# Control of concentrations between undertakings. EC Merger Regulation

2002/0296(CNS) - 07/04/2004 - Implementing legislative act

LEGISLATIVE ACT : Commission Regulation 802/2004 implementing Council Regulation 139/2004/EC on the control of concentrations between undertakings. CONTENT : As a result of recasting Council Regulation 4064/89/EEC as Regulation 139/2004/EC, Commission Regulation 447/98/EC on notifications and time-limits has to be modified. For the sake of clarity it is repealed and replaced by a new regulation. Regulation 139/2004/EC is based on the principle of compulsory notification of concentrations before they are put into effect. On the one hand, a notification has important legal consequences which are favourable to the parties to the proposed concentration, while, on the other hand, failure to comply with the obligation to notify renders the parties liable to fines and may also entail civil law disadvantages for them. This Regulation aims to define precisely the subject matter and content of the information to be provided in the notification. The main points are as follows: - Regulation 139/2004/EC allows the undertakings concerned to request, in a reasoned submission, prior to notification, that a concentration fulfilling the requirements of that Regulation be referred to the Commission by one or more Member States, or referred by the Commission to one or more Member States, as the case may be. It is important to provide the Commission and the competent authorities of the Member States concerned with sufficient information, in order to enable them to assess whether or not a referral ought to be made. To that end, the reasoned submission requesting the referral should contain certain specific information. This Regulation prescribes the forms to be used for notifications and reasoned submissions; - Notification sets in motion legal time-limits pursuant to Regulation 139/2004/EC. The Regulation determines the conditions governing such time-limits and the time when they become effective. Rules are laid down for calculating the time-limits provided for in Regulation 139/2004/EC. In particular, the beginning and end of time periods and the circumstances suspending the running of such periods are determined, with due regard to the requirements resulting from the exceptionally tight legal timeframe available for the proceedings; - In order to safeguard fully the right to be heard and the rights of defence, the Commission makes a distinction between the parties who notify the concentration, other parties involved in the proposed concentration, third parties and parties regarding whom the Commission intends to take a decision imposing a fine or periodic penalty payments; - The Commission gives the notifying parties and other parties involved in the proposed concentration an opportunity before notification to discuss the intended concentration informally and in strict confidence. In addition, the Commission will, after notification, maintain close contact with those parties, to the extent necessary to discuss with them any practical or legal problems which it discovers on a first examination of the case, with a view, if possible, to resolving such problems by mutual agreement; - The notifying parties are given the opportunity to submit their comments on all the objections which the Commission proposes to take into account in its decisions. The other parties involved in the proposed concentration are informed of the Commission'sobjections and are granted the opportunity to express their views; - Third parties demonstrating a sufficient interest are also be given the opportunity of expressing their views, if they make a written application to that effect; - In urgent cases the Commission may proceed immediately to formal oral hearings of the notifying parties, of other parties involved or of third parties; - The Regulation defines the rights of persons who are to be heard, to what extent they may be granted access to the Commission's file and on what conditions they may be represented or assisted; - In order to enable the Commission to carry out a proper assessment of commitments offered by the notifying parties with a view to rendering the concentration compatible with the common market, and to ensure due consultation with other parties involved, with third parties and with the authorities of the Member States the procedure and time-limits for submitting the commitments is laid down; - The Advisory Committee on Concentrations must deliver its opinion on the basis of a preliminary draft decision. It must therefore be consulted on a case after the inquiry in to that case has been completed. Such consultation does not, however, prevent the Commission from reopening an inquiry if need be. ENTRY INTO FORCE : 1 May 2004.