

Only the Swedish text is authentic

The Swedish Competition Authority's Regulations on the Notification of Concentrations between Undertakings under the Swedish Competition Act (2008:579);

resolved on 13 October 2010.

Section 1 The information specified in the Instructions for the Notification of Concentrations between Undertakings must be provided in a notification under Chapter 4, Articles 6 or 7 of the Swedish Competition Act (2008:579). These Instructions are available as an annex and form an integral part of these Regulations.

Section 2 A notification of a concentration between undertakings is only complete following the provision of the information under Section 1. The Swedish Competition Authority may choose to examine a concentration between undertakings even if certain information according to the Instructions for the Notification of Concentrations between Undertakings has not been supplied, provided this information is not available or not indispensable to the Swedish Competition Authority's examination of the concentration.

This enactment enters into force on 15 November 2010 and applies to all notifications submitted to the Swedish Competition Authority from and including that date. The Swedish Competition Authority's Regulations (KKVFS 2009:3) on the notification of concentrations between undertakings under the Swedish Competition Act (2008:579) ceases to apply in conjunction with this enactment entering into force.

DAN SJÖBLOM

Charlotte Zackari
(Legal Department)

Annex

Instructions for the Notification of Concentrations between Undertakings under the Swedish Competition Act (2008:579)

Introductory information

The information specified in these Instructions must be provided in a notification under Chapter 4, Articles 6 or 7 of the Swedish Competition Act (2008:579). These Instructions form an integral part of the Swedish Competition Authority's Regulations KKVFS 2010:3. The information provided must be true, correct and complete.

During its examination, the Swedish Competition Authority may contact other market stakeholders in respect of the notified concentration.

The Instructions for notification and other relevant information are available on the Swedish Competition Authority's website, www.konkurrensverket.se.

Submitting a notification of a concentration between undertakings

A notification shall be delivered or sent to:

The Swedish Competition Authority, SE-103 85 STOCKHOLM, Sweden

Visiting address: Torgatan 11

The notification may also be sent electronically to konkurrensverket@kkv.se. For an electronic notification to be deemed to be complete from the date on which it was submitted to the Swedish Competition Authority, the signed declaration (see Section E) must be submitted in the original to the Swedish Competition Authority within three working days.

For further information, please contact the Swedish Competition Authority by telephone +46 (0)8-700 16 00 or by e-mail at konkurrensverket@kkv.se.

Who is obliged to submit a notification?

The following applies to concentrations between undertakings that are subject to an obligation to submit a notification (Chapter 4, Article 9 of the Competition Act).

- In the case of acquisition of sole control of an undertaking or part thereof, the notification shall be made by the party acquiring control. In the case of a public bid, the bidder must submit the notification.
- In the case of acquisition of joint control, the notification shall be made by the parties acquiring control of an undertaking or part thereof.
- When merging two or more undertakings, the notification shall be made by these undertakings.

When and to which authority shall a notification be made?

A notification to the Swedish Competition Authority may be made as soon as a party or some other participant can demonstrate that they intend to implement a concentration between undertakings. A notification shall be made before the concentration is implemented (Chapter 4, Article 10 of the Swedish Competition Act). Some concentrations shall be notified to the European Commission instead of the Swedish Competition Authority (see Article 1 of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings).

Serial acquisitions

If a concentration between undertakings consists of several transactions between the same persons or undertakings, whereby parts of one or more undertakings are acquired, for the purpose of calculating the

turnover the transactions which have taken place within a period of two years shall be treated as only one concentration (Chapter 4, Article 8 of the Competition Act).

Requirement for a complete notification

A notification is only complete following the provision of the information requested in these Instructions. The Swedish Competition Authority shall promptly inform the undertaking making the notification, or their representative, if compulsory information is missing from their notification. The Swedish Competition Authority can choose to examine a concentration between undertakings even if compulsory information has not been provided. This applies if the information is not available or not indispensable to the Swedish Competition Authority's examination of the concentration.

Time limits

The Swedish Competition Authority shall within 25 working days from a complete notification decide whether or not to carry out a special investigation of the concentration between undertakings. If a party to the concentration submits a proposed commitment, this time limit will be prolonged to 35 working days (Chapter 4, Article 11 of the Competition Act). The parties and other participants to the concentration may not take any action to implement the concentration within the specified limits. The Swedish Competition Authority may in specific cases grant an exemption from the prohibition to implement the concentration (Chapter 4, Article 12 of the Competition Act).

The time limits may be suspended if one or more Member States request that the concentration be referred to the European Commission (Article 22.2, third paragraph of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings).

Professional Secrecy

The notification should indicate those parts that according to the notifying party are subject to secrecy under the Public Access to Information and Secrecy Act (2009:400) and also the grounds for the request for secrecy.

A non-confidential version of the information about the concentration between undertakings provided under Section C should be attached to the notification.

Pre-notification contacts

The extent of the obligation to provide information and other matters in connection with a concentration between undertakings may be raised during pre-notification contacts with the Swedish Competition Authority prior to the submission of a notification. Absolute secrecy (Chapter 30, Section 2 of the Public Access to Information and Secrecy Act) shall apply to such prior contacts.

Information to be provided in a notification

The information requested under Sections A to C below must be provided in the notification under the headings and items referred to in each section. The notification shall be provided in Swedish.

A Information about parties notifying concentrations between undertakings, representatives and other parties to the concentration

Notifying parties

The following information must be provided in respect of the notifying party or parties:

- name and address
- corporate/organisation ID number
- postal delivery address
- postcode and town
- telephone
- e-mail address
- main business
- contact person at the undertaking who can provide information about the situation in terms of the market and production
- the position, direct telephone number and e-mail address of the contact person

Representative

The following information must be provided in respect of the representative(s):

- name
- position
- firm, if applicable
- postal delivery address
- postcode and town
- telephone
- e-mail address

A power of attorney for the representative will only need to be submitted if this has been requested by the Swedish Competition Authority.

Other parties and participants to the concentration between undertakings

The following information must be provided in respect of other parties and participants:

- name
- corporate/organisation ID number
- postal delivery address
- postcode and town
- telephone
- e-mail address
- main business
- contact person
- the position, direct telephone number and e-mail address of the contact person

B Notification to authorities abroad

If notification of this concentration between undertakings has been made or will be made to other competition authorities, state which competition authority or authorities.

C Information about the concentration

Scope of the information

The information provided for each party under Sections 4 to 6 below shall refer to the entire group of companies to which the party belongs; cf. Section 2 below regarding ownership and control. The information shall only include the seller in those cases where the seller jointly controls the acquisition object after the concentration between undertakings. Information relating to turnover and sales value, etc. shall be specified in Swedish kronor.

Definitions

In the case of a merger, ‘**party**’ means each one of the undertakings combined, and in other cases the person(s) or undertaking(s) that will exercise control over an undertaking or part of an undertaking as well as the acquisition object. The term ‘party’ basically has the same meaning as the term ‘undertaking concerned’ (see below under 1.2).

Products refer to goods, services and other utilities.

Further information

For further information, see the Swedish Competition Authority’s guidance for notifications and examinations of concentrations between undertakings – www.konkurrensverket.se.

See also the currently applicable notices and guidelines of the European Commission relating to concentrations between undertakings.

1 Structure of a concentration between undertakings

1.1 Describe the nature of the concentration between undertakings being notified. State

- a) whether the concentration relates to a merger of two or more previously independent undertakings, an acquisition of sole or joint control, the creation of a full-function joint venture or a contract or any other circumstance that entails direct or indirect control,
- b) the proposed or expected date of any major events designed to bring about the implementation of the concentration, and
- c) the proposed structure of ownership and control after the implementation of the concentration.

Help in interpreting the terms ‘concentration’ and ‘joint venture’ may be obtained from the European Commission’s currently applicable Jurisdictional Notice for corresponding EU legal terms.

1.2 In respect of each of the undertakings concerned by the concentration between undertakings, provide information about

- a) world-wide turnover, and
- b) turnover in Sweden

for the preceding financial year.

The European Commission’s currently applicable Jurisdictional Notice states which undertakings are ‘undertakings concerned’ and how the turnover is to be calculated.

- 1.3 If the aggregate world-wide turnover of the undertakings concerned is more than EUR 2.5bn, explain why the concentration does not have a ‘Community dimension’.
- 1.4 State the value of the transaction (the estimated or approximate purchase price).

2 Ownership and control

For each of the parties to the concentration between undertakings, provide a list including the following:

- 2.1 All undertakings or persons controlling the parties, directly or indirectly.
- 2.2 All undertakings that are controlled, directly or indirectly, by the parties or by other undertakings according to item 2.1 and that are active in a **market concerned** according to Section 4 below.

For each undertaking or person listed above, the nature and means of control should be specified. The information sought in this section may be illustrated by the use of, for example, organisational charts.

3 Links of an economic and personal nature

Provide the following information about the parties and about each undertaking and person included in Section 2.

- 3.1 A list of all other undertakings in which the undertakings, or persons, in the group of companies hold individually or jointly 10 per cent or more of the voting rights, issued share capital or other securities and which are active in a **market concerned** in accordance with Section 4 below. In each such case, identify the holder and state the percentage share held.
- 3.2 A list for each undertaking of the members of their boards or management who are also members of the management or boards of any other undertaking that is active in a **market concerned** in accordance with Section 4 below. In each such case, identify the name of the other undertakings and the positions held.
- 3.3 A list of all acquisitions made during the last three years by the groups of companies identified in Section 2 of undertakings active in a **market concerned** according to Section 4 below.

4 Market definitions

A concentration between undertakings shall be assessed on the basis of the relevant product markets and the relevant geographic markets that exist in the individual case. The delimitation of a relevant market is described in the European Commission’s currently applicable’ Notice regarding the definition of relevant market under the European Union’s competition legislation’.

Relevant product market

The relevant product market comprises all products which are regarded as substitutable by the consumer by reason of the products’ characteristics, their prices and their intended use.

An analysis of, for example, substitutability, conditions of competition, prices and elasticity of demand are of importance for the definition of the relevant product market.

Relevant geographic market

The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply of and demand for relevant products, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring geographic areas because, in particular, conditions of competition are appreciably different in those areas.

The following are *inter alia* of importance to the definition of the relevant geographic market: the characteristics of the products concerned; entry barriers; consumer preferences; appreciable differences in the undertakings' market shares between neighbouring geographic areas; or substantial price differences.

When applying the provisions on the control of concentrations contained in the Swedish Competition Act, the concentration must affect competition in a relevant geographic market that comprises the entire or a significant part of Sweden, for example a county or metropolitan municipality.

Markets that may be affected by the concentration

In this context, a 'market that may be affected by the concentration' means the relevant product market and the relevant geographic market in Sweden where

- two or more of the parties to the concentration between undertakings are engaged in business activities in the same product market and where the concentration will lead to a combined **market share of less than 20 per cent** (horizontal link), or
- one or more of the parties to the concentration between undertakings are engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and any of the parties, or the parties jointly, have a **market share of less than 30 per cent** (vertical link). This applies regardless of whether there is or is not any existing supplier or customer relationship between the undertakings concerned.

Market concerned

In this context, a 'market concerned' means the relevant product market and the relevant geographic market in Sweden where

- two or more of the parties to the concentration between undertakings are engaged in business activities in the same product market and where the concentration will lead to a combined **market share of 20 per cent or more** (horizontal link), or
- one or more of the parties to the concentration between undertakings are engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and any of the parties, or the parties jointly, have a **market share of 30 per cent or more** (vertical link). This applies regardless of whether there is or is not any existing supplier or customer relationship between the undertakings concerned.

The parties' areas of activity

- 4.1 Describe the parties' respective areas of activity to the extent that this is not described in items 4.2 to 4.5 below. Information under items 4.2 to 4.4 shall only be provided if two or more of the parties to the concentration between undertakings are engaged in business activities in a product market (horizontal link) or 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 any other party to the concentration is engaged (vertical link). Please note that item 4.5 may apply even if information is not provided under items 4.2 to 4.4.

Markets that may be affected by the concentration

- 4.2 State the markets in Sweden that may be affected by the concentration in accordance with the above definition. Provide for each such market the respective party's estimated market share together with key customers and competitors including names, addresses, e-mail addresses, telephone numbers and contact persons.

Markets concerned

- 4.3 State each market concerned, in accordance with the above definition, covering the whole of Sweden or a significant part of Sweden. Information shall be provided under items 5 and 6 below for each of these markets.
- 4.4 State each relevant product market and geographic markets where any of the parties to the concentration between undertakings are engaged in business activities that are closely related to a market concerned but that do not themselves constitute a market concerned. For example, product markets are 'closely related' if the products are complementary 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 use. Provide for each such market the respective party's estimated market share together with key customers and competitors including names, addresses, e-mail addresses, telephone numbers and contact persons.

Other markets that may potentially be affected by the concentration

- 4.5 State whether any of the parties to the concentration between undertakings has a market share of 30 per cent or more in a market that is not specified under items 4.2 to 4.4 and it is possible for another party to the concentration to affect competition in the market. This impact may for example take the form of another party being a potential competitor or holding important intellectual property rights related to that market.

5 Information about markets concerned

Provide the following details for each market concerned included under item 4.3 for each of the last three financial years.

It may be preferable to provide the information about sales, in value and volume, and market shares under items 5.1 to 5.3 in a combined table.

- 5.1 Provide an estimate of the total size of the market in terms of sales value and sales volume. Indicate the basis and sources for the estimates and attach the documents on which this information is based.
- 5.2 For each party provide details of sales, in value and volume, and an estimate of market shares.
- 5.3 Provide an estimate of market share in sales value and sales volume for the five largest competitors (including importers) in the market concerned. Attach any documents that form the basis of the calculation of these market shares. Provide the names, addresses, e-mail addresses, telephone numbers and contact persons of the competitors.
- 5.4 Provide an estimate of sales, in value and volume, of any imports. Provide details of
 - a) the proportion of imports that may be attributable to the parties, and
 - b) the extent to which imports are the subject of barriers to trade, for example customs duties, quotas, transportation and legal barriers.
- 5.5 Provide an estimate of the total capacity of the market concerned. Also provide details of the parties' proportion of this capacity and the extent to which the parties utilise their capacity.
- 5.6 Give a description of how the parties produce and distribute the products concerned, for example, how production is organised and the distribution network.
- 5.7 Provide details of the nature and scope of vertical integration of each of the parties compared with their largest competitors.

6 Conditions in markets concerned

Provide the following information for each market concerned included in item 4.3.

Purchasing conditions

- 6.1 Identify for each party the five largest independent suppliers (i.e. not undertakings that constitute part of the group of companies to which the party in question belongs) and each such supplier's share of the respective party's purchases. Provide the name, address, e-mail address, telephone number and contact person of each supplier.

Structure of supply

- 6.2 Describe the existing distribution and service networks in the market concerned. State in particular
 - a) the distribution systems prevailing and their importance together with the extent to which distribution is performed by the parties or by third parties and
 - b) the service networks prevailing and their importance together with the extent to which such services are provided by the parties or third parties.
- 6.3 Indicate whether any of the parties within the next three years
 - a) intends to launch new products in the market concerned,
 - b) plans to expand production or sales capacity, or
 - c) intends to engage subcontractors.

If so, provide an estimate of the projected sales and market shares of the parties over the next three years.

- 6.4 Provide details of other factors that may be relevant when assessing the supply structure.

Structure of demand

- 6.5 Identify for each party the five largest independent customers (i.e. not undertakings that constitute part of the group of companies to which the party in question belongs) in the market concerned and each such

customer's share of the respective party's total sales in this market. Provide the name, address, e-mail address, telephone number and contact person of each customer.

- 6.6 Explain the structure of demand in the market concerned. State in particular
- a) the development phase of the market, for example take-off, expansion, maturity and decline together with a forecast of the growth rate of demand,
 - b) the importance of customer preferences in terms of brand loyalty and the provision of a full range of products,
 - c) the role of product differentiation in terms of quality and other properties, and the extent to which the products of the parties are close substitutes,
 - d) the importance of time and expense for customers when changing suppliers,
 - e) the degree of concentration among customers,
 - f) segmentation of customers into different groups and a description of the 'typical customer' of each group, and
 - g) the importance of exclusive distribution contracts and other types of long-term contracts.

Market entry

- 6.7 State whether any undertaking of significance has entered the market concerned over the last five years. If so, provide, if possible, an estimate of the undertaking's market share. Also provide details of the undertaking's name, address, e-mail address, telephone number and contact person.
- 6.8 State whether any of the parties has entered the market concerned over the last five years. Describe, when applicable, the barriers to entry that existed.
- 6.9 Provide details of those undertakings that could enter the market concerned (including such undertakings operating only in markets outside Sweden). Explain why such entry is possible and provide an estimate of when this could occur. Also provide details of the name, address, e-mail address, telephone number and contact person of each undertaking.
- 6.10 Describe the various factors that are significant for entry into the market concerned. State in particular
- a) the estimated costs (R&D, establishing distribution systems, promotion, advertising, servicing, etc.) of implementing a competitive and permanent establishment and make an estimate of the expected market share for such an entrant,
 - b) legal or other formal barriers to market entry, for example government authorisation or standard setting,
 - c) restrictions as a consequence of know-how, patents and other intellectual property rights,
 - d) the extent to which each of the parties are licensees or licensors of know-how, patents or other rights,
 - e) the importance of economies of scale for production, and
 - f) the importance of the availability of raw materials, etc.

Research and development

- 6.11 Describe the importance of research and development activities to an undertaking's long-term competitiveness in the market concerned. Also explain the nature of the research and development in the market concerned carried out by the parties. State in particular
- a) the intensity of research and development, i.e. research and development expenditure in proportion to turnover, for the market as a whole and for a respective party,
 - b) the technological development of the product in the market (production processes, distribution systems, etc.), and
 - c) major innovations that have been made and the undertakings responsible for these innovations, together with where the parties' and other undertakings' products are situated in this cycle of innovation.

Cooperative Agreements

- 6.12 To what extent do horizontal and vertical cooperative agreements exist in the market concerned?
- 6.13 Provide details of the most important cooperative agreements engaged in by the parties in the market concerned, such as joint production, licensing, specialisation, distribution, long term supply and exchange of information agreements as well as research and development agreements.

Trade associations

- 6.14 Provide the name, address, e-mail address, telephone number and contact person for any trade association or the like to which
- a) the parties and their competitors belong, and
 - b) to which the parties' customers and suppliers belong.

7 Efficiency gains

Should you wish the Swedish Competition Authority to take into account efficiency gains that the concentration is expected to generate, please provide the following information:

- a) a detailed explanation of how the proposed concentration would allow the new entity to achieve the efficiency gains,
- b) where reasonably possible, quantify the efficiency gains and explain how the quantification was calculated,
- c) in which way and how likely it is that the customers will benefit from these gains,
- d) the reason why the parties could not achieve the efficiency gains to a similar extent by means other than through the concentration proposed.

For guidance, see the European Commission's currently applicable Guidelines on the assessment of horizontal and non-horizontal mergers.

8 Joint ventures

For an assessment under Chapter 4, Article 1, third paragraph of the Swedish Competition Act, provide the following information:

- 8.1 State whether two or more parents retain activities in the same market as the joint venture or in a market that is downstream or upstream from that of the joint venture or in a market closely related to this market. Indicate for each such market
- a) the turnover of each parent company in the preceding financial year,
 - b) the economic significance of the activities of the joint venture in relation to this turnover, and
 - c) the market share of each parent.
- 8.2 Indicate why the creation of the joint venture does not lead to any coordination between independent undertakings that constitutes a prohibited restriction of competition under Chapter 2, Article 1 of the Swedish Competition Act.
- 8.3 In the event that the Swedish Competition Authority considers that Chapter 2, Article 1 of the Swedish Competition Act applies to the notified practice, state whether the criteria contained in Chapter 2, Article 2 of the Swedish Competition Act have been satisfied, i.e. if the agreement or concerted practice
1. *contributes to improving the production or distribution or to promoting technical or economic progress,*
 2. *allows consumers a fair share of the resulting benefit,*

3. *only imposes on the undertakings concerned restrictions which are indispensable to the attainment of the objective referred to in paragraph 1, and*
4. *does not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the utilities in question.*

D Executive summary of the concentration

Provide an executive summary of the concentration (up to 500 words) in a separate annex. The summary shall specify the undertakings concerned, the nature of the concentration (e.g. sole or joint control), the areas of activity of the parties and the markets on which the concentration will have an impact. This description will be published on the Swedish Competition Authority's website when the notification is made. The summary must therefore be drafted so that it contains no business secrets or any other confidential information.

E Declaration

Provide the following declaration in a separate annex:

"It is hereby certified that the information provided in this notification is true, correct and complete.

Place and date:

Party notifying the concentration:

Signature of authorised signatory or authorised representative:

Print name:"

F Annexes to be attached to the notification

The following documents shall be attached to the notification:

- 1) Most recent annual reports for the parties
- 2) Transfer agreements and any shareholder agreements or other contracts and documents that demonstrate the intention to implement the concentration between undertakings.
- 3) In the case of a public takeover bid, the document containing the bid and which is presented to the shareholders or the press release issued in accordance with the applicable rules for public offers in stock markets.
- 4) If there are markets concerned under item 4.3 above, supporting documents in the form of analyses, market surveys and any comparable documents produced or used by the undertaking's management, supervisory board or shareholders' meeting to assess the concentration between undertakings with respect to market shares, competitive conditions, competitors, the purpose of the concentration and general market conditions.
- 5) An executive summary of the concentration in accordance with Section D.
- 6) A signed declaration in accordance with Section E.