

Royal Decree of 15 March 1993 relating to the Procedure for the Protection of Economic Competition (Belgian Official Gazette, 1 April 1993), as amended by the Royal Decrees of 22 January 1998 (Belgian Official Gazette, 24 April 1998), 11 March 1999 (Belgian Official Gazette, 19 May 1999) and 28 December 1999 (Belgian Official Gazette, 1 February 2000)

Unofficial coordination

CHAPTER I. - Definitions.

Article 1. - For the purpose of this Decree, the following definitions shall apply :

- Act : the Act on the Protection of Economic Competition, coordinated on 1 July 1999;
- Office : the Competition Office referred to in Article 14 of the Act;
- Corps : the Corps of Examiners established by the Act;
- Council : the Competition Council established by the Act.

CHAPTER II. - Procedure before the Office and the Corps

Art. 2.- Pursuant to Article 24, § 3 of the Act, the examiner appointed by the Corps shall summon the interested undertakings or associations of undertakings so that they can submit their comments on a date set by him.

A minimum period of fifteen days shall elapse between the communication of any objections by the examiner and the date fixed.

Art. 3.- Undertakings or associations of undertakings summoned shall appear in person or be represented by legal representatives, by representatives authorised in their Constitution or by representatives specially appointed for that purpose. They may be assisted by a counsel.

Art. 4.- Undertakings or associations of undertakings summoned to appear shall lodge ten copies of their written comments with the examiner appointed by the Corps no later than the day before their appearance.

Art. 5.- Failure of said undertakings or associations of undertakings to appear shall not affect the validity of the procedure.

Art. 6.- § 1. After the appearance, the examiner appointed by the Corps shall draw up a record

stating the name and capacity of the persons attending.

The written comments of the parties shall be annexed thereto.

§ 2. If the undertakings or associations of undertakings summoned fail to appear or do not submit any written comments, this fact shall be set down in the record.

§ 3. The record and the annexes shall be attached to the reasoned report submitted to the Council by the examiner appointed by the Corps in pursuance of Article 24, § 4 of the Act.

Art. 7.- Undertakings or associations of undertakings shall be heard separately or in the presence of other undertakings or associations of undertakings summoned. In the latter case, account shall be taken of the legitimate interest of undertakings or associations of undertakings in not having their business secrets divulged.

Art. 8. The provisions of Articles 3, 6, § 1 and § 3 and 7 of this Decree shall *mutatis mutandis* apply to summonses other than those referred to in Article 24, § 3 of the Act that are sent by the examiner appointed by the Corps or the Office to interested undertakings or associations of undertakings, the complainant or any other natural or legal person.

CHAPTER III. - Procedure before the Council.

Art. 9.- § 1. If the undertakings or associations of undertakings whose activities have been under investigation wish to submit written comments in response to the report of the examiner appointed by the Corps, they shall lodge such comments at the latest 15 days before the day of the hearing before the Council.

This period shall be reduced to two working days if the procedure relating to concentrations referred to in Sections 5bis and 5ter of Chapter III of the Act is applied.

§ 2. Interested undertakings or associations of undertakings may in their comments set out all the arguments and facts relevant to their defence and attach any relevant documents as proof of the facts set out. They may also propose that the Council hear persons who may corroborate these facts.

Art. 9bis. If, pursuant to Article 32quater, § 2, subparagraph 4 of the Act, the Minister intends to address a note to the Council, he shall lodge it within the periods provided for by Article 9 of this Decree.

Art. 10.- In order to be heard under Article 27, § 2 of the Act, the complainant and the natural or legal persons considering that they show a sufficient interest or the Minister shall submit an application to the Secretary of the Council providing their name, capacity and, where appropriate, evidence of their interest.

The same procedure shall apply to natural and legal persons applying to be heard by virtue of Article 32quater, § 2, subparagraph 1 of the Act.

Art. 11.- The Council or a member appointed by it for that purpose shall decide on the admissibility of applications to be heard from natural or legal persons considering that they show a sufficient interest.

Art. 12.- Persons referred to in Article 10 of this Decree whose application to be heard is admissible shall file their written comments with the Secretary of the Council no later than the day before the hearing to which they are summoned.

Art. 13.- § 1. The Council shall summon the persons to be heard on the date set by it.

§ 2. Persons to be heard shall appear as provided for by Article 3 of this Decree.

Art. 14.- Eight copies of the note from the Minister and of the written comments of interested undertakings or associations of undertakings or of persons whose application to be heard has been deemed admissible shall be addressed to the Secretary of the Council. Where necessary, interested parties shall be requested to produce additional copies.

The Secretariat of the Council shall without delay transmit a copy of the written comments to the examiner appointed by the Corps so that he has the opportunity to submit comments.

Art. 15.- Hearings shall not be open to the public. Natural or legal persons shall be heard separately or in the presence of other persons summoned. In the latter case, account shall be taken of the legitimate interest of undertakings or associations of undertakings in not having their business secrets divulged.

Art. 16.-[...]

CHAPTER IV. - Procedure before the Chairman of the Council.

Art. 17.- § 1. The request for the taking of temporary measures as provided for by Article 35, § 1 of the Act, may be submitted at any time during the procedure. It shall be reasoned.

Such request shall be addressed to the Chairman of the Council, who shall without delay transmit it to the Corps of Examiners, which shall submit a reasoned report stating the measures it deems necessary in order to suspend the restrictive competitive practices being investigated and against which the temporary measures are directed. Such report shall be

submitted to the Chairman within a period set by him.

The Chairman of the Council shall also inform the undertakings or associations of undertakings against which temporary measures are requested.

§ 2. The Secretariat of the Council shall without delay acknowledge by registered letter to the parties receipt of their request for the taking of temporary measures, indicating the registration number and the date on which it is transmitted to the Corps.

Art. 18.- § 1. As soon as the report of the Corps is submitted to the Chairman of the Council pursuant to Article 35, § 1 of the Act, the latter shall advise the parties that they may consult it at the Secretariat of the Council and shall set the date on which they can be heard.

The Chairman of the Council shall see to the confidentiality of the facts contained in the report.

The parties shall confirm their attendance at the hearing by return of post.

§ 2. The parties shall appear as provided for by Article 3.

Art. 19.- The hearing shall take place in accordance with the provisions of Article 15.

Art. 20.- § 1. In case of application of Article 23, § 2.3 of the Act, combined with Article 40 of said Act, the Chairman of the Council shall fix the date on which undertakings or associations of undertakings can be heard.

If undertakings or associations of undertakings wish to be heard, they shall confirm their attendance at such hearing by return of post.

§ 2. Undertakings or associations of undertakings shall appear as provided for by Article 3.

CHAPTER V. - Provisions on time limits.

Art. 21.- § 1. The time limit referred to in Article 33, § 2.3 of the Act shall run from the day after the receipt of the notification or, if the information to be supplied in the notification is incomplete, from the day after the receipt of the complete information.

§ 2. The time limit referred to in Article 34, § 1 of the Act shall run from the date of the decision to initiate the procedure.

§ 3. If the first day of the time limit is a Saturday, Sunday or one of the days mentioned in Article 23 of this Decree, the time limit shall run from the following working day.

Art. 22.- If the last day of the time limit is a Saturday, Sunday or one of the days set out in Article 23 of this Decree, the time limit shall end at the expiration of the following working day.

Subparagraph 1 shall apply subject to the conditions determined in Article 23 of this Decree.

Art. 23.- § 1 . If the days referred to in § 2 of this Article fall within the time limits provided for by Articles 33 and 34 of the Act, such time limits shall be extended with the corresponding number of days.

§ 2. The days referred to in § 1 shall be :

- 1 January;
- the first working day of the year;
- Easter Monday;
- 1 May;
- Ascension Day;
- Whit Monday;
- 21 July;
- 22 July;
- 15 August;
- 1 November;
- 2 November;
- 11 November;
- 15 November;
- from 25 December to 31 December;
- the closing dates set by the Minister in charge of the Civil Service or the Minister in charge of the Economy.

Art. 24.- § 1. Without prejudice to Article 23, § 2.3 of the Act, the time limits referred to in Article 33, § 2 and Article 34, § 1 of the Act, shall also be suspended where the examiner appointed by the Corps or the Council considers that items in the file need to be translated.

§ 2. The suspension of the time limit shall begin on the day following that on which the event causing the suspension occurred. It shall end with the expiry of the day on which the reason for suspension is removed, except in so far as provided for in Article 23, § 2.3 of the Act. Where such day is a Saturday, Sunday or one of the days referred to in Article 23 of this Decree, the suspension shall end with the expiry of the following working day.

Art. 25.- The time limits referred to in Articles 33, § 2 and 34, § 1 of the Act shall be met with where the Council has taken its decision before the end of the period.

The time limits referred to in Article 34, § 1 may be extended only at the express request of the parties and for no longer than the time proposed by them.

CHAPTER VI. - Miscellaneous Provisions.

Art. 26.- § 1. Unless otherwise provided, documents and summonses to appear before the Office, the Corps, the Council or the Chairman of the Council shall be sent to the recipient by one of the following means :

- a) by courier against acknowledgement of receipt;
- b) by registered letter with acknowledgement of receipt;
- c) by fax with a request for acknowledgement of receipt.

§ 2. § 1 of this Article shall equally apply to the communication of documents to the Office, the Corps, the Council or the Chairman of the Council.

§ 3. In the event of transmission by fax, a document shall be presumed to have reached its recipient on the day of dispatch.
