

KINGDOM OF BELGIUM

Federal Public Service Economy, SMEs, Self-Employed and Energy

Royal decree (31/10/2006) on the notification of concentrations of undertakings referred to in article 9 of the act on the protection of economic competition, consolidated on 15th September 2006 (1).

ALBERT II, KING OF THE BELGIANS,

To all present and future subjects, Greetings.

Given the act on the protection of economic competition, consolidated on 15th September, 2006, in particular article 9, § 3;

Given the royal decree of 23rd March 23, 1993 concerning the notification of concentrations of undertakings referred to in article 12 of the act on the protection of economic competition, amended by the royal decrees of 22 January 1998, 11 March 1999 and 18 July 1999;

Given the urgency owing to the fact that the act of 10th June 2006 on the protection of economic competition enters into force on 1st October, 2006 and repeals on the same date the act on the protection of economic competition, consolidated on 1st July 1999 and the act of 10th June 2006 creating a Competition Council also enters into force on the same date. Accordingly, in order to ensure that the provisions of the said new laws are fully implemented, it is necessary

¹ **This is an unofficial translation in English of the official Dutch and French version of the royal decree. This translation is merely for your information. Only the texts published in the Belgian Official Gazette are authentic.**

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for the implementing decrees to enter into force on the same date at the latest and to be published beforehand. Otherwise it would be impossible to apply the new legislation, which would result in a legal vacuum which would seriously impede the economic activities of undertakings, deprived of legal certainty, which would undermine the Belgian Competition Authority's credibility. The State could be held liable for this situation and make itself liable to judicial proceedings and a formal warning from the Commission of the EC for non-compliance.

Given the opinion 41.369/1 of the Council of State, given on 28th September 2006 pursuant to article 84, § 1, clause 1^o, 2^o, of the consolidated acts on the Council of State;

On a proposal of our Minister for Economy,

Be it therefore enacted:

Article 1. For the purposes of this decree, the following definitions shall apply:

1^o the law: the act on the protection of economic competition, consolidated on 15th September 2006;

2^o the competition prosecutor: the member of the College of Competition Prosecutors referred to in Chapter III, Section 1, Subsection 4, of the act;

3^o the Council: the Competition Council referred to in Chapter III, Section 1, Subsection 1 to Subsection 3, of the act;

4^o the registry: the registry referred to in Chapter III, Section 1, Subsection 6, of the act.

Art. 2. § 1. The natural or legal persons referred to in article 9, § 2 of the act are required to notify a concentration, pursuant to article 9, § 1, of the act.

§ 2. When the notification is signed by representatives of natural or legal persons, the said representatives must present a written power of attorney confirming their power of representation.

§ 3. In the event of a joint notification, such notification must be given by a joint representative, with powers to transmit and receive documents on behalf of all the notifying parties.

§ 4. The notifying parties, or their representatives, shall give a single address in Belgium, to which all correspondence shall be sent to them.

Art. 3. § 1. Notifications shall be presented in the manner stipulated in the form CONC C/C, in accordance with the specimen annexed to this decree. In the event of a joint notification, only one form should be used.

§ 2. Notifications as well as their annexes should be submitted in eight copies, for the attention of the College of Competition Prosecutors at the address of the registry shown on the Council's web site.

Notifications shall be submitted by registered letter or delivered by messenger, against acknowledgement of receipt, during the registry's business hours. An electronic copy of the notification shall be sent simultaneously for the attention of the College of Competition Prosecutors at the e-mail address of the registry shown on the Council's web site.

§ 3. The documents attached to the notification shall be originals or copies of the original documents. In the case of copies, the notifying parties shall certify that they are true to the original.

§ 4. If the natural or legal person notifying the concentration is not domiciled or does not have an establishment in Belgium, the notification shall be drawn up in accordance with article 93 of the act.

The documents attached to the notification shall be filed in their original language. If that language is not one of the national languages or English, a translation into the notification language shall be added.

If the competition prosecutor or the Council considers it necessary, the notifying parties may be required to provide a translation of all or part of the documents submitted in English.

Art. 4. § 1. Notifications shall include the information required by the form CONC C/C. This information shall be exact and complete.

§ 2. Any essential modifications to the elements indicated in the notification, of which the notifying parties become aware or should have been aware, shall be communicated to the competition prosecutor voluntarily and without delay.

§ 3. Inaccurate or misrepresented information shall be considered as incomplete information.

Art. 5. § 1. Without prejudice to § 2, notifications shall become effective on the date they are received by the registry.

§ 2. If the competition prosecutor notes that the information given in the notification is incomplete, the competition prosecutor shall inform the notifying parties or the joint representative accordingly, without delay and in writing, fixing a suitable time limit for the information to be completed, without prejudice to § 4. In such a case, the notification shall become effective from the date of receipt by the registry of the

complete information.

§ 3. The provisions of §§ 2 to 4 of article 3 shall apply to all replies to a letter sent out by the competition prosecutor pursuant to § 2.

§ 4. The competition prosecutor may waive the obligation to provide any specific information required by the form CONC C/C if, in his or her view, such information does not appear to be necessary for the examination of the file. The request of the notifying parties and the competition prosecutor's reply shall be in writing.

This specific information may nevertheless be requested at a later date by the competition prosecutor or the Council, but its non-inclusion in the notification shall not make the latter incomplete within the meaning of § 2.

§ 5. The registry shall issue an acknowledgement of receipt to the notifying parties or the joint representative. This acknowledgement of receipt, which must be sent without delay by registered letter, shall indicate the registration number.

§ 6. The competition prosecutor shall send without delay to the notifying parties or the joint representative, by registered letter, fax or electronic mail, an acknowledgement of receipt of any reply to a letter sent to him or her pursuant to § 2.

Art. 6. The royal decree of 23rd March 1993 concerning the notification of concentrations of undertakings referred to in article 12 of the act on the protection of economic competition, amended by the royal decrees of 22 January 1998, 11 March 1999 and 18 June 1999, is rescinded.

Art. 7. This decree shall enter into force on 1st October 2006.

Art. 8. Our Minister for Economy is charged with the implementation of this decree.

Done at Châteauneuf-de Grasse, 31-10-2006.

By the King:

The Minister for Economy,

M. VERWILGHEN