



Brussels, 6.5.2022
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ANNEX 1

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) 139/2004 on the control of
concentrations between undertakings**

ANNEX
Commission Regulation (EU) [No [X]/2023 of [X] 2023] implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings

DRAFT

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Article 57(2), point (a) of the Agreement on the European Economic Area in conjunction with Article 1 of Protocol 21 to that Agreement,

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

After consulting the Advisory Committee,

Whereas:

- (1) Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings² has been amended several times. Since further changes now need to be made, Regulation (EC) No 802/2004 should be replaced, in the interest of clarity.
- (2) Regulation (EC) No 139/2004 is based on the principle of compulsory notification of concentrations before they are put into effect. Notification has important legal consequences which are favourable to the parties to the proposed concentration. However, 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.
- (3) 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.
- (4) 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.
- (5) In order to simplify and expedite examination of notifications, of reasoned submissions, and of the information regarding commitments, standardised forms should be used. Those forms are set out in the Annexes to this Regulation. The

¹ OJ L 24, 29.1.2004, p. 1.

² OJ L 133, 30.4.2004, p. 1.

format of the Annexes to this Regulation may change and the corresponding forms may be replaced by electronic forms containing the same information requirements.

- (6) Since notification sets in motion legal time-limits laid down in Regulation (EC) No 139/2004, the conditions governing such time-limits and the time when they become effective should also be determined.
- (7) In the interest of legal certainty, rules should be laid down 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 should be determined, with due regard to the requirements resulting from the exceptionally tight legal timeframe available for the proceedings.
- (8) The provisions relating to the Commission's proceedings under Regulation (EC) No 139/2004 should 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.
- (9) The Commission should give the notifying parties and other parties involved in the proposed concentration, if they so request, an opportunity to discuss the intended concentration informally and in strict confidence, before notification. In addition, the Commission should maintain close contact with those parties after notification, 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.
- (10) In accordance with the principle of respect for the rights of defence, the notifying parties should 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.
- (11) Third parties demonstrating a sufficient interest should also be given the opportunity of expressing their views, if they make a written application to that effect.
- (12) 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 an oral hearing, where appropriate, to supplement the written procedure. In urgent cases, however, the Commission should be able to proceed immediately to oral hearings of the notifying parties, of other parties involved or of third parties.
- (13) It is necessary to lay down rules on 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.
- (14) 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.
- (15) In order to enable the Commission to carry out a proper assessment of commitments offered by the notifying parties with a view to rendering a concentration compatible

with the internal 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, the procedure and time-limits for submitting commitments should be laid down.

- (16) Transmission of documents to and from the Commission should in principle take place through digital means, considering developments in information and communication technology and the environmental impact of such transmissions. This applies in particular to notifications, reasoned submissions, comments in response to objections that the Commission addresses to notifying parties, as well as commitments offered pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004,

HAS ADOPTED THIS REGULATION:

CHAPTER I SCOPE

Article 1

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

CHAPTER II NOTIFICATIONS AND OTHER SUBMISSIONS

Article 2

Persons entitled to submit notifications

- (1) Notifications shall be submitted by the persons or undertakings referred to in Article 4(2) of Regulation (EC) No 139/2004.
- (2) Where notifications are signed by authorised external representatives of persons or of undertakings, such representatives shall produce written proof that they are authorised to act.
- (3) Joint notifications shall be submitted by a joint representative who is authorised to transmit and to receive documents on behalf of all notifying parties.

Article 3

Submission of notifications

- (1) Notifications shall be submitted using the Form CO as set out in Annex I. Under the conditions set out in Annex II, notifications may be submitted using a Short Form CO as set out in Annex II. Joint notifications shall be submitted on a single form.
- (2) The forms referred to in paragraph 1 and all relevant supporting documents shall be submitted to the Commission in accordance with Article 22 and the instructions published by the Commission in the *Official Journal of the European Union*.

- (3) Notifications shall be drafted in one of the official languages of the Union. 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 of a document is not one of the official languages of the Union, a translation into the language of the proceedings shall be attached.
- (4) 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 Union, the notifying parties shall simultaneously supplement all documentation with a translation into an official language of the Union. The language which is chosen for the translation shall determine the language used by the Union as the language of the proceedings for the notifying parties.

Article 4

Information and documents to be provided

- (1) Notifications shall contain the information, including documents, required in the applicable forms set out in Annexes I and II. The information shall be correct and complete.
- (2) The Commission may, upon written request by the notifying parties, 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 (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 Commission may consider the notification as becoming effective on the date on which it receives the relevant information. The

Commission shall inform the notifying parties or their representatives of this in writing and without delay.

- (4) For the purposes of this Article, incorrect or misleading information shall be considered to be incomplete information, without prejudice to Article 14(1) of Regulation (EC) No 139/2004.
- (5) Where the Commission publishes the fact of the notification pursuant to Article 4(3) of Regulation (EC) No 139/2004, it shall specify the date upon which the notification has been received. Where, further to the application of paragraphs 2, 3 and 4 of this Article, the effective date of notification is later than the date specified in that publication, the Commission shall issue a further publication in which it shall state the later date.

Article 6

Specific provisions relating to reasoned submissions, supplements and certifications

- (1) Reasoned submissions within the meaning of Article 4(4) and (5) of Regulation (EC) No 139/2004 shall contain the information, including documents, required in Annex III to this Regulation. The information submitted shall be correct and complete.
- (2) Article 2, Article 3(1), third sentence, Article 3(2), (3) and (4), Article 4, Article 5(1) to (4) and Article 22 of this Regulation shall apply *mutatis mutandis* to reasoned submissions within the meaning of Article 4(4) and (5) of Regulation (EC) No 139/2004.
- (3) Article 2, Article 3(1), third sentence, Article 3(2), (3) and (4), Article 4, Article 5(1) to (4) and Article 22 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

- (1) A time period calculated in working days shall expire at the end of its last working day.
- (2) 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 Article 9(4) and Article 10(1) and (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 any other involved party, as defined in Article 11 of this Regulation, is not provided or not provided in full within the time limit fixed by the Commission;
 - (b) information which the Commission has requested pursuant to Article 11(2) of Regulation (EC) No 139/2004 from a third party 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 any other involved party, as defined in Article 11 of this Regulation, is responsible;
 - (c) one of the notifying parties or any other 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 Article 9(4), Article 10(1) and (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 Article 9(4), Article 10(1) and (3) of Regulation (EC) No 139/2004 shall be suspended:
 - (a) in the cases referred to in paragraph 1, points (a) and (b), 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 paragraph 1, point (c), 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 paragraph 1, point (d), 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 day on which the event causing the suspension occurred. It shall expire at 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 at the end of the following working day.

Article 10

Compliance with 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 AND HEARINGS

Article 11

Parties to be heard

For the purposes of the right 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
 - i) for members of the administrative or management bodies of the undertakings concerned or the recognised representatives of their employees;
 - ii) for consumer associations, where the proposed concentration concerns products or services used by final consumers.
- (d) parties regarding whom the Commission intends to take a decision pursuant to Article 14 or Article 15 of Regulation (EC) No 139/2004.

Article 12
Decisions on the suspension of concentrations

- (1) Where the Commission intends to take a decision pursuant to Article 7(3) of Regulation (EC) No 139/2004 which adversely affects one or more of the parties, it shall 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.

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, 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 in a statement of objections. Following the issuance of the statement of objections, the Commission may address one or more supplementary statement(s) of objections to the notifying parties, if the Commission wishes to raise new objections or modify the intrinsic nature of the objections that were previously raised.

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 the objections referred to in the first subparagraph and set a time limit within which those parties may inform the Commission of their comments in writing.

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

- (3) In their written comments, parties to whom the objections have been addressed or who have been informed of those objections may set out all relevant facts known to them, 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 in accordance with Article 22 and the instructions published by the Commission 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.

- (4) Following the issuance of a statement of objections, the Commission may address a letter of facts to the notifying parties, informing them of additional or new facts or evidence that the Commission wishes to use to corroborate objections already raised.

When sending a letter of facts, the Commission shall set a time limit within which the notifying parties may inform the Commission of their comments in writing.

- (5) 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, hear the parties regarding whom the Commission intends to take such a decision, pursuant to Article 18(1) and (3) of that Regulation.

The procedure provided for in paragraph 2, first and second subparagraphs, and paragraphs 3 and 4 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 at an 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 an 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 an 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 oral hearings*

- (1) Oral hearings shall be conducted by the Hearing Officer in full independence.
- (2) The Commission shall invite the persons to be heard to attend the 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 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) 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 oral hearing.
- (8) The Hearing Officer may hold a preparatory meeting with the parties and the Commission services, so as to facilitate the efficient organisation of the oral hearing.
- (9) The statements made by each person heard shall be recorded. Upon request, the recording of the 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 to be heard, the Commission shall inform them in writing of the nature and subject matter of the proceedings and shall set a time limit within which they may make known their views.
- (2) Where a statement of objections or a supplementary statement of objections has been issued, the Commission may send to third persons a non-confidential version of that statement or inform them of the nature and subject matter of the proceedings by other appropriate means. For this purpose, the notifying parties shall identify any information which they consider confidential in the objections, pursuant to Article 18(3), second and third subparagraphs, within five working days from the receipt of the statement. The Commission shall provide the non-confidential version of the objections to third persons only to be used for the purposes of the relevant proceedings pursuant to Regulation (EC) No 139/2004. Third persons shall accept that use restriction prior to receipt of the non-confidential version of the objections.

Where a statement of objections has not been issued, the Commission shall be under no obligation to provide third persons referred to in paragraph 1 with any information beyond the nature and the subject matter of the proceedings.
- (3) 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 persons who have so requested in their written comments the opportunity to participate in a hearing. It may also in other cases afford such third persons the opportunity of expressing their views orally.
- (4) The Commission may invite any other natural or legal person to express its views, in writing as well as orally, including at an 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 Commission gives notice of the statement of objections to the notifying parties.
- (2) The Commission shall, upon request, also give the other involved parties who have been informed of the objections access to the file in so far as this is necessary for the purposes of preparing their comments.
- (3) The right of access to the file shall not extend to:
 - (a) confidential information;
 - (b) internal documents of the Commission;
 - (c) internal documents of competent authorities of Member States;
 - (d) correspondence between the Commission and the competent authorities of Member States;
 - (e) correspondence between the competent authorities of Member States; and
 - (f) correspondence between the Commission and other competition authorities.
- (4) Documents obtained through access to the file pursuant to this Article may only be used for the purposes of the relevant proceedings pursuant to Regulation (EC) No 139/2004.

Article 18

Treatment of confidential information

- (1) Information, including documents, shall not be communicated or made accessible by the Commission in so far as:
 - (a) it contains business secrets or other confidential information;
 - (b) the disclosure of the information is not considered necessary by the Commission for the purpose of the proceedings.
- (2) Persons, undertakings, or associations of undertakings who make known their views or comments pursuant to Articles 12, 13 and 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 proceedings, 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 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.

- (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.

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 20 working days from the date of receipt of the notification.
- (2) Commitments offered by the undertakings concerned pursuant to Article 8(2) of Regulation (EC) No 139/2004 shall be submitted to the Commission within 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 Article 10(3), second sentence, of Regulation (EC) No 139/2004.

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) to (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 to consider commitments offered after the expiry of the relevant time limit for their submission as prescribed in this Article. In deciding whether to accept to consider commitments offered in such circumstances, the Commission shall have particular regard to the need to comply with the requirements of Article 19(5) of Regulation (EC) No 139/2004.

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

Article 20
Procedure for the submission of commitments

- (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 in accordance with Article 22 and the instructions published by the Commission in the *Official Journal of the European Union*. The Commission shall forward such commitments without delay to the competent authorities of the Member States.
- (2) 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 the information required by the Form RM as set out in Annex IV to this Regulation in accordance with Article 22 and the instructions published by the Commission in the *Official Journal of the European Union*. The information submitted shall be correct and complete.

Article 4 shall apply *mutatis mutandis* to the Form RM accompanying the commitments offered pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004.

- (3) When offering commitments pursuant to Article 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.
- (4) Commitments offered pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004 shall be signed by the notifying parties, as well as by any other involved parties on whom the commitments impose obligations.
- (5) A non-confidential version of the commitments shall be published on the website of the Commission's Directorate General for Competition without delay following the adoption of a decision pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004. To that effect, the notifying parties shall provide to the Commission a non-confidential version of the commitments within five working days from the adoption of the decision pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004.

Article 21
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 one or more independent trustees to assist the Commission in overseeing the parties' compliance with the commitments or to implement the commitments. The trustees may be appointed by the parties, after the Commission's approval, or by the Commission. The trustees shall carry out their tasks under the supervision of the Commission.
- (2) The Commission may attach to its decision pursuant to Article 6(2) or 8(2) of Regulation (EC) No 139/2004 conditions or obligations related to the trustees referred to in paragraph 1.

CHAPTER VII MISCELLANEOUS PROVISIONS

Article 22

Transmission and signature of documents

- (1) Transmission of documents to and from the Commission shall take place through digital means, save where the Commission exceptionally agrees that other means identified in paragraph (6) and (7) may be used.
- (2) Documents submitted through digital means must be signed using at least one Qualified Electronic Signature (QES) complying with the requirements set out in Regulation (EU) No 910/2014 (the “eIDAS Regulation”)³ and its future amendments.
- (3) Detailed technical specifications regarding the means of transmission and signature shall be published in the *Official Journal of the European Union* and shall be made available on the website of the Commission's Directorate General for Competition.
- (4) With the exception of the forms included in Annexes I, II, and III, all documents transmitted electronically to the Commission on a working day shall be deemed to have been received on the day they were sent, provided that an automated acknowledgement of receipt shows in its timestamp that they were received that day. The forms included in Annexes I, II, and III transmitted electronically to the Commission on a working day shall be deemed to have been received on the day they were sent, provided that an automated acknowledgement of receipt shows in its timestamp that they were received that day before or during the opening hours indicated on DG Competition’s website. The forms included in Annexes I, II, and III transmitted electronically to the Commission on a working day after the opening hours indicated on DG Competition’s website shall be deemed to have been received on the next working day. All documents transmitted electronically to the Commission outside a working day shall be deemed to have been received on the next working day.
- (5) Documents transmitted electronically to the Commission shall not be deemed to be received if the documents or parts thereof :
 - (a) are unusable (corrupted);
 - (b) contain viruses, malware or other threats;
 - (c) contain electronic signatures the validity of which cannot be verified by the Commission.In those cases, the Commission shall inform the sender without delay.
- (6) Documents transmitted to the Commission by registered post shall be deemed to have been received on the day of their arrival at the address published in the *Official Journal of the European Union*. This address shall be also indicated on the website of the Commission’s Directorate General for Competition.

³ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.257.01.0073.01.ENG

- (7) Documents transmitted to the Commission by means of hand delivery shall be deemed to have been received on the day of their arrival at the address published in the Official Journal of the European Union, as long as this is confirmed in an acknowledgment of receipt by the Commission. This address shall be also indicated on the website of the Commission's Directorate General for Competition.

Article 23

Setting of time limits

- (1) In setting the time limits referred to in Article 12(1) and (2), Article 13(2) and Article 16(1), the Commission shall have regard to the urgency of the case and the time required for the notifying parties, the other involved parties, or the third persons to prepare their views or comments. The Commission shall also take account of public holidays in the country where the notifying parties, the other involved parties, or the third persons are located.
- (2) Time limits shall be set in terms of a precise calendar date.

Article 24

Working days

- (1) 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 provisions

- (1) Without prejudice to paragraph 2, Regulation (EC) No 802/2004 is repealed with effect from [...].
- References to the repealed Regulation shall be construed as references to this Regulation.
- (2) Regulation (EC) No 802/2004 shall continue to apply to any concentration falling within the scope of Regulation (EC) 139/2004 and notified on or before [...].

Article 26

Entry into force

This Regulation shall enter into force on [...].

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

Done at Brussels,

For the Commission

The President

Ursula von der Leyen