COMMISSION NOTICE

on a simplified procedure for treatment of certain concentrations
under Council Regulation (EEC) No 4064/89

(Text with EEA relevance)

1. This Notice sets out a simplified procedure under which the Commission intends to treat certain concentrations that do not raise competition concerns. The Notice is based on experience gained by the Commission in applying Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings¹, as amended by Regulation (EC) No 1310/97² (the ‘Merger Regulation’) to date, which has shown that certain categories of notified concentrations are normally cleared without having raised any substantive doubts, provided that there were no special circumstances.

2. By following the procedure outlined in the following sections, the Commission aims to make Community merger control more focused and effective.

I. OVERVIEW OF THE SIMPLIFIED PROCEDURE

3. This Notice sets out the conditions under which the simplified procedure will be applied, together with the procedure itself. Pre-notification contact between the notifying parties and the Commission in such cases is encouraged. When all necessary conditions are met, and provided there are no special circumstances, the Commission will adopt a short-form clearance decision within one month from the date of notification, pursuant to Article 6(1)(b) of the Merger Regulation. Where it considers it appropriate in any particular case, the Commission may, naturally, launch an investigation and/or adopt a full decision within the time-limits laid down in Article 10(1) of the Merger Regulation.

II. CATEGORIES OF CONCENTRATIONS SUITABLE FOR TREATMENT UNDER THE SIMPLIFIED PROCEDURE

Eligible concentrations

4. The simplified procedure will apply to the following categories of concentrations:

(a) two or more undertakings acquire joint control of a joint venture, provided that the joint venture has no, or negligible, actual or foreseen activities within the territory of the European Economic Area (EEA). Such cases occur where:

(i) the turnover\(^3\) of the joint venture and/or the turnover of the contributed activities\(^4\) is less than EUR 100 million in the EEA territory; and

(ii) the total value of assets\(^5\) transferred to the joint venture is less than EUR 100 million in the EEA territory\(^6\);

(b) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, provided that none of the parties to the concentration are engaged in business activities in the same product and geographical market, or in a product market which is upstream or downstream of a product market in which any other party to the concentration is engaged\(^7\);

(c) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking:

(i) and two or more of the parties to the concentration are engaged in business activities in the same product and geographical market (horizontal relationships); or

(ii) one or more of the parties to the concentration are engaged in business activities in a product market which is upstream or downstream of a product market in which any other party to the concentration is engaged (vertical relationships)\(^8\),

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\(^3\) The turnover of the joint venture should be determined according to the most recent audited accounts of the parent companies, or the joint venture itself, depending upon the availability of separate accounts for the resources combined in the joint venture.

\(^4\) The expression “and/or” refers to the variety of situations covered; for example:
  - in the case of a joint acquisition of a target company, the turnover to be taken into account is the turnover of this target (the joint venture),
  - in the case of the creation of a joint venture to which the parent companies contribute their activities, the turnover to be taken into account is that of the contributed activities,
  - in the case of entry of a new controlling party into an existing joint venture, the turnover of the joint venture and the turnover of the activities contributed by the new parent company (if any) must be taken into account.

\(^5\) The total value of assets of the joint venture should be determined according to the last regularly prepared and approved balance sheet of each parent company. The term “assets” includes: (1) all tangible and intangible assets that will be transferred to the joint venture (examples of tangible assets include production plants, wholesale or retail outlets, and inventory of goods; examples of intangible assets include intellectual property, goodwill, etc.), and (2) any amount of credit or any obligations of the joint venture which any parent company of the joint venture has agreed to extend or guarantee.

\(^6\) Where the assets transferred generate turnover, then neither the value of the assets nor that of the turnover may exceed EUR 100 million.


\(^8\) See footnote 7.
provided that their combined market share is not 15% or more for horizontal and 25% or more for vertical relationships.

5. The Commission’s experience in applying the Merger Regulation to date has shown that, except in exceptional circumstances, concentrations falling into the above categories do not combine market positions in a way that would give rise to competition concerns.

Safeguards and exclusions

6. In assessing whether a concentration falls into one of the above categories, the Commission will ensure that all relevant circumstances are established with sufficient clarity. Given that market definitions may be a key element in this assessment, the parties are invited to provide information on possible alternative market definitions during the pre-notification phase (see point 10). Notifying parties are responsible for describing all alternative relevant product and geographic markets on which the notified concentration could have an impact and for providing data and information relating to the definition of such markets. The Commission retains the discretion to take the ultimate decision on market definition, basing its decision on an analysis of the facts of the case. Where it is difficult to define the relevant markets or to determine the parties’ market shares, the Commission will not apply the simplified procedure.

7. While it can normally be assumed that concentrations falling into the above categories will not raise serious doubts as to their compatibility with the common market, there may nonetheless be certain situations, which exceptionally require a closer investigation and/or a full decision. In such cases, the Commission may refrain from applying the simplified procedure.

8. The following are indicative examples of types of cases which may be excluded from the simplified procedure. Certain types of concentrations may increase the parties’ market power, for instance by combining technological, financial or other resources, even if the parties to the concentration do not operate in the same market. Concentrations involving conglomerate aspects may also be unsuitable for the simplified procedure, in particular, where one or more of the parties to the concentration holds individually a market share of 25% or more in any product market in which there is no horizontal or vertical relationship between the parties. In other cases, it may not be possible to determine the parties’ precise market shares. This is often the case when the parties operate in new or little developed markets. Concentrations in markets with high entry barriers, with a high degree of concentration or other known competition problems may also be unsuitable. Finally,

9 This means that only concentrations, which do not lead to affected markets, as defined in Section 6 III of Form CO, fall into this category. The thresholds for horizontal and vertical relationships apply to market shares both at national and at EEA levels and to any alternative product market definition that may have to be considered in a given case. It is important that the underlying market definitions set out in the notification are precise enough to justify the assessment that these thresholds are not met, and that all possible alternative market definitions are mentioned (including geographic markets narrower than national).

10 As with all other notifications, the Commission may revoke the short-form decision if it is based on incorrect information for which one of the undertakings concerned is responsible (Article 6, paragraph 3(a), of the Merger Regulation).
the Commission may not apply the simplified procedure where an issue of coordination as referred to in Article 2(4) of the Merger Regulation arises.

9. If a Member State expresses substantiated concerns about the notified concentration within three weeks of receipt of the copy of the notification, or if a third party expresses substantiated concerns within the time-limit laid down for such comments, the Commission will adopt a full decision. The time-limits set out in Article 10(1) of the Merger Regulation apply. The simplified procedure will not be applied if a Member State requests the referral of a notified concentration pursuant to Article 9 of the Merger Regulation.

III. PROCEDURAL PROVISIONS

Pre-notification contacts

10. Experience has shown that the business community has found pre-notification contacts between notifying parties and the Commission beneficial\textsuperscript{11}. In particular, such contacts allow the Commission and the notifying parties to determine the precise amount of information to be provided in a notification. Notifying parties are therefore advised to engage in pre-notification contacts, particularly where they request the Commission to waive full-form notification in accordance with Article 3(2) of Commission Regulation (EC) No 447/98\textsuperscript{12} on the grounds that the operation to be notified will not raise competition concerns.

Publication of the fact of notification

11. The information to be published in the \textit{Official Journal of the European Communities} upon receipt of a notification\textsuperscript{13} will include: the names of the parties to the concentration, the nature of the concentration and the economic sectors involved, as well as an indication that, on the basis of the information provided by the notifying party, the concentration may qualify for a simplified procedure. Interested parties will then have the opportunity to submit observations, in particular on circumstances which might require an investigation.

Short-form decision

12. If the Commission is satisfied that the concentration qualifies for the simplified procedure, it will normally issue a short-form decision. The concentration will thus be declared compatible with the common market, within one month from the date of notification, pursuant to Article 10(1) and (6) of the Merger Regulation. However, in the period leading up to the one-month deadline, the option of reverting to a normal first phase merger procedure and thus launching investigations and/or adopting a full decision remains open to the Commission, should it judge such action appropriate in the case in question.

\textsuperscript{11} See the ECLF Committee’s best practice guidelines, reproduced on the Commission’s website at: http://europa.eu.int/comm/competition/mergers/\textit{others/best\_practice\_gl.html}


\textsuperscript{13} Article 4, paragraph 3, of the Merger Regulation.
Publication of the short-form decision

13. The Commission will publish a notice of the fact of the decision in the Official Journal of the European Communities as it does for full clearance decisions. The public version of the decision will be made available on the Internet for a limited period. The short-form decision will contain the information about the notified concentration published in the Official Journal at the time of notification (names of the parties, nature of the concentration and economic sectors concerned) and a statement in the decision that the concentration is declared compatible with the common market because it falls within one or more of the categories described in the Notice on simplified procedure, with the applicable category(ies) being explicitly identified.

IV. RESTRICTIONS DIRECTLY RELATED TO AND NECESSARY FOR THE IMPLEMENTATION OF THE CONCENTRATION

14. Unless otherwise decided by the Commission, the simplified procedure for the approval of concentrations will also apply to restrictions directly related and necessary to the implementation of the concentration. The approval of a concentration by a short-form decision will cover, pursuant to Article 6(1)(b), second subparagraph, of the Merger Regulation, restrictions which are specified by the notifying parties and which are directly related and necessary to the implementation of the concentration. It should be noted in this regard that the criteria of direct relation and necessity are objective in nature⁴; restrictions are not ancillary simply because the parties regard them as such.

⁴ See Commission Notice on restrictions directly related and necessary to concentrations, OJ C 203, 14.8.1990, p. 5. This Notice sets out those categories of restrictions that, on the basis of the Commission’s experience of applying the Merger Regulation to date, can be considered directly related and necessary to the implementation of a concentration.