

ANNEX (1)

FORM CONC/C RELATING TO THE NOTIFICATION OF A CONCENTRATION IN ACCORDANCE WITH ARTICLE 9 OF THE ACT ON THE PROTECTION OF ECONOMIC COMPETITION, CONSOLIDATED ON 15th SEPTEMBER 2006.

1. INTRODUCTION

1.1. The purpose of this form

This form specifies the information that must be provided by the notifying parties when submitting a notification to the College of Competition Prosecutors of a proposed or agreed merger, acquisition or other concentration. The concentration control (system) is laid down in the act on the protection of economic competition, consolidated on 15th September 2006 (hereinafter: "the act") and in the royal decree of 31 October 2006 on the notification of concentrations of undertakings (hereinafter: "this decree") to which this form is annexed. The text of this act, as well as that of its implementing decrees, can be found on the "competition" page on the website of the FPS Economy, SMEs, Self-Employed and Energy: <http://www.economie.fgov.be> or on that of the Competition Council. You will also find on those sites the address of the registry of the College of Competition Prosecutors, to which you must submit the concentration notification form in 8 copies.

The notification of a concentration is only compulsory when the conditions of article 7 of the act are met. Parties that have implemented a concentration without giving prior notification are liable to a fine of 1% of their turnover (article 64, § 2 of the act).

The Council has to reach a decision within a period determined by law. In an initial phase, the Council normally has 40 working days to decide whether to clear the concentration or to initiate proceedings in accordance with article 58 of the act, that is to say to undertake an in-depth investigation (2nd phase). If the Council decides to initiate 2nd phase proceedings, it normally has to take a final decision within not more than 60 working days.

Taking into account these deadlines and in order to ensure the efficiency of the merger control procedure, it is essential that the College of Competition Prosecutors receives, when appropriate, the information required to carry out the necessary investigation and to assess the impact of the concentration on the markets concerned. This requires that a certain amount of information be provided at the time of the notification unless such information is available from the Crossroads Bank for Enterprises. (Kruispuntenbank van de Ondernemingen)

It is recognised that the information requested in this form is substantial. However, experience has shown that, depending on the specific characteristics of the case, not all the information is always necessary for an adequate examination of the proposed concentration. Accordingly, if you consider that any particular information requested by this form is not indispensable for the examination of your case, you are encouraged to ask the College of Competition Prosecutors to release you from the obligation to provide such information ("exemption"). See section 1.3 g) for more details.

¹ **This is an unofficial translation in English of the official Dutch and French version of the royal decree. This translation is merely for your information. Only the texts published in the Belgian Official Gazette are authentic.**

Ceci est une traduction officieuse en anglais de la version officielle en néerlandais et français. Cette traduction est uniquement à titre d'information. Seule fait loi la législation belge publiée au « Moniteur belge ».

Dit is een officieuze vertaling in het Engels van de officiële Nederlandse en Franse versie van het KB. Deze vertaling is enkel bedoeld als informatieve ondersteuning. Enkel de tekst gepubliceerd in het Belgisch staatsblad zijn rechtsgeldig.

Pre-notification contacts are particularly useful to both the notifying parties and the College of Competition Prosecutors in order to determine the precise amount of information required for the notification and, in the majority of cases, will lead to a considerable reduction of the information required.

In addition, it should be noted that certain concentrations, which are unlikely to pose any competition concerns, can be notified using the simplified procedure in accordance with article 61 of the act.

1.2. Who must notify?

In the case of a concentration within the meaning of article 6, § 1, 1°, of the act or in the case of the acquisition of joint control of an undertaking within the meaning of article 6, § 1, 2°, of the act, the notification shall be presented jointly by the parties to the concentration or by those acquiring joint control, as the case may be.

In the other cases, the party implementing the concentration must present the notification (article 9, § 2).

Each party completing the notification is responsible for the accuracy of the information which it provides. Any party providing, either intentionally or negligently, inaccurate or misleading information, may be liable to a fine.

For the purposes of this form, the parties include also the undertaking in which a participating interest is acquired or which is the subject of a takeover bid or public offer of exchange (target undertaking).

Pursuant to article 9 § 4, of the act, the undertakings concerned may not implement the concentration until the Council has notified its decision on its admissibility.

The parties may also notify a proposed agreement provided that they declare explicitly their intention to conclude an agreement which does not differ significantly from the notified project with regard to all the relevant points of competition law.

In the case of a takeover bid for an undertaking, the bidder must complete the notification.

1.3. The requirement for a correct and complete notification

All the information required by this form must be correct and complete, and must be supplied in the appropriate section of this form.

In particular, you should note that:

- a) The time limits of the concentrations control procedure do not begin to run until all the information that has to be supplied with the notification has been received by College of Competition Prosecutors or the competition prosecutor with responsibility for the case (articles 55 and 61 of the act).
- b) The notifying parties must verify, when preparing their notification, that the contact names and numbers, and in particular the fax numbers and e-mail addresses, provided to the College of Competition Prosecutors are accurate, relevant and up-to-date.
- c) Incorrect or misleading information shall be considered to be incomplete information.
- d) If a notification is incomplete, the competition prosecutor shall inform the notifying parties or their representatives accordingly, in writing and without delay. The notification shall only become effective on the date when the complete and accurate information is received by the competition prosecutor.
- e) In accordance with article 64 of the act, notifying parties that, either intentionally or negligently, supply incorrect or misleading information, may be liable to fines of up to 1% of the undertaking in question's turnover in Belgium and export turnover.

f) You may request in writing that the College of Competition Prosecutors considers that the notification is complete notwithstanding the fact that you didn't provide all the information required by this form, if such information is not reasonably available to you in part or in whole (for example, because of the unavailability of information on a target company during a hostile bid).

A competition prosecutor shall consider such a request, provided that you give reasons for the unavailability of such information and provide your best estimates for missing data, together with the sources for the estimates. Where possible, you should indicate where any of the requested information that is unavailable to you could be obtained by the competition prosecutor.

g) You may request in writing that the College of Competition Prosecutors considers that the notification is complete notwithstanding the fact that you didn't provide all the information required by this form, if you consider that any particular information required, as part of a detailed or simplified notification, is not necessary for the competition prosecutor's examination of your notification (article 5, § 4, of this royal decree).

A competition prosecutor shall consider such a request, provided that you give adequate reasons why the information in question is not relevant and necessary to the examination of the operation notified. You should explain this during your pre-notification contacts with the College of Competition Prosecutors and ask it to release you from the obligation to provide that information.

1.4. The notification procedure

The notification must be completed in French or Dutch in accordance with article 93 of the act. This presentation language will thereafter be the language of the proceedings for all the notifying parties.

The information requested by this form must be presented using the section and paragraph numbers. You should then sign the declaration as provided in section 11 and annex the supporting documentation. When completing sections 7 to 9 of this form, the notifying parties are invited to consider whether, for purposes of clarity, these sections are best presented in numerical order, or whether they can be grouped together for each individual affected market (or group of affected markets).

For the sake of clarity, certain information may be put in annexes. However, it is essential that all key substantive pieces of information, in particular market share information of the parties and their largest competitors, are presented in the form CONC C/C itself. Annexes to this form should only be used to complete the information supplied in the form itself.

Contact details must be provided in the format provided by this form. For a proper investigatory process, it is essential that the contact details are accurate. Multiple instances of incorrect contact details may be a ground for declaring a notification incomplete.

The annexed documents are to be submitted in their original language; where this is not one of the national languages or English, they must be translated into the notification language.

Annexed documents may be originals or copies of the originals. In the latter case, the notifying party must confirm that they are true and complete.

The notification and its annexed documents shall be submitted in eight copies (one original and seven copies), at the attention of the College of Competition Prosecutors, to the address of the registry shown on the Competition Council's website, during the registry's business hours. In order to enable it to be registered on the same day, the notification must be delivered before 16:00.

1.5. Confidentiality

In accordance with articles 36 to 38 and 84 and 85 of the act, officials and other servants must not disclose information, acquired pursuant to the law, and which falls within the scope of the obligation of professional secrecy. The same principle shall also apply to protect confidentiality between the notifying parties.

If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, you should submit this information separately with each page clearly marked “business secrets”. You should also give reasons why this information should not be divulged or published.

In the case of mergers or joint acquisitions, or when the notification is completed by more than one party, business secrets may be submitted under separate cover and referred to in the notification as an annex. All such annexes must be included in the submission in order for the notification to be considered complete.

1.6. Definitions and instructions for the purposes of this form

Parties to the concentration: these terms relate to both the acquiring and acquired parties, or to the merging parties, including all undertakings in which a controlling interest is being acquired or which is the subject of a takeover bid.

Unless stipulated otherwise, the terms “notifying party/parties” and “party/parties to the concentration” shall include all the undertakings which belong to the same groups as those parties.

Affected markets: section 6 of this form requires the notifying parties to define the relevant product markets and to indicate which of those markets are likely to be affected by the notified operation, irrespective of whether the relationship is horizontal or vertical, provided that the notifying parties have a market share of 25% or more.

This definition of affected markets is used as the basis for a certain number of other questions asked in this form. The markets thus defined by the notifying parties are referred to in this form as the “affected market(s)”. This term can refer to a relevant market made up of either products or of services.

Year: all references to the word “year” in this form should be understood to mean the calendar year, unless otherwise specified, and all the information requested relates to the year preceding that of the notification.

The financial data requested under points 3.3 to 3.5 must be given in euros, on the basis of the exchange rates prevailing for the year or other periods under consideration.

1.7. The provision of information to employees and their representatives

The College of Competition Prosecutors would like to draw attention to the obligations to which the parties to a concentration may be subject under national rules on the information and consultation of employees and/or their representatives with regard to concentration operations.

SECTION 1

Description of the concentration

1.1. Provide a summary of the concentration, specifying the parties to the operation, the nature of the concentration (for example, merger, acquisition or joint venture), the areas of activity of the notifying parties, the markets on which the concentration will have an impact (including the main affected markets⁽²⁾), and the strategic and economic reasons for the concentration.

1.2. Provide a summary (up to 500 words) of the information provided under point 1.1. It is intended that this summary will be published on the Competition Council's website. It must be drafted so that it contains no confidential information or business secrets.

SECTION 2

Information about the parties

2.1. Information on the notifying party/parties.

Provide the following information:

2.1.1. the name, number and address of the undertaking;

2.1.2. the nature of the undertaking's business;

2.1.3. the name, address, telephone number, fax number and e-mail address, as well as the position of the appropriate contact person;

2.1.4. in the case of a joint notification, the name, address, telephone number, fax number and e-mail address of the joint representative referred to in article 2, § 3, of this decree;

2.1.5. in other cases, an address in Belgium to which documents and, in particular, the Competition Council's decisions can be sent in accordance with article 2, § 4, of this decree. You should provide the name, telephone number and e-mail address of a person at that address who is authorised to accept service.

2.1.6. when notifications are signed by representatives of undertakings, the said representatives must provide written proof that are duly authorised. The written proof must give the name and position of the persons granting such authorisation.

2.2. Information on other parties to the concentration

For each party to the concentration (except the notifying party or parties), give the following details:

2.2.1. the name, and address of the undertaking;

2.2.2. the nature of the undertaking's business;

2.2.3. the name, address, telephone number, fax number and e-mail address, as well as the position of the appropriate contact person;

2.2.4. if possible, an address in Belgium of the party (or of each of the parties) to which documents and, in particular, the Competition Council's decisions can be sent. You should provide the name, telephone number and e-mail address of a person at that address who is authorised to accept service.

² Refer to la section 6, III for the definition of affected markets.

SECTION 3

Information concerning the concentration

3.1. Describe the nature of the concentration being notified. In doing so, state:

- a) whether it concerns a proposed concentration or a concentration. In the case of a concentration, state the date on which the change of control took place;
- b) if the proposed concentration is a full legal merger, an acquisition of sole or joint control, a full-function joint venture within the meaning of article 6, § 2, of the act, or it results from a contract or other means of direct or indirect control within the meaning of article 6, § 3 of the act;
- c) whether the concentration concerns all or parts of the undertakings in question;
- d) a brief explanation of the economic and financial structure of the concentration;
- e) in the case of a public offer by one party for the shares of another party: this bid has the support of the supervisory or executive boards of the latter or of other bodies legally representing that party?
- f) the proposed or expected date of any important event in the completion of the concentration;
- g) the proposed ownership and control structure after the completion of the concentration;
- h) is there any financial or other support received from whatever source (including from public authorities) by any of the parties and the nature and amount of such support;
- i) determine the economic sectors concerned by the concentration, based on the NACE codification;
- j) determine the economic reasons underlying the concentration.

3.2. State the value of the transaction (purchase price or value of all the assets involved, as the case may be).

3.3. For each of the undertakings concerned by the concentration, provide the following information for the last financial year:

- 3.3.1. worldwide turnover;
- 3.3.2. turnover for the European Community as a whole;
- 3.3.3. turnover in Belgium.

SECTION 4

Ownership and control

4.1. For each of the parties to the concentration, provide a list of all undertakings belonging to the same group.

This list must include:

- 4.1.1. all undertakings or persons controlling these parties, directly or indirectly;
- 4.1.2. all undertakings active on any affected market that are controlled directly or indirectly:
 - a) by these parties;
 - b) by one of the undertakings identified in point 4.1.1.

For each undertaking or person listed above, the nature and means of control should be specified.

4.2. provide with regard to the parties to the concentration and each undertaking or person identified in response to point 4.1.,

4.2.1. a list of all other undertakings which operate in the affected markets (affected markets are defined in section 6) in which undertakings or persons of the group hold individually or collectively 10% or more of the voting rights, issued share capital or other securities; in each case, indicate the name of the holder and the percentage held;

4.2.2. a list for each undertaking of the members of their executive bodies who are also members of the executive or supervisory bodies of any other undertaking which operates in the affected markets, and, where applicable, for each undertaking a list of the members of their supervisory bodies who are also members of the executive bodies of any other undertaking which is active in the affected markets; in each case, indicate the name of the other undertaking and the positions held;

4.2.3. details of participating interests acquired during the last three years by the groups identified above (point 4.1.), in the capital of undertakings operating in the affected markets, as defined in section 6.

4.3. if the concentration includes one or more public undertakings, indicate to which economic unity or unities with autonomous decision-making powers it or they belong.

For a clear understanding, the information provided in this section may be illustrated by organisation charts or diagrams showing the ownership and control structure of the undertakings.

SECTION 5

Supporting documents to be annexed to the notification

The notifying parties must provide the following documents:

5.1. copies of the final or most recent versions of all documents constituting the concentration, whether by way of an agreement or proposed agreement between the parties to the concentration, the acquisition of controlling interests or a takeover bid;

5.2. in the case of a takeover bid, a copy of the offer document. If this document is unavailable at the time of notification, it must be submitted as soon as possible and no later than when it is sent to shareholders;

5.3. copies of the most recent articles of association, annual reports and accounts of all the parties to the concentration;

5.4. a document issued by the works council of each of the notifying parties certifying that the works council has been informed of the operation in accordance with Belgian regulations on the information to be provided to works councils;

5.5. a list of the representatives of the most representative employee organisations or the employee representatives, including their contact details, for each undertaking;

5.6. copies of all analyses, reports, studies, surveys or any other comparable documents prepared by or for a member or members of the board of directors or the supervisory board, or any other person exercising similar functions (or to whom such functions have been delegated or entrusted) or of the general meeting of shareholders, for the purpose of assessing or analysing the concentration with regard to market shares, competitive conditions, competitors (actual and potential), the rationale of the concentration, the potential for sales growth or expansion into other product or geographic markets, and/or general market conditions. For each of these documents, indicate (if the information is not shown in the document itself), the date of preparation, as well as the name and title of each individual who prepared each such document.

SECTION 6

Market definitions

The relevant product and geographic market determine the scope within which the market power of the new entity resulting from the concentration must be assessed.

The notifying party or parties must provide the information required taking into account the following definitions.

I. Relevant product market

A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use. A relevant product market may in some cases be composed of a number of individual products and/or services which have largely identical physical or technical characteristics and are interchangeable.

Factors relevant to the assessment of the relevant product market include in particular an analysis of why the products or services in these markets are included and why others are excluded by using the above definition,

and taking into account in particular to their substitutability, conditions of competition, prices, cross-price elasticity of demand or other factors relevant for the definition of the product markets (for example, supply-side substitutability in appropriate cases).

II. Relevant geographic market

The relevant geographic market comprises the area in which the undertakings concerned 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.

Factors relevant to the assessment of the relevant geographic market include in particular the nature and characteristics of the products or services concerned, the existence of entry barriers, consumer preferences, appreciable differences in market shares between neighbouring geographic areas or substantial price differences.

III. Affected market

For the purposes of the information required in this form, “affected markets” are understood to mean relevant product markets, where in the relevant geographic markets:

- a) two or more of the parties to the concentration are engaged in business activities in the same product market and where the concentration is likely to lead to a combined market share of 25 % or more. These are horizontal relationships;
- b) one or more 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 another party is engaged, and where their individual or combined market shares at either level is 25 % or more, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration³. These are vertical relationships.

6.1. On the basis of the above definitions and market share thresholds, identify each affected market within the meaning of point III of this section. In addition, identify all the relevant markets where a horizontal or vertical threshold exists without the aforementioned market share thresholds being reached.

6.2. In addition, state and explain the views of the parties regarding the scope of the relevant geographic market within the meaning of point II of this section in relation to each affected and/or relevant market identified above.

In order to enable the Competition Prosecutor to consider, from the outset, the competitive impact of the proposed concentration on the relevant markets where a horizontal or vertical relationship exists without the market share thresholds of 25% or more being reached, the notifying parties are invited to submit the information requested in sections 7 and 8 of this form, for those markets when the market shares are between 20 and 25%.

IV. Other markets on which the notified operation may have a significant impact

6.3. On the basis of the above definitions, describe the product and geographic scope of markets other than the affected markets identified under point 6.1. on which the notified operation may have a significant impact, for example, where:

³ Thus, if a party to a concentration has a market share of 25% or more on a market upstream of a market in which the other party operates, the affected markets are both the upstream market and the downstream market. In the same way, if a vertically integrated undertaking merges with a party operating upstream, and if the merger results in a total downstream market share of 25% or more, the affected markets are both the upstream market and the downstream market.

- a) one of the parties to the concentration has a market share larger than 25% and another of the parties to the concentration is a potential competitor on that market. A party may be considered a potential competitor, in particular, where it has plans to enter a market, or has developed or pursued such plans in the past two years;
- b) one of the parties to the concentration has a market share higher than 25% and another of the parties to the concentration holds important intellectual property rights for that market;
- c) one of the parties to the concentration is present in a product market, which is a neighbouring market closely related to a product market in which another party to the concentration is engaged, and the individual or combined market shares of the parties in any one of these markets is 25 % or more. Product markets are closely related neighbouring markets when the products are complementary⁴ to each other or when they belong to a range of products that is generally purchased by the same set of customers for the same end use⁵.

In order to enable the competition prosecutor to consider, from the outset, the competitive impact of the proposed concentration on the markets identified under this point 6.3, the notifying parties are invited to submit the information requested under points 7 and 8 of this form in relation to those markets.

SECTION 7

Information on affected markets

For each relevant affected product market, for each of the last three financial years and for the relevant geographic markets, provide the following information:

- 7.1. an estimate of the total size of the market in terms of sales value (in euros) and volume (in units)⁶. Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;
- 7.2. sales in value and volume, as well as an estimate of the market shares of each of the parties to the concentration;
- 7.3. an estimate of the market share in value (and, if applicable, in volume) of all competitors (including importers) having at least 5% of the geographic market under consideration. On this basis, provide an estimate of the HHI index⁷, before and after the operation, as well as the difference between the two (delta)⁸. Indicate the proportion of market shares used as the basis to calculate the HHI. Identify the

⁴ Products (or services) are considered as complementary when, for example, the use (or consumption) of a product supposes in principle the use (or consumption) of the other product, such as staplers and staples or printers and printing cartridges.

⁵ Examples of products belonging to the same range include whisky and gin sold in bars and restaurants or various packaging materials for a certain category of goods sold to the manufacturers of those goods.

⁶ The value and volume of a market must correspond to the production, plus imports and minus exports, for the geographic areas under consideration. If possible, provide detailed import and export data by country of origin and destination respectively.

⁷ HHI refers to the Herfindahl-Hirschmann index which is used to measure market concentration. The HHI is equal to the sum of the squares of the market shares of each of the undertakings present in the market. For example, a market in which five undertakings are present, having respectively market shares of 40%, 20%, 15%, 15% and 10%, has an HHI of $(40^2 + 20^2 + 15^2 + 15^2 + 10^2 = 2550)$. The HHI ranges between a figure close to zero (fragmented market) and 10 000 (pure monopoly). The post-concentration HHI is calculated using the assumption that the market shares of each undertaking remains unchanged. Even if it is preferable to include all undertakings in the calculation, the lack of information on very small undertakings is not a problem, since those undertakings have very little influence on the HHI.

⁸ The increase in the market concentration, as measured by the HHI, can be calculated separately from the total market concentration by multiplying by two the total market shares of the parties to the operation. For example, a concentration between two undertakings which have respective market shares of 30% and 15%

sources used to calculate these market shares and provide documents where available to confirm the calculation;

7.4. the name, address, telephone number, fax number and e-mail address of the head of the legal department (or any other person exercising similar functions or, if there is no such person, of the chief executive) for the competitors identified under point 7.3.;

7.5. an estimate of the total value and volume of imports, as well as their source. Specify:

a) the proportion of such imports that is derived from the groups to which the parties to the concentration belong,

b) an estimate of the extent to which any quotas, tariffs or non-tariff barriers to trade affect these imports,

c) an estimate of the extent to which transportation and other costs affect these imports;

7.6. the manner in which the parties to the concentration produce, invoice and sell the products and/or services;

7.7. the nature and extent of vertical integration of each of the parties to the concentration compared with their main competitors.

SECTION 8

General conditions in affected markets

8.1. Identify the five main independent suppliers⁹ of the parties to the concentration and the share of each of them in the purchases (of raw materials or goods used to produce the relevant products) of each of the parties. Give the name, address, telephone number, fax number and e-mail address of the head of the legal department (or another person exercising similar function or, where there is no such person, then the chief executive) for each of these suppliers.

Structure of supply in affected markets

8.2. Describe the distribution channels and after-sales service networks that exist in the affected markets. For that purpose, take account, where applicable, of the following points:

a) existing distribution systems in these markets and their importance. To what extent is distribution performed by third parties and/or undertakings belonging to the same group as the parties, within the meaning of section 4?

b) existing after-sales service networks (for example, maintenance and repair services) and their importance in these markets. To what extent are such services performed by third parties and/or undertakings belonging to the same group as the parties, within the meaning of section 4?

8.3. Provide an estimate of the total capacity in Belgium for the last three years. Over this period, what proportion of this capacity is accounted for by each of the parties to the concentration and what were their

respective rates of capacity utilisation? If applicable, identify the location and capacity of the manufacturing facilities of each of the parties to the concentration in the affected markets.

8.4. Specify whether any of the parties to the concentration, or any of the competitors, have pipeline products or products likely to be put onto the market in the near future, or plans to expand (or subcontract)

would increase the HHI by 900 ($30 \times 15 \times 2 = 900$). The explanation of this technique is as follows: before the operation, the contribution of the parties to the HHI is equal to the sum of the squares of their market shares: $(a)^2 + (b)^2$. After the operation, the contribution to the HHI is equal to the sum of these market shares: $(a + b)^2$, i.e. $a^2 + b^2 + 2ab$. The HHI increase is therefore equal to $2ab$.

⁹ Excluding the subsidiaries or agents of the parties and undertakings belonging to the same group as one of the parties. Other than these five independent suppliers, the parties may, if they consider such is necessary for a clear understanding of the case, indicate the name of intra-group suppliers. The same applies for point 8.6. with regard to customers.

its production or sales capacity. If so, provide an estimate of the projected sales and market shares of the parties to the concentration over the next three to five years.

8.5. Any other supply-side considerations which in your opinion are relevant should be specified.

The structure of demand in affected markets

8.6. Identify the five¹⁰ main independent customers of the parties in each affected market and their individual share of total sales of the affected products made by each of the parties to the concentration.

Indicate the name, address, telephone number, fax number and e-mail address of the head of the legal department (or any other person exercising similar functions or, if there is no such person, then the chief executive) for each of these customers.

8.7. Describe the structure of demand in terms of:

- a) the different market phases, for example, take-off, expansion, maturity and decline, and an estimation of the growth rate of demand;
- b) the importance of customer preferences, for example in terms of brand loyalty, pre- and after-sales services, the provision of a full range of products, or network effects;
- c) the importance of product differentiation in terms of attributes or quality, and the extent to which the products of the parties to the concentration are close substitute products;
- d) the importance of switching costs (in terms of time and expense) for customers when changing from one supplier to another;
- e) the degree of market concentration or fragmentation from the point of view of demand;
- f) the segmentation of customers into different groups with a description of the “typical customers” of each group;
- g) the importance of exclusive distribution contracts and other types of long-term contracts;
- h) the importance of the share of demand represented by public authorities, public bodies or undertakings, or similar entities.

Market entry

8.8. Over the last five years, has there been any significant entry into any affected markets? If so, identify the undertakings in question and provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) and an estimate of the current market share of each such entrant. If any of the parties to the concentration entered an affected market in the past five years, provide an analysis of the barriers to entry encountered.

8.9. In the opinion of the notifying parties, are there undertakings (including those at present operating only outside Belgium) that are likely to enter the market? If so, identify the undertakings in question and provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive). Explain why such entry is likely and provide an estimate of the timeframe within which such entry is likely to occur.

8.10. Describe the various factors influencing entry into affected markets, examining entry from both a geographic and product viewpoint. In doing so, take account of the following where appropriate:

- (a) the total cost of market entry (R&D, production, the necessary distribution systems, promotion, advertising, after-sales service, etc.) on a scale equivalent to that of a significant viable competitor, indicating the market share of such a competitor;

¹⁰ In the case of complex cases, more information on customers may be requested at the pre-notification phase for certain affected markets.

- (b) any legal or regulatory barriers to entry, such as authorisation from the public authorities or the existence of standards in any form, as well as barriers resulting from product certification procedures, or the need to have a proven track record;
- (c) any restrictions created by the existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights;
- (d) the extent to which each of the parties to the concentration is a holder, licensee or licensor of patents, know-how and other rights in the relevant markets;
- (e) the importance of economies of scale for the production or distribution of products in the affected markets;
- (f) access to sources of supply, such as the availability of raw materials and the necessary infrastructure.

Research and Development

8.11. Specify the importance of research and development in the ability of a firm operating in the affected markets to compete in the long term. Explain the nature of the research and development carried out in affected markets by the parties to the concentration.

In doing so, take account of the following points, where appropriate:

- (a) research and development¹¹ trends and intensity in these markets and for the parties to the concentration;
- (b) the course of technological development in these markets over an appropriate time period (in particular as regards products and/or services, production processes, distribution systems, etc.);
- (c) the main innovations that have appeared in these markets and the undertakings responsible for such innovations;
- (d) the cycle of innovation in these markets and where the parties are in this cycle of innovation.

Cooperation agreements

8.12. To what extent do cooperation agreements (horizontal, vertical or other) exist in affected markets?

8.13. Give details of the most important cooperation agreements concluded by the parties to the concentration in the affected markets, such as research and development, licensing, joint production, specialisation, distribution, long term supply and exchange of information agreements and, where deemed useful, provide a copy of these agreements.

Trade associations

8.14. With regard to trade associations in the affected markets:

- (a) identify those of which the parties to the concentration are members; and
- (b) identify the most important trade associations to which the customers and suppliers of the parties to the concentration belong.

Provide the name, address, telephone number, fax number and e-mail address of the appropriate contact person for all trade associations listed above.

SECTION 9

Overall market context and efficiency gains

¹¹ The intensity of research and development is determined by research and development expenditure in relation to turnover.

9.1. Describe the worldwide context of the proposed concentration, indicating the position of each of the parties to the concentration outside Belgium in terms of size and competitive strength.

9.2. Describe how the proposed concentration is likely to affect the interests of intermediate and ultimate consumers and the development of technical and economic progress.

SECTION 10

The extent of cooperation in a joint venture

10. For the purpose of article 8, § 5, of the act, answer the following questions:

a) Do two or more parent companies continue to carry on significant activities in the same market as the joint venture, or in a market which is upstream or downstream from that of the joint venture or in a closely related neighbouring market?

If so, indicate for each of the markets in question:

- the turnover of each parent company for the previous financial year;
- the economic importance of the joint venture's activities in relation to that turnover;
- the market share of each parent company.

If not, state the grounds on which your answer is based.

b) If your answer to a) is affirmative and if you consider that the creation of the joint venture does not lead to coordination between independent undertakings likely to restrict competition within the meaning of article 2 of the act, give your reasons.

c) Irrespective of your answers to questions a) and b), and in order to enable the College of Competition Prosecutors to make a complete assessment, with full knowledge of the facts, indicate how, in your view, the criteria of article 2, § 3, of the act apply in this case. This article stipulates that the provisions of article 2, § 1, of the law may be declared inapplicable where the joint venture:

- (i) contributes to improving the production or distribution of goods, or to promoting technical or economic progress, or enables small and medium-sized undertakings to assert their competitive position in the market concerned or internationally;
- (ii) while allowing consumers to benefit from a fair share of the resulting benefit;
- (iii) does not impose on the undertakings concerned restrictions which are not indispensable to achieve these objectives; and
- (iv) does not give such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

SECTION 11

Declaration

Article 2, § 2, of this decree stipulates that where notifications are signed by representatives of undertakings, such representatives must produce written proof that they are authorised to represent the undertaking in question. This written authorisation must be attached to the notification.

The notification must conclude with the following declaration which is to be signed by or on behalf of all the notifying parties:

The undersigned declare that the information given in this notification is true, correct and complete, that all the estimates are true and reliable, that all the opinions expressed are sincere. Moreover, they declare that they have submitted true and complete copies of the documents required by form CONC-C/C.

They are aware of the provisions of article 64, § 1, of the act on the protection of economic competition.

The undersigned acknowledge that they cannot implement the concentration before the Council has ruled on its admissibility, unless they have obtained a derogation, to be requested from the said Council pursuant to article 9, § 6, of the act.

Place and date:

Signature and capacity:

Seen to be annexed to our decree of 31 October 2006 on the notification of concentrations of undertakings referred to in article 9 of the act on the protection of economic competition, consolidated on 15th September 2006.

By the King:

The Minister for Economy,

M. VERWILGHEN