

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(84) 59 final

Brussels, 3 February 1984

Amended proposal for a  
COUNCIL REGULATION

on the control of concentrations between undertakings

(submitted to the Council by the Commission pursuant to  
the second paragraph of Article 149 of the EEC Treaty)

COM(84) 59 final

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

(submitted by the Commission to the Council, pursuant to the second paragraph  
of Article 149 of the EEC Treaty)

Having regard to the proposal submitted by the Commission to the Council  
on 20 July 1973,<sup>1</sup>

Having regard to the amended proposal submitted by the Commission to the  
Council, pursuant to the second paragraph of Article 149 of the EEC Treaty,  
on 16 December 1981,<sup>2</sup>

Having regard to the resolution adopted by the European Parliament on the  
amended proposal on 25 October 1983 and to the amendments which Parliament  
itself proposed thereto,

Whereas the Commission supports the said amendments proposed to Articles 1,  
4(2) and 6 and the proposed insertion of a new Article 22a,

Annex : text of amended Articles

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<sup>1</sup>OJ No C 92, 31.10.1973.

<sup>2</sup>OJ No C 36, 12.2.1982.

## II

*(Preparatory Acts)*

## COMMISSION

**Amendment to the proposal for a Council Regulation on the control of concentrations between undertakings (\*)***COM(84) 59 final**(Submitted by the Commission to the Council pursuant to Article 149 (2) of the EEC Treaty on 7 February 1984)**(84/C 51/13)*

ORIGINAL PROPOSAL

AMENDED PROPOSAL

Preamble and recitals unchanged

*Article 1***Basic provisions**

1. Any transaction which has the direct or indirect effect of bringing about a concentration between undertakings or groups of undertakings, at least one of which is established in the common market, whereby they acquire or enhance the power to hinder effective competition in the common market or in a substantial part thereof, is incompatible with the common market in so far as the concentration may affect trade between Member States.

The power to hinder effective competition shall be appraised at Community level and by reference in particular to the extent to which suppliers and consumers have a possibility of choice, to the economic and financial power of the undertakings concerned, to the structure of the markets affected, to the effects of international competition, and to supply and demand trends for the relevant goods or services.

A concentration shall be presumed to be compatible with the common market where the market share of the goods or services concerned accounts in the common market for less than 20 % of the turnover in identical goods or services or in goods or services which, by reason of their characteristics, their price and their use are regarded as similar by the consumer. The presumption of compatibility with the common

*Article 1***Basic provisions**

1. Unchanged.

The power to hinder effective competition shall be appraised at Community level and by reference in particular to the extent to which suppliers and consumers have a possibility of choice, to the economic and financial power of the undertakings concerned, to the structure of the markets affected, to **international competition**, and to supply and demand trends for the relevant goods or services.

A concentration shall be presumed to be compatible with the common market where the market share of the goods or services concerned accounts in the common market, **or in a substantial part thereof**, for less than 20 % of the turnover in identical goods or services or in goods or services which, by reason of their characteristics, their price and their use are regarded as similar by the consumer. The

(\*) OJ No C 36, 12. 2. 1982, p. 3.

## ORIGINAL PROPOSAL

## AMENDED PROPOSAL

market can be rebutted if the Commission establishes that a concentration giving a market share below this threshold is nonetheless incompatible with the common market.

2. Paragraph 1 shall not apply where the aggregate turnover of the undertakings participating in the concentration is less than 500 million ECU.

3. Paragraph 1 may, however, be declared inapplicable to concentrations which are indispensable to the attainment of an objective which is given priority treatment in the common interest of the Community.

presumption of compatibility with the common market can be rebutted if the Commission establishes that a concentration giving a market share below this threshold is nonetheless incompatible with the common market.

2. Paragraph 1 shall not apply where the aggregate turnover of the undertakings participating in the concentration is less than 750 million ECU unless, **irrespective of turnover in the market as a whole, the share in a substantial part of the common market is greater than 50 %.**

3. Paragraph 1 may, however, be declared inapplicable to concentrations which are indispensable to the attainment of a **priority of the Community.**

Articles 2 and 3 unchanged

*Article 4***Prior notifications of concentrations**

Paragraph 1 unchanged

2. Where concentrations proposed by an undertaking or a group of undertakings have already reached or exceeded the amounts referred to in paragraph 1, they shall be exempted from the obligation of prior notification, if the turnover of the undertaking, the control of which they propose to acquire, is less than 30 million ECU.

Paragraphs 3 and 4 unchanged

Article 5 unchanged

*Article 6***Commencement of proceedings**

1. Where the Commission considers that a concentration is likely to become the subject of a decision under Article 1 (1) or (3), it shall commence proceedings and so inform the undertakings in question and the competent authorities in the Member States.

Paragraphs 2 to 4 unchanged

Articles 7 to 22 unchanged

*Article 4***Prior notifications of concentrations**

2. Where concentrations proposed by an undertaking or a group of undertakings have already reached or exceeded the amounts referred to in paragraph 1, they shall be exempted from the obligation of prior notification, if the turnover of **one of the undertakings concerned is less than 30 million ECU.**

*Article 6***Commencement of proceedings**

1. Where the Commission considers that a concentration is likely to become the subject of a decision under Article 1 (1) or (3), it shall commence proceedings **immediately** and so inform the undertakings in question and the competent authorities in the Member States.

*Article 22a*

The Commission may publish, from time to time, rules providing guidance to undertakings on the circumstances in which mergers or concentrations will be subject to examination or review by the Commission.