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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 IV

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

**(FORM RM)**

INTRODUCTION

(1) This form specifies the information and documents to be submitted by the undertakings concerned when offering commitments pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004.[[2]](#footnote-2) The information requested is necessary to allow the Commission to examine whether the commitments are capable of rendering the concentration compatible with the internal market by preventing a significant impediment to effective competition. The level of information required will vary depending on the type and structure of the remedy proposed. For example, carve-out remedies will typically require more detailed information than divestitures of stand-alone businesses.

(2) The information requested in the Form RM must be supplied in the appropriate section of the Form RM and must be correct and complete.

(3) In accordance with Articles 5(4) and 6(2) of the Commission 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) incorrect or misleading information in the Form RM will be considered to be incomplete information.

(4) Under Article 14(1), point (a), of the Merger Regulation, parties making a submission who, either intentionally or negligently, provide incorrect or misleading information, may be liable to fines of up to 1% of the aggregate turnover of the undertaking concerned.

(5) Pursuant to Article 6(3), point (a), and Article 8(6), point (a), of the Merger Regulation the Commission may revoke its decision on the compatibility of a notified concentration where it is based on incorrect information for which one of the parties to the concentration is responsible.

(6) Pursuant to Articles 4(2) and 20(2) of the Implementing Regulation the Commission may dispense with the obligation to provide any particular information in the Form RM, including documents, or with any other requirements where the Commission considers compliance with those obligations or requirements is not necessary for the examination of the case. In that case, the submitting parties may request the Commission to dispense with the obligation to provide the relevant information or with any other requirement in the Form RM related to this information. The Commission is available to discuss such requests with the parties upfront.

Any personal data submitted in this Form RM will be processed in compliance with Regulation (EU) 2018/1725 of the European Parliament and of the Council.[[4]](#footnote-4)

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

SECTION 1

*SUMMARY OF THE COMMITMENTS*

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

SECTION 2

*SUITABILITY TO REMOVE COMPETITION CONCERNS*

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

SECTION 3

*DEVIATION FROM MODEL TEXTS*

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

SECTION 4

*INFORMATION ON A BUSINESS TO BE DIVESTED*

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

*General information on the business to be divested*

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

4.1. Describe the legal structure of the business to be divested and provide the organigram of the company explaining where the business to be divested is integrated. Describe the entities belonging to the business to be divested, specifying their registered place of business and place of management, the general organisational structure and any other relevant information relating to the administrative structure of the business to be divested. If the business to be divested consists in a carve-out, all this information should also be provided for the entire business from which the business to be divested would be carved out.

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

4.3. Describe the entire value chain of the products produced or services provided by the business to be divested, including the location of the relevant facilities. List and describe the products manufactured or services provided, in particular their technical and other characteristics, the brands involved, the turnover generated with each of those products or services, and any innovations or research and development activities or pipeline products or new products ready for launch and services planned. If the business to be divested consists in a carve-out, all this information should also be provided for the entire business from which the business to be divested would be carved out.

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

4.5. Describe in detail the links between the business to be divested and other entities controlled by any of parties to the concentration (irrespective of the direction of the link), such as:

(a) supply, production, distribution, service, research and development or other contracts;

(b) shared tangible or intangible assets;

(c) shared or seconded personnel;

(d) shared IT systems or other systems;

(e) shared customers.

4.6. Describe in general terms all relevant tangible and intangible assets used or owned by the business to be divested, including, in any case, IP rights and brands. If the business to be divested consists in a carve-out, all this information should also be provided for the entire business from which the business to be divested would be carved out.

4.7. Submit an organisational chart identifying the number of personnel currently working in each of the functions of the business to be divested and a list of those employees who are indispensable for the operation of the business to be divested, describing their functions. If the business to be divested consists in a carve-out, all this information should also be provided for the entire business from which the business to be divested would be carved out.

4.8. Describe the customers of the business to be divested, including a list of customers, a description of the corresponding records available, and provide the total turnover generated by the business to be divested with each of these customers (in EUR and as percentage of the total turnover of business to be divested). If the business to be divested consists in a carve-out, all this information should also be provided on the entire business from which the business to be divested would be carved out.

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

4.10. Identify and describe any changes that have occurred in the last two years, in the organisation of the business to be divested or in the links with other undertakings controlled by the parties. If the business to be divested consists in a carve-out, all the information should also be provided for the entire business from which the business to be divested would be carved out.

4.11. Identify and describe any changes, planned for the next two years, in the organisation of the business to be divested or in the links with other undertakings controlled by the parties. If the business to be divested consists in a carve-out, all this information should also be provided for the entire business from which the business to be divested would be carved out.

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

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

*Acquisition by a suitable purchaser*

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

SECTION 5

*DECLARATION*

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

‘*The notifying parties and any other parties signing the commitments declare that, to the best of their knowledge and belief, the information given in this notification is true, correct, and complete, that true and complete copies of documents required by Form RM have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere. They are aware of the provisions of Article 14(1), point (a) of the Merger Regulation.*’

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

Date:

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

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), available at EUR-Lex - 32004R0139 - EN - EUR-Lex (europa.eu). [↑](#footnote-ref-2)
3. See page 22 of this Official Journal. [↑](#footnote-ref-3)
4. Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), available at EUR-Lex - 32018R1725 - EN - EUR-Lex (europa.eu). See also a privacy statement relating to Merger investigations at https://ec.europa.eu/competition-policy/index/privacy-policy-competition-investigations\_en. [↑](#footnote-ref-4)