

# COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended Proposal for a  
Council Regulation (EEC)  
on the control of concentrations between undertakings

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(presented by the Commission pursuant to Article 149(3)  
of the EEC Treaty)

## Summary

The annexed text contains an updated version of a proposal for a Regulation which was first made to the Council in 1973 and which has since been amended three times, pursuant to Article 109 of the EEC Treaty.

A further amendment of the initial proposal has been necessary in order to take into account the actual state of discussions in the Council. These have led to the emergence of a basically positive attitude on the following four principles of the future Regulation:

- merger control should apply to large-scale mergers of Community-wide importance;
- mandatory prior notification of planned mergers;
- prohibition of anti-competitive mergers and authorization of mergers on the basis of principles analogous to those contained in Article 85 (3);
- close and constant cooperation between the Commission and the Member States so as to ensure that procedures are handled rapidly.

Accordingly, the provisions concerning the field of application of the proposed Regulation (Article 1) and the criteria for the appraisal of concentrations (Article 2) as well as the procedural rules (Articles 4 to 9, 18, 19) have been adapted.

Explanatory Memorandum

I. Need for merger control at Community level

The introduction of merger control at Community level is more than ever necessary:

1. The creation of a single internal market by 1992 requires a strong and effective competition policy. However, the existing competition rules need to be supplemented by a set of instruments enabling the Commission to control mergers that may restrict competition. The dismantling of internal frontiers can be expected to result in major corporate reorganisations within the Community; indeed, such structural changes are already under way in many significant Community markets. This development must in principle be welcomed. It reflects the pressure on industry to adjust to changes in market conditions and is thus in line with the requirements of dynamic competition. It can increase the competitiveness of European industry and thus help to improve the conditions for growth and the standard of living in the Community.
2. However, it is also necessary to ensure that certain mergers do not entail lasting damage to competition. The danger of this happening is particularly present in those sectors in which a small number of firms would dominate the market. As analyses of the development of concentration show, it can also threaten other sectors particularly if oligopolies with

few competitors of relatively equal size become a prominent feature of markets within the European Community. A further stage, marked by the tightening of existing oligopolies and the development of individual dominant positions, could then become discernible. In most instances of such cases the reduced intensity (or even absence) of competition within the Community would undermine the efforts of Community industry to remain globally competitive.

3. The effects of such structural changes can be assessed effectively only at Community level. Existing national provisions on merger control are tailored to mergers with predominantly local features within a single Member State. Such mergers are mainly appraised on the basis of national interests alone. The effects of cross-frontier mergers lie largely outside the control of individual national authorities, which take into account only the domestic implications of a merger. Where a number of Member States would seek to apply their rules to one and the same merger, this could give rise to mutually contradictory results with unacceptable consequences for business activity and economic integration and with great legal uncertainty for firms. However, as progress is made towards achieving the unified single market, national instruments would not only prove to be increasingly ineffective; there would also be a damaging risk to the internal market if they were used to favour

"national champions" rather than the interests of the Community as a whole.

4. Although it is possible to envisage an approach whereby the Community's existing competition rules might be applied systematically to certain mergers that significantly affect competitive structures within the common market, it is preferable to have a specific merger control instrument specially adopted to deal with Community-scale mergers. A further constraint in applying Articles 85 and 86 to mergers is that the procedural rules laid down in Regulation No. 17 of 1962 are not well suited to mergers.

A regulation is therefore the best means of treating the various forms of concentration in a non-discriminatory manner. Such a regulation could enable the Commission to focus upon the most important mergers from the Community point of view and to leave it to the Member States to deal with those cases of concentrations that are exclusively national in character.

## II. Background

1. The Commission made a proposal to the Council for a Regulation on the control of concentrations between undertakings as long ago as 1973(1). The proposal, based on

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1. OJ No C 92, 31.10.1973. p. 1.

Articles 87 and 235 of the EEC Treaty, despite having been amended three times was not unfortunately acted upon by the Council(2). In its resolution on the Fifteenth Competition Policy Report, the European Parliament stated "that the Commission should end the 13 year-old deadlock in the Council ... by withdrawing [its proposals] forthwith, in order that a fresh start can be made on filling this important gap in the Community's competition policy"(1). In this context, the possibility of applying the existing competition rules systematically to mergers is relevant particularly in the light of the case law of the Court of Justice (Continental Can - Philip Morris).

2. Following intensive bilateral discussions with all the Member States, the Commission once again raised the political aspects of European merger control in the Council on 5 October 1987 and 30 November 1987. The discussions in the Council led to the emergence of a basically positive attitude on a draft Regulation based on the following principles:

- merger control should apply to large-scale mergers of Community-wide importance;
- mandatory prior notification of planned mergers;

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2. OJ No C 36, 12.2.1982, p. 3; OJ No C 51, 23.2.1984, p. 2; and OJ No C 324, 17.12.1986, p. 5.

1. Annex to the Sixteenth Competition Report, p. 245, point 29.

- prohibition of anti-competitive mergers and authorisation of mergers on the basis of principles analagous to those contained in Article 85(3);
- close and constant cooperation between the Commission and the Member States so as to ensure that procedures are handled rapidly.

### III. The amended proposal for a Regulation

The Commission has therefore decided, under Article 149(3), to amend its previous proposal for a Council Regulation on the control of concentrations between undertakings.

The main amendments may be summarized as follows:

#### 1. Scope of application

The Regulation applies only to mergers "having a Community dimension" (Article 1(1)). This concept is defined by reference to two criteria, one involving the "geographical field of activity" of the companies involved and the other related to their turnover (Articles 1 paragraphs 2 and 3).

For reasons of practicability and legal security, the amended proposal provides for the same overall turnover criterion both for the scope of application (Article 1) and the prior notification requirement (Article 4).

2. Appraisal criteria

All mergers within the scope of the Regulation are subject to prior control (Article 2(1)). Mergers which give rise to or strengthen a dominant position in the common market or in a substantial part of it are not compatible with the common market (Article 2(2)). Where the combined market share of the firms concerned does not exceed 20%, it is presumed that a dominant position does not exist (Article 2(3)).

The Regulation provides for the possibility of authorizing mergers as being compatible with the common market. The authorization criteria have been modelled on the principles laid down in Article 85(3); this allows account to be taken of international competition (Article 2(4)).

3. Procedural rules

The periods for proceedings have been substantially shortened; they amount to two months for the preliminary appraisal before the commencement of proceedings (Article 6(3)) and to four months for the further examination leading to a final decision (Article 19(1)).

In order to ensure close and permanent cooperation between the Commission and the national authorities, it is now provided that the Member States directly concerned must be consulted before the commencement of proceedings (Article



18(2).

The role of the Advisory Committee during the last stage of the decision-making process has been formulated in accordance with the Council Decision of 13 July 1987 laying down detailed rules for the exercise of the executive powers vested in the Commission (Article 18(4) to (8)).

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The Council presidency has put the work on establishing Community-level merger control high on its list of priorities with a view to adoption of a merger control regulation during 1988. It intends to report to the Council on 22 June 1988 of the results of the discussions to be held in its relevant working party on the attached amended proposal for a Regulation

Amended Proposal for a  
COUNCIL REGULATION (EEC)  
on the control of concentrations between undertakings

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 87 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

- (1) Whereas, for the achievement of the aims of the Treaty establishing the European Economic Community, Article 3 (f) requires the Community to institute "a system ensuring that competition in the common market is not distorted";
- (2) Whereas this system is essential for the achievement of the internal market by 1992;
- (3) Whereas the dismantling of internal frontiers can be expected to result in major corporate reorganisations in the Community, particularly in the form of concentrations;
- (4) Whereas such a development must be welcomed as being in line with the requirements of dynamic competition and liable to strengthen the competitiveness of European industry, to improve the conditions of growth and to raise the standard of living in the Community;
- (5) Whereas it must be ensured that the process of reorganisation does not give rise to lasting damage to competition; the system of undistorted competition must therefore include provisions governing those concentrations which may hinder effective competition in the common market;

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- (6) Whereas pursuant to Articles 85 and 86, anticompetitive agreements, decisions and practices, which may affect trade between Member States, are prohibited as incompatible with the common market, provided that their impact on competition and trade is appreciable;
- (7) Whereas the principles laid down in Articles 85 and 86 apply also to arrangements which alter the competitive structure of the market, and provisions for the implementation of these principles must take due account of the specific context of market structure;
- (8) Whereas these provisions should apply to structural alterations, the effects of which are substantial and go beyond national borders of one Member State;
- (9) Whereas the scope of application of this Regulation should therefore be defined according to the territory of operations of the undertakings concerned and be limited by quantitative thresholds in order to include only those operations of concentration which have a Community dimension;
- (10) Whereas this is the case where the aggregate turnover of all the undertakings concerned exceeds a given level and where each of the undertakings effecting the concentration has its sole or principal field of activities in a different Member State or where, although the undertakings in question act mainly in one and the same Member State, at least one of them has substantial operations in other Member States through subsidiaries or direct sales;
- (11) Whereas the existing competition rules and in particular Article 87 provide a legal basis for the control of certain forms and types of concentration;
- (12) Whereas it is necessary, however, to create a legal framework which makes it possible to treat in a comprehensive way all concentrations having the same impact on the competitive structure of the common market;
- (13) Whereas under Article 235 of the Treaty the Community may, by way of Regulation, give itself the additional powers of action necessary for the attainment of this objective, with regard to concentrations on the markets for products listed in Annex II to the Treaty;
- (14) Whereas such Regulation should establish the principle that concentrations which create or enhance a dominant position are not compatible with the common market;

- (15) Whereas concentrations which, by reason of the limited market share of the undertakings concerned, are not likely to impede the preservation of effective competition may be presumed to be compatible with the common market;
- (16) Whereas concentrations which, although they give rise to a substantial alteration of the competitive structure within the Community, contribute to the attainment of the basic objectives of the Treaty in such a way that on balance their economic benefits prevail over the risks for competition, should be subject to possible authorization as a positive measure of Community policy;
- (17) Whereas the Regulation should provide that authorizations may also be granted under conditions and obligations to be determined case by case in order to prevent in particular a substantial deterioration in the competitive structure of the Community national market concerned;
- (18) Whereas the Commission should be entitled to take decisions in respect of concentrations which are incompatible with the common market and decisions designed to re-establish conditions of effective competition;
- (19) Whereas, to ensure effective supervision, prior notification and the suspension of concentrations pending a Commission decision should be made obligatory;
- (20) Whereas a time limit within which the Commission must commence proceedings in respect of a concentration notified to it and a time-limit within which it must give a final decision on the incompatibility of a concentration with the common market should be laid down;
- (21) Whereas, before opening proceedings, the Commission should consult the Member States directly concerned by the concentration;
- (22) Whereas undertakings concerned must be accorded the right to be heard by the Commission as soon as proceedings have commenced, and third parties showing a sufficient interest must be given the opportunity to submit their comments;

- (23) Whereas the Commission should act in close and constant liaison with the competent authorities of the Member States in order to avoid concurrent proceedings;
- (24) Whereas the Commission must be afforded the assistance of the Member States and must also be empowered to require information to be given and to carry out the necessary investigations in order to examine concentrations in the light of the provisions of this Regulation;
- (25) Whereas compliance with this Regulation must be enforceable by means of fines and periodic penalty payments; whereas it is desirable to confer upon the Court of Justice, pursuant to Article 172, unlimited jurisdiction to that end;
- (26) Whereas it is appropriate to define the concept of concentration in such a manner as to cover operations bringing about a substantial change in the competitive structure of a market and to exclude from the scope of application of this Regulation those operations which have as their principal object or effect the coordination of conduct of independent undertakings, the latter operations having to be examined under the provisions of other Regulations implementing Articles 85 and 86;
- (27) Whereas the Commission should be given exclusive competence to apply this Regulation, subject to review by the Court of Justice; whereas it should also be stipulated that the provisions of this Regulation alone apply to concentrations of Community dimension,

HAS ADOPTED THIS REGULATION:

## Article 1

### Scope of application

- (1) This Regulation shall apply to all concentrations having a Community dimension including those falling within the scope of Articles 85(1) or 86 of the Treaty.
- (2) A concentration has a Community dimension
  - a) where at least two of the undertakings effecting the concentration have their principal field of Community activities in a different Member State or
  - b) where the undertakings effecting the concentration have their principal field of Community activities in one and the same Member State, but where at least one of them has substantial operations in other Member States in particular through subsidiaries or direct sales.
- (3) A concentration does not have a Community dimension
  - a) where the aggregate worldwide turnover of all the undertakings concerned is less than one thousand million ECU or
  - b) where the aggregate worldwide turnover of all the undertakings concerned exceeds one thousand million ECU, but where the aggregate worldwide turnover of the undertaking to be acquired is less than fifty million ECU or
  - c) where all the undertakings effecting the concentration achieve more than three quarters of their aggregate Community-wide turnover within one and the same Member State.

Article 2

Appraisal of concentrations

- (1) Concentrations within the scope of this Regulation shall be subject to prior control in order to determine whether they are compatible with the common market.
- (2) Concentrations shall not be compatible with the common market where they give rise to or strengthen a dominant position in the common market or in a substantial part thereof. This shall be appraised by reference in particular to the possibilities of choice of suppliers and consumers, to the market position and the economic and financial power of the undertakings concerned, to their access to supplies or markets, to the structure of the markets affected, to international competition, to legal and factual barriers to entry, and to supply and demand trends for the relevant goods or services.
- (3) Concentrations shall be presumed to be compatible with the common market where the market share of the undertakings concerned in the common market or in a substantial part thereof is less than 20 %. This presumption can be rebutted if it is established that the concentration nevertheless fulfils the conditions of paragraph 2.
- (4) The Commission shall authorize concentrations as compatible with the common market where they contribute to the attainment of the basic objectives of the Treaty, in particular to improving production and distribution, to promoting technical or economic progress or to improving the competitive structure within the common market, taking due account of the competitiveness of the undertakings concerned with regard to international competition and of the interests of consumers, provided that they do not
  - (a) impose on the undertakings concerned restrictions which are not indispensable to the achievement of the concentration,
  - (b) do not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

Article 3

Definition of concentration

- (1) A concentration shall be deemed to take place
- a) where two or more undertakings merge
  - b) or where
    - one or several persons already controlling at least one undertaking or
    - one or several undertakingsacquire, whether by purchase of shares or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more undertakings.
- (2) Operations which have as their principal object or effect the coordination of conduct of independent undertakings shall be deemed not to give rise to a concentration within the meaning of paragraph 1 (b).
- (3) Control is constituted by rights or contracts which, either separately or jointly, and having regard to the considerations of fact or law involved, make it possible to determine how an undertaking shall operate, and particularly by:
- 1) Ownership or the right to use all or part of the assets of an undertaking;
  - 2) Rights or contracts which confer power to influence the composition, voting or decisions of the organs of an undertaking;



- 3) Rights or contracts which make it possible to manage the business of an undertaking;
  - 4) Contracts made with an undertaking concerning the computation or appropriation of its profits;
  - 5) Contracts made with an undertaking concerning the whole or a substantial part of supplies or outlets, where the duration of these contracts or the quantities to which they relate exceed what is usual in commercial contracts dealing with those matters.
- (4) Control is acquired by persons, undertakings or groups of persons or undertakings which:
- 1) are holders of the rights or entitled to rights under the contracts concerned ;
  - 2) while not being holders of such rights or entitled to rights under such contracts, have power to exercise the rights deriving therefrom ;
  - 3) in a fiduciary capacity own assets of an undertaking or shares in an undertaking, and have power to exercise the rights attaching thereto.
- (5) Control of an undertaking is not constituted where, upon formation of an undertaking or increase of its capital, banks or financial institutions acquire shares in that undertaking with a view to selling them on the market, provided that they do not exercise voting rights in respect of those shares.

Article 4

Prior notification of concentrations

Concentrations within the scope of this Regulation, whether agreed or not, shall be notified to the Commission before they are put into effect.

Article 5

Calculation of turnover and market shares

- (1) Aggregate turnover within the meaning of Article 1 shall be calculated by adding together the pre-tax turnover of the undertakings concerned for all goods and services in the last financial year. Turnover deriving from internal operations within a group shall not be included in this calculation.
- (2) The market share within the meaning of Article 2 (3) shall be calculated by adding together the market shares held by the undertakings concerned in the area of the common market affected by the concentration. Market share shall be defined as the percentage share which the goods or services supplied by an undertaking concerned represent in the total supplies made in identical goods or services and those which, by reason of their characteristics, their price and their use are regarded as equivalent by the consumer.
- (3) Where the concentration consists in the acquisition of a part of the assets of an undertaking only the turnover relating to that part shall be taken into account on behalf of the seller.
- (4) In place of turnover the following shall be used :
  - (a) for banking and financial institutions : within the meaning of Article 1 paragraph 3 (a) and (b), one tenth of their assets; within the meaning of Article 1 paragraph 3 (c), the operations with national and foreign clients;
  - (b) for insurance companies : the value of the premiums received by them.
- (5) For the purposes of this Regulation, the undertakings concerned are:
  - (a) those which take part directly in the concentration;
  - (b) those in which a party to the concentration, directly or indirectly,
    - owns more than half the capital or business assets or
    - has the power to exercise more than half the voting rights, or

- has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertakings, or
  - has the right to manage the undertaking's affairs;
- (c) those which directly or indirectly have in or over a party to the concentration the rights or powers listed in (b);
- (d) those in or over which an undertaking referred to in (c) directly or indirectly has the rights or powers listed in (b).

Undertakings in which several undertakings as referred to in (a) to (d) jointly have, directly or indirectly, the rights or powers set out in (b) shall also be considered to be undertakings concerned.

Article 6

Proceedings

- (1) Where the Commission considers that a concentration does not give rise to a substantial change of the competitive structure within the Community, it shall immediately inform the undertakings concerned and the competent authorities of the Member States that there are no grounds for action on its part under this Regulation.
- (2) Where the Commission considers that a concentration gives rise to a substantial change of the competitive structure within the Community, it shall immediately commence proceedings with a view to establishing whether or not that concentration may be authorized and so inform the undertakings concerned and the competent authorities of the Member State.
- (3) As regards concentrations notified to it, the Commission shall commence proceedings within a period not exceeding two months unless the undertakings concerned agree to extend that period. The period of two months shall commence on the day following receipt of the notification, or if the information to be supplied with the notification is incomplete, on the day following the receipt of the complete information.
- (4) The Commission may commence proceedings after the expiry of the two months period where the information supplied by the undertakings in the notification is false or misleading.
- (5) Without prejudice to paragraph 4 a concentration notified to the Commission shall be considered not to have given grounds for action if the Commission has not commenced proceedings within the period specified in paragraph 3.

Article 7

Suspension of the concentration

- (1) Undertakings shall not put into effect a concentration notified to the Commission before the end of the time limit provided for in Article 6 (3) unless the Commission informs them pursuant to Article 6 (1) that there are grounds for action on its part under this Regulation.
- (2) Paragraph 1 shall not prevent or impede the implementation of a public takeover bid which has been notified to the Commission at the date of its inscription, provided that the acquirer does not exercise the voting rights attached to the shares in question.
- (3) Where the Commission commences proceedings the undertakings concerned shall not put into effect the concentration until the Commission has authorized it as compatible with the common market or has closed the proceedings.
- (4) The Commission may at any time waive paragraphs 1 and 3 in order to prevent serious and irreparable damage to one or more undertakings concerned by the concentration.

Article 8

Powers of decision of the Commission

- (1) The Commission may by decision state whether a concentration is or is not compatible with the Common Market.
- (2) Where the Commission finds that a concentration is caught by Article 2 (2) and that the conditions laid down in Article 2 (4) are not satisfied, it shall issue a decision refusing the authorization and declaring the concentration to be incompatible with the common market.
- (3) Where a concentration has already been put into effect, the Commission may require, by decision taken under paragraph 1 or by a separate decision, the undertakings or assets acquired or concentrated to be separated or the cessation of common control or any other action that may be appropriate in order to restore conditions of effective competition.
- (4) Where the Commission finds that a concentration satisfies the conditions laid down in Article 2 (4), it shall issue a decision authorizing the concentration as compatible with the common market; conditions and obligations may be attached thereto.

Article 9

Closure of proceedings

If, after having commenced proceedings in respect of a concentration, the Commission finds that there are no grounds for action on its part under this Regulation, it shall close the proceedings and so immediately inform the undertakings concerned and the competent authorities of the Member State.



## Article 10

### Requests for Information

1. In carrying out the duties assigned to it by this Regulation, the Commission may obtain all necessary information from the governments and competent authorities of the Member States and from undertakings and associations of undertakings.
2. When sending a request for information to an undertaking or association of undertakings, the Commission shall at the same time forward a copy of the request to the competent authority of the Member State in whose territory the seat of the undertaking or association of undertakings is situated.
3. In its request the Commission shall state the legal basis and the purpose of the request and also the penalties provided for in Article 13(1)(b) for supplying incorrect information.
4. The owners of the undertakings or their representatives and, in the case of legal persons, companies or firms, or of associations having no legal personality, the persons authorized to represent them by law or by their memorandum, shall supply the information requested.
5. Where an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the Commission, or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and mention the penalties provided for in Article 13(1) (b) and Article 14(1) (a) and the right to have the decision reviewed by the Court of Justice.
6. The Commission shall at the same time forward a copy of its decision to the competent authority of the Member State in whose territory the seat of the undertaking or association of undertakings is situated.

Article 11

Investigations by the Authorities of the Member States

1. At the request of the Commission, the competent authorities of the Member States shall undertake the investigations which the Commission considers to be necessary under Article 12(1), or which it has ordered by decision pursuant to Article 12(3). The officials of the competent authorities of the Member States responsible for conducting these investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the Member State in whose territory the investigation is to be made. Such authorization shall specify the subject matter and purpose of the investigation.
2. If so requested by the Commission or by the competent authority of the Member State in whose territory the investigation is to be made, officials of the Commission may assist the officials of such authority in carrying out their duties.

Article 12

Investigating Powers of the Commission

1. In carrying out the duties assigned to it by this Regulation, the Commission may undertake all necessary investigations into undertakings and associations of undertakings.

To this end the officials authorized by the Commission are empowered:

- (a) to examine the books and other business records;
- (b) to take or demand copies of or extracts from the books and business records;
- (c) to ask for oral explanations on the spot;
- (d) to enter any premises, land and means of transport of undertakings.

2. The officials of the Commission authorized to carry out these investigations shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 13(1) (c) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the Commission shall inform the competent authority of the Member State in whose territory the investigation is to be made of the investigation and of the identity of the authorized officials.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 13(1) (c) and Article 14(1) (b) and the right to have the decision reviewed by the Court of Justice.

4. The Commission shall take decisions referred to in paragraph 3 after consultation with the competent authority of the Member State in whose territory the investigation is to be made.

5. Officials of the competent authority of the Member State in whose territory the investigation is to be made may, at the request of such authority or of the Commission, assist the officials of the Commission in carrying out their duties.
  
6. Where an undertaking opposes an investigation ordered pursuant to this Article, the Member State concerned shall afford the necessary assistance to the officials authorized by the Commission to enable them to make their investigation. Member States shall, after consultation with the Commission, take the necessary measures to this end before .....

Article 13

Fines

1. The Commission may by decision impose on undertakings and associations of undertakings fines of from 1000 to 100.000 ECU where intentionally or negligently:
  - (a) they supply incorrect or misleading information in a notification pursuant to Article 4;
  - (b) they supply incorrect information in response to a request made pursuant to Article 10 or fail to supply information within the time-limit fixed by a decision taken pursuant to Article 10,
  - (c) they produce the required books or other business records in incomplete form during investigations under Article 11 or 12, or refuse to submit to an investigation ordered by decision taken pursuant to Article 12.
2. The Commission may by decision impose on natural or legal persons fines of from 1000 to 2.000.000 ECU where, either intentionally or negligently, they commit a breach of the obligation to notify under Article 4.
3. The Commission may by decision impose fines not exceeding 10 % of the value of the reorganized assets where the undertakings concerned either intentionally or negligently put into effect a concentration in breach of their obligations under Article 7 or in spite of a decision under Article 8 (2).

## Article 14

### Periodic Penalty Payments

1. The Commission may by decision impose on undertakings or associations of undertakings periodic penalty payments up to 50.000 ECU for each day of the delay calculated from the date appointed by the decision, in order to compel them:
  - (a) to supply complete and correct information which it has requested by decision taken pursuant to Article 10;
  - (b) to submit to an investigation which it has ordered by decision taken pursuant to Article 12.
  
2. The Commission may by decision impose on such undertakings periodic penalty payments up to 100.000 ECU for each day of the delay, calculated from the day appointed by the decision, in order to compel them to apply the measures resulting from a decision taken pursuant to Article 8 (2).

Article 15

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has fixed a fine or periodic penalty payment; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 16

Professional secrecy

1. Information acquired as a result of the application of Articles 10, 11 and 12 shall be used only for the purpose of the relevant request or investigation.
2. Without prejudice to the provisions of Article 20, the Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information acquired by them as a result of the application of this Regulation and of the kind covered by the obligation of professional secrecy.
3. The provisions of paragraphs 1 and 2 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.



Article 17

Hearing of the parties and third parties

- (1) Before taking decisions provided for in Articles 8, 13 and 14, the Commission shall give the parties the opportunity of being heard on the matters to which the Commission has taken objection.
- (2) If the Commission or the competent authorities of the Member States consider it necessary, the Commission may also hear other natural or legal persons. Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted.

Article 18

Liaison with the authorities of the Member States

- (1) The Commission shall forthwith transmit to the competent authorities of Member States a copy of the notifications together with the most important documents lodged with or issued by the Commission pursuant to this Regulation.
- (2) Before commencing proceedings pursuant to Article 6, the Commission shall seek the views of the competent authorities of the Member States directly concerned by the concentration.
- (3) The Commission shall carry out the procedure set out in this Regulation in close and constant cooperation with the competent authorities of the Member States; such authorities shall have the right to express their views upon that procedure, and in particular to request the Commission to commence proceedings under Article 6.
- (4) The Advisory Committee on Restrictive Practices and Dominant Positions shall be consulted prior to the taking of any decision pursuant to Articles 8, 13 and 14.
- (5) The Advisory Committee shall consist of officials having responsibility for restrictive practices and dominant positions. Each Member State shall appoint an official to represent it; he may be replaced by another official where he is unable to act.
- (6) Consultation shall take place at a meeting convened at the invitation of the Commission. A summary of the facts, together with the most important documents and a preliminary draft of the decision to be taken, shall be sent with the invitation. The Committee shall deliver its opinion on the draft, within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

- (7) The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.
- (8) The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 19

Time Limits for decision

- (1) Decisions under Article 8 (2) or (4) shall be taken within four months following the date of commencement of proceedings, save where there is agreement with the undertakings concerned to extend that period.
- (2) The period of four months shall be suspended where the Commission, owing to circumstances for which one of the undertakings concerned by the concentration is responsible, has to request information by decision taken pursuant to Article 10 or to order an investigation by decision taken pursuant to Article 12.
- (3) Without prejudice to paragraph 2 a concentration shall be considered to have been authorized as compatible with the common market if the Commission has not taken a decision under Article 8 (2) or (4) before expiry of the period specified in paragraph(1)

Article 20

Publication of decisions

- (1) The Commission shall publish in the Official Journal of the European Communities the decisions which it takes pursuant to Article 8.
- (2) The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 21  
Jurisdiction

Subject to review by the Court of Justice, the Commission shall have sole competence to take the decisions provided for in this Regulation.

Article 22

**Exclusive application of this Regulation**

Regulations (EEC) No 17, No 1017/68, No 4056/86 and No 3975/87 shall not apply to concentrations falling within the scope of this Regulation.

Article 23

Implementing provisions

The Commission shall have power to adopt implementing provisions concerning the form, content and other details of notifications pursuant to Article 4 and hearings pursuant to Article 17.



Article 24

Entry into force

This Regulation shall enter into force ....

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

Done at

For the Council



Impact of small and medium-sized undertakings

The proposed Regulation establishes a control of large-scale mergers having a Community dimension. It therefore applies only to large undertakings which are obliged to notify planned mergers to the Commission. Small and medium-sized undertakings are not directly concerned. Indirectly, however, the Regulation favours them by placing no legal obligations or impediments in the way of mergers between them, thus enabling them to grow and to improve their competitiveness.