

KINGDOM OF BELGIUM

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

Royal decree of 31/10/2006 on procedures with regard to the protection of economic competition (1).

ALBERT II, KING OF THE BELGIANS,

To all present and future subjects, Greetings.

Given article 108 of the Constitution;

Given the act on the protection of economic competition, consolidated on 15th September 2006 in particular articles 46, 48, § 8 and 57, § 5;

Given the royal decree of 15th March 1993 on procedures with regard to the protection of economic competition, amended by the royal decrees of 22 January 1998, 11 March 1999 and 28 December 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 law 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 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.

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.**

Ceci est une traduction officielle en anglais de la version officielle en néerlandais et français. Cette traduction est uniquement à titre d'information. Seule fait loi la législation belge publiée au « Moniteur belge ».

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Given the opinion 41.370/1 of the Council of State given on 28th September 2006 pursuant to article 84, § 1°, clause 1°, 2°, of the consolidated acts on the Council of State;

On a proposal of our Minister for Economic Affairs,

Be it therefore enacted:

CHAPTER I. – Definitions.

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

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

2° the Service: the Competition Service referred to in Chapter III, Section 2, of the act;

3° the College of Competition Prosecutors: the College of Prosecution Prosecutors referred to in Chapter III, Section 1, Subsection 4, of the act;

4° the competition prosecutor: the member of the College of Competition Prosecutors referred to in article 29 of the act;

5° the Council: the Competition Council referred to in Chapter III, Section 1, Subsection 1, of the act;

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

CHAPTER II. - Procedure for the Service and the College of Competition Prosecutors

Art.2. The competition prosecutor or the Service may on a date to be determined by them , for the needs of their investigation, summon the natural or legal persons concerned.

Art. 3. The natural or legal persons summoned may appear either themselves or in the person of their legal or statutory representatives or a representative specifically mandated for that purpose. They may be assisted by a legal adviser.

Art. 4. These persons shall be heard separately or in the presence of other natural or legal persons. In the latter case, the legitimate interest of the interested parties in ensuring that their business secrets are not disclosed shall be taken into consideration.

Art. 5. A report stating the name and capacity of the persons present shall be drawn up at the end of the hearing.

The written observations, if any, of the persons summoned shall be annexed to the report.

The non-appearance of natural or legal persons summoned shall be mentioned in the report.

The validity of the procedure shall not be affected by the non-appearance of any of the parties.

CHAPTER III. – Special procedure for the College of Competition Prosecutors concerning concentrations

Art. 6. § 1. The information transmitted by the competition prosecutor pursuant to article 56 of the act shall mention the competition problems which, in his or her opinion, might impede significantly effective competition on the Belgian market or on a substantial part of it.

§ 2. The commitments referred to in articles 56, clause 2, and 59 of the act, as well as their annexes shall be transmitted in three copies for the attention of the competition prosecutor to the address of the registry shown on the Council's website.

This transmission shall be sent by registered letter or by messenger against a receipt during the registry's business hours. An electronic copy of the commitments shall be sent simultaneously to the competition prosecutor's e-mail address.

§ 3. An acknowledgement of receipt of the commitments transmitted shall be issued without delay to the notifying parties or to the joint representative, by registered letter, fax or e-mail.

§ 4. For the commitments referred to in article 59, § 1, clause 2, of the act, the date on which the commitments are submitted is included in the period used by the notifying parties to present commitments.

Art.7. The competition prosecutor shall summon, on a date determined by him or her, the interested natural or legal persons in order to allow them to present their commitments, in accordance with article 56, clause 3, of the act.

CHAPTER IV. – Special procedure for the
College of Competition Prosecutors concerning
complaints and requests.

Art. 8. When the College of Competition Prosecutors is considering declaring a complaint or request inadmissible or ungrounded pursuant to article 45, § 2, of the act, it shall summon, if it considers it necessary, the complainant or the person submitting the request to a hearing.

The complainant or person submitting the request shall appear in accordance with the procedure set out in article 3.

Art. 9. A copy of the decisions of the College of Competition Prosecutors and of the competition prosecutor referred to respectively in articles 45, § 2 and 62, § 3 of the act shall also be sent to the undertakings investigated as well as to the Council.

These decisions shall be published in the Belgian Official Gazette and on the Competition Council's website on the initiative of the registry.

Ensuring that their business secrets and other confidential information are not disclosed shall be taken into consideration when publishing or notifying decisions which is the legitimate interest of the natural or legal persons concerned.

CHAPTER V. – Procedure for the Council.

Art. 10. § 1. Natural or legal persons concerned may present, in their observations, all means and facts useful to their defence and add all documents that may be useful for the purpose of establishing the facts invoked. They may also propose that the Council should hear any person capable of confirming the facts invoked.

§ 2. When natural or legal persons invoke, in their observations, business secrets or other confidential elements, they shall also provide a non-confidential version.

Art. 11. To be heard pursuant to article 48, § 5, of the act, the complainant and the natural or legal persons who consider that they have a sufficiently valid interest, the minister or public body with responsibility for supervising an economic sector, shall submit their requests to the registry of the Council, indicating their name, capacity and, if applicable, the justification of their interest.

This shall also apply to natural or legal persons that request a hearing pursuant to article 57, § 2, clauses 2 to 4 of the act.

Art. 12. The chamber of the Council hearing the case or the councillor that it authorises for that purpose, shall rule on the admissibility of request for a hearing from natural or legal persons who consider they have a sufficiently valid interest.

Art. 13. § 1. The Council sets the date on which the persons to be heard shall be summoned.

§ 2. The persons to be heard shall appear in accordance with the provisions of article 3.

Art. 14. The report of the minister, or of the public bodies with responsibility for supervising an economic sector or the written observations of the natural or legal persons concerned or of those whose request for a hearing was ruled admissible, shall be sent to the registry of the Council in eight copies.

In the event of the application of article 57, § 3, of the act, when the documents transmitted contain confidential information, a non-confidential version should be added.

If necessary, the interested parties shall be requested to provide additional copies.

Art. 15. The hearing is not public. The natural or legal persons shall be heard separately or in the presence of other persons summoned. In the latter case, the legitimate interest of the interested parties in ensuring that their business secrets are not disclosed shall be taken into consideration.

CHAPTER VI. - Procedures for the president of the Council.

Art. 16. A reasoned request for interim measures in accordance with article 62, § 1, of the act, may be submitted any time after the complaint in questions has been filed.

Art. 17. The hearing shall be held in accordance with the provisions of article 18.

The parties shall appear in accordance with the provisions of article 3.

Art. 18. § 1. In the event of the application of article 44, § 2, clause 3, of the act, combined with article 66 of the said act, the president of the Council shall fix the date on which the natural or legal persons may be heard.

If they want to be heard, the natural or legal persons in question must confirm by return mail that they will be attending the hearing.

§ 2. Natural and legal persons shall appear in accordance with the provisions of article 3.

CHAPTER VII. – Provisions concerning the
time limits applying with regard to
concentrations.

Art. 19. In addition to the non-business days set by the minister with responsibility for public administration or by the minister with responsibility for the Federal Public Service Economy, the following days shall not be considered as working days:

- 1st January;
- the first working day of the year;
- Easter Monday;
- 1st May;
- Ascension;
- Whit Monday;
- 21 July;
- 15 August;
- 1 November;
- 2 November;
- 11 November;
- 15 November;
- from 25 December up to 31st December inclusive.

Art. 20. § 1. Without prejudice to article 44, § 2, clause 4, of the act, the time limits referred to in article 58, § 2, and article 59, § 6, of the act, shall also be suspended when the designated competition prosecutor or the Council considers that it is necessary to have the file translated.

§ 2. The suspension of the time limit shall start on the day following the day when the event giving rise to the suspension occurred. The suspension shall stop at the end of the day when the cause of the suspension ceases to apply, subject to article 44, § 2, clause 4, of the act.

CHAPTER VIII. – Miscellaneous provisions.

Art. 21. § 1. Unless agreed otherwise, documents and summonses to appear before the Service, the College of Competition Prosecutors, the Council, the president of the Council, the appointed councillor or the registry, shall be sent by one of the following means:

a) by messenger in exchange for a receipt;

b) by recorded delivery with proof of delivery;

c) by fax, with a request for an acknowledgement of receipt;

d) by electronic mail with a request for an acknowledgement of receipt.

§ 2. § 1 also applies to documents transmitted to the Service, the College of Competition Prosecutors, the Council, the president of the Council, the appointed councillor or the secretariat.

§ 3. Documents sent by fax or electronic mail shall be presumed to have been received by the addressee on the date they are sent.

Art. 22. The royal decree of 15th March 1993 on procedures with regard to the protection of economic competition, amended by the royal decrees of 22 January 1998, 11 March 1999 and 28 December 1999, is rescinded.

Art. 23. This decree shall enter into force on 1st October 2006.

Art. 24. Our Minister for Economy is charged with the implementation of this decree.

Done at Chateauneuf-de-Grace, 31/10/2006

By the King:
Albert II

The Minister for Economy,

M. VERWILGHEN