

Proposal for a

COMMISSION REGULATION

(EC) No .../...

of [...]

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

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

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

After consulting the Advisory Committee on Concentrations,

Whereas:

- (1) Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings² sets out procedural rules for the notification and examination of concentrations. In order to take account of the accession of Bulgaria and Romania to the Community it is necessary to update the notification form used for concentrations which requires certain information based on a list of all Member States of the Community.
- (2) In order to ensure that the Commission is in a position to carry out a proper assessment of commitments offered by the notifying parties pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004 with a view to rendering a concentration compatible with the common market, the notifying parties should be required to submit detailed information concerning the commitments offered and, in particular, to submit specific information if the commitments offered consist in the divestiture of a business.

¹ OJ L 24, 29.1.2004, p. 1.

² OJ L 133, 30.4.2004, p. 1. Regulation as amended by Regulation (EC) No 1792/2006 (OJ L 362, 20.12.2006, p. 1).

(3) Regulation (EC) No 802/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 802/2004 is amended as follows:

(1) In Article 20, the following paragraph 3 is added:

3. When offering commitments pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004, the undertakings concerned shall simultaneously submit the information and documents prescribed by Form RM as set out in Annex IV. The information submitted shall be correct and complete.

(2) The Annexes are amended in accordance with the Annex to this Regulation.

Article 2

Entry into force

This Regulation shall enter into force on []

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

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission

ANNEX

The Annexes to Regulation (EC) No 802/2004 are amended as follows:

(1) In Annex III, subsection 6.3.1 is replaced by the following.

"6.3.1. For each Member State, specify whether the concentration is or is not capable of being reviewed under its national competition law. You must tick one box for each and every Member State.

Is the concentration capable of being reviewed under the national competition law of each of the following Member States? You must reply for **each** Member State. Only indicate YES **or** NO for each Member State. Failure to indicate YES or NO for any Member State shall be deemed to constitute an indication of YES for that Member State.

Belgium:	YES	NO
Bulgaria:	YES	NO
Czech Republic:	YES	NO
Denmark:	YES	NO
Germany:	YES	NO
Estonia:	YES	NO
Ireland:	YES	NO
Greece:	YES	NO
Spain:	YES	NO
France:	YES	NO
Italy:	YES	NO
Cyprus:	YES	NO
Latvia:	YES	NO
Lithuania:	YES	NO
Luxembourg:	YES	NO
Hungary:	YES	NO
Malta:	YES	NO

Netherlands:	YES	NO
Austria:	YES	NO
Poland:	YES	NO
Portugal:	YES	NO
Romania:	YES	NO
Slovenia:	YES	NO
Slovakia:	YES	NO
Finland:	YES	NO
Sweden:	YES	NO
United Kingdom:	YES	NO

"

- (2) The following Annex IV is added:

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

INTRODUCTION

This form specifies the information and documents to be submitted by the undertakings concerned simultaneously when offering commitments pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004. The information requested is necessary to allow the Commission to examine whether the commitments are capable of rendering the concentration compatible with the common market in that they will prevent a significant impediment to effective competition. The Commission may dispense with the obligation to provide any particular information in respect of the commitments offered, including documents, or with any other requirement laid down in this form where it considers that compliance with those obligations or requirements is not necessary for the examination of the commitments offered. If you consider that any particular information requested by this Form may not be necessary for the Commission's assessment, you may approach the Commission asking to dispense with certain requirements, giving adequate reasons why that information is not relevant.

SECTION 1

Description of the commitment

- 1.1 Provide detailed information on
 - (i) the object of the commitments offered, and
 - (ii) the conditions for their implementation.
- 1.2 In case the commitments offered consist in the divestiture of a business, Section 5 provides for the specific information required.

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.

SECTION 3

Deviation from Model Texts

3. Identify any deviations of the commitments offered from the pertinent Model Commitments texts published by the Commission's services, as revised from time-to-time, and explain the reasons for the deviations.

SECTION 4

Summary of the commitments

4. Provide a non-confidential summary of the nature and scope of the commitments offered and why, in your view, they are suitable to remove any significant impediment to effective competition. The Commission may use this summary for the market test of the commitments offered with third parties.

SECTION 5

Information on a business to be divested

5. In case 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 as to the current operation of the business to be divested and changes already planned for the future:

- 5.1 Describe the business to be divested generally, including the entities belonging to it, their seat and place of management, other locations for production or provisions of services, the general organisational structure, etc.
- 5.2 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.
- 5.3 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 these products or services, and any innovations or new products or services planned.
- 5.4 Describe the level on which the essential functions of the business to be divested are operated if they are not operated on the level of the business to be divested itself, including such functions as R&D, production, marketing & sales, logistics, relations with customers, relations with suppliers, IT systems, etc. The description should contain the role performed by those other levels, the relations with the business to be divested and the resources (personnel, assets, financial resources, etc.) involved in the function.
- 5.5 Describe in detail the links between the business to be divested and other undertakings controlled by the notifying parties (irrespective of the direction of the link), such as
 - Supply, production, distribution, service or other contracts;
 - Shared tangible or intangible assets;
 - Shared or seconded personnel;
 - Shared IT systems or other systems; and
 - Shared customers.
- 5.6 Describe in general terms all relevant tangible and intangible assets used and/or owned by the business to be divested, including, in any case, IP rights and brands.
- 5.7 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.
- 5.8 Describe the customers of the business to be divested, including a list of customers, a description of the corresponding records available, and a quantification of the importance of each of the customers.
- 5.9 Provide financial data for the business to be divested, including the turnover and the EBITDA achieved in the last two years, and the forecast for the next two years.

- 5.10 Identify and describe any changes, having 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 notifying parties.
- 5.11 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 notifying parties.

General information on the business to be divested as described in the commitments

- 5.12 Describe any areas where the business to be divested as set out in the commitments offered differs from the nature and scope of the business as currently operated.

Acquisition by a suitable purchaser

- 5.13 Explain the reasons why, in your view, the business will be acquired by a suitable purchaser in the time-frame proposed in the commitments offered. "