

DECISION

on approving the Regulation on economic concentrations

no 17 as of 30.08.2013

Official Gazette no 222-227/1501 as of 11.10.2013

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Under the art. 22 para. (4), art.23 para.(7), art.41 para.(1) let.c), art.46 para.(6) let.e) and art.94 let.a) from the Law on Competition no 183 as of 11 July 2012 (Official Gazette of the Republic of Moldova, 2012, no 193-197, art.667), the Plenum of the Competition Council

DECIDES:

1. The Regulation on economic concentrations (attached) is being approved.
2. This decision shall enter into force on the date of its publication in Official Gazette of the Republic of Moldova.

THE PRESIDENT OF THE PLENUM

OF THE COMPETITION COUNCIL

Chişinău, 30 August 2013.

No 17.

Viorica CĂRARE

Approved

By the Decision of the Plenum

of the Competition Council

No 17 as of 30 August 2013

REGULATION

on economic concentrations

The objective of economic concentrations control set up by the Competition Council is to prevent the occurrence of significant barriers for effective competition on the market or substantial part of it, in particular as a result of creation or strengthening of a dominant position.

This Regulation shall be mandatory for the Competition Council, undertakings registered in the Republic of Moldova or other states, natural persons, and for central or local public administration authorities and institutions, pursuing the uniform and transparent application of the Law on Competition no 183 as of 11.07.2012.

This Regulation transposes partially the COUNCIL REGULATION (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), published in EU OJ L 24 as of 29 January 2004; COMMISSION REGULATION (EC) No 802/2004 as of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, published in EU OJ L 133, as of 30 April 2004, and transposes partially the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, published in EU OJ C 56 as of 5 March 2005 and Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, published in EU OJ C 95 as of 16 April 2008.

I. GENERAL CONSIDERATIONS

Section 1

Scope

- 1.** This Regulation shall apply to control of economic concentrations carried out pursuant the Law on Competition no 183 as of 11.07.2012 (hereinafter– Law).
- 2.** The provisions of this Regulation shall apply to economic concentrations where the aggregate turnover achieved cumulatively by the undertakings concerned, registered in the year previous to the operation, exceeds MDL 25000000 and there exist at least two undertakings involved in the operation which achieved an aggregate turnover higher than MDL 10000000 in the year previous to the operation.
- 3.** This Regulation shall apply where the undertakings concerned accept restrictions directly related to, and necessary for, the implementation of the concentration.
- 4.** In the meaning of this Regulation, the notions used mean the following:
upstream market– market at the previous stage of production or distribution chain;
downstream market – market at the next stage of production or distribution chain;
vehicle – undertaking established to purchase the target company;
year –calendaristic year, unless otherwise specified.

Section 2

General provisions on economic concentrations

- 5.** The notion of economic concentration includes all the operation resulting in lasting change of control of undertakings, and, subsequently, comprising operations leading to creation of joint ventures performing on a lasting basis all the functions of an autonomous economic entity.
- 6.** A concentration shall be deemed to arise where a change of control on a lasting basis results from:
 - 1) the merger of two or more previously independent undertakings or parts of undertakings, or
 - 2) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities (social shares) or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.
- 7.** The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph 6 p 2) of this Regulation.

Section 3

Mergers between previously independent undertakings

- 8.** A merger, in the meaning of art.20 para.(2) let.a) from the Law, occurs where two or more independent undertakings merge, resulting in a new undertaking and cease to exist in the capacity of separate legal person (by merging).
- 9.** A merger occurs also where an undertaking is acquired by another undertaking, the last preserving its legal identity while the first ceases to exist as a legal entity (by absorption).

Section 4

Acquisition of control

10. Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exerting decisive influence over an undertaking, namely through:

- (1) ownership or the right to use all or part of the assets of an undertaking;
- (2) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

11. In the meaning of the Law, the control is acquired by persons or undertakings which:

- (1) are holders of the rights or entitled to rights under the contracts concerned; or
- (2) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.

12. The exercise of control (direct or indirect) shall manifest through either holding majority in the social capital of an undertaking allowing for exert of majority of voting rights or holding more than 50% from the total voting rights or holding the right to choose, appoint or dismiss the majority of members of the executive body or council of undertaking, or through holding the right to manage the business or decisively influence the activity of undertakings based on an agreement of other legal arrangement or by holding the right to decisively influence the activity of undertakings adopting decisions within other undertakings.

13. The elements of acquisition of control are the following: subject, object and methods of acquisition of control.

14. Subject of control

- 1) control may be acquired by an independent undertaking or by more undertakings operating jointly;
- 2) control may also be acquired by a person, where the person in question already controls (independently or jointly) at least one more undertaking, alternatively, by more persons (controlling other undertaking) and undertakings.

Acquisition of control by natural persons generates a change on a lasting basis in the structure of undertakings involved only where the natural persons carry out further economic activities on their own or where they control at least one more undertaking;

3) where a person or an undertaking uses another person or undertaking in order to acquire controlling interest and has at the power to exert rights which gives it the control by this person or undertaking, which means that the latter is the holder of rights, by acts only as a vehicle, in such situation the control is acquired by the person or undertaking which is actually behind the operation and has the power to control the target company;

4) acquisition of control by undertakings for collective investment in transferable securities.

Undertakings for collective investment in transferable securities are entities established with or without legal personality attracting available funds from natural and/or legal persons by issuing and placement of shares or funds for the purpose of further investment thereof (investment companies and investment funds). Undertakings for collective investment in transferable securities generally acquire shares and voting rights conferring the control over portfolio companies.

Control is exerted by the investment fiduciary management company, since it exerts the voting rights related to financial instruments belonging to undertakings for collective investment in transferable securities, in the interests of equity holders. Accordingly, investment fiduciary management company, generally undertakes the indirect control in the meaning of art.20 para.(2) let.b) from the Law and has the competence to exert the rights held directly by the collective investment undertaking.

15. Object of control

The Acquisition of control is carried over:

- 1) one or more undertakings;

2) parts of undertaking, such as:

a) one or more legal separate entities;

b) assets (tangible and intangible) or part of assets of an undertaking (-s), if these assets constitute the entire or part of the undertaking, that is a commercial activity present on the market, to which a turnover may be attributed.

16. Methods of control.

Usual forms of acquisition of control are as follows:

1) acquisition of securities (social shares) or assets;

2) control on a contractual basis.

In order to confer control, the contract must lead to a similar control of the management and the resources of the other undertaking as in the case of acquisition of shares (social shares) or assets and must have very long duration (ordinarily without a possibility of early termination for the party granting the contractual rights);

3) control by other methods:

a) economic dependency relations.

In exceptional circumstances, a situation of economic dependence may be determined by important long-term supply agreements or credits provided by suppliers or customers, coupled with structural links, confer decisive influence. In such a situation, the Competition Council will carefully analyze whether such economic links, combined with other links, are sufficient to lead to a change of control on a lasting basis;

b) There may be an acquisition of control even if it is not the declared intention of the parties or if the acquirer is only passive and the acquisition of control is triggered by action of third parties. Examples are situations where the change of control results from the inheritance (social shares) of a shareholder (associate) or where the exit of a shareholder(associate) triggers a change of control, in particular a change from joint to sole control.

Section 5

Joint ventures

17. A joint venture must fulfil the full-functionality criterion in order to constitute a concentration.

18. For the full-functionality criterion it is sufficient that the joint venture is autonomous from the operational viewpoint.

19. A joint venture is full-function where it operates on a market, fulfilling the tasks which are normally fulfilled by undertakings operating on the same market. In order to do so the joint venture must have a management dedicated to its day-to-day operations and access to sufficient resources including finance, staff, and assets (tangible and intangible) in order to conduct on a lasting basis its business activities.

20. A joint venture is not full-function if it only takes over one specific function within the parent companies' business activities without its own access to or presence on the market.

21. Another factor considered while establishing the full-functionality character of a joint venture is the strong presence of parent-companies on upstream or downstream markets, where this presence determines significant sales or purchases between parent-companies and joint venture. The fact that the joint venture is based almost exclusively on sales to parent-companies or purchases from these in the starting period do not affect the full-functionality character of the joint venture. This period shall be no longer than 3 years depending upon the specific conditions on the market in question.

22. The joint venture must be intended to operate on a lasting basis.

23. The joint venture will not be considered to operate on a lasting basis where it is established for a short finite duration, where a joint venture is established in order to construct a specific project.

Section 6

Operations which are not economic concentration

24. Art.21 from the Law sets up three situations in which acquisition of control shall not be economic concentration operation, in particular:

1) control is acquired and exerted by a liquidator or a manager appointed by court decision or by other person entitled by a public authority to fulfill a procedure of liquidation, insolvency or other similar proceeding;

2) banks and financial market professional participants, whose activities include transactions in securities on own account or on behalf of third parties, temporarily hold securities of an undertaking which were acquired for the purpose of resale, as long as they do not exert the voting rights conferred by securities in order to determine the competitive conduct of the undertaking at issue, or exert them only in view of preparing the alienation in whole or in part of the undertaking at issue or its assets or resale of securities at issue, upon condition that the alienation or resale occurs within 12 months from the date of acquisition. The Competition Council Plenum may extend this period, upon request, where the banks and financial market professional participants may prove that the resale was not possible, under reasonable conditions, within the period set;

3) undertakings, including, groups of undertakings, perform restructuring or reorganization of own activities, where:

a) restructuring within undertaking, including group of undertakings occur in case of increasing packages of shares (social shares) that are not accompanied by changes in the control, merger of undertakings in majority ownership.

Where both the acquiring undertaking and the acquired one are state (municipal) undertakings, the operation shall be regarded as internal restructuring if both undertakings were previously part of the same economic unity.

b) reorganization of own business activities of undertakings, including group of undertakings imply internal organizational measures not leading to change of control over the undertaking, in particular, change in internal structure, activities carried out by the undertaking, organizational and legal form.

25. The exercise of the enlisted rights shall be followed particularly, in order to determine whether the rights related to the shareholdings acquired in the undertaking are used by the acquirer for the purpose of determining the competitive conduct of the undertaking in question:

1) right to appoint or oppose the appointment of members in the management of the undertaking;

2) right to adopt or oppose the adoption of budget for revenues and expenditures of the undertaking;

3) right to adopt or oppose the adoption of the business plan of the undertaking;

4) right to adopt or oppose the adoption of the investment plan of the undertaking.

26. The rights provided for in p. 25 of this Regulation may be stipulated in the constitutive documents of the acquired undertaking or in any other legal document concluded between the parties to concentration. As a result of exerting of any of the enumerated rights, it can be presumed that the acquirer determines the competitive conduct of the undertaking at which it acquired shares. These rights exerted by the acquirer only for the purpose of protecting own financial interests shall not be deemed as determining for the competitive conduct of the controlled undertaking.

Among these, the ability to prevent: increase or decrease the value of shares, change in the capital of the controlled undertaking, business liquidation or change in status.

II. DIMENSION OF ECONOMIC CONCENTRATIONS

Section 1

Thresholds

27. Economic concentrations exceeding the thresholds provided for in art.22 para. (1) from the Law shall be notified at the Competition Council prior to their enforcement.

28. Art.22 para.(1) from the Law provides for two thresholds in order to determine whether the economic concentration is covered by the Law, using two different criteria:

1) the threshold of the turnover achieved worldwide established for measuring the overall size of undertakings concerned;

2) the threshold of the turnover achieved at the national level established for indicating whether the economic concentration at issue involves a minimum level of activities carried out on the territory of the Republic of Moldova.

29. The thresholds are provided for determining whether the economic concentration at issue is subject to control on behalf of Competition Council and not for evaluation of the market position of the parties to economic concentration or the impact of the operation. Therefore, these include the turnovers achieved and, subsequently, all the mobilized resources, in all activity domains of the parties and not only in those directly involved in the economic concentration.

30. The thresholds are purely quantitative, grounding only on calculation of turnover, not on the market share or other criteria. Their goal is to offer a simple and objective mechanism, easy to use by the undertakings involved in a concentration, in order to determine whether the operation is notifiable.

31. The aggregate turnover is used as an indicator of economic resources combined in a concentration and is geographically allocated in order to reflect the geographical distribution of these resources.

32. The aggregate turnover shall be calculated as set up in Section 3 of this Chapter.

Section 2

Stakeholders

33. For the purpose of establishing the competence of the Competition Council, the undertakings concerned are those participating in an economic concentration, namely in a merger or acquisition of control, as provided for in art.20 para.(2) from the Law. The aggregate individual turnover and the aggregate consolidated turnover of these undertakings is decisive for establishing the fulfilment of the thresholds provided for in art.22 para.(1) from the Law.

34. Once the undertakings involved in a certain operation were identified, the aggregate turnover for establishing the competence shall be calculated in compliance with the norms provided for in art. 24 from the Law.

35. In a merger the undertakings concerned are each of the merging entities.

36. On the acquiring side, there can be one or more undertakings acquiring sole or joint control. On the acquired side, there can be one or more undertakings as a whole or parts thereof. As a general rule, each of these undertakings will be an undertaking concerned within the meaning of the Regulation on economic concentrations.

37. In case of acquisition of sole control of the whole undertaking the undertakings concerned will be the acquiring undertaking and the target undertaking.

38. Where the target undertaking is acquired by a group through one of its subsidiaries, the undertakings concerned are the target undertaking and the acquiring subsidiary if this is not a mere acquisition vehicle. However, even though the subsidiary is normally the undertaking concerned for the purpose of calculating turnover, the turnover of all undertakings with which the undertaking concerned has the links as specified in Article 22 from the Law shall be included in the threshold calculations. In this respect, the group is considered to be a single economic unit and the different companies belonging to the same group cannot be considered as different undertakings.

The actual notification can be made by the subsidiary concerned or by its parent company.

39. Art. 24 para. (3) from the Law provides that when the operation concerns the acquisition of parts of one or more undertakings, only those parts which are the subject of the transaction shall be taken into account with regard to the seller. The possible impact of the transaction on the market will depend only on the combination of the economic and financial resources that are the subject of the transaction with those of the acquirer and not on the remaining business of the seller. In this case, the undertakings concerned will be the acquirer(-s) and the acquired part(-s) of the target undertaking, but the remaining businesses of the seller will be ignored.

40. In the meaning of art.24 para.(3) from the Law, if two or more transactions are carried out during a two years period between the same persons or undertakings, these should be treated as a sole economic concentration. The previous concentrations (within two years) involving the same parties become (re)notifiable with the most recent transaction, provided this constitutes a concentration, if the thresholds provided for in the Law are met whether for one or more of the transactions taken in isolation or cumulatively. In this case, the undertakings concerned are the acquirer(s) and the different acquired part(s) of the target company taken as a whole.

41. If the acquisition of control occurs by way of a change from joint control to sole control, one shareholder (associate) normally acquires the stake (social share) previously held by the other shareholder(-s) (associate (-s)). In this situation, the undertakings concerned are the acquiring shareholder (associate) and the joint venture. As is the case for any other seller, the 'exiting' shareholder (associate) is not an undertaking concerned.

42. In the case of acquisition of joint control of a newly-created undertaking, the undertakings concerned are each of the companies acquiring control of the newly set-up joint venture (which, as it does not yet exist, cannot be considered to be an undertaking concerned and moreover, as yet, has no turnover of its own). The same rule applies where one undertaking contributes a pre-existing subsidiary or a business (over which it previously exercised sole control) to a newly created joint venture. In these circumstances, each of the jointly-controlling undertakings is considered an undertaking concerned whereas any company or business contributed to the joint venture is not an undertaking concerned, and its turnover is part of the turnover of the initial parent company.

43. If acquiring joint control of a pre-existing undertaking or business, the undertakings concerned are each of the undertakings acquiring joint control and the pre-existing acquired undertaking or business.

44. A notifiable concentration may arise where a change in the quality of control occurs in a joint control structure either by a reduction of the number of shareholders (associates) holding control, or due to the entrance of new shareholders (associates) acquiring control, irrespective of whether or not they replace existing controlling shareholders.

45. In the case where one or more shareholders (associates) hold control, either by entry or by substitution of one or more shareholders(associates), in a situation of joint control both before and after the operation, the undertakings concerned are the shareholders(associates) (both existing and new) who exercise joint control and the joint venture itself. On the one hand, similar to the acquisition of joint control of an existing company, the joint venture itself can be considered as an undertaking concerned as it is an already pre-existing undertaking. On the other hand, the entry of a new shareholder (associate) is not only in itself a new acquisition of control, but also leads to a change in the quality of control for the remaining controlling shareholders (associates) as the quality of control of the joint venture is determined by the identity and composition of the controlling shareholders (associates) and therefore also by the relationship between them.

46. Where the acquisition is carried out by a full-function joint venture, the joint venture itself and the target undertaking shall be deemed the undertakings concerned.

47. Where the joint venture can be regarded as a mere vehicle for an acquisition by the parent companies, it shall be considered each of the parent companies themselves to be the undertakings concerned, together with the target company. This is the case in particular where the joint venture is set up especially for the purpose of acquiring the target company or has not yet started to operate, where an existing joint venture has no full-function character or where the joint venture is an association of undertakings. The same applies where there are elements which demonstrate that the parent companies are in fact the real players behind the

operation. These elements may include a significant involvement by the parent companies themselves in the initiation, organization and financing of the operation. In those cases, the parent companies are regarded as undertakings concerned.

48. When two (or more) undertakings break up a joint venture and split the assets (constituting businesses) between them, this will involve a change from joint control over the joint venture's entire assets to sole control over the divided assets by each of the acquiring undertakings. For each break-up operation, the undertakings concerned will be both the acquiring party and the assets that this undertaking will acquire.

49. Similar to the break-up scenario is the situation where two (or more) companies exchange assets constituting a business on each side. In this case, each acquisition of control is considered an independent acquisition of sole control. The undertakings concerned will be, for each transaction, the acquiring companies and the acquired undertaking or assets.

50. Control may also be acquired by natural persons, within the meaning of Article 3 para.(2), let b) from the Law, the undertakings concerned are the target undertaking and the individual acquirer (with the turnover of the undertaking(-s) controlled by that natural person being included in the calculation of the natural person's turnover to the extent that the terms of Article 24para. (4) from the Law are satisfied).

51. A merger or an acquisition of control arising between state (municipal) undertakings may constitute a concentration if the undertakings were formerly part of different economic units having an independent power of decision. If this is the case, both of them will qualify as undertakings concerned although both are state (municipal) undertakings.

Section 3

The concept of turnover

52. The concept of turnover pursuant art. 24 para. (1) from the Law shall refer to the amounts obtained by the undertakings concerned in the previous year from the sale of products, being part of ordinary activities of undertakings at issue, after the deduction of sales rebates and the added value tax and other taxes directly related to turnover.

53. Turnover from the sale of products can be determined by identifying each commercial act involving a transfer of ownership.

54. Calculation of turnover for areas like banks, lending institutions and insurance companies shall be described in p. 77-78 and p.81-82 from this Regulation.

55. The amounts to be included in the calculation of aggregate turnover, in compliance with art.24 para.(1) from the Law, shall be part of ordinary activities of undertakings concerned.

56. The aggregate turnover achieved from ordinary activities shall be the aggregate turnover from sale of products within operational activity.

57. Any state aid, granted by public authorities to undertakings concerned in economic concentration, shall be included in the calculation of aggregate turnover, where:

- 1) if the undertaking is itself the recipient of the aid, and
- 2) if the aid is directly linked to the sale of products by the undertaking.

58. The aggregate turnover shall be calculated pursuant the Standards for accounting and in terms of accounting treatment represent the revenue from sales reflected in the "Report on profit and losses" from the Financial Report.

59. The aggregate turnover achieved by the undertakings concerned does not include the value of sales of products between any of the undertakings mentioned in art.24 para. (4) from the Law, namely the group to which the undertaking concerned belongs. The amounts considered at the calculation of the total turnover reflect only the transactions occurring between the group of undertakings, on the one hand, and third parties, on the other hand.

60. If the undertaking concerned in an economic concentration belongs to a group, not only the aggregate turnover of the undertaking at issue shall be considered, but, pursuant the provisions of the Law, account shall be taken of the aggregate turnover of the undertakings with which the undertaking concerned has links consisting in rights or competences enumerated in art. 24 para.(4) from the Law, in order to determine whether the thresholds provided for in art. 22 para. (1) from the Law are met.

61. If an undertaking concerned directly or indirectly has such links mentioned in art. 24 para.(4) let b) from the Law with other undertakings, those are to be regarded as part of its group for purposes of turnover calculation under this Regulation.

62. Without prejudice to art.24 para.(3) from the Law, which refers to the acquisition of parts from an undertaking, in order to establish if the thresholds provided for in the Law are met, the aggregate turnover of an undertakings concerned shall be calculated by adding together the respective turnovers of the following:

(1) the undertaking concerned;

(2) those undertakings in which the undertaking concerned directly or indirectly:

(a) owns more than half the capital, or

(b) has the power to exercise more than half the voting rights, or

(c) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or

(d) has the right to manage the undertaking's affairs;

(3) those undertakings which have in an undertaking concerned the rights or powers listed in (2);

(4) those undertakings in which an undertaking as referred to in (3) has the rights or powers listed in (2);

(5) those undertakings in which two or more undertakings as referred to in (1) to (4) jointly have the rights or powers listed in (2).

63. The rights or powers listed in p.62 para.2) let (a)-(c) can be identified in a rather straightforward way as they refer to quantitative thresholds. These thresholds are fulfilled if the undertaking concerned owns more than half of the capital or business assets of other undertakings, has more than half of the voting rights or has legally the power to appoint more than half of the board members in other undertakings. The thresholds are met if the undertaking concerned de facto has the power to exercise more than half of the voting rights in the shareholders' assembly or the power to appoint more than half of the board members in other undertakings.

64. The right to manage the undertaking's affairs provided for in p.62 para.2) let (d) occurs:

1) for instance, on the basis of organizational contracts or on the basis of the organization structure for the general partner in a limited partnership;

2) may also result from the holding of voting rights (alone or in combination with contractual arrangements, such as a shareholders' agreement) which enable, on a stable, de jure basis, to determine the strategic behavior of an undertaking.

65. The right to manage also covers situations in which the undertaking concerned jointly has the right to manage an undertaking's affairs together with third parties.

66. Where two or more companies jointly control the undertaking concerned in the sense that the agreement of each and all of them is needed in order to manage the undertaking affairs, the turnover of all of them is included.

67. When any of the companies identified on the basis of p.62 also has links as defined in p.62 with other undertakings, these should also be brought into the calculation.

- 68.** As long as the control criterion provided for in art.24 para.(4) let.b) from the Law is met, account shall be taken of the aggregate turnover of the undertaking controlled by the undertaking concerned, regardless of the real share held by the concerned undertaking.
- 69.** If the undertakings involved in the concentration hold together the rights or competences provided for in art.24 para.(4) let.b) from the Law, when calculating the aggregate turnover of the undertakings concerned, account shall not be taken of aggregate turnover resulted from sales of products between the joint venture and each of the concerned undertakings or any other undertaking which has links with any of them, in compliance with art.24 para.(4) let.b)-e) from the Law, but account shall be taken of the aggregate turnover resulted from the sales of products between the joint venture and any of the third undertakings.
- 70.** The aggregate turnover resulted from sales of products between joint venture and any third party, shall be equally distributed between the undertakings concerned controlling the joint venture.
- 71.** The provisions of p.62 also have to be adapted in situations involving a change from joint to sole control in order to avoid double counting of the turnover of the joint venture. Even if the acquiring undertaking has rights or powers in the joint venture which satisfy the requirements of p.62, the turnover of the acquiring shareholder has to be calculated without the turnover of the joint venture, and the turnover of the joint venture has to be taken without the turnover of the acquiring shareholder.
- 72.** In case of a concentration by merging, the aggregate turnover shall result in the cumulation of turnovers of all merging undertakings.
- 73.** When economic concentration occurs by acquiring the sole control, the aggregate turnover shall result in the cumulation of the turnover of the acquirer and the turnover of the target undertaking.
- 74.** When economic concentration occurs by acquiring joint control of existent undertaking, the aggregate turnover shall result in the cumulation of the turnover of the undertakings jointly acquiring the control and the turnover of the undertaking over which the joint control was acquired.
- 75.** for economic concentration carried out by acquiring joint control over a newly created undertaking, the total turnover shall be the result of cumulating the total turnovers of the undertakings acquiring control over the newly created joint venture.
- 76.** if the economic concentration is carried out by acquiring control over some assets, the total turnover shall be calculated by cumulating the turnover of the acquiring party with the turnover generated by the assets purchased in the year prior to economic concentration notification, and where the specific of the assets in question shall not allow for the breakdown of the turnover, by cumulation with the turnover corresponding to the assets purchased, calculated proportionally with the share thereof from the total business assets of the selling undertaking.
- 77.** the total turnover for banks and for lending institutions shall be calculated based on specific norms.
- 78.** Pursuant to art.4 from the Law, the total turnover for banks and lending institutions is assimilated with the sum of revenues related to interest rates and the sum of revenues which are not related to interest rates, after deduction of duties and taxes directly linked with these.
- 79.** at calculating the total turnover of the undertaking which has financial leasing as main activity, all the leasing rates shall be considered. Selling future leasing rates at the beginning of the agreement for the purpose of refinancing shall not be considered.
- 80.** at calculating the total turnover for operational leasing activity, the general norms for calculating total turnover provided for in art. 24 from the Law shall apply.
- 81.** the total turnover for insurance companies, under art. 4 from the Law shall be assimilated with the total value of the gross subscribed insurance premiums, provided for by insurance agreements concluded by or on behalf of insurance companies, including the premiums paid to reinsurers, after deduction of duties and taxes charged over the quantum of individual insurance premiums or the total volume thereof. These represent the sum of the premiums collected, including the reinsurance premiums collected where the undertaking concerned carries out reinsurance activities.

82. the premiums to be considered refer both to new insurance agreements concluded during the year at issue, and to all premiums related to agreements concluded during the previous years, but which are executed during the reference period.

83. At calculating the total turnover of a state (municipal) undertaking concerned in an economic concentration it is necessary to consider the undertakings forming an economic unity with independent decision making power, regardless of the way of holding capital or the norms of administrative supervision which are applied.

84. in order to calculate the turnover of state (municipal) undertaking, consideration shall be taken of only those undertakings which belong to the same economic unity, have the same independent decision making power. Subsequently, when a state (municipal) undertaking does not make the object of a coordination with other groups controlled by the state, it shall be treated as independent group, and the total turnover of other state (municipal) undertakings shall not be considered. Where more state (municipal) undertakings belong to the same independent commercial decisions making center, the total turnover of these undertakings shall be considered as part of the group of the concerned undertakings, in the meaning of p. 62.

85. where an undertaking uses another person or another undertaking for acquisition of controlling interest and has the power to exert the rights giving the control by this person or undertaking, it means that formally this is the holder of the rights. In such a situation, the total turnover considered is the total turnover of the undertaking which in fact has the power to control the target undertaking.

86. in the control is acquired by a natural person (acquiring party), the total turnover considered is the total turnover of all the undertakings controlled directly or indirectly by it.

87. if the acquiring party is a fully functioning joint venture, the total turnover of the acquiring party is considered to be the total turnover of the joint venture.

88. if the joint venture may be considered a simple vehicle for acquisition by a parent company, the total turnover considered is the total turnover of the latest.

89. if acquiring control by purchasing elements of assets, the total turnover is assimilated with the sum related to assets which make the object of operation. If the specific of purchased assets shall not allow for the breakdown of the total turnovers, the total turnover corresponding to purchased assets shall be calculated proportionally with the share thereof from the total business assets of the selling undertaking.

90. Pursuant to art.22 para.(4) and (5) from the Law, the notifying person or persons, undertaking or undertakings, should submit the note on calculated total turnover.

91. the note on the calculated total turnover shall contain both total turnover and the total turnovers from which it is composed, specifying the undertakings from which it comes, together with all the documents on which the calculations were based.

92. as grounds for calculation the total turnover of undertakings for the year prior to the operation shall be considered.

93. where the values of the total turnover shall be recalculated in the national currency, the annual average official exchange rate of the MDL shall be applied compared to the foreign currency at issue, from the year prior to the operation.

Section 4

Examination fee for economic concentrations

94. The fee for the examination of economic concentrations, in compliance with art.27 from the Law, shall be set in the amount of 0,1% from the aggregate turnover obtained cumulatively on the territory of the Republic of Moldova by the undertakings involved in the economic concentration and shall be calculated based on the aggregate turnover for the year prior to the economic concentration, and may not exceed MDL 75000.

95. The person, undertaking or undertakings submitting a notification for an economic concentration to the Competition Council shall be obliged to pay examination fee for economic concentration under art.27 from the Law.

96. The proof of payment for examination shall be submitted once with the submission of notification of economic concentration to the Competition Council.

97. The examination fee shall be transferred by the paying persons/ undertakings to the account open at the State Treasury.

98. While calculating the aggregate turnover out of which the examination fee for economic concentration shall be set, and the rules of calculating the aggregate turnover shall be applied as provided for in Section 3 from this Chapter.

99. The examination fee for economic concentration shall be reimbursed to persons and/or undertakings which submitted a notification for an economic concentration to the Competition Council, where this operation is not covered by the Law.

100. from the moment of informing the notifying parties, under art.25 para.(1) let.a) from the Law, the Competition Council, within 30 calendaristic days, shall reimburse financial means paid for notification examination.

101. In the meaning of p. 100, persons and/or undertakings which submitted to the Competition Council a notification for economic concentration, within 10 calendaristic days from the moment of notification by the Competition Council, carried out under art.25 para.(1) let.a) from the Law, shall present a certificate issued by the bank on bank requisites

III. NOTIFICATION OF ECONOMIC COCENTRATIONS

102. Economic concentrations exceeding the thresholds provided for in art. 22 para.(1) from the Law are subject to assessment and must be notified at the Competition Council before enforcement.

Section 1

Persons required submitting notifications

103. Economic concentrations by mergers of two or more undertakings must be notified together by the parties to merger, and those by acquisition of joint control must be notified together by persons or undertakings acquiring joint control.

104. In all other cases, the notification shall be effected by the person or undertaking acquiring control of the whole or parts of one or more undertakings.

105. The notification shall be signed by legal representatives of the parties required to submit notifications. Where the notifications are signed by empowered persons or persons or undertakings, they have to submit the original written evidence that they are authorized to represent. The joint notification shall be submitted by a representative authorized to send and to receive documents on behalf of all notifying parties.

106. Each party submitting the notification shall be liable for the exact and complete character of the information provided .

Section 2

Preliminary consultations to notifications

107. Parties intending to submit a notification may request the preliminary consultations from the Competition Council, at the premises of the competition authority, in order to discuss essential legal or practical aspects regarding economic concentration. In this respect, at least 3 working days before the date set for consultations, the parties shall submit the Competition Council with relevant information on economic concentration, such as: parties involved in the concentration, markets on which they operate, brief description of the economic concentration and the way of acquisition of control.

Section 3

Submission of notifications

108. Notifications shall be submitted in the manner prescribed by notification form as set out in Annex 1 to this Regulation. Under the conditions set out in Chapter IV of this Regulation, notifications may be submitted in Short Form as provided for in Annex 2. Joint notifications shall be submitted on a single form, in number of copies set up.

109. Notification shall be submitted to the Competition Council by recommended letter, with acknowledgment of receipt or submitted to the Competition on hard copy, one of them the original, and, if possible, one electronic version of it.

110. Original and/or copies of attachments to the form shall be submitted; the copies must be authorized by signature and seal (for undertakings) by the notifying parties or by the persons entitled to do so, authorized to represent them.

Section 4

Information and documents to be submitted

111. The notification submitted to the Competition Council shall contain:

1) notification form, filled in pursuant the models provided for in annexes 1 and 2 to this Regulation, together with all the documents provided for and defined in the annexes mentioned;

2) note on the calculated turnover;

3) evidence of payment of the economic concentration fee.

112. Within 10 working days from the registration of notification, the Competition Council shall confirm in written to the notifying party(-ies) or their representatives the compliance with the conditions for the notification to be considered valid submitted to the competition authority.

113. The information provided by notification and by the documents transmitted after their registration must be complete and accurate. The parties shall take account of the obligations and the recommendations provided for in annexes 1 and 2 to this Regulation.

114. The Competition Council is entitled to request the notifying party(-ies) or their representatives to complete the information submitted and/or to confirm their accuracy and completion. The notification shall be deemed effective only after the completion and/or confirmation of accuracy and completion.

115. The notifying party (-ies) or their representatives shall be able to provide other information which is deemed useful for assessing the economic concentration.

Section 5

Effective date of notification

116. Notifications shall become effective on the date on which it was registered at the Competition Council, except for the cases where it is stated that the information contained in it is not accurate and complete.

117. In cases provided for in p 116, within 10 working days from the registration of notification, the Competition Council shall request, in written form, the notifying party (-ies) or their representatives the fulfilling and/or confirmation of information contained in the notification and shall set a time period to send the requested information, but not exceeding 15 working days from the receipt of request. Upon motivated request of the notification party, this time period may be extended by 5 working days.

118. The Competition Council will inform the notifying parties the date on which the notification became effective.

119. The changings of the facts contained in the notification, subsequent to the notification, which are known or must be known by the notifying parties, or any new information, subsequent to the notification, which is known or must be known by the notifying parties, and which must be notified if they were known on the date of notification, shall be communicated to the Competition Council without delay. In these cases, if the changings or new information would have significant effects on the assessment of

concentration, the notification may be deemed by the Competition Council as being effective on the date on which new relevant information are received by the Competition Council. The Competition Council shall inform in this respect the notifying party (-ies) or their representatives in written form.

Section 6

Publication of information on notification

120. Where the Competition Council states that a notified economic concentration is covered by the scope of the Law, it shall publish on the web site of the Competition Council and in the Official Gazette the information on notification, specifying the names of the parties concerned, nature of concentration, concerned economic sectors. The Competition Council shall take account of the legitimate interest of the undertakings of protecting their commercial secrets and other confidential information.

121. Any additions or changes of the information related to the economic concentration at issue could be also published.

IV. SIMPLIFIED PROCEDURE OF NOTIFICATION AND ASSESSMENT OF CERTAIN ECONOMIC CONCENTRATIONS

Section 1

Aim of the simplified procedure

122. This chapter states a simplified procedure by which the Competition Council evaluates certain economic concentrations, provided that these do not raise competition problems.

123. This chapter aims at setting the conditions under which the Competition Council may adopt a decision to declare an economic concentration compatible with the competition environment, as a result of applying simplified procedure of assessment.

124. However, in the cases specified in p. 129 of this Regulation, the Competition Council may return to the complete procedure of assessment of an economic concentration.

Section 2

Categories of economic concentrations

to which simplified procedure may apply

125. The Competition Council shall apply the simplified procedure to the following categories of economic concentrations:

1) two or more undertakings acquire joint control of a company, provided that the joint venture does not carry out potential or current activities or such activities should not be significant on the territory of the Republic of Moldova. Such cases occur where:

a) aggregate turnover¹ of the joint venture and/or aggregate turnover of transferred activities² does not exceed the equivalent of MDL 10 mln on the territory of the Republic of Moldova; and

¹ 1 Aggregate turnover of the joint venture shall be set based on the most recent financial reports of the parent company or of the joint venture, depending upon the availability of the separate registrations for combined resources in the joint venture.

² 2 The wording “and/or” refers to the diversity of the concerned situations; for instance:

- in case of a joint acquisition of a target company, the aggregate turnover taken into account is the turnover of that target company (joint venture),

- in case of establishment of a joint venture to which the parent companies transfer their activities, the aggregate turnover taken into account is the turnovers of the transferred activities,

b) total value of assets³ transferred to the joint venture does not exceed the equivalent MDL 10 mln on the territory of the Republic of Moldova⁴;

2) two or more undertakings merge or one or more undertakings acquire sole or joint control of other undertaking, provided that none of the parties involved in the concentration does not carry commercial activities on the same relevant product and geographic market or on a downstream or upstream product market compared to a product market on which any other party involved in the economic concentration is operating;

3) two or more undertakings merge or one or more undertakings acquire sole or joint control of other undertaking, and:

a) two or more parties to concentration carry out commercial activities on the same product and geographical market (horizontal relationship), provided that their combined segment on the market is less than 15%; or

b) two or more parties to concentration carry out commercial activities on an upstream or downstream product market compared to a product market on which any other party to concentration is operating (vertical relationship), provided that none of their individual or combined market shares exceed 25%⁵;

4) one of the parties is going to acquire sole control of a undertaking at which it already holds joint control.

Section 3

Safeguards and exclusions

126. In assessing whether a concentration falls into one of the categories referred to in point 125 from this Regulation, the Competition Council will ensure that all relevant circumstances are established with sufficient clarity.

127. The Competition Council retains the discretion to take the ultimate decision on relevant market definition, basing its decision on an analysis of the facts of the case. Where it is difficult to define the relevant markets or to determine the parties' market shares, the Competition Council will not apply the simplified procedure. In addition, to the extent that concentrations involve novel legal issues of a general interest, the Competition Council would normally abstain from adopting decisions as result of applying the simplified analysis procedure, and would normally revert to a complete analysis procedure in which the information shall be provided pursuant the form provided in annex 1 to this Regulation.

128. By exception from the provisions of p. 125 from this Regulation, an economic concentration covered by the mentioned categories may need a detailed analysis within the complete analysis procedure of an economic concentration, with the submission of information provided for in the complete notification form from annex 1.

- in case of occurrence of a new party controlling in an existing joint venture, the aggregate turnover which has to be considered is the turnover of the joint venture and the turnover of the activities transferred by the new parent company (if appropriate).

³ Total values of assets of the joint venture must be set up based on the most recent financial report of each parent company, finished and approved. In this context, the notion "assets" includes: 1) all tangible and intangible assets to be transferred to the joint venture (examples of tangible assets include: production units, en gross or en detail sale units and stock of goods; examples of intangible assets include: intellectual property, etc), and 2) any amount of credits or any obligations of the joint venture which any of the parent companies accepted to extend or guarantee.

⁴ Where the assets transferred generate an aggregate turnover, neither the assets value, not the turnover value may not exceed the equivalent of MDL 10 mln.

⁵ This means that this category covers only the concentrations which do not affect markets, insofar they were defined in the complete form of notification of a concentration. The definition of markets described in the notification must be sufficiently precise to justify the assessment that the thresholds at issue are not met and that all alternative definitions of the markets are mentioned.

129. The following types of economic concentrations can be excluded from applying simplified analysis procedure:

- 1) Certain types of concentrations which may increase the parties' market power, for instance by combining technological, financial or other resources, even if the parties to the concentration do not operate in the same market;
- 2) Concentrations where at least two parties to the concentration are present in closely related neighboring markets⁶, in particular, where one or more of the parties to the concentration holds individually a market share of at least 25 % in any product market in which there is no horizontal or vertical relationship between the parties but which is a neighboring market to a market where another party is active;
- 3) Economic concentrations where it may not be possible to determine the parties' precise market shares. This is often the case when the parties operate in new or little developed markets;
- 4) Concentrations in markets with high entry barriers, with a high degree of concentration or other known competition problems.

130. An economic concentration by a change from joint to sole control may exceptionally require closer investigation within a complete procedure, with the provisions of information contained in the complete notification form provided for in annex 1. The Competition Council may also apply a complete analysis procedure of an economic concentration, where it has not assessed the previous acquisition of joint control of the undertaking at issue.

131. If a coordination problem occurs, insofar as provided for in art.20 para.(3) from the Law, the Competition Council may revert to a complete analysis procedure of an economic concentration with the provisions of information contained in the complete notification form provided for in annex 1.

Section 4

PROCEDURAL PROVISIONS

132. If stating the fulfilment of all conditions for applying simplified procedure, the Competition Council shall adopt in the Plenum , within 30 working days from the receipt of complete notification, a decision under art.25 para.(1) let.b) from the Law declaring the economic concentration operation compatible with the competition environment.

133. If during the analysis the Competition Council finds that the economic concentration may not benefit from simplified analysis procedure, it shall inform the notifying parties that the operation shall be evaluated within complete analysis procedure and shall request the submission of information contained in the complete form notification, provided for in annex 1 to this Regulation. In this case, the notification shall be deemed effective only after completion of form provided for in annex 1.

The parties shall provide the Competition Council with the notification pursuant the mentioned form, without paying another examination fee.

134. The simplified procedure shall not apply where the concerned undertakings request a special evaluation of the restrictions directly linked and necessary for enforcing the economic concentration.

V. IMPLEMENTATION OF ECONOMIC CONCENTRATION

135. The provisions of art.20 para.(1) from the Law prohibit the implementation of the economic concentration covered by art.22 para.(1) from the Law until declaring the economic concentration compatible with the competition environment, under a decision issued by the Plenum of Competition Council in compliance with art.25 para.(1) let.b) or para.(2) let.b) or c), or based on a presumption under art.25 para.(5) from the Law.

⁶ Product markets are closely related neighboring markets when the products are complementary to each other or when they belong to a range of products that is generally purchased by the same type of customers for the same end use.

136. Implementation of economic concentration means, if appropriate, the conclusion of agreement, announcement of public offer or acquisition of control.

137. Measures of implementation of economic concentration are in particular the following:

- 1) entry of the acquired undertaking on another/new market, determined by the business strategy of the party acquiring control, respectively of parties to joint control;
- 2) exit of the acquired undertaking from the market on which it operated;
- 3) change of the business scope of the acquired undertaking;
- 4) exert of voting rights acquired for appointing members in the administrative board of the undertaking;
- 5) exert of voting rights acquired for adopting the profit and expenses budget of the undertaking;
- 6) exert of voting rights acquired for adopting the business plan of the undertaking;
- 7) exert of voting rights acquired for adopting the investment plan of the acquired undertaking;
- 8) changing the name of the acquired undertaking;
- 9) restructuring, closure or split the acquired undertaking;
- 10) sale of assets of the acquired undertaking;
- 11) dismissal of employees of the acquired undertaking;
- 12) the conclusion or termination of long-term contracts or other important agreements concluded with third parties;
- 13) listing (quotation) of the acquired undertaking at the stock market.

138. The provision of p. 135 does not prevent the implementation of a public bid or a series of transactions in securities, including securities convertible into other securities, admitted to trading on a stock exchange market type, by which the control from different sellers is acquired, upon the condition that:

- 1) concentration should be notified without delay to the Competition Council in compliance with art.22 from the Law; and
- 2) the acquirer should not exercise the voting rights related to the securities or should do so only in order to maintain the full value of its investment under an exemption granted by the Competition Council Plenum in compliance with art.20 para.(6) from the Law.

While granting exemption the Competition Council Plenum shall consider, among others, the following:

- a) effects of the suspension on one or more undertakings concerned by the concentration or on a third party, and
- b) threat of concentration on competition.

139. Economic concentrations covered by art.22 para. (1) from the Law shall be implemented only upon following situations:

- 1) upon receipt by the notifying parties of the decision issued by the Competition Council Plenum, under art.25 para.(1) let.b) or para.(2) let.b) or c) from the Law;
- 2) based on a presumption under art.25 para.(5) from the Law;
- 3) upon receipt of a decision of granting exemption under art.20 para.(6) from the Law.

VI. ASSESSMENT OF ECONOMIC CONCENTRATIONS. ISSUING OF DECISIONS.

Section 1

Assessment of economic concentrations

140. Economic concentrations falling under the scope of the Law are assessed for the purpose of establishing compatibility thereof with the competition environment. In this respect, the Competition Council shall consider whether an economic concentration raises significant obstacles for effective competition, in particular as a result of establishment or enhancement of a dominant position on the market or on significant part of it.

141. For the purpose of establishing compatibility thereof with the competition environment, the concentrations shall be assessed based on the following criteria, provided that these shall be to the benefit of the consumer and shall not raise obstacles for competition:

- 1) need to maintain and develop competition in the relevant market, taking into account the structure of all the markets concerned by the concentration and actual or potential competition on behalf of undertakings located within or outside the territory of the Republic of Moldova;
- 2) market position of the undertakings concerned, their economic and financial power;
- 3) alternatives available to suppliers and users, their access to markets and sources of supply, as well as any legal or other barriers to entry;
- 4) tendency of supply and demand for relevant products;
- 5) interests of intermediate and ultimate consumers;
- 6) technical progress and economic development.

142. Economic concentrations susceptible to raise significant barriers to effective competition on the market or in a substantial part thereof may be authorized if the parties to concentration demonstrate the fulfillment of the following conditions:

- 1) the concentration shall contribute to increasing the economic efficiency, improving the quality of production, distribution or technical progress or to increasing export competitiveness;
- 2) favorable effects of concentration shall compensate the negative effects of restricting competition;
- 3) consumers benefit to a reasonable extent from resulted advantages.

143. To the extent to which the creation of a joint venture, representing a concentration under art.20 para.(2) from the Law, has as its object or effect the coordination of competitive conduct of the undertakings which remained independent, such coordination shall be evaluated pursuant the criteria provided for in art.5 para.(3) and art.6 from the Law, in order to find whether the operation is compatible or not with the competition environment.

144. For carrying out the evaluation provided for in p. 143, the Competition Council shall consider, in particular, the following criteria:

- 1) if two or more parent companies retain to a significant extent activities in the same market as the joint venture or in an upstream or downstream market of the joint venture or in a neighboring market closely related to this market;
- 2) if by coordination which represent the direct consequence of creation of joint venture, the undertakings concerned have the possibility to eliminate competition for a significant part of products at issue.

Section 2

Adoption of decisions on compatibility of economic concentrations with the competitive environment

145. Within 30 working days from the receipt of complete notification of economic concentration, the Competition Council shall adopt in the Plenum a decision by which declares the notified economic concentration compatible with the competition environment, if finds that, although the notified economic concentration is covered by the Law:

- 1) there are no serious doubts as to compatibility with the competitive environment;
- 2) the doubts as to compatibility with the competitive environment have been removed through changings made by the parties to the notified concentration.

146. If, as a result of analyzing a notified economic concentration, the Competition Council finds that the operation is covered by the Law and raises doubts as to compatibility with the competitive environment, and these could not be removed pursuant to the provision of art.25 para.(1) let.b) from the Law, it shall decide in the Plenum the initiation of an investigation within 30 working days from the receipt of complete notification.

147. Within 90 working days from the initiation of investigation on serious doubts as to compatibility with the competitive environment, the Competition Council Plenum shall:

1) issue a decision declaring that the economic concentration is incompatible with the competitive environment, if the economic concentration raises significant barriers to effective competition on a market or substantial part of it, in particular as a result of creation or enhancement of a dominant position, under art.23 para.(3) from the Law or, in cases provided for in art.20 para.(3) from the law, if not complying with the conditions provided for in art.6 from the Law;

2) issue a decision declaring the concentration compatible with the competitive environment, if the economic concentration does not raise significant barriers to effective competition on a market or substantial part of it, in particular as a result of creation or enhancement of a dominant position, under art.23 para. (4) from the Law, or, in cases provided for in art.20 para.(3) from the Law, if complying with the conditions provided for in art.6 from the Law;

3) issue a decision declaring the concentration compatible with the competitive environment, if finding that, as a result of the changes made by the concerned undertakings, the notified economic concentration complies with the criterion provided for in art.23 para.(4) from the Law and, in cases mentioned in art.20 para.(3) from the Law, criteria provided for in art.6 from the Law. The Competition Council Plenum is enabled to set, by decision, the obligations and/or condition necessary to ensure the observance by the parties of the commitments made for the purpose of concentration's compatibility with the competitive environment.

148. If a notified economic concentration raises serious doubts as to compatibility with the competition environment, the parties may submit proposals for commitments to the Competition Council, before the effective date of notification or within a maximum of two weeks from that date.

149. The Competition Council Plenum, within 30 working days, provided for in art.25 para.(1) let.b) from the Law, by decision, declares the economic concentration compatible with the competition environment, if finding that doubts as to compatibility with the competition environment were removed through changings by parties concerned of the notified economic concentration. The Competition Council Plenum may establish by decision the conditions and obligations to ensure the observance of the commitments made by the parties concerned for the purpose of achievement of concentration's compatibility with the competitive environment.

150. When the assessment of proposed commitments reveals that they are not sufficient to achieve compatibility with the competitive environment, the parties will be informed accordingly. If the parties concerned have not removed the serious doubts, the Competition Council shall decide in the Plenum the initiation of an investigation under art.25 para.(1) let.c) from the Law.

151. During the stage of investigating the economic concentration, the commitments proposed and made by the parties must be communicated to the Competition Council within a period of 30 days from the date of opening the investigation. Upon parties' request, the competition authority may extend this term with maximum 15 days, provided that the applicants submit exceptional situations justifying the extension.

152. If finding that, as a result of the changes made by the concerned undertakings, the notified economic concentration fulfils the criteria provided for in art.23 para.(4) from the Law, the Competition Council Plenum, in the period provided for in art.25 para.(2)

from the Law, shall issue a decision to declare the economic concentration compatible with the competitive environment. If the commitments proposed by the parties are unlikely to remove significant barriers to effective competition on the market or on significant part of it, in particular, as result of creation or enhancement of dominant position, the Competition Council Plenum, within the period provided for in art.25 para.(2) from the Law, shall issue at the end of investigation a decision to declare the economic concentration incompatible with the competitive environment.

153. The proposals of commitments and the attached documents shall be submitted to the Competition Council in original an/or copies authorized by signatures and seals of parties.

154. Conditions, periods and procedure for submitting, accepting and evaluating the proposed commitments of parties are stipulated in the Regulation on accepting the commitments proposed by undertakings.

Section 3

Other decisions

155. The Competition Council Plenum, upon receipt of a substantiated request may grant derogation from the obligations imposed in art.20 para. (1) and (5) from the Law. It may be granted subject to conditions and obligations intended to ensure effective competition.

156. Parties intending to request an exemption from the application of art.20 para. (1) and (5) from the Law may request the Competition Council consultations prior to submitting the application for granting exemption.

157. The parties shall submit at least the following information and documents, so that application for granting exemption is considered:

- 1) information on the identity of the parties to the economic concentration, indicating areas in which they operate;
- 2) description of the economic concentration and phases for achieving it;
- 3) economic and financial statements of the parties involved (financial report, etc.);
- 4) specify concrete implementing measures in respect of which they apply for exemption, and present a detailed justification of the need of taking each of these in terms of the viability of undertaking;
- 5) demonstrating based on financial indicators (solvency, leverage ratio, etc..), the negative effects of the suspension of the implementation of the operation on one or more of the undertakings concerned or on third parties, including consumers;
- 6) estimating the impact of economic concentration on competition in the relevant market as a result of implementing the merger, specifying in particular:
 - a) relevant marker on which the economic concentration is carried out;
 - b) market share of parties to concentration;
 - c) important competitors and their market shares;
 - d) in case of vertical integration, market shares of the party acquiring control, on the upstream or downstream market compared to the relevant market shall be submitted.

158. Within 10 working days from the registration of application, the Competition Council shall provide the applicant or its representatives with the written confirmation of the compliance with the conditions provided for in p. 157 insofar to be deemed application for granting exemption.

159. If the Competition Council Plenum approves the request, it shall grant the exemption by decision, taking account of the effects of the suspension of economic concentration on one of more undertakings involved in the operation or on third parties, including consumers, and of the threat of concentration on competition.

160. The exemption may be requested and granted at any time, both prior to and after the notification.

161. The Competition Council Plenum is entitled to adopt, by prescription, appropriate interim measures in order to restore or maintain conditions of effective competition where a concentration:

1) has been implemented with infringement of art.20 para.(1) from the Law and has not yet been taken a decision on the compatibility of the concentration with the competitive environment;

2) has been implemented with infringement of one or more conditions included in a decision adopted in compliance with art.25 para.(1) let.b) or para.(2) let.c) from the Law;

3) has already been implemented and is declared incompatible with the competitive environment.

162. When taking an interim measure, the parties may submit their views in written form under the Law.

163. A decision adopted in compliance with the provisions of p. 161 from this Regulation shall apply for a limited duration, which may be renewed by the Competition Council Plenum to the extent to which it is necessarily and appropriate. The interim measures shall cease of right on the date of issuing a decision related to the compatibility with the competitive environment.

164. In the meaning of art.26 para.(1) from the Law, if the Competition Council shall state that an economic concentration has already been implemented and it has already been declared incompatible with the competitive environment, it is entitled to:

1) to request the undertakings concerned to dissolve the concentration, in particular by dissolving the merger or by disposal of all the shares (social parts) or assets acquired, insofar to restore the existent situation prior to implementing the concentration;

2) to bring an action in court on the dissolution of the concentration.

165. If by dissolving the concentration it is not possible to restore the existent situation prior to implementing the concentration, the Competition Council Plenum is entitled to adopt any other adequate measure in order to restore, to the extent possible, the previous situation.

166. The Competition Council may also act in compliance with p. 164-165 of this Regulation where it finds that an economic concentration has been implemented by infringing a condition imposed by a decision adopted under art.25 para.(2) let.c) from the Law, by which it has been established that, in the absence of condition, the concentration would fulfil the criterion provided for in art.23 para.(3) from the Law, or, in cases provided for by art.20 para.(3) from the Law, would not fulfil the criteria provided for in art.6 from the Law.

167. In cases covered by p. 164 subp. 1) of this Regulation, the measures provided for in p. 164 may be imposed by a decision adopted under art.25 para.(2) let.a) from the Law, or by a separate decision.

Section 4

Requests for information

168. In order to assess notification of economic concentrations and to carry out the duties provided for in art.39 from the Law, as to economic concentrations, the Competition Council is entitled to require undertakings and associations of undertakings, public administration authorities to provide all public documents and necessary information.

169. The Competition Council shall request the necessary information in written form, stating the legal basis and the purpose of the request, specify what information is required and fix the time limit within which the information is to be provided, as well as specifies the penalties provided for in the Law for non-supplying or supplying incorrect or misleading information.

170. The owners of the undertakings or their representatives of undertakings or associations of undertakings, and, in the case of legal persons, companies or firms, or associations having no legal personality, the persons authorized to represent them by law or by their constitution, shall supply the information requested on behalf of the undertaking concerned. Lawyers duly authorized to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

171. In order to carry out its duties, the Competition Council may interview any natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation. If the employees of the Competition Council want to interview a person, at the beginning of the interview, they shall state the legal basis (disposition of the Competition Council Plenum on initiating the investigation) and the purpose of the interview, the intention to record the interview and the right of the person to refuse the interviewing. Where an interview is not conducted on the premises of the Commission or by telephone or other electronic means, the Commission shall inform in advance the competent authority of the Member State in whose territory the interview takes place. If the competent authority of that Member State so requests, officials of that authority may assist the officials and other persons authorized by the Commission to conduct the interview.

Section 5

Procedure of investigation of economic concentrations

172. Investigation of concentrations shall be carried out under the provisions of Chapter VII from the Law.

173. Each time an investigation is initiated, the Competition Council Plenum shall appoint a rapporteur, responsible for drafting investigation report, the communication thereof to parties at issue, receipt of observations and presenting the report at the meeting of the Competition Council Plenum. The appointed rapporteur shall deal with all the documents related to the investigation procedure, recommending the Competition Council to order measures in its competences.

174. For the purpose of investigation, the Competition Council employees, except debutants, may to carry out necessary inspections under art.56-57 from the Law.

175. Before adopting the decisions provided for in art.65 para.(1) from the Law, the Competition Council, within investigation procedures, shall fully guarantee the rights of defense to the parties at issue (persons and undertakings involved in the economic concentration) by granting the right to express the view point on conclusions and suggestions from the investigation report, by ensuring access to file and right to hearings.

176. After drafting the investigation report, a copy of non-confidential version shall be transmitted for information to persons and undertakings involved in an economic concentration. The persons, whose hearing was admitted under art.64 para. (3) from the Law, shall be provided with a copy of non-confidential version of the investigation report only upon request.

177. Persons who were provided with the investigation report shall be entitled to request hearings. The hearings shall be requested by parties in written form once with the submission of observation as to the investigation report. The hearings may be ordered also ex officio by the president of the Competition Council.

178. If the president of the Competition Council considers appropriate, he/she can order or accept the hearing of other legal or natural persons. Hearing applications of these persons shall be accepted if they prove sufficient interest. The Competition Council may invite any other person, including representatives of public administration authorities to assist at hearings and to express their view point during the hearing.

179. The president of the Competition Council shall allow the persons at issue the access to file at the secretary ship of the Competition Council Plenum, and obtaining, upon request, against payment, the copies and extracts from the file, pursuant art.60-61 from the Law. The parties at issue have the right to access to file of the Competition Council, provided the legitimate interest of the undertakings to protect commercial secrets thereof. The right to access to file shall not include access to confidential information and internal documents of the Competition Council, the mailing of the Competition Council with other competition authorities from other states.

180. In the matter of economic concentrations, the investigations shall finalize by decisions. For investigations and decisions adopted regarding a possible infringement of art.20 from the Law, where the economic concentration under investigation is not notified, the Competition Council shall assess and decide, in this context, considering the compatibility of the economic concentration with the competitive environment.

VII. Other provisions

Section 1

Information on a merger that does not falls under the Law

181. Within 30 working days from the receipt of the complete notification of an economic concentration, the Competition Council shall inform the notifying parties, by a letter, where it shall come to the conclusion that the notified economic concentration shall be covered by the Law.

Section 2

Time-lines

182. The period of 30 working days provided for in art.25 para.(1) from the Law shall begin on the date of filling in the notification, being confirmed as effective, and shall end on the thirtieth working day.

183. The period of 90 working days provided for in art.25 para.(2) from the Law shall begin on the date of initiating the investigation and shall end on the ninetieth working day.

184. The periods provided for in art.25 para.(1) and (2) from the Law shall be extended if the parties to notification submit an application in this respect within a period of maximum 15 working days from the initiation of procedure. The notifying parties may submit once such an application. After initiating the procedure, the Competition Council Plenum may extend the periods provided for in art.25 para. (1) and (2) from the Law upon the assent of the parties making the notification. The total duration of any extension (s) may not exceed 20 working days.

185. The periods provided for in art.25 para.(1) and (2) from the Law shall be extended with 30 working days if the undertakings concerned offer to make commitments under art.25 para.(1) and (2) from the Law for the purpose of achieving the compatibility of the concentration with the competitive environment.

186. If the Competition Council Plenum has not taken any decision, within the periods provided for in art.25 para.(1) and (2) from the Law, the economic concentration shall be deemed tacitly authorized.

187. If, due to circumstances of which one of the undertakings involved in the concentration is responsible, the Competition Council had to request information under art.54 from the Law or to order inspection by an order approved under art.56 from the Law, the time limits provided for in p.182-183 from this Regulation shall be suspended and start to run from the date on which the parties provided the Competition Council with all the requested information.

188. Suspension of the time limit shall start on the working day following the date on which the event triggering the suspicion occurred. This expires at the end of the day on which the reason for suspension disappears. If this day is not a working day, the suspension of the time limit shall expire at the end of the following day.

Section 3

Communications. Way of decisions 'execution

189. Decisions and prescriptions adopted by the Competition Council Plenum with regard to economic concentration in enforcing the provisions of the Law and this Regulation shall be communicated in written form to the persons concerned within 10 calendaristic days from the date of their adoption.

190. Decisions and prescriptions of the Competition Council Plenum shall be published on the official web page of the Competition Council. The publication of decisions and prescriptions shall be made taking account of the legitimate interest of the undertakings as to protection of commercial secrets.

191. Decisions and prescriptions of the Competition Council Plenum adopted under the Law shall be executed by the undertakings, associations, public administration authorities to which they address, in the time limit mentioned in these.

192. The persons concerned are obliged to inform the Competition Council about the measures undertaken as to decision execution, within the time limit set in it.

193. In case of non-execution within the time limit of the decisions of the Competition Council Plenum, the forced execution thereof shall be made in compliance with the provisions of the Law and the Execution Code.

Section 4

Confidentiality

194. The information, including documents shall not be communicated or made available by the Competition Council to the extent these contain commercial secret or other confidential information which disclosure is not considered necessary by the Competition Council for the purpose of procedure.

195. Information classified as commercial secret shall be correspondingly marked in compliance with the Law on commercial secret.

196. Information other than commercial secret, shall be classified as being secret only where the person, undertaking or association of undertakings shall submit a justifying application in this respect and this shall be accepted by the Competition Council.

197. The application shall refer only to information obtained by the Competition Council from the author and not to information from other sources. The application must identify the parties to which the information held by the Competition Council is deemed confidential.

198. If the Competition Council intends to disclose restricted information to the person or undertaking concerned, it shall guarantee the possibility to submit a non-confidential version of the documents containing the information at issue, with the same probative value as the originals.

VIII. FINAL PROVISIONS

199. Annexes 1, 2 and 3 are integral part of this Regulation.

Annex 1
to Regulation on
economic concentrations

COMPLETE FORM

ON NOTIFICATION OF AN ECONOMIC CONCENTRATION⁷

The notifications shall be submitted in compliance with this Regulation. Under the conditions of Chapter IV from the Regulation on economic concentrations, notifications shall be submitted in a simplified form, provided for in annex 2 of the Regulation.

Description of economic concentration

⁷ The way of filling in the form is provided for in the Guidelines on the filling in the form on notification an economic concentration.

Provide a brief summary of the concentration, specifying the parties to the concentration, the nature of the concentration (for example merger, acquisition, or joint venture), the areas of activity of the parties to the concentration, the markets on which the concentration will have an impact, and the strategic and economic rationale for the concentration.

This summary must be drafted insofar it does not contain confidential information, since it shall be published on the official web site of the Competition Council and in the Official Gazette.

Section 1

Information about parties

1.1. Information about the notifying party (-ies). Provide details about:

1.1.1. name of undertaking (specify IDNO) and name or surname or natural person (specify IDNP);

1.1.2. address/ registered office (according to the registration certificate from the State Registration Chamber) and the administrative offices (real seat) of the undertaking;

1.1.3. type of activity conducted by the undertaking, stating main and secondary activities;

1.1.4. name, address for mailing, telephone and other means of communication of the contact person for liaison with the competition authority and the position held by this;

1.1.5. address of the notifying party (or each of the notifying parties) to which the correspondence and documents can be sent, in particular, the decisions of the Competition Council Plenum.

1.2. information requested in p. 1.1. shall be submitted for other parties to concentration as well (other than the notifying party (-ies)).

1.3. Appointment of representatives.

If the notifications are signed by representatives of parties to notification, these must submit the written proof that they are enabled in this respect. The written proof must contain name and the position of the persons who authorized them.

Representatives enabled by the parties to concentration, shall provide the following contact information each specifying whom it represents:

1.3.1. Name, surname of the representative;

1.3.2. Address/ registered office of the representative;

1.3.3. Name, address, telephone numbers and other means of communication of the contact person;

1.3.4. address of the representative to which correspondence and documents may be sent.

Section 2

Details on concentration

2.1. Describe the character of the notified economic concentration, specifying:

2.1.1. Way of carrying out the notified economic concentration:

a) by merger;

b) by acquiring sole or joint control (by purchase of securities (social parts) or assets, by contract or other means);

c) by creation of a joint venture under art.20 para.(2) from the Law;

- 2.1.2. whether economic concentration refers to all undertakings concerned of part thereof;
- 2.1.3. short description of economic and financial structure of economic concentration;
- 2.1.4. whether economic concentration must approved by a other authorities and the situation of obtaining approvals in question;
- 2.1.5. whether economic concentration is conditioned by certain special events of by fulfilment of special conditions;
- 2.1.6. ownership and control structure both before and after the economic concentration;
- 2.1.7. any financial aid or of other character received by the parties from diverse sources (including from public authorities), as well the nature of value of this aid;
- 2.1.8. economic sectors involved in the concentration;
- 2.2. Specify the value of transaction (the purchase price or the value of all the assets in question, if appropriate).
- 2.3. For each of the parties involved in the concentration, the following data for the last 3 years shall be submitted⁸:
 - 2.3.1. the total turnover worldwide;
 - 2.3.2. the total turnover achieved in the Republic of Moldova;
 - 2.3.3. the total turnover achieved the Republic of Moldova, broken down by categories of activity and products;
- 2.4. Specify the purpose of economic concentration.
- 2.5. Specify whether the operation has been notified to other competition authority in another country.

Section 3

Control and ownership⁹

- 3.1. For each of the parties to concentration a list shall be submitted containing all undertakings being part of the same group. This list shall contain:
 - 3.1.1. all undertakings or persons controlling, directly or indirectly the parties;
 - 3.1.2. all undertakings on any of the affected markets, controlled directly or indirectly:
 - a) By these parties;
 - b) by any other undertaking mentioned in p. 3.1.1.

For each undertaking listed above, mention the nature and means of control¹⁰.

⁸ Turnover of the parties shall include the aggregate turnover of undertakings considered part of its/their group, in the meaning of p. 62 from the Regulation on economic concentrations. For purchase of assets elements, account shall be taken only of the sum related to the assets which make the object of transaction.

⁹ the information from this section may be illustrated by graphics or diagrams in order to show the ownership and control structure of the undertakings.

¹⁰ In case of holding securities, specify the register company

3.2. As regards the parties to the concentration and each undertaking or person identified in response to Section 3.1 shall be submitted the following:

3.2.1. a list of the rest of undertakings operating on the affected markets on which undertakings of persons from the group hold individually or jointly 10% or more of their voting rights, of the subscribed capital or other securities; for each case specifying the holder and the percentage held;

3.2.2. for each undertaking, a list with the members of management boards, which are also members of management boards or in other managing bodies of any other undertaking active in affected markets, and (if appropriate), for each undertaking, a list with the members in the managing bodies, which are also members of management boards or in other managing bodies of any other undertaking active in affected markets; in each case, specifying the name other undertaking and the position held;

3.2.3. Details regarding the acquisitions made in the last three years by the abovementioned clusters (p.3.1) active in affected markets as defined in Section 5.

Section 4

Supporting documents

Notifying parties must provide the following documents authorized by signature and seal:

4.1. Copies of the final or most recent versions of all documents bringing about the concentration, whether by agreement between the parties to the concentration, acquisition of a controlling interest or a public bid;

4.2. Copies of the financial reports from the year prior to concentration;

4.3. Copies of the statutes parties to the economic concentration;

4.4. A copy of the bidding document (for the public bid); if the document is not available on the date of notification, this shall be submitted once it is possible, but not later than the date on which it is addressed to the shareholders;

4.5. A copy of the permission of the National Bank of Moldova (for banks);

4.6. copies of reports, studies, research and all comparable documents prepared by/for members of managing board or other managing bodies or general meeting of shareholders/associates for the purpose of evaluating or analyzing the concentration from the point of view of market shares, conditions of competition and competitors (current and potential), as well from the point of view of motivation, potential sales increase or extension on other product or geographic markets and/or of general conditions on the market.

For each of these documents, specify (unless specified in the document itself) the date of drafting, name and position of the persons who drafted it.

Section 5

Market definitions¹¹

It is extremely important that within the notifying operation of the economic concentration, the parties offer exact and reasoned definition of the relevant markets affected by the economic concentration.

The notifying party or parties must provide information on:

5.1. Markets affected by the economic concentration;

¹¹ for filling in this section, see p. 7 Guidelines on the filling in the form on notification an economic concentration.

5.2. Other markets affected than those referred to in p. 5.1, on which the notified operation may have a significant impact, depending on the product and geographic scope.

In order to allow the competition authority to assess the competitive impact of the concentration on the markets mentioned in p.5.2, the notifying parties must submit the information requested for affected markets in the following sections (6 and 7) including for these markets.

Section 6

Information on affected markets

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

6.1. list of manufactured products and/or commercialized by the parties involved in concentration, as defined by the undertakings themselves, for marketing purposes (after Nomenclature of Goods of the Republic of Moldova);

6.2. estimation of total size of the market in terms of sales value and volume thereof (in physical units); specify the calculation base and the sources used in this respect, and submit, if available, documents necessary for confirmation of these calculations;

6.3. sales, in value and volume of each of the parties to concentration and its groups, as well an estimation of market shares;

6.4. estimation of market share as value, and if appropriate, as volume, of all competitors (including importers) holding at least 5% from the considered market. Based on it, provide an estimation of IHH index, before and after economic concentration. Specify the proportion of market shares used as basis for calculating the IHH¹². Specify the sources used for calculation of these market shares, and submit, if available, documents necessary for confirmation of these calculations;

6.5. name, address, phone numbers, other means of communication, for competitors enumerated in p. 6.4;

6.6. estimation of total value, of total volume and source (country of origin) of imports, specifying:

a) percentage from these imports that comes from groups to which parties to the concentration belong;

b) estimation of extent to which import shares and tariff and non-tariff barriers to changes affect these imports;

c) estimation of extent to which transport or other costs affect these imports;

6.7. the way in which parties to concentration produce, charge and sell products, for instance, if manufacturing and charging are made locally or if sale is carried out by local distribution networks;

6.8. Comparison between prices charged by each party to concentration and prices charged by competitors enumerated in p. 6.4;

6.9. Nature and degree of vertical integration of each of the parties to concentration compared to their main competitors.

Section 7

General conditions on affected markets

¹² HHI stands for Herfindahl-Hirschman Index, a measure of market concentration. The HHI is calculated by summing the squares of the individual market shares of all the firms in the market.

7.1. Identify the five largest independent suppliers¹³ to the parties to the concentration and their individual shares of purchases from each of these suppliers (of raw materials or goods used for purposes of producing the relevant products). Provide the name, address, telephone number, and other means of communication for each of these suppliers.

Structure of supply in affected markets

7.2. Explain the distribution channels and service networks that exist in the affected markets. In so doing, take account of the following where appropriate:

(a) the distribution systems prevailing in the market and their importance. To what extent is distribution performed by third parties and/or undertakings belonging to the same group as the parties identified in Section 3?

(b) the service networks (for example, maintenance and repair) prevailing 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 identified in Section 3?

7.3. Provide an estimate of the total capacity for the Republic of Moldova for the last three years. Over this period what proportion of this capacity is accounted for by different parties to the concentration?

7.4. Specify whether any of the parties to the concentration, or any of the competitors, have products likely to be brought to market in the near term, or plans to expand (or contract) 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 years.

7.5. If you consider any other supply-side considerations to be relevant, they should be specified.

Structure of demand in affected markets

7.6. Identify the five largest independent customers of the parties in each affected market and their individual share of total sales for such products accounted for by each of those customers. Provide the name, address, telephone number, and other means of communication for each of these customers.

7.7. Explain the structure of demand in terms of:

a) the phases of the markets in terms of, for example, take-off, expansion, maturity and decline, and a forecast of the growth rate of demand;

b) the importance of customer preferences, for example in terms of brand loyalty, the provision of pre- and after-sales services, the provision of a full range of products, or network effects;

c) the role of product differentiation in terms of attributes or quality, and the extent to which the products of the parties to the concentration are close substitutes;

d) the role of switching costs (in terms of time and expense) for customers when changing from one supplier to another;

e) the degree of concentration or dispersion of customers;

f) segmentation of customers into different groups with a description of the 'typical customer' of each group;

g) the importance of exclusive distribution contracts and other types of long-term contracts; and

h) the extent to which public authorities, public undertakings or similar bodies are important participants as a source of demand.

¹³ That is, suppliers which are not undertakings in majority possession, agents or undertakings forming part of the group of the party in question. In addition to those five independent suppliers the notifying parties can, if they consider it necessary for a proper assessment of the case, identify the intra-group suppliers. The same will apply in 7.6 in relation to customers.

Market entry

7.8. Over the last five years, has there been any significant entry into any affected markets? If so, identify such entrants and provide the name, address, telephone number, other means of communication 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.

7.9. In the opinion of the notifying parties, are there undertakings that are likely to enter the market? If so, identify such entrants (including address, telephone number, other communication means). Explain why such entry is likely and provide an estimate of the time within which such entry is likely to occur.

7.10. Describe the various factors influencing entry into affected markets, examining entry from both a geographical and product viewpoint.

Cooperative Agreements

7.11. To what extent do cooperative agreements (horizontal, vertical, or other) exist in the affected markets?

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

Trade associations

7.13. With respect to the 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 address, telephone number, and other means of communication for all trade associations listed above.

Section 8

Overall market context and efficiencies

8.1. Describe the world wide context of the proposed concentration, indicating the position of each of the parties to the concentration outside of the territory of the Republic of Moldova in terms of size and competitive strength.

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

8.3. Provide a description of, and supporting documents relating to each efficiency increase (including cost savings, new product introductions, and service or product improvements) that the parties anticipate will result from the proposed concentration relating to any product and provide the appropriate supporting documents.

Section 9

Cooperative effects of a joint venture

For the purpose of Article 20 para. (3) from the Law, answer the following questions:

a) two or more parents retain to a significant extent activities:

- in the same market as the new joint venture or
- in a market which is upstream or downstream from that of the new joint venture or
- in a neighboring market closely related to this market?

If the answer is affirmative, please indicate for each of the markets referred to here:

- the turnover of each parent company in the preceding financial year;
- the economic significance of the activities of the joint venture in relation to this turnover (which may be expressed by its turnover);
- the market share of each parent.

If the answer is negative, please justify your answer.

b) If the answer to a) is affirmative and in your view the creation of the joint venture does not lead to coordination between independent undertakings that restricts competition within the meaning of Article 5 para.(3) from the Law, give your reasons.

c) Without prejudice to the answers to a) and b) and in order to ensure that a complete assessment of the case can be made by the competition authority, please explain how the criteria of Article 6 from the Law apply.

Section 10

Statement on own responsibility

Where notifications are signed by representatives of undertakings/natural persons, such representatives must produce written proof that they are authorized to represent the undertakings/natural persons at issue. Such written authorization must accompany the notification.

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

“ This notification contains...pages. The notifying party or parties declare that, to the best of their knowledge and belief, the information given in this notification is true, correct, and complete, that true and complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The party or parties is/are aware of the provisions of art.68 para.(1) let.a) and b) from the Law.

Place and date:

Signatures:

Name and positions:

On behalf of:”

ANNEX 2

To Regulation on

Economic concentrations

SHORT FORM

for the notification of a concentration¹⁴

PURSUANT TO REGULATION ON ECONOMIC CONCENTRATIONS

Description of concentration

¹⁴ The way of filling in the form is provided for in the Guidelines on the filling in the form on notification an economic concentration.

Provide a brief summary of the concentration, specifying the parties to the concentration, the nature of the concentration (for example, merger, acquisition, or joint venture), the areas of activity of the parties to the concentration, the markets on which the concentration will have an impact, and the strategic and economic rationale for the concentration.

This summary must be drafted insofar it does not contain confidential information, since it shall be published on the official web site of the Competition Council and in the Official Gazette.

Section 1

Information about parties

1.1. Information about the notifying party (-ies). Provide details about:

1.1.1. name of undertaking (specify IDNO) and name or surname or natural person (specify IDNP);

1.1.2. address/ registered office (according to the registration certificate from the State Registration Chamber) and the administrative offices (real seat) of the undertaking;

1.1.3. type of activity conducted by the undertaking, stating main and secondary activities;

1.1.4. name, address for mailing, telephone and other means of communication of the contact person for liaison with the competition authority and the position held by this;

1.1.5. address of the notifying party (or each of the notifying parties) to which the correspondence and documents can be sent, in particular, the decisions of the Competition Council Plenum.

1.2. information requested in p. 1.1. shall be submitted for other parties to concentration as well (other than the notifying party (-ies)).

1.3. Appointment of representatives

If the notifications are signed by representatives of parties to notification, these must submit the written proof that they are enabled in this respect.

Representatives enabled by the parties to concentration, shall provide the following contact information each specifying whom it represents:

1.3.1. name, surname of the representative;

1.3.2. address/ registered office of the representative;

1.3.3. name, address, telephone numbers and other means of communication of the contact person;

1.3.4. address of the representative to which correspondence and documents may be sent.

Section 2

Details on concentration

2.1. Describe the character of the notified economic concentration, specifying:

2.1.1. way of carrying out the notified economic concentration:

a) by merger;

b) by acquiring sole or joint control (by purchase of securities (social parts) or assets, by contract or other means);

c) by creation of a joint venture under art.20 para.(2) from the Law;

- 2.1.2. whether economic concentration refers to all undertakings concerned of part thereof;
- 2.1.3. short description of economic and financial structure of economic concentration;
- 2.1.4. whether economic concentration must be approved by other authorities and the situation of obtaining approvals in question;
- 2.1.5. whether economic concentration is conditioned by certain special events or by fulfilment of special conditions;
- 2.1.6. ownership and control structure both before and after the economic concentration;
- 2.1.7. any financial aid or of other character received by the parties from diverse sources (including from public authorities), as well as the nature and value of this aid;
- 2.1.8. economic sectors involved in the concentration;
- 2.2. Specify the value of transaction (the purchase price or the value of all the assets in question, if appropriate).
- 2.3. For each of the parties involved in the concentration, the following data for the last 3 years¹⁵ shall be submitted:
 - 2.3.1. the total turnover worldwide;
 - 2.3.2. the total turnover achieved in the Republic of Moldova;
 - 2.3.3. the total turnover achieved in the Republic of Moldova, broken down by categories of activity and products;
- 2.4. Where the operation refers to acquisition of joint control of a joint venture, the following information shall be provided:
 - 2.4.1. total turnover of joint venture and/or turnover from activities transferred to the joint venture; and/or
 - 2.4.2. total value of assets transferred to the joint venture.
- 2.5. Specify the purpose of economic concentration.
- 2.6. Specify whether the operation has been notified to other competition authority in another country.

Section 3

Control and ownership¹⁶

For each of the parties to concentration a list shall be submitted containing all undertakings being part of the same group. This list shall contain:

- 3.1. all undertakings or persons controlling, directly or indirectly the parties
- 3.2. all undertakings on any of the affected markets, controlled directly or indirectly:
 - a) By these parties;

¹⁵ Turnover of the parties shall include the aggregate turnover of undertakings considered part of its/their group, in the meaning of p. 62 from the Regulation on economic concentrations. For purchase of assets elements, account shall be taken only of the sum related to the assets which make the object of transaction.

¹⁶ the information from this section may be illustrated by graphics or diagrams in order to show the ownership and control structure of the undertakings.

b) by any other undertaking mentioned in p. 3.1.

For each undertaking listed above, mention the nature and means of control.¹⁷

Section 4

Supporting documents

Notifying parties must provide the following documents authorized by signature and seal:

- 4.1. Copies of the final or most recent versions of all documents bringing about the concentration, whether by agreement between the parties to the concentration, acquisition of a controlling interest or a public bid;
- 4.2. Copies of the financial reports from the year prior to concentration;

Section 5

Market definitions¹⁸

Identify reportable markets on which the economic concentration shall occur.

Section 6

Information on affected markets

For each market mentioned in section 5, for each of the last three years, provide the following information:

- 6.1. list of manufactured products and/or commercialized by the parties involved in concentration, as defined by the undertakings themselves, for marketing purposes (after Nomenclature of Goods of the Republic of Moldova);
- 6.2. estimation of total size of the market in terms of sales value and volume thereof (in physical units); specify the calculation base and the sources used in this respect, and submit, if available, documents necessary for confirmation of these calculations;
- 6.3. sales, in value and volume of each of the parties to concentration and its groups, as well an estimation of market shares;
- 6.4. for horizontal relationships, estimation of market share as value, and if appropriate, as volume, of main competitors (indicating the basis of estimation). Provided the address, telephone numbers, other means of communication, for these competitors.

Section 7

Cooperative dimension of a joint venture

For the purpose of Article 20 para. (3) from the Law, answer the following questions:

- a) two or more parents retain to a significant extent activities:
 - in the same market as the new joint venture or
 - in a market which is upstream or downstream from that of the new joint venture or
 - in a neighboring market closely related to this market?

¹⁷ if holding securities, specify the register company.

¹⁸ for filling in the section in question, see p. .9 form the Guidelines on the filling in the form on notification an economic concentration.

If the *answer is affirmative*, please indicate for each of the markets referred to here:

- the turnover of each parent company in the preceding financial year;
- the economic significance of the activities of the joint venture in relation to this turnover (which may be expressed by its turnover);
- the market share of each parent.

If the *answer is negative*, please justify your answer.

b) If the answer to a) is affirmative and in your view the creation of the joint venture does not lead to coordination between independent undertakings that restricts competition within the meaning of Article 5 para.(3) from the Law, give your reasons.

c) Without prejudice to the answers to a) and b) and in order to ensure that a complete assessment of the case can be made by the competition authority, please explain how the criteria of Article 6 from the Law apply.

Section 8

Statement on own responsibility

Where notifications are signed by representatives of undertakings/natural persons, such representatives must produce written proof that they are authorized to represent the undertakings/natural persons at issue. Such written authorization must accompany the notification.

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

“This notification contains...pages. The notifying party or parties declare that, to the best of their knowledge and belief, the information given in this notification is true, correct, and complete, that true and complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The party or parties is/are aware of the provisions of art.68 para.(1) let.a) and b) from the Law.

Place and date:

Signatures:

Name and positions:

On behalf of:”

Annex 3

to Regulation

on economic concentrations

GUIDELINES

on filling in the notification form of economic concentration

I. FILLING IN THE NOTIFICATION FORM OF ECONOMIC CONCENTRATION

1. The purpose of this form

This Form specifies the information that parties should provide when submitting a notification of an economic concentration to Competition Council.

Taking account of the fact that the time limits set by the Law for adopting a decision by the Competition Council Plenum regarding a notified economic concentration shall start to run from the date on which the notification becomes effective it is important that the notifying parties submit a form filled in an appropriate manner and submit to the competition authority in due time the information required.

In this context, pre-notification contacts are extremely useful for both the notifying parties, and for the competition authority.

Certain economic concentrations that are unlikely to raise competition concerns may be notified using the Short Form provided for in annex 2.

2. Who must notify

In the case of a merger or the acquisition of joint control of an undertaking, the notification must be completed jointly by the parties to the merger or by those acquiring joint control, as the case may be.

In the case of the acquisition of a controlling interest in one undertaking or part of an undertaking or more undertakings by another, the acquirer must complete the notification.

In the case of a public bid to acquire an undertaking, the bidder must complete the notification.

Each party completing the notification is responsible for the accuracy of the information which it provides.

3. The requirement for a correct and complete notification

All information required by this Form must be correct and complete. The information required must be supplied in the appropriate Section of this Form.

In particular the notifying parties should note that:

All information required by this Form must be correct and complete. The information required must be supplied in the appropriate Section of this Form.

In particular the notifying parties should note that:

a) The time-limits of the linked to the notification will begin to run from the date all the information needed for evaluating the notification has been received by the Competition Council within the strict time-limits provided by the Law.

b) The notifying party or parties must verify, in the course of preparing their notification, that contact names provided are accurate, relevant and up-to-date.

(c) If a notification is incomplete, the Competition Council, within 10 working days from the notification registration, shall be able to request from notifying parties or their representatives the completion and/or confirmation of information contained in the notification. By the same request, the Competition Council shall set up a deadline for the parties to provide the information. The notification shall become effective on the date the competition authority receives the exact and complete information.

d) The notifying parties who, either intentionally or negligently, supply incorrect or misleading information, or do not provide information and the requested documents may be liable to fines pursuant to the legal provisions.

4. How to notify

The notification must be completed in the official language. The supporting documents attached to may be submitted either in original, or in copies authorized by signature and seal. Where these documents are drafted in other language, an authorized translation must be submitted.

The information requested in this forma shall be submitted using the numbers of sections and paragraphs from the form, signing the declaration provided for in section 10 and attaching the supporting documents. In completing Section 6 and 8 of this Form, the

notifying parties are invited to consider whether, for purposes of clarity, this section is best presented in numerical order, or whether information can be grouped together for each individual reportable market (or group of reportable markets).

Certain information may be put in annexes. However, it is essential that all key substantive pieces of information, in particular, market share information for the parties and their largest competitors, are presented in the body of this Form. Annexes to this Form must only be used to supplement the information supplied in the Form itself.

For a proper investigatory process, it is essential that the contact details are accurate. Incorrect contact details may be a ground for declaring a notification incomplete.

The notification shall be submitted to the Competition Council in compliance with the specifications made in p. 108-110 from the Regulation on economic concentrations.

5. Confidentiality

Information classified as commercial secret shall be correspondingly marked in compliance with the Law on commercial secret.

Information other than commercial secret shall be classified as being secret only where the person, undertaking or association of undertakings shall submit a justifying application in this respect and this shall be accepted by the Competition Council.

In the case of mergers or joint acquisitions, or in other cases where the notification is completed by more than one of the parties, business secrets may be submitted under separate cover, and referred to in the notification as an annex.

6. Definitions and instructions for purposes of this Form

Notifying party or parties: in cases where a notification is submitted by only one of the undertakings who is party to an operation, "notifying parties" is used to refer only to the undertaking actually submitting the notification.

Party (ies) to the concentration or parties: 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 public bid.

Except where otherwise specified, the terms notifying party(ies) and party(ies) to the concentration include all the undertakings which belong to the same groups as those parties.

7. Definitions of markets

It is extremely important that within the notifying operation of the economic concentration, the parties offer exact and reasoned definition of the relevant markets affected by the economic concentration¹⁹.

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

Notifying party or parties must submit the necessary data taking account of the following definitions:

7.1. Relevant product markets

Relevant product market comprises all those products which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.

Factors relevant to the assessment of the relevant product market include the analysis of why the products or services in these markets are included and why others are excluded by using the above definition, and having regard to, for example, substitutability,

¹⁹ See Chapter V from the Law.

competition conditions, prices, cross-price elasticity of demand or other relevant factors (such as supply-side substitutability in appropriate cases).

7.2. Relevant geographic markets

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 neighboring geographic areas because conditions of competition are appreciably different in those areas.

Factors relevant to the assessment of the relevant geographic market include *inter alia* the nature and characteristics of the products or services concerned the existence of entry barriers, consumer preferences, appreciable differences in the undertakings' market shares between neighboring geographic areas, or substantial price differences.

7.3. Affected markets

For purposes of information required in the Complete Form for notification of an economic concentration, affected markets consist of relevant product markets, on which, on the territory of the Republic of Moldova or on a part of it:

- (a) two or more of the parties to the concentration are engaged in business activities in the same product market, where the concentration shall lead to a combined market share of 15% or more (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 any other party to the concentration is engaged and any of their individual or combined market shares at level is 25% or more regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration²⁰ (vertical relationships).

7.4. Other markets in which the notified operation may have a significant impact

Markets, other than those mentioned in p. 7.3. in which the notified operation may have significant impact are, for instance, those where:

- a) any of the parties to concentration holds a market share more than 25% and any other party to concentration is a potential competitor on that market²¹;
- b) any of the parties to concentration holds a market share more than 25%, and any other party to concentration holds important intellectual property rights for that market;
- c) any of the parties to concentration is present on a product market which is a neighboring market closely linked to a product market on which another party to concentration operates, and the individual or combined market shares of the parties on any of these markets are 25% or more²², where these markets include a part of the whole territory of the Republic of Moldova.

²⁰ 2 for instance, if a party to concentration holds a market share more than 25% on a market which is upstream of a market in which the other party operates, then both the upstream and downstream markets are affected markets. Similarly, if there is an economic concentration between a horizontal undertaking and an active part downstream and the economic concentration shall lead to a combined market share of 25% or more, when both the upstream and downstream markets are affected markets.

²¹ A party may be considered potential competitor in particular where it intends to enter the market or it has carried out or implemented such plans within the last two years

²² neighboring markets closely linked occur where products are complementary to each other or when they belong to a range of products that is generally purchased by the same customer for the same end use. Products are complementary where, for instance, the use (or consumption) of such a product implies the use (or consumption) of another product, such for example as staplers and staples, printers and printer cartridges. Examples of products belonging to the same range would be whiskey and gin sold to bars and restaurants, and different materials for packaging a certain category of goods sold to producers of such goods.

II. FILLING IN THE SIMPLIFIED FORM ON NOTIFICATION OF AN ECONOMIC CONCENTRATION

1. Purpose of simplified form

This Form specifies the information that parties should provide the Competition Council with, when submitting a notification on an economic concentration which is not likely to raise competition problems.

Generally, the simplified form may be used for notifying economic concentrations which meet one of the conditions provided for in p.125 from the Regulation on economic concentrations.

The Competition Council may request a notification pursuant to the complete form provided for in annex 1 where, either the conditions necessary for using the simplified form are not met, or, exceptionally, these conditions are met, but the competition authorities considers that a notification by complete form provided for in annex 1 is needed for an appropriate assessment of the possible competition problems.

Examples of cases where it may be necessary a notification by complete form provided for in annex 1 are as follows:

- concentrations for which the definitions of relevant markets is difficult;
- if a party is either a new entrant on the market or potential new entrant, or it is an important patent holder;
- if the impossibility of appropriate establishment of parties' markets shares is demonstrated;
- on markets with high entry barriers, with a high degree of concentration or known competition problems;
- if at least two parties to concentration are present on neighboring markets closely linked between them²³;
- in concentrations which raise coordination problem, in the meaning of art.20 para.(3) from the Law.

2. Conditions for applying the simplified form

In order to evaluate whether a concentration may be notified by simplified form, the Competition Council shall ensure if the relevant circumstances were clearly established. For this purpose, the notifying parties bear the responsibility to submit exact and complete information.

If after the notification of concentration, the Competition Council considers that the operation is not adequate for being notified by simplified form, it may request a complete notification pursuant the form provided for in annex 1. This may intervene in the case where:

- the conditions for using simplified form are not met;
- although the conditions for using simplified form are met, a detailed notification by complete form provided for in annex 1 is needed for an appropriate assessment of the possible competition problems or in order to set whether the operation is an economic concentration under art.20 from the Law;
- simplified form contains inaccurate, incomplete or misleading information;
- a third party may express substantiate concern as to the impact on competition within the period set up by the Competition Council for such observations.

3. Importance of pre-notification contacts

²³ Product markets are neighboring markets closely linked where the products are complementary or belong to the same range of products which is generally purchased by the same category of customers or for the same end use.

Where the parties intend to submit a notification by simplified form, they are advised to address pre notification contacts with the Competition Council, in order to discuss whether the operation is appropriate for using such a form. Within such contacts, the parties shall submit all the data considered necessary for the assessment, which shall be kept confidential by the Competition Council if the parties justify the request for this purpose.

4. Who must notify

In the case of a merger or the acquisition of joint control of an undertaking, the notification must be completed jointly by the parties to the merger or by those acquiring joint control, as the case may be.

In the case of the acquisition of a controlling interest in one undertaking or more undertakings or part of one or more undertakings by another, the acquirer must complete the notification.

In the case of a public bid to acquire an undertaking, the bidder must complete the notification.

Each party completing the notification is responsible for the accuracy of the information which it provides.

5. The requirement for a correct and complete notification

All information required by this Form must be correct and complete. The information required must be supplied in the appropriate Section of this Form.

In particular the notifying parties should note that:

- a) The time-limits of the linked to the notification will begin to run from the date all the information needed for evaluating the notification has been received by the Competition Council within the time-limits provided by the Law.
- b) The notifying party or parties must verify, in the course of preparing their notification, that contact names provided are accurate, relevant and up-to-date.
- c) if a notification is incomplete, within 10 working days from the registration of notification, the Competition Council shall request the notifying party(-ies) or their representatives the completion and/or confirmation of information contained in the notification. By the same request, the Competition Council shall set up a time limit until the parties shall submit information. The notification becomes effective on the date the competition authority receives the complete and exact information.
- d) The notifying parties which either intentionally or negligently provide information inaccurate, incomplete or misleading information or incomplete documents or do not provide the requested information and documents may be subject to a fine in accordance with the law.

6. How to notify

The notification must be completed in the official language. The supporting documents attached to may be submitted either in original, or in copies authorized by signature and seal. Where these documents are drafted in other language, an authorized translation must be submitted. The information requested in this form shall be submitted using the numbers of sections and paragraphs from the form, signing the declaration provided for in Section 8, attaching the supporting documents. In completing Section 6 of this simplified Form, the notifying parties are invited to consider whether, for purposes of clarity, this section is best presented in numerical order, or whether information can be grouped together for each individual reportable market (or group of reportable markets).

Certain information may be put in annexes. However, it is essential that all key substantive pieces of information, in particular, market share information for the parties and their largest competitors, are presented in the body of this Form. Annexes to this Form must only be used to supplement the information supplied in the Form itself.

For a proper investigatory process, it is essential that the contact details are accurate. Incorrect contact details may be a ground for declaring a notification incomplete.

The notification shall be submitted to the Competition Council in compliance with the specifications made in p. 108-110 from the Regulation on economic concentrations.

7. Confidentiality

Information classified as commercial secret shall be correspondingly marked in compliance with the Law on commercial secret.

Information other than commercial secret shall be classified as being secret only where the person, undertaking or association of undertakings shall submit a justifying application in this respect and this shall be accepted by the Competition Council.

In the case of mergers or joint acquisitions, or in other cases where the notification is completed by more than one of the parties, business secrets may be submitted under separate cover, and referred to in the notification as an annex.

8. Definitions and instructions for purposes of this Form

Notifying party or parties: in cases where a notification is submitted by only one of the undertakings who is party to an operation, "notifying parties" is used to refer only to the undertaking actually submitting the notification.

Party (ies) to the concentration or parties: 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 public bid.

Except where otherwise specified, the terms notifying party(ies) and party(ies) to the concentration include all the undertakings which belong to the same groups as those parties.

9. Definition of markets

The relevant product and geographic markets serve to identify the scope within which the market power of the new entity resulting from the concentration²⁴ must be assessed.

9.1. Relevant product markets

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.

Factors relevant to the assessment of the relevant product market include the analysis of why the products or services in these markets are included and why others are excluded by using the above definition, and having regard to, for example, substitutability, prices, cross-price elasticity of demand or other relevant factors (such as supply-side substitutability in appropriate cases).

9.2. Relevant geographic markets

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 neighboring 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 inter alia the nature and characteristics of the products or services concerned, the existence of entry barriers, consumer preferences, appreciable differences in the undertakings' market shares between neighboring geographic areas, or substantial price differences.

9.3. Reportable markets

For purposes of information required in this Form, reportable markets consist of all plausible relevant product and geographic markets, on the basis of which:

²⁴ See Chapter V from the Law.

(a) two or more of the parties to the concentration are engaged in business activities in the same relevant market (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 market in which any other party to the concentration is engaged, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration (vertical relationships).