



Brussels, 6.5.2022  
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ANNEX 2

## **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 NOTIFICATION OF A CONCENTRATION PURSUANT TO**  
**COUNCIL REGULATION (EC) No 139/2004**  
**(FORM CO)**

**INTRODUCTION**

**A. The purpose of the Form CO**

- (1) 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<sup>1</sup> and in 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”)<sup>2</sup>, to which this Form CO is annexed. Your attention is drawn to the corresponding provisions of the Agreement on the European Economic Area<sup>3</sup> (‘EEA Agreement’).

**B. Pre-notification contacts and waiver requests**

**1. TYPES OF INFORMATION REQUESTED BY THE FORM CO**

- (2) The Form CO requires the following information:
- (a) basic information which is in principle necessary for the assessment of all concentrations (Sections 1-10);
  - (b) information on efficiencies (Section 11);
  - (c) information to be provided in cases involving joint ventures (Section 12).
- (3) The information requested in Sections 1-10 must in principle be provided in all cases and is therefore a requirement for a complete notification. Section 11 requires information on efficiencies of the notified transaction which the notifying parties may submit if they wish the Commission to consider from the outset any efficiency claims. Section 12 must be provided in all cases involving joint ventures; in these cases, that information is a requirement for a complete notification.

**2. INFORMATION THAT IS NOT REASONABLY AVAILABLE**

- (4) In exceptional circumstances, specific pieces of information required by this Form CO may not be reasonably available to the notifying parties in part or in whole (e.g., because information on a target company is not available in case of a contested bid). In this case, the notifying parties may request the Commission to dispense with the obligation to provide the relevant information or with any other requirement in the Form CO related to that

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<sup>1</sup> 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).

<sup>2</sup> OJ L, [X], [X].[X].[X], p. [X].

<sup>3</sup> 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 (‘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.

information. The request should be submitted in accordance with the instructions in section B.4.

**3. INFORMATION THAT IS NOT NECESSARY FOR THE COMMISSION'S EXAMINATION OF THE CASE**

- (5) Pursuant to Article 4(2) of the Implementing Regulation, the Commission may dispense with the obligation to provide any particular information in the Form CO, 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.
- (6) Although necessary for the Commission's examination of certain cases, in other cases Article 4(2) of the Implementing Regulation would apply in particular to information referred to in sections 3.4, 3.5, 3.6, and 3.7 and Section 10 of this Form CO.
- (7) In such circumstances, the notifying parties may request the Commission to dispense with the obligation to provide the relevant information or with any other requirement in the Form CO related to this information. This request should be submitted in accordance with the instructions laid down in section B.4..

**4. PRE-NOTIFICATION CONTACTS AND WAIVER REQUESTS**

- (8) Notifying parties are invited to engage in pre-notification discussions in all normal cases on the basis of a draft Form CO. 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 proceedings. As such, while not mandatory, pre-notification contacts are extremely valuable to both the notifying parties and the Commission in determining, among other things, the precise amount of information required in a Form CO and, in the majority of cases, will result in a significant reduction of the information required.
- (9) In the course of pre-notification contacts, notifying parties may submit requests for waivers. The Commission will consider waiver requests provided that one of the following conditions is fulfilled:
  - (a) the notifying parties give adequate reasons why the relevant information is not reasonably available and provide best estimates for the missing data, identifying the sources for these estimates. Where possible, the notifying parties must indicate where any of the requested information that is unavailable could be obtained by the Commission or the relevant Member State(s) and EFTA State(s);
  - (b) the notifying parties give adequate reasons why the relevant information is not necessary for the examination of the case.
- (10) Waiver requests should be made in the draft Form CO itself (at the beginning of the relevant Section or sub-Section). The Commission's Directorate-General for Competition ('DG Competition') will deal with waiver requests in the context of the review of the draft Form CO. DG Competition will normally require five working days before responding to a waiver request.
- (11) For the avoidance of doubt, the fact that the Commission may have accepted that any particular information requested by this Form CO may be omitted from a notification made using the Form CO does not in any way prevent the Commission from requesting that information at any time during the proceedings, in particular through a request for information pursuant to Article 11 of the Merger Regulation.

- (12) The notifying parties are referred to the ‘Best Practices on the conduct of EC merger control proceedings’ 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.

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

- (13) As explained in section B.1., the information requested in Sections 1-10 must in principle be provided in all normal cases<sup>4</sup> and is therefore a requirement for a complete notification. All the required information must be supplied in the appropriate section of the Form CO and it must be correct and complete.
- (14) 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 laid down in the Merger Regulation with regard to the notification will not start until all the information that has to be supplied with the notification has been received by the Commission. This is to ensure that the Commission is able to assess the notified concentration within the strict time limits laid down in 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 e-mail addresses, provided to the Commission are accurate, relevant and up-to-date;
  - (c) in accordance with Article 5(4) of the Implementing Regulation, incorrect or misleading information in the notification will be considered to be incomplete information;
  - (d) requested contact details must be provided in the format prescribed by DG Competition on its website<sup>5</sup>. For a proper investigatory process, it is essential that the contact details are accurate. To this end, please ensure that the email addresses provided are personalised and attributed to specific contact persons and that they are not general company mailboxes (e.g., info@, hello@). The Commission may declare the notification incomplete on the basis of inappropriate contact details;
  - (e) under Article 14(1), point (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), 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.

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<sup>4</sup> And Section 12 in cases involving joint ventures.

<sup>5</sup> Please see: [https://ec.europa.eu/competition-policy/mergers/practical-information\\_en](https://ec.europa.eu/competition-policy/mergers/practical-information_en).

## **D. How to notify**

- (15) The information requested by this Form CO is to be set out using the provided sections of the Form CO and paragraph numbers, contained therein, signing a declaration as provided in Section 13, and annexing supporting documentation. Where information required by one section partly (or wholly) overlaps with information required by another section, this same information should not be submitted twice though accurate cross-referencing should be used.
- (16) 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. The corresponding power of attorney documents must be attached to the Form CO. Technical specifications and instructions regarding notifications (including signatures) can be found in the *Official Journal of the European Union*.
- (17) In completing Sections 6, 8, 9 and 10 of this Form CO, the notifying parties are invited to consider whether, for purposes of clarity, those sections are best presented in numerical order, or whether they can be grouped together for each individual affected market (or group of affected markets).
- (18) 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.
- (19) 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).
- (20) Supporting documents may be copies of the originals. In this case, the notifying party must confirm that they are true and complete.

## **E. Confidentiality and Personal Data**

- (21) Article 339 of the Treaty on the Functioning of the European Union and Article 17(2) of the Merger Regulation as well as the corresponding provisions of the EEA Agreement<sup>6</sup> 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.
- (22) 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 disclosed to other parties, you should submit this information separately with each page clearly marked 'Business Secrets'. You should also give reasons why this information should not be disclosed or published.
- (23) 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

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<sup>6</sup> 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).

separate cover, and referred to in the notification as an annex. In order for a notification to be considered complete, all such annexes must be included in the notification.

- (24) Any personal data submitted in this Form CO will be processed in compliance with 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.<sup>7</sup>

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

- (25) For the purposes of this Annex, the following definitions apply:
- (a) ‘Party/parties to the concentration’ or ‘party/parties’: These terms relate to both the acquiring party/parties and the acquired party/parties, or the merging parties, including all undertakings in which a controlling interest is being acquired or which is the subject of a public bid. Unless otherwise specified, the terms ‘notifying party/parties’ and ‘party/parties to the concentration’ include all the undertakings which belong to the same groups as those parties.
  - (b) ‘Relevant product market’: A relevant product market comprising all those products or services, or both, which are regarded as interchangeable or substitutable by the consumer, by reason of the products’ or services’ characteristics, their prices and their intended use. A relevant product market may in some cases be composed of a number of individual products or services, or both, 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 this 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).
  - (c) ‘Relevant geographic market’: The relevant geographic market comprising 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.
  - (d) ‘Horizontal overlap’: A concentration gives rise to horizontal overlaps when the parties to the concentration are engaged in business activities in the same relevant product and geographic market(s) (including the development of pipeline products<sup>8</sup>).<sup>9</sup>

<sup>7</sup> 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](https://ec.europa.eu/competition-policy/index/privacy-policy-competition-investigations_en).

<sup>8</sup> Pipeline products are products (or services) that undertakings intend to bring to the market in the short or medium term.

<sup>9</sup> Horizontal overlaps involving pipeline products include overlaps between pipeline products and overlaps between one or more marketed product(s) and one or more pipeline product(s).

- (e) ‘Non-horizontal relationship’: A concentration gives rise to non-horizontal relationship when the activities of the parties to the concentration are in a relationship that is not a horizontal overlap.
  - (f) ‘Vertical relationship’: A concentration gives rise to vertical relationships when one or more of the parties to the concentration 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 (including the development of pipeline products).<sup>10</sup>
  - (g) ‘Affected markets’: Affected markets are all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets, where the parties’ activities overlap horizontally or are vertically related and which do not meet the conditions for review under point 5 of the Notice on Simplified Procedure<sup>11</sup> and do not benefit from the flexibility clauses of point 8 of the Notice on Simplified Procedure.
- (26) 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.

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

- (27) In this Form CO, briefly describe the data that each of the parties to the concentration collects and stores in the ordinary course of its business operations and which could be useful for a quantitative economic analysis.
- The data description should include, in particular, information about:
- (a) the type of such data (information on sales or bids, profit margins, procurement process details, etc.);
  - (b) the level of disaggregation (per country, per product, per customer, per contract, etc.);
  - (c) the time period for which the data are available and the format;
  - (d) the source of the data (for example, Customer Relationship Management (CRM) software, or dataset purchased from external providers, etc.).
- (28) Further, please describe the usage of the data in the normal course of business. In particular, please describe, if relevant, the internal datasets produced based on the above data, as well as the type of internal reporting products and analysis, such as business strategy, marketing plans, investment plans, market intelligence and competitors’ monitoring (e.g., comparison between the products/services and pipeline products of one party to the concentration and those of its main competitors or between those of the parties to the concentration; competitors’ strategy and positioning; or SWOT<sup>12</sup> analyses).
- (29) The information requested in accordance with this section must be supplied in the Form CO to be considered complete.

<sup>10</sup> Vertical relationships involving pipeline products include relationships between pipeline products and relationships between one or more marketed product(s) and one or more pipeline product(s).

<sup>11</sup> Commission Notice on a simplified treatment of certain concentrations under Council Regulation (EC) No 139/2004 (OJ C [X], [X].[X].[X], p. [X]) (the ‘Notice on Simplified Procedure’).

<sup>12</sup> SWOT refers to ‘Strengths, Weaknesses, Opportunities and Threats’ analysis. Any other method to depict the competitive landscape of a given product/innovation area falls under the requested data as well.

- (30) For further guidance, the parties to the concentration 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.

#### **H. International cooperation between the Commission and other competition authorities**

- (31) The Commission encourages the parties to the concentration to facilitate 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.
- (32) Furthermore, the Commission encourages the parties to the concentration to submit confidentiality waivers 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 parties to the concentration. To this end, the Commission encourages the parties to the concentration to use the Commission's model waiver, which is published on DG Competition's website and updated from time to time.



## 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<sup>13</sup>), and the strategic and economic rationale for the concentration.
- 1.2. Provide a summary (up to 500 words) of the information required by Section 1.1. 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.

Example (please delete for notification)

*This notification concerns the following undertakings:*

*[Full name of Company A] ([Short name of company A], [Country of origin of Company A]), controlled by [Company X]*

*[Full name of Company B] ([Short name of company B], [Country of origin of Company B]), controlled by [Company Y]*

*[Company A] acquires within the meaning of Article 3(1), point (b) of the Merger Regulation sole control of (the whole/part) of [Company B] OR*

*[Company A] enters into a full merger within the meaning of Article 3(1), point (a) of the Merger Regulation with [Company B] OR*

*[Company A] and [Company B] acquire within the meaning of Article 3(1), point (b) and Article 3(4) of the Merger Regulation joint control of [Company C].*

*The concentration is accomplished by [Means of implementing the concentration, e.g. way of purchase of shares/assets, etc].*

*The business activities of the undertakings concerned are:*

*a. for [Company A]: [Brief description of activity, e.g., diversified chemicals with primary activities in agricultural sciences, performance plastics and chemicals, and hydrocarbon and energy products and services].*

*b. for [Company B]: [Brief description of activity, e.g., silicone-based technology and innovation with primary activities in development and production of polymers and other materials based on silicone chemistry].*

<sup>13</sup> See Section 6 for more information on how to identify affected markets.

## **SECTION 2**

### **Information about the parties**

#### **2.1. Information about the parties to the concentration<sup>14</sup>**

For each of the parties to the concentration provide:

- 2.1.1. the name of the undertaking;
- 2.1.2. the name, address, telephone 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. the name, address, telephone number and e-mail address of, and position held by, each representative; and
  - 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 parties to the concentration, describe the nature of the undertaking's business.

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<sup>14</sup> 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.

## SECTION 3

### Details of the concentration, ownership and control<sup>15</sup>

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 parties to the concentration 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<sup>16</sup>:
  - 3.1.1. Identify the undertakings or persons solely or jointly controlling each of the parties to the concentration, directly or indirectly, and describe the structure of ownership and control of each of them before the completion of the concentration.
  - 3.1.2. Explain whether the proposed concentration is one of the following:
    - (a) a full merger;
    - (b) an acquisition of sole or joint control;
    - (c) a contract or other means of conferring direct or indirect control within the meaning of Article 3(2) of the Merger Regulation;
    - (d) 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<sup>17</sup>.
  - 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
    - (a) an agreement has been concluded;
    - (b) a controlling interest has been acquired;
    - (c) a public bid or the intention to launch a public bid has been announced;
    - (d) the parties to the concentration 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 parties to the concentration 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).

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<sup>15</sup> See Article 3(3) to (5) and Article 5(4) of the Merger Regulation.

<sup>16</sup> See Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (“Commission Consolidated Jurisdictional Notice”) (OJ C 95, 16.4.2008, p. 1).

<sup>17</sup> See Section B IV of the Consolidated Jurisdictional Notice.

- 3.4. Describe any financial or other support received from public authorities by any of the parties to the concentration and the nature and amount of that support. In particular, please indicate whether any of the parties to the concentration has been the beneficiary of aid that is or has been subject to Union State aid proceedings.
- 3.5. Provide a list of all the jurisdictions outside the EEA where the concentration has been or will be notified (before or after the completion of the concentration) and/or is under investigation under merger control rules. For each jurisdiction, indicate the (actual or expected) date of notification and, where applicable, identify the stage of the investigation.
- 3.6. For the parties to the concentration, provide a list of all other undertakings which are active in affected markets and 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.
- 3.7. Describe whether one or more competitors of the parties hold a significant non-controlling shareholding (i.e. above 10%) in any of the parties to the concentration. Indicate the percentage and the rights attached to the shareholding. Provide details of acquisitions made during the last three years by the groups identified in Section 2.1 of undertakings active in affected markets.

## SECTION 4

### TURNOVER

For each of the parties to the concentration provide the following data for the last financial year<sup>18</sup>:

- 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.

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<sup>18</sup> On the calculation of turnover see Commission Consolidated Jurisdictional Notice.

## SECTION 5

### SUPPORTING DOCUMENTATION

The notifying parties must provide the following:

- 5.1. copies of the final or most recent versions of all documents bringing about the concentration, whether by agreement between the parties to the concentration, acquisition of a controlling interest or a public bid;
- 5.2. in case of a public bid, a copy of the offer document. If the offer document 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 webpage, if any, at which the most recent annual reports and accounts of the parties to the concentration are available, or if no such webpage exists, copies of the most recent annual reports and accounts of the parties to the concentration;
- 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, depending on 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:
  - (a) minutes of the meetings of the board of management, of the board of directors, of the supervisory board and/or of the shareholders' meeting at which the transaction has been discussed, or excerpts of those minutes relating to the discussion of the transaction;
  - (b) 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 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;
  - (c) analyses, reports, studies, surveys and any comparable documents from the last two years for the purpose of assessing any of the affected markets<sup>19</sup> 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.

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).

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<sup>19</sup> See Section 6 for more information on how to identify affected markets.

## 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<sup>20</sup>. When presenting relevant product and geographic markets, the notifying 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.

- 6.1. Please discuss all plausible relevant market definitions where the proposed concentration could give rise to affected markets. Please explain how the notifying parties consider that the relevant product and geographic markets should be defined.
- 6.2. Taking into account all the plausible relevant market definitions discussed, please identify each affected market<sup>21</sup> and provide summary information on the activities of the parties to the concentration in each plausible relevant market. Please add to the tables as many rows as required to cover all the plausible markets that you consider:

Summary of Affected Markets Horizontal Overlaps		
Product market definition	Geographic market definition	Combined market share [Identify year] [Identify metric]

Summary of Affected Markets Vertical Relationships					
Upstream market			Downstream market		
Product market definition	Geographic market definition	Combined market share [Identify year][Identify metric]	Product market definition	Geographic market definition	Combined market share [Identify year][Identify metric]

<sup>20</sup> 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).

<sup>21</sup> During pre-notification contacts, notifying parties shall disclose information relating to all potentially affected markets even if they ultimately consider that these markets are not affected, and notwithstanding that the notifying parties may take a particular view in relation to the issue of market definition.

6.3. Describe the product and geographic scope of all plausible alternative market definitions (where such markets include the whole or a part of the EEA) other than the affected markets identified in Section 6.2., in which the notified concentration may have a significant impact, for example, where:

- (a) any of the parties to the concentration has a market share larger than 20 % and any other party to the concentration is a potential competitor in 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 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<sup>22</sup> or when they belong to a range of products that is generally purchased by the same set of customers for the same end use<sup>23</sup>.

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, notifying parties are invited to submit the information under Sections 7 to 10 of this Form CO also in relation to those markets.

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<sup>22</sup> Products (or services) are 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.

<sup>23</sup> 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.



## SECTION 7

### INFORMATION ON MARKETS FALLING UNDER POINT 8 OF THE NOTICE ON SIMPLIFIED PROCEDURE

**For markets falling under point 8 of the Notice on Simplified Procedure, in principle only section 7 needs to be filled in. However, where any of the circumstances listed in Section II.C of the Notice on Simplified Procedure are present, the flexibility clause will normally not be applied<sup>24</sup>. In this case, Sections 6, 8, 9 and 10 of this form should be completed.**

7.1. For each market falling under point 8 of the Notice on Simplified Procedure, tick the relevant boxes below.<sup>25</sup>

<input type="checkbox"/> Under all plausible market definitions, (i) the parties' combined market share is 20% or higher but remains below 25% on any relevant market where the parties' activities overlap and (ii) none of the special circumstances described in section II.C of the Notice on Simplified Procedure are present.
<input type="checkbox"/> Under all plausible market definitions, the parties' combined market share is 20% or higher but remains below 25% on any relevant market where the parties' activities overlap, and although one or several of the special circumstances described in section II.C of the Notice on Simplified Procedure are present, the case does not raise any competition concerns for the reasons explained in sub-Section 7.4.
<input type="checkbox"/> None of the circumstances described in section II.C of the Notice on Simplified Procedure are present and the individual and combined market shares of all the parties to the concentration that are engaged in business activities in a market which is upstream or downstream from a market in which any other party to the concentration is engaged (vertical relationships) meet at least one of the following conditions: <ul style="list-style-type: none"><li><input type="checkbox"/> are 30% or higher but remain below 35 % in the upstream and downstream markets,</li><li><input type="checkbox"/> are lower than 50 % in one market while the individual and combined market shares of all the parties to the concentration in all the other vertically related markets are lower than 10%.</li></ul>
<input type="checkbox"/> One or several of the circumstances described in section II.C of the Notice on Simplified Procedure are present, the case does not raise any competition concerns for the reasons explained in Section 7.4 and the individual and combined market shares of all the parties to the concentration that are engaged in vertical relationships meet at least one of the following conditions: <ul style="list-style-type: none"><li><input type="checkbox"/> are 30% or higher but remain below 35 % in the upstream and downstream markets,</li><li><input type="checkbox"/> are lower than 50 % in one market while the individual and combined market shares of all the parties to the concentration in all the other vertically related markets are lower than 10%.</li></ul>

<sup>24</sup> Notice on Simplified Procedure, point 11.

<sup>25</sup> Please complete only one table for all markets falling under point 8 of the Notice on Simplified Procedure, ticking (all) the relevant boxes.

- 7.2. Complete the table below if the concentration leads to horizontal overlaps that fall under point 8 of the Notice on Simplified Procedure. You should replicate the table as many times as required to cover all the plausible markets that you considered:

Horizontal overlaps – Market shares									
Precedents (please include a reference to relevant paragraphs)	Plausible product market considered	Plausible geographic market considered	Supplier	Year X -2		Year X -1		Year X	
				Value	Volume	Value	Volume	Value	Volume
			Undertaking concerned 1	%	%	%	%	%	%
			Undertaking concerned 2	%	%	%	%	%	%
			Undertaking concerned 3	%	%	%	%	%	%
			<b>Combined</b>	%	%	%	%	%	%
			Competitor 1	Do not complete.				%	%
			Competitor 2					%	%
			Competitor 3					%	%
			Others					%	%
			Total	100%	100%	100%	100%	100%	100%
			Market size	EUR		EUR		EUR	
Describe the activities of the parties in this market:									
Provide further details here (in particular if there are no precedents, you should provide the parties' views on product/geographic market definition):									
Metrics, sources and methodology followed for market share calculation. If value and volume are not the most common metrics for market share calculation in the relevant markets, you should provide market shares based on alternative metrics and explain.									
Provide the contact details of Competitor 1, Competitor 2, and Competitor 3 in the prescribed format.									

- 7.3. Complete the table below if the concentration leads to vertical relationships that fall under point 8 of the Notice on Simplified Procedure. You should replicate the table as many times as required to cover all the plausible markets that you considered:<sup>26</sup>

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<sup>26</sup> For example, if regarding the vertical relationship between upstream market U and downstream market D, you considered the plausible upstream market definitions U1 and U2, you should include two tables: one including information on U1 and D and one including information on U2 and D.

Vertical relationships – Market shares									
UPSTREAM									
Precedents (include a reference to relevant paragraphs)	Plausible product market considered	Plausible geographic market considered	Supplier	Year X -2		Year X -1		Year X	
				Value	Volume	Value	Volume	Value	Volume
			Undertaking concerned 1	%	%	%	%	%	%
			Undertaking concerned 2	%	%	%	%	%	%
			Undertaking concerned 3	%	%	%	%	%	%
			Combined	%	%	%	%	%	%
			Competitor 1	Do not complete.				%	%
			Competitor 2					%	%
			Competitor 3					%	%
			Others					%	%
			Total	100%	100%	100%	100%	100%	100%
Market size	EUR		EUR		EUR				
Describe the activities of the parties in this market:									
Provide further details here (in particular if there are no precedents, you should provide the parties' views on product/geographic market definition):									
Metrics, sources and methodology followed for market share calculation. If value and volume are not the most common metrics for market share calculation in the relevant markets, you should provide market shares based on alternative metrics and explain.									
Provide the contact details of Competitor 1, Competitor 2, and Competitor 3 in the prescribed format.									
DOWNSTREAM									
Precedents (include a reference to relevant paragraphs)	Plausible product market considered	Plausible geographic market considered	Supplier	Year X -2		Year X -1		Year X	
				Value	Volume	Value	Volume	Value	Volume
			Undertaking concerned 1	%	%	%	%	%	%
			Undertaking concerned 2	%	%	%	%	%	%
			Undertaking concerned 3	%	%	%	%	%	%
			Combined	%	%	%	%	%	%
			Competitor 1	Do not complete.				%	%
			Competitor 2					%	%
			Competitor 3					%	%
			Others					%	%
			Total			100%	100%		
Market size	EUR		EUR		EUR				
Describe the activities of the parties in this market:									
Provide further details here (in particular if there are no precedents, you should provide the parties' views on product/geographic market definition):									
Metrics, sources and methodology followed for market share calculation. If value and volume are not the most common metrics for market share calculation in the relevant markets, you should provide market shares based on alternative metrics and explain.									
Provide the contact details of Competitor 1, Competitor 2, and Competitor 3 in the prescribed format.									

#### 7.4. Safeguards and exclusions.

Please complete this information regarding the markets identified in Sections 7.2 and 7.3<sup>27</sup>.

Any of the parties to the concentration has significant non-controlling shareholdings (i.e. above 10%) or cross-directorships in companies active in the same markets as any of the other parties or in vertically related markets (e.g. the acquiring company has a non-controlling minority shareholding or common directors in a company active in the same market as the target company).	<input type="checkbox"/> Yes <input type="checkbox"/> No
One or more of the parties' competitors have a significant non-controlling shareholding (i.e. above 10%) in any of the undertakings concerned. If yes: Indicate the shareholding%: Indicate the rights attached to the shareholding:	<input type="checkbox"/> Yes <input type="checkbox"/> No
The parties own or control important technological, financial or competitively valuable assets, such as raw materials, intellectual property rights, patents, data or infrastructure.	<input type="checkbox"/> Yes <input type="checkbox"/> No
The parties are active in closely related neighbouring markets and any of the parties individually holds a market share of 30% or more in any of these markets under any plausible market definition.	<input type="checkbox"/> Yes <input type="checkbox"/> No
The parties have a significant user base and/or commercially valuable data inventories.	<input type="checkbox"/> Yes <input type="checkbox"/> No
The concentration will allow the merged entity to gain access to commercially sensitive information regarding the upstream or downstream activities of rivals.	<input type="checkbox"/> Yes <input type="checkbox"/> No
There remain fewer than three competitors with market shares above 5% in any of the markets giving rise to horizontal overlaps or vertical relationships under any plausible market definition.	<input type="checkbox"/> Yes <input type="checkbox"/> No
The relevant market share thresholds are exceeded in terms of capacity or production under any plausible market definition.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
The parties (or one of them) are recent entrants in the overlapping markets (i.e. entered the market in the last three years).	<input type="checkbox"/> Yes <input type="checkbox"/> No

<sup>27</sup> Complete only one table for all markets falling under point 8 of the Notice on Simplified Procedure for which none of the safeguards/exclusions apply (i.e., the answer to all questions in Section 7.4 is "No"). For each market falling under point 8 of the Notice on Simplified Procedure for which the answer to at least one question is "Yes", you should provide a separate table.

<p>The parties' activities overlap or have a vertical relationship in highly differentiated products. Indicate if:</p> <p>brand recognition is important in any of the overlapping markets;</p> <p>branch or store locations are important in any of the overlapping markets;</p> <p>technical specifications, quality or level of service is important in any of the overlapping markets;</p> <p>advertising is important in any of the overlapping markets.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No
<p>The parties are important innovators in the overlapping markets.</p> <p>The parties have brought to the market an important pipeline product within the last 5 years.</p> <p>Main activity of one or more companies focuses on R&amp;D</p> <p>Expenditure in terms of R&amp;D: <i>[open text - please provide in EUR million]</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No
<p>The concentration gives raise to pipeline-to-pipeline or pipeline-to-marketed product overlaps</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>One of the parties has plans to expand into product markets and/or geographic markets in which another party to the concentration is active or which are in a vertical relation with markets in which another party to the concentration is active.</p> <p>Explain the products or services concerned by such plans and their timing: <i>[open text]</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>In production chains with more than two levels, individual or combined market shares of the parties exceed 30% in any of the levels of the value chain (in terms of value, volume, production or capacity)</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>If you answered “yes” to any of the questions above, explain why in your view the market concerned does not give rise to competition concerns and provide all relevant details: <i>[open text]</i></b></p>	

## SECTION 8

### INFORMATION ON AFFECTED MARKETS AND MARKETS INVOLVING PIPELINE PRODUCTS

- 8.1. With regard to each horizontally affected market, each vertically affected market and each of the other markets where the notified operation may have a significant impact, provide the following information for each of the last three years:
- 8.1.1. 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;
  - 8.1.2. an estimate of the total size of the market in terms of sales value (in euro) and volume (units)<sup>28</sup>. You should indicate the basis and sources for the calculations and provide documents where available to confirm those calculations;
  - 8.1.3. for each of the parties to the concentration, the sales in value and volume, as well as an estimate of the market shares;
  - 8.1.4. 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. You should identify the sources used to calculate those market shares and provide documents where available to confirm the calculation;
  - 8.1.5. an estimate of the total capacity in the relevant markets. You should indicate what proportion of this capacity has been accounted for over the last three years by each of the parties to the concentration, and what their respective rates of capacity utilisation have been. If applicable, you should identify the location and capacity of the manufacturing facilities of each of the parties to the concentration in affected markets;
  - 8.1.6. information on pipeline products of the parties and their competitors (including the stage of their development, an estimate of the projected sales and market shares of the parties to the concentration over the next three to five years).

#### Information on horizontal overlaps and vertical relationships involving pipeline products

- 8.2. With regard to each plausible relevant product and geographic market definition, where there is a horizontal overlap or a vertical relationship involving (i) one or more marketed products of one or several of the party(ies) to the concentration and one or more pipeline products of other parties to the concentration<sup>29</sup> or (ii) pipeline products of the parties to the concentration, you should provide the information included in the tables below:

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<sup>28</sup> The value and volume of a market must reflect output less exports plus imports for the geographic areas under consideration.

<sup>29</sup> This section does not need to be completed if you have disclosed this information in section 8.1.6 with regard to the same pipeline products.



Horizontal overlaps involving pipeline products										
Precedents (include a reference to relevant paragraphs)	Plausible product market considered	Plausible geographic market considered	Supplier	Year X -2 <sup>30</sup>		Year X -1		Year X		Pipeline products <sup>31</sup> (Provide name)
				Value	Volume	Value	Volume	Value	Volume	
			Undertaking concerned 1	%	%	%	%	%	%	
			Undertaking concerned 2	%	%	%	%	%	%	
			Undertaking concerned 3	%	%	%	%	%	%	
			Combined	%	%	%	%	%	%	
			Competitor 1	%	%	%	%	%	%	
			Competitor 2	%	%	%	%	%	%	
			Competitor 3	%	%	%	%	%	%	
			Others	%	%	%	%	%	%	
			Total	100%	100%	100%	100%	100%	100%	
Market size	EUR		EUR		EUR		Do not complete.			
Describe the activities of the parties in this market:										
Provide further details here (in particular if there are no precedents, you should provide the parties' views on product/geographic market definition):										
Metrics, sources and methodology followed for market share calculation. If value and volume are not the most common metrics for market share calculation in the relevant markets, you should provide market shares based on alternative metrics and explain.										
Provide information on pipeline products of the parties and their competitors (including the stage of their development, an estimate of the projected sales and market shares of the parties to the concentration over the next three to five years).										
Provide the contact details of Competitor 1, Competitor 2, and Competitor 3 in the prescribed format.										

<sup>30</sup> Provide market shares if one or more of the parties have marketed products.

<sup>31</sup> Provide market shares for competitors with marketed products. If there are no marketed products, please provide at least three competitors developing competing products.

Vertical Relationships Involving Pipeline Products										
UPSTREAM										
Precedents (please include a reference to relevant paragraphs)	Plausible product market considered	Plausible geographic market considered	Supplier	Year X -2 <sup>32</sup>		Year X -1		Year X		Pipeline Products (Provide Name) <sup>33</sup>
				Value	Volume	Value	Volume	Value	Volume	
			Undertaking concerned 1	%	%	%	%	%	%	
			Undertaking concerned 2	%	%	%	%	%	%	
			Undertaking concerned 3	%	%	%	%	%	%	
			Combined	%	%	%	%	%	%	
			Competitor 1	%	%	%	%	%	%	
			Competitor 2	%	%	%	%	%	%	
			Competitor 3	%	%	%	%	%	%	
			Others	%	%	%	%	%	%	
			Total	100%	100%	100%	100%	100%	100%	
Market size	EUR		EUR		EUR		Do not complete.			
Describe the activities of the parties in this market:										
Provide further details here (in particular if there are no precedents, you should provide the parties' views on product/geographic market definition)]:										
Metrics, sources and methodology followed for market share calculation. If value and volume are not the most common metrics for market share calculation in the relevant markets, you should provide market shares based on alternative metrics and explain.										
Please provide information on pipeline products of the parties and their competitors (including the stage of their development, an estimate of the projected sales and market shares of the parties to the concentration over the next three to five years).										
Provide the contact details of Competitor 1, Competitor 2, and Competitor 3 in the prescribed format.										
DOWNSTREAM										
Precedents (please include a reference to relevant paragraphs)	Plausible product market considered)	Plausible geographic market considered	Supplier	Year X -2 <sup>34</sup>		Year X -1		Year X		Pipeline Products (Provide Name) <sup>35</sup>
				Value	Volume	Value	Volume	Value	Volume	
			Undertaking concerned 1	%	%	%	%	%	%	
			Undertaking concerned 2	%	%	%	%	%	%	
			Undertaking concerned 3	%	%	%	%	%	%	
			Combined	%	%	%	%	%	%	
			Competitor 1	%	%	%	%	%	%	

<sup>32</sup> Provide market shares if one or more of the parties have marketed products.

<sup>33</sup> Provide market shares for competitors with marketed products. If there are no marketed products, please list at least three competitors developing competing products.

<sup>34</sup> Provide market shares if one or more of the parties have marketed products.

<sup>35</sup> Provide market shares for competitors with marketed products. If there are no marketed products, please list at least three competitors developing competing products.

			Competitor 2	%	%	%	%	%	%	
			Competitor 3	%	%	%	%	%	%	
			Others	%	%	%	%	%	%	
			Total	100%	100%	100%	100%	100%	100%	
			Market size	EUR		EUR		EUR		Do not complete.
Describe the activities of the parties in this market:										
Provide further details here (in particular if there are no precedents, you should provide the parties' views on product/geographic market definition):										
Metrics, sources and methodology followed for market share calculation. If value and volume are not the most common metrics for market share calculation in the relevant markets, you should provide market shares based on alternative metrics and explain.										
Provide information on pipeline products of the parties and their competitors (including the stage of their development, an estimate of the projected sales and market shares of the parties to the concentration over the next three to five years).										
Provide the contact details of Competitor 1, Competitor 2, and Competitor 3 in the prescribed format.										

## SECTION 9

### STRUCTURE OF SUPPLY IN AFFECTED MARKETS

- 9.1. Provide a brief explanation of the structure of supply in each of the affected markets. Specify in particular:
- (a) how these markets function;
  - (b) the manner in which the parties to the concentration and their largest competitors produce and sell the products and/or services (for example, whether parties to the concentration and their largest competitors manufacture and sell locally);
  - (c) the manner in which the parties to the concentration price the products and/or services;
  - (d) the nature and extent of vertical integration of each of the parties to the concentration compared with their largest competitors.

#### Structure of demand in affected markets

- 9.2. 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 for both the following:
    - (i) existing products;
    - (ii) 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.

## SECTION 10

### PRODUCT DIFFERENTIATION AND CLOSENESS OF COMPETITION

- 10.1. 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;
  - (c) for horizontal overlaps, 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).

### Distribution systems and service networks

- 10.2. Provide a brief description of:
- (a) 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;
  - (b) the service networks (for example, maintenance and repair) prevailing and their importance in these markets. To what extent are such services performed by third parties and/or undertakings belonging to the same group as the parties?

### Market entry and exit

- 10.3. Over the last five years, indicate whether there has been any significant entry into any affected market. If this is the case, identify such entrants and provide an estimate of the current market share of each such entrant.
- 10.4. Indicate whether in your view there are undertakings (including those at present operating only outside the EU or the EEA) that are likely to enter any affected market. If so, explain why such entry is likely and provide an estimate of the time within which such entry is likely to occur.
- 10.5. 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 doing so, you should 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;
  - (g) access to sources of supply, such as availability of raw materials and necessary infrastructure.
- 10.6. Explain whether any of the parties to the concentration, or any of the competitors, have pipeline products<sup>36</sup>, 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.
- 10.7. Indicate whether there has been any exit from any affected market over the last five years. 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**

- 10.8. 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. In so doing, you should take account of the following, where appropriate:
- (a) trends and intensities of research and development in those markets and for the parties to the concentration. Research and development intensity can be illustrated by research and development expenditure; number of employees dedicated to research and development (in terms of full time employees equivalents); number and importance of research and development facilities; or number of patents filed during the last three years;
  - (b) the course of technological development for those 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);
  - (c) the research planning and priorities that the parties to the concentration have over the next three years.

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<sup>36</sup> With reference to your reply to Sections 8.1.6 and 8.2 above.

### **Contact details**

- 10.9. Provide the name, address, telephone 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<sup>37</sup>:
- (a) the competitors identified under section 8.2;
  - (b) each of the parties' top ten customers in each of the affected markets;
  - (c) the recent entrants identified under section 10.3; and
  - (d) the potential entrants identified under section 10.4.

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

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<sup>37</sup> 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.

## SECTION 11

### EFFICIENCIES

Should you wish the Commission specifically to consider from the outset<sup>38</sup> 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<sup>39</sup>.

For each claimed efficiency, provide the following information:

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

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<sup>38</sup> 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.

<sup>39</sup> 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).



## SECTION 12

### 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?

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

- 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 point (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) TFEU, and, where applicable, the corresponding provisions of the EEA Agreement<sup>40</sup>, give your reasons.
- (c) Without prejudice to the answers to points (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 conditions of Article 101(3) TFEU and, where applicable, the corresponding provisions of the EEA Agreement<sup>41</sup> 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.

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<sup>40</sup> See Article 53(1) of the EEA Agreement.

<sup>41</sup> See Article 53(3) of the EEA Agreement.

## SECTION 13

### 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), 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:

[signatory 1] Name: Organisation: Position: Address: Phone number: E-mail: [“e-signed” / signature]	[signatory 2 if applicable] Name: Organisation: Position: Address: Phone number: E-mail: [“e-signed” / signature]
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