

# 1 JULY 1999 - ROYAL DECREE COORDINATING THE ACT OF 5 AUGUST 1991 ON THE PROTECTION OF ECONOMIC COMPETITION

Albert II, King of the Belgians,  
To all present and future, greetings

Having regard to the Act of 5 August 1991 on the Protection of Economic Competition, amended by the Acts of 22 March 1993 and 26 April 1999 and by the Royal Decrees of 31 March 1995 and 14 June 1999, notably Article 56bis thereof;

Having regard to the Acts on the Council of State, coordinated on 12 January 1973, notably Article 3; §1 thereof replaced by the Act of 4 July 1989 and amended by the Act of 4 August 1996;

Having regard to the emergency caused by the circumstance that the Act of 26 April 1999 (Article 77 of the Constitution) amending some articles of the Act of 5 August 1991 on the Protection of Economic Competition came into force on 27 April 1999, that the Act of 5 August 1999 was also amended by another Act of 26 April 1999 (Article 78 of the Constitution) and, as far as the notification thresholds for concentrations are concerned, by the Royal Decree of 14 June 1999, that the texts must be coordinated in order to ensure a coherent and harmonised application of the new provisions in force;

On the proposal of our Minister for the Economy,

We have decreed and decree :

Art. 1. The provisions of the Acts of 5 August 1991, 26 April 1999 (I) and 26 April 1999 (II) shall be coordinated in compliance with the text attached to this Decree.

Art. 2. Our Minister, who is in charge of Economic Affairs, shall implement this Decree.

Done in Brussels on 1 July 1999.

ALBERT

By the King :

The Minister for the Economy,  
Elio DI RUPO

Annex I

**ACT ON THE PROTECTION OF ECONOMIC COMPETITION,  
coordinated on 1 July 1999 (Belgian Official Gazette\*, 1 September 1999)**

CHAPTER I

**Definitions**

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\* Moniteur belge/Belgisch Staatsblad

## Art. 1

For the purpose of this Act, the following definitions shall apply :

- a) undertaking : any natural or legal person pursuing an economic goal on a lasting basis;
- b) dominant position : a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained in the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers or suppliers;
- c) Minister : the minister in charge of economic affairs.

## CHAPTER II

**Competitive Practices****Section 1***Restrictive Competitive Practices*

## Art. 2

§ 1. All agreements between undertakings, decisions taken by associations of undertakings and concerted practices whose object or effect is to significantly prevent, restrain or distort competition in the Belgian market concerned or in a substantial part of it are prohibited, particularly those consisting in :

- a) fixing directly or indirectly purchase or selling prices or other contractual terms;
- b) limiting or controlling production, outlets, technical development or investments;
- c) sharing the markets or sources of supply;
- d) applying unequal terms to commercial partners for equivalent services, thereby putting them at a competitive disadvantage;
- e) making the conclusion of contracts subject to acceptance by the partners of additional services that are not tied, by their nature or according to commercial practice, to the object of such contracts.

§ 2. Any agreement or decision prohibited pursuant to this Article shall be null and void ipso jure.

§ 3. However, the provisions of § 1 of this Article may be declared inapplicable to :

- any agreement or category of agreements between undertakings,
- any decision or category of decisions taken by associations of undertakings, and
- any concerted practice or category of concerted practices,

which contribute to improving production or distribution or to promoting technical or economic progress or which allow small and medium-sized undertakings to strengthen their competitive position in the

market concerned or in the international market, while providing users with a fair share of the profit resulting therefrom without, however :

- a) imposing on the undertakings concerned any restriction that is not indispensable for attaining these objectives;
- b) giving such undertakings the opportunity to eliminate competition for a substantial part of the products concerned.

#### Art. 3

Any abuse of a dominant position in the Belgian market concerned or in a substantial part of it by one or more undertakings shall be prohibited.

Such abusive practices may, in particular, consist in:

- a) fixing purchase or selling prices directly or indirectly or other unfair contractual terms;
- b) limiting production, outlets or technical development to the disadvantage of the consumer;
- c) applying unequal terms to commercial partners for equivalent services, thereby putting them at a competitive disadvantage;
- d) making the conclusion of contracts subject to the acceptance by the partners of additional services that are not tied, by their nature or according to commercial practice, to the objects of such contracts.

#### Art. 4

The practices referred to in Article 2, § 1 and Article 3 are hereinafter called restrictive competitive practices.

#### Art. 5

§ 1. The practices referred to in Article 2, § 1 are not subject to the notification referred to in Article 7, where the undertakings involved individually comply with the conditions provided for by Article 12, § 2 of the Company Bookkeeping and Annual Accounts Act of 17 July 1975.

§ 2. Notwithstanding § 1, the condition concerning the annual turnover provided for by Article 12, § 2 of the above-mentioned Act shall not be applicable to banks, credit institutions and other financial institutions.

#### Art. 6

§ 1. At the request of interested undertakings or associations of undertakings, the Competition Council may establish, on the basis of the facts brought to its attention, that there is no reason to take action against an agreement, decision or concerted practice by virtue of Article 2, § 1 or Article 3 of this Act.

§ 2. The King shall lay down the procedures of application for negative clearance referred to in §1.

#### Art. 7

§ 1. Agreements, decisions and concerted practices referred to in Article 2, § 1 of this Act for which the undertakings concerned wish to take advantage of the provisions of Article 2, § 3 shall be notified to the Competition Council.

Until such time as notification has been received, the declaration referred to in Article 2, § 3 shall not be made save in the event of a practice referred to in Article 5, § 1.

§ 2. Paragraph 1 of this article shall not apply to agreements, decisions or concerted practices :

- 1) where only two undertakings are involved and their sole effect is :
  - a) to restrict the freedom of one party to set prices or contractual terms when reselling goods that it has acquired from the other party to the contract or
  - b) to impose restrictions on the exercise of the rights of the assignee or user of intellectual property rights - in particular patents, utility models, designs or trade marks - or of the person entitled under a contract to the assignment, or grant, of the right to use a method of manufacture or knowledge relating to the use and to the application of industrial processes;
- 2) or where they have as their sole object :
  - a) the development or uniform application of standards or types;
  - b) joint research on technical improvements if the findings are available to all involved and if each of them may benefit therefrom.

Such agreements, decisions and concerted practices may be notified.

§ 3. The King shall lay down the procedure for notification of an agreement, decision or concerted practice referred to in § 1.

#### Art. 8

Provided that they enjoy exemption pursuant to Article 85, § 3 of the Treaty establishing the European Economic Communities, agreements, decisions and concerted practices need not be notified.

### Section 2

#### *Concentrations*

#### Art. 9

§ 1. For the purpose of this Act, a concentration shall be deemed to arise where :

a) two or more previously independent undertakings merge, or

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

- one or more undertakings acquire, whether by purchase of securities or assets, by contract or any other means, direct or indirect control of the whole or parts of one or more other undertakings.

§ 2. The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of § 1, b).

§ 3. For the purposes of this Act, control shall be constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the opportunity of exercising decisive influence over the activities of an undertaking, in particular by :

1. ownership or the right to use all or part of the assets of an undertaking;
2. rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

§ 4. Control is acquired by the person or persons or undertakings which :

- a) are holder of the rights or entitled to rights under the contracts concerned, or
- b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.

§ 5. A concentration shall not be deemed to arise where :

- a) credit institutions, other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the sale of all or part of that undertaking or of its assets or the sale of those securities and that any such sale takes place within one year of the date of acquisition, or within two years where those securities have been acquired as evidence for doubtful or unsettled debts.
- b) control is acquired by a public or legal representative in accordance with a judicial decision or any other compulsory winding-up procedure.

## Art. 10

§ 1. Concentrations are subject to the prior approval of the Competition Council which shall establish whether or not they are permissible.

§ 2. In making the decision referred to in § 1, the Council shall take into account :

- a) the need to preserve and develop effective competition in the domestic market, having particular regard to the structure of all the markets concerned and to the actual or potential competition from undertakings located either within or without the Kingdom;

b) the market position of the undertakings concerned, their economic and financial power, the choice opportunities available to suppliers and users, their access to supplies and markets, supply and demand trends for the relevant goods and services, the interests of consumers of the relevant goods and services, the interests of intermediate and final consumers and the development of technical and economic progress provided that it is to the consumers' advantage and does not form an obstacle to competition.

§ 3. Concentrations which do not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the Belgian market or in a substantial part of it shall be declared permissible.

§ 4. Concentrations which create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the Belgian market or in a substantial part of it shall be declared non-permissible.

§ 5. Provided that the creation of a joint venture, constituting a concentration within the meaning of Article 9, has as its object or effect the coordination of the competitive behaviour of undertakings which remain independent, such coordination shall be appraised in accordance with the provisions of Article 2 with a view to establishing whether or not the concentration is permissible.

In making this appraisal, the Competition Council shall, in particular, take into account :

- the significant and simultaneous presence of one or more parent undertakings in the same market as that of the joint venture, in a market upstream or downstream of this market or in a market closely linked to it;
- the opportunity given to the undertakings concerned by the coordination resulting directly from the creation of the joint venture to eliminate competition for a substantial part of the products and services involved.

§ 6. When the public interest so requires, the Council of Ministers may, in accordance with the provisions of Article 34bis, proprio motu or at the request of the parties, authorise a concentration declared non-permissible by the Competition Council.

## Art. 11

§ 1. The provisions of this section shall only apply where the aggregate turnover in Belgium of the undertakings concerned, as determined by the provisions of Article 46, amounts to EUR 40 million and where the turnover in Belgium of each of at least two of the undertakings concerned amounts to at least EUR 15 million.

§ 2. The King may, by decree deliberated on in the Council of Ministers and after consultation with the Competition Council and the Competition Commission, increase the thresholds referred to in § 1.

§ 3. Every three years the Competition Council shall assess the thresholds referred to in § 1, taking into account among other things their economic impact and the administrative burden for undertakings.

The Competition Council shall deliver an opinion to the Council with a view to such assessment.

## Art. 12

§ 1. Concentrations referred to in this Act shall be notified to the Competition Council within a period of one month of the conclusion of the agreement, the publication of the offer of purchase or exchange or the acquisition of a controlling interest. The period shall begin when the first of those events occurs. The parties may, however, notify a draft agreement provided that they explicitly declare that they intend to conclude an agreement that does not significantly differ from the draft notified with regard to all relevant items of competition law.

§ 2. Concentrations subject to an agreement shall be notified by the interested parties acting jointly; in other cases, notification shall be made by the interested party that put the concentration into effect.

§ 3. The King shall lay down the notification procedure referred to in § 1.

§ 4. Until the Competition Council renders a decision on the permissibility of the concentration, the undertakings concerned shall only take measures regarding the concentration that do not impede its reversibility and do not alter the market structure on a lasting basis.

§ 5. After a first period of forty-five days of examination of the concentration, the Competition Council may, save where a draft agreement has been notified, at the request of the parties to the concentration, determine whether or not one or more measures regarding the concentration that the parties involved wish to take are reversible or whether those measures would alter the market structure in an abiding fashion. In that case the Competition Council shall request the examiner to lodge, within two weeks, a report mentioning the information to be considered with a view to making the decision referred to in this §.

The Council may attach conditions and obligations to its decision.

## Art. 13

Concentrations subject to the control of the Commission of the European Communities shall not be subject to the control established by this Act.

## CHAPTER III

**Organs and procedure****Section 1***Competition Office and Corps of Examiners*

## Art. 14

§ 1. The Competition Office of the Ministry of Economic Affairs has been instructed to track and examine the practices referred to in Chapter II.

It shall investigate the cases initiated by virtue of this Act and shall supervise the implementation of the decisions made.

The Ministry of Economic Affairs shall also be responsible for the Secretariat of the Competition Council as well as for that of the Corps of Examiners.

§ 2. A Corps of Examiners shall be set up at the Competition Office.

The examiners shall be recruited by competitive examination. They shall be the holders of a doctorate or bachelor's degree in law, sales engineering or of a doctorate or bachelor's degree in economics. They shall have at least three years of relevant experience of both competition and procedural questions.

The examiners shall be appointed by the King. They shall enjoy an administrative and financial status guaranteeing their independence. As for disciplinary matters, the regulation applicable to the Inspector of Finances shall apply.

The Corps shall include as many examiners from the French language service as from the Dutch language service.

At least one examiner shall give evidence of his knowledge of the German language.

The examiners shall in particular:

- 1) lead and organise the investigation ; the Corps of Examiners shall among other things determine the order in which files are to be processed ; it shall allocate the files under investigation to the examiners;
- 2) give mission orders, including those referred to in Article 23 of this Act, to the civil servants of the Office;
- 3) draw up and present the investigation report to the Competition Council.

They shall not seek nor accept any injunction concerning the handling of the cases initiated by virtue of Article 23, § 1, a), b), c), d) and f).

The examiners shall by majority vote appoint one of their number Head of the Corps for a period not exceeding three years. The Head may be reappointed.

The Head of the Corps shall preside over the meetings of the Corps. When absent or prevented from attending those meetings, he shall be replaced by the most senior examiner or, in the event of equal seniority, by the oldest.

The examiners may carry out all acts necessary for the performance of their tasks save where this Act reserves them for the Corps of Examiners. In that case, the Corps of Examiners shall reach a decision by majority vote; in the event of a tie, the Head of the Corps shall have a casting vote.

The Corps of Examiners shall lay down its standing orders, which shall be approved by the King.

## Art. 15

The King shall take the necessary measures to set the number of staff employed per professional category at the Competition Office and the Corps of Examiners, to determine the conditions of access and to ensure proper working, considering the specific requirements as regards the independence of the examiners who make up the Corps referred to in Article 14, §2, the stability, the specialisation and the continuity of the Office.



The King shall in particular determine the status of the examiners in accordance with the principles of the linear career.

The King shall determine the status of the members of the Secretariat of the Competition Council.

## Section 2

### *Competition Council*

#### Art. 16

A Competition Council shall be set up at the Ministry of Economic Affairs. The Council shall be an administrative court with the power to take decisions, deliver opinions and make proposals, conferred upon it by this Act.

With regard to general competition policy issues, it shall also have a general advisory competence which it shall exercise on its own initiative or at the request of the Minister.

#### Art. 17

§ 1. The Competition Council shall be made up of 20 members, to wit :

1. a Chairman and a Vice-Chairman, appointed from among the members of the judiciary. The Vice-Chairman shall replace the Chairman when the latter is absent or prevented from attending;
2. eight members appointed from among the members of the judiciary, the lawyers whose name has been entered on the roll of lawyers for more than ten years or the persons in charge of teaching law at a Belgian University or one that is located in the European Union. At least three of these eight members shall be appointed from among the members of the judiciary;
3. ten members appointed for their competence in competition matters; no more than six of these shall be persons considered to take part in the management of a trading company within the meaning of Article 205 of the Judicial Code.

§ 2. The Chairman, Vice-Chairman and the other members of the Competition Council shall be appointed by Royal Decree deliberated on in the Council of Ministers. They shall serve a term of six years. They may be reappointed.

The members of the Competition Council shall continue to carry out their duties on the expiration of their term of office until provision has been made for their replacement.

§ 3. The Chairman and Vice-Chairman shall give evidence of their knowledge of the French and Dutch languages.

At least one member shall give evidence of his knowledge of the German language.

§ 4. The Chairman, Vice-Chairman and two members appointed by the King from among the members referred to in § 1 shall carry out their duties on a full-time basis.

Judges occupying a full-time position at the Competition Council shall not be subject to Article 293 of the Judicial Code during their term of office.

Throughout their term of office, the Chairman, Vice-Chairman and the two members appointed on a full-time basis shall not carry out any other professional activity. However, the King may, on the proposal of the Minister, authorise a complementary and secondary activity provided that it is compatible with the exercise of an appointment to the Competition Council.

§ 5. Immediate provision shall be made for the replacement, as judges, of the members designated from among the judiciary and referred to in § 4 through supernumerary appointment. Where the Head of the Corps is concerned, provision shall be made for his replacement by appointing a supernumerary judge who holds an immediately inferior rank.

The Chairman and Vice-Chairman of the Competition Council shall enjoy a salary equal to that of the Chairman of a court of first instance whose jurisdiction extends over a population of at least 500,000 residents, together with the related enhancements and benefits. This salary shall not, however, be inferior to that enjoyed within the judiciary.

A judge who occupies a full-time position at the Competition Council shall be given leave of absence for the duration of his term of office.

Pursuant to Article 315 of the Judicial Code, a judge shall regain his place in the ranks of the judiciary at the end of his period of office.

§ 6. The members referred to in § 4 who have not been appointed Chairman or Vice-Chairman shall, at the beginning of their term of office, receive a salary equal to that of the Vice-Chairman of a court of first instance whose jurisdiction extends over a population of at least 500,000 residents.

§ 7. The Competition Council may be divided into several chambers, all consisting of the same fixed number of members.

Each chamber shall be presided over by a member of the judiciary and shall be made up of at least three members.

Where a member is legitimately prevented from attending, the Chairman of the Council may appoint another member to replace him. If the Chairman of the chamber is prevented from attending, the oldest member of the chamber shall assume the presidency.

§ 8. The King shall determine the conditions for the appointment and the status of the Chairman, Vice-Chairman and other members of the Competition Council who carry out their duties on a full-time basis.

The statutes relating to the pension scheme for civil servants and their legal successors shall equally apply to the members of the Competition Council who do not have the status of judge or civil servant and who carry out their duties on a full-time basis.

§ 9. The Competition Council shall be assisted by a Secretary and assistant Secretary appointed for that purpose by the Minister or his representative from among the staff of the Ministry of Economic Affairs.

The Secretary and assistant Secretary shall belong to different language services.

The Minister shall appoint supply secretaries in the same manner.

§ 10. With the exception of persons holding a full-time position in the Competition Council, honorary and emeritus judges shall be deemed to have the status of judges within the meaning of the above paragraphs.

#### Art. 18

§ 1. All members of the Council shall inform the Chairman of interests they have acquired or are in the process of acquiring and of any position they hold in any economic activity.

§ 2. The members of the Competition Council may be challenged for the reasons laid down in Article 828 of the Judicial Code. Furthermore, the members of the Competition Council shall not deal with a case in which they have an interest or when they represent or have represented one of the interested parties.

Neither shall they act as counsel to a party in a case initiated by virtue of this Act.

§ 3. Where the challenge is contested, the Competition Council shall take a decision in the absence of the member concerned.

§ 3bis. If the challenge is contested, the member concerned shall be heard. The decision of the Competition Council is not subject to appeal.

§ 4. The King shall replace a member pursuant to Article 17, § 3 where the member :

- has been declared bankrupt or has been placed in composition;
- has been dismissed from his duties by disciplinary action;
- has been sentenced to a term of more than six months imprisonment;
- has concealed a reason for challenge;
- has incurred a penalty for infringement of this Act.

The King shall also replace a member where the latter :

- is affected by mental or physical incapacity;
- no longer resides in the Belgian territory;
- is a member of the legislature or of a Regional or Community Council.

#### Art 18bis

The members of the Competition Council shall be subject to professional secrecy and shall not divulge to any person or authority whatsoever confidential information acquired owing to their duties, save in the event that they are to testify before a court.

Any breach of this Article shall be punished by the penalties provided for by Article 458 of the Code of Criminal Law.

The provisions of Book 1 of the Code of Criminal Law, including Chapter VII and Article 85, shall apply to the breaches referred to in this Article.

### Art. 19

§ 1. The Council shall draw up its standing orders and submit them for approval to the King.

§ 2. The Council may carry out or have carried out all necessary investigations.

§ 3. In the event of a tie, the Chairman of the chamber shall have a casting vote.

§ 4. The Council shall deal with all cases submitted by reasoned decision after having heard the arguments of the undertakings concerned and, if they so request, the complainants (if any) or the counsel of their choice.

§ 5. The Competition Council shall submit an annual report on the application of the Act to the Minister and the legislature. The Competition Council shall publish this report.

The decisions, propositions and opinions of the Competition Council, the judgements of the Court of Appeal in Brussels and the decisions of the Council of Ministers shall be attached to this report.

### Art. 20

The King shall set the amount of the emoluments of the members of the Competition Council who do not carry out their duties on a full-time basis, of experts or of any other person who is assigned to work with the Council.

## Section 3

### *Competition Commission*

### Art. 21

A parity commission, namely the Competition Commission, shall be established within the Central Economic Council. Its task shall be to deliver opinions on its own initiative or at the request of :

- a) the King regarding any draft decree implementing this Act and for which consultation with the Commission is provided for in this Act;
- b) the Minister regarding any general competition policy issue and any preliminary draft providing for amendments to this Act;
- c) the Competition Council regarding any general competition policy issue as well as in the cases referred to in Article 28.

Where the Competition Commission does not respond to a request for opinion within the time limit set by the Minister, which shall not be less than 15 working days, its opinion shall no longer be required.

### Art. 22

The King shall determine the composition and functioning of the Competition Commission and of its Secretariat.

He shall also set the amount of the emoluments of the Chairman and the Commission members as well as of any person assigned to collaborate with the Commission.

## Section 4

### *Investigation Procedure*

#### Art. 23

§ 1. The Corps of Examiners shall investigate cases:

- a) at the request of the undertakings or associations of undertakings concerned in the event of an application for negative clearance pursuant to Article 6 or an application for individual exemption pursuant to Article 2, § 3;
- b) at the request of the interested parties referred to in Article 12, where a concentration is notified;
- c) proprio motu or at the request of the Minister or of the Competition Council where justified by serious indications or on the ground of a complaint from a natural or legal person that shall prove a direct and immediate interest in the event of a breach of Article 2, § 1, Article 3 or Article 12, § 1, or in the event of failure to comply with a decision made by virtue of Article 12, § 5, Article 33 or Article 34 ;
- d) at the request of the Minister for small and medium-sized undertakings, of a public body or another specific public institution whose task is to control or supervise an economic sector in the event of a breach of Article 2, § 1, or Article 3 or Article 12, § 1;
- e) proprio motu or at the request of the Minister or of the Competition Council with a view to a Royal Decree providing for exemptions by category of agreements, decisions and concerted practices pursuant to Article 2, § 3;
- f) at the request of the Court of Appeal in Brussels in the event of the application of Article 42.

§ 2. 1. In carrying out their duties the examiners may obtain all necessary information from undertakings and associations of undertakings. They shall set the time limit within which such information must be communicated to them.

- 2. Where the examiners make a request for information to an undertaking or an association of undertakings, they shall state the legal basis and the purpose of their request.
- 3. Where an undertaking or an association of undertakings does not supply the information requested within the period set by the examiner or supplies incomplete, inaccurate or distorted information, the Corps of Examiners may demand the information concerned by reasoned decision.

Such decision shall specify the information required and set the deadline by which it shall be provided. When the decision relating to a request for information is addressed to one of the notifying undertakings, this shall in addition suspend the periods provided for by Article 33 until such time as the information

required has been supplied or, at the latest, on the day of expiration of the period set by the Corps of Examiners.

The Corps of Examiners shall notify its decision to the undertakings required to provide the information.

§ 3. Without prejudice to the powers of the criminal investigation officers, the examiners and officers of the Competition Office appointed for that purpose by the Minister shall be empowered to detect breaches of this Act and to record such breaches in reports which shall be deemed authentic until there is evidence to the contrary. The examiners may have recourse to the officers of the Economic Inspection Department of the Ministry of Economic Affairs.

They shall also be competent to search for any useful information and to make any finding necessary for the application of Articles 9 to 13.

In the exercise of their duties they shall be subject to the supervision of the Procurator-General.

They shall collect all information, receive all depositions as well as written and oral evidence, shall get informed, regardless of the holder, of all documents and information which they deem necessary for the performance of their duties and of which they can make copies and shall make the necessary findings on the spot.

They may carry out searches :

- at the domicile of the heads of undertaking, administrators, managers, directors and other staff members, as well as at the domicile and on the business premises of natural and legal persons, whether external or internal, in charge of commercial, accounting, administrative, tax and financial management, between 5 am and 9 pm subject to the prior authorisation of an examining magistrate;
- on the premises, in the means of transport, and on the land of undertakings where they have reason to believe they will find documents or pieces of information that they deem necessary for the performance of their duties and of which they can take a copy.

In carrying out their duties they may make seizures on the spot and affix seals for a period not exceeding 48 hours. Such measures shall be recorded in a report, a copy of which shall be given to the person against whom those measures are directed.

In the course of their duties they may have recourse to the police.

In order to carry out a search or make seizures or affix seals, the officers referred to in § 1 shall, in addition, have specific mission orders issued by the Corps of Examiners as referred to in Article 14, § 2. Such orders shall specify the object and the purpose of their mission.

The examiners may commission experts whose advisory mission they shall define.

§ 4. Without prejudice to the specific laws guaranteeing the secrecy of declarations, public services shall be under a duty to provide assistance to the examiners and authorised officers of the Competition Office in the carrying out of their duties.

§ 5. In the course of their investigative duties the examiners and officers of the Competition Office shall comply :

- 1) when hearing persons, with the provisions of Article 31, except Subparagraph 3, of the Act of 15 June 1935 relating to Language Use in Judicial Matters;

- 2) when drawing up summonses, statements and reports, with the provisions of Article 11 of said Act. Where several persons are under investigation, the examiner's report referred to in Article 24, § 4 shall be drawn up in the language of the majority, taking into account the provisions of Article 11. In the event of parity, use shall be made of one of the national languages according to the purpose in hand.

### **Section 4bis**

#### *Specific rules for the investigation of restrictive competitive practices*

#### **Art. 24**

§ 1. Applications and complaints relating to restrictive competitive practices shall be lodged with the Competition Council, which shall forward them to the Corps of Examiners for investigation.

§ 2. Where the examiner concludes that the complaints or applications are inadmissible or groundless, he shall submit a reasoned proposal to close the file to the Council. If the Council deems it appropriate, the examiner shall notify the complainant of his proposal, stating that he may consult the file at the Secretariat, obtain a copy of it against payment and lodge written observations with the Council.

The Chairman of the Competition Council may, on his own initiative or at the request of the interested undertakings, refuse to communicate documents the disclosure of which would adversely affect trade secrets. In such event these documents shall be removed from the file.

By way of derogation from the previous subparagraph, the Chairman of the Council may not remove a document from the file if he deems it necessary for decision-making and considers that its divulgence would have less harmful a consequence than that resulting from a breach of competition rules.

A refusal by the Chairman of the Council to remove documents from the file shall be the subject of a reasoned decision in which the Chairman of the Council shall explain why he deems the documents necessary for decision-making and why divulging them would have less harmful a consequence than that resulting from a breach of competition rules and why he does not consider that he should acknowledge the confidential nature of the documents.

The Secretary of the Council shall inform the interested undertakings of such reasoned decision.

The Chairman of the Council may in any case ask the parties or the examiners to provide a non-confidential version of the documents the communication of which would adversely affect trade secrets.

The merits of the Competition Council's decision shall not rest on documents that have been removed from the file.

Where the Council accepts the proposal to close the file, it shall close it. If it does not accept such proposal, it shall remit the case to the examiner who shall proceed with the investigation.

§ 3. At the end of the investigation and before a reasoned report is drawn up, the examiners shall report any objections to the undertakings concerned and summon them so that they can submit their observations.

§ 4. The examiner shall lodge his reasoned report with the Council. It shall include the investigation report, a proposed list of observations and a proposed decision.

The report shall also comprise a reasoned proposal for regulation within the meaning of the second subparagraph of Article 28, § 1, if the examiner considers that the concrete events require general regulation.

§ 5. Where the Council considers that objections other than those raised by the examiner should be examined, the examiner shall examine them and shall carry out a complementary investigation, if necessary. He shall supplement his report and submit it to the Council.

#### Art. 25

§ 1. The King may lay down any procedure for the making-up and lodging of files as well as set the rules of procedure before the Competition Office and the Corps of Examiners.

§ 2. In the economic sectors controlled or supervised by a public body or another specific public institution, the King may, after consultation with such bodies or institutions, settle the cooperation between the Competition Office and the Corps of Examiners and such bodies or institutions with regard to the investigation.

#### Art. 26

The Competition Office may proprio motu or at the request of the Minister or the Chairman of the Competition Council, carry out or have carried out general or sector inquiries where there are serious indications of the existence of practices prohibited by Articles 2, § 1 and 3. The provisions of Article 23 shall apply by analogy, with the exception of subparagraphs 5 to 8 of § 3.

### Section 5

#### *Decisions relating to restrictive practices*

#### Art. 27

§ 1. After the report referred to in Article 24, § 3 or § 4 has been lodged, the examiner shall so advise the undertakings whose activity has been under investigation as well as the complainant, where the Council deems it appropriate, and send them a copy of it at least one month before the date of the hearing at which the Council will examine the case. He shall inform them that they may consult the file at the Secretariat of the Competition Council and obtain a copy of it against payment.

The Chairman of the Competition Council may, on his own initiative or at the request of the interested undertakings, refuse to communicate documents the disclosure of which would adversely affect trade secrets. In such event these documents shall be removed from the file.

By way of derogation from the previous subparagraph, the Chairman of the Council may not remove a document from the file if he deems it necessary for decision-making and considers that its divulgence would have less harmful a consequence than that resulting from a breach of competition rules.

The Chairman of the Council may in any case ask the parties or the examiners to provide a non-confidential version of the documents the communication of which would adversely affect trade secrets.



The merits of the Competition Council's decision shall not rest on documents that have been removed from the file.

The parties shall submit their written observations to the Council.

The Council shall do likewise if the report contains a proposal to close the file.

The Council shall notify the Competition Commission of any case submitted to it by an examiner on receipt of the latter's report. It shall in addition communicate the names of the undertakings whose activities or concentration have been investigated together with the provisions of the Act on which the file is based.

§ 2. The Council shall investigate every case at the hearing. It shall hear the undertakings whose activities have been investigated as well as the complainant at his request.

The Council shall hear any natural or legal person where it considers it necessary.

If natural or legal persons showing a sufficient interest ask to be heard, their request shall be honoured. In the economic sectors controlled or supervised by a public body or another specific public institution, such bodies and institutions shall be regarded as showing a sufficient interest. The Minister shall in any event be deemed to show a sufficient interest.

Failure of the parties summoned or of their representatives to appear shall not affect the validity of the proceedings.

The Competition Council may request the examiner to file a supplementary report the content of which it shall specify. The examiner shall, if need be, carry out a supplementary investigation. The report shall be communicated to the parties by the examiner and filed with the Competition Council.

The examiner shall on receipt of the report submit his comments on any written observations submitted by the parties.

A decision or a Ministerial Decree shall in any event be issued within six months of the filing of the report provided for by Article 24, § 3 or § 4, and Article 29, with the Council. This period shall also apply where the report contains a proposal to close the file.

§ 3. The King shall determine the rules of procedure before the Council as well as the conditions under which copies may be obtained.

## Art. 28

§ 1. The King may also, after consultation with the Competition Council and the Competition Commission, declare by decree that Article 2, § 1 shall not apply to categories of agreements, decisions or concerted practices.

The King may also issue such a decree at the request of the Competition Council. He shall in particular do so if He receives a reasoned proposal for regulation from an examiner. The King shall request the opinion of the Competition Council.

The Competition Office or, in the event referred to in Article 24, § 3, the examiner shall, at the end of the investigation, submit a report containing the proposal for regulation by Royal Decree to the Council for its opinion.

The decree shall be reasoned. It shall be deliberated on in the Council of Minister where it differs from the opinion or request of the Competition Council.

§ 2. The Royal Decree shall include a definition of the categories of agreements, decisions and concerted practices to which it applies and shall in particular specify :

- the restrictions or the subparagraphs that shall not be featured in them;
- the subparagraphs that shall be featured in them or the conditions that shall be fulfilled.

This Royal Decree shall be issued for a limited period. It may be repealed or amended where circumstances have changed with regard to a factor that was essential for its enactment; in such event, provision shall be made for transitional measures relating to agreements, decisions and concerted practices referred to in the previous decree.

#### Art. 29

§ 1. In case of application of Article 2, § 3, the Competition Council may, on receipt of the examiners' report, declare by reasoned decision that the agreements, decisions or concerted practices are exempted from the prohibition provided for by Article 2, § 1 on a case-by-case basis.

§ 2. Conditions and obligations may be attached to the exemption provided for by § 1; this exemption shall be granted for a specified period and may be renewed on request if the conditions for the application of Article 2, § 3 continue to be fulfilled.

The Council may revoke or modify the exemption where :

- a) there has been a change in any of the facts which were basic to the making of the decision;
- b) the interested parties commit a breach of a condition or obligation attached to the decision;
- c) the decision is based on inaccurate information or was induced by deceit;
- d) the interested parties abuse the exemption granted to them.

§ 3. Where the Council makes a decision under Article 2, § 3, it shall state the date from which the decision shall take effect. Such date shall not be prior to the date of notification.

#### Art. 30

In case of application of Article 6, the Competition Council may on receipt of the examiners' report declare by reasoned decision that there is no reason to take action on the ground of the factors within its knowledge.

#### Art. 31

On receipt of the examiner's report the Competition Council may by reasoned decision establish :

1. the existence of a restrictive competitive practice and, if necessary, order an injunction against it in accordance with the procedures it shall lay down;
2. the non-existence of a restrictive competitive practice.

#### Art. 32

If the agreement, decision or concerted practice that has been investigated is the subject of an exemption under Article 85, § 3 of the Treaty establishing the European Economic Community or under this Act, the Council shall note it and close the file.

### Section 5bis

#### *Investigation of concentrations*

#### Art. 32bis

§ 1 . The Competition Council shall without delay transmit notifications of concentrations made by virtue of Article 12 to the Corps of Examiners for investigation. The examiner appointed by the Corps of Examiners shall investigate the case on receipt of the notification referred to in Article 12 or, where the information to be supplied is incomplete, on receipt of the complete information.

§ 2. The examiner shall submit the file and his reasoned report to the Competition Council. The reasoned report shall contain the factors allowing the Competition Council to make a reasoned decision.

§ 3. The examiner shall, at least 15 days before the date of the hearing at which the Council will investigate the case, send a copy of his report to the undertakings whose concentration is the subject of the investigation and to the representatives of the organisations that are the most representative of the workers of those undertakings or the persons appointed by them; he shall inform them that they may consult the file at the Secretariat and take a copy of it against payment.

#### Art. 32ter

The Chairman of the Competition Council may, on his own initiative or at the request of the interested undertakings, refuse to communicate documents the disclosure of which would adversely affect trade secrets. In such event these documents shall be removed from the file.

By way of derogation from the previous subparagraph, the Chairman of the Council may not remove a document from the file if he deems it necessary for decision-making and considers that its divulgence would have less harmful a consequence than that resulting from a breach of competition rules.

A refusal by the Chairman of the Council to remove documents from the file shall be the subject of a reasoned decision in which the Chairman of the Council shall explain why he deems the documents necessary for decision-making and why divulging them would have less harmful a consequence than that resulting from a breach of competition rules and why he does not consider that he should acknowledge the confidential nature of the documents.

The Secretary of the Council shall inform the interested undertakings of such reasoned decision.

The Chairman of the Council may in any case request the parties or the examiners to provide a non-confidential version of the documents the communication of which would adversely affect trade secrets.

The merits of the Competition Council's decision shall not rest on documents that have been removed from the file.

## **Section 5ter**

### *Decisions on concentrations*

#### Art. 32quater

§ 1. The Council shall investigate every case at the hearing. It shall hear the undertakings party to the concentration.

The Council shall hear any natural or legal person where it considers it necessary.

§ 2. If natural or legal persons showing a sufficient interest ask to be heard, their request shall be honoured.

In the economic sectors controlled or supervised by a public body or another specific public institution, such bodies and institutions shall be regarded as showing a sufficient interest.

The members of the administration or management organs of the undertakings engaged in the concentration and the representatives of the organisations that are the most representative of the workers of such undertakings or the persons appointed by them shall be regarded as showing a sufficient interest. In such event they shall get access to the file pursuant to the provisions of Article 32bis, § 3.

The Minister may send the Council a note in which he sets out the elements of the file concerned which relate to general policy and those which may influence general economic competition policy. The filing of such note shall not confer upon him the status of party to the case.

Failure of the parties summoned or of their representatives to appear shall not affect the validity of the procedure.

§ 3. The King shall determine the rules of procedure before the Council and the conditions under which copies may be obtained.

#### Art. 33

§ 1. Where the investigation is connected with a concentration, the Competition Council may, by reasoned decision, establish :

1. either that the concentration falls within the scope of this Act;
2. or that it does not fall within the scope of this Act.

§ 2. 1. If the concentration falls within the scope of this Act, the Competition Council may by reasoned decision :

- a) either decide that the concentration should be declared permissible. The notifying parties may, until such time as the Competition Council makes its decision, modify the terms of the concentration. In such event the decision on permissibility shall concern the concentration as thus modified. Where the undertakings concerned control together less than 25 % of the market in question, the concentration shall be declared permissible;
- b) or establish that there are serious doubts about the permissibility of the concentration and decide to initiate the procedure provided for by Article 34.

2. The decisions of the Council referred to in Point 1 above must be communicated within a maximum period of forty-five days pursuant to Article 32ter, § 1.

The examiner shall file his report within a maximum period of one month. These periods shall run from the day following the date of receipt of the notification or, if the information to be supplied in the notification is incomplete, from the day following the date of receipt of the complete information.

3. The concentration shall be deemed permissible if the Competition Council has not made a decision within the 45-day period.

§ 3. The King may, after consultation with the Competition Council, modify the periods referred to in § 2 and Article 34, § 1.

He may also determine the conditions of suspension of said periods:

- 1) in the event that the notification does not meet the conditions laid down in Article 12, § 3;
- 2) in the event that it proves necessary to translate particular documents.

The period referred to in § 2 of this Article may be extended only at the express request of the parties and for no longer than the time proposed by them.

#### Art. 34

§ 1. If, pursuant to Article 33, § 2.1, b), the Competition Council decides to initiate the procedure, the examiner shall submit a supplementary report to the Competition Council.

On receipt of this report, the Council shall send a copy of it to the parties by virtue of Article 32bis, § 3.

The decisions of the Competition Council on the permissibility of the concentration shall be made within, at the latest, 60 days of the decision to initiate a procedure. Conditions and obligations may be attached to the decision.

The concentration shall be deemed to be the subject of a favourable decision if the Competition Council has not made a decision within the 60-day period.

§ 2. Where the Competition Council establishes in its decision that the concentration is not permissible, it shall order the demerger of the undertakings or grouped assets, the end of joint control or any other appropriate measure with a view to restoring effective competition.

§ 3. The period referred to in § 1 of this Article shall be extended only at the express request of the parties and for no longer than the time proposed by them.

#### Art. 34bis

Within thirty days of the notification of the decision of the Competition Council, the Council of Ministers may authorise a concentration for reasons of general interest that prevail over the risk of distorting competition as established by the Competition Council. In such event, the Council of Ministers may also totally or partially lift any conditions or obligations laid down by the Competition Council.

The Council of Ministers shall, in its assessment and reasoning, notably take account of the general interest, national security, the competitiveness of the sectors involved with regard to international competition as well as the interests of consumers and employment.

The Council of Ministers shall take a decision *proprio motu* or at the request of the notifying undertakings.

The decision of the Council of Ministers shall be made within thirty days of the notification of the decision of the Competition Council. In the absence of such decision within this period, the Council of Ministers shall be deemed not to grant authorisation.

### Section 6

#### *Temporary measures*

#### Art. 35

§ 1. The Chairman of the Competition Council may, at the request of the complainant or of the Minister, take temporary measures intended to suspend the restrictive competitive practices being investigated where it is urgent to avoid a situation that may lead to serious, imminent and irreparable damage to the undertakings whose interests are affected by such practices or harm the general economic interest.

The Chairman of the Council shall transmit the request for the taking of temporary measures to the Corps of Examiners, which shall submit a reasoned report stating the measures they deem necessary in order to suspend the practices referred to in subparagraph 1. Such report shall be submitted to the Chairman within a period set by him.

§ 2. The Chairman of the Council shall, by reasoned decision, determine whether there is reason to take temporary measures.

Before the Chairman makes such decision, the parties may consult the report and shall have the opportunity to be heard by the Chairman.

### Section 7

#### *Fines and penalty payments*

#### Art. 36

§ 1. In the event of application of Article 31, §1, the Council may impose on each of the undertakings concerned fines not exceeding 10 % of their turnover determined in accordance with the criteria laid down in Article 46. The Council may also, by the same decision, impose penalty payments for non-compliance with its decision on a daily basis of maximum BEF 250,000 per undertaking concerned. These fines shall not be imposed in the event of application of Article 31, 1, in respect of the practices referred to in Article 5, § 1.

§ 2. Such fines and penalty payments may also be imposed in the event of application of Article 29, § 2, b), c), and d) and in the event of failure to comply with the decisions referred to in Articles 33 and 34.

#### Art. 37

§ 1. The Competition Council may impose on individuals, undertakings and associations of undertakings fines of from BEF 20,000 to BEF 1,000,000 where they, either deliberately or negligently,

- a) provide inaccurate or distorted information when making notification or a request for information;
- b) supply incomplete information;
- c) do not provide the information within the specified time-limit;
- d) prevent or impede the investigations provided for by Article 23 as well as the inquiries referred to in Article 26.

§ 2. The same fines may be imposed in the event that an undertaking has put a concentration into effect without prior notification as provided for by Article 12, even if it appears that the concentration is permissible.

#### Art. 38

In the event of infringement of Article 12, § 4, the Competition Council may impose the fines referred to in Article 36, § 1.

It may also, in the event of the application of Article 33, § 4, impose the penalty payments referred to in Article 36, § 1.

#### Art. 39

The fines provided for by Article 36, § 1 shall not be imposed in respect of acts taking place after the notification provided for by Article 7, § 1, and before the decision by which the application of Article 2, § 3 is granted or refused provided they fall within the limits of the activity described in the notification.

#### Art. 40

The Chairman of the Council may impose the penalty payments referred to in Article 36, § 1 in order to ensure compliance with the temporary measures that he has taken pursuant to Article 35 as well as compliance with the decision referred to in Article 23, § 2.

### **Section 7bis**

#### *Publication and notification*

##### **Art. 40bis**

The decisions of the Competition Council and of its Chairman shall be notified to the parties, the complainants and to the Minister by registered letter with acknowledgement of receipt.

The letter of notification shall, on pain of invalidity, indicate the period for appeal and the rules of procedure for the exercise of the right of appeal. The letter shall include in its appendix the name, position and address of the parties to whom the decision has been notified.

The Secretariat of the Competition Council shall notify the decisions.

##### **Art. 41**

§ 1. The Competition Council shall, on receipt, communicate any notification of a concentration to the Belgian Official Gazette for publication in the form of an abstract. This publication shall include the names of the undertakings which are party to the concentration.

§ 2. The decisions of the Competition Council or of its Chairman, including those referred to in sections 5 to 7 of this Chapter, shall be published in the Belgian Official Gazette and shall be notified by the Secretariat of the Competition Council to the undertakings whose activities have been investigated and, if need be, to the complainant.

The decisions of the Court of Appeal in Brussels, of the Council of Ministers and of the Council of State shall be published in the Belgian Official Gazette and shall be notified to the parties.

The decisions referred to in Articles 33, § 2, and 34, § 1 of this Act, including the decisions and judgements referred to in Sections 5ter and 7 of this Chapter, as well as the opinions according to which the concentration shall, in default of a decision, be deemed authorised, shall be published in the Belgian Official Gazette and shall be notified to the parties involved in the concentration.

The decisions referred to in the preceding subparagraphs shall mention the parties to whom notification shall be made.

The decisions provided for by the previous subparagraphs shall, without delay, be communicated to the Competition Commission in the form intended for publication in the Belgian Official Gazette.

Publication and communication shall take account of the legitimate interest of undertakings in not having their business secrets divulged.

The notification and the publication of the decision of the Competition Council or of its Chairman shall state that it is open to appeal before the Court of Appeal in Brussels within thirty days of its publication in the Belgian Official Gazette.



The notification and the publication of the decision of the Council of Ministers relating to a concentration, shall state that it is open to appeal at the Council of State, where it is final, within 30 days of the publication of the final decision in the Belgian Official Gazette. The decisions according to which a concentration falls within the scope of this Act and those that provide for the initiation of the procedure referred to in Article 34 shall not be deemed final for the purpose of the appeal procedure.

The notifications provided for by this Act shall, according to the cases, be made by the Secretariat of the Council or by the Minister, by registered letter with acknowledgement of receipt.

## Section 8

### *Questions referred for a preliminary ruling to the Court of Appeal in Brussels by Courts and Tribunals*

#### Art. 42

The Court of Appeal in Brussels shall by way of a judgement give preliminary rulings on questions relating to the legality of a competitive practice within the meaning of this Act.

#### Art. 42bis

§ 1. Where the settlement of a dispute depends on the legality of a competitive practice within the meaning of this Act, the court to which the case has been submitted, with the exception of the Court of Cassation, shall stay judgement and refer the matter to the Court of Appeal in Brussels.

§ 2. However, this court shall not be obliged to do so where the action is inadmissible for procedural reasons based on standards that do not themselves form the subject of the reference for a preliminary ruling.

Neither shall the court be obliged to do so where :

- 1) the Court of Appeal has already ruled on a question or appeal having the same subject;
- 2) it considers that there is no need to answer the question referred for a preliminary ruling in order to come to a decision;
- 3) the competitive practice is clearly legal within the meaning of this Act.

The decision of the judge as to whether or not to refer a question for a preliminary ruling shall not be open to appeal.

§ 3. The Registrar of the Court of Appeal in Brussels shall without delay bring the question referred for a preliminary ruling to the knowledge of the parties and invite them to make any written comments within a month.

§ 4. The Competition Council, the examiners and the Minister may each lodge their written comments with the Court of Appeal in Brussels. They may consult the file on the spot.

The Court may rephrase the question referred for a preliminary ruling. It shall give a reasoned decision that shall not be open to appeal. The Court shall rule like in the course of an interim relief procedure.

§ 5. The court which referred the question for a preliminary ruling as well as any court considering the same matter, with the exception of the Court of Cassation, shall comply with the judgement of the Court of Appeal in Brussels in settling the dispute to which the question relates.

§ 6. The Registrar of the competent court shall without delay communicate any judgement made or order issued by a court or tribunal relating to a dispute questioning the legality of a competitive practice within the meaning of this Act to the Competition Office and the Competition Council within eight days.

The Registrar shall also without delay inform the Competition Office and the Competition Council of the appeals lodged against any judgement or order referred to in the preceding subparagraph.

## **Section 9**

### *Appeals*

#### Art. 43

The decisions of the Competition Council and of its Chairman may be subject to appeal before the Court of Appeal in Brussels.

#### Art. 43bis

§ 1. The decisions by which the Competition Council remits the matter to the examiner and those by which the Chairman of the Council removes items from the file shall not be subject to a separate appeal.

§ 2. The appeals provided for by Article 43 may be lodged by the parties involved before the Council, by the complainant or by any person showing an interest who has asked to be heard by the Council. An appeal may also be lodged by the Minister without his showing any interest.

On pain of automatic inadmissibility, appeals shall be lodged by means of a signed application with the Registrar's Office of the Court of Appeal in Brussels within thirty days of the notification of the decision and, so far as third parties are concerned, within thirty days of its publication.

On pain of inadmissibility the application shall include :

- 1) the day, month and year;
- 2) if the applicant is a natural person, his surname, forenames, occupation and domicile; if the applicant is a legal person, its name, form, registered office and its representative organ; if the appeal is lodged by the Minister, the name and address of the department representing him;
- 3) a mention of the decision against which appeal is made;
- 4) a summary of arguments;
- 5) the place, date and time for appearance in court set by the Registrar of the Court of Appeal;
- 6) an inventory of written evidence and supporting documents lodged with the Registrar, besides the application.

Within five days of the lodging of the application the applicant shall, on pain of inadmissibility of the appeal, send a copy of the application by registered letter with acknowledgement of receipt to the parties to whom the contested decision has been notified, as appears from the letter of notification referred to in Article 40bis, to the Competition Council and to the Minister, if he is not the applicant.

An incidental appeal may be lodged. It shall be admissible only if it is lodged within one month of the receipt of the letter referred to in the previous subparagraph.

The Court of Appeal in Brussels may proprio motu and at any time implicate persons who were parties before the Competition Council when the substantive appeal or the incidental appeal may affect their rights or obligations.

The Court of Appeal in Brussels shall set the period within which the parties shall exchange their written observations and submit a copy to the Registrar's Office. It shall also set the date of the proceedings.

The Competition Council and the Minister may each submit their written observations to the Registrar's Office of the Court of Appeal in Brussels and consult the file on the spot at the Registrar's Office. The Court of Appeal in Brussels shall fix the periods for submitting such observations. They shall be brought to the knowledge of the parties by the Registrar's Office.

§ 3. The Registrar's Office of the Court of Appeal in Brussels shall, within five days after the case has been entered in the list, request the Secretariat of the Competition Council, to send the file relating to the proceedings. This shall be transmitted within five days of the receipt of the request. The Minister shall determine the means by which the file shall be transmitted.

§ 4. Appeals shall not suspend the decisions of the Council or of its Chairman.

The Court of Appeal may, at the request of the party concerned and by interlocutory decision, suspend the obligation to pay fines and penalty payments until the judgement is pronounced. The Court of Appeal may, where appropriate, order the refund of the amount of fines and penalty payments paid to the party concerned; it may also not immediately decide on the refund of penalty payments or fines paid where that decision is based on the merits of the case.

#### Art. 43ter

§ 1. The decisions of the Council of Ministers on concentrations may be the subject of an action for annulment before the Council of State.

The appeal shall be lodged to the Registrar's Office of the Council of State by means of an application within thirty days of the notification or the publication in the Belgian Official Gazette referred to in Article 41, § 2, subparagraph 3.

§ 2. On pain of nullity, the application shall include :

- 1) the day, month and year;
- 2) the surname, forenames, occupation and domicile of the applicant where a natural person is involved as well as his trade or craft industry registration number, where appropriate;

- 3) where a legal person is concerned, its name, form, registered office and the name and position of the person or organ representing it as well as its trade registration number, where appropriate;
- 4) a mention of the decision against which the appeal is made;
- 5) where appropriate, the surnames, forenames, domicile or, in default thereof, the residence, or the name, form and registered office of the parties to whom the decision had to be notified;
- 6) a mention of the objections;
- 7) the signature of the applicant or his lawyer.

§ 3. Appeals shall not suspend the contested decisions.

The Minister may, on behalf of the Council of Ministers, submit his written comments to the Council of State. He may consult the file on the spot at the Registrar's Office of the Council.

The Council of State shall postpone all other cases and shall decide on concentration matters.

In these matters, the Council of State shall control the legality of the decisions against which the appeal has been lodged.

In the event of the contested decision being annulled, the Council of Ministers shall have another period within which to make a decision. This period shall be equivalent to that provided for by Article 34bis. It shall run from the notification of the annulment judgement of the Council of State.

The rules of procedure before the administrative section of the Council of State shall apply in the other cases. The King may depart from the rules of procedure by Decree deliberated on in the Council of Ministers.

## CHAPTER IV

### Penal provisions

#### Art. 44

The use and disclosure of documents or information received in pursuance of the provisions of this Act for purposes other than the application of this Act shall be punished by a fine of from BEF 100 to BEF 10,000 and by imprisonment of from two months to five years or by only one of these penalties.

Any breach of Article 23, § 3, Subparagraph 6, or of the Decree referred to in Article 51 shall also be punished by a fine of from BEF 100 to BEF 10,000 and by imprisonment of from two months to five years or by only one of these penalties.

#### Art. 45

The provisions of the first Book of the Code of Criminal Law, including Chapter VII and Article 85 shall apply to the infringements referred to in Article 44.

## CHAPTER V

### Other provisions

#### Art. 46

§ 1. The turnover referred to in Articles 5 and 36 shall be the aggregate turnover achieved in the previous financial year in the domestic and export markets. It shall be as defined under the Royal Decree of 8 October 1976 on Annual Accounts of Undertakings as amended by the Royal Decree of 6 March 1990.

The turnover referred to in Article 11 is the aggregate turnover achieved in Belgium in the preceding financial year. It shall be as defined under the Royal Decree of 6 March 1990 on Consolidated Accounts of Undertakings.

§ 2. By way of derogation to § 1, where a concentration consists in the acquisition of parts - whether or not constituted as legal entities - of one or more undertakings or a group of undertakings, only the turnover relating to the parts which are the subject of the transaction shall be taken into account with regard to the seller or sellers.

However, two or more transactions within the meaning of Subparagraph 1, which take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the last transaction.

§ 3. In place of turnover the following shall be used :

- a) for banks, credit institutions, and other financial institutions, one tenth of their total assets;
- b) for insurance undertakings, the value of the gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on the behalf of the insurance undertakings, including also outgoing reinsurance premiums and after deduction of taxes and parafiscal contributions charged by reference to the amounts of individual premiums or the total volume of premiums.

§ 4. With regard to the application of Articles 11 and 36, and without prejudice to § 2 of this Article, the turnover of each of the undertakings concerned shall be calculated by adding together the respective turnover of all the undertakings belonging to the same group.

Connected undertakings within the meaning of the Royal Decree of 8 October 1976 on the Annual Accounts of Undertakings as amended by the Royal Decree of 6 March 1990 shall be deemed to belong to the same group.

§ 5. As for the public undertakings referred to in Article 47, the turnover to be taken into account shall be that of all the undertakings making up an economic unit with an independent power of decision irrespective of the way in which their capital is held or of the rules of administrative supervision applicable to them.

#### Art. 47

Public companies and those to which public authorities grant special or exclusive rights shall be subject to the provisions of this Act inasmuch as these provisions do not impede the performance in fact or in law of the specific functions assigned to those undertakings by virtue of the law.

#### Art. 48

§ 1. The investigation referred to in Article 23 shall only be connected with facts going back no longer than five years. This period shall run from the date of the decision of the Competition Office to carry out an investigation proprio motu or from the date on which the matter is submitted to the Office pursuant to Article 23, § 1.

§ 2. The term of limitation for the investigation and decision-making procedures shall be five years from the date referred to in § 1.

The term of limitation shall be interrupted only by evidence-taking and decision-making within the period specified in the preceding subparagraph; these acts shall cause a new term of equal length to run.

§ 3. The term of limitation with regard to fines and penalty payments shall be five years from the date of the notification provided for by Article 41.

The term of limitation with regard to fines and penalty payments shall be interrupted only by recovery measures taken within the period specified in the preceding subparagraph; these acts shall cause a new term of equal length to run.

#### Art. 49

§ 1. The examiners and the Competition Office shall carry out, within the undertakings, assistance, verification and other duties in reviewing compliance with the competition rules provided for by the treaties of the European Communities.

§ 2. The examiners and officers appointed for this purpose shall have the same powers and obligations as those of the authorised officers referred to in Article 23 of this Act.

#### Art. 50

Notwithstanding the provisions of Article 44,

- a) the Competition Office may communicate the documents and information in its possession to the competent authorities with regard to the application of Articles 8 and 9 of the Treaty Establishing the BENELUX Economic Union and of Articles 10 and 11 of the Memorandum of Implementation attached thereto, and to the relevant Community authorities by virtue of Article 89 of the Treaty Establishing the European Economic Community;
- b) within the framework of the reciprocal agreements providing for mutual assistance as regards competitive practices, the Competition Office may also communicate the documents and information indispensable to the competent foreign competition authorities.

## Art. 51

Without prejudice to the provisions of the Act of 27 March 1969 on the Regulation of Maritime and Air Transport, the King may, by decree deliberated on in the Council of Ministers and after consultation with the Competition Council and the Competition Commission, take measures, save for the exceptions determined by Him, to forbid undertakings to transmit unpublished information or documents pertaining to their competitive practices to a foreign State or to a body under its authority.

## Art. 52

If an undertaking fails to pay a fine or penalty payment, the decision of the Competition Council or its Chairman or the decision of the Court of Appeal in Brussels having the effect of a final judgement shall be notified to the Value Added Tax, Registration and Property Department with a view to levying an administrative fine.

The legal proceedings to be initiated by the above-mentioned department shall be carried out pursuant to Article 3 of the Property Act of 22 December 1949.

The King shall determine the periods and methods of payment of the fines and penalty payments referred to in Articles 36, 37, 38 and 40.

## Art. 53

Where the Belgian authorities, in applying Article 88 of the Treaty Establishing the European Economic Community, have to rule on the permissibility of agreements between undertakings and on the abuse of a dominant position in the Common Market, the decision shall be made by the authorities referred to in this Act pursuant to Articles 85, § 1 and 86 of the Treaty in compliance with the procedure and penalties provided for by this Act.

## Art. 54

The costs arising from the application of this Act shall be borne by the Ministry of Economic Affairs.

The King may, by decree deliberated on in the Council of Ministers, lay down the list of procedural documents, including the investigation measures the costs of which shall be borne by the notifying parties or the parties who have committed a breach of this Act.

The King may, by decree deliberated on in the Council of Ministers, provide for the payment of a tax on the following administrative acts, the amount of which He shall set :

- 1) the registration and processing of an application for negative clearance referred to in Article 6;
- 2) the registration and processing of an application for individual exemption pursuant to Article 2, § 3, notified by virtue of Article 7 of this Act.

The King may, by decree deliberated on in the Council of Ministers, determine the amount, conditions and methods of collection of the payments covering the costs and taxes provided for by the preceding subparagraphs.

## Art. 54bis

The Language Use Act of 15 June 1935 shall apply to the procedures provided for by this Act.

## CHAPTER VI

**Final provisions**

## Art. 55

The King may coordinate the provisions of this Act as well as the provisions which expressly or implicitly modify them at the time of the coordination.

For this purpose He may, in particular :

- 1) modify the order, numbering and general layout of the provisions to be coordinated;
- 2) modify the references contained in the provisions to be coordinated so that they tally with the new numbering;
- 3) modify the phrasing of the provisions to be coordinated with a view to providing consistency and harmonising their terminology without any breach of the principles incorporated therein.

The title of the coordinated text shall be determined by the King.

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