



EUROPEAN
COMMISSION

Brussels, 6.5.2022
C(2022) 2918 final

ANNEX 4

ANNEX

to the

COMMUNICATION FROM THE COMMISSION

**Approval of the content of a draft for a Commission Regulation (EU) [No [X]/2023 of
[X] 2023] implementing Council Regulation (EC) No 139/2004 on the control of
concentrations between undertakings**

ANNEX
FORM RELATING TO THE INFORMATION CONCERNING COMMITMENTS
SUBMITTED PURSUANT TO ARTICLE 6(2) AND ARTICLE 8(2) OF COUNCIL
REGULATION (EC) No 139/2004

(FORM RM)

INTRODUCTION

- (1) This form specifies the information and documents to be submitted by the undertakings concerned when offering commitments pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004.¹ The information requested is necessary to allow the Commission to examine whether the commitments are capable of rendering the concentration compatible with the internal market by preventing a significant impediment to effective competition. The level of information required will vary depending on 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.
- (2) The information requested in the Form RM must be supplied in the appropriate section of the Form RM and must be correct and complete.
- (3) In accordance with Articles 5(4) and 6(2) of the Commission Regulation (EU) [No [X]/2023 of [X] 2023] implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “Implementing Regulation”),² incorrect or misleading information in the Form RM will be considered to be incomplete information.
- (4) Under Article 14(1), point (a), of the Merger Regulation, parties making a 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.
- (5) Pursuant to Article 6(3), point (a), and Article 8(6), point (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 parties to the concentration is responsible.
- (6) Pursuant to Articles 4(2) and 20(2) of the Implementing Regulation the Commission may dispense with the obligation to provide any particular information in the Form RM, including documents, or with any other requirements where the Commission considers compliance with those obligations or requirements is not necessary for the examination of the case. In that case, the submitting parties may request the Commission to dispense with the obligation to provide the relevant information or with any other requirement in the Form RM related to this information. The Commission is available to discuss such requests with the parties upfront.

¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the “Merger Regulation”) (OJ L 24, 29.1.2004, p. 1).

² OJ L, [X], [X].[X].[X], p. [X].

Any personal data submitted in this Form RM will be processed in compliance with Regulation (EU) 2018/1725 of the European Parliament and of the Council.³

The Form RM must be signed by persons authorised by law to act on behalf of each notifying party and/or on behalf of any other party signing the commitments or by one or more authorised external representatives of the notifying party or parties and/or any other party signing the commitments. Technical specifications and instructions regarding signatures can be found in the *Official Journal of the European Union*.

SECTION 1

SUMMARY OF THE COMMITMENTS

1. Provide a non-confidential summary of the nature and scope of the commitments offered. The Commission may use this summary for the market test with third parties of the commitments offered.

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. Provide an annex identifying any deviations of the commitments offered from the up-to-date model commitments text as published in DG COMP website.

SECTION 4

INFORMATION ON A BUSINESS TO BE DIVESTED

4. 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

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39). See also a privacy statement relating to Merger investigations at https://ec.europa.eu/competition-policy/index/privacy-policy-competition-investigations_en.

The following information should be provided regarding all aspects of the current (i.e., pre-divestment) operation of the business to be divested and any changes already planned for the future.

- 4.1. Describe the legal structure of the business to be divested and provide the organigram of the company explaining where the business to be divested is integrated. Describe the entities belonging to the business to be divested, specifying their registered place of business and place of management, the general organisational structure and any other relevant information relating to the administrative structure of the business to be divested. If the business to be divested consists in a carve-out, all this information should also be provided for the entire business from which the business to be divested would be carved out.
- 4.2. 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.
- 4.3. Describe the entire value chain of the products produced or services provided by the business to be divested, including the location of the relevant facilities. 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 those products or services, and any innovations or research and development activities or pipeline products or new products ready for launch and services planned. If the business to be divested consists in a carve-out, all this information should also be provided for the entire business from which the business to be divested would be carved out.
- 4.4. Describe the level at which the essential functions of the business to be divested (for example, research and development, production, marketing and sales, logistics, relations with customers, relations with suppliers, IT systems) are operated if they are not carried out on the level of the business to be divested. The description should contain the role performed by those other levels, the relations with the business to be divested and the resources (such as personnel, assets, financial resources) involved in the function.
- 4.5. Describe in detail the links between the business to be divested and other entities controlled by any of parties to the concentration (irrespective of the direction of the link), such as:
 - (a) supply, production, distribution, service, research and development or other contracts;
 - (b) shared tangible or intangible assets;
 - (c) shared or seconded personnel;
 - (d) shared IT systems or other systems;
 - (e) shared customers.
- 4.6. Describe in general terms all relevant tangible and intangible assets used or owned by the business to be divested, including, in any case, IP rights and brands. If the business to be divested consists in a carve-out, all this

information should also be provided for the entire business from which the business to be divested would be carved out.

- 4.7. 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. If the business to be divested consists in a carve-out, all this information should also be provided for the entire business from which the business to be divested would be carved out.
- 4.8. 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). If the business to be divested consists in a carve-out, all this information should also be provided on the entire business from which the business to be divested would be carved out.
- 4.9. Provide all relevant financial data for the business to be divested, including the turnover and the EBITDA achieved in the last three financial years, and the forecast for the next two financial years. If available, provide the current business or strategic plan for the business to be divested, including any forecasts that may be available. If the business to be divested consists in a carve-out, all the information should also be provided for the entire business from which the business to be divested would be carved out.
- 4.10. 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 parties. If the business to be divested consists in a carve-out, all the information should also be provided for the entire business from which the business to be divested would be carved out.
- 4.11. 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 parties. If the business to be divested consists in a carve-out, all this information should also be provided for the entire business from which the business to be divested would be carved out.

Information on the business to be divested as described in the commitments offered and comparison with the business to be divested as currently operated

- 4.12. Taking into account your replies to questions 4.1-4.11 above, please set out all the differences between (i) the business to be divested as described in the commitments offered and (ii) the business to be divested as it is currently operated. In case there are any tangible or intangible assets, personnel, facilities, contracts, products, research and development, pipeline products, shared services etc. which are currently produced, used or relied on in any way by the business to be divested but which are not included in the commitments, please provide an exhaustive list.

Acquisition by a suitable purchaser

- 4.13. Explain the reasons why, in your view, the business to be divested is likely to be acquired by a suitable purchaser in the time-frame proposed in the commitments offered.

SECTION 5

DECLARATION

The Form RM must conclude with the following declaration which is to be signed by or on behalf of the notifying parties and any other parties signing the commitments:

‘The notifying parties and any other parties signing the commitments 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 RM 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), point (a) of the Merger Regulation.’

For digitally signed forms, the following fields are for information purposes only. They should correspond to the metadata of the corresponding electronic signature(s).

Date:

<p>[signatory 1]</p> <p>Name:</p> <p>Organisation:</p> <p>Position:</p> <p>Address:</p> <p>Phone number:</p> <p>E-mail:</p> <p>["e-signed" / signature]</p>	<p>[signatory 2 if applicable]</p> <p>Name:</p> <p>Organisation:</p> <p>Position:</p> <p>Address:</p> <p>Phone number:</p> <p>E-mail:</p> <p>["e-signed" / signature]</p>
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