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COMMISSION IMPLEMENTING REGULATION (EU) 2024/2776

of 31 October 2024

correcting Implementing Regulation (EU) 2023/914 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004

(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, and in particular Article 57(2), point a in conjunction with Article 1 of Protocol 21 to that Agreement,

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

Whereas:

(1) Regulation (EC) No 139/2004 is based on the principle of compulsory notification of concentrations before they are put into effect. Notification has important legal consequences which are favourable to the parties to the proposed concentration. However, failure to comply with the obligation to notify renders the parties liable to fines and may also entail civil law disadvantages for them. It is therefore necessary in the interests of legal certainty to define precisely the subject matter and content of the information to be provided in the notification.

(2) Regulation (EC) No 139/2004 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, within a short period of time, whether or not a referral ought to be made. To that end, the reasoned submission requesting the referral should contain certain specific information.

(3) In order to simplify and expedite examination of notifications, of reasoned submissions, and of the information regarding commitments, standardised forms should be used. Those forms are set out in the Annexes to Commission Implementing Regulation (EU) 2023/914 ([2]). The format of the Annexes to this Regulation may change and the corresponding forms may be replaced by electronic forms containing the same information requirements.

(4) Several inaccuracies have been found in the notification forms contained in the Annexes to Implementing Regulation (EU) 2023/914. Considering the important effects of such forms, the inaccuracies should be corrected.

(5) The Annexes to Implementing Regulation (EU) 2023/914 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The Annexes to Implementing Regulation (EU) 2023/914 are amended in accordance with the Annex to this Regulation.

([1]) OJ L 24, 29.1.2004, p. 1, ELI: http://data.europa.eu/eli/reg/2004/139/oj ('Regulation (EC) No 139/2004' or 'Merger Regulation').
([2]) Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004 (OJ L 119, 5.5.2023, p. 22, ELI: http://data.europa.eu/eli/reg_impl/2023/914/oj) ('Implementing Regulation (EU) 2023/914').

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 31 October 2024.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

The Annexes to Implementing Regulation (EU) 2023/914 are amended as follows:

(1) Annex I is amended as follows:

(a) in the introduction, paragraph 25, point (g) is replaced by the following:

'(g) "Affected markets": Affected markets are all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets, where the parties' activities overlap horizontally or are vertically related and which do not meet the conditions for review under point 5(d) of the Notice on Simplified Procedure (*) and do not benefit from the flexibility clauses of point 8 of the Notice on Simplified Procedure.

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(*) Footnote 12: Commission Notice on a simplified treatment of certain concentrations under Council Regulation (EC) No 139/2004 (OJ C 160, 5.5.2023, p. 1) (the "Notice on Simplified Procedure").';

(b) in Section 1, point 1.2 is replaced by the following:

'1.2. Provide a non-confidential summary (up to 500 words) of the following information: the way by which the concentration is accomplished (for example, by way of purchase of shares, public bid, contract, etc.); the articles of the Merger Regulation pursuant to which the transaction qualifies as a concentration; the undertakings concerned. For each of the undertakings concerned provide: Full name, country of incorporation, ultimately controlling entity, short description of activities and geographic areas of activity. For newly created JVs provide intended activities and geographic areas of activity. It is intended that this summary will be published on DG Competition's website upon notification. The summary must be drafted so that it contains no confidential information or business secrets.';

(c) in point 7.1. of Section 7, the table is replaced by the following:

'□ Under all plausible market definitions, the parties' combined market share is 20 % or higher but remains below 25 % on any relevant market where the parties' activities overlap, and none of the special circumstances described in Section II.C of the Notice on Simplified Procedure are present.
□ Under all plausible market definitions, the parties' combined market share is 20 % or higher but remains below 25 % on any relevant market where the parties' activities overlap, and although one or several of the special circumstances described in Section II.C of the Notice on Simplified Procedure are present the case does not raise any competition concerns for the reasons explained in sub-Section 7.4.
□ None of the circumstances described in Section II.C of the Notice on Simplified Procedure are present, and the individual and combined market shares of all the parties to the concentration that are engaged in business activities in a market which is upstream or downstream from a market in which any other party to the concentration is engaged (vertical relationships) meet at least one of the following conditions: □ are 30 % or higher but remain below 35 % in the upstream and downstream markets, □ are lower than 50 % in one market while the individual and combined market shares of all the parties to the concentration in all the other vertically related markets are lower than 10 %.
□ Although one or several of the circumstances described in Section II.C of the Notice on Simplified Procedure are present the case does not raise any competition concerns for the reasons explained in Section 7.4, and the individual and combined market shares of all the parties to the concentration that are engaged in vertical relationships meet at least one of the following conditions: □ are 30 % or higher but remain below 35 % in the upstream and downstream markets, □ are lower than 50 % in one market while the individual and combined market shares of all the parties to the concentration in all the other vertically related markets are lower than 10 %.'

(d) Section 8, point 8.2. is amended as follows:

(i) the title of the first table is replaced by the following:

'**Horizontal overlaps involving marketed products and pipeline products**';

(ii) the title of the second table is replaced by the following:

'**Vertical relationships involving marketed products and pipeline products**';

(e) footnote 33 is replaced by the following:

'You should provide market shares for the parties and the competitors who offer marketed products and disclose any pipeline products at least for the acquirer(s) and target(s). If there are less than three competitors offering marketed products, you should identify at least three competitors developing rival pipeline products.';

(f) footnote 35 is replaced by the following:

'You should provide market shares for the parties and the competitors who offer marketed products and disclose any pipeline products at least for the acquirer(s) and target(s). If there are less than three competitors offering marketed products, you should identify at least three competitors developing rival pipeline products.';

(g) footnote 37 is replaced by the following:

'You should provide market shares for the parties and the competitors who offer marketed products and disclose any pipeline products at least for the acquirer(s) and target(s). If there are less than three competitors offering marketed products, you should identify at least three competitors developing rival pipeline products.';

(h) in Section 13, the box is replaced by the following:

'**[Notifying Party 1]** Name: Organisation: Position: Address: Phone number: Email: ["e-signed" / signature]	**[Notifying Party 2 if applicable]** Name: Organisation: Position: Address: Phone number: Email: ["e-signed" / signature]'

(2) Annex II is amended as follows:

(a) in Section 1, the table is replaced by the following:

'Notification under simplified treatment: yes	Merger Regulation
Jurisdiction: □ Article 1(2) □ Article 1(3) □ Article 4(5) □ Article 22	Notification basis: □ Article 4(1) □ Article 4(4) □ Article 4(5) □ Article 22
Concentration: □ Merger [Article 3(1), point (a)] (*) □ Acquisition of sole control [Article 3(1), point (b)] □ Acquisition of joint control [Article 3(1), point (b)] (**) □ Acquisition of joint control of a greenfield joint venture [Article 3(4)] (***) □ Acquisition of joint control in any other scenario (i.e. at least one previously controlling shareholder remaining) [Article 3(1), point (b) and 3(4)] (****)	Category of case in accordance with the Notice on Simplified Procedure: □ Point 5(a) of the Notice on Simplified Procedure □ Point 5(b) of the Notice on Simplified Procedure □ Point 5(c) of the Notice on Simplified Procedure □ Point 5(d) of the Notice on Simplified Procedure □ Point 5(e) of the Notice on Simplified Procedure □ Point 8 of the Notice on Simplified Procedure □ Point 9 of the Notice on Simplified Procedure
Notification linked to a previous case (linked operation/ parallel transaction/case aborted or withdrawn)? YES □ NO □ If yes, provide case number:	Notification linked with a consultation on the same concentration? YES □ NO □ If yes, provide consultation number:

Means of implementing the concentration: □ Public bid announced on [DATE]. □ Purchase of shares □ Purchase of assets □ Purchase of securities □ Management contract or any other contractual means □ Purchase of shares in a newly created undertaking constituting a joint venture	Value of the concentration in EUR:
Seat of the companies involved in the concentration: □ Within the same Member State □ Within the same third country □ Within a Member State and a third country □ In different Member States □ In different third countries	
(*) Footnote 18: A merger occurs when two or more independent undertakings amalgamate into a new undertaking and cease to exist as separate legal entities. See points 9 and 10 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p. 1) ("Commission Consolidated Jurisdictional Notice"). (**) Footnote 19: This scenario refers to acquisitions of joint control over target companies which were not previously controlled by any of the parties acquiring joint control (i.e. acquisition of control over an undertaking from an unrelated third party). See in particular Commission Consolidated Jurisdictional Notice, point 91. (***) Footnote 20: This category refers to the creation of a greenfield joint venture to which the parent companies do not transfer an existing economic activity (i.e. a subsidiary or business with a market presence) or transfer only assets which do not constitute a business in themselves. (****) Footnote 21: These cases include, among other things, (i) the creation of new full-function joint ventures when one or more parent companies transfer an existing business or economic activity and (ii) the entry or replacement of controlling shareholders of a joint venture. See in particular Commission Consolidated Jurisdictional Notice, point 92.'; 	

(b) in Section 2, the second table is replaced by the following:

'Undertakings concerned	Country of origin	Role (*)	Turnover (in million EUR) (**)		Year of turnover (***)
			Worldwide	EU-wide	
Combined turnover of all undertakings concerned					

□ It is not the case that each of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.

(*) Footnote 24: A = Acquirer in the case of acquisition of sole or joint control (if more than one, define A1, A2, etc.).
T = Target in the case of acquisition of sole control (if more than one, define T1, T2, etc.).
JV = Joint venture in the case of acquisition of joint control (if more than one, define JV1, JV2, etc.).
MP = Merging Party in the case of a merger (if more than one, define MP1, MP2, etc.).

(**) Footnote 25: The turnover information must be provided in euro at the average exchange rates prevailing for the years or other periods in question.

(***) Footnote 26: If the fiscal year does not fall together with the calendar year, indicate the end of the fiscal year in full date format (dd/mm/yyyy).';

(c) in Section 2, the third table is replaced by the following:

'Name of relevant Member State for the purposes of Article 1(3) point (b) and (c) of the Merger Regulation	Combined turnover of all undertakings concerned in this Member State (in million EUR)	Name of relevant undertakings concerned for the purposes of Article 1(3), point (c) of the Merger Regulation	Turnover of the undertaking concerned in this Member State (in EUR million)

□ It is not the case that each of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.'

(d) in Section 4, the first paragraph is replaced by the following:

'Provide a non-confidential summary (up to 250 words) of the following information: the way by which the concentration is accomplished (for example, by way of purchase of shares, public bid, contract etc.); the articles of the Merger Regulation pursuant to which the transaction qualifies as a concentration; the undertakings concerned. For each of the undertakings concerned provide: Full name, country of incorporation, ultimately controlling entity, short description of activities and geographic areas of activity. For newly created JVs provide intended activities and geographic areas of activity. It is intended that this summary will be published on DG Competition's website upon notification. The summary must be drafted so that it contains no confidential information or business secrets.';

(e) in Section 7, the table under point (a) is replaced by the following:

'□ The joint venture is not active within the territory of the European Economic Area (EEA):
□ The joint venture has no current (i.e. at the time of notification) or expected (over the next three years following notification) turnover within the EEA. AND □ The parent companies of the joint venture have not planned any asset transfers to the joint venture within the EEA at the time of notification (*).
If the concentration fulfils the criteria in point 5(a) of the Notice on Simplified Procedure, Sections 8, 9, 10 and 11 below do not need to be completed.
(*) Footnote 32: Any asset planned to be transferred to the joint venture at the time of notification should be considered, regardless of the date in which these assets will actually be transferred to the joint venture.';

(f) in Section 7, the table under point (b) is replaced by the following:

'□ The joint venture has negligible current or expected activities within the EEA:
□ The current annual turnover of the joint venture and the turnover of the contributed activities at the time of notification as well as the annual turnover expected over the three years following notification is less than EUR 100 million within the EEA. AND □ The total value of the asset transfers to the joint venture planned at the time of notification (*) is less than EUR 100 million within the EEA.
(*) Footnote 34: Any asset planned to be transferred to the joint venture at the time of notification should be considered, regardless of the date in which these assets will actually be transferred to the joint venture.';

(g) in Section 7, the table under point (c) is replaced by the following:

'□ Two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, without creating any horizontal overlaps or vertical links.
If the concentration fulfils the criteria of point 5(c) of the Notice on Simplified Procedure, Sections 8, 9, 10 and 11 below do not need to be completed.'

(h) footnote 33 was removed;

(i) footnote 35 was removed;

(j) in Section 7, the table under point (d) is replaced by the following:

'□ Two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and the conditions set out in points 5(d)(i) and 5(d)(ii) of the Notice on Simplified Procedure are fulfilled under all plausible market definitions (*).
□ None of the parties to the concentration are active in the same product and geographic market. OR □ The combined market shares of all the parties to the concentration that are engaged in business activities in the same product and geographic market (horizontal overlaps) meet at least one of the following conditions: □ are lower than 20 %; □ are lower than 50 % and the increment (delta) of the Herfindahl-Hirschman Index (HHI) resulting from the concentration on these markets is below 150 (**).
□ None of the parties to the concentration are active in markets upstream or downstream of each other. OR □ The individual and combined market shares of all the parties to the concentration that are engaged in business activities in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (vertical relationships) meet at least one of the following conditions: □ are lower than 30 % upstream and downstream; □ are lower than 30 % in the upstream market and the purchasing share of the downstream entity of the upstream input is lower than 30 %; □ are lower than 50 % on both the upstream and downstream markets, the increment (delta) of the HHI resulting from the concentration is below 150 on both the upstream and downstream markets and the smaller undertaking in terms of market shares is the same in the upstream and downstream markets (***).
(*) Footnote 36: The thresholds for horizontal overlaps and vertical relationships apply to any plausible alternative product and geographic market definition that may have to be considered in a given case. It is important that the underlying market definitions set out in the notification are precise enough to justify the assessment that these thresholds are not met, and that all plausible alternative market definitions that may have to be considered are mentioned (including geographic markets narrower than national).

(**) Footnote 37: The HHI is calculated by summing the squares of the individual market shares of all the firms in the market: see Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, p. 5), point 16, available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52004XC0205%2802%29 However, in order to calculate the HHI delta resulting from the concentration, it is sufficient to subtract from the square of the sum of the market shares of the parties to the concentration (in other words, the square of the merged entity's market share post-concentration) the sum of the squares of the parties' individual market shares (since the market shares of all other competitors in the market remain unchanged and thus do not influence the result of the equation).

(***) Footnote 38: This category aims to capture small increments to a pre-existing vertical integration. For example, Company A, active in an upstream and a downstream market (with a share of 45 % in each) acquires Company B active in the same upstream and downstream markets (with a share of 0,5 % in each). This category does not capture situations in which the bulk of the vertical integration results from the transaction, even if the combined market shares are below 50 % and the HHI delta is below 150. For example, this category does not capture the following situation: Company A, active upstream with a market share of 45 % and downstream with a market share of 0,5 % acquires company B active upstream with a market share of 0,5 % and downstream with a market share of 45 %.';

(k) in Section 7, the table under point (f) is replaced by the following:

'□ None of the parties to the concentration are active in the same product and geographic market. OR □ Under all plausible market definitions, the parties' combined market shares remain below 25 % on any relevant market where the parties' activities overlap and none of the special circumstances described in Section II.C of the Notice on Simplified Procedure are present.
□ Under all plausible market definitions, the parties' combined market shares remain below 25 % on any relevant market where the parties' activities overlap, and although one or several of the special circumstances described in Section II.C of the Notice on Simplified Procedure are present, the case does not raise any competition concerns for the reasons explained in Section 11.
□ None of the parties to the concentration are active in markets upstream or downstream of each other. OR □ None of the circumstances described in Section II.C on Simplified Procedure are present and the individual and combined market shares of all the parties to the concentration that are engaged in business activities in a market which is upstream or downstream from a market in which any other party to the concentration is engaged (vertical relationships) meet at least one of the following conditions: □ are lower than 35 % in the upstream and downstream markets; □ are lower than 50 % in one market while the individual and combined market shares of all the parties to the concentration in all the other vertically related markets are lower than 10 %.
□ One or several of the circumstances described in Section II.C of the Notice on Simplified Procedure are present, the case does not raise any competition concerns for the reasons explained in Section 11 and the individual and combined market shares of all the parties to the concentration that are engaged in vertical relationships meet at least one of the following conditions: □ are lower than 35 % in the upstream and downstream markets; □ are lower than 50 % in one market while the individual and combined market shares of all the parties to the concentration in all the other vertically related markets are lower than 10 %.'

(l) in Section 7, the table under point (g) is replaced by the following:

'□ The annual current turnover of the joint venture and the turnover of the contributed activities (*) at the time of notification is more than EUR 100 million, but less than EUR 150 million within the EEA. AND □ The total value of asset transfers to the joint venture planned at the time of notification is more than EUR 100 million, but less than EUR 150 million within the EEA (**).

If the joint venture is active in the EEA and the concentration gives rise to horizontal overlaps and/or vertical relationships, you should complete respectively Section 8 and/or 9.
(*) Footnote 39: See footnote 31. (**) Footnote 40: See footnote 32.';

(m) in Section 8, the title of the table is replaced by the following:

'**Horizontal overlaps involving marketed products and pipeline products**';

(n) footnote 43 is replaced by the following:

'You should provide market shares for the parties and the competitors who offer marketed products and disclose any pipeline products at least for the acquirer(s) and target(s). If there are less than three competitors offering marketed products, you should identify at least three competitors developing rival pipeline products.';

(o) in Section 9, the title of the first table is replaced by the following:

'**Vertical relationships involving marketed products and pipeline products**';

(p) footnote 46 is replaced by the following:

'You should provide market shares for the parties and the competitors who offer marketed products and disclose any pipeline products at least for the acquirer(s) and target(s). If there are less than three competitors offering marketed products, you should identify at least three competitors developing rival pipeline products.';

(q) footnote 47 is replaced by the following:

'You should provide market shares for the parties and the competitors who offer marketed products and disclose any pipeline products at least for the acquirer(s) and target(s). If there are less than three competitors offering marketed products, you should identify at least three competitors developing rival pipeline products.';

(r) in Section 10, the title of the first table is replaced by the following:

'**Vertical relationships under point 5(d)(ii)(bb) of the Notice on Simplified Procedure involving marketed products and pipeline products**';

(s) footnote 49 is replaced by the following:

'You should provide market shares for the parties and the competitors who offer marketed products and disclose any pipeline products at least for the acquirer(s) and target(s). If there are less than three competitors offering marketed products, you should identify at least three competitors developing rival pipeline products.';

(t) footnote 50 is replaced by the following:

'You should provide market shares for the parties and the competitors who offer marketed products and disclose any pipeline products at least for the acquirer(s) and target(s). If there are less than three competitors offering marketed products, you should identify at least three competitors developing rival pipeline products.';

(u) in Section 16, the table is replaced by the following:

[Notifying Party 1] Name: Organisation: Position: Address: Phone number: Email: ["e-signed" / signature]	**[Notifying Party 2, if applicable]** Name: Organisation: Position: Address: Phone number: Email: ["e-signed" / signature]

(3) Annex III is amended as follows:

(a) in the introduction, paragraph 23(g) is replaced by the following:

'(g) "Affected markets": Affected markets are all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets, where the parties' activities overlap horizontally or are vertically related and which do not meet the conditions for review under point 5(d) of the Notice on Simplified Procedure (*) and do not benefit from the flexibility clauses of point 8 of the Notice on Simplified Procedure.

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(*) Footnote 10: Commission Notice on a simplified treatment of certain concentrations under Council Regulation (EC) No 139/2004 (OJ C 160, 5.5.2023, p. 1) ("Notice on Simplified Procedure").';

(b) in Section 6, the table is replaced by the following:

[Submitting party 1] Name: Organisation: Position: Address: Phone number: Email: ["e-signed" / signature]	**[Submitting party 2 if applicable]** Name: Organisation: Position: Address: Phone number: Email: ["e-signed" / signature]'