

REGULATION
OF THE COUNCIL OF MINISTERS
of December 23, 2014
on the notification of intended concentration of undertakings
(Journal of Laws of January 15, 2015)

Pursuant to [article 94.6](#) of the Act of February 16, 2007 on competition and consumer protection (Journal of Laws No. 50, item 331, with subsequent amendments), it is hereby ordained as follows:

§ 1. 1. The Regulation lays down:

- 1) the detailed conditions to be met by the notification of intended concentration, including the schedule of information and documents which such notification should contain, hereinafter referred to as “Schedule”;
 - 2) the amount of the fees payable upon submitting an application for the commencement of antimonopoly proceedings in concentration cases as well as the manner of payment of such fees.
2. The Schedule constitutes an appendix to the present Regulation.

§ 2. Any reference made in this Regulation to:

- 1) the Act – shall mean [the Act](#) of February 16, 2007 on competition and consumer protection;
- 2) notification – shall mean a notification of intended concentration of undertakings;
- 3) relevant horizontally affected market – shall mean any product market on which at least two undertakings involved in the concentration are present (common market) and on which the concentration would lead to these undertakings attaining a total share in the geographic market which exceeds 20%;
- 4) relevant vertically affected market – shall mean any relevant market, where:
 - a) at least one undertaking involved in the concentration is present on such relevant market, provided that such market is also the sales market or purchasing market (previous or next level of trade) on which any of the remaining undertakings involved in the concentration is present (vertically linked market), and
 - b) the market share of undertakings involved in the concentration on any of such markets exceeds 30%, regardless whether there are any supplier-recipient links between the undertakings in question;
- 5) relevant market on which the concentration would have a conglomerate effect – shall mean any product market:
 - a) on which there are no vertical or horizontal links between the undertakings involved in the concentration, and
 - b) where any of the undertakings involved in the concentration has a share exceeding 40% in any relevant market covering the territory of Poland or any part thereof;
- 6) undertakings directly involved in the concentration – shall mean:
 - a) jointly all undertakings involved in a merger – in the case referred to in [article 13.2.1](#) of the Act,
 - b) an undertaking taking over control of another – in the case referred to [article 13.2.2](#) of the Act,
 - c) jointly all undertakings participating in the formation of a joint venture – in the case referred to in [article 13.2.3](#) of the Act,
 - d) an undertaking acquiring part of another undertaking’s property – in the case referred to in [article 13.2.4](#) of the Act,
 - e) an undertaking or undertakings the control of which is taken over by another – in the case referred to in [article 13.2.2](#) of the Act,
 - f) a newly formed undertaking – in the case referred to in [article 13.2.3](#) of the Act,
 - g) an undertaking which remains the owner of the property being acquired – in the case referred to in [article 13.2.4](#) of the Act,
- 7) undertakings involved in a concentration – shall mean all undertakings directly involved in the concentration, other undertakings forming part of the capital groups within the meaning of [article 4.14](#) of the Act to which the undertakings directly involved in the concentration belong as well as undertakings exercising joint control of a capital group to which an undertaking involved in the concentration belongs or remaining under the joint control of undertakings involved in the concentration;
- 8) financial institutions – shall mean, in particular, banks, insurance companies, investment fund companies, pension fund companies and brokerage houses;
- 9) preceding year – shall mean the financial year preceding the year during which the intended concentration is notified.

§ 3. The notification shall constitute an application for the commencement of antimonopoly proceedings concerning the concentration of undertakings referred to in [article 49.2](#) of the Act.

§ 4. 1. An undertaking submitting the notification shall present complete and accurate information and documents listed in the Schedule, subject to the provisions of § 5 and 6.

2. In the course of the proceedings, the undertaking shall be under an obligation to immediately notify the President of the Office of Competition and Consumer Protection, hereinafter referred to as "President of the Office", of any changes in factual or legal circumstances which may have an impact on the assessment of the concentration.

§ 5. 1. The President of the Office may, at the request of the undertaking submitting the notification which is contained in such notification, conclude that the notification satisfies the requirements laid down in § 4 despite the absence of information or documents listed in the Schedule, provided that all of the following conditions are met:

1) the undertaking submitting the notification does not have access to some or all of the information or documents in question;

2) the efforts made by the undertaking to obtain the said information or documents have failed to yield any results;

3) the undertaking proves, on the balance of probabilities, that it exercised due diligence in the course of actions aimed at obtaining the said information or documents.

2. In cases referred to in section 1 above, the undertaking submitting the notification shall be under an obligation to provide estimated data as well as to state the sources and basis for the estimates in question.

3. Where the undertaking obtains the information or documents referred to in section 1 above in the course of the proceedings, it shall immediately provide such information or documents to the President of the Office.

4. The undertaking submitting the notification may not cite the lack of access to information or documents pertaining to the capital group to which it belongs as the reason for the failure to provide such information or documents, with the exception of information pertaining to undertakings forming part of such capital group which operate exclusively abroad.

§ 6. 1. The President of the Office may, at the request of the undertaking submitting the notification which is contained in such notification, conclude that such notification satisfies the requirements laid down in § 4 despite the absence of information or documents listed in the Schedule where the undertaking submitting the notification proves on the balance of probabilities that, from an objective standpoint, such information or documents are not necessary for the decision on the concentration to be adopted.

2. Where the President of the Office concludes that a notification referred to in section 1 above satisfies the requirements laid down in § 4, this does not release the undertaking submitting the notification from the obligation to present – at the request of the President of the Office – any information or documents where such information or documents have, in the course of the pending proceedings, become necessary for the decision on the concentration to be adopted.

§ 7. The undertaking submitting the notification which considers the information contained in the notification to form its business secret shall be under an obligation to specify in its notification which parts of the information in question have the status of business secret as well as to provide a non-confidential version of the notification (i.e. a version which does not include any information which constitutes a business secret) – or, in case of notification of an intended concentration which involves more than one undertaking, to submit the application referred to in article 69.4 of the act along with the notification.

§ 8. For every application for the commencement of antimonopoly proceedings concerning the concentration of undertakings to be conducted before the President of the Office, the undertaking shall pay a fee in the amount of PLN 15 000 per every notification of intended concentration of undertakings.

§ 9. The fee referred to in § 8 above shall be made by the undertaking obliged to submit the notification in cash or by wire transfer to the bank account of the tax office having jurisdiction over the registered seat of the President of the Office. A single fee per every notification shall also be payable in cases where two or more undertakings are under the obligation to submit a notification on the intended concentration.

§ 10. An undertaking submitting the application for the commencement of antimonopoly proceedings concerning the concentration of undertakings shall attach the certificate of payment of the fee referred to in § 8 above to the submitted application.

§ 11. The Regulation of the Council of Ministers of July 17, 2007 on the notification of intended concentration of undertakings (Journal of Laws No. 134, item 937) is hereby repealed.

§ 12. The present Regulation shall enter into force on January 18, 2015.

APPENDIX

Schedule of information and documents

Introduction

- I.** The present Schedule constitutes a list of information and documents which a notification of intended concentration must contain. Every notification of intended concentration must be prepared in accordance with the numbering of chapters and items as listed in the present Schedule. Where an item does not apply to the given undertaking or market, the answer given must be “N/A”. All documents, whether specified in the Schedule or provided at the undertaking’s own initiative, must be submitted in the form of appendices. These documents shall form an integral part of the notification. The notification of intended concentration along with any information or documents which constitute appendices to the notification must also be submitted in electronic form (on a CD-ROM, DVD or other data carrier or by e-mail sent to the address of the competent department of the Office of Competition and Consumer Protection, hereinafter referred to as “the Office”).
- II.** Along with the notification of intended concentration, the undertaking submitting the notification shall provide a concise (500 words max) description of the intended concentration, containing an indication of the form of concentration (merger, takeover of control, formation of a joint venture or acquisition of property), the names of the undertakings directly involved in the concentration and of their capital groups as well as the fields of activity of the undertakings involved in the given concentration. The concise description must also be submitted in electronic form (on a CD-ROM, DVD or other data carrier or by e-mail sent to the address of the competent department of the Office). Immediately after the notification is submitted, this description shall be published on the website of the Office; for the above reason, the description should be written in a manner which ensures that no business secrets are included in the text.
- III.** Where the undertaking involved in the concentration is a natural person referred to in article 4.1.c of the act, the indication of the business name (item 1.1.1 or 1.3.1) shall be replaced by an indication of the first and last name. Other identification data shall be provided whenever they apply to this form of undertaking.
- IV.** Where the undertaking involved in the concentration is a local government unit, the indication of the business name (item 1.1.1 or 1.3.1) shall be replaced by an indication of its name and territorial scope of competence. Other identification data shall be provided whenever they apply to this form of undertaking.

PART I

INFORMATION AND DOCUMENTS SERVING AS IDENTIFICATION OF THE UNDERTAKINGS INVOLVED IN THE CONCENTRATION SCHEME AND PROVIDING A DESCRIPTION OF THE INTENDED CONCENTRATION SCHEME.

Chapter 1

Basic information on undertakings directly involved in the concentration

- 1.1. Information serving as identification of the undertakings submitting the notification
For each undertaking submitting the notification, the following information must be provided:
 - 1.1.1. name (business name), address of the registered office and e-mail address,
 - 1.1.2. identification number (for undertakings having their registered office within the territory of the Republic of Poland – the tax identification number [NIP] or the REGON statistical number),
 - 1.1.3. the subject of business activities actually carried out by the undertaking,
 - 1.1.4. the identity of the persons performing the role of members of the management body (first and last names, positions, correspondence addresses and e-mail addresses, phone numbers and – where applicable – fax numbers),
 - 1.1.5. first and last names of plenipotentiaries where such plenipotentiaries have been appointed (their correspondence addresses and e-mail addresses, phone numbers and – where applicable – fax numbers),
 - 1.1.6. first and last name of the person authorised to maintain contact with the Office (where different than the person specified in item 1.1.5 or, where no plenipotentiaries have been appointed – where different than the person specified in 1.1.4) as well as his or her correspondence address and e-mail address, phone number and – where applicable – fax number.
- 1.2. In case of a joint notification in which a joint plenipotentiary is appointed, the first and last name, correspondence address, e-mail address, phone numbers and – where applicable – fax numbers (or the first and last name, correspondence address, e-mail address, phone numbers and – where applicable – fax number of the person authorised to maintain contact with the Office if this function is performed by a person other than the plenipotentiary) must be listed.
- 1.3. Identifying information of the remaining undertakings directly involved in the concentration. For every other undertaking directly involved in the concentration, the following information must be provided:
 - 1.3.1. name (business name), address of the registered office and e-mail address,

- 1.3.2. identification number (for undertakings having their registered office within the territory of the Republic of Poland – the tax identification number [NIP] or the REGON statistical number),
- 1.3.3. the subject of business activities actually carried out by the undertaking,
- 1.3.4. the identity of the persons performing the role of members of the management body (first and last names, positions, correspondence addresses and e-mail addresses – if different than those listed in item 1.3.1 – as well as phone numbers and – where applicable – fax numbers),
- 1.3.5. the first and last name of the person authorised to maintain contact with the Office (where different than the person specified in item 1.3.4 – his or her correspondence address and e-mail address, phone number and – where applicable – fax number).

Chapter II

Detailed description of the intended concentration

The form of the intended concentration (i.e. merger, takeover of control, establishment of a joint venture or acquisition of property) must be specified and accompanied by a brief description; in particular, the following information must be provided:

- 2.1. In cases where the concentration is to be effected by way of a merger of two or more undertakings referred to in article 13.2.1 of the Act, the form thereof – in the light of the provisions of the Act of September 15, 2000 – the Commercial Companies Code (Journal of Laws for year 2013, item 1030, for year 2014, items 265 and 1161 and for year 2015, item 4) pertaining to the merger of companies or in the light of other applicable provisions – must be specified.
- 2.2. Where the concentration is to be effected by way of takeover of control referred to in article 13.2.2 of the Act, the following information must be listed:
 - 2.2.1. whether the takeover of control is to be effected by one or more undertakings,
 - 2.2.2. whether in the course of the transaction the undertaking takes control over one or more undertakings,
 - 2.2.3. whether the concentration is linked to the acquisition or subscription of publicly traded shares and whether it is effected with the approval of the governing bodies of the company whose shares are to be acquired,
 - 2.2.4. what is the form of the concentration that is intended to ensure the takeover of control.
- 2.3. Where the concentration is to be effected by way of the establishment of a joint venture referred to in article 13.2.3 of the Act, the following information must be listed:
 - 2.3.1. name (business name) and address of the registered office of the undertaking being established,
 - 2.3.2. the scope of intended business activities of the undertaking,
 - 2.3.3. the contemplated time of commencement of business activities by the undertaking,
 - 2.3.4. whether the undertaking to be established shall be a newly formed undertaking or whether it shall pursue its activities on the basis of an existing entity (an undertaking or an organised part thereof).
- 2.4. Where the concentration is to be effected by way of the acquisition by an undertaking of the property of another undertaking (acquisition of enterprise or any part thereof) referred to in article 13.2.4 of the Act, the following information must be listed:
 - 2.4.1. whether the concentration is to encompass the entire enterprise or a part thereof,
 - 2.4.2. the characteristics of the property to be acquired (e.g. manufacturing line, brand, real estate),
 - 2.4.3. the plans concerning the use of the acquired property.
- 2.5. In addition, the following information needs to be provided:
 - 2.5.1. the cause and objectives of the concentration,
 - 2.5.2. the contemplated effect of the concentration for the undertakings participating in that scheme, for the competition and for consumers as well as the description of the impact which the concentration would have on the relevant market, manufacturing costs, product prices and the market scale effect,
 - 2.5.3. information on the positive effects of the concentration offsetting the adverse effects that it may have on competition where the presence of such positive effects may make it possible to adopt the decision referred to in article 20.2 of the Act, including, in particular, a statement that the contemplated concentration would contribute towards economic growth or technical progress, that it would have a positive effect for the national economy or that it would bring about other positive consequences,
 - 2.5.4. the contemplated schedule of the concentration,
 - 2.5.5. the contemplated ownership and control structure following the implementation of the concentration,
 - 2.5.6. types and amounts of public aid linked to the concentration being notified.

Chapter III

The turnover of the undertakings involved in the concentration

3.1. Evidence needs to be provided which shows that the aggregate turnover of the undertakings involved in the concentration during the year preceding the year of the notification exceeds the values specified in Article 13.1 of the Act and that the exemptions specified in article 13.2.4 or in article 14.1-1b do not apply to the contemplated concentration.

3.2. The turnover achieved individually by each of the undertakings involved in the concentration needs to be specified.

3.3. Evidence needs to be provided which shows that the turnover of the undertakings involved in the concentration does not exceed the values specified in article 1 of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Control Regulation) (Official Journal EU L 24 of 29.01.2004, p. 1), subject to the rules for turnover calculation specified therein. If the values referred to above are exceeded, causes due to which the concentration is not subject to notification with the European Commission must be listed.

Chapter IV

Information on ownership and control within a capital group

For each of the undertakings directly involved in the concentration, a list of all undertakings forming part of its capital group within the meaning of article 4.14 of the Act must be provided (with the undertakings generating their turnover within the territory of the Republic of Poland being identified as such); the subject of actual business activities of the undertakings in question shall also be stated (this only applies to undertakings generating their turnover within the territory of the Republic of Poland), as shall be the formal and factual basis for direct or indirect control which the given undertaking exercises over other undertakings or which such other undertakings exercise over the undertaking in question, with the characteristics of the relevant capital groups (the field of business activities and the territorial scope thereof) also being presented. The information referred to above must also be provided with respect to undertakings exercising joint control of a capital group to which an undertaking directly involved in the concentration belongs or remaining under the joint control of any of the undertakings forming part of such capital group.

The information required under the provisions of the present chapter shall be provided in the form of diagrams, graphs or tables accompanied with the necessary descriptions.

Chapter V

Information on the notification of intended concentration

The following information must be provided:

5.1. whether the intended concentration is to be notified to any other national or supranational competition authority,

5.2. names of such authorities and dates of notifications where any notifications have already been made,

5.3. dates and operative parts of the decisions made by such authorities, provided that the authorities in question have already adopted such decisions.

Chapter VI

Documents confirming the information contained in chapters I-V

Undertakings submitting the notification shall be under an obligation to attach the following documents to the present Schedule:

6.1. Final or up-to-date agreements or documents identifying the activities on the basis of which the given concentration is to be effected.

6.2. In case of merger of companies – a merger plan referred to in article 499 and 518 of the Act of September 15, 2000 – the Commercial Companies Code, or, where the transaction is effected on the basis of the provisions of foreign law – documents equivalent to such merger plan.

6.3. In case of a public takeover bid – a prospectus or bid within the meaning of the Act of July 29, 2005 on the trading in financial instruments (Journal of Laws for year 2014, items 94 and 586), or, where the transaction is effected on the basis of the provisions of foreign law – documents equivalent to such prospectus or bid.

6.4. Approved annual financial statements of the undertakings involved in the concentration for the last financial year preceding the year during which the intended concentration is notified (including, in particular, the balance sheet, profit and loss statement, cash flow statement and statement of changes in equity).

6.5. Undertakings having consolidated financial statements at their disposal shall be able to satisfy the obligation referred to above by attaching an approved consolidated statement to their applications.

6.6. In cases where the intended concentration is notified within a timeframe which prevents a financial statement for the last financial year from being provided, the undertaking shall be under an obligation to present reliable estimates of its financial results for the year in question while also indicating the reason for its failure to provide complete documentation in this regard.

Chapter VII

Relevant markets on which the undertakings involved in concentration pursue their business activities

The information required under the provisions of the present chapter does not pertain to:

- in case of concentrations referred to in [article 13.2.2](#) of the Act – to undertakings forming part of a capital group within the meaning of [article 4.14](#) of the Act where the undertaking which is subject to the takeover of control belongs to such capital group, as well as to those undertakings which exercise joint control over, or are under the joint control of, the undertakings referred to above – with the exception of the undertaking which is subject to the takeover of control as well as its subsidiaries or undertakings over which it exercises joint control with other entities; the above exemption shall not apply to concentrations which involve the change of control from exclusive control to joint control exercised together with the undertaking which had previously exercised control over the given entity.
- in case of concentrations referred to in [article 13.2.4](#) of the Act – to undertakings forming part of a capital group within the meaning of [article 4.14](#) of the Act where the undertaking the property of which is being acquired belongs to such capital group, as well as to those undertakings which exercise joint control over, or are under the joint control of, the undertakings referred to above – with the exception of information pertaining to the property being acquired.

7.1. Identification of the relevant product markets on which the undertakings involved in the concentration are present (separately for each of the undertakings involved in the concentration), where the relevant geographic market for such undertakings encompasses the territory of the Republic of Poland or any part thereof, according to the formula listed below:

No.	Product market	Geographic market
1		
2		
3		

7.2. Identification of overlapping markets on which the undertakings involved in the concentration are present (applies only to the overlapping markets for which the relevant geographic market encompasses the territory of the Republic of Poland or any part thereof), according to the formula listed below:

No.	Product market	Geographic market	Estimated market share (expressed in percentages) during the preceding year
1			
2			
3			

A statement of reasons as to why the markets have been designated in such manner must be provided, having regard to the definitions listed in [article 4.9](#) of the Act. When preparing the statement of reasons for the designation of the market, one may rely on the statements of reasons for the decisions of the President of the Office and of the European Commission which were adopted in analogous cases.

The statement of reasons must take into account, in particular, the application and properties of the goods offered by the undertakings involved in the concentration and allocated to the relevant product markets, along with an indication of the substitutes thereof, as well as the range of viable sale of goods (indication of the maximum viable distance and the typical distance over which the goods are usually transported) with respect to the goods offered by the undertakings involved in the concentration and allocated to the relevant product markets.

7.2.1. The competitors of the undertakings involved in the concentration based on the following formula:

No.	Name	Address	Estimated market share (expressed in percentages) during the preceding year
1			

2			
3			

7.3. Identification of the markets on which any vertical links between undertakings involved in the concentration exist (applies only to the markets for which the relevant geographic market encompasses the territory of the Republic of Poland or any part thereof), according to the formula listed below:

No.	Product market	Geographic market	Estimated market share (expressed in percentages) during the preceding year
1			
2			
3			

A statement of reasons as to why the markets have been designated in such manner must be provided, having regard to the definitions listed in article 4.9 of the Act. When preparing the statement of reasons for the designation of the market, one may rely on the statements of reasons for the decisions of the President of the Office and of the European Commission which were adopted in analogous cases.

The statement of reasons must take into account, in particular, the application and properties of the goods offered by the undertakings involved in the concentration and allocated to the relevant product markets, along with an indication of the substitutes thereof, as well as the range of viable sale of goods (indication of the maximum viable distance and the typical distance over which the goods are usually transported) with respect to the goods offered by the undertakings involved in the concentration and allocated to the relevant product markets.

7.3.1. The competitors of the undertakings involved in the concentration based on the following formula:

No.	Name	Address	Estimated market share (expressed in percentages) during the preceding year
1			
2			
3			

7.4. Identification of the markets on which the concentration has a conglomerate effect (applies only to the markets for which the relevant geographic market encompasses the territory of the Republic of Poland or any part thereof), according to the formula listed below:

No.	Product market	Geographic market	Estimated market share (expressed in percentages) during the preceding year
1			
2			
3			

PART II

INFORMATION ON THE RELEVANT HORIZONTALLY OR VERTICALLY AFFECTED MARKETS

Chapter VIII

Basic information on the relevant horizontally or vertically affected markets

The following information must be presented for each of the two preceding years:

- separately for each of the relevant horizontally or vertically affected product markets,
- separately for the Polish market (domestic or local) and for a market broader than the Polish market where the relevant geographic market is other than the Polish market (domestic or local).

8.1. Identification of the relevant horizontally or vertically affected markets.

8.1.1. Data and information must be presented for each of the markets specified above (separately for the Polish market – domestic or local – and for a market broader than the Polish market where the relevant geographic market is other than the Polish market – domestic or local), according to the formula listed below:

Market size		Market value	
Year	Year	Year	Year

The methodology for the estimation of the data in question must be listed, including a designation of the formula used for the purposes of the calculation thereof along with the appropriate description and the source of data on the basis of which the estimates were made; if possible, documents which serve as confirmation of the calculations or estimates in question should also be presented in the form of attachments.

8.1.2. Data and information must be presented separately for each of the undertakings involved in the concentration and for each of the markets specified above (separately for the Polish market – domestic or local – and for a market broader than the Polish market where the relevant geographic market is other than the Polish market – domestic or local), according to the formula listed below:

Sales volume		Market share (expressed in percentages)		Sales value		Market share (expressed in percentages)	
Year	Year	Year	Year	Year	Year	Year	Year

The methodology for the estimation of the data in question must be listed, including a designation of the formula used for the purposes of the calculation thereof along with the appropriate description and the source of data on the basis of which the estimates were made; if possible, documents which serve as confirmation of the calculations or estimates in question should also be presented in the form of attachments.

8.1.3. The output volume (including the goods produced for competitors and retail networks operating under their brands), expressed in quantitative terms (in natural units) for each undertaking involved in the concentration.

8.2. The significance of foreign trade; at this stage, the following information must be provided:

8.2.1. estimated aggregate value (in PLN thousand) and quantity (in natural units) as well as directions of import into Poland (with the term “import” also encompassing intra-community trade),

8.2.2. import volume expressed in terms of value (in PLN thousand) and quantity (in natural units) for the capital groups which undertakings involved in the concentration form a part of, as well as the share of the import in question in the total import into Poland,

8.2.3. an estimation of the degree to which any barriers resulting from the imposition of quotas, tariffs as well as any other trade barriers and transportation costs have an impact on the import volume referred to above,

8.2.4. estimated aggregate value (in PLN thousand) and quantity (in natural units) as well as directions of export from Poland (with the term “export” also encompassing intra-community trade),

8.2.5. export volume expressed in terms of value (in PLN thousand) and quantity (in natural units) for the capital groups which undertakings involved in the concentration form a part of, as well as the share of the export in question in the total export from Poland,

8.2.6. an estimation of the degree to which any barriers resulting from the imposition of quotas, tariffs as well as any other trade barriers and transportation costs have an impact on the export volume referred to above,

8.2.7. the methodology for the estimation of the values in question must be listed, including a designation of the formula used for the purposes of the calculation thereof along with the appropriate description and the source of data on the basis of which the estimates were made; if possible, documents which serve as confirmation of the calculations or estimates in question should also be presented in the form of attachments.

8.3. Primary recipients and suppliers; at this stage, the following information must be provided:

8.3.1. names and addresses of primary recipients (at least three) which are not members of the capital group which the undertaking involved in the concentration forms part of as well as the estimated percentage shares of the purchases made by such recipients in the aggregate value of sales made by the undertakings involved in the concentration,

8.3.2. names and addresses of primary suppliers (at least three) which are not members of the capital group which the undertaking involved in the concentration forms part of as well as the estimated percentage shares of the supplies

provided by such suppliers in the aggregate value of purchases made by the undertakings involved in the concentration,

8.4. Analyses and reports – the following information and documents must be attached:

8.4.1 all analyses, reports, studies and research results – including those in the form of presentations – pertaining to the relevant markets affected by the concentration, acquired (commissioned) by the undertakings involved in the concentration over the last two years before the notification was submitted,

8.4.1.1. before submitting the documents referred to above, the undertaking may provide a list thereof, stating the following information:

8.4.1.1.1. the names of analyses, reports, studies and research results,

8.4.1.1.2. date of preparation thereof,

8.4.1.1.3. name of the entity which prepared the said documents,

8.4.1.1.4. a description of the subject of the analyses, reports, studies and research results – in such case, the entrepreneur shall provide all documents or selected documents at the request of the President of the Office,

8.4.2 all analyses, reports, studies and research results – including those in the form of presentations – pertaining to the relevant markets affected by the concentration, prepared by the internal organisational units of undertakings involved in the concentration over the last two years before the notification was submitted,

8.4.2.1. before submitting the documents referred to above, the undertaking may provide a list thereof, stating the following information:

8.4.2.1.1. the names of analyses, reports, studies and research results,

8.4.2.1.2. date of preparation thereof,

8.4.2.1.3. the name of the internal organisational unit responsible for the preparation thereof,

8.4.2.1.4. a description of the subject of the analyses, reports, studies and research results – in such case, the entrepreneur shall provide all documents or selected documents at the request of the President of the Office,

8.4.3 all analyses, reports, studies and research results – including those in the form of presentations – on the basis of which the competent bodies of the undertakings involved in the concentration (including the Management Board and the Supervisory Board) adopted the decision on the concentration in question,

8.4.4. a list of publicly available sources of information concerning the markets on which the contemplated concentration would have an impact, including, in particular, professional periodicals, statistics and analyses made available to third parties (including those which are made available for a fee) as well as websites containing information which is useful for the purposes of assessment of the intended concentration forming the subject of the relevant notification.

Chapter IX

Detailed characteristics of the relevant horizontally or vertically affected markets

The following information must be presented separately for each of the horizontally or vertically affected markets:

9.1. market characteristics, including:

9.1.1. application and properties of the goods offered by the undertakings involved in the concentration and allocated to the relevant product markets, along with an indication of the substitutes thereof and a relevant statement of reasons,

9.1.2. comparison of the prices of goods offered by the undertakings involved in the concentration with the prices of goods offered by their competitors,

9.1.3. the range of viable sale of goods (indication of the maximum viable distance and the typical distance over which the goods are usually transported) with respect to the goods offered by the undertakings involved in the concentration and allocated to the relevant product markets,

9.1.4. the brands under which the undertakings involved in the concentration offer their goods,

9.2. supply structure, including:

9.2.1. description of distribution channels and service networks present on the markets in question, including, in particular:

9.2.1.1. the distribution systems present on the market, their significance as well as the scope in which distribution activities are performed by independent undertakings or undertakings forming part of the same capital group as the undertakings involved in the concentration,

9.2.1.2. organisational entities controlled by the undertakings involved in the concentration (manufacturing plants, distribution centres, base facilities, sales outlets etc.) used for the purposes of distribution of goods, along with their geographic distribution and description of the role of such entities in the process of distribution,

- 9.2.1.3. the service networks (e.g. conservation and repairs) present on the market, their significance as well as the scope in which services of this kind are performed by independent undertakings or undertakings forming part of the same capital group as the undertakings involved in the concentration,
- 9.2.2. the estimated volume of aggregate manufacturing capacity during each of the two years preceding the year in which the notification is submitted as well as the designation of the shares of the said manufacturing capacity for each of the undertakings involved in the concentration and the indicators of the actual usage of such capacity by each of the said undertakings; in addition, materials or sources on the basis of which the volume of the total manufacturing capacity on these markets has been determined must also be presented or specified,
- 9.2.3. all other factors characterising the supply structure on the markets affected by the concentration which the undertakings submitting the notification consider to be of importance,
- 9.3. demand dynamics and structure, including the following information:
 - 9.3.1. market development phases, e.g. initial phase, development phase, phase of maturity or phase of decline,
 - 9.3.2. the significance and changes in the preferences of recipients with respect to product brands (including the degree of brand loyalty), their diversity as well as the deliveries of the full assortment of products,
 - 9.3.3. degree of concentration or dispersion of recipients,
 - 9.3.4. whether the recipient incurs any costs as a result of switching from the goods supplied by the undertakings involved in the concentration to goods offered by their competitors,
 - 9.3.5. division of recipients into various groups, along with a description of each group; subsequently, the following information must be presented:
 - 9.3.5.1. groups of recipients at which the goods offered by the undertakings involved in the concentration and by their competitors are aimed,
 - 9.3.5.2. distribution channels used by the individual groups of recipients,
 - 9.3.6. significance of exclusive distribution contracts and other types of long-term contracts,
 - 9.3.7. the degree to which the demand is generated by public administration bodies, government agencies, state-owned enterprises and other entities of a similar nature,
 - 9.3.8. all other factors characterising the demand structure which the undertakings submitting the notification consider to be of importance,
- 9.4. entry into the market and exit from the market; the following information must be provided:
 - 9.4.1. whether, according to the knowledge of the undertakings submitting the notification, during the last five years any undertakings made any significant entries into any of the relevant markets affected by the concentration as well as what were the estimated market shares of such undertakings during that period,
 - 9.4.2. whether, according to the knowledge of the undertakings submitting the notification, there are any undertakings (including those currently operating exclusively outside the Republic of Poland) which are planning to enter the market or which may do so in the future. If the answer is positive, the names and addresses of such undertakings must be specified; in addition, insofar as possible, the suspected location where such undertakings may conduct their activities should also be specified,
 - 9.4.3. whether, according to the knowledge of the undertakings submitting the notification, there are any manufacturers that could switch their manufacturing output so that they may offer products competitive towards those offered by undertakings involved in the concentration on the given market within a short timespan and without the need to incur substantial costs in the process. If the answer is positive, the names and addresses of such undertakings must be specified,
 - 9.4.4. other factors present in the given case which influence entry into the markets affected by the concentration, taking into account both the possibility of market entry in geographic and in product terms, including, in particular:
 - 9.4.4.1. the estimated total cost of entry (R&D works, establishment of distribution systems, promotion, advertising, service etc.) measured in comparison with the costs of functioning of a notable competitor, along with the designation of the market share of such competitor; the materials or sources on the basis of which the total cost of market entry and functioning of such notable competitor has been estimated must be presented or specified,
 - 9.4.4.2. any legal barriers to entry into the market such as permits, authorisations or any applicable regulations,
 - 9.4.4.3. any limitations related to patents, know-how and other exclusive rights in the field of intellectual and industrial property on the given markets as well as any restrictions affecting the possibility of obtaining licenses with respect to those rights,
 - 9.4.4.4. the scope in which any of the undertakings involved in the concentration remains a licensor or licensee of any patents, know-how or other exclusive rights on the relevant markets affected by the concentration,
 - 9.4.4.5. the significance of the economies of scale for the manufacture of products on the markets affected by the concentration,
 - 9.4.4.6. access to supplies, including, for example, the availability of raw materials,

9.4.5. all other factors characterising the entry or exit into or from the market or factors characterising the appeal of conducting business activities on the relevant markets affected by the concentration which the undertakings submitting the notification consider to be of importance,

9.5. R&D works, with the following information being specified:

9.5.1. assessment of the significance of R&D works for the capacity of the companies operating on the market affected by the concentration to compete on these markets in the long-term perspective,

9.5.2. the types of R&D works performed by the undertakings involved in the concentration on the relevant markets affected by the said concentration,

9.5.3. the directions and intensity of the R&D works conducted on such markets, including by undertakings involved in the concentration,

9.5.4. the description of technological development on these markets in a suitably long-term perspective (including the development of products or services, manufacturing processes, distribution systems etc.),

9.5.5. significant innovations introduced on these markets and the undertakings introducing such innovations,

9.5.6. the innovation cycle on these markets as well as the phase of the cycle which the undertakings involved in the concentration are currently in,

9.6. cooperation agreements, with the following information being specified:

9.6.1. the degree to which cooperation agreements (whether horizontal or vertical) occur on the markets affected by the concentration,

9.6.2. information on the most significant cooperation agreements concluded by the undertakings involved in the concentration, pertaining to the markets affected by the concentration, such as: R&D agreements, licence agreements, joint manufacturing agreements, specialisation agreements, distribution agreements, long-term supply agreements and information exchange agreements,

9.7. membership of associations of undertakings, indicating the names and addresses of the associations of undertakings operating within the territory of the Republic of Poland in cases where the undertakings directly involved in the concentration remain the members thereof.

.....
(location and date of preparation of the Schedule)

.....
(first and last name and signature of the person representing the managing body or plenipotentiary of the undertaking(s) submitting the notification)

¹⁾ § 8 amended by § 1 of the regulation of December 7, 2016 (Journal of Laws 2016.2013) amending the present regulation from January 1, 2017 onwards.

²⁾ Separately for each of the undertakings involved in the concentration.

³⁾ Together with importers having at least a 10% share in the relevant market.

⁴⁾ Together with importers having at least a 10% share in the relevant market.

⁵⁾ In natural units.

⁶⁾ In PLN thousand.

⁷⁾ In natural units.

⁸⁾ In PLN thousand.