

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(88) 734 final - REVISED VERSION

Brussels, 19 December 1988

Amended proposal for a
COUNCIL REGULATION (EEC)

on the control of concentrations between undertakings

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

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

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 reorganizations 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, however, it must be ensured that the process of reorganization does not give rise to lasting damage to competition; whereas the system of undistorted competition must therefore include provisions governing those concentrations which may impede effective competition in the common market;
- (6) Whereas, pursuant to Articles 85 and 86, anticompetitive agreements, decisions and practices, which may affect trade between Member States, are prohibited, 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 whereas provisions for the implementation of those principles must take due account of the specific context of market structure;
- (8) Whereas those provisions should apply to significant structural changes, whose impact on the market goes beyond the 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 at least two of the undertakings concerned have their 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 at least one other Member State through subsidiaries or direct sales; whereas this is also the case where the concentrations effected by undertakings which do not have their principal field of activities in the Community are such as to have an effect within the common market;

- (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 or a substantial part thereof;
- (13) Whereas, pursuant to Article 235 the Community may, by way of Regulation, give itself the additional powers of action necessary for the attainment of this objective, and in particular with regard to concentrations on the markets for products listed in Annex II to the Treaty ;
- (14) Whereas the Regulation should establish the principle that concentrations which create or strengthen a position as a result of which the maintenance or development of effective competition is impeded in the common market or in a substantial part thereof are to be declared incompatible with the common market ;
- (15) Whereas concentrations which, by reason of the limited market share of the undertakings concerned, are not liable to impede effective competition may be presumed to be compatible with the common market; whereas, in particular, this may be presumed where the market share of the undertakings concerned does not exceed 25% either in the common market or in a substantial part thereof;
- (16) Whereas authorization should be available in respect of concentrations which, although they impede effective competition, contribute to the attainment of the basic objectives of the Treaty in such a way that, on balance, their economic benefits prevail over the damage they cause to competition;

- (17) Whereas the Regulation should also provide that decisions of compatibility and authorizations may be made subject to conditions and obligations to be determined case by case in order to ensure that conditions of effective competition are maintained;
- (18) Whereas the Commission should have the task of taking all the decisions necessary to establish whether or not concentrations which fall within the scope of application of the Regulation are compatible with the common market, as well as decisions designed to restore and maintain conditions of effective competition :
- (19) Whereas, to ensure effective supervision, prior notification and the suspension of concentrations should be made obligatory ;
- (20) Whereas a period within which the Commission must initiate a proceeding in respect of a concentration notified to it and a period within which it must give a final decision on the compatibility or incompatibility with the common market of a notified concentration should be laid down ;
- (21) Whereas undertakings concerned must be accorded the right to be heard by the Commission as soon as a proceeding has been initiated, and third parties showing a legitimate interest must be given the opportunity to submit their comments ;
- (22) Whereas the Commission should act in close and constant liaison with the competent authorities of the Member States and should obtain the views of those most directly concerned by a concentration ;
- (23) Whereas, for the purposes of this Regulation, 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 appraise concentrations ;

- (24) Whereas compliance with this Regulation must be enforceable by means of fines and periodic penalty payments; whereas the Court of Justice should be given unlimited jurisdiction in that regard pursuant to Article 172;
- (25) Whereas it is appropriate to define the concept of concentration in such a manner as to cover operations bringing about a change in the structure of the undertakings concerned; whereas it is therefore necessary to exclude from the scope of application of this Regulation those operations which have as their object or effect the coordination of the competitive behaviour of independent undertakings, since such operations fall to be examined under the provisions of other regulations implementing Article 85 or Article 86;
- (26) 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 apply to all concentrations with a Community dimension, whether or not they fall within the scope of Article 85 or Article 86;
- (27) Whereas the Member States may not apply their national legislation on competition to concentrations having a Community dimension, unless expressly empowered to do so by the Commission;
- (28) Whereas, however, this principle does not prevent Member States from taking appropriate measures in so far as is necessary to protect legitimate interests other than those pursued by this Regulation, provided that such interests are sufficiently defined and protected by domestic law and that such measures are compatible with the other provisions of Community law,

HAS ADOPTED THIS REGULATION :

Article 1

Scope of application

1. This Regulation shall apply to all concentrations having a Community dimension as defined in paragraph 2, whether or not they fall within the scope of Article 85 or Article 86.
2. For the purposes of this Regulation, a concentration has a Community dimension where:
 - (a) the aggregate worldwide turnover of all the undertakings concerned is more than one thousand million ECU, and
 - (b) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than one hundred million ECU,

unless each of the undertakings concerned achieves more than three quarters of its aggregate Community-wide turnover within one and the same Member State.

Article 2

Appraisal of concentrations

1. Concentrations falling within the scope of this Regulation shall be appraised with a view to establishing whether or not they are compatible with the common market, by reference in particular to the market position of the undertakings concerned and to their economic and financial power, to opportunities of choice available to suppliers and users, to their access to supplies or markets, to the structure of the markets affected taking account of international competition, to legal and factual barriers to entry, and to supply and demand trends for the relevant goods or services.
2. Concentrations which do not create or strengthen a position as a result of which the maintenance or development of effective competition would be impeded in the common market or in a substantial part thereof shall be declared compatible with the common market.
3. Concentrations which create or strengthen a position as a result of which the maintenance or development of effective competition is impeded in the common market or in a substantial part thereof shall be declared incompatible with the common market unless authorized on the ground that their contribution to improving production and distribution, to promoting technical or economic progress or to improving the competitive structure within the common market outweighs the damage to competition. In this respect, the competitiveness of the sectors concerned with regard to international competition and the interests of consumers shall be taken into account.

Concentrations shall be authorized on account of their compatibility with the common market only insofar as they do not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the implementation of the concentration, and
- (b) 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 occur where:

(a) two or more undertakings merge; or

(b) - one or more persons already controlling at least
one undertaking, or

- one or more undertakings

acquire, 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 object or effect the coordination of the
competitive behaviour of independent undertakings shall be deemed not to
give rise to a concentration within the meaning of paragraph (1) (b).

The creation of a joint venture performing on a lasting basis all the
functions of an autonomous economic entity, which does not have as its
object or effect the coordination of the competitive behaviour of the
undertakings concerned, shall be deemed to be 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 in particular by:

- (a) ownership or the right to use all or part of the assets of an undertaking ;
 - (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking ;
 - (c) rights or contract which make it possible to manage the business of an undertaking ;
 - (d) contracts made with an undertaking concerning the computation or appropriation of its profits ;
 - (e) any other means conferring decisive influence on the activity of an undertaking.
4. Control is acquired by persons, undertakings or groups of persons or undertakings which :
- (a) are holders of the rights or entitled to rights under the contracts concerned ;
 - (b) while not being holders of such rights or entitled to rights under such contracts, have power to exercise the rights deriving therefrom ;
 - (c) in a fiduciary capacity derived from a private law contract, hold assets of an undertaking or shares in an undertaking, and have power to exercise the rights attaching thereto, unless that power may be revoked at any time or unless they are bound by special instructions from their principals.
5. Control of an undertaking is not constituted where banks or financial institutions acquire shares in an undertaking with a view to selling them, provided that they do not exercise voting rights in respect of these shares with a view to determining the competitive behaviour of that undertaking.

Article 4

Prior notification of concentrations

1. Concentrations as referred to by this Regulation, whether or not they form the subject-matter of an agreement, shall be notified to the Commission before they are put into effect.
2. Concentrations within the meaning of Article 3(1)(a) shall be notified jointly by the parties concerned. In the cases referred to in Article 3 (1)(b), the notification shall be made by the party or parties seeking to acquire control of the whole or parts of one or more undertakings.
3. Where the Commission finds that a concentration falls within the scope of application of this Regulation, it shall immediately publish the main contents of the notification. The publication shall contain the names of the parties, the nature of the concentration and the economic sectors involved. It shall take account of the legitimate interest of undertakings in the protection of their business secrets.

Article 5

Calculation of turnover

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. By way of derogation from paragraph 1, where the concentration consists in the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings or of a group of undertakings, only the turnover relating to the parts which are the subject of the operation shall be taken into account with regard to the seller or sellers.
3. In place of turnover the following shall be used :
 - (a) for banking and financial institutions : as regards Article 1 (2)(a) and (b), one tenth of their assets ; as regards the final part of Article 1(2), operations with clients from their own and from other Member States ;
 - (b) for insurance companies : the value of premiums received.
4. Without prejudice to the provisions of paragraph 2, the relevant turnover for each of the undertakings concerned shall be calculated by adding together the respective turnovers of all undertakings belonging to the same group.

In this respect the following undertakings shall be taken into account :

- (a) those which take part directly in the concentration ;
- (b) those in which a party to the concentration, directly or indirectly,
 - owns at least half the capital or business assets, or
 - has the power to exercise at least half the voting rights, or
 - has the power to appoint at least 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 rights or powers as listed in (b) ;
- (d) those in or over which an undertaking as referred to in (c) directly or indirectly has rights or powers as listed in (b).

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

Article 6

Initiation of proceedings

1. Where the Commission finds that a concentration falls within the scope of application of this Regulation, it shall immediately initiate a proceeding with a view to establishing whether or not that concentration is compatible with the common market. It shall so inform the undertakings concerned and the competent authorities of the Member States without delay.
2. Where the Commission finds that a notified concentration does not fall within the scope of application of this Regulation, it shall immediately so inform the undertakings concerned and the competent authorities of the Member States.
3. As regards notified concentrations, decisions pursuant to paragraphs 1 and 2 shall be taken within a period not exceeding one month, unless the undertakings concerned agree to extend that period. The period of one month shall commence on the day following the date of receipt of the notification, or if the information to be supplied with the notification is incomplete, on the day following the date of receipt of the complete information.
4. The Commission may initiate a proceeding after the expiry of the period provided for in paragraph 3 where the information supplied by the undertakings in the notification or thereafter is false or misleading.

Article 7

Suspension of the concentration

1. Undertakings shall suspend the implementation of a concentration which falls within the scope of application of this Regulation until the Commission has decided on initiation of a proceeding pursuant to Article 6.
2. In order to ensure conditions of effective competition, the Commission may decide, when it initiates a proceeding pursuant to Article 6 (1), that the suspension of the implementation of a concentration should be extended until it takes a final decision pursuant to Article 8.
3. The provisions of paragraphs 1 and 2 shall not impede the implementation of a public takeover or exchange bid which has been notified to the Commission by the date of its announcement, provided that the acquirer does not exercise the voting rights attached to the shares in question.
4. The Commission may, on request, waive the provisions of paragraphs 1 and 2 or the proviso contained in paragraph 3 in order to prevent serious damage to one or more undertakings concerned by a concentration; the waiver may be made subject to conditions and obligations in order to ensure conditions of effective competition.

Article 8

Powers of decision of the Commission

1. For each proceeding initiated pursuant to Article 6 and concerning a notified concentration, the Commission shall establish by decision whether or not that concentration is compatible with the common market.
2. Where the Commission finds that a notified concentration fulfils the conditions of compatibility laid down in Article 2 (2), it shall issue a decision declaring the concentration compatible with the common market; conditions and obligations may be attached thereto in order to ensure conditions of effective competition. In such a case, the Commission may also empower Member States which are directly concerned by the concentration to apply their national legislation on competition in order to ensure conditions of effective competition in local markets within their respective territories.
3. Where the Commission finds that a notified concentration fulfils all the conditions laid down in Article 2 (3), it shall issue a decision authorizing the concentration as being compatible with the common market; conditions and obligations may be attached thereto in order to ensure conditions of effective competition. The decision granting the authorization shall also cover additional restrictions reasonably ancillary to the implementation of the concentration.
4. Where the Commission finds that a concentration fulfils the conditions of incompatibility laid down in Article 2 (3) but does not fulfil the conditions for an authorization laid down therein, it shall issue a decision refusing the authorization and declaring the concentration incompatible with the common market.

5. Where a concentration has already been implemented, the Commission may require in a decision pursuant to paragraph 1 or by separate decision, the undertakings or assets grouped together 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.

6. The Commission may revoke its decision pursuant to paragraph 2 or paragraph 3 where the decision is based on incorrect information for which one of the undertakings involved in the concentration is responsible or where the decision has been obtained by deceit.

It may also revoke its decision pursuant to paragraph 2 or paragraph 3 where the undertakings concerned commit a breach of an obligation attached to the decision.

7. Authorizations of concentrations by the Commission shall in no way alter collective workers' rights in force in the undertakings concerned.

Article 9

Time limits for decisions

1. Decisions pursuant to Article 8 (2) concerning notified concentrations shall be taken within one month following the date of initiation of the proceeding, unless the undertakings concerned agree to an extension of that period.
2. Decisions pursuant to Article 8 (3) and (4) concerning notified concentrations shall be taken within four months following the date of initiation of the proceeding, unless the undertakings concerned agree to an extension of that period.
3. By way of exception, the periods of one and four months set respectively by paragraphs 1 and 2 shall be suspended where the Commission, owing to circumstances for which one of the undertakings involved in the concentration is responsible, has had to request information by decision pursuant to Article 10 or to order an investigation by decision pursuant to Article 12.

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 persons, undertakings and associations of undertakings.
2. When sending a request for information to a person, an undertaking or an 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 residence of the person or 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 information requested shall be supplied, in the case of undertakings, by their owners or their representatives and, in the case of legal persons, companies or firms, or of associations having no legal personality, by the persons authorized to represent them by law or by their statutes.

5. Where a person, an undertaking or an association of undertakings does not supply the information requested within the period 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 period 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 residence of the person or 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 the 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 14(1)(b) and the right to have the decision reviewed by the Court of Justice.

4. The Commission shall inform the competent authority of the Member State in whose territory the investigation is to be made in good time of its intention to take a decision pursuant to paragraph 3. It shall hear the competent authority before taking its decision.
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 persons, undertakings or associations of undertakings fines of from 1,000 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 period 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 Article 12, or refuse to submit to an investigation ordered by decision taken pursuant to Article 12.

2. The Commission may by decision impose fines not exceeding 10% of the aggregate turnover of the undertakings concerned within the meaning of Article 5 where the persons or undertakings concerned, either intentionally or negligently:
 - (a) breach an obligation imposed pursuant to Article 7 or Article 8,
or
 - (b) implement a concentration in breach of the provisions of this Regulation.

3. In setting the amount of the fine, regard shall be had to the gravity of the infringement.

4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a criminal law nature.

Article 14

Periodic Penalty Payments

1. The Commission may by decision impose on persons, undertakings or associations of undertakings periodic penalty payments of 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 persons or undertakings periodic penalty payments of 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 (5).
3. Where persons, undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the Commission may set the total amount of the periodic penalty payment at a lower figure than that which would arise under the original decision.

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 purposes of the relevant request or investigation.
- (2) Without prejudice to the provisions of Article 19, 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 Article 8, paragraph 2, where conditions and obligations are attached thereto, and in Article 8, paragraphs 3 to 6, as well as in Articles 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. The Commission may also, on application or on its own initiative, hear other natural or legal persons and associations.
3. Natural or legal persons or associations showing a legitimate interest shall be entitled to make such applications.
4. Applications to be heard on the part of members of the administrative or management organs and the acknowledged employees' representatives from the undertakings concerned, shall in all cases be granted.

Article 18

Liaison with the authorities of the Member States

1. The Commission shall transmit forthwith to the competent authorities of the Member States copies of notifications and of the most important documents lodged with or issued by the Commission pursuant to this Regulation.
2. The Commission shall carry out the procedures set out in this Regulation in close and constant liaison with the competent authorities of the Member States, which may express their views upon those procedures. It shall obtain the views of the competent authorities of the Member States which show that they are directly concerned by the concentration, in particular with a view to the application of Article 8(2).
3. An advisory Committee on concentrations shall be consulted prior to the taking of any decision pursuant to Article 8, paragraphs 3 to 6, as well as Articles 13 and 14, or of implementing provisions pursuant to Article 22.
4. The Advisory Committee shall consist of officials of the Member States. Each Member State shall appoint two officials to represent it; if prevented from attending, they may be replaced by other officials. At least one of the representatives of a Member State shall be competent in the matter of restrictive practices and dominant positions.

5. Consultation shall take place at a joint meeting convened at the invitation of and chaired by 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 meeting shall place no earlier than fourteen days after the invitation has been sent. The Commission may, however, shorten this period in order to avoid serious harm to one or more of the undertakings concerned by a concentration.
6. The Advisory Committee shall deliver an opinion on the Commission's draft decision, if necessary by taking a vote. The Advisory Committee may deliver an opinion even if some members are absent and unrepresented. The opinion shall be delivered in writing and appended to the draft decision. It shall not be made public.
7. 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

Publication of decisions

1. The Commission shall publish the decisions which it takes pursuant to Article 8 (2), where conditions and obligations are attached thereto, and to Article 8 (3) to (6) in the Official Journal of the European Communities.
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 20

Jurisdiction

1. Subject to review by the Court of Justice, the Commission shall have sole competence to take the decisions provided for in this Regulation.
2. Member States shall not apply their national legislation on competition to concentrations having a Community dimension, unless expressly empowered to do so by the Commission in accordance with the provisions of the last sentence of Article 8 (2).
3. Notwithstanding the provisions of paragraphs (1) and (2), Member States may take appropriate measures where necessary to protect legitimate interests other than those pursued by this Regulation, provided that such interests are sufficiently defined and protected in domestic law and that such measures are compatible with other provisions of Community Law.

Article 21

Exclusive application of this Regulation

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

Article 22

Implementing provisions

The Commission shall have power to adopt implementing provisions concerning the form, content and other details of notifications pursuant to Article 4, time limits pursuant to Articles 6 and 9, as well as hearings pursuant to Article 17.

Article 23

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