

GUIDANCE ON PRE-NOTIFICATION CONTACTS RELATING TO THE CONTROL OF CONCENTRATIONS

1. The purpose of this guidance is to inform parties and their representatives of the practice applied by the GVH within the course of the informal pre-notification contacts relating to the control of concentrations, with the aim of facilitating and to clarifying for stakeholders the proper use of pre-notification contacts.
2. By incorporating the best practices developed by the GVH, the guidance enables transparency and provides the private sphere with the opportunity to become acquainted with the best practices and to understand them in detail.

1. The purpose of pre-notification contacts

3. The pre-notification contacts aim to increase the efficiency and the productivity of the procedures of the control of concentrations and – if possible – to also speed them up. The purpose of the pre-notification contacts is to prepare for the formal steps of the procedures and not to substitute them.
4. Meaningful discussion prior to notification decreases information asymmetry between the parties and the GVH and moreover, facilitates the early identification of possible future problems and enables their efficient management. Therefore, both the GVH and the parties are allowed to focus on the relevant questions of the transaction and by doing so, prepare themselves for the formal steps of the procedure that would make these formal actions more productive and efficient.
5. The pre-notification contacts aim to facilitate cooperation between the GVH and well-informed and well-prepared parties and their representatives. It is not the purpose of the pre-notification contacts to remedy any deficiencies in the preparedness of the parties and their representatives. Consequently the parties themselves need to carry out the preliminary evaluation and risk assessment of the proposed transaction. The GVH may give aspects and make observations during pre-notification contacts; however the substantive evaluation of the given transaction by the GVH is only possible in the course of a subsequent proceeding.

2. Principles of the pre-notification contacts

6. The main feature of the pre-notification contacts is flexibility that enables parties and the GVH to comply with the specified circumstances of each case.
7. Pre-notification contacts do not have a strict procedural outline and moreover, the negotiations – having regard to the requirement of the principle of good faith - do not have a binding effect on the GVH or on the parties.

8. The GVH treats the facts that have been stated and the materials that have been written in relation to the pre-notification contacts as confidential.

9. For the purpose of holding pre-notification contacts, both the parties' and the GVH's agreement is required.

10. At these meetings the GVH expects the parties to act frankly, constructively and in good faith and moreover, their allegations should reflect reality. At the same time, the GVH also seeks to conduct itself in such a manner that the parties can rely on their allegations in good faith during the procedure.

3. The initiation of the pre-notification contacts

11. The pre-notification contacts can be initiated before the application for the approval of the concentration – regarding defined and concrete (proposed with the participation of market operators specified to the GVH) transactions – has been submitted to the GVH. A signed contract or a letter of intent is not a requirement of a prior consultation. The parties to the concentration are allowed to initiate the pre-notification at the head of the Merger Section of the GVH (tel.: +36-1-472-8905, email: fuzios@gvh.hu).

12. According to the experiences of the GVH, in order to carry out successful negotiations, parties need to make written preparatory notes before the meeting that contain a brief summary of the proposed transaction, the relevant markets, market shares, the envisaged effects on competition and any other circumstances that need to be evaluated in the parties' view. The written preparation can be concluded in the following forms: by submitting the draft of the notification form, presentation or other memorandum. The written preparation should be sent to the GVH a reasonable amount of time before the meeting to ensure that the GVH will have enough time to evaluate it and to give room for the preliminary negotiations between the parties and the GVH relating to it.

13. The pre-notification contacts can speed up the merger procedures if parties incorporate the observations and recommendations of the GVH raised at the pre-notification meetings into their formal notification form (as a consequence of this, the amount of time it takes to remedy the deficiencies contained in the formal notification will be shortened and less further information will need to be asked for).

4. The course of the pre-notification contacts

14. The negotiations between the parties and the GVH are informal in their nature; however, certain questions can be evaluated on their merits if the necessary requirements are fulfilled – primarily, if the preparation for the meeting and the preparedness of the parties enables this.

15. The pre-notification contacts are primarily held personally, but they can be organised by holding telephone conversations (e.g. telephone conferences). The venue of the personal meeting is always the building of the GVH. Pre-notification contacts can be held on several occasions.

16. No minutes will be taken at the meeting; however, this does not mean that the parties and the GVH cannot make notes on the facts and observations that have been raised at the meeting.

17. The GVH is generally represented by the relevant case handler and the head of unit of the relevant investigating unit within the GVH. If it is necessary, the case handlers of other organisational entities and also, a member of the Competition Council can be present at the pre-notification meetings. The relevant investigating unit of the GVH can initiate the participation of the member of the Competition Council.

18. Pre-notification contacts can generally be held in the following situations:

a) By evaluating whether the transaction concerned is subject to the competition rules, whether the transaction constitutes a concentration within the meaning of the Competition Act – if professionally well-prepared parties/their legal representatives cannot determine this unanimously according to the existing case law,

b) On the extent of the data/information that is needed in order to assess the transaction, the clarification of the questions stemming from the fulfilment of the notification form (the circumstances that may lead to an application requesting the elimination of the questions that need to be answered)¹,

c) On the competition concerns identified by the parties before initiating a procedure that should be assessed within the course of the procedure and on the planned commitments.

19. The GVH ensures that pre-notification contacts can be held irrespective of the feature, difference and the appreciation of each control of concentration case. In contrast to this, the GVH will not hold these meetings if

a) it does not fulfil its main function, thus it can not be excepted that as a result of the meetings the procedure would be effectively implemented,

b) the pre-notification contacts will jeopardise the effective and productive implementation of the case concerned or other ongoing procedures,

c) parties violate the principle of good faith.

5. Other

20. The GVH aims to continuously develop the practice relating to pre-notification contacts through its case law and to modify or complement the guidance if necessary.