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COMMISSION IMPLEMENTING REGULATION (EU) 2023/914

of 20 April 2023

implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004

(Text with EEA relevance)

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.

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 that Annex. 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 or the moment when the Commission informs the notifying parties that, in light of the results of its ongoing investigation or market developments, the information requested is no longer necessary;

(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 or the moment when the Commission informs the notifying parties that, in light of the results of its ongoing investigation or market developments, the inspection ordered is no longer necessary;

(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 or the moment when the Commission informs the notifying parties that, in light of the results of its ongoing investigation or market developments, the information requested is no longer necessary.

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.

5. The Commission shall process within a reasonable time period all the data it has received in the framework of its investigation that could allow it to deem that information requested or an inspection ordered is no longer necessary, within the meaning of paragraph 3, points (a), (b), and (d).

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 notifying parties and other involved parties 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; and

(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 supply information pursuant to Article 11 of Regulation (EC) No 139/2004, or subsequently submit further information to the Commission in the course of the same proceedings, shall clearly identify any material which they consider 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 allows that other means identified in paragraph (6) and (7) may be used.

2. Where a signature is required, 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”)[[1]](#footnote-1) 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.

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**

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 1 September 2023.

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 31 August 2023.

Article 26

**Entry into force**

This Regulation shall enter into force on 1 September 2023.

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

ANNEX III

**FORM RELATING TO REASONED SUBMISSIONS PURSUANT TO ARTICLES 4(4) AND 4(5) OF COUNCIL REGULATION (EC) No 139/2004**

**(FORM RS)**

INTRODUCTION

A. *The purpose of the Form RS*

(1) This Form RS specifies the information that must be provided when making a reasoned submission for a pre-notification referral under Article 4(4) or (5) of Regulation (EC) No 139/2004[[2]](#footnote-2) (“Merger Regulation”). The merger control system of the European Union is laid down in the Merger Regulation and in Commission Implementing Regulation (EU) 2023/914 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “Implementing Regulation”)[[3]](#footnote-3) to which this Form RS is annexed. Your attention is drawn to the corresponding provisions of the Agreement on the European Economic Area[[4]](#footnote-4) (‘EEA Agreement’).

B. *Contacts prior to submission of the Form RS and waiver requests*

(2) The information requested in this Form RS must in principle be provided in all cases and is therefore a requirement for a complete pre-notification referral request.

1. Information that is not reasonably available

(3) In exceptional circumstances, specific elements required by this Form RS may not be reasonably available to the submitting parties in part or in whole (e.g., because information on a target company is not available in case of a contested bid). In that case, the submitting parties may request the Commission to dispense with the obligation to provide the relevant information or with any other requirement in the Form RS related to this information. This request should be submitted in accordance with the instructions set out in point B.3.

2. Information that is not necessary for the Commission’s examination of the case

(4) Pursuant to Articles 4(2) and 6(2) of the Implementing Regulation, the Commission may dispense with the obligation to provide any particular information in the Form RS, including documents, or with any other requirements, where the Commission considers compliance with those obligations or requirements is not necessary for the examination of the case. In that case, the submitting parties may request the Commission to dispense with the obligation to provide the relevant information or with any other requirement in the Form RS related to this information. This request should be submitted in accordance with the instructions set out in point B.3.

3. Prior contacts and waiver requests

(5) Parties that are entitled to submit a Form RS are invited to engage in contacts with the Commission prior to the submission. Parties should engage in such contacts on the basis of a draft Form RS. The possibility to engage in prior contacts is a service offered by the Commission to submitting parties on a voluntary basis in order to prepare the formal submission of this Form RS. As such, while not mandatory, prior contacts are extremely valuable to both the submitting parties and the Commission in determining, among other things, the precise amount of information required in a Form RS and, in the majority of cases, will result in a significant reduction of the information required.

(6) In the course of prior contacts, submitting parties may make requests for waivers. The Commission will consider waiver requests provided one of the following conditions is fulfilled:

(a) the submitting parties give adequate reasons why the relevant information is not reasonably available and provide best estimates for the missing data, identifying the sources for those estimates. Where possible, the submitting 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 submitting parties give adequate reasons why the relevant information is not necessary for the examination of the Form RS.

(7) Waiver requests should be submitted at the same time as the draft Form RS. Waiver requests should be made in the text of the draft Form RS itself (at the beginning of the relevant section or sub-section). The Commission will deal with waiver requests in the context of the review of the draft Form RS. The Commission will normally require five working days before responding to a waiver request. Where a waiver request is submitted with the justification that information is not necessary for the examination of the Form RS, the Commission may consult with the relevant Member State(s) or EFTA State authority(-ies) before deciding to accept the request.

(8) For the avoidance of doubt, the fact that the Commission may have accepted that any particular information requested by this Form RS is not necessary for the examination of the pre-notification referral request 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.

(9) The submitting parties may refer to the ‘Best Practices on the conduct of EC merger control proceedings’ of the Commission’s Directorate-General for Competition (‘DG Competition’) as published on DG Competition’s website and updated from time to time, which provide guidance on pre-notification contacts and the preparation of pre-notification referral requests.

C. *The requirement for correct and complete reasoned submission*

(10) The information requested in this Form RS must in principle be provided in all cases and is therefore a requirement for a complete pre-notification referral request. All information must be supplied in the appropriate section of this Form RS and it must be correct and complete.

(11) In particular you should note that:

(a) in accordance with Article 4(4) and (5) of the Merger Regulation and Article 5(2) and (4), and Article 6(2) of the Implementing Regulation, the time-limits laid down in the Merger Regulation with regard to the Form RS will not start until all the information that has to be supplied with the submission has been received by the Commission. This is to ensure that the Commission is able to assess the pre-notification referral request within the strict time-limits laid down in the Merger Regulation.

(b) in accordance with Article 4(4) of the Merger Regulation, the decision whether or not to refer a case in whole or in part to a Member State or an EFTA State will normally be taken on the basis of the information contained in the Form RS, without further investigation efforts being undertaken by the Commission. In accordance with Article 4(5) of the Merger Regulation, the position of a Member State or an EFTA State regarding the referral of a case to the Commission will normally be taken on the basis of the information contained in the Form RS, without further investigation efforts being undertaken by the authorities involved;

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

(d) in accordance with Articles 5(4) and 6(2) of the Implementing Regulation, incorrect or misleading information in the reasoned submission will be considered to be incomplete information;

(e) under Article 14(1), point (a), of the Merger Regulation, parties making a reasoned submission who, either intentionally or negligently, provide incorrect or misleading information, may be liable to fines of up to 1% of the aggregate turnover of the undertaking concerned[[5]](#footnote-5).

D. *How to make a reasoned submission*

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

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

(14) The information requested by this Form RS is to be set out using the sections and paragraph numbers signing a declaration as provided in Section 6, 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.

(15) The Form RS must be signed by persons authorised by law to act on behalf of each of the submitting party or parties or by one or more authorised external representatives of the submitting party or parties. Technical specifications and instructions regarding reasoned submissions (including signatures) can be found in the *Official Journal of the European Union.*

(16) For the sake of clarity, certain information may be put in annexes. However, it is essential that all key substantive pieces of information are presented in the body of the Form RS. Annexes to this Form RS must only be used to supplement the information supplied in the Form RS itself.

(17) 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 (Articles 3(4) and 6(2) of the Implementing Regulation).

(18) Supporting documents may be copies of the originals. In this case, the submitting party must confirm that they are true and complete.

E. *Confidentiality and Personal Data*

(19) 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[[6]](#footnote-6) 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 that Regulation of the kind covered by the obligation of professional secrecy. The same principle must also apply to protect confidentiality between submitting parties.

(20) If you believe that your interests would be harmed if any of the information supplied 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.

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

(22) Any personal data submitted in this Form RS 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.[[7]](#footnote-7)

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

(23) For the purposes of this Form, 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[[8]](#footnote-8)).[[9]](#footnote-9)

(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).[[10]](#footnote-10)

ê 2776/2024 Art. 1 and Annex .3(a)

(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(d) of the Notice on Simplified Procedure[[11]](#footnote-11) and do not benefit from the flexibility clauses of point 8 of the Notice on Simplified Procedure.

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(h) ‘Year’ means calendar year, unless otherwise stated. All information requested in this Form RS relates, unless otherwise specified, to the year preceding that of the reasoned submission.

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

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

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

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

1.1. Background information

1.1.1. Provide an executive summary of the concentration, specifying the parties to the concentration, the nature of the concentration (for example, merger, acquisition, or joint venture), the areas of activity of the parties to the concentration, the markets on which the concentration will have an impact (including the main affected markets), and the strategic and economic rationale for the concentration.

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

1.2. Information on submitting party (or parties) and other parties to the concentration[[12]](#footnote-12)

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

1.2.1. the name of the undertaking;

1.2.2. 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 shall be deemed to be authorised to accept service;

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

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

1.2.3.2. the original power of attorney document(s) (for the notifying party or parties).[[13]](#footnote-13)

SECTION 2

*GENERAL BACKGROUND AND DETAILS OF THE CONCENTRATION*

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

2.1. Describe the nature of the concentration being notified by reference to the relevant criteria of the Merger Regulation and the Commission Consolidated Jurisdictional Notice[[14]](#footnote-14):

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

2.1.2. explain whether the proposed concentration is 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[[15]](#footnote-15);

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

2.1.4. by reference to Article 4(1) of the Merger Regulation explain whether whether at the time of notification, any of the following has occurred:

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

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

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

2.2. Describe the economic rationale of the concentration.

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

2.4. Provide sufficient financial or other data to show whether the concentration meets or does not meet the jurisdictional thresholds set out in Article 1 of the Merger Regulation by submitting the following information for each of the undertakings concerned by the concentration for the last financial year[[16]](#footnote-16):

2.4.1. worldwide turnover;

2.4.2. –EU-wide turnover;

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

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

2.4.5. EFTA-wide turnover;

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

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

SECTION 3

*MARKET DEFINITIONS*

The relevant product and geographic markets serve to identify the scope within which the market power of the new entity resulting from the concentration must be assessed[[17]](#footnote-17). When presenting relevant product and geographic markets, the submitting 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 submitting parties’ internal documents.

3.1. Please discuss all plausible relevant market definitions where the proposed concentration could give rise to affected markets. Please explain how the submitting parties consider that the relevant product and geographic markets should be defined.

3.2. Taking into account all the plausible relevant market definitions discussed, you should identify each affected market[[18]](#footnote-18) 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* | | | *Downstream* | | |
| 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] |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

SECTION 4

*INFORMATION ON AFFECTED MARKETS*

With regard to each affected market, you should provide all the following information for the last year:

4.1. for each of the parties to the concentration, the nature of the undertaking’s business, the main subsidiaries active, brands, product names, and trademarks, , used in each of those markets;

4.2. an estimate of the total size of the market in terms of sales value (in euro) and volume (units)[[19]](#footnote-19). You should indicate the basis and sources for the calculations and provide documents where available to confirm those calculations;

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

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

4.5. if the concentration is a joint venture, indicate whether two or more parents retain to a significant extent activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture[[20]](#footnote-20) .

SECTION 5

*DETAILS OF THE REFERRAL REQUEST AND REASONS WHY THE CASE SHOULD BE REFERRED*

5.1. With regard to referrals made pursuant to Article 4(4) of the Merger Regulation and referrals made pursuant to the relevant provisions of the EEA Agreement:

5.1.1. identify the Member State(s) and EFTA State(s) which should in your view examine the concentration in accordance with Article 4(4) of the Merger Regulation indicating whether or not you have made informal contact with this Member State(s) and EFTA State(s);

5.1.2. specify whether you are requesting referral of the whole or part of the case. If you are requesting referral of part of the case, specify clearly the part or parts of the case for which you request the referral. If you are requesting referral of the whole of the case, you must confirm that there are no affected markets outside the territory of the Member State(s) and EFTA State(s) to which you request the referral to be made;

5.1.3. if the proposed concentration does not give rise to affected markets within the meaning of this Form RS, please explain[[21]](#footnote-21):

(a) in which market(s) the concentration could significantly affect competition within a Member State and how;

(b) why each of the markets identified in response to the question set out in point (a) presents all the characteristics of a distinct market.

5.1.4. In the event a Member State and/or EFTA State becomes competent to review the whole or part of the case following a referral pursuant to Article 4(4) of the Merger Regulation, do you consent to the information contained in this Form RS being relied upon by the Member State(s) and/or EFTA State(s) in question for the purpose of its/their national proceedings regarding (part of) this case? Please reply only with a “Yes” or a “No”.

5.2. With regard to referrals made pursuant to Article 4(5) of the Merger Regulation and referrals made pursuant to the relevant provisions of the EEA Agreement:

5.2.1. for each Member State and EFTA State, specify whether the concentration is capable of being reviewed under its national competition law. This information must be provided by completing the Commission’s template table available on DG Competition’s website. For each Member State and EFTA State, you must indicate “Yes” (if the concentration is capable of being reviewed under national competition law) or “No” (if it is not);

5.2.2. for each Member State and EFTA State where you completed “Yes” in the table referred to in point 5.2.1, provide sufficient financial or other data to show that the concentration meets the relevant jurisdictional criteria under the applicable national law;

5.2.3. explain why the case should be examined by the Commission if[[22]](#footnote-22):

(a) the proposed concentration gives rise to affected markets (within the meaning of this Form RS) that are national in scope in less than three Member States;

(b) the proposed concentration does not give rise to affected markets (within the meaning of this Form RS).

SECTION 6

*DECLARATION*

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

*‘The submitting party or parties declare that, following careful verification, the information given in this reasoned submission is to the best of their knowledge and belief true, correct, and complete, that true and complete copies of documents required by Form RS have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere. They are aware of the provisions of Article 14(1), 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:

ê 2776/2024 Art. 1 and Annex .3(b)

|  |  |
| --- | --- |
| *[Submitting party 1]*  Name:  Organisation:  Position:  Address:  Phone number:  Email:  [‘e-signed’ / signature] | *[Submitting party 2 if applicable]*  Name:  Organisation:  Position:  Address:  Phone number:  Email:  [‘e-signed’ / signature]’ |

1. 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 (OJ L 257, 28.8.2014, p. 73). [↑](#footnote-ref-1)
2. 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). [↑](#footnote-ref-2)
3. OJ L 119, 5.5.2023, p. 22. [↑](#footnote-ref-3)
4. 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 (all available at EUR-Lex - 21994A0103(74) - EN - EUR-Lex (europa.eu)) , as well as Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (hereinafter ‘Surveillance and Court Agreement’), available at EUR-Lex - JOL\_1994\_344\_R\_0001\_003 - EN - EUR-Lex (europa.eu) . 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, those States are Iceland, Liechtenstein and Norway. [↑](#footnote-ref-4)
5. In case submitting parties provide incorrect or misleading information in the Form RS, the Commission can also take the courses of action described in Commission Notice on case referral in respect of concentrations (‘Referral Notice’) (OJ C 56, 5.3.2005, p. 2), point 60, available at EUR-Lex - 52005XC0305(01) - EN - EUR-Lex (europa.eu). [↑](#footnote-ref-5)
6. See, in particular, Article 122 of the EEA Agreement, Article 9 of Protocol 24 to the EEA Agreement and Article 17(2) of Chapter XIII of Protocol 4 to the Surveillance and Court Agreement. [↑](#footnote-ref-6)
7. 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. [↑](#footnote-ref-7)
8. Pipeline products are products likely to be brought to market in the short or medium term. “Pipeline products” also covers services. [↑](#footnote-ref-8)
9. 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). [↑](#footnote-ref-9)
10. 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). [↑](#footnote-ref-10)
11. Commission Notice on a simplified treatment of certain concentrations under Council Regulation (EC) No 139/2004 (OJ C 160, 5.5.2023, p. 1) (‘Notice on Simplified Procedure’). [↑](#footnote-ref-11)
12. 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. [↑](#footnote-ref-12)
13. See power of attorney document template at https://ec.europa.eu/competition/mergers/legislation/power\_of\_attorney\_template\_en.docx. [↑](#footnote-ref-13)
14. 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), available at EUR-Lex - 52008XC0416(08) - EN - EUR-Lex (europa.eu). [↑](#footnote-ref-14)
15. See Section B IV of the Commission Consolidated Jurisdictional Notice. [↑](#footnote-ref-15)
16. On the concepts of ‘undertaking concerned’ and the calculation of turnover, see Commission Consolidated Jurisdictional Notice. [↑](#footnote-ref-16)
17. 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). [↑](#footnote-ref-17)
18. During pre-notification contacts, submitting 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 submitting parties may take a particular view in relation to the issue of market definition. [↑](#footnote-ref-18)
19. The value and volume of a market must reflect output less exports plus imports for the geographic areas under consideration. [↑](#footnote-ref-19)
20. For market definitions refer to Section 3. [↑](#footnote-ref-20)
21. For guiding principles of case referrals, see Referral Notice, point 17 and fn. 21. [↑](#footnote-ref-21)
22. For guiding principles of case referrals, see Referral Notice, point 28. [↑](#footnote-ref-22)