Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 1269/2013

of 5 December 2013

amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)[(1)], and in particular Article 23(1) thereof,

After consulting the Advisory Committee on concentrations,

Whereas:

(1) Commission Regulation (EC) No 802/2004[(2)] requires the use of standard forms for the notification of concentrations pursuant to Article 4(1) of Regulation (EC) No 139/2004 and reasoned submissions for the referral of concentrations to the Commission or to a Member State pursuant to Article 4(4) or (5) of Regulation (EC) No 139/2004. Those forms are set out in the Annexes to Regulation (EC) No 802/2004.

(2) In order to simplify and expedite the examination of notifications and reasoned submissions, and in view of the experience gained with the standard forms for notifying concentrations and making reasoned submissions, the information requirements laid down in those forms should be updated, streamlined and reduced. At the same time, the forms should ensure that sufficient information is provided regarding the structure of the concentration and that the most important internal documents prepared by the undertakings concerned discussing the concentration are submitted.

(3) In order to simplify and expedite the examination of concentrations that are unlikely to raise competition concerns, it is furthermore desirable to provide that a larger number of concentrations may be notified using the short form prescribed in Annex II to Regulation (EC) No 802/2004.

(4) The Commission should be able to specify and modify, from time to time, the format and the number of copies requested of submissions by notifying parties, other involved parties and third parties, taking into account developments in information

Changes to legislation: There are outstanding changes not yet made to Commission Implementing Regulation (EU) No 1269/2013. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

and communication technology and the need to provide copies of certain documents to Member States. This applies in particular to notifications, reasoned submissions, comments in response to objections addressed by the Commission to notifying parties as well as to commitments offered by the undertakings concerned pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004. Details of the number of copies and the format of information and documents to be provided should be published in the *Official Journal of the European Union.*

(5) In order to enable the Commission to exchange views with competition authorities outside the European Economic Area regarding the examination of notified concentrations freely and in confidence, the right of access to the Commission's file should not extend to correspondence between the Commission and those competition authorities.

(6) It should be clarified that written proof of representatives' authority to act is required where notifications are signed by authorised external representatives of persons or of undertakings. It should also be clarified that notifications must contain the information requested in the applicable forms set out in Annex I and II to Regulation (EC) No 802/2004. Article 12 of Regulation (EC) No 802/2004 should be amended in order to refer to a repeal of the provisional decision rather than to an annulment. It should finally be clarified that the extension of the time limit for adoption of a decision pursuant to Article 8(1), (2) and (3) of Regulation (EC) No 139/2004 provided for by the second sentence of Article 10(3) of that Regulation also applies where the undertakings concerned offer commitments pursuant to the second subparagraph of Article 8(2) of that Regulation less than 55 working days after the initiation of proceedings but submit a modified version of the commitments 55 or more working days after the initiation of proceedings.

(7) Regulation (EC) No 802/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 802/2004 is amended as follows:

(1) in Article 2, paragraph 2 is replaced by the following:

2. Where notifications are signed by authorised external representatives of persons or of undertakings, such representatives shall produce written proof that they are authorised to act.;

(2) in Article 3, paragraph 2 is replaced by the following:

2. The Form CO and the supporting documents shall be submitted to the Commission in the format and with the number of copies specified by the Commission from time to time in the *Official Journal of the European Union*. The notification shall be delivered to the address referred to in Article 23(1).;

(3) in Article 4, paragraph 1 is replaced by the following:

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1. Notifications shall contain the information, including documents, requested in the applicable forms set out in Annexes I and II. The information shall be correct and complete.;

(4) in Article 6(2), the first subparagraph is replaced by the following:

2. Article 2, Article 3(1), third sentence, Article 3(2) to (5), Article 4, Article 5(1) to (4), Article 21 and Article 23 of this Regulation shall apply *mutatis mutandis* to reasoned submissions within the meaning of Article 4(4) 4(5) of Regulation (EC) No 139/2004.;

(5) in Article 12(2), the first sentence of the second subparagraph is replaced by the following:

'Once the notifying parties and other involved parties have made known their views, the Commission shall take a final decision repealing, amending or confirming the provisional decision.';

(6) in Article 13, paragraph 3 is replaced by the following:

3. The parties to whom the Commission's objections have been addressed or who have been informed of those objections may submit their comments on the objections. Any comments shall be submitted in writing within the time limit set. In their written comments, they may set out all facts and matters known to them which are relevant to their defence, and shall attach any relevant documents as proof of the facts set out. They may also propose that the Commission hear persons who may corroborate those facts. They shall submit their comments to the Commission at the address referred to in Article 23(1). The format in which the comments are to be submitted and the number of copies required shall be specified by the Commission from time to time in the *Official Journal of the European Union*. The Commission shall forward copies of such written comments without delay to the competent authorities of the Member States.;

(7) in Article 17, paragraph 3 is replaced by the following:

3. The right of access to the file shall not extend to confidential information, or to internal documents of the Commission or of the competent authorities of the Member States. The right of access to the file shall equally not extend to correspondence between the Commission and the competent authorities of the Member States, between the competent authorities of the Member States and between the Commission and other competition authorities.;

(8) in Article 19(2), the first subparagraph is replaced by the following:

2. Commitments offered by the undertakings concerned pursuant to Article 8(2) of Regulation (EC) No 139/2004 shall be submitted to the Commission within not more than 65 working days from the date on which proceedings were initiated.

Where the undertakings concerned first offer commitments within less than 55 working days from the date on which proceedings were initiated but submit a modified version of the commitments 55 or more working days from that date, the modified commitments shall be deemed to be new commitments for the purpose of applying the second sentence of Article 10(3) of Regulation (EC) No 139/2004.;

(9) in Article 20, paragraphs 1 and 1a are replaced by the following:

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1. The commitments offered by the undertakings concerned pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004 shall be submitted to the Commission at the address referred to in Article 23(1) in the format and with the number of copies specified by the Commission from time to time in the *Official Journal of the European Union*. The Commission shall forward copies of such commitments without delay to the competent authorities of the Member States.

1a In addition to the requirements set out in paragraph 1, the undertakings concerned shall, at the same time as offering commitments pursuant to Article 6(2) or Article 8(2) of Regulation (EC) No 139/2004, submit one original of the information and documents prescribed by the Form RM relating to remedies (Form RM) as set out in Annex IV to this Regulation as well as the number of copies specified by the Commission from time to time in the *Official Journal of the European Union*. The information submitted shall be correct and complete.;

(10) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. The Commission may transmit documents and invitations to the addressees in any of the following ways:
   a delivery by hand against receipt;
   b registered letter with acknowledgement of receipt;
   c fax with a request for acknowledgement of receipt;
   d electronic mail with a request for acknowledgement of receipt.;

(b) paragraph 3 is replaced by the following:

3. Where a document is sent by fax or by electronic mail, it shall be presumed that it has been received by the addressee on the day on which it was sent.;

(11) in Article 23, the following paragraph 4 is added:

4. Where the Commission specifies that documents submitted to it or any additional copies thereof are to be submitted electronically, it shall specify the format from time to time in the *Official Journal of the European Union*. Submissions sent by electronic mail shall be sent to the electronic mail address as published by the Commission from time to time in the *Official Journal of the European Union*.;

(12) Annex I, Annex II and Annex III are replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 January 2014.

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

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Done at Brussels, 5 December 2013.

For the Commission

The President

José Manuel BARROSO