



5 July 2013

Re: Completing the Merger Notification Form – distinction between the 'notifying party' and the 'undertaking involved'.

Dear Sirs,

The Mergers Division of the Competition Authority ("the Authority") is taking this opportunity to remind practitioners involved in the notification of mergers to the Authority about one aspect of the Authority's Merger Notification Form ("the Form") that has given rise to some difficulties. This letter is being circulated for information purposes to practitioners who have recently been involved in merger notifications to the Authority. A copy of it has also been posted on the Authority's website.

As you know, the Form draws a distinction between a "*notifying party*" and an "*undertaking involved*". Page 2 of the Form provides as follows:

*"The **notifying party** is usually the undertaking which is most directly involved with the transaction. For example in an acquisition, the notifying party on the buyer's side is the purchasing company and the notifying party on the target's side is the target company". [Emphasis added.]*

In contrast, while the term "**undertaking involved**" is not defined in the Competition Act 2002, its meaning is broader. The Form refers to the Authority's understanding of this term as set out at Article 2(1) of the Authority's *Notice in respect of certain terms used in Part 3 of the Competition Act 2002* which provides as follows:

"the Competition Authority understands the phrase 'undertakings involved in the merger or acquisition' ... to mean the entire group of undertakings to which an undertaking party to a proposed transaction belongs".

Thus, were a multinational undertaking with ten subsidiaries in ten lines of business to have one of those subsidiaries make an acquisition, the subsidiary would probably be the "notifying party" whereas the multinational would most likely be the "undertaking involved".

The point to which we wish to draw the attention of practitioners is the following comment on page 2 of the Form:

*"Section 1 of the Notification Form seeks information in respect of the **notifying parties** whereas the remainder of the Notification Form refers to the '**undertakings involved**'". [Emphasis added.]*

Thus, the questions raised in Section 3 of the Form as to structure, turnover and goods and services; and in Section 4 about overlapping products and services; and in Section 5 about market shares; and in Section 7.3 about documents, etc., usually concern the "undertakings involved" and not just the "notifying parties". Occasionally, notifying parties provide information concerning only themselves and not the "undertakings involved". This necessitates further follow up inquiries by the Authority which can delay the merger review process.

This letter does not change, replace or supersede any of the official guidance published by the Authority. It is intended merely as a reminder to practitioners designed to make the merger notification and review process more efficient.

If you have any queries in relation to the contents of this letter, please do not hesitate to contact either myself or Cormac Keating, Manager of the Mergers Division.

Yours sincerely,



Stephen Calkins
Member and Director of Mergers Division