body, members of its statutory body, members of the supervisory boards, or members of the management body and, at the same time, the statutory body, members of the statutory body, members of the supervisory board, or members of the management body of another undertaking operating in the affected market according to Article 4 (1) (a) and (b);
 - b. the positions occupied by persons referred to in (a) in another undertaking and information on this undertaking to the extent specified in Article 1 (1) (a).

Article 4. Information on Affected Markets ➔

1. Information on affected markets shall contain the following:
 - a. definition of the relevant markets that include the Slovak Republic or part thereof from a territorial viewpoint and where:

1. two or more parties to the concentration or undertakings referred to in Article 3 (1) (a) and (b) operate in the same relevant commodity market;
 2. one or several parties to the concentration or undertakings referred to in Article 3 (1) (a) and (b) operate in the relevant commodity market representing the supplies market or sales market with respect to the relevant commodity market, in which any other party to the concentration or undertaking referred to in Article 3 (1) (a) and (b) is operating, regardless of whether or not there is a supplier-customer relationship between them;
 3. one or more parties to the concentration or undertakings referred to in Article 3 (1) (a) and (b) operate in the relevant commodity market closely related to the relevant commodity market in which any other party to the concentration or undertaking referred to in Article 3 (1) (a) and (b) is operating; commodity markets are deemed to be closely related if goods are complementary or usually purchased by the same group of customers for the same purpose of use;
- b. definition of other relevant markets not referred to in (a), which include the Slovak Republic or part thereof from a territorial viewpoint and where at least one of the parties to the concentration or undertakings referred to in Article 3 (1) (a) and (b) operates and its market share exceeds 25%, provided that, at the same time, any other party to the concentration or undertaking referred to in Article 3 (1) (a) and (b), regardless of the territorial definition of the relevant market, is operating in:
1. the same relevant commodity market;
 2. the relevant commodity market representing the supplies market or sales market with respect to this market; or
 3. a closely related relevant market;
- c. explanation of the definition of the relevant commodity market according to (a) and (b) with respect to mutual substitutability of goods, especially from the viewpoint of their physical characteristics, technical characteristics, price, and purpose of use;
- d. explanation of the definition of the relevant territorial market according to (a) and (b) with respect to the possibility of separating this territory, which constitutes the relevant territorial market, from other territories with respect to the homogeneity of the competition conditions in that market.
2. A party to the concentration shall submit, with respect to each affected market according to paragraph 1 (a) and (b), the following information for the past three years:
 - a. an estimate of the total size of the market expressed in financial units and units of volume, after adding import and deducting export, indicating the source from which information has been drawn, as well as documents confirming the submitted information;

- b. information on sales expressed in financial units and units of volume, as well as an estimate of the individual market shares of each party to the concentration and undertakings referred to in Article 3 (1) (a) and (b);
 - c. an estimate of the market shares of individual competitors, indicating the source from which information has been drawn, as well as documents confirming the submitted information;
 - d. information on competitors to the extent specified in Article 1 (1) (a);
 - e. information on import expressed in units of volume and financial units, as well as information on the following:
 1. shares of the individual parties to the concentration and undertakings referred to in Article 3 (1) (a) and (b) in import;
 2. quotas, customs duties, and other impediments to trade and their influence on import;
 3. the influence of transportation costs on import, indicating a profitable transport distance;
 - f. comparison of the price level of goods of each party to the concentration and undertakings referred to in Article 3 (1) (a) and (b) in the Slovak Republic with the price level of these goods in other countries and areas where these goods are sold, especially in neighboring countries and the European Union;
 - g. comparison of the price level of goods in the Slovak Republic with the price level in other countries and areas where these goods are sold, especially in neighboring countries and the European Union.
3. With respect to each affected market according to paragraph 1 (a) and (b), a party to the concentration shall submit information on the following:
- a. the manner in which the parties to the concentration and undertakings referred to in Article 3 (1) (a) and (b) produce and sell goods, especially if they are produced locally and if they are sold via local distribution networks;
 - b. the character and extent of vertical integration of each party to the concentration compared with its competitors.
4. With respect to each affected market according to paragraph 1 (a) and (b), a party to the concentration shall submit the following information:
- a. a list of five largest independent suppliers of input necessary for the parties to the concentration and undertakings referred to in Article 3 (1) (a) and (b) to produce goods, and the shares of purchases from each supplier; a supplier that is not an undertaking according to Article 3 (1) (a) and (b) shall be deemed an independent supplier;
 - b.

- information on suppliers referred to in (a) to the extent specified in Article 1 (1) (a);
- c. description of distribution systems and service networks in each affected market, especially a description of the following:
1. distribution systems prevailing in the affected markets, their importance, the extent to which the undertakings referred to in Article 3 (1) (a) and (b) and third parties perform distribution;
 2. service networks prevailing in the affected markets, especially services related to repairs and maintenance, their importance, and the extent to which the undertakings referred to in Article 3 (1) (a) and (b) and third parties perform these services;
- d. information on the total capacity of the parties to the concentration and undertakings referred to in Article 3 (1) (a) and (b) and its utilization over the past three years.
5. With respect to each affected market according to paragraph 1 (a) and (b), a party to the concentration shall submit the following information:
- a. a list of five largest independent customers of the parties to the concentration and undertakings referred to in Article 3 (1) (a) and (b) and shares of these customers in the total sale of goods; a customer that is not an undertaking according to Article 3 (1) (a) and (b) shall be deemed an independent customer;
 - b. information on customers referred to in (a) to the extent specified in Article 1 (1) (a);
 - c. description of the structure of demand with respect to each affected market, especially from the viewpoint of the following factors:
 1. the market phase, namely recovery, expansion, peak, and decline;
 2. the estimated growth rate of demand;
 3. the importance of customer preferences from the viewpoint of brand loyalty, product differentiation, after-sale services, and product range;
 4. the amount of costs and time losses related to a change of supplier and their impact on the customer's decision on changing the supplier;
 5. the degree of concentration of customers;
 6. division of customers into groups and description of a typical customer in each group;
 7. the importance of exclusive distribution agreements and other types of long-term agreements;

8. the extent to which the state, state authorities, government agencies, state-owned enterprises, state budget funded organizations, subsidized organizations, or other state institutions represent an important source of demand.
6. With respect to each affected market according to paragraph 1 (a) and (b), a party to the concentration shall submit a description of the following:
 - a. the importance of research and development for the competitiveness of undertakings in the long term and an explanation of the character of research and development carried out by the parties to the concentration;
 - b. trends and intensity of research and development in general and in the case of the parties to the concentration and undertakings referred to Article 3 (1) (a) and (b); intensity of research and development shall be defined as the proportion of research and development costs to turnover;
 - c. orientation of technological development, including development of goods and services, production process, and distribution systems;
 - d. what significant innovations have been introduced in the market and who has introduced them;
 - e. the cycle of innovations and where in this cycle the parties to the concentration and undertakings referred to Article 3 (1) (a) and (b) are present.

Article 5. Information on Possibilities of Entering the Market ➔

Information on possibilities of entering the market shall contain the following:

1. whether a significant undertaking has entered the affected markets over the past five years; if so, information on this undertaking to the extent specified in Article 1 (1) (a) and an estimate of its current market share;
2. whether there exists an undertaking that is likely to enter the affected market, including an undertaking already operating in another relevant territorial market; if such an undertaking exists, information on this undertaking to the extent specified in Article 1 (1) (a), as well as the reason and the time when it is likely to enter the market;
3. the factors influencing entry into each of the affected markets from a commodity viewpoint and territorial viewpoint, especially:
 1. total cost of entry, especially cost of research and development, creation of a distribution network, creation of a network for providing services and maintenance, promotion and advertising, which would have to be incurred if the significant undertaking began to operate in the market, what market share this undertaking would have to attain, and what time period would be needed for attaining this position on the market;

2. legal and regulatory barriers to entry, especially the need to obtain various authorizations, and standardization requirements;
3. restrictions consisting of the existence of patents, production-technical and business knowledge and information resulting from creative activities and experience of the undertaking (hereafter referred to as "know-how") and other intellectual property rights, and restrictions arising from the granting of licenses for these rights;
4. the extent to which the party to the concentration and undertakings referred to in Article 3 (1) (a) and (b) are holders, providers, or acquirers of licenses for patents, know-how, or other intellectual property rights;
5. the importance of quantity savings;
6. description of access to supplies of input.

Article 6. Information on Cooperation Agreements ➡

Information on cooperation agreements, which primarily contain provisions on cooperation in the area of research and development, provisions on granting licenses, provisions on joint production, provisions on cooperation in the area of distribution, provisions on long-term supplies and exchange of information, or provisions on cooperation in the area of specialization, shall contain information on the following:

- a. the extent to which such agreements exist in the affected markets according to Article 4 (1) (a) and (b);
- b. the content of agreements referred to in (a) concluded in the affected markets according to Article 4 (1) (a) and (b), to which a party to the concentration or undertaking referred to in Article 3 (1) (a) and (b) is a party.

Article 7. Information on Trade Associations ➡

Information on trade associations shall contain the following:

- a. a list of associations of sole traders and legal entities according Article 3 (2) of the Act, which operate on the affected markets according to Article 4 (1) (a) and (b) and perform business activities, and of which the party to the concentration is a member;
- b. a list of major associations of sole traders and legal entities according Article 3 (2) of the Act, which perform business activities and of which customers and suppliers of the parties to the concentration are members;
- c. information on the name, registered office, telephone number, fax number, and email address, if available, of an association referred to in (a).

Article 8. General Market Information ➔

General market information shall contain the following:

- a. a list of all categories of goods produced and services provided by each party to the concentration, a list of all categories of goods produced and services provided by undertakings referred to Article 3 (1) (a) and (b), definition of the territory in which these goods are produced and definition of the territory in which these services are provided, except for goods referred to in Article 4;
- b. description of concentrations established over the past three years by the parties to the concentration according to Article 3 (1) (a) and (b), especially:
 1. when the concentration arose;
 2. who was the party to the concentration;
 3. which categories of goods and which territories the concentration concerned.

Article 9. Information on Cooperative Effects of a Joint Venture ➔

1. If two parties to the concentration or several parties to the concentration or undertakings referred to Article 3 (1) (a) and (b), which have established a joint venture, continue to operate to a substantial extent in the same relevant market in which the joint venture established by them is operating or in the market representing the sales market, supplies market, or closely related market with respect to this relevant market, information on cooperative effects of the joint venture shall contain the following:
 - a. with respect to each of these markets, information on the following:
 1. turnover of each party to the concentration and undertakings referred to Article 3 (1) (a) and (b), which have established the joint venture, attained for the closed accounting period preceding the establishment of the concentration;
 2. share of activities transferred to the joint venture with respect to turnover referred to in point 1;
 3. market shares of the parties to the concentration and undertakings referred to Article 3 (1) (a) and (b), which have established the joint venture, as of the date of notification of the concentration;
 - b. explanation of why the establishment of the joint venture leads or does not lead to coordination of competitive behavior of undertakings.

2. If two parties to the concentration or several parties to the concentration or undertakings referred to Article 3 (1) (a) and (b), which have established the joint venture, do not continue to operate to a substantial extent in the same relevant market in which the joint venture established by them is operating or in the market representing the sales market, supplies market, or closely related market with respect to this relevant market, information on cooperative effects of the joint venture shall contain an explanation of their conduct.
3. Information on cooperative effects of a joint venture shall always contain an explanation of whether or not coordination of competitive behavior of undertakings according to Article 9 (6) of the Act is contrary to Article 4 (1) of the Act.

Article 10. Reasons for and Effects of Concentration ➔

The reasons for and effects of a concentration and their impact on competition shall include the following:

- a. indication of the reasons for the concentration;
- b. evaluation or calculation of effects of the concentration primarily with respect to cost saving, improvement of the relation between the quality and price, strengthening competitiveness in foreign markets, implementation of innovations, evaluation of the influence of the concentration on employment and investment plans, including the calculation of their actual rate of return;
- c. analysis of price development of the affected goods before and after the concentration and information on the prerequisites for maintaining the current price level after the concentration;
- d. detailed evaluation or calculation of effects of the concentration with respect to consumers, suppliers, and customers;
- e. explanation of whether or not the effects of the concentration can be achieved in a different way;
- f. explanation of whether the concentration creates impediments to effective competition;
- g. brief description of further business plans of the parties to the concentration and undertakings referred to Article 3 (1) (a) and (b).

Article 11. Underlying Documentation ➔

Underlying documentation shall include the following:

- a. all documents concerning the concentration, especially:
 1. the original or certified copy of the agreement between the undertakings based

- on which the concentration has arisen or any other document based on which the concentration has arisen; at the request of the party to the concentration that has submitted a notification of the concentration, the Office may allow submitting an uncertified copy accompanied by a statutory declaration that the copy fully corresponds to the original document;
2. the articles of association of the parties to the concentration and the articles of partnership;
 3. an original extract from the Commercial Register or extract from another register in which the party to the concentration is registered or a certified copy thereof, which must not be older than three months;
 4. the trade license;
- b. the annual reports and financial statements of the parties to the concentration for the accounting period preceding the establishment of the concentration;
- c. analyses, reports, studies, overviews, and other documents prepared for the purpose of appraisal or analysis of the concentration, primarily with respect to the competition conditions, market shares, existing competitors or potential competitors, sales growth potential or the potential for growth regarding the expansion to other relevant commodity markets or other relevant territorial markets.

Article 12. Common Provision ➡

If a concentration has arisen according to Article 9 (1) (b) of the Act, the particulars of a notification of the concentration shall not be required with respect to an undertaking associated under Article 3 (1) (a) and (b) with an undertaking or part thereof over which direct or indirect control will be acquired, provided that this undertaking is not subject to the concentration.

Article 13. Transitional Provision ➡

If a notification of concentration submitted by a party to the concentration prior to the effective date of this Decree is incomplete, previous legislation shall apply.

Article 14. Repealing Provision ➡

Decree of the Antimonopoly Office of the Slovak Republic No. 168/2001 Coll. laying down details of particulars of a notification of concentration as amended by Decree No. 585/2002 Coll. shall be repealed.

Article 15. Entry Into Force ➡

This Decree shall enter into force on the effective date of the Treaty on Accession of the

Slovak Republic to the European Union.

Danica Paroulková, sign manual

1:

Article 2 (2) of the Commercial Code.

➡

2:

Commission Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (Official Journal of the European Communities L 024, 29/01/2004).

➡
