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►**B** **COMMISSION REGULATION (EC) No 802/2004**

of ►C1 21 April 2004 ◄

implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings

(Text with EEA relevance)

(OJ L 133, 30.4.2004, p. 1)

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COMMISSION REGULATION (EC) No 802/2004

of ►C1 21 April 2004 ◄

implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation) ([1]), and in particular Article 23(1) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ([2]), as last amended by Regulation (EC) No 1310/97 ([3]), and in particular Article 23 thereof,

Having consulted the Advisory Committee,

Whereas:

(1) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings has been recast, with substantial amendments to various provisions of that Regulation.

(2) Commission Regulation (EC) No 447/98 ([4])of 1 March 1998 on the notifications, time-limits and hearings provided for in Council Regulation (EEC) No 4064/89 must be modified in order to take account of those amendments. For the sake of clarity it should therefore be repealed and replaced by a new regulation.

(3) The Commission has adopted measures concerning the terms of reference of hearing officers in certain competition proceedings.

(4) Regulation (EC) No 139/2004 is based on the principle of compulsory notification of concentrations before they are put into effect. On the one hand, a notification has important legal consequences which are favourable to the parties to the proposed concentration, while, on the other hand, failure to comply with the obligation to notify renders the parties liable to fines and may also entail civil law disadvantages for them. It is therefore necessary in the interests of legal certainty to define precisely the subject matter and content of the information to be provided in the notification.

(5) It is for the notifying parties to make a full and honest disclosure to the Commission of the facts and circumstances which are relevant for taking a decision on the notified concentration.

(6) Regulation (EC) No 139/2004 also allows the undertakings concerned to request, in a reasoned submission, prior to notification, that a concentration fulfilling the requirements of that Regulation be referred to the Commission by one or more

([1]) OJ L 24, 29.1.2004, p. 1.
([2]) OJ L 395, 30.12.1989, p. 1.
([3]) OJ L 180, 9.7.1997, p. 1.
([4]) OJ L 61, 2.3.1998, p. 1. Regulation as amended by the 2003 Act of Accession.

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Member States, or referred by the Commission to one or more Member States, as the case may be. It is important to provide the Commission and the competent authorities of the Member States concerned with sufficient information, in order to enable them to assess, within a short period of time, whether or not a referral ought to be made. To that end, the reasoned submission requesting the referral should contain certain specific information.

(7) In order to simplify and expedite examination of notifications and of reasoned submissions, it is desirable to prescribe that forms be used.

(8) Since notification sets in motion legal time-limits pursuant to Regulation (EC) No 139/2004, the conditions governing such time-limits and the time when they become effective should also be determined.

(9) Rules must be laid down in the interests of legal certainty for calculating the time-limits provided for in Regulation (EC) No 139/2004. In particular, the beginning and end of time periods and the circumstances suspending the running of such periods must be determined, with due regard to the requirements resulting from the exceptionally tight legal timeframe available for the proceedings.

(10) The provisions relating to the Commission's procedure must be framed in such a way as to safeguard fully the right to be heard and the rights of defence. For these purposes, the Commission should distinguish between the parties who notify the concentration, other parties involved in the proposed concentration, third parties and parties regarding whom the Commission intends to take a decision imposing a fine or periodic penalty payments.

(11) The Commission should give the notifying parties and other parties involved in the proposed concentration, if they so request, an opportunity before notification to discuss the intended concentration informally and in strict confidence. In addition, the Commission should, after notification, maintain close contact with those parties, to the extent necessary to discuss with them any practical or legal problems which it discovers on a first examination of the case, with a view, if possible, to resolving such problems by mutual agreement.

(12) In accordance with the principle of respect for the rights of defence, the notifying parties must be given the opportunity to submit their comments on all the objections which the Commission proposes to take into account in its decisions. The other parties involved in the proposed concentration should also be informed of the Commission's objections and should be granted the opportunity to express their views.

(13) Third parties demonstrating a sufficient interest must also be given the opportunity of expressing their views, if they make a written application to that effect.

(14) The various persons entitled to submit comments should do so in writing, both in their own interests and in the interests of sound administration, without prejudice to their right to request a formal oral hearing, where appropriate, to supplement the written procedure. In urgent cases, however, the Commission must be enabled to proceed immediately to formal oral hearings of the notifying parties, of other parties involved or of third parties.

(15) It is necessary to define the rights of persons who are to be heard, to what extent they should be granted access to the Commission's file and on what conditions they may be represented or assisted.

(16) When granting access to the file, the Commission should ensure the protection of business secrets and other confidential infor-

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mation. The Commission should be able to ask undertakings that have submitted documents or statements to identify confidential information.

(17) In order to enable the Commission to carry out a proper assessment of commitments offered by the notifying parties with a view to rendering the concentration compatible with the common market, and to ensure due consultation with other parties involved, with third parties and with the authorities of the Member States as provided for in Regulation (EC) No 139/2004, in particular Article 18(1), 18(4), Article 19(1), 19 (2), 19(3) and 19(5) thereof, the procedure and time-limits for submitting the commitments referred to in Article 6(2) and Article 8(2) of that Regulation should be laid down.

(18) It is also necessary to define the rules applicable to certain time limits set by the Commission.

(19) The Advisory Committee on Concentrations must deliver its opinion on the basis of a preliminary draft decision. It must therefore be consulted on a case after the inquiry in to that case has been completed. Such consultation does not, however, prevent the Commission from reopening an inquiry if need be.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE

Article 1

Scope

This Regulation shall apply to the control of concentrations conducted pursuant to Regulation (EC) No 139/2004.

CHAPTER II

NOTIFICATIONS AND OTHER SUBMISSIONS

Article 2

Persons entitled to submit notifications

1. Notifications shall be submitted by the persons or undertakings referred to in Article 4(2) of Regulation (EC) No 139/2004.

2. Where notifications are signed by representatives of persons or of undertakings, such representatives shall produce written proof that they are authorised to act.

3. Joint notifications shall be submitted by a joint representative who is authorised to transmit and to receive documents on behalf of all notifying parties.

Article 3

Submission of notifications

1. Notifications shall be submitted in the manner prescribed by Form CO as set out in Annex I. Under the conditions set out in Annex II, notifications may be submitted in Short Form as defined therein. Joint notifications shall be submitted on a single form.

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2. One original and ►M1 37 ◄ copies of the Form CO and the supporting documents shall be submitted to the Commission. The notification shall be delivered to the address referred to in Article 23(1) and in the format specified by the Commission.

3. The supporting documents shall be either originals or copies of the originals; in the latter case the notifying parties shall confirm that they are true and complete.

4. Notifications shall be in one of the official languages of the Community. For the notifying parties, this language shall also be the language of the proceeding, as well as that of any subsequent proceedings relating to the same concentration. Supporting documents shall be submitted in their original language. Where the original language is not one of the official languages of the Community, a translation into the language of the proceeding shall be attached.

5. Where notifications are made pursuant to Article 57 of the Agreement on the European Economic Area, they may also be submitted in one of the official languages of the EFTA States or the working language of the EFTA Surveillance Authority. If the language chosen for the notifications is not an official language of the Community, the notifying parties shall simultaneously supplement all documentation with a translation into an official language of the Community. The language which is chosen for the translation shall determine the language used by the Commission as the language of the proceeding for the notifying parties.

Article 4

Information and documents to be provided

1. Notifications shall contain the information, including documents, requested in the applicable forms set out in the Annexes. The information shall be correct and complete.

2. The Commission may dispense with the obligation to provide any particular information in the notification, including documents, or with any other requirement specified in Annexes I and II where the Commission considers that compliance with those obligations or requirements is not necessary for the examination of the case.

3. The Commission shall without delay acknowledge in writing to the notifying parties or their representatives receipt of the notification and of any reply to a letter sent by the Commission pursuant to Article 5(2) and 5(3).

Article 5

Effective date of notification

1. Subject to paragraphs 2, 3 and 4, notifications shall become effective on the date on which they are received by the Commission.

2. Where the information, including documents, contained in the notification is incomplete in any material respect, the Commission shall inform the notifying parties or their representatives in writing without delay. In such cases, the notification shall become effective on the date on which the complete information is received by the Commission.

3. Material changes in the facts contained in the notification coming to light subsequent to the notification which the notifying parties know or ought to know, or any new information coming to light subsequent to the notification which the parties know or ought to know and which would have had to be notified if known at the time of notification, shall be communicated to the Commission without delay. In such cases, when these material changes or new information could have a

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significant effect on the appraisal of the concentration, the notification may be considered by the Commission as becoming effective on the date on which the relevant information is received by the Commission; the Commission shall inform the notifying parties or their representatives of this in writing and without delay.

4. Incorrect or misleading information shall be considered to be incomplete information.

5. When the Commission publishes the fact of the notification pursuant to Article 4(3) of Regulation (EC) No 139/2004, it shall specify the date upon which the notification has been received. Where, further to the application of paragraphs 2, 3 and 4 of this Article, the effective date of notification is later than the date specified in that publication, the Commission shall issue a further publication in which it shall state the later date.

Article 6

Specific provisions relating to reasoned submissions, supplements and certifications

1. Reasoned submissions within the meaning of Article 4(4) and 4(5) of Regulation (EC) No 139/2004 shall contain the information, including documents, requested in accordance with Annex III to this Regulation.

2. Article 2, Article 3(1), third sentence, 3(2) to (5), Article 4, Article 5(1), 5 (2) first sentence, 5 (3), 5 (4), Article 21 and Article 23 of this Regulation shall apply *mutatis mutandis* to reasoned submissions within the meaning of Article 4(4) and 4(5) of Regulation (EC) No 139/2004.

Article 2, Article 3(1), third sentence, 3(2) to (5), Article 4, Article 5(1) to (4), Article 21 and Article 23 of this Regulation shall apply *mutatis mutandis* to supplements to notifications and certifications within the meaning of Article 10(5) of Regulation (EC) No 139/2004.

CHAPTER III

TIME-LIMITS

Article 7

Beginning of time periods

Time periods shall begin on the working day, as defined in Article 24 of this Regulation, following the event to which the relevant provision of Regulation (EC) No 139/2004 refers.

Article 8

Expiry of time periods

A time period calculated in working days shall expire at the end of its last working day.

A time period set by the Commission in terms of a calendar date shall expire at the end of that day.

Article 9

Suspension of time limit

1. The time limits referred to in Articles 9(4), Article 10(1) and 10(3) of Regulation (EC) No 139/2004 shall be suspended where the

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Commission has to take a decision pursuant to Article 11(3) or Article 13(4) of that Regulation, on any of the following grounds:

(a) information which the Commission has requested pursuant to Article 11(2) of Regulation (EC) No 139/2004 from one of the notifying parties or another involved party, as defined in Article 11 of this Regulation, is not provided or not provided in full within the time limit fixed by the Commission;

(b) information which the Commission has requested pursuant to Article 11(2) of Regulation (EC) No 139/2004 from a third party, as defined in Article 11 of this Regulation, is not provided or not provided in full within the time limit fixed by the Commission owing to circumstances for which one of the notifying parties or another involved party, as defined in Article 11 of this Regulation, is responsible;

(c) one of the notifying parties or another involved party, as defined in Article 11 of this Regulation, has refused to submit to an inspection deemed necessary by the Commission on the basis of Article 13(1) of Regulation (EC) No 139/2004 or to cooperate in the carrying out of such an inspection in accordance with Article 13(2) of that Regulation;

(d) the notifying parties have failed to inform the Commission of material changes in the facts contained in the notification, or of any new information of the kind referred to in Article 5(3) of this Regulation.

2. The time limits referred to in Articles 9(4), Article 10(1) and 10(3) of Regulation (EC) No 139/2004 shall be suspended where the Commission has to take a decision pursuant to Article 11(3) of that Regulation, without proceeding first by way of simple request for information, owing to circumstances for which one of the undertakings involved in the concentration is responsible.

3. The time limits referred to in Articles 9(4), Article 10(1) and (3) of Regulation (EC) No 139/2004 shall be suspended:

(a) in the cases referred to in points (a) and (b) of paragraph 1, for the period between the expiry of the time limit set in the simple request for information, and the receipt of the complete and correct information required by decision;

(b) in the cases referred to in point (c) of paragraph 1, for the period between the unsuccessful attempt to carry out the inspection and the completion of the inspection ordered by decision;

(c) in the cases referred to in point (d) of paragraph 1, for the period between the occurrence of the change in the facts referred to therein and the receipt of the complete and correct information.

(d) in the cases referred to in paragraph 2 for the period between the expiry of the time limit set in the decision and the receipt of the complete and correct information required by decision.

4. The suspension of the time limit shall begin on the working day following the date on which the event causing the suspension occurred. It shall expire with the end of the day on which the reason for suspension is removed. Where such a day is not a working day, the suspension of the time-limit shall expire with the end of the following working day.

Article 10

Compliance with the time-limits

1. The time limits referred to in Article 4(4), fourth subparagraph, Article 9(4), Article 10(1) and (3), and Article 22(3) of Regulation (EC)

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No 139/2004 shall be met where the Commission has taken the relevant decision before the end of the period.

2. The time limits referred to in Article 4(4), second subparagraph, Article 4(5), third subparagraph, Article 9(2), Article 22(1), second subparagraph, and 22(2), second subparagraph, of Regulation (EC) No 139/2004 shall be met by a Member State concerned where that Member State, before the end of the period, informs the Commission in writing or makes or joins the request in writing, as the case may be.

3. The time limit referred to in Article 9(6) of Regulation (EC) No 139/2004 shall be met where the competent authority of a Member State concerned informs the undertakings concerned in the manner set out in that provision before the end of the period.

CHAPTER IV

EXERCISE OF THE RIGHT TO BE HEARD; HEARINGS

Article 11

Parties to be heard

For the purposes of the rights to be heard pursuant to Article 18 of Regulation (EC) No 139/2004, the following parties are distinguished:

(a) notifying parties, that is, persons or undertakings submitting a notification pursuant to Article 4(2) of Regulation (EC) No 139/2004;

(b) other involved parties, that is, parties to the proposed concentration other than the notifying parties, such as the seller and the undertaking which is the target of the concentration;

(c) third persons, that is natural or legal persons, including customers, suppliers and competitors, provided they demonstrate a sufficient interest within the meaning of Article 18(4), second sentence, of Regulation (EC) No 139/2004, which is the case in particular

— for members of the administrative or management bodies of the undertakings concerned or the recognised representatives of their employees;

— for consumer associations, where the proposed concentration concerns products or services used by final consumers.

(d) parties regarding whom the Commission intends to take a decision pursuant to Article 14 or Article 15 of Regulation (EC) No 139/2004.

Article 12

Decisions on the suspension of concentrations

1. Where the Commission intends to take a decision pursuant to Article 7(3) of Regulation (EC) No 139/2004 which adversely affects one or more of the parties, it shall, pursuant to Article 18(1) of that Regulation, inform the notifying parties and other involved parties in writing of its objections and shall set a time limit within which they may make known their views in writing.

2. Where the Commission, pursuant to Article 18(2) of Regulation (EC) No 139/2004, has taken a decision referred to in paragraph 1 of this Article provisionally without having given the notifying parties and other involved parties the opportunity to make known their views, it shall without delay send them the text of the provisional decision and shall set a time limit within which they may make known their views in writing.

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Once the notifying parties and other involved parties have made known their views, the Commission shall take a final decision annulling, amending or confirming the provisional decision. Where they have not made known their views in writing within the time limit set, the Commission's provisional decision shall become final with the expiry of that period.

Article 13

Decisions on the substance of the case

1. Where the Commission intends to take a decision pursuant to Article 6(3) or Article 8(2) to (6) of Regulation (EC) No 139/2004, it shall, before consulting the Advisory Committee on Concentrations, hear the parties pursuant to Article 18(1) and (3) of that Regulation.

Article 12(2) of this Regulation shall apply *mutatis mutandis* where, in application of Article 18(2) of Regulation (EC) No 139/2004, the Commission has taken a decision pursuant to Article 8(5) of that Regulation provisionally.

2. The Commission shall address its objections in writing to the notifying parties.

The Commission shall, when giving notice of objections, set a time limit within which the notifying parties may inform the Commission of their comments in writing.

The Commission shall inform other involved parties in writing of these objections.

The Commission shall also set a time limit within which those other involved parties may inform the Commission of their comments in writing.

The Commission shall not be obliged to take into account comments received after the expiry of a time limit which it has set.

3. The parties to whom the Commission's objections have been addressed or who have been informed of those objections shall, within the time limit set, submit in writing their comments on the objections. In their written comments, they may set out all facts and matters known to them which are relevant to their defence, and shall attach any relevant documents as proof of the facts set out. They may also propose that the Commission hear persons who may corroborate those facts. They shall submit one original and 10 copies of their comments to the Commission to the address of the Commission's Directorate General for Competition. An electronic copy shall also be submitted at the same address and in the format specified by the Commission. The Commission shall forward copies of such written comments without delay to the competent authorities of the Member States.

4. Where the Commission intends to take a decision pursuant to Article 14 or Article 15 of Regulation (EC) No 139/2004, it shall, before consulting the Advisory Committee on Concentrations, hear pursuant to Article 18(1) and (3) of that Regulation the parties regarding whom the Commission intends to take such a decision.

The procedure provided for in paragraph 2, first and second subparagraphs, and paragraph 3 shall apply, *mutatis mutandis*.

Article 14

Oral hearings

1. Where the Commission intends to take a decision pursuant to Article 6(3) or Article 8(2) to (6) of Regulation (EC) No 139/2004, it

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shall afford the notifying parties who have so requested in their written comments the opportunity to develop their arguments in a formal oral hearing. It may also, at other stages in the proceedings, afford the notifying parties the opportunity of expressing their views orally.

2. Where the Commission intends to take a decision pursuant to Article 6(3) or Article 8(2) to (6) of Regulation (EC) No 139/2004, it shall also afford other involved parties who have so requested in their written comments the opportunity to develop their arguments in a formal oral hearing. It may also, at other stages in the proceedings, afford other involved parties the opportunity of expressing their views orally.

3. Where the Commission intends to take a decision pursuant to Article 14 or Article 15 of Regulation (EC) No 139/2004, it shall afford parties on whom it proposes to impose a fine or periodic penalty payment the opportunity to develop their arguments in a formal oral hearing, if so requested in their written comments. It may also, at other stages in the proceedings, afford such parties the opportunity of expressing their views orally.

Article 15

Conduct of formal oral hearings

1. Formal oral hearings shall be conducted by the Hearing Officer in full independence.

2. The Commission shall invite the persons to be heard to attend the formal oral hearing on such date as it shall determine.

3. The Commission shall invite the competent authorities of the Member States to take part in any formal oral hearing.

4. Persons invited to attend shall either appear in person or be represented by legal representatives or by representatives authorised by their constitution as appropriate. Undertakings and associations of undertakings may also be represented by a duly authorised agent appointed from among their permanent staff.

5. Persons heard by the Commission may be assisted by their lawyers or other qualified and duly authorised persons admitted by the Hearing Officer.

6. Formal oral hearings shall not be public. Each person may be heard separately or in the presence of other persons invited to attend, having regard to the legitimate interest of the undertakings in the protection of their business secrets and other confidential information.

7. The Hearing Officer may allow all parties within the meaning of Article 11, the Commission services and the competent authorities of the Member States to ask questions during the formal oral hearing.

The Hearing Officer may hold a preparatory meeting with the parties and the Commission services, so as to facilitate the efficient organisation of the formal oral hearing.

8. The statements made by each person heard shall be recorded. Upon request, the recording of the formal oral hearing shall be made available to the persons who attended that hearing. Regard shall be had to the legitimate interest of the undertakings in the protection of their business secrets and other confidential information.

Article 16

Hearing of third persons

1. If third persons apply in writing to be heard pursuant to Article 18 (4), second sentence, of Regulation (EC) No 139/2004, the Commission

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shall inform them in writing of the nature and subject matter of the procedure and shall set a time limit within which they may make known their views.

2. The third persons referred to in paragraph 1 shall make known their views in writing within the time limit set. The Commission may, where appropriate, afford such third parties who have so requested in their written comments the opportunity to participate in a formal hearing. It may also in other cases afford such third parties the opportunity of expressing their views orally.

3. The Commission may likewise invite any other natural or legal person to express its views, in writing as well as orally, including at a formal oral hearing.

CHAPTER V

ACCESS TO THE FILE AND TREATMENT OF CONFIDENTIAL INFORMATION

Article 17

Access to the file and use of documents

1. If so requested, the Commission shall grant access to the file to the parties to whom it has addressed a statement of objections, for the purpose of enabling them to exercise their rights of defence. Access shall be granted after the notification of the statement of objections.

2. The Commission shall, upon request, also give the other involved parties who have been informed of the objections access to the file in so far as this is necessary for the purposes of preparing their comments.

3. The right of access to the file shall not extend to confidential information, or to internal documents of the Commission or of the competent authorities of the Member States. The right of access to the file shall equally not extend to correspondence between the Commission and the competent authorities of the Member States or between the latter.

4. Documents obtained through access to the file pursuant to this Article may only be used for the purposes of the relevant proceeding pursuant to Regulation (EC) No 139/2004.

Article 18

Confidential information

1. Information, including documents, shall not be communicated or made accessible by the Commission in so far as it contains business secrets or other confidential information the disclosure of which is not considered necessary by the Commission for the purpose of the procedure.

2. Any person which makes known its views or comments pursuant to Articles 12, Article 13 and Article 16 of this Regulation, or supplies information pursuant to Article 11 of Regulation (EC) No 139/2004, or subsequently submits further information to the Commission in the course of the same procedure, shall clearly identify any material which it considers to be confidential, giving reasons, and provide a separate non-confidential version by the date set by the Commission.

3. Without prejudice to paragraph 2, the Commission may require persons referred to in Article 3 of Regulation (EC) No 139/2004, undertakings and associations of undertakings in all cases where they produce or have produced documents or statements pursuant to Regulation (EC) No 139/2004 to identify the documents or parts of documents which

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they consider to contain business secrets or other confidential information belonging to them and to identify the undertakings with regard to which such documents are to be considered confidential.

The Commission may also require persons referred to in Article 3 of Regulation (EC) No 139/2004, undertakings or associations of undertakings to identify any part of a statement of objections, case summary or a decision adopted by the Commission which in their view contains business secrets.

Where business secrets or other confidential information are identified, the persons, undertakings and associations of undertakings shall give reasons and provide a separate non-confidential version by the date set by the Commission.

CHAPTER VI

COMMITMENTS OFFERED BY THE UNDERTAKINGS CONCERNED

Article 19

Time limits for submission of commitments

1. Commitments offered by the undertakings concerned pursuant to Article 6(2) of Regulation (EC) No 139/2004 shall be submitted to the Commission within not more than 20 working days from the date of receipt of the notification.

2. Commitments offered by the undertakings concerned pursuant to Article 8(2) of Regulation (EC) No 139/2004 shall be submitted to the Commission within not more than 65 working days from the date on which proceedings were initiated.

Where pursuant to Article 10(3), second subparagraph, of Regulation (EC) No 139/2004 the period for the adoption of a decision pursuant to Article 8(1), (2) and (3) is extended, the period of 65 working days for the submission of commitments shall automatically be extended by the same number of working days.

In exceptional circumstances, the Commission may accept commitments offered after the expiry of the time limit for their submission within the meaning of this paragraph provided that the procedure provided for in Article 19(5) of Regulation (EC) No 139/2004 is complied with.

3. Articles 7, 8 and 9 shall apply *mutatis mutandis*.

Article 20

Procedure for the submission of commitments

1. One original and 10 copies of commitments offered by the undertakings concerned pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004 shall be submitted to the Commission at the address of the Commission's Directorate General for Competition. An electronic copy shall also be submitted at the same address and in the format specified by the Commission. The Commission shall forward copies of such commitments without delay to the competent authorities of the Member States.

2. When offering commitments pursuant to Articles 6(2) or Article 8 (2) of Regulation (EC) No 139/2004, the undertakings concerned shall at the same time clearly identify any information which they consider to be confidential, giving reasons, and shall provide a separate non-confidential version.

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CHAPTER VII

MISCELLANEOUS PROVISIONS

Article 21

Transmission of documents

1. Transmission of documents and invitations from the Commission to the addressees may be effected in any of the following ways:

(a) delivery by hand against receipt;

(b) registered letter with acknowledgement of receipt;

(c) fax with a request for acknowledgement of receipt;

(d) telex;

(e) electronic mail with a request for acknowledgement of receipt.

2. Unless otherwise provided in this Regulation, paragraph 1 also applies to the transmission of documents from the notifying parties, from other involved parties or from third parties to the Commission.

3. Where a document is sent by telex, by fax or by electronic mail, it shall be presumed that it has been received by the addressee on the day on which it was sent.

Article 22

Setting of time limits

In setting the time limits provided for pursuant to Article 12(1) and (2), Article 13(2) and Article 16(1), the Commission shall have regard to the time required for the preparation of statements and to the urgency of the case. It shall also take account of working days as well as public holidays in the country of receipt of the Commission's communication.

Time limits shall be set in terms of a precise calendar date.

Article 23

Receipt of documents by the Commission

1. In accordance with the provisions of Article 5(1) of this Regulation, notifications shall be delivered to the Commission at the address of the Commission's Directorate General for Competition as published by the Commission in the *Official Journal of the European Union*.

2. Additional information requested to complete notifications must reach the Commission at the address referred to in paragraph 1.

3. Written comments on Commission communications pursuant to Article 12(1) and (2), Article 13(2) and Article 16(1) of this Regulation must have reached the Commission at the address referred to in paragraph 1 before the expiry of the time limit set in each case.

Article 24

Definition of working days

The expression working days in Regulation (EC) No 139/2004 and in this Regulation means all days other than Saturdays, Sundays, and Commission holidays as published in the *Official Journal of the European Union* before the beginning of each year.

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Article 25

Repeal and transitional provision

1. Without prejudice to paragraphs 2 and 3, Regulation (EC) No 447/98 is repealed with effect from 1 May 2004.

References to the repealed Regulation shall be construed as references to this Regulation.

2. Regulation (EC) No 447/98 shall continue to apply to any concentration falling within the scope of Regulation (EEC) No 4064/89.

3. For the purposes of paragraph 2, Sections 1 to 12 of the Annex to Regulation (EC) No 447/98 shall be replaced by Sections 1 to 11 of Annex I to this Regulation. In such cases references in those sections to the 'EC Merger Regulation' and to the 'Implementing Regulation' shall be read as referring to the corresponding provisions of Regulation (EEC) No 4064/89 and Regulation (EC) N° 447/98, respectively.

Article 26

Entry into force

This Regulation shall enter into force on 1 May 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX I

FORM CO RELATING TO THE NOTIFICATION OF A CONCENTRATION PURSUANT TO REGULATION (EC) No 139/2004

1. INTRODUCTION

1.1. The purpose of this Form

This Form specifies the information that must be provided by notifying parties when submitting a notification to the European Commission of a proposed merger, acquisition or other concentration. The merger control system of the European Union is laid down in Council Regulation (EC) No 139/2004 (hereinafter referred to as 'the EC Merger Regulation'), and in Commission Regulation (EC) No xx/2004 (hereinafter referred to as 'the Implementing Regulation'), to which this Form CO is annexed. ([1]) The text of these regulations, as well as other relevant documents, can be found on the Competition page of the Commission's Europa web site.

In order to limit the time and expense involved in complying with various merger control procedures in several individual countries, the European Union has put in place a system of merger control by which concentrations having a Community dimension (normally, where the parties to the concentration fulfil certain turnover thresholds) ([2]) are assessed by the European Commission in a single procedure (the 'one stop shop' principle). Mergers which do not meet the turnover thresholds may fall within the competence of the Member States' authorities in charge of merger control.

The EC Merger Regulation requires the Commission to reach a decision within a legal deadline. In an initial phase the Commission normally has 25 working days to decide whether to clear the concentration or to 'initiate proceedings', i.e., to undertake an in-depth investigation ([3]). If the Commission decides to initiate proceedings, it normally has to take a final decision on the operation within no more than 90 working days of the date when proceedings are initiated ([4]).

In view of these deadlines, and for the 'one stop shop' principle to work, it is essential that the Commission is provided, in a timely fashion, with the information required to carry out the necessary investigation and to assess the impact of the concentration on the markets concerned. This requires that a certain amount of information be provided at the time of notification.

It is recognised that the information requested in this Form is substantial. However, experience has shown that, depending on the specific characteristics of the case, not all information is always necessary for an adequate examination of the proposed concentration. Accordingly, if you consider that any particular information requested by this Form may not be necessary for the Commission's examination of the case, you are encouraged to ask the Commission to dispense with the obligation to provide certain information ('waiver'). See Section 1.3(g) for more details.

Pre-notification contacts are extremely valuable to both the notifying parties and the Commission in determining the precise amount of information required in a notification and, in the majority of cases, will result in a significant reduction of the information required. Notifying parties

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004, OJ L 24, 29.01.2004, p. 1. Your attention is drawn to the corresponding provisions of the Agreement on the European Economic Area (hereinafter referred to as 'the EEA Agreement'). See in particular Article 57 of the EEA Agreement, point 1 of Annex XIV to the EEA Agreement and Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice, as well as Protocols 21 and 24 to the EEA Agreement and Article 1 and the Agreed Minutes of the Protocol adjusting the EEA Agreement. Any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the EEA Agreement. As of 1 May 2004, these States are Iceland, Liechtenstein and Norway.

([2]) The term 'concentration' is defined in Article 3 of the EC Merger Regulation and the term 'Community dimension' in Article 1 thereof. Furthermore, Article 4(5) provides that in certain circumstances where the Community turnover thresholds are not met, notifying parties may request that the Commission treat their proposed concentration as having a Community dimension.

([3]) See Article 10(1) of the EC Merger Regulation.

([4]) See Article 10(3) of the EC Merger Regulation.

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may refer to the Commission's Best Practices on the Conduct of EC Merger Control Proceedings, which provides guidance on pre-notification contacts and the preparation of notifications.

In addition, it should be noted that certain concentrations, which are unlikely to pose any competition concerns, can be notified using a Short Form, which is attached to the Implementing Regulation, as Annex II.

1.2. **Who must notify**

In the case of a merger within the meaning of Article 3(1)(a) of the EC Merger Regulation or the acquisition of joint control of an undertaking within the meaning of Article 3(1)(b) of the EC Merger Regulation, the notification shall be completed jointly by the parties to the merger or by those acquiring joint control, as the case may be ([1]).

In case of the acquisition of a controlling interest in one undertaking 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.

1.3. **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 you should note that:

(a) In accordance with Article 10(1) of the EC Merger Regulation and Article 5(2) and (4) of the Implementing Regulation, the time-limits of the EC Merger Regulation linked to the notification will not begin to run until all the information that has to be supplied with the notification has been received by the Commission. This requirement is to ensure that the Commission is able to assess the notified concentration within the strict time-limits provided by the EC Merger Regulation.

(b) The notifying parties should verify, in the course of preparing their notification, that contact names and numbers, and in particular fax numbers and e-mail addresses, provided to the Commission are accurate, relevant and up-to-date.

(c) Incorrect or misleading information in the notification will be considered to be incomplete information (Article 5(4) of the Implementing Regulation).

(d) If a notification is incomplete, the Commission will inform the notifying parties or their representatives in writing and without delay. The notification will only become effective on the date on which the complete and accurate information is received by the Commission (Article 10(1) of the EC Merger Regulation, Articles 5 (2) and (4) of the Implementing Regulation).

(e) Under Article 14(1)(a) of the EC Merger Regulation, notifying parties who, either intentionally or negligently, supply incorrect or misleading information, may be liable to fines of up to 1 % of the aggregate turnover of the undertaking concerned. In addition, pursuant to Article 6(3)(a) and Article 8(6)(a) of the EC Merger Regulation the Commission may revoke its decision on the compatibility of a notified concentration where it is based on incorrect information for which one of the undertakings is responsible.

(f) You may request in writing that the Commission accept that the notification is complete notwithstanding the failure to provide information required by this Form, if such information is not reasonably available to you in part or in whole (for example, because of the

([1]) See Article 4(2) of the EC Merger Regulation.

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unavailability of information on a target company during a contested bid).

The Commission will consider such a request, provided that you give reasons for the unavailability of that information, and provide your best estimates for missing data together with the sources for the estimates. Where possible, indications as to where any of the requested information that is unavailable to you could be obtained by the Commission should also be provided.

(g) You may request in writing that the Commission accept that the notification is complete notwithstanding the failure to provide information required by this Form, if you consider that any particular information required, in the full or short form version, may not be necessary for the Commission's examination of the case.

The Commission will consider such a request, provided that you give adequate reasons why that information is not relevant and necessary to its inquiry into the notified operation. You should explain this during your pre-notification contacts with the Commission and, submit a written request for a waiver, asking the Commission to dispense with the obligation to provide that information, pursuant to Article 4 (2) of the Implementing Regulation.

1.4. **How to notify**

The notification must be completed in one of the official languages of the European Community. This language will thereafter be the language of the proceedings for all notifying parties. Where notifications are made in accordance with Article 12 of Protocol 24 to the EEA Agreement in an official language of an EFTA State which is not an official language of the Community, the notification must simultaneously be supplemented with a translation into an official language of the Community.

The information requested by this Form is to be set out using the sections and paragraph numbers of the Form, signing a declaration as provided in Section 11, and annexing supporting documentation. In completing Sections 7 to 9 of this Form, the notifying parties are invited to consider whether, for purposes of clarity, these sections are best presented in numerical order, or whether they can be grouped together for each individual affected market (or group of affected markets).

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

Contact details must be provided in a format provided by the Commission's Directorate-General for Competition (DG Competition). For a proper investigatory process, it is essential that the contact details are accurate. Multiple instances of incorrect contact details may be a ground for declaring a notification incomplete.

Supporting documents are to be submitted in their original language; where this is not an official language of the Community, they must be translated into the language of the proceeding (Article 3(4) of the Implementing Regulation).

Supporting documents may be originals or copies of the originals. In the latter case, the notifying party must confirm that they are true and complete.

One original and ►M1 37 ◄ copies of the Form CO and the supporting documents shall be submitted to the Commission's Directorate-General for Competition.

The notification shall be delivered to the address referred to in Article 23 (1) of the Implementing Regulation and in the format specified by the Commission from time to time. This address is published in the *Official Journal of the European Union*. The notification must be deliveredto the Commission on working days as defined by Article 24 of the Implementing Regulation. In order to enable it to be registered on the same day, it must be delivered before 17.00 hrs on Mondays to Thursdays and

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before 16.00 hrs on Fridays and workdays preceding public holidays and other holidays as determined by the Commission and published in the *Official Journal of the European Union*. The security instructions given on DG Competition's website must be adhered to.

1.5. **Confidentiality**

Article 287 of the Treaty and Article 17(2) of the EC Merger Regulation as well as the corresponding provisions of the EEA Agreement ([1]) require the Commission, the Member States, the EFTA Surveillance Authority and the EFTA States, their officials and other servants not to disclose information they have acquired through the application of the Regulation of the kind covered by the obligation of professional secrecy. The same principle must also apply to protect confidentiality between notifying parties.

If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked 'Business Secrets'. You should also give reasons why this information should not be divulged or published.

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. All such annexes must be included in the submission in order for a notification to be considered complete.

1.6. **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 a 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.

Affected markets: Section 6 of this Form requires the notifying parties to define the relevant product markets, and further to identify which of those relevant markets are likely to be affected by the notified operation. This definition of affected market is used as the basis for requiring information for a number of other questions contained in this Form. The definitions thus submitted by the notifying parties are referred to in this Form as the affected market(s). This term can refer to a relevant market made up either of products or of services.

Year: all references to the word year in this Form should be read as meaning calendar year, unless otherwise stated. All information requested in this Form must, unless otherwise specified, relate to the year preceding that of the notification.

The financial data requested in Sections 3.3 to 3.5 must be provided in euros at the average exchange rates prevailing for the years or other periods in question.

All references contained in this Form are to the relevant articles and paragraphs of the EC Merger Regulation, unless otherwise stated.

([1]) See, in particular, Article 122 of the EEA Agreement, Article 9 of Protocol 24 to the EEA Agreement and Article 17(2) of Chapter XIII of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (ESA Agreement).

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1.7. **Provision of information to Employees and their representatives**

The Commission would like to draw attention to the obligations to which the parties to a concentration may be subject under Community and/or national rules on information and consultation regarding transactions of a concentrative nature vis-à-vis employees and/or their representatives.

SECTION 1

Description of the concentration

1.1. Provide an executive 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 notifying parties, the markets on which the concentration will have an impact (including the main affected markets ([1])), and the strategic and economic rationale for the concentration.

1.2. Provide a summary (up to 500 words) of the information provided under Section 1.1. It is intended that this summary will be published on the Commission's website at the date of notification. The summary must be drafted so that it contains no confidential information or business secrets.

SECTION 2

Information about the parties

2.1. Information on notifying party (or parties)

Give details of:

2.1.1. name and address of undertaking;

2.1.2. nature of the undertaking's business;

2.1.3. name, address, telephone number, fax number and e-mail address of, and position held by, the appropriate contact person; and

2.1.4. an address for service of the notifying party (or each of the notifying parties) to which documents and, in particular, Commission decisions may be delivered. The name, telephone number and e-mail address of a person at this address who is authorised to accept service must be provided.

2.2. Information on other parties ([2]) to the concentration

For each party to the concentration (except the notifying party or parties) give details of:

2.2.1. name and address of undertaking;

2.2.2. nature of undertaking's business;

2.2.3. name, address, telephone number, fax number and e-mail address of, and position held by, the appropriate contact person; and

2.2.4. an address for service of the party (or each of the parties) to which documents and, in particular, Commission Decisions may be delivered. The name, e-mail address and telephone number of a person at this address who is authorised to accept service must be provided.

2.3. Appointment of representatives

Where notifications are signed by representatives of undertakings, such representatives must produce written proof that they are authorised to act.

([1]) See Section 6.III for the definition of affected markets.

([2]) This includes the target company in the case of a contested bid, in which case the details should be completed as far as is possible.

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The written proof must contain the name and position of the persons granting such authority.

Provide the following contact details of any representatives who have been authorised to act for any of the parties to the concentration, indicating whom they represent:

2.3.1. name of representative;

2.3.2. address of representative;

2.3.3. name, address, telephone number, fax number and e-mail address of person to be contacted; and

2.3.4. an address of the representative (in Brussels if available) to which correspondence may be sent and documents delivered.

SECTION 3

Details of the concentration

3.1. Describe the nature of the concentration being notified. In doing so, state:

(a) whether the proposed concentration is a full legal merger, an acquisition of sole or joint control, a full-function joint venture within the meaning of Article 3(4) of the EC Merger Regulation or a contract or other means of conferring direct or indirect control within the meaning of Article 3(2) of the EC Merger Regulation;

(b) whether the whole or parts of parties are subject to the concentration;

(c) a brief explanation of the economic and financial structure of the concentration;

(d) whether any public offer for the securities of one party by another party has the support of the former's supervisory boards of management or other bodies legally representing that party;

(e) the proposed or expected date of any major events designed to bring about the completion of the concentration;

(f) the proposed structure of ownership and control after the completion of the concentration;

(g) any financial or other support received from whatever source (including public authorities) by any of the parties and the nature and amount of this support; and

(h) the economic sectors involved in the concentration.

3.2. State the value of the transaction (the purchase price or the value of all the assets involved, as the case may be).

3.3. For each of the undertakings concerned by the concentration [1] provide the following data [2] for the last financial year:

3.3.1. world-wide turnover;

3.3.2. Community-wide turnover;

3.3.3. EFTA-wide turnover;

3.3.4. turnover in each Member State;

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[1] See Commission Notice on the concept of undertakings concerned.

[2] See, generally, the Commission Notice on calculation of turnover. Turnover of the acquiring party or parties to the concentration should include the aggregated turnover of all undertakings within the meaning of Article 5(4) of the EC Merger Regulation. Turnover of the acquired party or parties should include the turnover relating to the parts subject to the transaction within the meaning of Article 5(2) of the EC Merger Regulation. Special provisions are contained in Articles 5(3), (4) and 5(5) of the EC Merger Regulation for credit, insurance, other financial institutions and joint undertakings.

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3.3.5. turnover in each EFTA State;

3.3.6. the Member State, if any, in which more than two-thirds of Community-wide turnover is achieved; and

3.3.7. the EFTA State, if any, in which more than two-thirds of EFTA-wide turnover is achieved.

3.4. For the purposes of Article 1(3) of the EC Merger Regulation, if the operation does not meet the thresholds set out in Article 1(2), provide the following data for the last financial year:

3.4.1. the Member States, if any, in which the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million; and

3.4.2. the Member States, if any, in which the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million.

3.5. For the purposes of determining whether the concentration qualifies as an EFTA cooperation case ([1]), provide the following information with respect to the last financial year:

3.5.1. does the combined turnover of the undertakings concerned in the territory of the EFTA States equal 25 % or more of their total turnover in the EEA territory?

3.5.2. does each of at least two undertakings concerned have a turnover exceeding EUR 250 million in the territory of the EFTA States?

3.6. Describe the economic rationale of the concentration.

SECTION 4

Ownership and control ([2])

4.1. For each of the parties to the concentration provide a list of all undertakings belonging to the same group.

This list must include:

4.1.1. all undertakings or persons controlling these parties, directly or indirectly;

4.1.2. all undertakings active on any affected market ([3]) that are controlled, directly or indirectly:

(a) by these parties;

(b) by any other undertaking identified in 4.1.1.

([1]) See Article 57 of the EEA Agreement and, in particular, Article 2(1) of Protocol 24 to the EEA Agreement. A case qualifies as a cooperation case if the combined turnover of the undertakings concerned in the territory of the EFTA States equals 25 % or more of their total turnover within the territory covered by the EEA Agreement; or each of at least two undertakings concerned has a turnover exceeding EUR 250 million in the territory of the EFTA States; or the concentration is liable to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the territories of the EFTA States or a substantial part thereof.

([2]) See Articles 3(3), 3(4) and 3(5) and Article 5(4) of the EC Merger Regulation.

([3]) See Section 6 for the definition of affected markets.

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For each entry listed above, the nature and means of control should be specified.

The information sought in this section may be illustrated by the use of organization charts or diagrams to show the structure of ownership and control of the undertakings.

4.2. With respect to the parties to the concentration and each undertaking or person identified in response to Section 4.1, provide:

4.2.1. a list of all other undertakings which are active in affected markets (affected markets are defined in Section 6) in which the undertakings, or persons, of the group hold individually or collectively 10 % or more of the voting rights, issued share capital or other securities;

in each case, identify the holder and state the percentage held;

4.2.2. a list for each undertaking of the members of their boards of management who are also members of the boards of management or of the supervisory boards of any other undertaking which is active in affected markets; and (where applicable) for each undertaking a list of the members of their supervisory boards who are also members of the boards of management of any other undertaking which is active in affected markets;

in each case, identify the name of the other undertaking and the positions held;

4.2.3. details of acquisitions made during the last three years by the groups identified above (Section 4.1) of undertakings active in affected markets as defined in Section 6.

Information provided here may be illustrated by the use of organization charts or diagrams to give a better understanding.

SECTION 5

Supporting documentation

Notifying parties must provide the following:

5.1. 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;

5.2. in a public bid, a copy of the offer document; if it is unavailable at the time of notification, it should be submitted as soon as possible and not later than when it is posted to shareholders;

5.3. copies of the most recent annual reports and accounts of all the parties to the concentration; and

5.4. copies of all analyses, reports, studies, surveys, and any comparable documents prepared by or for any member(s) of the board of directors, or the supervisory board, or the other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting, for the purpose of assessing or analysing the concentration with respect to market shares, competitive conditions, competitors (actual and potential), the rationale of the concentration, potential for sales growth or expansion into other product or geographic markets, and/or general market conditions. ([1])

For each of these documents, indicate (if not contained in the document itself) the date of preparation, the name and title of each individual who prepared each such document.

([1]) As set out in introductory Parts 1.1 and 1.3(g), in the context of pre-notification, you may want to discuss with the Commission to what extent dispensation (waivers) to provide the requested documents would be appropriate. Where waivers are sought, the Commission may specify the documents to be provided in a particular case in a request for information under Article 11 of the EC Merger Regulation.

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SECTION 6

Market definitions

The relevant product and geographic markets determine the scope within which the market power of the new entity resulting from the concentration must be assessed. ([1])

The notifying party or parties must provide the data requested having regard to the following definitions:

I. **Relevant product markets:**

A 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. A relevant product market may in some cases be composed of a number of individual products and/or services which present largely identical physical or technical characteristics and are interchangeable.

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, conditions of competition, prices, cross-price elasticity of demand or other factors relevant for the definition of the product markets (for example, supply-side substitutability in appropriate cases).

II. **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 neighbouring 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 neighbouring geographic areas or substantial price differences.

III. **Affected markets:**

For purposes of information required in this Form, affected markets consist of relevant product markets where, in the EEA territory, in the Community, in the territory of the EFTA States, in any Member State or in any EFTA State:

(a) two or more of the parties to the concentration are engaged in business activities in the same product market and where the concentration will lead to a combined market share of 15 % or more. These are 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 either level is 25 % or more, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration ([2]). These are vertical relationships.

([1]) See Commission Notice on the definition of the relevant market for the purposes of Community competition law.

([2]) For example, if a party to the concentration holds a market share larger than 25 % in a market that is upstream to a market in which the other party is active, then both the upstream and the downstream markets are affected markets. Similarly, if a vertically integrated company merges with another party which is active at the downstream level, and the merger leads to a combined market share downstream of 25 % or more, then both the upstream and the downstream markets are affected markets.

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On the basis of the above definitions and market share thresholds, provide the following information: (1)

— Identify each affected market within the meaning of Section III, at:

— the EEA, Community or EFTA level;

— the individual Member States or EFTA States level.

6.2. In addition, state and explain the parties' view regarding the scope of the relevant geographic market within the meaning of Section II that applies in relation to each affected market identified above.

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

6.3. On the basis of the above definitions, describe the product and geographic scope of markets other than affected markets identified in Section 6.1 in which the notified operation may have a significant impact, for example, where:

(a) any of the parties to the concentration has a market share larger than 25 % and any other party to the concentration is a potential competitor into that market. A party may be considered a potential competitor, in particular, where it has plans to enter a market, or has developed or pursued such plans in the past two years;

(b) any of the parties to the concentration has a market share larger than 25 % and any other party to the concentration holds important intellectual property rights for that market;

(c) any of the parties to the concentration is present in a product market, which is a neighbouring market closely related to a product market in which any other party to the concentration is engaged, and the individual or combined market shares of the parties in any one of these markets is 25 % or more. Product markets are closely related neighbouring markets when the products are complementary to each other (2) or when they belong to a range of products that is generally purchased by the same set of customers for the same end use (3);

where such markets include the whole or a part of the EEA.

In order to enable the Commission to consider, from the outset, the competitive impact of the proposed concentration in the markets identified under this Section 6.3, notifying parties are invited to submit the information under Sections 7 and 8 of this Form in relation to those markets.

SECTION 7

Information on affected markets

For each affected relevant product market, for each of the last three financial years (4):

(a) for the EEA territory;

(b) for the Community as a whole;

(c) for the territory of the EFTA States as a whole;

(d) individually for each Member State and EFTA State where the parties to the concentration do business; and

(1) As set out in introductory Parts 1.1 and 1.3(g), in the context of pre-notification, you may want to discuss with the Commission to what extent dispensation (waivers) to provide the requested information would be appropriate for certain affected markets, or for certain other markets (as described under IV).

(2) Products (or services) are called complementary when, for example, the use (or consumption) of one product essentially implies the use (or consumption) of the other product, such as for staple machines and staples, and printers and printer cartridges.

(3) Examples of products belonging to such a range would be whisky and gin sold to bars and restaurants, and different materials for packaging a certain category of goods sold to producers of such goods.

(4) Without prejudice to Article 4(2) of the Implementing Regulation.

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(e) where in the opinion of the notifying parties, the relevant geographic market is different;

provide the following:

7.1. an estimate of the total size of the market in terms of sales value (in euros) and volume (units) ([1]). Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;

7.2. the sales in value and volume, as well as an estimate of the market shares, of each of the parties to the concentration;

7.3. an estimate of the market share in value (and where appropriate, volume) of all competitors (including importers) having at least 5 % of the geographic market under consideration. On this basis, provide an estimate of the HHI index ([2]) pre- and post-merger, and the difference between the two (the delta) ([3]).Indicate the proportion of market shares used as a basis to calculate the HHI. Identify the sources used to calculate these market shares and provide documents where available to confirm the calculation;

7.4. the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for the competitors identified under 7.3;

7.5. an estimate of the total value and volume and source of imports from outside the EEA territory and identify:

(a) the proportion of such imports that are derived from the groups to which the parties to the concentration belong;

(b) an estimate of the extent to which any quotas, tariffs or non-tariff barriers to trade, affect these imports; and

(c) an estimate of the extent to which transportation and other costs affect these imports;

7.6. the extent to which trade among States within the EEA territory is affected by:

(a) transportation and other costs; and

(b) other non-tariff barriers to trade;

7.7. the manner in which the parties to the concentration produce, price and sell the products and/or services; for example, whether they manufacture and price locally, or sell through local distribution facilities;

7.8. a comparison of price levels in each Member State and EFTA State by each party to the concentration and a similar comparison of price levels between the Community, the EFTA States and other areas where these products are produced (e.g. Russia, the United States of America, Japan, China, or other relevant areas); and

7.9. the nature and extent of vertical integration of each of the parties to the concentration compared with their largest competitors.

([1]) The value and volume of a market should reflect output less exports plus imports for the geographic areas under consideration. If readily available, please provide disaggregated information on imports and exports by country of origin and destination, respectively.

([2]) 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. For example, a market containing five firms with market shares of 40 %, 20 %, 15 %, 15 %, and 10 %, respectively, has an HHI of 2 550 ($40^2 + 20^2 + 15^2 + 15^2 + 10^2 = 2\,550$). The HHI ranges from close to zero (in an atomistic market) to 10 000 (in the case of a pure monopoly). The post-merger HHI is calculated on the working assumption that the individual market shares of the companies do not change. Although it is best to include all firms in the calculation, lack of information about very small firms may not be important because such firms do not affect the HHI significantly.

([3]) The increase in concentration as measured by the HHI can be calculated independently of the overall market concentration by doubling the product of the market shares of the merging firms. For example, a merger of two firms with market shares of 30 % and 15 % respectively would increase the HHI by 900 ($30 \times 15 \times 2 = 900$). The explanation for this technique is as follows: Before the merger, the market shares of the merging firms contribute to the HHI by their squares individually: $(a)^2 + (b)^2$. After the merger, the contribution is the square of their sum: $(a + b)^2$, which equals $(a)^2 + (b)^2 + 2ab$. The increase in the HHI is therefore represented by 2ab.

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SECTION 8

General conditions in affected markets

8.1. Identify the five largest independent [1] suppliers 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, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for each of these suppliers.

Structure of supply in affected markets

8.2. 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 4?

(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 4?

8.3. Provide an estimate of the total Community-wide and EFTA-wide capacity for the last three years. Over this period what proportion of this capacity is accounted for by each of the parties to the concentration, and what have been their respective rates of capacity utilization. If applicable, identify the location and capacity of the manufacturing facilities of each of the parties to the concentration in affected markets.

8.4. Specify whether any of the parties to the concentration, or any of the competitors, have 'pipeline products', 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 to five years.

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

Structure of demand in affected markets

8.6. Identify the five [2] 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, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for each of these customers.

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[1] That is, suppliers which are not subsidiaries, 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 8.6 in relation to customers.

[2] Experience has shown that the examination of complex cases often requires more customer contact details. In the course of pre-notification contacts, the Commission's services may ask for more customer contact details for certain affected markets.

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8.7. 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, government agencies, State enterprises or similar bodies are important participants as a source of demand.

Market entry

8.8. 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, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) 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.

8.9. In the opinion of the notifying parties, are there undertakings (including those at present operating only outside the Community or the EEA) that are likely to enter the market? If so, identify such entrants and provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive). Explain why such entry is likely and provide an estimate of the time within which such entry is likely to occur.

8.10. Describe the various factors influencing entry into affected markets, examining entry from both a geographical and product viewpoint. In so doing, take account of the following where appropriate:

(a) the total costs of entry (R&D, production, establishing distribution systems, promotion, advertising, servicing, and so forth) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor;

(b) any legal or regulatory barriers to entry, such as government authorization or standard setting in any form, as well as barriers resulting from product certification procedures, or the need to have a proven track record;

(c) any restrictions created by the existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights;

(d) the extent to which each of the parties to the concentration are holders, licensees or licensors of patents, know-how and other rights in the relevant markets;

(e) the importance of economies of scale for the production or distribution of products in the affected markets; and

(f) access to sources of supply, such as availability of raw materials and necessary infrastructure.

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Research and development

8.11. Give an account of the importance of research and development in the ability of a firm operating the relevant market(s) to compete in the long term. Explain the nature of the research and development in affected markets carried out by the parties to the concentration.

In so doing, take account of the following, where appropriate:

(a) trends and intensities of research and development ([1]) in these markets and for the parties to the concentration;

(b) the course of technological development for these markets over an appropriate time period (including developments in products and/or services, production processes, distribution systems, and so on);

(c) the major innovations that have been made in these markets and the undertakings responsible for these innovations; and

(d) the cycle of innovation in these markets and where the parties are in this cycle of innovation.

Cooperative Agreements

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

8.13. 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

8.14. 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 the name, address, telephone number, fax number and e-mail address of the appropriate contact person for all trade associations listed above.

SECTION 9

Overall market context and efficiencies

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

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

9.3. Should you wish the Commission specifically to consider from the outset ([2]) whether efficiency gains generated by the concentration are likely to enhance the ability and incentive of the new entity to act pro-competitively for the benefit of consumers, please provide a description of, and

([1]) Research and development intensity is defined as research development expenditure as a proportion of turnover.

([2]) It should be noted that submitting information in response to Section 9.3 is voluntary. Parties are not required to offer any justification for not completing this section. Failure to provide information on efficiencies will not be taken to imply that the proposed concentration does not create efficiencies or that the rationale for the concentration is to increase market power. Not providing the requested information on efficiencies at the notification stage does not preclude providing the information at a later stage. However, the earlier the information is provided, the better the Commission can verify the efficiency claim.

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supporting documents relating to, each efficiency (including cost savings, new product introductions, and service or product improvements) that the parties anticipate will result from the proposed concentration relating to any relevant product ([1]).

For each claimed efficiency, provide:

(i) a detailed explanation of how the proposed concentration would allow the new entity to achieve the efficiency. Specify the steps that the parties anticipate taking to achieve the efficiency, the risks involved in achieving the efficiency, and the time and costs required to achieve it;

(ii) where reasonably possible, a quantification of the efficiency and a detailed explanation of how the quantification was calculated. Where relevant, also provide an estimate of the significance of efficiencies related to new product introductions or quality improvements. For efficiencies that involve cost savings, state separately the one-time fixed cost savings, recurring fixed cost savings, and variable cost savings (in euros per unit and euros per year);

(iii) the extent to which customers are likely to benefit from the efficiency and a detailed explanation of how this conclusion is arrived at; and

(iv) the reason why the party or parties could not achieve the efficiency to a similar extent by means other than through the concentration proposed, and in a manner that is not likely to raise competition concerns.

SECTION 10

Cooperative effects of a joint venture

10. For the purpose of Article 2(4) of the EC Merger Regulation, answer the following questions:

(a) Do two or more parents retain to a significant extent activities in the same market as the joint venture or in a market which is upstream or downstream from that of the joint venture or in a neighbouring market closely related to this market? ([2])

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;

— 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 81(1) of the EC Treaty, 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 Commission, please explain how the criteria of Article 81(3) apply. Under Article 81(3), the provisions of Article 81(1) may be declared inapplicable if the operation:

(i) contributes to improving the production or distribution of goods, or to promoting technical or economic progress;

(ii) allows consumers a fair share of the resulting benefit;

(iii) does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; and

([1]) For further guidance on the assessment of efficiencies, see the Commission Notice on the assessment of horizontal mergers.

([2]) For market definitions refer to Section 6.

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(iv) does not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

SECTION 11

Declaration

Article 2(2) of the Implementing Regulation states that where notifications are signed by representatives of undertakings, such representatives must produce written proof that they are authorized to act. 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:

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 Form CO 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.

They are aware of the provisions of Article 14(1)(a) of the EC Merger Regulation.

Place and date:

Signatures:

Name/s and positions:

On behalf of:

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ANNEX II

SHORT FORM FOR THE NOTIFICATION OF A CONCENTRATION PURSUANT TO REGULATION (EC) No 139/2004

1. INTRODUCTION

1.1. The purpose of the Short Form

The Short Form specifies the information that must be provided by the notifying parties when submitting a notification to the European Commission of certain proposed mergers, acquisitions or other concentrations that are unlikely to raise competition concerns.

In completing this Form, your attention is drawn to Council Regulation (EC) No 139/2004 (hereinafter referred to as 'the EC Merger Regulation'), and Commission Regulation (EC) No xx/2004 (hereinafter referred to as 'the Implementing Regulation'), to which this Form is annexed [1]. The text of these regulations, as well as other relevant documents, can be found on the Competition page of the Commission's Europa web site.

As a general rule, the Short Form may be used for the purpose of notifying concentrations, where one of the following conditions is met:

1. in the case of a joint venture, the joint venture has no, or negligible, actual or foreseen activities within the territory of the European Economic Area (EEA). Such cases occur where:

   (a) the turnover of the joint venture and/or the turnover of the contributed activities is less than EUR 100 million in the EEA territory; and

   (b) the total value of the assets transferred to the joint venture is less than EUR 100 million in the EEA territory;

2. none of the parties to the concentration are engaged in business activities in the same relevant product and geographic market (no horizontal overlap), or in a market which is upstream or downstream of a market in which another party to the concentration is engaged (no vertical relationship);

3. two or more of the parties to the concentration are engaged in business activities in the same relevant product and geographic market (horizontal relationships), provided that their combined market share is less than 15 %; and/or 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 (vertical relationships), and provided that none of their individual or combined market shares at either level is 25 % or more; or

4. a party is to acquire sole control of an undertaking over which it already has joint control.

The Commission may require a full form notification where it appears either that the conditions for using the Short Form are not met, or, exceptionally, where they are met, the Commission determines, nonetheless, that a notification under Form CO is necessary for an adequate investigation of possible competition concerns.

Examples of cases where a notification under Form CO may be necessary are concentrations where it is difficult to define the relevant markets (for

[1] Council Regulation (EC) No 139/2004 of 20 January 2004, OJ L 24, 29.01.2004, p. 1. Your attention is drawn to the corresponding provisions of the Agreement on the European Economic Area (hereinafter referred to as 'the EEA Agreement'. See in particular Article 57 of the EEA Agreement, point 1 of Annex XIV to the EEA Agreement and Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice, as well as Protocols 21 and 24 to the EEA Agreement and Article 1, and the Agreed Minutes of the Protocol adjusting the EEA Agreement. Any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the EEA Agreement. As of 1 May 2004, these States are Iceland, Liechtenstein and Norway.

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example, in emerging markets or where there is no established case practice); where a party is a new or potential entrant, or an important patent holder; where it is not possible to adequately determine the parties' market shares; in markets with high entry barriers, with a high degree of concentration or known competition problems; where at least two parties to the concentration are present in closely related neighbouring markets ([1]); and in concentrations where an issue of coordination arises, as referred to in Article 2(4) of the EC Merger Regulation. Similarly, a Form CO notification may be required in the case of a party acquiring sole control of a joint venture in which it currently holds joint control, where the acquiring party and the joint venture, together, have a strong market position, or the joint venture and the acquiring party have strong positions in vertically related markets.

1.2. **Reversion to the full Form CO notification**

In assessing whether a concentration may be notified under the Short Form, the Commission will ensure that all relevant circumstances are established with sufficient clarity. In this respect, the responsibility to provide correct and complete information rests with the notifying parties.

If, after the concentration has been notified, the Commission considers that the case is not appropriate for notification under the Short Form, the Commission may require full, or where appropriate partial, notification under Form CO. This may be the case where:

— it appears that the conditions for using the Short Form are not met;

— although the conditions for using the Short Form are met, a full or partial notification under Form CO appears to be necessary for an adequate investigation of possible competition concerns or to establish that the transaction is a concentration within the meaning of Article 3 of the EC Merger Regulation;

— the Short Form contains incorrect or misleading information;

— a Member State expresses substantiated competition concerns about the notified concentration within 15 working days of receipt of the copy of the notification; or

— a third party expresses substantiated competition concerns within the time-limit laid down by the Commission for such comments.

In such cases, the notification may be treated as being incomplete in a material respect pursuant to Article 5(2) of the Implementing Regulation. The Commission will inform the notifying parties or their representatives of this in writing and without delay. The notification will only become effective on the date on which all information required is received.

1.3. **Importance of pre-notification contacts**

Experience has shown that pre-notification contacts are extremely valuable to both the notifying parties and the Commission in determining the precise amount of information required in a notification. Also, in cases where the parties wish to submit a Short Form notification, they are advised to engage in pre-notification contacts with the Commission in order to discuss whether the case is one for which it is appropriate to use a Short Form. Notifying parties may refer to the Commission's Best Practices on the Conduct of EC Merger Control Proceedings, which provides guidance on pre-notification contacts and the preparation of notifications.

1.4. **Who must notify**

In the case of a merger within the meaning of Article 3(1)(a) of the EC Merger Regulation or the acquisition of joint control of an undertaking within the meaning of Article 3(1)(b) of the EC Merger Regulation, the

([1]) Product markets are closely related neighbouring 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 set of customers for the same end use.

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notification shall be completed jointly by the parties to the merger or by those acquiring joint control, as the case may be [1].

In the case of the acquisition of a controlling interest in one undertaking 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.

1.5. **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 you should note that:

(a) In accordance with Article 10(1) of the EC Merger Regulation and Article 5(2) and (4) of the Implementing Regulation, the time-limits of the EC Merger Regulation linked to the notification will not begin to run until all the information that must be supplied with the notification has been received by the Commission. This requirement is to ensure that the Commission is able to assess the notified concentration within the strict time-limits provided by the EC Merger Regulation.

(b) The notifying parties should verify, in the course of preparing their notification, that contact names and numbers, and in particular fax numbers and e-mail addresses, provided to the Commission are accurate, relevant and up-to-date.

(c) Incorrect or misleading information in the notification will be considered to be incomplete information (Article 5(4) of the Implementing Regulation).

(d) If a notification is incomplete, the Commission will inform the notifying parties or their representatives in writing and without delay. The notification will only become effective on the date on which the complete and accurate information is received by the Commission (Article 10(1) of the EC Merger Regulation, Article 5 (2) and (4) of the Implementing Regulation).

(e) Under Article 14(1)(a) of the EC Merger Regulation, notifying parties who, either intentionally or negligently, supply incorrect or misleading information, may be liable to fines of up to 1 % of the aggregate turnover of the undertaking concerned. In addition, pursuant to Article 6(3)(a) and Article 8(6)(a) of the EC Merger Regulation the Commission may revoke its decision on the compatibility of a notified concentration where it is based on incorrect information for which one of the undertakings is responsible.

(f) You may request in writing that the Commission accept that the notification is complete notwithstanding the failure to provide information required by this Form, if such information is not reasonably available to you in part or in whole (for example, because of the unavailability of information on a target company during a contested bid).

The Commission will consider such a request, provided that you give reasons for the unavailability of that information, and provide your best estimates for missing data together with the sources for the estimates. Where possible, indications as to where any of the requested information that is unavailable to you could be obtained by the Commission should also be provided.

(g) You may request in writing that the Commission accept that the notification is complete notwithstanding the failure to provide information required by this Form, if you consider that any particular information required may not be necessary for the Commission's examination of the case.

The Commission will consider such a request, provided that you give adequate reasons why that information is not relevant and necessary to

[1] See Article 4(2) of the EC Merger Regulation.

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its inquiry into the notified operation. You should explain this during your pre-notification contacts with the Commission and submit a written request for a waiver, asking the Commission to dispense with the obligation to provide that information, pursuant to Article 4 (2) of the Implementing Regulation.

1.6. **How to notify**

The notification must be completed in one of the official languages of the European Community. This language will thereafter be the language of the proceedings for all notifying parties. Where notifications are made in accordance with Article 12 of Protocol 24 to the EEA Agreement in an official language of an EFTA State which is not an official language of the Community, the notification must simultaneously be supplemented with a translation into an official language of the Community.

The information requested by this Form is to be set out using the sections and paragraph numbers of the Form, signing a declaration as provided in Section 9, and annexing supporting documentation. In completing Section 7 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).

For the sake of clarity, 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 shall only be used to supplement the information supplied in the Form itself.

Contact details must be provided in a format provided by the Commission's Directorate-General for Competition (DG Competition). For a proper investigatory process, it is essential that the contact details are accurate. Multiple instances of incorrect contact details may be a ground for declaring a notification incomplete.

Supporting documents are to be submitted in their original language; where this is not an official language of the Community, they must be translated into the language of the proceeding (Article 3(4) of the Implementing Regulation).

Supporting documents may be originals or copies of the originals. In the latter case, the notifying party must confirm that they are true and complete.

One original and ►M1 37 ◄ copies of the Short Form and the supporting documents shall be submitted to the Commission's Directorate-General for Competition.

The notification shall be delivered to the address referred to in Article 23 (1) of the Implementing Regulation and in the format specified by the Commission from time to time. This address is published in the *Official Journal of the European Union*. The notification must be delivered to the Commission on working days as defined by Article 24 of the Implementing Regulation. In order to enable it to be registered on the same day, it must be delivered before 17.00 hrs on Mondays to Thursdays and before 16.00 hrs on Fridays and workdays preceding public holidays and other holidays as determined by the Commission and published in the *Official Journal of the European Union*. The security instructions given on DG Competition's website must be adhered to.

1.7. **Confidentiality**

Article 287 of the Treaty and Article 17(2) of the EC Merger Regulation as well as the corresponding provisions of the EEA Agreement ([1]) require the Commission, the Member States, the EFTA Surveillance Authority and the EFTA States, their officials and other servants not to disclose infor-

([1]) See, in particular, Article 122 of the EEA Agreement, Article 9 of Protocol 24 to the EEA Agreement and Article 17(2) of Chapter XIII of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (ESA Agreement).

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mation they have acquired through the application of the Regulation of the kind covered by the obligation of professional secrecy. The same principle must also apply to protect confidentiality between notifying parties.

If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked 'Business Secrets'. You should also give reasons why this information should not be divulged or published.

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. All such annexes must be included in the submission in order for a notification to be considered complete.

1.8. **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 a 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.

Year: all references to the word year in this Form should be read as meaning calendar year, unless otherwise stated. All information requested in this Form must, unless otherwise specified, relate to the year preceding that of the notification.

The financial data requested in Sections 3.3 to 3.5 must be provided in euros at the average exchange rates prevailing for the years or other periods in question.

All references contained in this Form are to the relevant articles and paragraphs of the EC Merger Regulation, unless otherwise stated.

1.9. **Provision of information to employees and their representatives**

The Commission would like to draw attention to the obligations to which the parties to a concentration may be subject under Community and/or national rules on information and consultation regarding transactions of a concentrative nature vis-à-vis employees and/or their representatives.

SECTION 1

Description of the concentration

1.1. Provide an executive summary of the concentration, specifying the parties to the concentration, the nature of the concentration (for example, merger, acquisition, joint venture), the areas of activity of the notifying parties, the markets on which the concentration will have an impact (including the main reportable markets ([1])), and the strategic and economic rationale for the concentration.

1.2. Provide a summary (up to 500 words) of the information provided under Section 1.1. It is intended that this summary will be published on the Commission's website at the date of notification. The summary must be drafted so that it contains no confidential information or business secrets.

([1]) See Section 6.III for the definition of reportable markets.

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SECTION 2

Information about the parties

2.1. Information on notifying party (or parties)

Give details of:

2.1.1. name and address of undertaking;

2.1.2. nature of the undertaking's business;

2.1.3. name, address, telephone number, fax number and e-mail address of, and position held by, the appropriate contact person; and

2.1.4. an address for service of the notifying party (or each of the notifying parties) to which documents and, in particular, Commission Decisions may be delivered. The name, e-mail address and telephone number of a person at this address who is authorised to accept service must be provided.

2.2. Information on other parties [1] to the concentration

For each party to the concentration (except the notifying party or parties) give details of:

2.2.1. name and address of undertaking;

2.2.2. nature of undertaking's business;

2.2.3. name, address, telephone number, fax number and e-mail address of, and position held by, the appropriate contact person; and

2.2.4. an address for service of the party (or each of the parties) to which documents and, in particular, Commission Decisions may be delivered. The name, e-mail address and telephone number of a person at this address who is authorised to accept service must be provided.

2.3. Appointment of representatives

Where notifications are signed by representatives of undertakings, such representatives must produce written proof that they are authorised to act. The written proof must contain the name and position of the persons granting such authority.

Provide the following contact details of information of any representatives who have been authorised to act for any of the parties to the concentration, indicating whom they represent:

2.3.1. name of representative;

2.3.2. address of representative;

2.3.3. name, address, telephone number, fax number and e-mail address of person to be contacted; and

2.3.4. an address of the representative for service (in Brussels if available) to which correspondence may be sent and documents delivered.

SECTION 3

Details of the concentration

3.1. Describe the nature of the concentration being notified. In doing so state:

(a) whether the proposed concentration is a full legal merger, an acquisition of sole or joint control, a full-function joint venture within the meaning of Article 3(4) of the EC Merger Regulation or a contract or other means of conferring direct or indirect control within the meaning of Article 3(2) of the EC Merger Regulation;

[1] This includes the target company in the case of a contested bid, in which case the details should be completed as far as is possible.

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(b) whether the whole or parts of parties are subject to the concentration;

(c) a brief explanation of the economic and financial structure of the concentration;

(d) whether any public offer for the securities of one party by another party has the support of the former's supervisory boards of management or other bodies legally representing that party;

(e) the proposed or expected date of any major events designed to bring about the completion of the concentration;

(f) the proposed structure of ownership and control after the completion of the concentration;

(g) any financial or other support received from whatever source (including public authorities) by any of the parties and the nature and amount of this support; and

(h) the economic sectors involved in the concentration.

3.2. State the value of the transaction (the purchase price or the value of all the assets involved, as the case may be);

3.3. For each of the undertakings concerned by the concentration [1] provide the following data [2] for the last financial year:

3.3.1. world-wide turnover;

3.3.2. Community-wide turnover;

3.3.3. EFTA-wide turnover;

3.3.4. turnover in each Member State;

3.3.5. turnover in each EFTA State;

3.3.6. the Member State, if any, in which more than two-thirds of Community-wide turnover is achieved; and

3.3.7. the EFTA State, if any, in which more than two-thirds of EFTA-wide turnover is achieved.

3.4. For the purposes of Article 1(3) of the EC Merger Regulation, if the operation does not meet the thresholds set out in Article 1(2), provide the following data for the last financial year:

3.4.1. the Member States, if any, in which the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million; and

3.4.2. the Member States, if any, in which the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million.

3.5. For the purposes of determining whether the concentration qualifies as an EFTA cooperation case [3], provide the following information with respect to the last financial year:

3.5.1. does the combined turnover of the undertakings concerned in the territory of the EFTA States equal 25 % or more of their total turnover in the EEA territory?

3.5.2. does each of at least two undertakings concerned have a turnover exceeding EUR 250 million in the territory of the EFTA States?

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[1] See Commission Notice on the concept of undertakings concerned.

[2] See, generally, the Commission Notice on calculation of turnover. Turnover of the acquiring party or parties to the concentration should include the aggregated turnover of all undertakings within the meaning of Article 5(4) of the EC Merger Regulation. Turnover of the acquired party or parties should include the turnover relating to the parts subject to the transaction within the meaning of Article 5(2) of the EC Merger Regulation. Special provisions are contained in Articles 5(3), (4) and 5(5) of the EC Merger Regulation for credit, insurance, other financial institutions and joint undertakings.

[3] See Article 57 of the EEA Agreement and, in particular, Article 2(1) of Protocol 24 to the EEA Agreement. A case qualifies to be treated as a cooperation case if the combined turnover of the undertakings concerned in the territory of the EFTA States equals 25 % or more of their total turnover within the territory covered by the EEA Agreement; or each of at least two undertakings concerned has a turnover exceeding EUR 250 million in the territory of the EFTA States; or the concentration is liable to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the territories of the EFTA States or a substantial part thereof.

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3.6. In case the transaction concerns the acquisition of joint control of a joint venture, provide the following information:

3.6.1. the turnover of the joint venture and/or the turnover of the contributed activities to the joint venture; and/or

3.6.2. the total value of assets transferred to the joint venture.

3.7. Describe the economic rationale of the concentration.

SECTION 4

Ownership and control [1]

For each of the parties to the concentration provide a list of all undertakings belonging to the same group.

This list must include:

4.1. all undertakings or persons controlling these parties, directly or indirectly;

4.2. all undertakings active in any reportable market [2] that are controlled, directly or indirectly:

(a) by these parties;

(b) by any other undertaking identified in 4.1.

For each entry listed above, the nature and means of control should be specified.

The information sought in this section may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the undertakings.

SECTION 5

Supporting documentation

Notifying parties must provide the following:

5.1. 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; and

5.2. copies of the most recent annual reports and accounts of all the parties to the concentration.

SECTION 6

Market definitions

The relevant product and geographic markets determine the scope within which the market power of the new entity resulting from the concentration must be assessed. [3]

The notifying party or parties must provide the data requested having regard to the following definitions:

I. **Relevant product markets**

A 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. A relevant product market may in some cases be composed of a number of individual products and/or services which present largely identical physical or technical characteristics and are interchangeable.

[1] See Articles 3(3), 3(4) and 3(5) and Article 5(4) of the EC Merger Regulation.
[2] See Section 6.III for the definition of reportable markets.
[3] See Commission Notice on the definition of the relevant market for the purposes of Community competition law.

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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, conditions of competition, prices, cross-price elasticity of demand or other factors relevant for the definition of the product markets (for example, supply-side substitutability in appropriate cases).

II. **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 neighbouring 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 neighbouring geographic areas, or substantial price differences.

III. **Reportable markets**

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

(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).

6.1. On the basis of the above market definitions, identify all reportable markets.

SECTION 7

Information on markets

For each reportable market described in Section 6, for the year preceding the operation, provide the following: [1]

7.1. an estimate of the total size of the market in terms of sales value (in euros) and volume (units) [2]. Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;

7.2. the sales in value and volume, as well as an estimate of the market shares, of each of the parties to the concentration. Indicate if there have been significant changes to the sales and market shares for the last three financial years; and

7.3. for horizontal and vertical relationships, an estimate of the market share in value (and where appropriate, volume) of the three largest competitors (indicating the basis for the estimates). Provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for these competitors.

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[1] In the context of pre-notification, you may want to discuss with the Commission to what extent dispensation (waivers) to provide the requested information would be appropriate for certain reportable markets.

[2] The value and volume of a market should reflect output less exports plus imports for the geographic areas under consideration.

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SECTION 8

Cooperative effects of a joint venture

8. For the purpose of Article 2(4) of the EC Merger Regulation, please answer the following questions:

(a) Do two or more parents retain to a significant extent activities in the same market as the joint venture or in a market which is upstream or downstream from that of the joint venture or in a neighbouring market closely related to this market? ([1])

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;

— 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 81(1) of the EC Treaty, 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 Commission, please explain how the criteria of Article 81(3) apply. Under Article 81 (3), the provisions of Article 81(1) may be declared inapplicable if the operation:

(i) contributes to improving the production or distribution of goods, or to promoting technical or economic progress;

(ii) allows consumers a fair share of the resulting benefit;

(iii) does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; and

(iv) does not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

SECTION 9

Declaration

Article 2(2) of the Implementing Regulation states that where notifications are signed by representatives of undertakings, such representatives must produce written proof that they are authorized to act. 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:

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.

They are aware of the provisions of Article 14(1)(a) of the EC Merger Regulation.

([1]) For market definitions refer to Section 6.

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Place and date:

Signatures:

Name/s and positions:

On behalf of:

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ANNEX III:

FORM RS

(RS = reasoned submission pursuant to Article 4(4) and (5) of Council Regulation (EC) No 139/2004)

FORM RS RELATING TO REASONED SUBMISSIONS

PURSUANT TO ARTICLES 4(4) AND 4(5) OF REGULATION (EC) No 139/2004

INTRODUCTION

A. **The purpose of this Form**

This Form specifies the information that requesting parties should provide when making a reasoned submission for a pre-notification referral under Article 4(4) or (5) of Council Regulation (EC) No 139/2004 (hereinafter referred to as 'the EC Merger Regulation').

Your attention is drawn to the EC Merger Regulation and to Commission Regulation (EC) No […/2004] (hereinafter referred to as 'the EC Merger Implementing Regulation'). The text of these regulations, as well as other relevant documents, can be found on the Competition page of the Commission's Europa web site.

Experience has shown that prior contacts are extremely valuable to both the parties and the relevant authorities in determining the precise amount and type of information required. Accordingly, parties are encouraged to consult the Commission and the relevant Member State/s regarding the adequacy of the scope and type of information on which they intend to base their reasoned submission.

B. **The requirement for a reasoned submission to be correct and complete**

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

Incorrect or misleading information in the reasoned submission will be considered to be incomplete information (Article 5(4) of the EC Merger Implementing Regulation).

If parties submit incorrect information, the Commission will have the power to revoke any Article 6 or 8 decision it adopts following an Article 4(5) referral, pursuant to Article 6(3)(a) or 8(6)(a) of the EC Merger Regulation. Following revocation, national competition laws would once again be applicable to the transaction. In the case of referrals under Article 4(4) made on the basis of incorrect information, the Commission may require a notification pursuant to Article 4(1). In addition, the Commission will have the power to impose fines for submission of incorrect or misleading information pursuant to Article 14 (1)(a) of the EC Merger Regulation. (See point d below). Finally, parties should also be aware that, if a referral is made on the basis of incorrect, misleading or incomplete information included in Form RS, the Commission and/or the Member States may consider making a post-notification referral rectifying any referral made at pre-notification.

In particular you should note that:

(a) In accordance with Articles 4(4) and (5) of the EC Merger Regulation, the Commission is obliged to transmit reasoned submissions to Member States without delay. The time-limits for considering a reasoned submission will begin upon receipt of the submission by the relevant Member State or States. The decision whether or not to accede to a reasoned submission will normally be taken on the basis of the information contained therein, without further investigation efforts being undertaken by the authorities involved.

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(b) The submitting parties should therefore verify, in the course of preparing their reasoned submission, that all information and arguments relied upon are sufficiently supported by independent sources.

(c) Under Article 14(1)(a) of the EC Merger Regulation, parties making a reasoned submission who, either intentionally or negligently, provide incorrect or misleading information, may be liable to fines of up to 1 % of the aggregate turnover of the undertaking concerned.

(d) You may request in writing that the Commission accept that the reasoned submission is complete notwithstanding the failure to provide information required by this Form, if such information is not reasonably available to you in part or in whole (for example, because of the unavailability of information on a target company during a contested bid).

The Commission will consider such a request, provided that you give reasons for the non-availability of that information, and provide your best estimates for missing data together with the sources for the estimates. Where possible, indications as to where any of the requested information that is unavailable to you could be obtained by the Commission or the relevant Member State/s should also be provided.

(e) You may request that the Commission accept that the reasoned submission is complete notwithstanding the failure to provide information required by this Form, if you consider that any particular information requested by this Form may not be necessary for the Commission's or the relevant Member State/s' examination of the case.

The Commission will consider such a request, provided that you give adequate reasons why that information is not relevant and necessary to dealing with your request for a pre-notification referral. You should explain this during your prior contacts with the Commission and with the relevant Member State/s, and submit a written request for a waiver asking the Commission to dispense with the obligation to provide that information, pursuant to Article 4(2) of the EC Merger Implementing Regulation. The Commission may consult with the relevant Member State authority or authorities before deciding whether to accede to such a request.

C. **Persons entitled to submit a reasoned submission**

In the case of a merger within the meaning of Article 3(1)(a) of the EC Merger Regulation or the acquisition of joint control of an undertaking within the meaning of Article 3(1)(b) of the Merger Regulation, the reasoned submission must be completed jointly by the parties to the merger or by those acquiring joint control as the case may be.

In case of the acquisition of a controlling interest in one undertaking by another, the acquirer must complete the reasoned submission.

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

Each party completing a reasoned submission is responsible for the accuracy of the information which it provides.

D. **How to make a reasoned submission**

The reasoned submission must be completed in one of the official languages of the European Union. This language will thereafter be the language of the proceedings for all submitting parties.

In order to facilitate treatment of Form RS by Member State authorities, parties are strongly encouraged to provide the Commission with a translation of their reasoned submission in a language or languages which will be understood by all addressees of the information. As regards requests for referral to a Member State or States, the requesting parties are strongly encouraged to include a copy of the request in the language/s of the Member State/s to which referral is being requested.

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The information requested by this Form is to be set out using the sections and paragraph numbers of the Form, signing the declaration at the end, and annexing supporting documentation. For the sake of clarity, certain information may be put in annexes. However, it is essential that all key substantive pieces of information are presented in the body of Form RS. Annexes to this Form shall only be used to supplement the information supplied in the Form itself.

Supporting documents are to be submitted in their original language; where this is not an official language of the Community, they must be translated into the language of the proceeding.

Supporting documents may be originals or copies of the originals. In the latter case, the submitting party must confirm that they are true and complete.

One original and ►M1 37 ◄ copies of the Form RS and of the supporting documents must be submitted to the Commission. The reasoned submission shall be delivered to the address referred to in Article 23 (1) of the EC Merger Implementing Regulation and in the format specified by the Commission services.

The submission must be delivered to the address of the Commission's Directorate-General for Competition (DG Competition). This address is published in the *Official Journal of the European Union*. The submission must be delivered to the Commission on working days as defined by Article 24 of the EC Merger Implementing Regulation. In order to enable it to be registered on the same day, it must be delivered before 17.00 hrs on Mondays to Thursdays and before 16.00 hrs on Fridays and workdays preceding public holidays and other holidays as determined by the Commission and published in the *Official Journal of the European Union*. The security instructions given on DG Competition's website must be adhered to.

E. **Confidentiality**

Article 287 of the Treaty and Article 17(2) of the EC Merger Regulation require the Commission and the competent authorities of the Member States, their officials and other servants and other persons working under the supervision of these authorities as well as officials and civil servants of other authorities of the Member States, not to disclose information of the kind covered by the obligation of professional secrecy and which they have acquired through the application of the Regulation. The same principle must also apply to protect confidentiality between submitting parties.

If you believe that your interests would be harmed if any of the information supplied were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked 'Business Secrets'. You should also give reasons why this information should not be divulged or published.

In the case of mergers or joint acquisitions, or in other cases where the reasoned submission is completed by more than one of the parties, business secrets may be submitted in separate annexes, and referred to in the submission as an annex. All such annexes must be included in the reasoned submission.

F. **Definitions and instructions for the purposes of this Form**

Submitting party or parties: in cases where a reasoned submission is made by only one of the undertakings who is a party to an operation, 'submitting parties' is used to refer only to the undertaking actually making the submission.

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 'submitting party(ies)' and 'party(ies) to the concentration' include all the undertakings which belong to the same groups as those 'parties'.

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Affected markets: Section 4 of this Form requires the submitting parties to define the relevant product markets, and further to identify which of those relevant markets are likely to be affected by the operation. This definition of affected market is used as the basis for requiring information for a number of other questions contained in this Form. The definitions thus submitted by the submitting parties are referred to in this Form as the affected market(s). This term can refer to a relevant market made up either of products or of services.

Year: all references to the word 'year' in this Form should be read as meaning calendar year, unless otherwise stated. All information requested in this Form relates, unless otherwise specified, to the year preceding that of the reasoned submission.

The financial data requested in this Form must be provided in Euros at the average exchange rates prevailing for the years or other periods in question.

All references contained in this Form are to the relevant Articles and paragraphs of the EC Merger Regulation, unless otherwise stated.

SECTION 1

Background information

1.0. Indicate whether the reasoned submission is made under Article 4(4) or (5).

— Article 4(4) referral

— Article 4(5) referral

1.1. Information on the submitting party (or parties)

Give details of:

1.1.1. the name and address of undertaking;

1.1.2. the nature of the undertaking's business;

1.1.3. the name, address, telephone number, fax number and electronic address of, and position held by, the appropriate contact person; and

1.1.4. an address for service of the submitting party (or each of the submitting parties) to which documents and, in particular, Commission decisions may be delivered. The name, telephone number and e-mail address of a person at this address who is authorised to accept service must be provided.

1.2. Information on the other parties [1] to the concentration

For each party to the concentration (except the submitting party or parties) give details of:

1.2.1. the name and address of undertaking;

1.2.2. the nature of undertaking's business;

1.2.3. the name, address, telephone number, fax number and electronic address of, and position held by the appropriate contact person;

1.2.4. an address for service of the party (or each of the parties) to which documents and, in particular, Commission Decisions may be delivered. The name, e-mail address and telephone number of a person at this address who is authorised to accept service must be provided.

[1] This includes the target company in the case of a contested bid, in which case the details should be completed as far as is possible.

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1.3. Appointment of representatives

Where reasoned submissions are signed by representatives of undertakings, such representatives must produce written proof that they are authorized to act. The written proof must contain the name and position of the persons granting such authority.

Provide the following contact details of any representatives who have been authorized to act for any of the parties to the concentration, indicating whom they represent:

1.3.1. the name of the representative;

1.3.2. the address of the representative;

1.3.3. the name, address, telephone number, fax number and e-mail address of the person to be contacted; and

1.3.4. an address of the representative (in Brussels if available) to which correspondence may be sent and documents delivered.

SECTION 2

General background and details of the concentration

2.1. Describe the general background to the concentration. In particular, give an overview of the main reasons for the transaction, including its economic and strategic rationale.

Provide an executive 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 submitting parties, the markets on which the concentration will have an impact (including the main affected markets ([1])), and the strategic and economic rationale for the concentration.

2.2. Describe the legal nature of the transaction which is the subject of the reasoned submission. In doing so, indicate:

(a) whether the whole or parts of the parties are subject to the concentration;

(b) the proposed or expected date of any major events designed to bring about the completion of the concentration;

(c) the proposed structure of ownership and control after the completion of the concentration; and

(d) whether the proposed transaction is a concentration within the meaning of Article 3 of the EC Merger Regulation.

2.3. List the economic sectors involved in the concentration.

2.3.1. State the value of the transaction (the purchase price or the value of all the assets involved, as the case may be).

2.4. Provide sufficient financial or other data to show that the concentration meets OR does not meet the jurisdictional thresholds under Article 1 of the EC Merger Regulation.

2.4.1. Provide a breakdown of the Community-wide turnover achieved by the undertakings concerned, indicating, where applicable, the Member State, if any, in which more than two-thirds of this turnover is achieved.

([1]) See Section 4 for the definition of affected markets.

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SECTION 3

Ownership and control (1)

For each of the parties to the concentration provide a list of all undertakings belonging to the same group.

This list must include:

3.1. all undertakings or persons controlling these parties, directly or indirectly;

3.2. all undertakings active on any affected market (2) that are controlled, directly or indirectly:

(a) by these parties;

(b) by any other undertaking identified in 3.1.

For each entry listed above, the nature and means of control should be specified.

The information sought in this section may be illustrated by the use of organization charts or diagrams to show the structure of ownership and control of the undertakings.

SECTION 4

Market definitions

The relevant product and geographic markets determine the scope within which the market power of the new entity resulting from the concentration must be assessed (3).

The submitting party or parties must provide the data requested having regard to the following definitions:

I. **Relevant product markets**

A 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. A relevant product market may in some cases be composed of a number of individual products and/or services which present largely identical physical or technical characteristics and are interchangeable.

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, conditions of competition, prices, cross-price elasticity of demand or other factors relevant for the definition of the product markets (for example, supply-side substitutability in appropriate cases).

II. **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 neighbouring 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 neighbouring geographic areas, or substantial price differences.

(1) See Article 3(3), 3(4) and 3(5) and Article 5(4).
(2) See Section 4 for the definition of affected markets.
(3) See Commission Notice on the definition of the relevant market for the purposes of Community competition law.

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III. **Affected markets**

For the purposes of the information required in this Form, affected markets consist of relevant product markets where, in the Community, or in any Member State:

(a) two or more of the parties to the concentration are engaged in business activities in the same product market and where the concentration will lead to a combined market share of 15 % or more. These are 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 either level is 25 % or more, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration ([1]). These are vertical relationships.

On the basis of the above definitions and market share thresholds, provide the following information:

4.1. Identify each affected market within the meaning of Section III:

(a) at the Community level;

(b) in the case of a request for referral pursuant to Article 4(4), at the level of each individual Member State;

(c) in the case of a request for referral pursuant to Article 4(5), at the level of each Member State identified at Section 6.3.1 of this Form as capable of reviewing the concentration.

4.2. In addition, explain the submitting parties' view as to the scope of the relevant geographic market within the meaning of Section II in relation to each affected market identified at 4.1 above.

SECTION 5

Information on affected markets

For each affected relevant product market, for the last financial year,

(a) for the Community as a whole;

(b) in the case of a request for referral pursuant to Article 4(4), individually for each Member State where the parties to the concentration do business; and

(c) in the case of a request for referral pursuant to Article 4(5), individually for each Member State identified at Section 6.3.1 of this Form as capable of reviewing the concentration where the parties to the concentration do business; and

(d) where in the opinion of the submitting parties, the relevant geographic market is different;

provide the following information:

5.1. an estimate of the total size of the market in terms of sales value (in Euros) and volume (units) ([2]). Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;

5.2. the sales in value and volume, as well as an estimate of the market shares, of each of the parties to the concentration;

5.3. an estimate of the market share in value (and where appropriate volume) of all competitors (including importers) having at least 5 % of the geographic market under consideration;

([1]) For example, if a party to the concentration holds a market share larger than 25 % in a market that is upstream to a market in which the other party is active, then both the upstream and the downstream markets are affected markets. Similarly, if a vertically integrated company merges with another party which is active at the downstream level, and the merger leads to a combined market share downstream of 25 % or more, then both the upstream and the downstream markets are affected markets.

([2]) The value and volume of a market should reflect output less exports plus imports for the geographic areas under consideration.

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On this basis, provide an estimate of the HHI index [1] pre- and post-merger, and the difference between the two (the delta) [2].Indicate the proportion of market shares used as a basis to calculate the HHI; Identify the sources used to calculate these market shares and provide documents where available to confirm the calculation;

5.4. 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;

5.5. the nature and extent of vertical integration of each of the parties to the concentration compared with their largest competitors;

5.6. identify the five largest independent [3] suppliers to the parties;

5.7. Over the last five years, has there been any significant entry into any affected markets? In the opinion of the submitting parties are there undertakings (including those at present operating only in extra-Community markets) that are likely to enter the market? Please specify.

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

5.9. If the concentration is a joint venture, do two or more parents retain to a significant extent activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market? [4]

5.10. Describe the likely impact of the proposed concentration on competition in the affected markets and how the proposed concentration is likely to affect the interests of intermediate and ultimate consumers and the development of technical and economic progress.

SECTION 6

Details of the referral request and reasons why the case should be referred

6.1. Indicate whether the reasoned submission is made pursuant to Article 4(4) or 4(5) of the EC Merger Regulation, and fill in only the relevant sub-section:

— Article 4.4. referral

— Article 4.5 referral

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[1] 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. For example, a market containing five firms with market shares of 40 %, 20 %, 15 %, 15 %, and 10 %, respectively, has an HHI of 2550 ($40^2 + 20^2 + 15^2 + 15^2 + 10^2 = 2550$). The HHI ranges from close to zero (in an atomistic market) to 10000 (in the case of a pure monopoly). The post-merger HHI is calculated on the working assumption that the individual market shares of the companies do not change. Although it is best to include all firms in the calculation, lack of information about very small firms may not be important because such firms do not affect the HHI significantly.

[2] The increase in concentration as measured by the HHI can be calculated independently of the overall market concentration by doubling the product of the market shares of the merging firms. For example, a merger of two firms with market shares of 30 % and 15 % respectively would increase the HHI by 900 ($30 \times 15 \times 2 = 900$). The explanation for this technique is as follows: Before the merger, the market shares of the merging firms contribute to the HHI by their squares individually: $(a)^2 + (b)^2$. After the merger, the contribution is the square of their sum: $(a + b)^2$, which equals $(a)^2 + (b)^2 + 2ab$. The increase in the HHI is therefore represented by 2ab.

[3] That is suppliers which are not subsidiaries, 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 applies in relation to customers.

[4] For market definitions refer to Section 4.

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Sub-section 6.2

ARTICLE 4(4) REFERRAL

6.2.1. Identify the Member State or Member States which, pursuant to Article 4(4), you submit should examine the concentration, indicating whether or not you have made informal contact with this Member State/s.

6.2.2. Specify whether you are requesting referral of the whole or part of the case.

If you are requesting referral of part of the case, specify clearly the part or parts of the case for which you request the referral.

If you are requesting referral of the whole of the case, you must confirm that there are no affected markets outside the territory of the Member State/s to which you request the referral to be made.

6.2.3. Explain in what way each of the affected markets in the Member State or States to which referral is requested presents all the characteristics of a distinct market within the meaning of Article 4(4).

6.2.4. Explain in what way competition may be significantly affected in each of the above-mentioned distinct markets within the meaning of Article 4 (4).

6.2.5. In the event of a Member State/s becoming competent to review the whole or part of the case following a referral pursuant to Article 4(4), do you consent to the information contained in this Form being relied upon by the Member State/s in question for the purpose of its/their national proceedings relating to that case or part thereof? YES or NO

Sub-section 6.3

ARTICLE 4(5) REFERRAL

6.3.1. For each Member State, specify whether the concentration is or is not capable of being reviewed under its national competition law. You must tick one box for each and every Member State.

Is the concentration capable of being reviewed under the national competition law of each of the following Member States? You must reply for each Member State. Only indicate YES or NO for each Member State. Failure to indicate YES or NO for any Member State shall be deemed to constitute an indication of YES for that Member State.

▼B

Austria:	YES	NO
Belgium:	YES	NO
Cyprus:	YES	NO
Czech Republic:	YES	NO
Denmark:	YES	NO
Estonia:	YES	NO
Finland:	YES	NO
France:	YES	NO
Germany:	YES	NO
Greece:	YES	NO
Hungary:	YES	NO
Ireland:	YES	NO
Italy:	YES	NO
Latvia:	YES	NO
Lithuania:	YES	NO
Luxembourg:	YES	NO
Malta:	YES	NO
Netherlands:	YES	NO
Poland:	YES	NO
Portugal:	YES	NO
Slovakia:	YES	NO
Slovenia:	YES	NO
Spain:	YES	NO
Sweden:	YES	NO
United Kingdom:	YES	NO

6.3.2. For each Member State, provide sufficient financial or other data to show that the concentration meets or does not meet the relevant jurisdictional criteria under the applicable national competition law.

6.3.4. Explain why the case should be examined by the Commission. Explain in particular whether the concentration might affect competition beyond the territory of one Member State.

SECTION 7

Declaration

It follows from Articles 2(2) and 6(2) of the EC Merger Implementing Regulation that where reasoned submissions are signed by representatives of undertakings, such representatives must produce written proof that they are authorized to act. Such written authorization must accompany the submission.

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

The submitting party or parties declare that, following careful verification, the information given in this reasoned submission is to the best of their knowledge and belief true, correct, and complete, that true and complete copies of documents required by Form RS, have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

▼B

They are aware of the provisions of Article 14(1)(a) of the EC Merger Regulation.

Place and date:

Signatures:

Name/s and positions:

On behalf of: