

Belgian Act on the Protection of Economic Competition (APEC)
consolidated on the 15th of September 2006 (Belgian Official Gazette 29/9/2006)
and amended by the act of 6/5/2009 (Belgian Official Gazette 19/5/2009).⁽¹⁾

Annex I

Act on the protection of economic competition,
consolidated on the 15th September 2006.

CHAPTER I. – *Definitions*

Article 1. For the purposes of this act, the following definitions shall apply:

- 1° undertaking: any natural or legal person engaged in an economic activity on a permanent basis;
- 2° dominant position: the position enabling an undertaking to impede effective competition by giving it the ability to behave independently to a significant extent of its competitors, customers or suppliers;
- 3° minister: the Minister with responsibility for Economic Affairs;
- 4° Belgian Competition Authority: the Competition Council and the Directorate-General for Competition established within the Federal Public Service Economy, each acting in accordance with its powers defined in this act.

The Belgian Competition Authority is the competition authority responsible for the application of articles 81 and 82 of the Treaty establishing the European Community, referred to in article 35 of Council Regulation (EC) n° 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in articles 81 and 82 of the Treaty.

CHAPTER II. – *Anti-competitive practices*

Section 1. – Anti-competitive practices

Art. 2. § 1. Without the need for a prior decision to that effect, all agreements between undertakings, all decisions by associations of undertakings and all concerted practices, the aim or consequence of which is to prevent, restrict or distort significantly competition in the Belgian market concerned or in a substantial part of that market are prohibited, and in particular those which consist in:

1° directly or indirectly fix purchase or selling prices or any other transaction conditions;

2° limit or control production, markets, technical

¹ **This is an unofficial translation in English of the official Dutch and French version of the act. Only the texts published in the Belgian Official Gazette are authentic. This translation is merely for your information.**

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development or investments;

3° share markets or sources of supply;

4° apply, with regard to business partners, unequal conditions for equivalent services, thus putting them at competitive disadvantage;

5° make the conclusion of contracts subject to acceptance, by the other parties, of supplementary services which, by their nature or according to commercial usage, have no connections with the subject of such contracts.

§ 2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

§ 3. The provisions of § 1 may however be declared inapplicable in the case of :

1° any agreement or category of agreements between undertakings,

2° any decision or category of decisions of associations of undertakings, and

3° any concerted practice or category of concerted practices

which contribute to improving production or distribution or to promoting technical or economic progress or which enable small and medium-sized undertakings to assert their competitive position in the market concerned or internationally, while enabling users to benefit from a fair share of the resulting benefits, without however:

a) imposing on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

b) giving the undertaking the possibility to eliminate competition for a substantial part of the affected products.

Art. 3. Without the need for a prior decision to that effect, the abuse by one or more undertakings of a dominant position in the Belgian market concerned or in a substantial part of that market is prohibited.

Such abuse may in particular consist in:

1° directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

2° limiting production, markets or technical development to the prejudice of consumers;

3° applying, with regard to business partners, unequal conditions for equivalent services, thus putting them at competitive disadvantage;

4° making the conclusion of contracts subject to acceptance, by the parties, of additional services

which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Art. 4. The practices referred to in article 2, § 1, and article 3 are referred to hereinafter as anti-competitive practices.

Art. 5. The prohibition under article 2, § 1, does not apply to agreements, decisions of associations of undertakings and concerted practices for which article 81, paragraph 3, of the EC treaty has been declared applicable by a regulation of the Council of the European Communities or a regulation or decision of the European Commission.

The prohibition under article 2, § 1, does not apply to agreements, decisions of associations of undertakings and concerted practices which do not affect trade between Member States or which do not restrict, prevent or distort competition in the common market and which would have been protected by a regulation within the meaning of the first clause, if they had affected such trade or restricted, prevented or distorted this competition.

The prohibition under article 2, § 1, does not apply to categories of agreements, decisions of associations of undertakings and concerted practices which fall within the scope of a royal decree adopted in implementation of article 50.

Section 2. – Concentrations

Art. 6. § 1. For the purposes of this act, a concentration shall be deemed to arise where a change of control on a lasting basis results from:

1° the merger of two or more previously independent undertakings or parts of such undertakings, or

2° the acquisition, by one or more persons already controlling at least one undertaking or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of 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, 2°.

§ 3. For the purposes of this act, control shall be constituted by rights, contracts or any other means

which either separately or in combination and having regard to the considerations of fact or act involved, confer the possibility of exercising decisive influence on 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(s) or undertakings, which:

1° are holders of the rights or entitled to rights under the contracts concerned ;or

2° while not being the holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving there from.

§ 5. A concentration within the meaning of § 1 is not brought about:

1° where 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 temporarily 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 disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition, the period being two years in the case of participating securities acquired in representation of doubtful or overdue debts.

2° where control is acquired by a law or public official, pursuant to a judicial decision or another compulsory liquidation procedure.

3° where the operations referred to in § 1, 2°, are carried out by financial holding companies referred to in article 5, 3, of the fourth directive 78/660/EEC of the Council of 25 July 1978 based on article 54, paragraph 3, point g), of the Treaty and concerning the annual accounts of certain forms of companies, subject however to the voting rights attached to the participating interests held being exercised, in particular by way of appointing members of the executive or supervisory bodies of the undertakings in which they hold participating interests, solely to protect the full value of these investments and not to determine directly or indirectly the competitive behaviour of the said undertakings.

Art. 7. § 1. The provisions of this section shall apply only where the undertakings concerned, taken together, have a total turnover in Belgium, determined in accordance with the criteria referred to in article 86, of more than 100 million Euro, and where at least two of the undertakings concerned each have a turnover of at least 40 million Euro in Belgium.

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

§ 3. Every three years, the general assembly of the Council shall assess the thresholds referred to in § 1, taking into account inter alia the economic incidence and administrative burden for undertakings.

The College of Competition Prosecutors shall submit an opinion to the general assembly of the Council on this assessment.

Art. 8. § 1 Concentrations shall be subject to the prior approval of the chamber of the Competition Council hearing the case, hereinafter referred to as the Council chamber, which shall examine whether or not they are permissible.

§ 2. The following factors shall be taken into consideration in reaching the decision referred to in § 1:

1° the need to maintain and develop effective competition in the national market having regard in particular to the structure of all the affected markets and the real or potential competition of undertakings located within or outside Belgium;

2° the position in the market of the undertakings concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant goods and services, the interests of intermediate and ultimate consumers, and the development of technical and economic progress provided that it is to consumers' advantage and does form an obstacle to competition.

§ 3. Concentrations that do not result in a significant obstacle to effective competition being created in the Belgian market or in a substantial part of that market, in particular through the creation or strengthening of a dominant position, shall be declared permissible.

§ 4. Concentrations that result in a significant obstacle to effective competition being created in the Belgian market or in a substantial part of that market, in particular through the creation or strengthening of a dominant position, shall be declared non-permissible.

§ 5. To the extent that the creation of a joint venture, constituting a concentration pursuant to article 6, § 2, has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria set out in article 2, with a view to establishing whether or not the operation is permissible.

The following factors shall be taken into account for the purposes of this assessment:

1° whether two or more parent companies retain to a significant extent, activities in the same market as that of the joint venture, or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market;

2° whether the coordination which is the direct consequence of the creation of the joint affords undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

§ 6. When justified by the general interest, the Council of Ministers may authorise at its own initiative or at the request of the parties, the implementation of a concentration declared non-permissible by the Council, in accordance with the procedure referred to in article 60.

Art. 9. § 1. The concentrations covered by this act shall be notified to the College of Competition Prosecutors before their implementation and after the conclusion of the agreement, publication of the take-over bid or public offer of exchange, or of the acquisition of a controlling interest. The parties may however notify a proposed agreement provided that they declare explicitly that they intend to conclude an agreement which does not differ significantly from the notified proposal as regards all the relevant points of competition act. In the case of a take-over bid or a public offer of exchange, the parties may also notify a project when they have announced publicly their intention to make such a bid or offer.

§ 2. Concentrations which consist of a merger within the meaning of article 6, § 1, 1°, or of the acquisition of joint control within the meaning of article 6, § 1, 2°, shall be notified jointly by the parties to the merger or the acquisition of joint control. In all other cases, the

notification shall be submitted by the person or undertaking having acquired control of all or part of one or more undertakings.

§ 3. The king shall determine the notification procedure referred to in § 1. The general assembly of the Council may lay down specific simplified notification rules.

§ 4. Until the Council chamber hearing the case pronounces its decision on the permissibility of the concentration, the undertakings concerned may not implement the concentration.

§ 5. The preceding paragraph shall not however prevent the implementation of a take-over bid or a public offer of exchange or operations by which control within the meaning of article 6 is acquired through the intermediary of several sellers through a series of transactions in financial instruments, including those which are convertible into other financial instruments, listed on a market such as a stock market, provided that:

1° the concentration is notified without delay to the College of Competition Prosecutors in accordance with this article, and,

2° the purchaser does not exercise the voting rights attached to the participating interests concerned or exercises them only to protect the full value of its investment and on the basis of a derogation granted by the competent Council chamber in accordance with § 6.

§ 6. Without prejudice to the provisions set out in § 5, the Council chamber hearing the case may, at any time, if requested by the parties, grant a derogation to the obligations laid down in § 4. In this case, the Council chamber hearing the case shall request the competition prosecutor to submit, within two weeks after such a request has been submitted, a report specifying the elements necessary for the examination of the request with a view to reaching the decision referred to in this paragraph.

§ 7. The council chamber hearing the case may make its decision subject to certain conditions and obligations.

Art. 10. Concentrations which are subject to the control of the European Commission, including those which fall under its responsibility pursuant to article 22 of Regulation (EC) n° 139/2004 of the Council of the European Union, dated 20 January 2004, on the control of concentrations between undertakings are

not subject to the control established by this act.

Nevertheless, concentrations referred to the Belgian Competition Authority by the European Commission pursuant to articles 4, paragraphs 4 and 5, and 9, paragraph 1, of Regulation (EC) n° 139/2004 of the Council of the European Union, dated 20 January 2004, on the control of concentrations between undertakings, are subject to the control established by this act. In such cases, the parties shall notify the concentration again to the College of Competition Prosecutors in accordance with article 9.

CHAPTER III. – *Bodies*

Section 1. – The Competition Council

Sub-section 1. – General provision

Art. 11. § 1. A Competition Council shall be set up. This Council shall be an administrative jurisdiction that shall have the decision-making and other powers conferred on it by this act.

§ 2. The Competition Council shall be composed of

- 1° the general assembly of the Council;
- 2° the College of Competition Prosecutors;
- 3° the registry.

§ 3. The Council shall have the power to draw up communications relating to the application of this act.

§ 4. The Competition Council shall transmit annually to the minister and the legislative chambers a report on the application of this act. The Competition Council shall publish this report.

The Competition Council's decisions and proposals, the rulings of the Brussels Court of Appeal and of the Court of Cassation, as well as the decisions of the Council of Ministers shall be annexed to this report.

Sub-section 2. – Councillors to the Competition Council

Art. 12. § 1. The general assembly of the Council shall be composed of twelve councillors. The president, vice-president and four councillors shall exercise their functions on a full-time basis.

§ 2. The King may, by a decree deliberated by the Council of Ministers, increase the number of councillors.

Art. 13. The king shall appoint the president, vice-president and councillors of the Council by a decree deliberated in the Council of Ministers. They shall be appointed for a term of office of six years. Mandates shall be renewable.

The president and vice-president must be fluent in Dutch and French.

The councillors shall continue to exercise their mandate until they are replaced, except in the cases set out in article 18, § 3.

Art. 14. All councillors must hold a master's degree.

Art. 15. § 1. Either the president or the vice-president must hold a French language diploma, while the other must hold a Dutch language diploma.

Half of the councillors shall hold a French language diploma and the other half a Dutch language diploma.

The president, vice-president and councillors must have a working knowledge of English.

At least one councillor shall have a working knowledge of German.

Not more than three-quarters of the councillors shall have a diploma in the same subject.

§ 2. Magistrates may be appointed to the Competition Council, in compliance with article 323a of the Judicial Code.

Art. 16. To be eligible to be appointed president, vice-president or councillor within the meaning of article 12 §1, candidates shall have passed the professional examination intended to assess that they have the maturity and the ability necessary to exercise the function concerned, in accordance with the terms and conditions and programme determined by the King. Candidates must in addition provide proof that they have the necessary experience for the function.

Art. 17. The salary of the councillors shall be fixed as follows:

1° The president and vice-president of the Council shall receive a salary equal to 90 percent of the salary of the first president of the Council of State; they shall also receive the related increases and benefits.

2° The other full-time councillors shall receive a salary equal to 90 percent of the salary of a State Councillor; they shall also receive the related increases and benefits.

3° The councillors who do not exercise their mandate on a full-time basis shall receive a salary equal to that referred to in 2° in proportion to the services provided; the amount may not however exceed 50 percent of the amount referred to in 2°.

The acts on the pension system for members of the State's civil service and their heirs shall also apply to the members of the Competition Council who do not have the status of magistrate or civil servant and who exercise their functions on a full-time basis.

Art. 18. § 1. All councillors shall inform the president of interests that they hold or may acquire and of functions that they have exercised or exercise within the framework of an economic activity.

§ 2. The councillors may be challenged on the grounds set out in article 828 of the Judicial Code.

Any councillor who is aware of grounds to be challenged shall abstain from hearing the case.

Applications challenging a councillor must be submitted in writing to the registry. They must be reasoned, set out the grounds for the challenge and be signed by the party or the party's representative, holding a special power of attorney, which shall be annexed to the application.

The application shall be transmitted within 24 hours by the registrar to the councillor challenged.

The councillor in question shall add to the application, within two days, a written declaration either to express his approval of challenge or refusing to abstain, with his or her replies to the grounds on which he or she is challenged.

If the councillor's decision is contested, the general assembly of the Council shall rule on the challenge, in the absence of the councillor. The applicant and the adviser in question shall be heard.

In this case, the general assembly's decision shall not be appealable.

§ 3. The King shall replace a councillor who:

1° is physically or mentally unfit for the function;

2° exercises an elected public mandate;

3° resigns or must resign for reasons of incompatibility.

§4. The members of the general assembly of the Council enjoy in the exercise of their office the same immunity as the members of the judiciary.

Art. 19. The Council shall be divided into chambers, each of which shall be composed of three councillors. The general assembly of the Council shall determine on an annual basis the composition of the chambers and choose the presidents from among their members.

The president of the Council shall allocate cases between the chambers.

Art. 20. Each chamber of the Council and the president or councillor that it delegates in the case of interim measures shall, when giving their ruling explain the reasons for their decision in all the cases referred to them, after having heard the interested parties and their arguments, as well as, at their request, any plaintiffs, or the counsel of their choosing.

Art. 21. The Competition Council shall participate in meetings between jurisdictional authorities. Participation in other European and international meetings shall be subject to the minister's prior approval.

*Sub-section 3. – The general assembly of the
Competition Council*

Art. 22. The general assembly of the Council shall be composed of the president, vice-president and councillors. It shall be chaired by the president, or failing him/her, by the vice-president or if both are absent by the president of the chamber who is present, or by the most senior councillor and in the event with the same length of service, by the eldest.

The Competition Prosecutor General shall be invited to attend meetings of the general assembly. He or she shall be heard at his or her request.

In order for the general assembly of the Council to deliberate validly there must be a quorum of at least half of the Dutch-speaking members and half of the French-speaking members present. When this quorum is not achieved, a new meeting shall be convened with the same items on the agenda. The second meeting may deliberate validly on the items on the agenda irrespective of the number of members present.

Decisions of the general assembly shall be adopted on

the basis of a simple majority of the votes cast. In the event of a split vote, the chair of the meeting shall have the casting vote.

Art. 23. When the president of the Competition Council considers that, in order to ensure the unity of jurisprudence, a case must be dealt with by the general assembly; the president shall order the case to be referred to the assembly.

Art. 24. The rules of procedure shall be determined by the general assembly, with the competition prosecutor general being present. The King shall approve such rules.

Sub-section 4. – The College of Competition Prosecutors

Art. 25. A College of Competition Prosecutors composed of not less than six and not more than 10 members, made up of the competition prosecutor general and the competition prosecutors or deputy competition prosecutors, shall be established within the Competition Council.

The competition prosecutor general, competition prosecutor and deputy competition prosecutor shall exercise the functions of the College of Competition Prosecutors on a collegial basis and each of them may exercise the functions of the competition prosecutors specified in this act.

The deputy competition prosecutors shall be appointed by the King from among those who pass a professional examination, the terms and conditions and programme of which shall be determined by the King.

They must hold a master's diploma and have a working knowledge of French, Dutch and English.

Not more than three-quarters of the members of the College of Competition Prosecutors shall have a diploma in the same subject.

Half of the members of the College of Competition Prosecutors shall hold a French language diploma and the other half a Dutch language diploma.

At least one member of the College of Competition Prosecutors must have a working knowledge of German.

Art. 26. The King shall appoint, for a term of office of six years renewable, the competition prosecutor general from among the competition prosecutors or failing that, from among the deputy competition prosecutors, after having obtained the opinion of the general assembly of the Competition Council.

The competition prosecutors are appointed by the King from among the deputy competition prosecutors who have been a member of the College of Competition Prosecutors for six years.

Art. 27. The competition prosecutor general shall allocate cases among the members of the College of Competition Prosecutors and manage their work.

The members of the College of Competition Prosecutors shall report to the competition prosecutor general.

Art. 28. The salaries of the members of the College of Competition Prosecutors shall be fixed as follows:

1° competition prosecutor-general: the financial regime applying to first auditors, heads of section, of the Council of State;

2° competition prosecutor: the financial regime applying to auditors of the Council of State;

3° deputy competition prosecutor: the financial regime applying to assistant auditors of the Council of State.

The members of the College of Competition Prosecutors shall be subject to the regulations applying to public servants, except where this act expressly derogates to such regulations.

Art. 29. § 1. The competition prosecutors shall be responsible for:

1° receiving complaints and requests for interim measures regarding anti-competitive practices, as well as notifications of concentrations;

2° heading and organising investigations and ensuring the implementation of decisions taken by the Competition Council;

3° issuing instructions to the officials of the Directorate-General for Competition charged with carrying out investigative tasks, including those tasks referred to in article 44, § 3, clause 8 except for, if the officials of the Directorate-General of Competition, assist the officials of the European Commission during an inspection which is ordered by the European

Commission, laid down in the regulation (EC) 1/2003 concerning the execution of the rules of competition as stipulated in the articles 81 and 82 of the EC treaty;

4° drawing up and submitting the reasoned report to the Competition Council;

5° decisions not to take action following complaints and requests for interim measures;

6° at the request of interested natural or legal persons, or on their own initiative, ruling on the confidential nature of data provided to the Directorate-General for Competition or to the College of Competition Prosecutors during the procedure;

7° requesting the referral of a concentration to the Belgian Competition Authority and also referring a concentration to the European Commission pursuant to articles 4 and 9, on the one hand, and article 22, on the other hand, of Regulation (EC) no 139/2004 of the Council of the European Union, dated 20 January 2004, on the control of concentrations between undertakings;

8° applying article 61.

The Competition Prosecutor General shall chair meetings of the College of Competition Prosecutors, except for meetings organised for the purpose of determining the policy priorities for the implementation of the act and establishing the order for handling cases submitted pursuant to article 44. Such meetings shall be chaired by the head of the Directorate-General for Competition. If the Competition Prosecutor General is absent or unavailable, meetings shall be chaired by the longest serving competition prosecutor or, if more than one competition prosecutor qualifies by length of service, by the eldest competition prosecutor.

§ 2. The competition prosecutor may accomplish all actions related to the accomplishment of their mission, except those which the law reserved for the College of Competition Prosecutors. In this case, decision of the College of Competition Prosecutors shall be adopted on the basis of a simple majority of the votes cast, with the competition prosecutor general having the casting vote in the event of a split vote.

Without prejudice to article 27, the competition prosecutor may neither request nor accept any instructions regarding the handling of cases submitted pursuant to article 44, § 1, or their position adopted in meetings of the College of Competition Prosecutors held in order to determine the policy priorities for the implementation of the act and the order in which cases are to be handled.

§ 3. When the College of Competition Prosecutors decides to open an investigation pursuant to article 44,

§ 1, the head of the Directorate-General for Competition shall designate, in consultation with the competition prosecutor general, the officials of the directorate-General that shall form the team with responsibility for the investigation.

The civil servants who make up an investigation team may only receive instructions from the competition prosecutor who heads the investigation.

§ 4. The College of Competition prosecutors shall determine its rules of procedure, which, after opinion of the general assembly, shall be approved by the King.

Art. 30. § 1. Competition prosecutors may be challenged for the reasons set out in article 828 of the Judicial Code.

Any competition prosecutor who is aware of grounds to be challenged shall abstain from investigating the case.

Applications challenging a competition prosecutor must be submitted in writing to the registry. They must be reasoned, set out the grounds for the challenge and be signed by the party or the party's representative, holding a special power of attorney, which shall be annexed to the application.

The application shall be submitted within 24 hours by the registrar to the competition prosecutor challenged.

The competition prosecutor in question shall add to the application, within two days, a written declaration either disclaiming competence or refusing to abstain, with his or her replies to the grounds on which his or her competence is challenged.

If the competition prosecutor's decision is contested, the general assembly of the Council shall rule on the challenge, in the absence of the competition prosecutor. The applicant and the competition prosecutor in question shall be heard.

In this case, the general assembly's decision shall not be appealable.

§ 2. Members of the College of Competition Prosecutors are eligible for retirement if they suffer from a serious, permanent disability which prevents them from exercising correctly their functions or when they reach the age of 65.

Sub-section 5. – Discipline

Art. 31. Any councillor to the Competition Council and any member of the College of Competition

Prosecutors within the Competition Council may be removed or suspended from his or her functions in accordance with article 615, clause 2, of the Judicial Code.

The president of the Competition Council may issue a call to order or a formal warning to councillors and members of the College of Prosecution Prosecutors, or impose a fine to be deducted from their salary by way of disciplinary sanctions, setting out at the same time the ground for the sanction imposed.

Sub-section 6. – The registry

Art. 32. A registry shall be established within the Competition Council to fulfil the role of secretariat.

The registrar shall have operational responsibility for the registry.

The registrar shall exercise his or her functions under the authority of the president of the Council.

A deputy registrar shall assist the registration

The general assembly of the Competition Council shall draw up the registry's rules of procedure.

Art. 33. The registrar and deputy registrar shall be appointed by the King from among the members of staff of the Federal Public Service Economy. They shall hold a master's degree, which shall be a French language diploma for one and a Dutch language diploma for the other.

The King shall determine the status of the registrar and the deputy registrar.

Section 2. – The Directorate-General for Competition

Art. 34. The Directorate-General for Competition shall be responsible in particular for:

1° detecting and examining the practices referred to in chapter II, under the authority of the College of Competition Prosecutors and the designation of officials of the Directorate-General to participate in inspections carried out by officials of the European Commission, laid down in the regulation (EC) 1/2003 concerning the execution of the rules of competition as stipulated in the articles 81 and 82 of the EC treaty;

2° representing Belgium, on the minister's authority and subject to article 21, in European and international competition organisations;

3° preparing, implementing and evaluating economic competition policy in Belgium;

4° preparing Belgian legislation and regulations on economic competition.

Art. 35. The means necessary for the implementation of this act shall be made available to the Federal Public Service Economy, which shall provide its logistic and material assistance to the Competition Council.

Administrative assistance to the Competition Council shall be provided by the staff made available by the Federal Public Service Economy.

Section 3. – Concerning professional secrecy

Art. 36. The councillors of the Competition Council, members of the College of Competition Prosecutors, registrars and civil servants of the Directorate-General for Competition, as well as any other person working under their authority, shall be subject to the rules of professional secrecy and may not disclose, without prejudice to the provisions of Section 10 of Chapter IV, article 89 and royal decrees adopted pursuant to article 46, clause 2, to any person or authority, the confidential information of which they have become aware in exercising their functions, other than in cases where they are required to testify before the courts. They may only use that information for the purpose for which it has been gathered.

Art. 37. Without prejudice to the provision of Section 10 of Chapter IV and the royal decrees adopted pursuant to article 46, clause 2, the information in the possession of the councillors, members of College of Competition Prosecutors, registrars and the civil servants of the Directorate-General for Competition, as well as any other person working under their authority, may be used solely for the purposes for which they were collected.

Without prejudice to the exchange and use of information referred to in Section 10 of Chapter IV, councillors, members of the College of Competition Prosecutors, registrars and the civil servants of the

Directorate-General for Competition, as well as any other person working under their authority, may not disclose information of which they have become aware in exercising their functions and which, by its nature, falls within the scope of professional secrecy. The obligation of article 36 shall also apply to the representatives of the competition authority and experts who participate in meetings of the consultative committee referred to in article 14 of Regulation (EC) n° 1/2003 of the Council of 16 December 2002 on the implementation of the rules on competition in accordance with articles 81 and 82 of the Treaty and article 19 of Regulation (EC) n° 139/2004 of the Council of 20 January 2004 on the control of concentrations between undertakings.

Art. 38. Any infringement of articles 36 and 37 shall be punished by the sanctions laid down in article 458 of the Penal Code.

The provisions of Book I of the Penal Code, including Chapter VII and article 85, shall apply to the infringements set out in the articles 36 and 37.

Section 4. – Incompatibilities

Art. 39. § 1. The functions of full-time members of the Competition Council, members of the College of Competition Prosecutors and the registry are incompatible with judicial functions, the exercising of an elected public mandate at a different level than the local or provincial level, any remunerated political or administrative public function or responsibilities, the responsibilities of a notary public or bailiff, the profession of advocate, military status and the function of a minister of a recognised cult.

Derogations may be granted in respect of clause 1:

1° only in the case of teachers, junior lecturers, or lecturers in institutes of higher education, provided that such functions are not exercised more than two half days a week;

2° only in the case of functions exercised as a member of a panel of examiners;

3° only in the case of participation in a commission, a consultative committee, provided that the number of missions or functions is limited to two and that such missions or functions are not remunerated.

The minister shall grant these derogations.

§2. At most two members of the College of Competition Prosecutors can be sent on secondment. They can not hold a diploma in the same language.

A deputy competition prosecutor can not be send on secondment.

The members of the College of Competition prosecutors who are send on secondment can be replaced regardless the number of members laid down in article 25. The substitutes who are in office will be appointed to the position which they hold, even if the occasion of overstaffing arises. They are fully entitled to take the places depending on the fact if there are vacancies pursuant to article 25.

Art. 40. The functions of a part-time member of the Competition Council are incompatible with the exercising of an elected public mandate at a different level than the local or provincial level, military status and the function of minister of a recognised cult.

The councillor in the Brussels Court of Appeal, part-time member of the Competition Council, may not, throughout his or her mandate, be informed of appeals against the decisions of the Competition Council or of its president, and may not, even after the end of his or her mandate, be informed of appeals against his or her decisions concerning cases on which he or she sat, otherwise the ruling may be declared invalid in each case.

Art. 41. The Council's councillors, members of the College of Competition Prosecutors, registrars, members of staff of the Competition Council and civil servants of the Directorate-General for Competition as well as any other person working under their authority, may not assume the defence of the interested parties either verbally or in writing, nor be consulted by them.

The Council's councillors, except for those who do not exercise their functions on a full-time basis, members of the College of Competition Prosecutors and registrars may not:

1° act as remunerated arbitrators;

2° either personally, or through an intermediary, carry on any type of business activity, act as a business agent or participate in the management, administration or supervision of trading companies or industrial or commercial establishments.

Section 5. – The Competition Commission

Art. 42. A joint consultative body, called the Competition Commission, shall be established within the Central Economic Council. The Competition Commission shall issue opinions on all general questions of competition policy, either on its own

initiative or at the minister's request.

Art. 43. The King shall determine the composition and functioning of the Competition Commission, as well as that of its secretariat.

He shall appoint its members by a decree deliberated by the Council of Ministers.

He shall also determine the sums allocated to the president and members of the Commission and those allocated to any other person called upon to collaborate with the Commission.

CHAPTER IV. – *Procedures*

Section 1. – Investigation procedure

Art. 44. § 1. Cases shall be investigated by the College of Competition Prosecutors:

1° at the request of the interested parties referred to in article 9 in the case of a notified concentration;

2° at their own initiative or at the minister's request or in response to a complaint from a natural or legal person demonstrating a direct, current interest in the case of infringements of articles 2, § 1, 3, 9, § 1, or in the case of non-compliance with a decision taken pursuant to articles 9, § 5, 52, 53, 58 or 59;

3° at the request of the minister with responsibility for the self-employed, a public body or another specific public institution, with responsibility for controlling or supervising an economic sector in the case of an infringement of article 2, § 1, article 3 or article 9, § 1;

4° at their own initiative, at the request of the minister or the general assembly for the purpose of a royal decree granting exemptions by category of agreements, decisions and concerted practices on the basis of article 50;

5° at the request of the Brussels Commercial Court in the case where article 76, § 2 applies.

§ 2. In carrying out the tasks entrusted to them, the competition prosecutors may collect all necessary information from undertakings and associations of undertakings. They shall set the deadlines by which such information shall be supplied to them.

When the competition prosecutors send a request for information to an undertaking or an association of undertakings they shall indicate the legal basis and

purpose of their request.

If an undertaking or an association of undertakings does not provide the information within the time limit set by the competition prosecutors or if the information supplied is incomplete, inaccurate or misrepresented, the competition prosecutors may require the information by reasoned decision.

This decision shall specify the information required and set a deadline for providing the said information. When the decision requiring information is sent to one of the notifying undertakings, it shall in addition suspend the deadlines referred to in article 58 until the day when the information is provided or at the latest when the deadline fixed by the competition prosecutors expires.

The competition prosecutors shall notify his or her decision to the undertakings from which the information is required.

§ 3. Without prejudice to the powers of police officers, the competition prosecutors and civil servants of the Directorate-General for Competition authorised by the Minister have the powers to detect infringements of this act and draw up an official report which shall be valid evidence until evidence to the contrary.

They are also authorised to search for all useful information and carry out the necessary inquiries for the purpose of the application of articles 6 to 10.

In carrying out the tasks entrusted to them, they shall act under the supervision of the public prosecutor's department.

They shall collect all information, receive all written or oral statements, obtain, irrespective of the holder, all documents or information that they consider necessary for the accomplishment of their tasks, and of which they are authorised to make copies, and also carry out inspections as necessary on the premises of the interested parties.

They may carry out inspections:

1° at the home of heads of undertakings, directors, managers and other members of staff, as well as at the home address or on the business premises of the internal or external natural or legal persons entrusted with commercial, accounting, administrative, fiscal or financial management responsibilities, between 8:00 and 18:00, with the prior authorisation of an examining magistrate;

2° in the offices means of transport and other premises of the undertakings where they have reason to believe that they will find documents or information necessary

for the accomplishment of their mission, and of which they are authorised to make copies, between 8:00 and 18:00 with the prior authorisation of the president of the Competition Council or by a member of the General Assembly of the Council who is empowered to this by the president.

In carrying out their tasks, they may seize elements relative to their investigation and affix seals for the duration of their mission and to the extent necessary for the purposes of their mission, without however exceeding 72 hours, in premises other than those of the undertakings or associations of undertakings. A report on these measures shall be drawn up and a copy of the report shall be transmitted to the person affected by the measures.

In carrying out their tasks, they may require the police force.

To carry out an inspection, seize elements relative to the investigation or affix seals, the civil servants referred to in clause 1 must in addition have specific instructions issued by the competition prosecutor. These instructions must specify the object and purpose of their mission.

The competition prosecutors may appoint experts whose advisory tasks they shall determine. The competition prosecutors may also use the services of civil servants of the Directorate General Enforcement and Mediation of the Federal Public Service Economy.

§ 4. Notwithstanding specific laws that guarantee the secrecy of declarations, public administrations shall assist the competition prosecutors and civil servants of the Directorate-General for Competition in the performance of their tasks.

§ 5. In carrying out their investigations, the competition prosecutors, civil servants of the Directorate-General for Competition and civil servants of the Directorate General Enforcement and Mediation shall comply for:

1° hearings, with the provisions of article 31, except for clause 3, of the act of 15 June 1935 on the use of languages in judicial proceedings;

2° drawing up summons and reports, with the provisions of article 11 of the same act. When the investigation concerns several parties, the competition prosecutors' report referred to in article 45, § 4, shall be drawn up in the language of the majority determined taking into consideration the provisions of the said article 11. In the case of equal numbers, one of the national languages shall be used as appropriate for the needs of the case.

§ 6. Before transmitting to the Council the reasoned report referred to in articles 45, § 4, 55, § 4, 59, § 2, or 62, § 5, the College of Competition Prosecutors or the Competition Prosecutor shall draw up a list of all the documents and data collected during the investigation and rule on their confidentiality.

The confidential nature of the data and documents shall be determined with regard to each natural or legal person to whom the reasoned report is notified.

§ 7. When the College of Competition Prosecutors or the Competition Prosecutor is of the opinion that data which have been described as confidential by the natural or legal persons that supplied them, are not confidential with regard to the undertaking concerned, he or she shall inform, by letter, fax or electronic mail, the natural or legal persons of his or her position and invite them to state their position on this point by letter, fax or electronic mail within a time limit determined by him or her.

The College of Competition Prosecutors or the competition prosecutor shall then rule. The College of Competition Prosecutors or the competition prosecutor may decide that the interest of ensuring the effective application of this act should prevail over the confidential nature of the data in question. The College of Competition Prosecutor or competition prosecutor shall then notify the decision to the natural or legal persons having supplied the data in question.

When the College of Competition Prosecutors or competition prosecutor accepts the confidential nature of the data, he or she shall require, by a deadline fixed by him or her, the natural or legal person having supplied the data, to draw up a summary or a non-confidential version of the document in question, if such a summary or non-confidential version is not already in the file. The confidential documents shall then be removed from the file and replaced by the summary or non-confidential version.

When the College of Competition Prosecutors or the competition prosecutor rejects the confidential nature of the data, he or she shall inform the natural or legal person that supplied the data of his decision, indicating the reasons why he or she does not consider the data in question to be confidential. This decision shall be notified by letter, fax or electronic mail.

§ 8. The natural or legal person having supplied the said data may, within 10 days after notification of the decision of the College of Competition Prosecutor or of the competition prosecutor, appeal against the said decision to the Council. This time limit for lodging such an appeal shall be two working days in the case of an investigation or decision concerning a

concentration.

A councillor of the Council, designated by the president, who shall not be a member of the chamber hearing the case, shall rule on the appeal within 10 days. This time limit shall be two working days in the case of an investigation or decision concerning a concentration. A separate appeal may not be lodged with the Brussels Court of Appeal against such a decision.

§ 9. The College of Competition Prosecutors or the competition prosecutor may not communicate any confidential data before the Councils' councillor has ruled on the appeal.

Section 2. – Investigation rules applying specifically to anti-competitive practices

Art. 45. § 1. Complaints or requests concerning anti-competitive practices shall be submitted to the College of Competition Prosecutors.

§ 2. If it concludes that the complaint or request is inadmissible or ungrounded, the College of Competition Prosecutors shall reject the complaint or request by reasoned decision. The College of Competition prosecutors can also reject a complaint or a request by reasoned decision according to the available resources and the priorities which are set. This decision shall be notified by registered letter to the complainant or the party submitting the request, indicating that the file can be consulted at the registry, without being removed, that a copy can be obtained against payment and that the complainant or person submitting the request can appeal to the Council against the decision not to take action.

§ 3. The appeal referred to in § 2, must be in writing. It must be reasoned, signed and lodged with the registry within 30 days after notification of the decision, under penalty of invalidity. The appeal must satisfy, under penalty of invalidity, the conditions stipulated in article 76, § 2, clause 3, 1° to 3°, 5° and 7°. The competent Council chamber shall rule on the basis of the documents. The decision of the competent Council chamber is not appealable. If the chamber considers that the appeal is founded, the case shall be referred to the College of Competition Prosecutors for investigation, with the request to submit a report to the chamber.

§ 4. If the College of Competition Prosecutors considers that the complaint or request or, if applicable, an investigation at its own initiative, is justified, the

competition prosecutor shall submit on behalf of the College of Competition Prosecutors a reasoned report to the chamber of the Council. This report shall include the investigation report, the grievances and a proposed decision; it shall be accompanied by the investigation file and a list of the documents comprising the file. The list shall determine the confidentiality of the documents with regard to each of the parties having access to the file.

The report shall also include a reasoned proposal for a regulation within the meaning of the second clause of article 50, § 1, if the competition prosecutor considers that the concrete facts require a general regulation.

Art. 46. The King may prescribe any formality with regard to the preparation and submitting of files, and also determine the procedural arrangements before the Directorate-general for Competition and the College of Competition Prosecutors.

In the economic sectors placed under the control or supervision of a public body, or another specific public institution, the King may, after consultation with the said bodies or institutions, regulate the co-operation between the Directorate-General for Competition and the College of Competition Prosecutors and these bodies or institutions, with regard to the investigation and the reciprocal exchange of confidential information.

Art. 47. The College of Competition Prosecutors may, on its own initiative or at the request of the minister or of the minister with responsibility according to the sector concerned, carry out or order general or sectorial investigations, if there is serious proof of the existence of practices prohibited by articles 2, § 1, and 3 and articles 81 and 82 of the EC Treaty. The provisions of article 44 shall apply by analogy, except for clauses 5 to 8 of § 3.

Section 3. – Decisions on restrictive practices

Art. 48. § 1. Simultaneously with the filing of the report referred to in article 45, § 4, the competition prosecutor shall inform the undertakings whose activity has been investigated and transmit to them a copy of the report. The competition prosecutor shall inform them that they can consult the file at the registry, without removing it, and obtain a copy of it against payment.

The registry shall inform the natural or legal persons having submitted the complaint that the report has been filed. If the Council chamber hearing the case deems it

necessary, the natural or legal persons having submitted the complaint as well as the other parties heard by the Council in accordance with § 5, clause 2 and 3, may receive a non-confidential version of the report referred to in article 45, § 4.

§ 2. The president of the Council chamber hearing the case shall then invite the undertakings whose activities have been investigated to indicate the confidential parts of the report with a view to transmitting a non-confidential version of the report to the natural or legal persons that filed the complaint or to the other parties heard by the Council in accordance with § 5, clauses 2 and 3. The president of the Council chamber hearing the case shall take a decision in this regard, which shall not be appealable.

The complainants and all the other natural or legal persons heard by the Council in accordance with § 5, clauses 2 and 3, shall not in principle have access to the file, unless the president of the Council chamber hearing the case decides otherwise.

When parties other than the undertakings under investigation, wish to communicate confidential information to the Council, a Council councillor who is not part of the chamber hearing the case, shall rule on the confidentiality, as shall the competition prosecutor, in accordance with the procedure set out in article 44, §§ 6 and 7. Consequently, the confidential documents shall not be part of the file and shall be replaced by a non-confidential version or a summary to be provided by the parties having supplied the data in accordance with a deadline fixed by the Council councillor. This decision is not open to a separate appeal.

§ 3. As soon as the parties have been given access to the file pursuant to §§ 1 and 2, the chambers' president shall set the deadlines by which the competition prosecutor and the parties must submit their written observations and their replies. These deadlines may be extended at the reasoned request of the parties or of the competition prosecutor.

When the Council chamber, pursuant to § 5, clause 2 or 3, has granted access to the hearing to natural or legal persons, the chambers' president may set a deadline for the said persons to submit their written observations, in such a way as to ensure that the competition prosecutor and the parties concerned can still submit their replies.

The Council shall inform the Competition Commission of any case submitted to it by a competition prosecutor, after receipt of the latter's report. It shall also transmit to it the name of the undertakings whose activity has been investigated as well as the provisions of the act on which the case is based.

§ 4. When the Council chamber hearing the case is of the opinion that objections or elements other than those that have been taken into account by the competition prosecutor should be examined, it shall charge the competition prosecutor with carrying out a supplementary investigation. In such cases, the competition prosecutor shall complete his or her report and submit it to the Council chamber hearing the case. The registry shall transmit a copy of the supplementary report to the parties concerned.

§ 5. The Council chamber hearing the case shall hear each case in court. It shall hear the competition prosecutor and the undertakings whose activity has been investigated, as well as the complainant, at the latter's request.

When it considers it necessary, it shall hear any natural or legal person.

The request of any natural or legal person, who can demonstrate a sufficient interest, to be heard, shall be accepted. In the economic sectors placed under the control or supervision of a public body or another specific public institution, the said bodies or institutions shall be considered to have a sufficient interest. In all cases, the minister shall be considered to have a sufficient interest.

The validity of the proceedings shall not be affected by the non-appearance of the parties summonsed or their representatives.

§ 6. At the end of the supplementary investigation referred to in § 4, the competition prosecutor shall submit his or her report to the Council chamber and the procedure referred to in §§ 1, 2 and 3 shall be resumed.

§ 7. The Council's decision on the substance of the case cannot be based on the documents which have been provided by third parties and where the confidential nature of the documents has been accepted, so that the undertakings under investigation have not been able to examine the said documents.

§ 8. The King shall determine the rules for procedures before the Council, as well as the arrangements for obtaining copies.

Art. 49. Immunity from fines or a reduction of fines may be granted to an undertaking or an association of undertakings which, together with others, was involved in a practice prohibited by article 2, if this undertaking has contributed to proving the existence of the prohibited practice and to identifying the participants, inter alia by providing information which the

competition authority did not have before, by delivering the evidence of a practice prohibited by article 2 of which the existence had not yet been established, or by admitting the prohibited practice. As a consequence of the action of this undertaking or association of undertakings, the chamber of the Council which hears the case adopts, at the request of the competition prosecutor general, a leniency declaration which specifies the conditions applying to any envisaged exemption, after the undertaking or association of undertakings concerned have submitted their observations. This declaration will be sent to the undertaking or association of undertakings, but will not be published.

When the decision is taken pursuant to this article, the chamber of the Council hearing the case may, if the conditions stipulated in the leniency declaration are fulfilled, grant immunity from fines or reduction of fines in proportion to the contribution which was provided in order to prove the infringement.

Art. 50. §1. The King may, after consulting the Competition Commission and the general assembly of the Council, declare by decree that article 2, § 1, does not apply to categories of agreements, decisions and concerted practices.

The King may also adopt such a decree at the request of the general assembly of the Council. The general assembly of the Council may in particular decide to request such a decree after receipt of a reasoned proposal for a regulation from the College of Competition Prosecutors.

In the case referred to in article 45, § 4, clause 2, the competition prosecutor shall submit to the general assembly of the Council for opinion, at the end of the investigation, a report containing the proposed regulation by royal decree.

The decree shall be reasoned. It shall be deliberated by the Council of Ministers when it differs from the opinion or the request of the assembly general of the Council.

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

1° the restrictions or stipulations which cannot be included in them;

2° the stipulations which must appear in them or the other conditions which must be satisfied.

This royal decree shall be adopted for a limited duration. It may be rescinded or modified when the circumstances have changed with regard to an element which was essential to the decree; in this case, transitional measures for the agreements, decisions and concerted practices referred to in the previous decree shall be established.

Art. 51. The Council chamber hearing the case may, after receipt of the report of the competition prosecutor concerning a complaint, a request or an investigation at the initiative of the College of Competition Prosecutors declare, by reasoned decision, that according to the elements in its possession, there are no grounds for acting.

Art. 52. After receipt of the competition prosecutor's report, the Council chamber hearing the case, may rule, by reasoned decision:

1° that a anti-competitive practice exists and order it to cease, if applicable, in accordance with the terms and conditions it may stipulate;

2° that no anti-competitive practice exists, provided that it does not affect trade between Member States of the European Community;

3° that article 5, clause 2, or a royal decree within the meaning of articles 5, clause 3 and 50 does not apply in an individual case, where the anti-competitive practice in question produces effects that are incompatible with article 2, § 3;

4° that a regulation within the meaning of article 5, clause 1, does not apply in an individual case, where the anti-competitive practice produces effects incompatible with article 81, paragraph 3, of the EC Treaty, in the national territory or part of it, which has all the characteristics of a separate geographic market.

Art. 53. § 1. When the Council chamber hearing the case intends to adopt a decision requiring the termination of an infringement and the undertakings concerned provide commitments likely to satisfy its concerns, it may, by decision, make the said commitments compulsory for the undertakings. It may request the competition prosecutor to submit a report on the proposed commitments within a period of time determined by it. The decision may be adopted for a fixed period and conclude that there is no further need for the Council to take action. This decision shall be without prejudice to the option for national jurisdictions to determine the existence of restrictive practices in the past and shall not imply any

acknowledgement prejudicial to the interests of the undertaking concerned.

§ 2. The Council may re-open the procedure set out in articles 44 to 48, if so requested or on its own initiative:

1° if one of the facts on which its decision is based is subject to an important change;

2° if the undertakings concerned do not comply with their commitments, or

3° if the decision is based on incomplete, inaccurate or misleading information provided by the parties.

Art. 54. If the agreement, decision or concerted practice which has been investigated is the subject of a regulation of the Council of the European Communities or the European Commission declaring article 81, paragraph 1, of the EC Treaty inapplicable or of a royal decree within the meaning of article 50, the Council chamber hearing the case shall record that fact and issue a decision to dismiss the case.

Section 4. – Investigations concerning concentrations

Art. 55. § 1 The competition prosecutor designated by the competition prosecutor general shall transmit without delay to the Council a copy of notifications of concentrations submitted pursuant to article 9. The competition prosecutor shall initiate his or her investigation upon receipt of the notification or, if the information to be provided is incomplete, upon receipt of the complete information.

§ 2. The competition prosecutor may entrust civil servants of the Directorate-General for Competition designated pursuant to article 29, § 3, clause 1, with investigative duties.

§ 3. The competition prosecutor designated pursuant to article 27 shall submit the reasoned report as well as the file to the Council. This report shall contain the investigation report and a proposal for a decision; it shall be accompanied by the investigation file and a list of the documents it contains. This list shall determine the confidentiality of the documents with regard to each of the parties having access to the file.

§ 4. The report shall be submitted within 25 working days with effect from the day after the day when the notification is submitted to the College of Competition Prosecutor. When the information supplied in the notification is incomplete, this time-limit

shall run from the day after the day when the complete information is received. The 25 working days time-limit shall be extended by five working days in case commitments have been presented in accordance with article 56, clause 2.

§ 5. The competition prosecutor shall transmit, when filing the report as per § 4, a copy of the report to the notifying parties. The competition prosecutor shall also transmit, after the business secrets and confidential information have been removed, a copy of the report to the representatives of the most representative employee organisations of the undertakings involved or to those that they designate.

The competition prosecutor shall inform the persons referred to in the first clause that they may consult the file at the registry, except for the documents which are confidential with regard to them, and obtain a copy against payment.

Art. 56. When the competition prosecutor considers that effective competition in the Belgian market or in a substantial part of it, would be significantly impeded, in particular by the creation or strengthening of a dominant position, in accordance with article 8, § 4, he or she shall inform the undertakings that are parties of the concentration accordingly, at least five working days before his or her report is submitted to the Council, in accordance with article 55, § 3.

The undertakings that are parties of the concentration shall in such a case have five working days in which to present to the competition prosecutor commitments with a view to obtaining a decision on the basis of article 58, § 2, clause 1, 1°.

The competition prosecutor shall hear the undertakings that are party of the concentration with regard to the commitments provided and adopt a position on the said commitments in the report.

Section 5. – Decisions on concentrations

Art. 57. § 1. The Council chamber hearing the case shall hear each case in court. The hearing shall be held at least 10 working days after the report has been transmitted to the notifying parties.

§ 2. The Council chamber hearing the case shall hear the undertakings that are parties of the concentration. These undertakings shall submit their written observations, if any, no later than the day before the hearing, with a copy to the competition prosecutor.

When it considers it necessary, the Council chamber hearing the case shall hear any natural or legal person that it summons.

It shall also hear third parties that can demonstrate a sufficient interest. In the economic sectors placed under the control or supervision of a public body or another specific public institution, these bodies or institutions shall be deemed to have a sufficient interest.

The members of the supervisory or executive bodies of the undertakings participating in the concentration, as well as the representatives of the most representative employee organisation of those undertakings, or those that they designate, shall be deemed to have a sufficient interest.

The minister may, at the latest three working days before the hearing, transmit to the Council a memorandum setting out the elements of the case in question which concern general policy matters as well as those which are likely to influence general economic competition policy. A memorandum submitted in this way shall not entitle the minister to be considered as a party to the case. The registry shall transmit the memorandum without delay to the notifying parties.

The validity of the procedure shall not be affected by the non-appearance of the parties summonsed or their representatives.

§ 3. Persons other than those parties to the concentration may transmit information to the Council chamber hearing the case, no later than three working days before the hearing. The registrar shall communicate this information immediately to the notifying parties and the College of competition prosecutors.

When persons other than the undertakings that are parties to the concentration, wish to transmit confidential information to the Council, a councillor in the Council, who is not member of the chamber hearing the case, shall rule on its confidentiality, in accordance with the procedure set out in article 44, §§ 6 and 7. In such a case the confidential documents shall not be part of the file and shall be replaced by a non-confidential version or summary. This decision is not open to separate appeal.

§ 4. The Council's decision on the substance of the case cannot be based on the documents which have been provided by third parties and of which the confidential nature has been accepted, so that the undertakings under investigation have not been able to examine the said documents.

§ 5. The King shall determine the rules for procedures before the Council, as well as the arrangements for

obtaining copies.

Art. 58. § 1. The Council chamber hearing the case shall rule, by way of a reasoned decision:

1° either that the concentration falls within the scope of application of this act;

2° or that the concentration does not fall within the scope of application of this act.

§ 2. If the concentration falls within the scope of application of this act, the competent Council chamber shall adopt one of the following reasoned decisions:

1° either it may decide that the concentration is permissible.

It may make its decision subject to conditions and/or obligations intended to ensure that the undertakings concerned respect the commitments that they have presented for the concentration to be declared permissible. When the competent Council chamber wishes to take into consideration conditions and/or obligations that are not discussed in the report, the undertakings concerned and the competition prosecutor shall be heard on this point and shall have at least two working days to communicate their views in this regard. The notifying parties may modify the conditions of the concentration, up to the time when the Council chamber hearing the case has taken its decision. In such a case, the permissibility decision shall relate to the modified concentration;

2° or it declares the concentration permissible when the undertakings concerned do not control together more than 25% of any relevant market for the transaction, whether it concerns horizontal or vertical relationships;

3° or it may decide that there are serious doubts about the permissibility of the concentration and decide to initiate the supplementary investigation procedure referred to in article 59.

The Council's decisions referred to in clause 1 shall be taken within 40 working days after the day following the day on which the notification is received, extended if applicable, pursuant to article 55, § 1. This time-limit shall be extended by 15 working days when the undertaking concerned proposes commitments, with a view to having their concentration declared permissible.

The concentration shall be deemed permissible when the Council has not taken its decision within the time-limit specified in clause 2.

§ 3. The time-limit referred to in § 2 of this article may

only be extended at the express request of the notifying parties, and only for the duration proposed by them. The Council chamber hearing the case shall in any event authorise an extension of 15 working days if so requested by the notifying parties.

§ 4. The King may, after consultation of the general assembly of the Council, modify the time-limit referred to in § 2.

He may also determine the conditions on which these time-limits may be suspended if it proves necessary to translate certain documents.

Art. 59. § 1. If the Council chamber hearing the case adopts the decision referred to in article 58, § 2, clause 1, 3°, the competition prosecutor shall carry out a supplementary investigation and submit a supplementary report to the Council chamber hearing the case. The provisions of article 55, except for §§ 1 and 4, shall apply to the supplementary investigation and report.

No later than 20 working days after the date of the decision to initiate the procedure in accordance with article 58, § 2, 3°, the notifying undertakings may provide the competition prosecutor with commitments, aiming at a decision of permissibility.

§ 2. The competition prosecutor shall transmit the additional report to the Council chamber hearing the case within 30 working days after the decision to initiate the procedure. This time-limit shall be extended by a period equal to that used by the notifying parties, to present their commitments in accordance with § 1. This supplementary report shall be transmitted in accordance with article 55, § 5.

When the competition prosecutor is of the opinion that the concentration should be declared permissible in accordance with article 8, § 3, the supplementary report shall state the reasons why the concentration would not result in effective competition being significantly impeded in the Belgian market or a substantial part of it, in particular through the creation or strengthening of a dominant position.

When the competition prosecutor is of the opinion that the concentration should be declared non-permissible in accordance with article 8, § 4, or should be subject to conditions and/or obligations, the supplementary report shall state the reasons why the concentration should be prohibited or made subject to the conditions or obligations that the competition prosecutor proposes.

§ 3. The undertakings that are parties to the concentration and the parties involved in the procedure in accordance with article 57, § 2, shall submit any written observations they may have, within a period of

10 working days after the supplementary report has been filed, with a copy to the competition prosecutor and the other parties to the case.

§ 4. When written observations are submitted in accordance with § 3, the competition prosecutor may submit a supplementary report to the Council chamber hearing the case within five working days after the expiry of the deadline stipulated in § 3. This supplementary report shall be transmitted in accordance with article 55, § 5. The undertakings participating in the concentration shall submit their written observations, if any, no later than the day before the hearing, with a copy to the competition prosecutor. The supplementary written observations of the intervening parties shall be excluded from the debates.

§ 5. The Council chamber hearing the case shall hear the case in accordance with article 57.

§ 6. The chamber's decision on the admissibility of the concentration shall be taken within 60 working days after the decision to initiate the procedure, if applicable extended in accordance with § 2. Its decisions may be made subject to conditions and/or obligations, with a view to ensuring that the undertakings concerned respect the commitments presented by them in order for the concentration to be declared permissible. When the Council chamber hearing the case wishes to take into consideration conditions and/or obligations that are not discussed in the report, the undertakings concerned and the competition prosecutor shall be heard on this point and shall have at least two working days to express their views in this regard.

The concentration shall be deemed to be approved when the Council has not taken its decision within the time limit of 60 working days, extended if applicable in accordance with § 2, where the undertakings concerned present commitments in accordance with § 2.

The time-limit may only be extended at the express request of the parties, and for a period that may not exceed that proposed by the parties. The Council chamber hearing the case shall in any event grant an extension of 20 working days, as well as a new hearing at the request of the notifying parties in order to allow them to present new commitments.

The King may, after consulting the general assembly of the Council, modify the time-limit referred to in clause 1.

§ 7. When the Council chamber hearing the case rules in its decision that the concentration is non-permissible, it shall order, with a view to re-establishing effective competition, the demerger of the undertakings or any combined assets, the end of joint control or any other appropriate measure.

Art. 60. § 1. Within 30 working days after the notification of the Council's decision to the notifying parties and to the chancellery of the prime minister, the Council of Ministers may authorise the implementation of a concentration for reasons of general interest which outweigh the risk of competition being undermined as recorded in the decision of the Competition Council. The Council of Ministers may also overturn totally or in part any conditions and obligations imposed by the Competition Council.

In its assessment and in the grounds for its decision, the Council of Ministers shall take into consideration in particular the general interest, national security, the competitiveness of the sectors concerned with regard to international competition, and the interests of consumers and the employment market.

§ 2. The Council of Ministers shall rule at its own initiative or at the request of the notifying parties.

§ 3. The decision of the Council of Ministers shall be adopted within 30 working days after the notification of the Competition Council's decision and solely on the basis of that decision. If the Council of Ministers fails to take a decision within that period of time, it shall be deemed not to have authorised it.

Section 6. – Investigation and decisions during simplified concentration procedures

Art. 61 § 1. The notifying parties may request the use of the simplified procedure. In this case the following provisions shall apply by derogation to the provisions of articles 55, § 1 and §§ 3 to 5, and 56 to 59.

§ 2. The competition prosecutor shall investigate the case as soon as he or she receives the notification provided for in article 9 or, where the information to be supplied is incomplete, as soon as he or she receives the complete information.

§ 3. When the competition prosecutor reaches the conclusion that the conditions for the application of the simplified procedure are satisfied and that there are no objections to the notified concentration, he or she shall record that in a letter to be sent to the notifying parties. The competition prosecutor shall transmit at the same time a copy of that letter to the Council for publication.

§ 4. The competition prosecutor's letter referred to in § 3 shall be considered for the purpose of the application

of this act, as a decision of the Council within the meaning of article 58, § 2, 1°.

§ 5. When the competition prosecutor reaches the conclusion that the conditions for the application of the simplified procedure are not, in his or her opinion, satisfied or that there are doubts as to the permissibility of the concentration, he or she shall record his or her decision in a letter, setting out the reasons for his or her decision in summarised form, to be sent to the notifying parties, with a copy to the Council.

There is no separate right of appeal against this letter.

This letter from the competition prosecutor shall terminate the simplified procedure, and as a result articles 55 to 59 shall once again apply in full. The notification shall be considered as incomplete from the beginning within the meaning of article 55, § 1. The notification shall be deemed to be complete on the day after that when the notifying parties supply the missing information mentioned in the competition prosecutor's letter.

§ 6. The competition prosecutor shall transmit the letter referred to in § 3 or § 5 to the notifying parties within 20 working days. The concentration shall be deemed to be approved if the competition prosecutor has not transmitted the said letter within the prescribed period of time.

Section 7. – Interim measures

Art. 62. § 1. The president of the Council or the councillor delegated by the president may, in accordance with the conditions specified in this article, adopt interim measures intended to suspend the anti-competitive practices under investigation, if there is an urgent need to avoid a situation likely to cause serious, imminent and irreparable damage to undertakings whose interests are affected by such practices or likely to harm the general economic interest.

§ 2. Requests for interim measures may be submitted to the College of Competition Prosecutors by the complainant, the minister or the minister with responsibility for the sector concerned. The College of Competition Prosecutors shall inform the undertakings or associations of undertakings against which it has been requested to adopt interim measures and transmit a copy of the request to the president of the Council.

§ 3. When the competition prosecutor concludes that the request for interim measures is inadmissible or unfounded, he or she shall reject the request by reasoned decision. This decision shall be notified by

registered letter to the complainant or the minister, indicating that the file may be consulted at the registry, that a copy can be obtained against payment and that they can lodge an appeal against the decision with the president of the Council.

§ 4. An appeal to the president of the Council against a decision not to agree to a request as above must be submitted in writing to the registry, setting out the grounds of the appeal, within 30 days after the notification of the decision, under penalty of invalidity. This appeal must satisfy the conditions laid down in article 76, § 2, clause 3, 1° to 3°, 5° and 7° under penalty of invalidity. The president of the Council shall rule on the basis of the documents. The president's decision is not appealable. If the president of the Council considers that the appeal is founded, the case shall be referred to the College of Competition Prosecutors for investigation, with the request that it submits a report to the president.

§ 5. When the competition prosecutor considers that the request is admissible and justified, he or she shall submit a reasoned report to the president of the Council. This report shall state the measures that the competition prosecutor considers necessary to suspend the practices referred to in § 1.

§ 6. Once the report has been submitted in accordance with § 5, the procedure referred to in article 48 shall also apply for requests for interim measures.

Section 8. – Fines and periodic penalty payments

Art. 63. When it takes a decision referred to in article 52, 1°, the chamber of the Competition Council hearing the case may impose on each of the undertakings and associations of undertakings concerned, fines not exceeding 10% of their turnover, determined in accordance with the criteria referred to in article 86. In addition, it may, by the same decision, at the request of the competition prosecutor, impose on each of the undertakings and associations of undertakings concerned periodic penalty payments for non-compliance with its decision, of up to 5% of the average daily turnover, determined in accordance with the criteria referred to in article 86, per day of non-compliance, with effect from the date fixed by it in its decision.

Such fines and periodic penalty payments may in addition be imposed if articles 52, 1°, 3° and 4°, and 53, § 2 apply, and in the case of non-compliance with the decisions referred to in articles 58, § 2, 1°, and 59, § 7.

Art. 64. § 1. The Council division hearing the case may

impose on persons, undertakings or associations of undertakings involved; fines of up to 1% of turnover, determined in accordance with the criteria set out in article 86 where, deliberately or by negligence:

1° they provide inaccurate or misleading information at the time of a notification or in response to a request for information;

2° they provide incomplete information;

3° they do not provide the information within the prescribed time;

4° they prevent or impede the investigations specified in article 44 as well as the inquiries referred to in article 47.

§ 2. The same fines may be imposed when an undertaking implements a concentration without prior notification in accordance with article 9, even if it transpires that the concentration is permissible.

Art. 65. In the event of an infringement of article 9, § 4, the Council chamber hearing the case may impose the fines referred to in article 63, § 1.

It may, in addition, impose the periodic penalty payments referred to in article 63, § 1, to ensure compliance with the order referred to in article 59, § 7.

Art. 66. The president of the Council may impose the periodic penalty payment referred to in article 63, § 1, in order to ensure compliance with the interim measures adopted in accordance with article 62 and compliance with the decision referred to in article 44, § 2, clause 3.

Section 9. – Publication and notification

Art. 67. The decisions of the Council and its president shall be notified by the registry by recorded delivery letter to the parties, the complainants and the minister, as well as to any person who can demonstrate an interest in accordance with article 48, § 5, clause 3 or article 57, § 2 and who has requested to be heard by the Council.

The president of the chamber of the Council that takes the decision shall take account of the legitimate interest of the undertakings to ensure that their business secrets and other confidential information are not disclosed.

The decisions referred to in the first clause shall

indicate the parties to which the notification must be sent.

Under penalty of invalidity, the notification letter must indicate the period within which an appeal must be lodged as well as the procedure for lodging an appeal. The letter shall show in annex the names, capacities and addresses of the parties to which the decision has been notified.

Art. 68. § 1. The College of Competition Prosecutors shall transmit, upon receipt, an abstract of all notifications of a concentration for publication in the *Belgian Official Gazette* and on the website of the Competition Council. This publication shall include the names of the undertakings that are parties of the concentration. The publication shall indicate whether the application of the simplified procedure has been requested.

§ 2. The decisions of the Council or of its president, including those referred to in Sections 3 to 8 of this chapter, shall be published in the *Belgian Official Gazette* and on the website of the Competition Council.

The decisions of the Court of Appeal and the Court of Cassation, of the Council of Ministers and the Council of State shall be published in the *Belgian Official Gazette* and notified to the parties by the registry concerned or the minister, as the case may be, by recorded delivery letter.

Notices whereby the concentration is deemed, in the absence of a decision, to be authorised, shall also be published in *Belgian Official Gazette* and notified to those parties of the concentration, and to any other person who can demonstrate an interest in accordance with article 57, § 2 and who has asked to be heard by the Council.

The decisions referred to in the preceding clauses shall be transmitted without delay, in the form intended for publication in the *Belgian Official Gazette*, to the Competition Commission.

For the purposes of the publication and communication of decisions, the president of the chamber that has taken the decision shall take into account the legitimate interest of undertakings to ensure that their business secrets and other confidential information are not disclosed.

The notification of the decision of the Council or of its president shall indicate that an appeal against the decision may be lodged with the Brussels Court of Appeal within 30 days after its notification.

Decisions whereby a concentration falls within the scope

of application of this act and those which provide for the procedure referred to in article 59 to be initiated shall not be considered as final decision within the framework of this appeal procedure.

The notification of the Council of Minister's decision with regard to concentrations, shall indicate whether the decision is open, when it is final, to appeal to the Council of State within 30 days after notification.

Section 10. – Co-operation with the European Commission and the competition authorities of other European Union Member States

Art. 69. When the Belgian competition authority rules pursuant to article 84 of the Treaty establishing the European Community on the permissibility of restrictive agreements or practices and on the abuse of a dominant position in the common market, the decision shall be taken in accordance with articles 81, paragraph 1, and 82 of the Treaty, in accordance with the procedure and sanctions laid down in this act.

When the Belgian competition authority rules, pursuant to regulations or directives adopted on the basis of article 83 of the Treaty establishing the European Community, in application of the principles set out in articles 81 and 82 of the Treaty, the decision shall be pronounced in accordance with the said regulations or directives, in accordance with the procedure and sanctions laid down in this act.

Art. 70. The competition prosecutors and the Directorate-General for Competition shall be charged, pursuant to article 20, § 5, of Regulation (EC) n° 1/2003 of the Council, with providing assistance or carrying out controls or other missions as part of its role in ensuring compliance with the rules on competition of the treaties of the European Communities, on their own initiative, at the request of the European Commission or at the request of a national competition authority of another European Union Member State in accordance with their rules on competition.

The competition prosecutors and officials authorised for that purpose shall have the same powers and obligations as those of the authorised officials referred to in article 44 when they intervene at the request of a competition authority of another Member State, and those of the authorised officials referred to in article 20, clause 2, of Regulation (EC) n° 1/ 2003 when they intervene at the request of the European Commission.

Art. 71. For the purposes of the application of articles 81 and 82 of the Treaty establishing the European

Community, the Directorate-General for Competition, the College of Competition Prosecutors and the Council may communicate to the European Commission and the competition authorities of the Member States any de facto or legal elements, including confidential information, and if applicable use as means of proof such information obtained from the European Commission or from the competition authorities of other Member States.

CHAPTER V. – *Preliminary rulings sought from the Court of Cassation*

Art. 72. The Court of Cassation shall give preliminary rulings on questions relating to the interpretation of this act.

Art. 73. § 1. When the resolution of a dispute depends on the interpretation of this act, the jurisdiction to which the dispute is referred, including the Competition Council, may defer its decision and ask the Court of Cassation for a preliminary ruling.

The decision to seek a preliminary ruling from the Court of Cassation shall suspend the time limits and the proceedings before the court which has sought such a ruling with effect from the day when the decision is taken until the day when the jurisdiction in question receives the Court of Cassation's ruling.

The court's decision on whether or not to seek a preliminary ruling is not appealable.

§ 2. The registrar of the Court of Cassation shall notify the preliminary ruling without delay to the parties, the Competition Council, the minister and, if articles 81 and 82 of the Treaty establishing the European Community apply, to the European Commission.

The registrar of the Court of Cassation shall invite the parties, the minister and the European Commission to submit their written observations within one month after the notification of the preliminary ruling, under penalty of the said observations being declared inadmissible.

§ 3. The latter may each ask to be heard and consult the file of the proceedings at the registry, without removing it, or request that a copy be sent to them.

When a preliminary ruling is requested by the Competition Council, the competition prosecutor who examines the case for which such a ruling is requested, shall be requested by the registrar of the Court of Cassation to file his or her observations in accordance

with the procedure set out in § 2, clause 2.

The Court may rephrase the preliminary question. The Court shall give a reasoned decision. The Court shall rule on these requests with priority on all other cases.

§ 4. The jurisdiction which requested a preliminary ruling, as well as any other jurisdiction called upon to rule on the same case, shall be required, in order to resolve the dispute, for which the preliminary ruling was sought, to comply with the ruling given by the Court of Cassation.

Art. 74. Any judgement or ruling given by the courts relating to cases concerning the legitimate nature of a competition practice within the meaning of this act, shall be notified to the Directorate-General for Competition, the Competition Council, the Federal Public Service Chancellery and, if the judgement or ruling concerns the application of European competition act, to the European Commission within eight days at the request of the registrar of the competent jurisdiction.

In addition, the registrar shall inform without delay the Directorate General for Competition and the Competition Council of appeals lodged against any judgement or ruling referred to in the preceding clause.

CHAPTER VI. – *Appeals*

Art. 75. The decisions of the Competition Council and of its president, as well as the tacit decisions on the permissibility of concentrations as a result of the lapsing of the time-limits referred to in articles 58 and 59 may be appealed against, before the Brussels Court of Appeal, except where the Competition Council rules pursuant to article 79.

The Court of Appeal shall rule with full jurisdictional powers on the suspected restrictive practices and, if applicable, on the sanctions imposed, as well as the permissibility of the concentrations. The Court of Appeal may take into consideration developments since the Council's disputed decision.

The Court of Appeal can impose fines and penalties in accordance with the provisions referred to in section 8 of Chapter IV.

Art. 76. § 1. A separate appeal cannot be lodged against decisions by which the Competition Council refers the case to the competition prosecutor.

§ 2. The appeals referred to in article 75 may be lodged by the interested parties before the Council, by the complainant as well as by any other person demonstrating a valid interest in accordance with article 48, § 2, or article 57, § 2, and having asked the Council to be heard. The appeal may also be lodged by the minister, who shall not however have to justify an interest or having had to be represented before the Competition Council.

Appeals must be lodged, under penalty of being automatically void, in the form of a signed application lodged with the registry of the Brussels Court of Appeal within 30 days after notification of the decision.

Under penalty of being automatically void, the application shall contain:

1° the day, month and year;

2° if the applicant is a natural person, his or her surname, given names, profession and domicile, and, if applicable, his or her company number; if the applicant is a legal person, its name, legal form, registered address and the capacity of the person or body that represents it, and, if applicable, its enterprise number; if the appeal is lodged by the minister, the name and address of the service which represents him or her;

3° the decision against which the appeal is lodged;

4° a list of the names, capacity and address of the parties to whom the decision was notified within the meaning of article 67;

5° a presentation of the grounds for the appeal;

6° the place, date and time of the hearing fixed by the registry of the Court of Appeal;

7° the signature of the applicant or that of the applicant's lawyer.

Within five days of lodging the application, the applicant must, under penalty of the appeal being automatically void, send a copy of the application by recorded delivery to the parties to whom the disputed decision has been notified, as evidenced by the notification letter referred to in article 67, to the Competition Council and to the minister, if the latter is not the applicant.

A counter appeal may be lodged. It is only admissible if it is lodged within one month after receipt of the letter referred to in the previous clause.

However, the counter appeal shall be inadmissible if the main appeal is declared void or is not lodged within the prescribed time.

The Brussels Court of Appeal may at any time at its own initiative call to the case the persons that were parties before the Competition Council when there is a risk that the main appeal or the counter appeal may affect their rights or obligations.

The Court may request the College of Competition Prosecutors within the Competition Council to carry out an investigation and to submit a report to it. In this case, the College of Competition Prosecutors shall have the investigative powers set out in the first section of Chapter IV.

The Brussels Court of Appeal shall determine the time limit within which the parties must submit their written observations and file them with the registry.

The minister may file his or her written observations to the registry of the Brussels Court of Appeal and consult the file there, without removing it. The Brussels Court of Appeal shall fix the deadlines for submitting these observations. The registry shall inform the parties of their content.

§ 3. Within five days after the case has been entered in the cause list, the registry of the Brussels Court of Appeal shall request the registry of the Competition Council, to transmit the case file. This file must be transmitted within five days after receipt of the request. The minister shall determine the method by which the file is transmitted.

§ 4. An appeal does not suspend the decisions of the Council, or those of its president.

The Court of Appeal may, however, at the request of the interested party and by an interlocutory judgement, suspend, in all or part, the enforcement of the decision of the Competition Council or of its president, until its ruling is pronounced.

The suspension of the enforcement of a decision may only be ordered if serious grounds likely to lead to the disputed decision being overturned are invoked and if there is a risk that the immediate enforcement of the decision would cause serious irreparable harm.

The Court of Appeal may, if applicable, order the reimbursement to the interested party of amounts paid by way of fines and periodic penalty payments. It may also decide not to rule immediately on the reimbursement of fines and periodic penalty payments paid.

§ 5. The Court of Appeal shall ensure that the confidentiality of the file transmitted by the Council is protected throughout the proceedings before the Court.

Art. 77. § 1. The parties concerned may lodge an application for judicial review before the Council of State against decisions of the Council of Ministers with regard to concentrations.

The application shall be lodged with the registry of the Council of State, within 30 days after notification of the decision.

§ 2. The application shall contain, under penalty of invalidity:

1° the day, month and year;

2° if the applicant is a natural person, his or her surname, given names, profession and domicile, and, if applicable, his or her company registration number;

3° if the applicant is a legal person, its name, legal form, registered address and the capacity of the person or body that represents it, and, if applicable, its company registration number;

4° the decision against which the appeal is lodged;

5° as applicable, the surnames, given names, domicile or, otherwise, the residence or name, legal form and the registered address of the parties to whom the decision had to be notified;

6° a list of the grounds for the appeal;

7° the signature of the applicant or of the applicant's lawyer.

§ 3. Such an application shall not suspend the decisions appealed against.

The minister may, on behalf of the Council of Ministers, submit written observations to the Council of State. The minister may consult the file at the registry, without removing it.

The Council of State shall rule forthwith on matters relating to concentrations.

The Council of State shall control the legality of the decisions that are the subject to the appeal.

In the event that the disputed decision is annulled, the Council of Ministers shall have a new time-limit to reach a decision. This time-limit shall be equivalent to that set out in article 60. It shall start to run from the date of notification of the Council of State's overruling of the disputed decision.

Moreover, the rules relating to proceedings before the administration section of the Council of State shall apply. The King may derogate from these procedural rules, by decree deliberated by the Council of Ministers.

Art. 78. Appeals to the Court of Cassation against judgements pronounced by the Court of Appeal pursuant to this chapter may also be lodged by the minister, without the latter having to demonstrate an interest or without having been a party before the Competition Council or the Brussels Court of Appeal.

CHAPTER VII. – *Appeals against the decisions of sectorial regulatory authorities*

Art. 79. The Competition Council shall hear, in the cases determined by the act, appeals against the decisions of sectorial regulatory authorities.

Art. 80. § 1. Appeals must be lodged, under penalty of being automatically void, in the form of a signed application lodged with the registry of the Competition Council within 30 days after notification of the decision, or for the other interested persons with effect from 30 days after the publication of the decision or, if it is not published, after they learn of it. The application shall be lodged with the registry in as many copies as there are parties to the case.

The application shall contain, under penalty of being automatically void:

1° the day, month and year;

2° if the applicant is a natural person, his or her surname, given names, profession and domicile, and, if applicable, his or her company registration number; if the applicant is a legal person, its name, legal form, registered address and the capacity of the person or body that represents it, and, if applicable, its company registration number; if the appeal is lodged by the minister, the name and address of the service which represents him or her;

3° the decision against which the appeal is lodged;

4° a presentation of the grounds for the appeal;

5° the signature of the applicant or of the applicant's lawyer.

The registry of the Competition Council shall notify the application by registered letter, within the time limits and in the form laid down in article 1056 of the Judicial

Code to the parties to whom the disputed decision was notified, as well as to the minister if the latter is not the applicant.

§ 2. A counter appeal may be lodged. It is only admissible if it is lodged within one month after receipt of the letter referred to in § 1, clause 3.

The president of the Competition Council shall set the deadlines by which the parties must submit their written observations and file a copy with the registry. The president shall also set the date of the debates.

The minister and the minister with responsibility for the sector concerned may file their written observations with the registry of the Competition Council and consult the file at the registry, without removing it, or have a copy sent to them. The president of the Competition Council shall fix the deadline by which these observations must be submitted. The registry shall notify the contents of these observations to the parties.

§ 3. The registry of the Council shall request the sectorial regulatory authority, within five days after the appeal has been lodged, to transmit the case file. This file shall be transmitted within five days after receipt of the request. The minister shall determine the method used to transmit the file.

§ 4. An appeal shall not suspend the decisions of the sectorial regulatory authority.

The Competition Council may however, at the request of the interested party and by an interlocutory decision, suspend all or part of the sectorial regulatory authority's decision.

§ 5. The King shall determine the rules for procedures before the Council.

CHAPTER VIII. – Appeals to the Court of Cassation against decisions of the Competition Council

Art. 81. The Court of Cassation shall rule on appeals against decisions of the Competition Council pursuant to article 79.

The Competition Council shall comply with the ruling of the Court of Cassation on the point of law on which it has ruled.

Appeals to the Court of Cassation shall be lodged in accordance with the form and time limits for appeals to the Court of Cassation against rulings of the Council of State.

CHAPTER IX. – *Provisions amending the Judicial Code*

Art. 82. The following words shall be added to Article 609 of the Judicial Code, amended by the act of 23 December 1986 and by the royal decree of 20 July 2000:

“8° decisions of the Competition Council pronounced pursuant to article 79 of the act on the protection of economic competition, co-ordinated on”

Art. 83. The following clause shall be added to article 615 of the Judicial Code:

“Any Competition Council councillor and any member of the College of Competition Prosecutors of the Competition Council who has not respected the dignity of his or her office or failed in the duties of his or her office may, as applicable, be removed or suspended from his or her function, by decision pronounced by the first Division of the Court of Cassation, following an application by the public prosecutor to that court”.

CHAPTER X. – *Penal provisions*

Art. 84. The use or disclosure of documents or information received pursuant to the provisions of this act and 81 and 82 of the Treaty establishing the European Community, shall be sanctioned by a fine of between 100 and 10,000 Euro and a period of imprisonment of between two months and five years or by one of these penalties only.

Any infringement of article 44, § 3, clause 6, and the decree referred to in article 90 shall also be punished by a fine of between 100 and 10,000 Euro and period of imprisonment of between two months and five years or by one of these penalties only.

Art. 85. The provisions of the first book of the Penal Code, including Chapter VII and article 85, shall apply to the infringements referred to in article 84.

CHAPTER XI. – *Other provisions*

Art. 86. § 1. The turnover referred to in articles 63 and 64 is the turnover realised during the previous financial

year in the national market and for export sales. It shall be understood in accordance with the definition of title VI of Book IV of the Company Code relating to the consolidated annual accounts of undertakings.

The turnover referred to in article 7 is the total turnover realised during the previous financial year in Belgium. It shall be understood in accordance with the definition of title VI of Book IV of the Company Code relating to the consolidated annual accounts of undertakings.

§ 2. By derogation from § 1, where the concentration consists of the acquisition of parts – whether or not constituted as legal entities – of one or more undertakings or of 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.

Two or more transactions within the meaning of the first clause, which occur during a period of two years between the same persons or undertakings, shall be considered as a single concentration operation occurring on the date of the last transaction.

§ 3. Turnover shall be replaced:

a) for credit institutions and other financial institutions, by the sum of the following income items, as defined in the royal decree of 23 September 1992, relating to the annual accounts of credit institutions, after deduction, as applicable, of value added tax and other taxes directly related to the said income:

1° interest and similar income;

2° income from securities:

- a) income from shares, and other variable yield securities;
- b) income from participating interests;
- c) income from shares in affiliated undertakings;

3° commissions received;

4° net profit on financial operations;

5° other operating income.

The turnover of a credit institution or a financial institution in Belgium shall include the income items, defined above, of the branch or division of the said institution, established in Belgium.

b) for insurance undertakings, the value of gross premiums issued which shall include all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertaking, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contribution or levies charged by reference to the

amounts of individual premiums or the total volume of premiums. The gross premiums paid by residents in Belgium shall be taken into account.

§ 4. As regards the application of articles 7 and 63, and without prejudice to § 2 of this article, the turnover of each of the undertakings shall be the total of the turnover of all the undertakings belonging to the same group.

Affiliated companies within the meaning of Title VI of Book IV of the Company Code relating to the annual consolidated accounts of undertakings are considered as belonging to the same group.

§ 5. For the public undertakings referred to in article 87, the turnover to be taken into consideration is that of all the undertakings which constitute an economic entity with autonomous decision-making powers, independently of the ownership of their capital or of the rules of administrative supervision applying to them.

Art. 87. Public undertakings and undertakings to which the public authorities grant special or exclusive rights shall be subject to the provisions of this act to the extent that such application does not prevent them, in law or in fact, from accomplishing the specific mission entrusted to them by law or pursuant to legal provisions.

Art. 88. § 1. The investigation referred to in article 44 may only concern facts occurring within the last five years. This limitation period shall run from the date of the decision of the College of Competition Prosecutors to carry out an automatic investigation or the date when the case is referred to the College of Competition Prosecutor in accordance with article 44, § 1. In the case of continuing or repeated infringements this period shall begin to run from the day on which the infringement ceases

§ 2. The limitation period for the investigation and decision procedure shall be five years from the date referred to in § 1.

The limitation period shall only be interrupted by investigative actions or decisions taken within the time limit determined in clause 1 or by a reasoned request submitted to the Council by the complainant or the party submitting a request; these actions shall trigger a new limitation period of an equal duration.

§ 3. The limitation period for the imposition of fines or periodic penalty payments shall be:

1° three years in the case of infringements of provisions concerning requests for information or the conduct of inspections;

2° five years in the case of all other infringements.

The limitation period begins to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, this period shall begin to run from the day on which the infringement ceases.

The limitation period for the imposition of fines or periodic penalty payments shall be interrupted by any action by the Directorate-General for Competition, the College of Competition Prosecutors or the Council or, in the case of the application of articles 81 and 82 of the Treaty, of a competition authority of a Member State with a view to investigating or instituting proceedings for the infringement. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement.

Actions which interrupt the running of the period shall include in particular the following:

1° written requests for information by the College of Competition Prosecutors or by the competition authority of a Member State;

2° written instruction to conduct an inspection issued by the College of Competition Prosecutors to its officials or by the competition authority of a Member State;

3° the initiation of a proceedings by the College of Competition Prosecutors or by a competition authority of a Member State;

4° the filing of the report containing the objections in accordance with articles 45, § 4 or 48, §§ 4 and 6, by the College of Competition prosecutors or the communication of objections by a competition authority of a Member State.

The interruption of the limitation period shall apply to all undertakings and associations of undertakings which have participated in the infringement.

The limitation period shall start to run again from each interruption. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Council having imposed a fine or periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended pursuant with the following clause.

The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the Council's decision is the subject of proceedings pending before the Brussels Court of Appeal.

§ 4. The power to enforce decisions adopted pursuant to articles 44 et 45 shall be extinguished after the limitation period of five years.

This period shall start to run from the day when the decision becomes final.

The limitation period for the enforcement of penalties shall be interrupted:

1° by the notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;

2° by any action by the competent body or by a Member State, acting at the request of this competent body, to recover the fine or periodic penalty payment.

The limitation period shall start to run again from each interruption.

The limitation period for the enforcement of penalties shall be suspended:

1° as long as a postponement of payment is granted;

2° as long as the judicial execution of payment is suspended pursuant to a decision of the Brussels Court of Appeal.

Art. 89. Notwithstanding the provisions of article 84, the Belgian Competition Authority may also communicate, within the framework of reciprocity agreements in the area of mutual assistance on competition practices, indispensable documents and information to the competent foreign competition authorities.

Art. 90. Without prejudice to the provisions of the act of 27 March 1969 on the regulation of maritime and air transport and other than the exceptions that it determines, the King may, by a decree deliberated by the Council of Ministers, and after consultation with the Competition Council and Commission, adopt measures to prohibit undertakings from providing to a foreign State or a body falling within the competence of a foreign State, information or documents which have not been published and which concern their competitive practices.

Art. 91. If the undertaking is in default in the payment of the fine or penalty, the decision of the Council or of its president or the decision of the Brussels Court of Appeal, *res judicata*, shall be transmitted to the Administration of “Belasting op de Toegevoegde Waarde, Registratie en Domeinen/la Taxe sur la valeur ajoutée, de l’Enregistrement et des Domaines” (Value Added Tax, Registration and Public Property) in order to recover the administrative fine.

The proceedings instituted by the aforementioned administration shall comply with article 3 of the act on public property of 22 December 1949.

The King shall determine the time-limits and arrangements for the payment of the fines and penalties referred to in articles 63 to 66.

Art. 92. The costs inherent in the application of this act shall be borne by the Federal Public Service Economy, SMEs, Self-Employed and Energy.

The King may, by a decree deliberated by the Council of Ministers, determine the list of procedural actions, including in particular, investigative measures, the cost of which shall be borne by the notifying parties or the parties having committed an infringement of this act.

The King may, by a decree deliberated by the Council of Ministers, determine the amount, conditions and arrangement for the collection of the costs referred to in the previous clauses.

Art. 93. The investigation shall be conducted and the report of the College Competition Prosecutors shall be drawn up in the language of the Region where the undertaking under investigation is established. In the case of several undertakings, the language used shall be that of the region in which the majority of them are established. In the event of equal numbers, one of the national languages shall be used as appropriate for the needs of the case.

The complainant or the body initiating the investigation shall choose the language (Dutch or French) if the undertaking is established in the Brussels Region.

The undertaking which is under investigation and which is established in the Brussels Region may nevertheless ask for the investigation and the procedure to be carried out in another language (French or Dutch).

A concentration shall be notified in Dutch or French at the choosing of the notifying parties.

CHAPTER XII. – *Transitional provisions*

Art. 94. § 1. Requests submitted pursuant to article 6, § 1, of the act on the protection of economic competition, co-ordinated on 1 July 1999, as well as notifications given pursuant to article 7, § 1, of the same act shall become null and void on the date when this act enters into force.

§ 2. The procedural actions carried out in accordance with the act on the protection of economic competition, co-ordinated on 1 July 1999, shall remain in force for the application of this act.

§ 3. Article 29, § 2, second clause, of the act on the protection of economic competition, co-ordinated on 1 July 1999, shall continue to apply to the exemption decisions adopted by the Council, pursuant to article 2, § 3, of the same act, before the date when this act enters into force, until the date when the said decisions lapse.

Art. 95. The mandates of the president, the vice-president, the two full-time members and the other members of the Competition Council who were appointed pursuant to the provisions of the act on the protection of economic competition, co-ordinated on 1 July 1999, shall automatically be terminated on the date when this act enters into force.

The members referred to in clause 1 shall however continue to exercise their mandate until such time as a replacement has been appointed.

Art. 96. The rapporteurs of the Directorate-General for Competition shall automatically be appointed competition prosecutors.

The secretary and deputy secretary of the Council shall automatically be appointed registrar and deputy registrar.

CHAPTER XIII. – *Final provisions*

Art. 97. The act on the protection of economic competition, co-ordinated on 1 July 1999, amended by the acts of 15 March and 26 June 2000, the royal decrees of 20 July 2000 and 10 August 2001, the act of 3 May 2003 and the royal decrees of 25 April 2004 and 3 July 2005 is repealed.

Art. 98. This act shall enter into force on the first day

of the fourth month following the month in which it is published in the *Belgian Official Gazette*.

Seen to be annexed to our decree of 15 September 2006 consolidating the act of 10 June 2006 on the protection of economic competition and the act of 10 June 2006 establishing a Competition Council.

By the King:

The Minister for Economy,

M. VERWILGHEN