

Executive Order on the Notification of Mergers

Executive Order No. 976 of 13/08/2010

Pursuant to Sections 12 b(3) and 15 b of the Competition Act, i.e. Consolidated Act No. 972 of 13 August 2010 and Executive Order No. 98 of 12 February 2003 on conferring powers upon the Danish Competition Authority relating to electronic communication, this order lays down the following provisions:

1.-(1) Notification of a merger or concentration in accordance with Section 12 b(1) of the Competition Act shall be submitted to the Competition Authority by one or more of the undertakings participating in the merger or concentration.

(2) Notifications to the Competition Authority may be filed electronically. In that case an electronic signature shall replace the personal signature required on the full and simplified notifications forms respectively, cf. Annexes 1 and 2. Accompanying documents may be attached in copy.

2.-(1) A merger may either be notified by a submission of a full or the simplified procedure.

(2) A full notification of a merger must include the information and documents specified in the notification form for full notification, cf. Annex 1, in order to qualify as a complete notification under Section 12 d(1) of the Competition Act.

(3) A simplified notification of a merger must include the information and documents specified in the notification form for simplified notification, cf. Annex 2, in order to qualify as a complete notification under Section 12 d(1) of the Competition Act.

(4) The notifying party may request that the notification, cf. subsections (2) and (3), be granted the same status as a full notification even though some of the information specified in the notification form has not been supplied. Such a request must be accompanied by a reasoned statement, explaining why this information is not necessary for the merger assessment.

3.-(1) The following categories of mergers may be notified by a submission of a simplified notification form:

- 1) Mergers in which two or more undertakings acquire joint control of a joint venture which has no, or negligible, actual or foreseen activities in Denmark. Such cases occur where:
 - a) the turnover of the joint venture and/or the turnover of the transferred activities is less than DKK 100 million in Denmark; and
 - b) the total value of the assets or the turnover generated by the assets transferred to the joint venture is less than DKK 100 million in Denmark.
- 2) Mergers in which one undertaking acquires sole control of another undertaking over which it already has joint control with one or more other undertakings.

3) Mergers in which two or more undertakings are merged or one or more undertakings acquire sole or joint control of another undertaking and in which:

- a) none of the parties to the merger are engaged in business activities in the same product and in the same geographic market or in a product market which is downstream or upstream from a product market in which another party to the merger is engaged; or
- b) two or more of the parties to the merger are engaged in business activities in the same product and geographic market, but where they will have a combined market share of less than 15 % in Denmark; or
- c) one or more of the parties to the merger are engaged in business activities in a product market which is downstream or upstream from a product market in which another party to the merger operates, provided that neither their individual nor their combined market share downstream or upstream is 25 % or more in Denmark.

(2) Even though a merger may be covered by one of the categories referred to in subsection (1), the Competition Authority may require a full notification of the merger, cf. Section 2(2).

4.-(1) The Competition Authority shall inform the notifying party whether the notification is complete no later than ten weekdays after the receipt of the notification, if the merger was notified by a submission of a full notification form, cf. Section 2(2). In case the Competition Authority finds the notification incomplete, the Authority shall inform the notifying party within the said time limit, specifying which information is required. The notification is complete as of the day on which the Competition Authority has received the requested information.

(2) If a merger has been notified by a submission of a simplified notification form, cf. Section 2(3), the notification shall be deemed to be complete no later than ten weekdays after receipt of the notification, unless before that date the Competition Authority has informed the notifying party that the merger must be notified by a submission of a full notification form. Within the said ten weekdays, the Competition Authority may request supplementary information from the notifying party. In such situations, the notification is deemed complete on the date the information has been received, but no later than ten weekdays from the receipt of the simplified notification.

(3) Even though a simplified notification may be deemed complete, the Competition Authority may require a submission of a full notification form; cf. Section 2(2), as long as the merger has not been approved.

5.-(1) In case the Competition Council finds that the notified transaction does not fall within the scope of Section 12 a; cf. Section 12(1), of the Competition Act, the Council must inform the notifying party of this. No later than four weeks thereafter, the notifying party may request the Competition Council to treat the notification as a notification according to Section 8(2), Section 9(1) first sentence, Section 11(2) first sentence or Section 11(5) of the Competition Act.

(2) Competition Council may require additional information, where it is necessary in order to assess the transaction under Section 8(2), Section 9(1) first sentence, Section 11(2) first sentence or Section 11(5) of the Competition Act. The Council shall set a time limit for the submission of this additional information. The notification shall then be deemed to have been received at the time of the notification of the transaction as a merger.

6. This Executive Order enters into force on 1 October 2010.

(2) Executive Order No. 480 of 15 June 2005 on the notification of mergers is repealed.

Ministry of Economic and Business Affairs, 13 August 2010

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