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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)

(OJ L 133, 30.4.2004, p. 1)

Amended by:

		Official Journal		
		No	page	date
►M1	Commission Regulation (EC) No 1792/2006 of 23 October 2006	L 362	1	20.12.2006
►M2	Commission Regulation (EC) No 1033/2008 of 20 October 2008	L 279	3	22.10.2008
►M3	Commission Regulation (EU) No 519/2013 of 21 February 2013	L 158	74	10.6.2013
►M4	Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013	L 336	1	14.12.2013

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►C1	Corrigendum, OJ L 172, 6.5.2004, p. 9 (802/2004)

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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 For the sake of clarity it should therefore be repealed and replaced by a new regulation.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.

([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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(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 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.

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(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 information. 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.

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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.

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

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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. The Form CO and the supporting documents shall be submitted to the Commission in the format and with the number of copies specified by the Commission from time to time in the *Official Journal of the European Union*. The notification shall be delivered to the address referred to in Article 23(1).

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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.

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Article 4

Information and documents to be provided

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

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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 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.

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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.

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

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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 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;

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(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.

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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) 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.

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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.

►M4 Once the notifying parties and other involved parties have made known their views, the Commission shall take a final decision repealing, 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.

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3. The parties to whom the Commission's objections have been addressed or who have been informed of those objections may submit their comments on the objections. Any comments shall be submitted in writing within the time limit set. 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 their comments to the Commission at the address referred to in Article 23(1). The format in which the comments are to be submitted and the number of copies required shall be specified by the Commission from time to time in the *Official Journal of the European Union*. The Commission shall forward copies of such written comments without delay to the competent authorities of the Member States.

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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 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.

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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 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.

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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.

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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, between the competent authorities of the Member States and between the Commission and other competition authorities.

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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.

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4. If persons, undertakings or associations of undertakings fail to comply with paragraphs 2 or 3, the Commission may assume that the documents or statements concerned do not contain confidential information.

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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.

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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 the undertakings concerned first offer commitments within less than 55 working days from the date on which proceedings were initiated but submit a modified version of the commitments 55 or more working days from that date, the modified commitments shall be deemed to be new commitments for the purpose of applying the second sentence of Article 10(3) of Regulation (EC) No 139/2004.

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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

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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

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1. The 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 referred to in Article 23(1) in the format and with the number of copies specified by the Commission from time to time in the *Official Journal of the European Union*. The Commission shall forward copies of such commitments without delay to the competent authorities of the Member States.

1a. In addition to the requirements set out in paragraph 1, the undertakings concerned shall, at the same time as offering commitments pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004, submit one original of the information and documents prescribed by the Form RM relating to remedies (Form RM) as set out in Annex IV to this Regulation as well as the number of copies specified by the Commission from time to time in the *Official Journal of the European Union*. The information submitted shall be correct and complete.

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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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Article 20a

Trustees

1. The commitments offered by the undertakings concerned pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004 may include, at the own expense of the undertakings concerned, the appointment of an independent trustee (or trustees) assisting the Commission in overseeing the parties' compliance with the commitments or having a mandate to implement the commitments. The trustee may be appointed by the parties, after the Commission has approved its identity, or by the Commission. The trustee shall carry out its tasks under the supervision of the Commission.

2. The Commission may attach such trustee-related provisions of the commitments as conditions and obligations pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004.

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CHAPTER VII

MISCELLANEOUS PROVISIONS

Article 21

Transmission of documents

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1. The Commission may transmit documents and invitations to the addressees 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) electronic mail with a request for acknowledgement of receipt.

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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.

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3. Where a document is sent 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.

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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.

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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.

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4. Where the Commission specifies that documents submitted to it or any additional copies thereof are to be submitted electronically, it shall specify the format from time to time in the *Official Journal of the European Union*. Submissions sent by electronic mail shall be sent to the electronic mail address as published by the Commission from time to time in the *Official Journal of the European Union*.

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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.

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) No 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

INTRODUCTION

1.1. **The purpose of this Form CO**

This Form CO 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 of 20 January 2004 on the control of concentrations between undertakings [1] (hereinafter referred to as 'the Merger Regulation') and in Commission Regulation (EC) No 802/2004 [2] (hereinafter referred to as 'the Implementing Regulation'), to which this Form CO is annexed. The text of these regulations, as well as other relevant documents, can be found on the Competition page of the Commission's Europa website. Your attention is drawn to the corresponding provisions of the Agreement on the European Economic Area [3] (hereinafter referred to as 'the EEA Agreement').

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 Union dimension [4] (normally, where the parties to the concentration fulfil certain turnover thresholds) [5] are assessed by the European Commission in a single procedure (the 'one stop shop' principle). Concentrations which do not meet the turnover thresholds may fall within the competence of the Member States' and/or the EFTA States' authorities in charge of merger control.

The 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', that is to say to undertake an in-depth investigation [6]. 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 [7].

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.

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[1] OJ L 24, 29.1.2004, p. 1.

[2] OJ L 133, 30.4.2004, p. 1.

[3] See in particular Article 57 of the EEA Agreement, point 1 of Annex XIV to the EEA Agreement, Protocols 21 and 24 to the EEA Agreement, as well as Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (hereinafter referred to as the 'Surveillance and Court Agreement'). Any reference to EFTA States must 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.

[4] With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this Form CO.

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

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

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

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1.2. **Pre-notification contacts**

It is recognised that the information requested in this Form CO 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 CO 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 (see point 1.4(g) of this Introductory Part for more details).

The possibility to engage in pre-notification contacts is a service offered by the Commission to notifying parties on a voluntary basis in order to prepare the formal merger review procedure. As such, while not mandatory, pre-notification contacts can be extremely valuable to both the notifying parties and the Commission in determining, amongst other things, 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.

Accordingly, whilst the parties are solely responsible for deciding whether to engage in pre-notification contacts and when exactly to notify, parties are encouraged to consult the Commission on a voluntary basis regarding the adequacy of the scope and type of information on which they intend to base their notification.

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

Notifying parties may refer to the *'Best Practices on the conduct of EC merger control proceedings'* of the Commission's Directorate-General for Competition ('DG Competition'), as published on DG Competition's website and updated from time to time, which provide guidance on pre-notification contacts and the preparation of notifications.

1.3. **Who must notify**

In the case of a merger within the meaning of Article 3(1)(a) of the Merger Regulation or the acquisition of joint control of an undertaking within the meaning of Article 3(1)(b) of the Merger Regulation, the notification must 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]) See Article 4(2) of the Merger Regulation.

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1.4. **The requirement for a correct and complete notification**

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

In particular you should note that:

(a) In accordance with Article 10(1) of the Merger Regulation and Article 5(2) and (4) of the Implementing Regulation, the time-limits of the 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 Merger Regulation.

(b) The notifying party or parties must 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 ([1]).

(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 Merger Regulation, Articles 5(2) and (4) of the Implementing Regulation).

(e) Under Article 14(1)(a) of the 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 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 CO, 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.

([1]) Any personal data submitted in this Form CO will be processed in compliance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

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(g) In accordance with Article 4(2) of the Implementing Regulation, the Commission may dispense with the obligation to provide any particular information in the notification, including documents, or with any other requirement specified in this Form CO where the Commission considers that compliance with those obligations or requirements is not necessary for the examination of the case. Accordingly, you may, in pre-notification, submit a written request for a waiver, asking the Commission to dispense with the obligation to provide such information if you consider that that information is not necessary for the Commission's examination of the case.

The Commission's experience shows that particular categories of information required by this Form CO, although necessary for the Commission's examination of certain cases, may not be necessary for the Commission's examination of a significant number of other cases. These categories of information are specifically indicated in this Form CO (see footnotes 15, 16, 18, 20, 23, 27, 28, 30 and 31). You are particularly invited to consider whether to request a waiver for any of these categories of information.

Waiver requests should be submitted together with a draft Form CO in order to allow the Commission to determine whether or not the information in relation to which a waiver is being requested is necessary for the examination of the case. Waiver requests should be made either within the text of the draft Form CO itself or as an e-mail or letter addressed to the responsible case manager and/or head of unit.

The Commission will consider waiver requests, provided that you give adequate reasons why the information in question is not necessary for the examination of the case. Waiver requests will be dealt with in the context of the review of a draft Form CO. Therefore, in accordance with DG Competition's Best Practices on the conduct of EC merger control proceedings, DG Competition would normally require five working days before responding to waiver requests.

For the avoidance of doubt, it should be noted that the fact that the Commission may have accepted that any particular information requested by this Form CO was not necessary for the complete notification of a concentration (using the Form CO) does not in any way prevent the Commission from requesting that information at any time, in particular by way of request for information pursuant to Article 11 of the Merger Regulation.

1.5. **How to notify**

The notification 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 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 Union, the notification must simultaneously be supplemented with a translation into an official language of the Union.

The information requested by this Form CO is to be set out using the sections and paragraph numbers of the Form CO, signing a declaration as provided in Section 11, and annexing supporting documentation. The original of the Form CO must be signed by persons authorised by law to act on behalf of each notifying party or by one or more authorised external representatives of the notifying party or parties. In completing Sections 7 to 9 of this Form CO, the notifying parties are invited to

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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 CO must only be used to supplement the information supplied in the Form CO itself.

Contact details must be provided in a format provided by DG Competition on its website. 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 Union, 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 the required number of copies of the Form CO and the supporting documents must be submitted to DG Competition. The required number and format (paper and/or electronic) of copies will be published from time to time in the *Official Journal of the European Union* as well as on DG Competition's website.

The notification must be delivered to the address referred to in Article 23(1) of the Implementing Regulation. This address is published in the *Official Journal of the European Union* and available on DG Competition's website. The notification must be delivered to the Commission on working days as defined by Article 24 of the Implementing Regulation during the opening hours indicated on DG Competition's website. The security instructions given on DG Competition's website must be adhered to.

All electronic copies of the Form CO and supporting documents must be provided in a useable and searchable format as specified on DG Competition's website.

1.6. **Confidentiality**

Article 17(2) of the 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.

[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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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.

1.7. **Definitions and instructions for purposes of this Form CO**

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 CO 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 CO. 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 CO must be read as meaning calendar year, unless otherwise stated. All information requested in this Form CO must, unless otherwise specified, relate to the year preceding that of the notification.

The financial data requested in Section 4 must be provided in euro at the average exchange rates prevailing for the years or other periods in question.

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

1.8. **Description of quantitative economic data collected by the undertakings concerned**

In cases in which quantitative economic analysis for the affected markets is likely to be useful, briefly describe the data that each of the undertakings concerned collects and stores in the ordinary course of its business operations and which could be useful for such analysis.

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The following are three examples of cases where and the data could be useful for quantitative economic analysis in those cases: a concentration between two providers of services that business customers purchase on the basis of structured procurement processes where candidate suppliers bid against each other and where suppliers or customers collect bidding data, that is to say data about the participants, offers and outcomes of past procurement processes; a concentration between producers of retail products that are sold to final consumers and where 'scanning data' about consumers' purchases in shops are collected over a significant period of time; a concentration amongst providers of mobile telephony services to end customers and where regulatory authorities for telecommunication collect data on customer switching between the providers of mobile telephony services.

The data description should include, in particular, information about the type of such data (information on sales or bids, profit margins, procurement process details, etc.), the level of disaggregation (per country, per product, per customer, per contract, etc.), the time period for which the data are available and the format.

The information requested under this introductory part point 1.8 is not required for the Form CO to be considered as complete. However, given the statutory deadlines for Union merger control, notifying parties are encouraged to provide such descriptions as early as possible in cases and for the markets for which quantitative analysis is likely to be useful.

For further orientation, the undertakings concerned may refer to DG Competition's *'Best Practices for the submission of economic evidence and data collection in cases concerning the application of articles 101 and 102 TFEU and in merger cases'* as published on DG Competition's website and updated from time to time.

1.9. **International cooperation between the Commission and other competition authorities**

The Commission encourages the undertakings concerned to facilitate the international cooperation between the Commission and other competition authorities reviewing the same concentration. In the Commission's experience, good cooperation between the Commission and competition authorities in jurisdictions outside the EEA entails substantial benefits for the undertakings concerned. To this end, the Commission encourages notifying parties to submit together with this Form CO a list of those jurisdictions outside the EEA where the concentration is subject to regulatory clearance under merger control rules before or after closing.

Furthermore, the Commission encourages the undertakings concerned to submit waivers of confidentiality that would enable the Commission to share information with other competition authorities outside the EEA reviewing the same concentration. Each waiver facilitates joint discussion and analysis of a concentration as it allows the Commission to share relevant information with another competition authority reviewing the same concentration, including confidential business information obtained from the undertakings concerned. To this end,

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the Commission encourages the undertakings concerned to use the Commission's model waiver, which is published on DG Competition's website and updated from time to time.

1.10. **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 Union 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 parties to the concentration, 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 DG Competition's website upon 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) and other parties to the concentration** ([2])

For each notifying party as well as for each other party to the concentration provide:

2.1.1. name of undertaking;

2.1.2. name, address, telephone number, fax number and e-mail address of, and position held by, the appropriate contact person; the address given must be an address for service to which documents and, in particular, Commission decisions and other procedural documents may be notified, and the contact person given must be deemed to be authorised to accept service;

2.1.3. if one or more authorised external representatives of the undertaking are appointed, the representative or representatives to which documents and, in particular, Commission decisions and other procedural documents may be notified:

2.1.3.1. name, address, telephone number, fax number and e-mail address of, and position held by, each representative; and

([1]) See Section 6.3 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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2.1.3.2. the original written proof that each representative is authorised to act (based on the model Power of Attorney available on DG Competition's website).

2.2. **Nature of the parties' business**

For each of the notifying parties and the other parties to the concentration, describe the nature of the undertaking's business.

SECTION 3

Details of the concentration, ownership and control [1]

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 before and after completion of the concentration.

3.1. Describe the nature of the concentration being notified. By reference to the relevant criteria of the Merger Regulation and the Commission Consolidated Jurisdictional Notice [2]:

3.1.1. identify the undertakings or persons solely or jointly controlling each of the undertakings concerned, directly or indirectly, and describe the structure of ownership and control of each of the undertakings concerned before the completion of the concentration;

3.1.2. explain whether the proposed concentration is:

(i) a full merger,

(ii) an acquisition of sole or joint control, or

(iii) a contract or other means of conferring direct or indirect control within the meaning of Article 3(2) of the Merger Regulation;

(iv) the acquisition of joint control in a full-function joint venture within the meaning of Article 3(4) of the Merger Regulation, and, if so, the reasons why the joint venture is considered to be full-function [3].

3.1.3. explain how the concentration will be implemented (for example by conclusion of an agreement, by the launch of a public bid, etc.);

3.1.4. by reference to Article 4(1) of the Merger Regulation explain which of the following have taken place at the time of notification:

(i) an agreement has been concluded,

(ii) a controlling interest has been acquired,

[1] See Articles 3(3), 3(4) and 3(5) and Article 5(4) of the Merger Regulation.
[2] See Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p. 1).
[3] See Section B IV of the Consolidated Jurisdictional Notice.

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(iii) (the intention to launch) a public bid has been announced, or

(iv) the undertakings concerned have demonstrated a good faith intention to conclude an agreement.

3.1.5. indicate the expected date of any major events designed to bring about the completion of the concentration;

3.1.6. explain the structure of ownership and control of each of the undertakings concerned after the completion of the concentration.

3.2. Describe the economic rationale of the concentration.

3.3. State the value of the transaction (the purchase price (or the value of all the assets involved, as the case may be); specify whether this is in the form of equity, cash, or other assets).

3.4. Describe any financial or other support received from public authorities by any of the parties and the nature and amount of this support.

3.5. For the parties to the concentration (other than the seller) provide a list of all other undertakings which are active in affected markets 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, identifying the holder and stating the percentage held ([1]); and

3.6. Provide details of acquisitions made during the last three years by the groups identified in Section 2.1 of undertakings active in affected markets ([2]).

SECTION 4

Turnover

For each of the undertakings concerned provide the following data for the last financial year ([3]):

([1]) As set out in points 1.2 and 1.4(g) in the introductory part, before notification, the notifying party or parties may want to discuss with the Commission to what extent dispensation (waivers) to provide some of the requested information (in this context, data on participations in other undertakings) would be appropriate. On the other hand, the Commission may for specific concentrations require the following for a complete notification based on this Form CO: with respect to the parties to the concentration and each undertaking or person identified in response to sections 3.1.1 or 3.1.6, provide 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 by the management or supervisory board member.

([2]) As set out in points 1.2 and 1.4(g) in the introductory part, before notification, the notifying party or parties may want to discuss with the Commission to what extent dispensation (waivers) to provide some of the requested information (in this context, past acquisitions of undertakings) would be appropriate.

([3]) On the concepts of ‘undertaking concerned’ and the calculation of turnover see Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p. 1).

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4.1. Worldwide turnover;

4.2. EU-wide turnover;

4.3. EEA-wide turnover (EU and EFTA);

4.4. turnover in each Member State (indicate the Member State, if any, in which more than two-thirds of EU-wide turnover is achieved);

4.5. EFTA-wide turnover;

4.6. turnover in each EFTA State (indicate the EFTA State, if any, in which more than two-thirds of EFTA-wide turnover is achieved; also indicate whether the combined turnover of the undertakings concerned in the territory of the EFTA States equals 25 % or more of their total turnover in the EEA territory).

Turnover data must be provided by filling in the Commission's template table available on DG Competition's website.

SECTION 5

Supporting documentation

The notifying party or 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, a copy of the most recent document demonstrating the intention to launch a public bid must be provided and a copy of the offer document must be submitted as soon as possible and not later than when it is posted to shareholders;

5.3. an indication of the internet address, if any, at which the most recent annual reports and accounts of the parties to the concentration are available, or if no such internet address exists, copies of the most recent annual reports and accounts of the parties to the concentration; and

5.4. copies of the following documents prepared by or for or received by any member(s) of the board of management, the board of directors, or the supervisory board, as applicable in the light of the corporate governance structure, or the other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting:

(i) minutes of the meetings of the board of management, board of directors, supervisory board and shareholders' meeting at which the transaction has been discussed, or excerpts of those minutes relating to the discussion of the transaction;

(ii) analyses, reports, studies, surveys, presentations and any comparable documents for the purpose of assessing or analysing the concentration with respect to its rationale (including documents where the transaction is discussed in relation to

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potential alternative acquisitions), market shares, competitive conditions, competitors (actual and potential), potential for sales growth or expansion into other product or geographic markets, and/or general market conditions ([1]);

(iii) analyses, reports, studies, surveys and any comparable documents from the last two years for the purpose of assessing any of the affected markets ([2]) with respect to market shares, competitive conditions, competitors (actual and potential) and/or potential for sales growth or expansion into other product or geographic markets ([3]).

Provide a list of the documents mentioned in this section 5.4, indicating for each document the date of preparation and the name and title of the addressee(s).

SECTION 6

Market definitions

The relevant product and geographic markets serve to identify the scope within which the market power of the new entity resulting from the concentration must be assessed ([4]). When presenting relevant product and geographic markets, the notifying party or parties must submit, in addition to any product and geographic market definitions they consider relevant, all plausible alternative product and geographic market definitions. Plausible alternative product and geographic market definitions can be identified on the basis of previous Commission decisions and judgments of the Union Courts and (in particular where there are no Commission or Court precedents) by reference to industry reports, market studies and the notifying parties' internal documents.

The notifying party or parties must provide the information requested in this Form CO having regard to the following definitions:

6.1. **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,

([1]) As set out in points 1.2 and 1.4(g) in the introductory part, before notification, the notifying party or parties may want to discuss with the Commission to what extent dispensation (waivers) to provide some of the requested information (in this context, documents) would be appropriate.

([2]) See Section 6.3 for the definition of affected markets.

([3]) As set out in points 1.2 and 1.4(g) in the introductory part, before notification, the notifying party or parties may want to discuss with the Commission to what extent dispensation (waivers) to provide some of the requested information (in this context, documents) would be appropriate.

([4]) See Commission Notice on the definition of the relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5).

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and having regard to, for example, substitutability of products and services, prices, cross-price elasticity of demand or other relevant factors (such as supply-side substitutability in appropriate cases).

6.2. **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.

6.3. **Affected markets:**

For purposes of information required in this Form CO, affected markets consist of all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets, on the basis of which in the EEA territory:

(a) two or more of the parties to the concentration are engaged in business activities in the same relevant market and where the concentration will lead to a combined market share of 20 % or more. These are horizontal relationships;

(b) one or more of the parties to the concentration are engaged in business activities in a relevant market, which is upstream or downstream of a relevant market in which any other party to the concentration is engaged, and any of their individual or combined market shares at either level is 30 % 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 definitions and market share thresholds set out in Section 6, identify each affected market ([2]).

([1]) For example, if a party to the concentration holds a market share larger than 30 % 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 concentration leads to a combined market share downstream of 30 % or more, then both the upstream and the downstream markets are affected markets.

([2]) As indicated in DG Competition's Best Practices on the conduct of EC merger control proceedings, notifying parties are advised, in pre-notification, to disclose information relating to all potentially affected markets even if they ultimately consider that they are not affected and notwithstanding that they may take a particular view in relation to the issue of market definition. In this regard, as set out in introductory Parts 1.2 and 1.4(g), before notification, the notifying party or parties may want to discuss with the Commission to what extent dispensation (waivers) to provide some of the requested information (in this context, for certain affected markets, or for certain other markets as described under Section 6.4 would be appropriate.

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

On the basis of the definitions in Section 6, describe the product and geographic scope under all plausible alternative market definitions of markets (where such markets include the whole or a part of the EEA) 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 30 % 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 three years;

(b) any of the parties to the concentration has a market share larger than 30 % 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 30 % or more. Product markets are closely related neighbouring markets when the products are complementary to each other [1] or when they belong to a range of products that is generally purchased by the same set of customers for the same end use [2].

In order to enable the Commission to consider, from the outset, the competitive impact of the proposed concentration in the markets identified under Section 6.4, notifying parties are invited to submit the information under Sections 7 and 8 of this Form CO also in relation to those markets.

SECTION 7

Information on affected markets

For each horizontally affected market, for each vertically affected market and for each of the other markets where the notified operation may have a significant impact, and for each of the last three years [3], provide the following:

7.1. for each of the parties to the concentration, the nature of the undertaking's business, the main subsidiaries active and/or brands, product names and/or trademarks used in each of these markets;

[1] 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.

[2] 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.

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

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

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

7.4. an estimate of the market share in value (and where appropriate, volume) of all competitors (including importers) having at least 5 % of the relevant market under consideration. Identify the sources used to calculate these market shares and provide documents where available to confirm the calculation.

7.5. an estimate of the total Union-wide and EEA-wide capacity. Over the last three years what proportion of this capacity has been accounted for by each of the parties to the concentration, and what have their respective rates of capacity utilisation been? If applicable, identify the location and capacity of the manufacturing facilities of each of the parties to the concentration in affected markets [2].

SECTION 8

Structure of supply in affected markets

8.1. Provide a brief explanation of the structure of supply in each of the affected markets. Specify in particular:

(a) the manner in which the parties to the concentration produce, price and sell the products and/or services; for example, whether they manufacture, sell and price locally;

(b) the nature and extent of vertical integration of each of the parties to the concentration compared with their largest competitors;

(c) the distribution systems prevailing in the market and their importance, and to what extent distribution is performed by third parties and/or undertakings belonging to the same group as the parties, as well as the importance of exclusive distribution contracts and other types of long-term contracts; and

(d) 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?

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

[1] The value and volume of a market must reflect output less exports plus imports for the geographic areas under consideration. As set out in points 1.2 and 1.4(g) in the introductory part, before notification, the notifying party or parties may want to discuss with the Commission to what extent dispensation (waivers) to provide some of the requested information (in this context, value- or volume-based data for market size and shares) would be appropriate.

[2] As set out in points 1.2 and 1.4(g) in the introductory part, before notification, the notifying party or parties may want to discuss with the Commission to what extent dispensation (waivers) to provide some of the requested information (in this context, capacity data) would be appropriate. A reason for a waiver could be that capacity does not appear relevant for competition in the market in question.

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Structure of demand in affected markets

8.2. Provide a brief explanation of the structure of demand in each affected market, specifying, in particular:

(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 switching costs (in terms of time and expense) for customers when changing from one supplier to another,

(i) for existing products and

(ii) for new products replacing existing products (including the normal time horizon of customer contracts);

(d) the degree of concentration or dispersion of customers;

(e) the way customers purchase the products or services in question, in particular whether they use procurement techniques such as requests for proposal and bidding procedures.

Product differentiation and closeness of competition

8.3. Provide a brief explanation of the degree of product differentiation in each affected market, specifying, in particular:

(a) the role and importance of product differentiation in terms of quality ('vertical differentiation') and other product characteristics ('horizontal' and 'spatial differentiation');

(b) any segmentation of customers into different groups with a description of the 'typical customer' for each group; and

(c) the rivalry between the parties to the concentration in general, as well as the closeness of substitution between the products of the parties to the concentration, including for each of the customer groups and 'typical customers' identified in response to the question in point (b).

Market entry and exit

8.4. Over the last five years, has there been any significant entry into any affected market?

If so, identify such entrants and provide an estimate of the current market share of each such entrant.

8.5. In the opinion of the notifying parties, are there undertakings (including those at present operating only outside the EU or the EEA) that are likely to enter any affected market?

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If so, explain why such entry is likely and provide an estimate of the time within which such entry is likely to occur.

8.6. Provide a brief description of the main factors influencing entry into each of the 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 authorisation or standard setting in any form;

(c) any barriers to access to customers, such as those resulting from product certification procedures, or the importance of reputation and a proven track record;

(d) any need and possibility to obtain access to patents, know-how and other intellectual property rights in these markets;

(e) 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;

(f) the importance of economies of scale and scope and of network effects for the production or distribution of products and/or services in the affected markets; and

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

8.7. Explain whether any of the parties to the concentration, or any of the competitors, have products likely to be brought to market in the short or medium term ('pipeline products'), or plans to expand production or sales capacity in any of the affected markets. 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.

8.8. Over the last five years, has there been any exit from any affected market?

If so, identify the firm having exited the market and provide an estimate of its market share in the year prior to the exit.

Research and development

8.9. Give an account for the affected markets of the importance of research and development in firms' ability 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.

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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 the frequency of introduction of new products and/or services, developments in products and/or services, production processes, distribution systems, and so on); and

(c) the parties' own research planning and priorities over the next three years.

Cooperative Agreements

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

8.11. If relevant, 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 [2].

Trade between Member States and imports from outside the EEA

8.12. Explain the extent to which trade within the territory of the EEA in the products at stake is affected by transportation and other costs.

8.13. For the affected markets, provide 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;

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;

[1] Research and development intensity can for instance be illustrated by research and development expenditure as a proportion of turnover.

[2] As set out in points 1.2 and 1.4(g) in the introductory part, before notification, the notifying party or parties may want to discuss with the Commission to what extent dispensation (waivers) to provide some of the requested information would be appropriate.

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(b) identify the most important trade associations to which the customers of the parties to the concentration belong; and

(c) provide the name, address, telephone number, fax number and e-mail address of the appropriate contact person for all trade associations listed in this section ([1]).

Contact details

8.15. 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, the chief executive) for ([2]):

(a) the competitors identified under section 7.4;

(b) each of the parties' top five customers in each of the affected markets;

(c) the recent entrants identified under section 8.4; and

(d) the potential entrants identified under section 8.5;

Contact details must be provided using the Commission's template available on DG Competition's website.

SECTION 9

Efficiencies

Should you wish the Commission specifically to consider from the outset ([3]) 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, provide a description of, and 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 ([4]).

([1]) As set out in points 1.2 and 1.4(g) in the introductory part, before notification, the notifying party or parties may want to discuss with the Commission to what extent dispensation (waivers) to provide some of the requested information would be appropriate.

([2]) The Commission may at any time, including for a complete notification of a concentration based on this Form CO, request a higher number of contact details for each of the categories of market participants identified in this Form CO and request contact details for other categories of market participants, for example suppliers.

([3]) It should be noted that submitting information in response to Section 9 is not required for a complete notification and is therefore voluntary. The notifying party or 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 claims.

([4]) For further guidance on the assessment of efficiencies, see the Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, p. 5).

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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 EUR per unit and EUR 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. In the case of a joint venture, for the purpose of Article 2(4) of the 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 ([1])?

If the answer is affirmative, 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.

(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 101(1) of the Treaty on the Functioning of the European Union ('TFEU'), and, where applicable, the corresponding provisions of the EEA Agreement ([2]), 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, if you consider that the criteria of Article 101(3) TFEU and, where applicable, the

([1]) For market definitions refer to Section 6.
([2]) See Article 53(1) of the EEA Agreement.

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corresponding provisions of the EEA Agreement [1] apply, explain why this is the case. Under Article 101(3) TFEU, the provisions of Article 101(1) TFEU 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 11

Declaration

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 Merger Regulation.'

[1] See Article 53(3) of the EEA Agreement.

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ANNEX II

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

INTRODUCTION

1.1. **The purpose of the Short Form CO**

The Short Form CO 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 Short Form CO, your attention is drawn to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ([1]) (hereinafter referred to as 'the Merger Regulation'), and Commission Regulation (EC) No 802/2004 ([2]) (hereinafter referred to as 'the Implementing Regulation'), to which this Short Form CO is annexed. The text of those Regulations, as well as other relevant documents, can be found on the Competition page of the Commission's Europa website. Your attention is also drawn to the corresponding provisions of the Agreement on the European Economic Area ([3]) (hereinafter referred to as 'the EEA Agreement'). In completing this Short Form CO, your attention is also drawn to the Commission's Notice on a simplified procedure for treatment of certain concentrations ([4]).

As a general rule, the Short Form CO 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 at the time of notification; and

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

([1]) OJ L 24, 29.1.2004, p. 1.
([2]) OJ L 133, 30.4.2004, p. 1.
([3]) See in particular Article 57 of the EEA Agreement, point 1 of Annex XIV to the EEA Agreement, Protocols 21 and 24 to the EEA Agreement, as well as Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (hereinafter referred to as the 'Surveillance and Court 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.
([4]) The Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (OJ C 366, 14.12.2013, p. 1).

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2. two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, provided that none of the parties to the concentration are engaged in business activities in the same product and geographic market ([1]), or in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged ([2]) ([3]);

3. two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and:

   (a) the combined market share of all the parties to the concentration that are engaged in business activities in the same product and geographic market (horizontal relationships) is less than 20 % ([4]); and

   (b) none of the individual or combined market shares of all the parties to the concentration that are engaged in business activities in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (vertical relationships) is at either level 30 % or more ([5]);

   as regards the conditions in point 3(a) and (b), in the case of an acquisition of joint control, relationships that occur only between the undertakings acquiring joint control are not considered horizontal or vertical relationships for the purpose of this Short Form CO but may be dealt with as concentrations where an issue of coordination arises;

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

([1]) Any reference in this Short Form CO to undertakings' activities in markets should be understood as activities in markets within the EEA territory or markets which include the EEA territory, but may be wider than the EEA territory.

([2]) A vertical relationship normally presupposes that the product or service of the undertaking active in the upstream market in question constitutes an important input to the product or service of the undertaking active in the downstream market: for more details see Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p. 6), point 34.

([3]) In the case of an acquisition of joint control, relationships that occur only between the undertakings acquiring joint control are not considered horizontal or vertical relationships for the purpose of this Short Form CO but may be dealt with as concentrations where an issue of coordination arises.

([4]) The thresholds for horizontal and vertical relationships apply to any plausible alternative product and geographic market definition that may have to be considered in a given case. It is important that the underlying market definitions set out in the notification are precise enough to justify the assessment that these thresholds are not met, and that all plausible alternative market definitions that may have to be considered are mentioned (including geographic markets narrower than national).

([5]) See footnotes 5 and 7.

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The Commission may also accept a Short Form CO where two or more of the parties to the concentration are in a horizontal relationship [1], provided that the increment ('delta') of the Herfindahl-Hirschman Index ('HHI') resulting from the concentration is below 150 [2] and the parties' combined market share is below 50 % [3]. The Commission will decide on a case-by-case basis whether, under the particular circumstances of the case at hand, the increase in market concentration level indicated by the HHI delta is such that a Short Form CO can be accepted. The Commission is less likely to accept a Short Form CO if any of the special circumstances mentioned in the Commission's guidelines on the assessment of horizontal mergers are present [4], for instance – but not limited to – where the market is already concentrated, in the case of a concentration that eliminates an important competitive force, in the case of a concentration between two important innovators, or in the case of a concentration involving a firm that has promising pipeline products.

The Commission may always require a Form CO where it appears that the conditions for using the Short Form CO are not met, or, exceptionally where they are met, but 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 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 [5]; and in concentrations where an issue of coordination arises, as referred to in Article 2(4) of the Merger Regulation. Similarly, a Form CO may be required in the case of a party acquiring sole control of a joint venture in which it currently holds joint control,

[1] In the case of an acquisition of joint control, relationships that occur only between the undertakings acquiring joint control outside the field of activity of the joint venture, are not considered horizontal or vertical relationships for the purpose of this Short Form CO but may be dealt with as concentrations where an issue of coordination arises.

[2] The HHI is calculated by summing the squares of the individual market shares of all the firms in the market; the change in the HHI stemming from a concentration can be calculated independently of the overall market concentration, on the basis of the market shares of the parties to the concentration only. See Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, page 5), point 16 and footnote 19. However, in order to calculate the HHI delta resulting from the concentration, it is sufficient to subtract from the square of the sum of the market shares of the parties to the concentration (in other words, the square of the merged entity's market share post-concentration) the sum of the squares of the parties' individual market shares (since the market shares of all other competitors in the market remain unchanged and thus do not influence the result of the equation). In other words, the HHI delta can be calculated on the basis of only the market shares of the parties to the concentration, without a need to know the market shares of any other competitors in the market.

[3] See footnote 7.

[4] See Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, in particular point 20.

[5] 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; see Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p. 6), point 91.

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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]).

1.2. **Reversion to the normal procedure and notification under Form CO**

In assessing whether a concentration may be notified under the Short Form CO, 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 CO, the Commission may require full, or where appropriate partial, notification under Form CO. This may be the case where:

(a) it appears that the conditions for using the Short Form CO are not met;

(b) although the conditions for using the Short Form CO 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 Merger Regulation;

(c) the Short Form CO contains incorrect or misleading information;

(d) a Member State or an EFTA State expresses substantiated competition concerns about the notified concentration within 15 working days of receipt of the copy of the notification; or

(e) 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. **Pre-notification contacts**

It is recognised that the information requested in this Short Form CO can be substantial. However, experience has shown that, depending on

([1]) See Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, points 8 to 19.

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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 Short Form CO 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 point 1.6(g) of this introductory part for more details).

Under the Merger Regulation, notifying parties are entitled to notify a concentration at any time, provided the notification is complete. The possibility to engage in pre-notification contacts is a service offered by the Commission to notifying parties on a voluntary basis in order to prepare the formal merger review procedure. As such, while not mandatory, pre-notification contacts can be 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.

Accordingly, whilst the parties are solely responsible to decide whether to engage in pre-notification contacts and when exactly to notify, parties are encouraged to consult the Commission regarding the adequacy of the scope and type of information on which they intend to base their notification. Similarly, in cases where the parties wish to submit a Short Form CO, they are encouraged to engage in pre-notification contacts with the Commission to discuss whether the case is one for which it is appropriate to use a Short Form CO.

Notifying parties are also encouraged to engage in pre-notification contacts where they wish to submit a Short Form CO in situations where two or more of the parties to the concentration are in a horizontal relationship with an HHI delta resulting from the concentration of below 150.

Nonetheless, pre-notification contacts, in particular the submission of a draft notification, may be less useful in cases falling under point 5(b) of the Commission's Notice on a simplified procedure for treatment of certain concentrations. This concerns cases where the parties are not engaged in business activities in the same product and geographic market, or in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged. In such circumstances, notifying parties may prefer to notify immediately without submitting a draft notification before-hand ([1]).

Notifying parties may refer to the '*Best Practices on the conduct of EC merger control proceedings*' of the Commission's Directorate-General for Competition ('DG Competition') as published on DG Competition's website and updated from time to time. These Best Practices provide guidance on pre-notification contacts and the preparation of notifications.

([1]) In light of the DG Competition *Best Practices on the conduct of EC merger control proceedings*, the Commission would nevertheless encourage parties to submit in advance a request for the allocation of a DG Competition case-team.

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1.4. **Who must notify**

In the case of a merger within the meaning of Article 3(1)(a) of the Merger Regulation or the acquisition of joint control of an undertaking within the meaning of Article 3(1)(b) of the Merger Regulation, the notification must 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 information to be provided**

Different Sections of this Short Form CO must be filled in, depending on the reasons [2] why the concentration qualifies for simplified treatment and notification under the Short Form CO:

(a) Sections 1, 2, 3, 4, 5 and 10 must be completed for all cases. Section 9 must be completed in the case of a joint venture.

(b) If the concentration gives rise to one or more reportable markets [3], sections 6 and 7 must be completed.

(c) If the concentration does not give rise to one or more reportable markets [4], section 8 must be completed; sections 6 and 7 do not need to be completed.

1.6. **The requirement for a correct and complete notification**

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

In particular you should note that:

(a) In accordance with Article 10(1) of the Merger Regulation and Article 5(2) and (4) of the Implementing Regulation, the time-limits of the 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 Merger Regulation.

[1] See Article 4(2) of the Merger Regulation.
[2] See the conditions in points 5 and 6 of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (OJ C 366, 14.12.2013, p. 1).
[3] Reportable markets within the meaning of section 6.
[4] Reportable markets within the meaning of section 6.

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(b) The notifying party or parties must 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 ([1]).

(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 Merger Regulation, Article 5(2) and (4) of the Implementing Regulation).

(e) Under Article 14(1)(a) of the 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 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 Short Form CO, 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) In accordance with Article 4(2) of the Implementing Regulation, the Commission may dispense with the obligation to provide any particular information in the notification, including documents, or with any other requirement specified in this Short Form CO where the Commission considers that compliance with those obligations or requirements is not necessary for the examination of the case. Accordingly, you may, in pre-notification, submit a written request for a waiver, asking the Commission to dispense with the obligation to provide such information if you consider that that information is not necessary for the Commission's examination of the case.

([1]) Any personal data submitted in this Short Form CO will be processed in compliance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

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Waiver requests should be at the same time as the draft Short Form CO in order to allow the Commission to determine whether or not the information in relation to which a waiver is being requested is necessary for the examination of the case. Waiver requests should be made either within the text of a draft Short Form CO itself or as an e-mail or letter addressed to the responsible case manager and/or head of unit.

The Commission will consider waiver requests, provided that you give adequate reasons why the information in question is not necessary for the examination of the case. Waiver requests will be dealt with in the context of the review of a draft Short Form CO. Therefore, in accordance with DG Competition's *Best Practices on the conduct of EC merger control proceedings*, DG Competition would normally require five working days before responding to waiver requests.

For the avoidance of doubt, it should be noted that the fact that a section is not mentioned in point 1.5. of this introductory part nor the fact that the Commission may have accepted, pursuant to point 1.6, that any particular information requested by this Short Form CO was not necessary for the complete notification of a concentration (using the Short Form CO), does not in any way prevent the Commission from requesting this particular information at any time, in particular by way of request for information pursuant to Article 11 of the Merger Regulation.

1.7. **How to notify**

The notification 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 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 Union, the notification must simultaneously be supplemented with a translation into an official language of the Union.

The information requested by this Short Form CO is to be set out using the sections and paragraph numbers of the Short Form CO, signing a declaration as provided in Section 10, and annexing supporting documentation. The original of the Short Form CO must be signed by persons authorised by law to act on behalf of each notifying party or by one or more authorised external representatives of the notifying party or parties. In completing Section 7 of this Short Form CO, 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 Short Form CO. Annexes to this Short Form CO must only be used to supplement the information supplied in the Short Form CO itself.

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Contact details must be provided in a format provided by the DG Competition on its website. 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 Union, 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 the required number of copies of the Short Form CO and the supporting documents must be submitted to the Commission's DG Competition. The Commission has published the required number and format (paper or electronic) of copies in the *Official Journal of the European Union* as well as on DG Competition's website.

The notification must be delivered to the address referred to in Article 23(1) of the Implementing Regulation. This address is published in the *Official Journal of the European Union* and available on DG Competition's website. The notification must be delivered to the Commission on working days as defined by Article 24 of the Implementing Regulation during the opening hours indicated on DG Competition's website. The security instructions given on DG Competition's website must be adhered to.

All electronic copies of the Short Form CO and supporting documents must be provided in a useable and searchable format as further specified on DG Competition's website.

1.8. **Confidentiality**

Article 339 of the Treaty on the Functioning of the European Union ('TFEU') and Article 17(2) of the 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

[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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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.

1.9. **Definitions and instructions for purposes of this Short Form CO**

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 Short Form CO must be read as meaning calendar year, unless otherwise stated. All information requested in this Short Form CO must, unless otherwise specified, relate to the year preceding that of the notification.

The financial data requested in Section 4 must be provided in euro at the average exchange rates prevailing for the years or other periods in question.

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

1.10. **International cooperation between the Commission and other competition authorities**

The Commission encourages the undertakings concerned to facilitate the international cooperation between the Commission and other competition authorities reviewing the same concentration. In the Commission's experience, good cooperation between the Commission and competition authorities in jurisdictions outside the EEA entails substantial benefits for the undertakings concerned. To this end, the Commission encourages notifying parties to submit together with this Short Form CO a list of those jurisdictions outside the EEA where the concentration is subject to regulatory clearance under merger control rules before or after closing.

1.11. **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 Union and/or national rules on information and consultation regarding transactions of a concentrative nature vis-à-vis employees and/or their representatives.

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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 parties to the concentration, 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 non-confidential summary (up to 500 words) of the information provided under Section 1.1. It is intended that this summary will be published on DG Competition's website at the date of notification. The summary must be drafted so that it contains no confidential information or business secrets.

1.3. Provide an explanation of the reasons why the concentration qualifies for simplified treatment by reference to the relevant provisions of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004.

SECTION 2

Information about the parties

For each notifying party as well as for each other party to the concentration [2] provide:

2.1.1. name of undertaking;

2.1.2. name, address, telephone number, fax number and e-mail address of, and position held by, the appropriate contact person; the address given must be an address for service to which documents and, in particular, Commission decisions and other procedural documents may be notified, and the contact person given shall be deemed to be authorised to accept service;

2.1.3. if one or more authorised external representatives of the undertaking are appointed, the representative or representatives to which documents and, in particular, Commission decisions and other procedural documents may be notified:

2.1.3.1. name, an address for service, telephone number, fax number and e-mail address of, and position held by, each representative; and

2.1.3.2. the original of written proof that each authorised external representative is authorised to act (based on the model Power of Attorney available on DG Competition's website).

[1] Reportable markets within the meaning of section 6.

[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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SECTION 3

Details of the concentration, ownership and control [1]

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 before and after completion of the concentration.

3.1. Describe the nature of the concentration being notified. By reference to the relevant criteria of the Merger Regulation and the Commission Consolidated Jurisdictional Notice [2]:

3.1.1. identify the undertakings or persons solely or jointly controlling each of the undertakings concerned, directly or indirectly, and describe the structure of ownership and control of each of the undertakings concerned before the completion of the concentration;

3.1.2. explain whether the proposed concentration is:

(i) a full merger,

(ii) an acquisition of sole or joint control, or

(iii) a contract or other means of conferring direct or indirect control within the meaning of Article 3(2) of the Merger Regulation; or

(iv) the acquisition of joint control in a full-function joint venture within the meaning of Article 3(4) of the Merger Regulation, and if so, the reasons why the joint venture is considered to be full-function [3];

3.1.3. explain how the concentration will be implemented (for example by conclusion of an agreement, by the launch of a public bid, etc.);

3.1.4. by reference to Article 4(1) of the Merger Regulation explain which of the following have taken place at the time of notification:

(i) an agreement has been concluded,

(ii) a controlling interest has been acquired,

(iii) (the intention to launch) a public bid has been announced, or

(iv) the undertakings concerned have demonstrated a good faith intention to conclude an agreement;

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

[2] See Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p. 1).

[3] See section B IV of the Consolidated Jurisdictional Notice.

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3.1.5. indicate the expected date of any major events designed to bring about the completion of the concentration;

3.1.6. explain the structure of ownership and control of each of the undertakings concerned after the completion of the concentration.

3.2. Describe the economic rationale of the concentration.

3.3. State the value of the transaction (the purchase price (or the value of all the assets involved as the case may be); specify whether this is in the form of equity, cash, or other assets).

3.4. Describe any financial or other support received from public authorities by any of the parties and the nature and amount of this support.

SECTION 4

Turnover

For each of the undertakings concerned provide the following data for the last financial year [1]:

4.1. Worldwide turnover;

4.2. EU-wide turnover;

4.3. EEA-wide turnover (EU and EFTA);

4.4. turnover in each Member State (indicate the Member State, if any, in which more than two-thirds of EU-wide turnover is achieved);

4.5. EFTA-wide turnover;

4.6. turnover in each EFTA State (indicate the EFTA State, if any, in which more than two-thirds of EFTA-wide turnover is achieved; also indicate whether the combined turnover of the undertakings concerned in the territory of the EFTA States equals 25 % or more of their total turnover in the EEA territory).

Turnover data must be provided by filling in the Commission's template table available on DG Competition's website.

SECTION 5

Supporting documentation

Notifying parties must provide the following:

[1] On the concepts of 'undertaking concerned' and the calculation of turnover see Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p. 1).

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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. An indication of the internet address, if any, at which the most recent annual reports and accounts of all the parties to the concentration are available, or if no such internet address exists, copies of the most recent annual reports and accounts of the parties to the concentration.

5.3. The following information needs to be provided only in cases where the concentration gives rise to one or more reportable markets in the EEA: copies of all presentations prepared by or for or received by any members of the board of management, or the board of directors, or the supervisory board, as applicable in the light of the corporate governance structure, or the other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting analysing the notified concentration.

Provide a list of the documents mentioned in this section 5.3 indicating for each document the date of preparation and the name and title of the addressee(s).

SECTION 6

Market definitions

This section needs to be completed for concentrations that give rise to one or more reportable markets ([1]).

6.1. **Market definitions**

The relevant product and geographic markets serve to identify the scope within which the market power of the new entity resulting from the concentration must be assessed ([2]).

The notifying party or parties must provide the information requested in this Short Form CO having regard to the following definitions:

6.1.1. 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 definition, and having regard to, for example, substitutability, prices, cross-price elasticity of demand or other relevant factors (such as supply-side substitutability in appropriate cases).

([1]) Reportable markets within the meaning of section 6.

([2]) See Commission Notice on the definition of the relevant market for the purposes of Union competition law (OJ C 372, 9.12.1997, p. 5).

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6.1.2. 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.

6.2. **Reportable markets**

For purposes of information required in this Short Form CO, reportable markets consist of all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets [1], on the basis of which in the EEA territory:

(a) two or more of the parties to the concentration (in case of acquisition of joint control in a joint venture, the joint venture and at least one of the acquiring parties) are engaged in business activities in the same relevant market (horizontal relationships);

(b) one or more of the parties to the concentration (in case of acquisition of joint control in a joint venture, the joint venture and at least one of the acquiring parties) 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).

On the basis of the definitions set out in Section 6, identify all reportable markets.

If the concentration falls within the scope of point 5(c) of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, you must confirm that there is no affected market as defined in Form CO Section 6.3 under any plausible product and geographic market definition.

SECTION 7

Information on markets

This section needs to be completed for concentrations that give rise to one or more reportable markets.

7.1. For each reportable market described in Section 6, for the year preceding the operation, provide the following:

[1] Plausible alternative product and geographic market definitions can be identified on the basis of previous Commission decisions and judgments of the Union Courts and (in particular where there are no Commission or Court precedents) by reference to industry reports, market studies and the notifying parties' internal documents.

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7.1.1. for each of the parties to the concentration, the nature of the undertaking's business, the main subsidiaries active and/or brands, product names and/or trademarks used in each of these markets.

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

7.1.3. 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

7.1.4. 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.)

7.2. If the concentration falls within the scope of point 6 of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, explain the following for each reportable market where the parties have a combined horizontal market share of 20 % or more:

7.2.1. Explain whether any of the special circumstances mentioned in point 20 of the Commission's Guidelines on the assessment of horizontal mergers [2] are present; in particular discuss the degree of market concentration, whether the proposed concentration would combine important innovators, whether the proposed concentration would eliminate an important competitive force and whether the proposed concentration involves a firm that has promising pipeline products.

7.2.2. Provide the sales in value and volume, as well as an estimate of the market shares, of each of the parties to the concentration for each of the last 3 years.

7.2.3. In respect of each party to the concentration provide a brief description of:

7.2.3.1. the intensity of research and development [3];

7.2.3.2. the main innovations in products and/or services brought to market during the last 3 years, pipeline products to be brought to the market within the next 3 years, as well as important intellectual property rights owned or controlled.

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

[2] See Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, p. 5).

[3] Research and development intensity can for instance be illustrated by research and development expenditure as a proportion of turnover.

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SECTION 8

Activities of the target if no reportable markets

This section needs to be completed for concentrations that do not give rise to any reportable markets.

8.1. **Business activities of the party or parties acquiring control**

For each of the party or parties acquiring control describe the nature of the undertaking's business.

8.2. **Business activities of the target**

8.2.1. Explain the existing and future business activities of the undertaking(s) over which control is acquired.

8.2.2. In the case of a joint venture with no actual or foreseen activities within the territory of the EEA within the meaning of paragraph 5(a) of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, it is sufficient to explain:

8.2.2.1. the products or services provided by the joint venture currently and in the future; and

8.2.2.2. why the joint venture would not have any effect, directly or indirectly, on markets within the EEA.

8.3. **Absence of reportable markets**

Please explain why you consider that the proposed concentration does not give rise to any reportable market in the EEA.

SECTION 9

Cooperative effects of a joint venture

In the case of a joint venture, for the purpose of Article 2(4) of the 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? ([1])

If the answer is affirmative, indicate for each of the markets referred to here:

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

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(i) the turnover of each parent company in the preceding financial year;

(ii) the economic significance of the activities of the joint venture in relation to this turnover;

(iii) the market share of each parent.

(b) If the answer to (a) is affirmative and in your view the criteria of Article 101(1) TFEU, and, where applicable, the corresponding provisions of the EEA Agreement [1] are not met, 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, if you consider that the criteria of Article 101(3) TFEU and, where applicable, the corresponding provisions of the EEA Agreement [2] apply, explain why this is the case. Under Article 101(3) TFEU, the provisions of Article 101(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 10

Declaration

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 Short 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 Merger Regulation.’

[1] See Article 53(1) of the EEA Agreement.
[2] See Article 53(3) of the EEA Agreement.

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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

1.1. **The purpose of this Form RS**

This Form RS specifies the information that submitting parties must provide when making a reasoned submission for a pre-notification referral under Article 4(4) or (5) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ([1]) (hereinafter referred to as 'the Merger Regulation').

Your attention is drawn to the Merger Regulation and to Commission Regulation (EC) No 802/2004 ([2]) (hereinafter referred to as 'the Implementing Regulation'), to which this Form RS is annexed. The text of those regulations, as well as other relevant documents, can be found on the Competition page of the Commission's Europa website. Your attention is also drawn to the corresponding provisions of the Agreement on the European Economic Area ([3]) (hereinafter referred to as 'the EEA Agreement').

It is recognised that the information requested in this Form RS can be substantial. However, experience has shown that, depending on the specific characteristics of the case, not all information is always necessary for an adequate reasoned submission. Accordingly, if you consider that any particular information requested by this Form RS may not be necessary for the reasoned submission in your case, you are encouraged to ask the Commission to dispense with the obligation to provide certain information. See point 1.3(e) of this introductory part for more details.

The possibility to engage in prior contacts is a service offered by the Commission to submitting parties on a voluntary basis in order to prepare the formal submission of this Form RS. Prior contacts are extremely valuable to both the submitting parties and the Commission in determining the precise amount of information required in a reasoned submission and, in the majority of cases, will result in a significant reduction of the information required. Accordingly, parties are encouraged to consult the Commission and the relevant Member State/s or EFTA State/s on a voluntary basis regarding the adequacy of the scope and type of information on which they intend to base their reasoned submission.

The parties may refer to the '*Best Practices on the conduct of EC merger control proceedings*' of the Commission's Directorate-General

([1]) OJ L 24, 29.1.2004, p. 1.
([2]) OJ L 133, 30.4.2004, p. 1.
([3]) See in particular Article 57 of the EEA Agreement, point 1 of Annex XIV to the EEA Agreement, Protocols 21 and 24 to the EEA Agreement, as well as Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (hereinafter referred to as the 'Surveillance and Court Agreement'). Any reference to EFTA States must 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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for Competition ('DG Competition') as published on DG Competition's website and updated from time to time, which provide guidance on prior contacts and the preparation of notifications and reasoned submissions.

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

In the case of a merger within the meaning of Article 3(1)(a) of the 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 the 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.

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

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

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

In particular you should note that:

(a) In accordance with Articles 4(4) and (5) of the Merger Regulation, the Commission is obliged to transmit reasoned submissions to the Member States and the EFTA States without delay. The time limits for considering a reasoned submission will begin upon receipt of the submission by the relevant Member State/s or EFTA State/s. 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.

(b) The submitting parties must 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 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) In accordance with the Implementing Regulation, the Commission may dispense with the obligation to provide any particular information in the reasoned submission or with any other requirement specified in this Form RS. Accordingly, you may submit a written request for a waiver, asking the Commission to dispense with the obligation to provide such information, 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).

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Waiver requests should be submitted at the same time as the draft Form RS. Waiver requests should be made either within the text of the draft Form RS itself or as an e-mail or letter addressed to the responsible case manager and/or head of unit.

The Commission will consider such waiver requests, 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 and EFTA State/s should also be provided.

Requests for waivers will be dealt with in accordance with DG Competition's Best Practices on the conduct of EC merger control proceedings and DG Competition would normally require five working days before responding to a waiver request.

(e) In accordance with the Implementing Regulation, the Commission may dispense with the obligation to provide any particular information in the reasoned submission or with any other requirement specified in this Form RS where the Commission considers that compliance with those obligations or requirements are not necessary for the examination of the pre-notification referral request. Accordingly, you may submit a written request for a waiver, asking the Commission to dispense with the obligation to provide such information, if you consider that any particular information required by this Form RS may not be necessary for the Commission's or the relevant Member State/s' or EFTA State/s' examination of the pre-notification referral request.

Waiver requests should be made simultaneously with the submission of the draft Form RS in order to allow the Commission to determine whether or not the information in relation to which a waiver is being requested is necessary for the examination of the pre-notification referral request. Waiver requests should be made either within the text of the draft Form RS itself or as an e-mail or letter addressed to the responsible case manager and/or head of unit.

The Commission will consider such waiver requests, provided that you give adequate reasons why the information in question is not necessary for dealing with your request for a pre-notification referral. The Commission may consult with the relevant Member State or EFTA State authority or authorities before deciding whether to accede to such a request.

Requests for waivers will be dealt with in accordance with DG Competition's Best Practices on the conduct of EC merger control proceedings and DG Competition would normally require five working days before responding to a waiver request.

For the avoidance of doubt, it should be noted that the fact that the Commission may have accepted that any particular information requested by this Form RS was not necessary for the complete reasoned submission for a concentration, does not in any way prevent the Commission from requesting this particular information at any time, in particular by way of request for information pursuant to Article 11 of the Merger Regulation.

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1.4. **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 and EFTA 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/s or (an) EFTA State/s, the requesting parties are strongly encouraged to include a copy of the request in the language/s of the Member State/s and EFTA State/s to which referral is being requested.

The information requested by this Form RS is to be set out using the sections and paragraph numbers of the Form RS, signing the declaration at the end, and annexing supporting documentation. The original of the Form RS must be signed by persons authorised by law to act on behalf of each of the submitting party or parties or by one or more authorised external representatives of the submitting party or parties.

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 RS must only be used to supplement the information supplied in the Form RS itself.

Supporting documents are to be submitted in their original language; where this is not an official language of the European Union, 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 the required number of copies of the Form RS and of the supporting documents must be submitted to the Commission. The required number and format (paper or electronic) of copies will be published from time to time in the *Official Journal of the European Union* as well as on DG Competition's website.

The submission must be delivered to the address referred to in Article 23(1) of the Implementing Regulation. This address is published in the *Official Journal of the European Union* and available on DG Competition's website. The submission must be delivered to the Commission on working days as defined by Article 24 of the Merger Implementing Regulation during the opening hours indicated on DG Competition's website. The security instructions given on DG Competition's website must be adhered to.

All electronic copies of the Form RS and supporting documents must be provided in a useable and searchable format as specified on DG Competition's website.

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1.5. **Confidentiality**

Article 287 of the Treaty and Article 17(2) of the 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 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.

1.6. **Definitions and instructions for purposes of this Form RS**

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'.

Affected markets: Section 4 of this Form RS 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 RS. The definitions thus submitted by the submitting parties are referred to in this Form RS 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 RS must be read as meaning calendar year, unless otherwise stated. All information requested in this Form RS relates, unless otherwise specified, to the year preceding that of the reasoned submission.

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

([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 Surveillance and Court Agreement.

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

1.7. **International cooperation between the Commission and other competition authorities**

The Commission encourages the undertakings concerned to facilitate the international cooperation between the Commission and other competition authorities reviewing the same concentration. In the Commission's experience, good cooperation between the Commission and competition authorities in jurisdictions outside the EEA entails substantial benefits for the undertakings concerned. To this end, the Commission encourages submitting parties to submit together with this Form RS a list of those jurisdictions outside the EEA where the concentration is subject to regulatory clearance under merger control rules before or after completion.

SECTION 1

1.1. **Background information**

1.1.1. 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 parties to the concentration, the markets on which the concentration will have an impact (including the main affected markets), and the strategic and economic rationale for the concentration.

1.1.2. Indicate whether the reasoned submission is made under Article 4(4) or (5) of the Merger Regulation and/or pursuant to the provisions of the EEA Agreement:

— Article 4(4) referral to Member State(s) and/or referral to EFTA State(s);

— Article 4(5) referral to the Commission.

1.2. **Information on submitting party (or parties) and other parties to the concentration** ([1])

For each party making the reasoned submission as well as for each other party to the concentration provide:

1.2.1. name of undertaking;

1.2.2. name, address, telephone number, fax number and e-mail address of, and position held by, the appropriate contact person; the address given must be an address for service to which documents and, in particular, Commission decisions and other procedural documents may be notified, and the contact person given shall be deemed to be authorised to accept service;

1.2.3. if one or more authorised external representatives of the undertaking are appointed, to which documents and, in particular, Commission decisions and other procedural documents may be notified:

1.2.3.1. name, address, telephone number, fax number and e-mail address of, and position held by, each representative; and

([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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1.2.3.2. the original of written proof that each representative is authorised to act (based on the model Power of Attorney available on DG Competition's website).

SECTION 2

General background and details of the concentration

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.

2.1. Describe the nature of the concentration being notified. By reference to the relevant criteria of the Merger Regulation and the Commission Consolidated Jurisdictional Notice ([1]):

2.1.1. identify the undertakings or persons solely or jointly controlling each of the undertakings concerned, directly or indirectly, and describe the structure of ownership and control of each of the undertakings concerned before the completion of the concentration;

2.1.2. explain whether the proposed concentration is:

(i) a full merger,

(ii) an acquisition of sole or joint control, or

(iii) a contract or other means of conferring direct or indirect control within the meaning of Article 3(2) of the Merger Regulation;

(iv) the acquisition of joint control in a full-function joint venture within the meaning of Article 3(4) of the Merger Regulation, and if so, the reasons why the joint venture is considered to be full-function ([2]);

2.1.3. explain how the concentration will be implemented (for example by conclusion of an agreement, by the launch of a public bid, etc.);

2.1.4. by reference to Article 4(1) of the Merger Regulation explain whether to bring about the concentration at the time of notification:

(i) an agreement has been concluded,

(ii) a controlling interest has been acquired,

(iii) (the intention to launch) a public bid has been announced, or

(iv) the undertakings concerned have demonstrated a good faith intention to conclude an agreement;

2.1.5. indicate the expected date of any major events designed to bring about the completion of the concentration;

2.1.6. explain the structure of ownership and control of each of the undertakings concerned after the completion of the concentration.

([1]) See Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p. 1).

([2]) See section B IV of the Consolidated Jurisdictional Notice.

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2.2. Describe the economic rationale of the concentration.

2.3. State the value of the concentration (the purchase price (or the value of all the assets involved as the case may be); specify whether this is in the form of equity, cash, or other assets).

2.4. Describe any financial or other support received from public authorities by any of the parties and the nature and amount of this support.

2.5. Provide sufficient financial or other data to show that the concentration meets OR does not meet the jurisdictional thresholds under Article 1 of the Merger Regulation by providing the following information for each of the undertakings concerned by the concentration for the last financial year ([1]):

2.5.1. Worldwide turnover;

2.5.2. EU-wide turnover;

2.5.3. EEA-wide turnover (EU and EFTA);

2.5.4. turnover in each Member State (indicate the Member State, if any, in which more than two-thirds of EU-wide turnover is achieved);

2.5.5. EFTA-wide turnover;

2.5.6. turnover in each EFTA State (indicate the EFTA State, if any, in which more than two-thirds of EFTA-wide turnover is achieved; also indicate whether the combined turnover of the undertakings concerned in the territory of the EFTA States equals 25 % or more of their total turnover in the EEA territory).

Turnover data must be provided by filling in the Commission's template table available on DG Competition's website.

SECTION 3

Market definitions

The relevant product and geographic markets serve to identify the scope within which the market power of the new entity resulting from the concentration must be assessed ([2]). When presenting relevant product and geographic markets, the submitting party or parties must submit, in addition to any product and geographic market definitions they consider relevant, all plausible alternative product and geographic market definitions. Plausible alternative product and geographic market definitions can be identified on the basis of previous Commission decisions and judgments of the Union Courts and (in particular where no Commission or Court precedents exist) by reference to industry reports, market studies and the submitting parties' internal documents.

([1]) On the concepts of 'undertaking concerned' and the calculation of turnover see Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p. 1).

([2]) See Commission Notice on the definition of the relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5).

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The submitting party or parties must provide the information requested in this Form RS having regard to the following definitions:

3.1. **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 definition, and having regard to, for example, substitutability of products and services, prices, cross-price elasticity of demand or other relevant factors (such as supply-side substitutability in appropriate cases).

3.2. **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.

3.3. **Affected markets:**

For purposes of information required in this Form RS, affected markets consist of all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets, on the basis of which in the EEA territory:

(a) two or more of the parties to the concentration are engaged in business activities in the same relevant market and where the concentration will lead to a combined market share of 20 % or more. These are horizontal relationships;

(b) one or more of the parties to the concentration are engaged in business activities in a relevant market, which is upstream or downstream of a relevant market in which any other party to the concentration is engaged, and any of their individual or combined market shares at either level is 30 % 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.

[1] For example, if a party to the concentration holds a market share larger than 30 % 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 concentration leads to a combined market share downstream of 30 % or more, then both the upstream and the downstream markets are affected markets.

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On the basis of the definitions set out in Section 3 (including all plausible alternative market definitions) and market share thresholds, identify each affected market ([1]).

SECTION 4

Information on affected markets

For each affected market, for the last financial year, provide the following information:

4.1. For each of the parties to the concentration, the nature of the undertaking's business, the main subsidiaries active and/or brands, product names and/or trademarks used in each of these markets.

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

4.3. The sales in value and volume, as well as an estimate of the market shares, of each of the parties to the concentration; if in response to this question you do not provide market shares at the level of Member States, for each of the parties to the concentration indicate the geographic location of the five largest customers.

4.4. An estimate of the market share in value (and where appropriate volume) of the three largest competitors (indicating the basis for the estimates).

4.5. 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? ([3])

4.6. 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.

SECTION 5

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

5.1. Indicate whether the reasoned submission is made pursuant to Article 4(4) or 4(5) of the Merger Regulation and/or pursuant to the provisions of the EEA Agreement, and fill in only the relevant subsection:

([1]) As indicated in DG Competition's Best Practices on the conduct of EC merger control proceedings, submitting parties are advised to disclose information relating to all potentially affected markets even if they ultimately consider that they are not affected and notwithstanding that they may take a particular view in relation to the issue of market definition.

([2]) The value and volume of a market must reflect output less exports plus imports for the geographic areas under consideration. As set out in points 1.1 and 1.3(e) in the Introductory Part, before notification, the submitting party or parties may want to discuss with the Commission to what extent dispensation (waivers) to provide some of the requested information (in this context value- or volume-based data for market size and shares) would be appropriate.

([3]) For market definitions refer to Section 3.

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— Article 4(4) referral to Member State(s) and/or referral to EFTA State(s);

— Article 4(5) referral to the Commission.

5.2. (for Article 4(4) referrals and/or referrals pursuant to the provisions of the EEA Agreement)

5.2.1. Identify the Member State/s and EFTA State/s which, pursuant to Article 4(4) of the Merger Regulation, you submit should examine the concentration, indicating whether or not you have made informal contact with this Member State/s and/or EFTA State/s.

5.2.2. 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 and EFTA State/s to which you request the referral to be made.

5.2.3. Explain in what way each of the affected markets in the Member State/s and EFTA State/s to which referral is requested presents all the characteristics of a distinct market within the meaning of Article 4(4) of the Merger Regulation.

5.2.4. Explain in what way competition may be significantly affected in each of the above-mentioned distinct markets within the meaning of Article 4(4) of the Merger Regulation ([1]).

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

5.3. (for Article 4(5) referrals and/or referrals pursuant to the provisions of the EEA Agreement)

5.3.1. For each Member State and/or EFTA State, specify whether the concentration is or is not capable of being reviewed under its national competition law. This information must be provided by filling in the Commission's template table available on DG Competition's website. You must tick one box for each and every Member State and/or EFTA State ([2]).

([1]) For guiding principles of case referrals see Commission Notice on case referral in respect of concentrations ('Referral Notice') (OJ C 56, 5.3.2005, p. 2). In practice, the existence of 'affected markets' within the meaning of Form RS would generally be considered sufficient to meet the requirements of Article 4(4) in this regard. However, the existence of 'affected markets' within the meaning of Form RS is not a necessary condition for meeting those requirements. See recital 17 and footnote 21 of the Referral Notice.

([2]) Failure to indicate YES or NO for any Member State and/or EFTA State shall be deemed to constitute an indication of YES for that Member State and/or EFTA State.

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5.3.2. For each Member State and/or EFTA 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 law.

5.3.3. 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 and/or EFTA State [1].

SECTION 6

Declaration

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, 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 Merger Regulation.'

[1] For guiding principles of case referrals see Commission Notice on case referral in respect of concentrations ('Referral Notice') (OJ C 56, 5.3.2005, p. 2). Cases where the market(s) in which there may be a potential impact on competition is/are wider than national in geographic scope, or where some of the potentially affected markets are wider than national and the main economic impact of the concentration is connected to such markets, are the most appropriate candidate cases for referral to the Commission. See recital 28 of the Referral Notice.

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ANNEX IV

Form RM relating to the information concerning commitments submitted pursuant to Article 6(2) and Article 8(2) of Regulation (EC) No 139/2004

FORM RM RELATING TO REMEDIES

INTRODUCTION

This form specifies the information and documents to be submitted by the undertakings concerned at the same time as offering commitments pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004. The information requested is necessary to allow the Commission to examine whether the commitments are capable of rendering the concentration compatible with the common market in that they will prevent a significant impediment to effective competition. The Commission may dispense with the obligation to provide any particular information in respect of the commitments offered, including documents, or with any other requirement laid down in this form where it considers that compliance with those obligations or requirements is not necessary for the examination of the commitments offered. The level of information required will vary according to the type and structure of the remedy proposed. For example, carve-out remedies will typically require more detailed information than divestitures of stand-alone businesses. The Commission is available to discuss the scope of the information required with the parties upfront. If you consider that any particular information requested by this Form may not be necessary for the Commission's assessment, you may approach the Commission asking to dispense with certain requirements, giving adequate reasons why that information is not relevant.

SECTION 1

Description of the commitment

1.1. Provide detailed information on

(i) the object of the commitments offered, and

(ii) the conditions for their implementation.

1.2. Where the commitments offered consist in the divestiture of a business, Section 5 provides for the specific information required.

SECTION 2

Suitability to remove competition concerns

2. Provide information showing the suitability of the commitments offered to remove the significant impediment of effective competition identified by the Commission.

SECTION 3

Deviation from Model Texts

3. Identify any deviations of the commitments offered from the pertinent Model Commitments texts published by the Commission's services, as revised from time-to-time, and explain the reasons for the deviations.

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SECTION 4

Summary of the commitments

4. Provide a non-confidential summary of the nature and scope of the commitments offered and why, in your view, they are suitable to remove any significant impediment to effective competition. The Commission may use this summary for the market test of the commitments offered with third parties.

SECTION 5

Information on a business to be divested

5. Where the commitments offered consist in the divestiture of a business, provide the following information and documents.

General information on the business to be divested

The following information should be provided as to the current operation of the business to be divested and changes already planned for the future:

5.1. Describe the business to be divested generally, including the entities belonging to it, their registered place of business and place of management, other locations for production or provisions of services, the general organisational structure and any other relevant information relating to the administrative structure of the business to be divested.

5.2. State whether there are and describe any legal obstacles for the transfer of the business to be divested or the assets, including third party rights and administrative approvals required.

5.3. List and describe the products manufactured or services provided, in particular their technical and other characteristics, the brands involved, the turnover generated with each of these products or services, and any innovations or new products or services planned.

5.4. Describe the level on which the essential functions of the business to be divested are operated if they are not operated on the level of the business to be divested itself, including such functions as research and development, production, marketing and sales, logistics, relations with customers, relations with suppliers, IT systems, etc. The description should contain the role performed by those other levels, the relations with the business to be divested and the resources (personnel, assets, financial resources, etc.) involved in the function.

5.5. Describe in detail the links between the business to be divested and other undertakings controlled by the notifying parties (irrespective of the direction of the link), such as:

— supply, production, distribution, service or other contracts,

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— shared tangible or intangible assets,

— shared or seconded personnel,

— shared IT systems or other systems, and

— shared customers.

5.6. Describe in general terms all relevant tangible and intangible assets used and/or owned by the business to be divested, including, in any case, IP rights and brands.

5.7. Submit an organisational chart identifying the number of personnel currently working in each of the functions of the business to be divested and a list of those employees who are indispensable for the operation of the business to be divested, describing their functions.

5.8. Describe the customers of the business to be divested, including a list of customers, a description of the corresponding records available, and provide the total turnover generated by the business to be divested with each of these customers (in EUR and as percentage of the total turnover of business to be divested).

5.9. Provide financial data for the business to be divested, including the turnover and the EBITDA achieved in the last two years, and the forecast for the next two years.

5.10. Identify and describe any changes that have occurred in the last two years, in the organisation of the business to be divested or in the links with other undertakings controlled by the notifying parties.

5.11. Identify and describe any changes, planned for the next two years, in the organisation of the business to be divested or in the links with other undertakings controlled by the notifying parties.

General information on the business to be divested as described in the commitments

5.12. Describe any areas where the business to be divested as set out in the commitments offered differs from the nature and scope of the business as currently operated.

Acquisition by a suitable purchaser

5.13. Explain the reasons why, in your view, the business will be acquired by a suitable purchaser in the time-frame proposed in the commitments offered.