

Book IV of the Code of Economic Law

Competition Act ¹

3 April 2013

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“BOOK IV – Protection of competition

TITLE 1 – Competition rules

First Chapter – Anti Competitive practices

Art. IV.1. §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 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.

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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§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.

§ 4. It is prohibited to natural persons to negotiate in name and for the account of an undertaking or association of undertakings with competitors or with them to decide about :

a) the price fixing at the sale of products or services to a third party;

b) limitation of production or the sale of products or services ;

c)the allocation of markets.

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

Art. IV.4. The prohibition under article IV.1, § 1, does not apply to agreements, decisions of associations of undertakings and concerted practices for which article 101, paragraph 3, of the TFEU 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 IV.1, § 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 IV.1, § 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 IV 5.

Art. IV.5. §,. The King may, after consulting the Competition Commission as meant in article IV.39 and the Belgian Competition Authority, declare by decree that article IV.1, § 1, does not apply to categories of agreements, decisions and concerted practices.

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 Belgian Competition Authority.

§ 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.

Chapter 2. Concentrations

Art. IV.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° ou 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 founded on article 54, clause 3, sub g of the treaty 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. IV.7. §1. The provisions of this chapter 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 IV.8, 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 Belgian Competition Authority and the Competition Commission meant in art. IV.39, increase the thresholds referred to in § 1.

§3. Every three years, Belgian Competition Authority shall assess the thresholds referred to in § 1, taking into account inter alia the economic incidence and administrative burden for undertakings.

Art. IV.8. §1. The turnover referred to in article IV. 7 is the turnover realized 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 :

1° 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:

a) interest and similar income;

b) income from securities:

income from shares, and other variable yield securities;

income from participating interests;

income from shares in affiliated undertakings

c) commissions received;

d) net profit on financial operations

e) 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.

2° 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 para fiscal 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 article IV 7 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.

For the public undertakings referred to in article IV 12, 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. IV.9. §1. Concentrations shall be subject to the prior approval of the Belgian Competition Authority 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 not 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 IV.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 IV.1, 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 venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

Art. IV.10. §1. The concentrations covered by this act shall be notified to the Competition Prosecutor general 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 IV 6, § 1, 1°, or of the acquisition of joint control within the meaning of article IV 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 notifying parties have the choice to notify a concentration in Dutch or in French.

§4. The King shall determine the notification procedure referred to in § 1. The Belgian Competition Authority may lay down specific simplified notification rules.

§5. So long as the Competition College does not pronounce its decision on the permissibility of the concentration, the undertakings concerned may not implement the concentration.

§6. 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 IV 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 Competition Prosecutor General 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 president of the competition Authority in accordance with § 7.

§7. Without prejudice to the provisions set out in § 6, the chairperson may, at any time, if requested by the parties, grant a derogation to the obligations laid down in § 5. In this case, the president 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.

§8. The president may make its decision subject to certain conditions and obligations.

Art. IV.11. 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 competition prosecutor general in accordance with article IV.10.

Chapter 3. Public undertakings

Art. IV.12. 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.

Chapter 4. Measures or decisions taken by a foreign state

Art. IV.13. Except for an exemption in the cases determined by the King, it is forbidden for each person residing on Belgian territory or having its office or establishment, to carry out measures or decisions taken by a foreign state or its organism and which refer to regulation regarding competition, economic dominant position or

restrictive trade practices regarding international transport by sea and by air.

The King determines on which acts this prohibition clause refers to.

The exemption on request of interested persons may be granted by the minister ,qualified for economic affairs and if necessary may be subject to specific stipulations.

Art. IV.14. Each injunction or request based on measures or decisions referred to in art.IV.13 must be communicated to the minister or his proxy within a period of 15 days.

Art. IV.15. Without prejudice to the articles IV 13 en IV 14 and subject to the exceptions he determines the king may, by a decree deliberated by the Council of ministers and after consultation with the Belgian Competition Authority and the competition commission takes measures to prohibit undertakings to give at a foreign state or organizations depending on it, information or documents regarding competition practices which were not yet published.

Title 2. Competition law enforcement

Chapter 1 – Belgian Competition Authority

Section 1 Organisation

Article IV.16. An autonomous service with legal personality shall be set up named « Belgian Competition Authority ».

§2. The Belgian Competition Authority shall be composed of :

1° the president and the service of the president ;

2° the Competition College ;

3° the Board;

4° the investigation service under the direction of the competition prosecutor general.

§3. The Belgian Competition Authority is responsible for the application of art. 101 and 102 of the Treaty of the Functioning of the European Union (TFEU), referred to in art. 35 of Council Regulation (EC) n° 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in articles 101 and 102 of the treaty on the Functioning of the European Union (hereafter

TFEU).

§4. The King determines, by a decree deliberated by the Council of ministers, which human, logistic and material means the federal public service (FPS) Economy, SME, self-employed and Energy has to put at the disposal of the Belgian Competition Authority. To that end a service level agreement will be concluded between the Belgian Competition Authority and the FPS Economy.

§5. The King determines, by a decree deliberated by the Council of Ministers, the administrative and pecuniary statute of the president, assessor vice-president and assessors who are having a seat in the Competition College, the competition prosecutor general, the general counsel, the chief economist and the staff of the Belgian Competition Authority.

Sub-section 1. The president and the service of the president

Art. IV.17 §1. The president of the Belgian Competition Authority (hereafter « the president») will be appointed by the King by a decree deliberated by the Council of Ministers for a mandate of six years which can be renewed once. The president carries out the duties which the act and in particular section 2 of this chapter assigns to him. To that end he can delegate tasks to the assessor vice-president when it involves the Competition College and to the chief economist, the general counsel and to the staff of the Belgian Competition Authority when it concerns other duties.

§2. In order to be appointed to president the candidate must pass the exam regarding professional skills intended to assess the maturity as well as the ability which is essential for the performance of his duties. Further details and the examination programme are determined by the King. In addition he proves a useful experience for the exercise of his duties. He must hold a masters' degree and have a working knowledge of Dutch, French and English.

When the occasion arises the exercise of his duties as president of the Belgian Competition Authority is considered as a mission within the meaning of art. 323b, §1 of the Judicial Code.

§3. The president will be sent into retirement when he is, due to a severe and permanent infirmity, unfit for his function.

Art. IV.18. The president must not accept any instructions, neither while taking decisions in the execution of duties assigned to him by the act and especially by section 2 of this chapter, nor by determining his position in competition matters of the European Commission concerning the application of art. 101 and 102 TFEU and regulation (EC) nr. 139/2004 of the Council of 20 January 2004 regarding merger control of undertakings.

Art. IV.19. The assessor vice-president is sitting in for president as president of the Competition College in the case of conflict of interests or reasoned in availability. The assessor vice-president has for the matters for which he is designated the same powers and responsibilities as this book assigns to the president.

In the case of unavailability the president is replaced as president of the board by the most senior-ranking present.

In the case of unavailability of the assessor vice-president and the president, a third assessor is designated and the most senior of the three assessors will act as president of the Competition College.

Art. IV.20. §1. The president is responsible among other things:

1° for representing Belgium in the European and international competition organisations for all discussions related to the powers of the Belgian Competition Authority; and he takes part in other discussions in European and international institutions about legislation and regulations related to competition policy;

2° to contribute for the benefit of FPS Economy, the parliament, the government or other agencies in the preparation and evaluation of competition policy in Belgium, to contribute to a better understanding of that policy, to conduct studies and to resolve informally questions and disputes about the application of competition rules in cases in which no formal inquiry is conducted as meant in art. IV41 § 1;

3° preparing Belgian legislation and regulations regarding competition rules and competition policy.

4° representing the Belgian Competition Authority in procedures meant in art. IV 75 till IV 79.

§2. A service of the president will be organized in the Belgian Competition Authority. That service will be directed by the president and includes the members of the staff of the Belgian Competition Authority who were assigned to that service by the Board. According to art. IV .27 §1 the service of the president can also call upon the members of the Investigation Service for a percentage of their time determined by the Board for the execution of the duties referred to in §1.

Sub-section 2. The Competition College

Art. IV.21. The Competition College is a decision making college that is made up by the president per case to take decisions meant in Section 2 of this title.

Art. IV.22. § 1. The Competition College is composed of :

1° the president or the assessor vice-president;

2° two assessors chosen out of an alphabetic list of assessors

The designation of the assessors happens in alphabetical order of the list referred to in paragraph 2, by turns depending on the language of the procedure.

In the Competition College must be at least one lawyer with a working knowledge of dispute settlement ;and if possible has a at least one member another qualification.

If a case cannot be assigned to an assessor vice-president or assessor of the linguistic group in accordance with the language of the procedure, without causing a conflict of interests, the designation happens on the basis of the list of the other linguistic group.

§ 2. The assessor vice-president, who belongs to a another linguistic group than the president, and the assessors amounting to maximum 20, are appointed by the King by a decree deliberated by the Council of ministers for a renewable mandate.

They are divided into 2 equal lists, in alphabetical order, according to the Dutch or French speaking linguistic group which they belong to, determined by the language of the diploma of master.

On each list the diploma of each assessor will be

mentioned.

§ 3. To be appointed as assessor vice-president, or as assessor, the candidate must comply with the selection conditions for president, laid down in art. IV.17.

§4. The assessor vice-president and the assessors hearing the case may not accept any instruction regarding this case, when taking decisions in the execution of their duties assigned to them by this book and in particular section 2 of this chapter.

Sub-section 3.The Board

Art. IV.23. The Board is running the Belgian Competition Authority.

Art. IV.24. §1. It is composed of :

1° the president ;

2° the competition prosecutor general ;

3° the chief economist ;

4° the general counsel.

In case of equality of votes the president has the casting vote.

§2. The King appoints the chief economist and the general counsel for a renewable mandate of six years by decree deliberated in the Council of ministers, after an exam of professional skills laid down in article IV. 17.

Art. IV.25. The board is in charge among other things of:

- the organization and the composition of the service of the president and the Investigation Service ;
- to determine guidelines regarding competition law enforcement;
- to draw up an annual memorandum in which its policy priorities are laid down and communicated to the minister ;
- to draw up internal rules for the Investigation service that will be adopted by the King.

Sub-section 4. The competition prosecutor general and the Investigation Service.

Art. IV. 26 § 1 The King may , by a decree deliberated by the Council of ministers , appoint the competition prosecutor general for a renewable mandate of six years.

To be appointed as competition prosecutor general ,the candidate must comply with the selection conditions for president, laid down in art. IV.17.

When the occasion arises the exercise of his duties as competition prosecutor-general of the Belgian Competition Authority is considered as a mission within the meaning of art. 323b, § 1 of the Judicial Code.

§ 2. The competition prosecutor general carries out the duties which are in particular assigned to him by this book and by title 2, chapter 1, section 2.

His duties are inter alia :

1° the management of the Investigation Service and the coordination and the lead of the investigations ;

2° to receive complaints and injunctions as meant in article IV.41,§1, 3° concerning anti-restrictive practices ;

3° to open an investigation in the cases referred to in article IV.41 §1 and to determine the order in which these cases will be dealt with after advice from the chief economist; ;

4° to receive notifications of concentrations ;

5° to issue instructions, when officials of the Belgian Competition Authority assist officials of the European Commission during an inspection ,which is ordered by the European Commission, pursuant to the regulation (EC) 1/2003 concerning the execution of the rules of competition as stipulated in the articles 101 and 102 of the treaty ;

6° to monitor the implementation of decisions concerning rules of competition taken by the Competition College and the Court of Appeal.

§ 3. If the Competition Prosecutor-General is absent or unavailable he will be replaced by the longest serving official of the Investigation Service or in case of equal seniority, by the eldest.

§ 4. The competition prosecutor general will be put on pension when he is ,due to a severe and permanent infirmity, unfit for the function.

§ 5. With reference to a case the competition prosecutor general may not accept any instruction, when taking decisions in the execution of his duties assigned to him by this book and in particular section 2 of this chapter.

Art. IV.27. § 1. A Investigation Service is organized in the Belgian Competition Authority.

The Investigation Service is composed of the officials of the Belgian Competition Authority who are assigned to that service by the Board, provided that the president can require their assistance for a percentage of their time determined by the Board.

§ 2. The competition prosecutor general assigns for each case which the Belgian Competition Authority in accordance with articles IV.26 §2, second clause,3°, and IV,41 §1 decides to deal with and for each notification of a concentration, a member of the Investigation Service who is as competition prosecutor in charge of the daily management of the investigation.

The competition prosecutor who is in charge of the daily management of the investigation team may only receive orders from the competition prosecutor general regarding this investigation.

§ 3.The competition prosecutor general designates, for each case referred to in paragraph 2, a team of members of the Investigation Service who are under his supervision in charge of the investigation and under the guidance of the competition prosecutor who is in charge of the daily management of the investigation.

The members of the Investigation Service who are part of an investigation team ,can only receive orders from the competition prosecutor general or the competition prosecutor in charge of the daily management regarding this investigation.

Art. IV.28. The members of the Investigation

Service referred to in article IV.27 § 2 who are in charge of the daily management of an investigation, perform duties which are assigned to them by title 2, chapter 1, section 2.

Art. IV.29. To perform the duties which are assigned to the Investigation service by title 2, chapter 1, the competition prosecutor general, assigns for each case, the Belgian Competition Authority decides to deal with, in application of the articles IV.26. § 2, second clause, 3° and IV. § 1 in this book and for each notified concentration, a cell which consists of the competition prosecutor general, the competition prosecutor who is in charge of the daily management of the investigation and a member of the Investigation Service who is not part of the investigation team.

Art. IV.30. § 1. The Investigation Service is in charge of:

1° eventually dismissing a complaint;

2° the implementation of Section 2, sub-section 4.

§ 2. Without prejudice to article IV.28, the competition prosecutors are in charge of :

1° heading and organizing the investigation ;

2° at the request of interested natural or legal persons, or on their own initiative, ruling on the confidential nature of data provided to the Belgian Competition Authority or to the College of Competition Prosecutors during the procedure

3° drawing up and submitting the reasoned draft decision to the Competition College;

4° issuing instructions including these instructions referred to in article IV.41, §3 clause 8, except if the officials of the Belgian Competition Authority assist the officials of the European Commission during an inspection which is ordered by the European Commission, pursuant to 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 ;

5° applying article IV.63.

§ 3. The competition prosecutors may accomplish all actions related to the accomplishment of their mission, except those which this book reserved for the College of Competition Prosecutors.

Art. IV.31. The Investigation Service will get assistance from a secretariat.

This secretariat is also in charge to accomplish the duties of a registry regarding procedures at the Competition College and the president.

Sub-section 5. Challenge and discipline

Art. IV.32. The President, the assessor vice-president or assessors assigned to a case, the competition prosecutor general and the competition prosecutors assigned by him can be challenged for the reasons stipulated in article 828 of the Judicial code.

Any person who is aware of grounds to be challenged, shall abstain.

The application to challenge must be submitted by means of a reasoned appeal to the secretariat of the Investigation Service. It sets out the grounds 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 secretary to the person challenged.

The person challenged shall add at the bottom of the application, within two days a written declaration either disclaiming competence or refusing to abstain, with his replies to the grounds on which his competence is challenged.

If the challenge is contested, the Court of Appeal of Brussels shall rule on the challenge, in the absence of the person concerned. The applicant and the competition prosecutor in the case shall be heard.

The decision of the court of appeal shall not be appealable.

Art. IV.33. The Court of Appeal of Brussels may issue a formal warning to the president, the assessor vice-president, the assessors, the competition prosecutor general and the chief economic and general counsel, to impose a fine to be deducted from their salary by way of disciplinary sanction or a blame.

The court may discharge them from office or suspend them.

Sub-section 6. Professional secrecy and immunity.

Art. IV.34. The president, the members of the Competition College, the competition prosecutor general, the chief economist and the general counsel and the staff of the Belgian Competition Authority, 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 Sub-section 10 of Section 2 and royal decrees adopted pursuant to article IV;43, 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. IV.35. The obligation meant in article IV 34 shall also apply to the representatives of the Belgian 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 101 and 102 of the Treaty (TFEU) and article 19 of Regulation (EC) n° 139/2004 of the Council of 20 January 2004 on the control of concentrations between undertakings.

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Art. IV.36. The president, the assessor vice-president or assessors, who are handling a case, the competition prosecutor general, the chief economist and the general counsel and the staff of the Belgian Competition Authority enjoy the same immunities as the federal officials in public office.

Sub-section 7. Incompatibilities

Art. IV.37. § 1. The functions of president, the competition prosecutor general, the chief economist, the general counsel and a member of staff of the Belgian Competition Authority 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, with the responsibilities of a notary or bailiff, with the profession of a lawyer, with the military status and

with the function of a minister of a recognized cult.

§ 2. The function of assessor vice-president or assessor is incompatible with the exercising of an elected public mandate at a different level than the local or provincial level, any remunerated political or administrative public function with the exception of functions in institutes of higher education, with the responsibilities of a notary or bailiff, with the military status and with the function of a minister of a recognized cult.

§ 3 Derogations may be granted in respect of paragraphs 1 and 2

1° only in the case of professor, 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.

These derogations are granted by the president, and if it concerns himself by the president of the Court of Appeal of Brussels.

Art. IV.38. The president, assessor vice-president or assessors handling the case, the competition prosecutor general, the chief economist, the general counsel and the staff of the Belgian Competition Authority, 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 president, the competition prosecutor general, the chief economist, the general counsel and the staff of the Belgian Competition Authority, as well as any other person working under their authority, 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.

Sub-section 8 – The Competition Commission

Art. IV.39. 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. IV.40. The King shall determine the composition and functioning of the Competition Commission, as well as that of its secretariat.

The president, the members and their substitutes are appointed by the minister.

The king shall also determine by decree deliberated by the Council of Ministers, 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.

Section 2. Procedures

Sub-section 1. Investigation procedure

Art. IV.41. § 1. Cases shall be investigated as meant in art. IV.27,

1° at the request of the interested parties referred to in article IV.10 in the case of a notified concentration;

2° officially, or in response to a complaint from a natural or legal person demonstrating a direct, current interest in the case of infringements of articles IV.1,§1,IV.2, en IV.10, §1 or in the case of non-compliance with a decision taken pursuant to articles IV.10,§ 7, IV. 48,IV. 49,IV.61 or IV.62;

3° on request or on injunction of the minister ;

4° 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 IV.1, § 1 , of article IV. 2 or article IV.10, § 1;

5° officially ,or at the request of the minister for the purpose of a royal decree granting exemptions by category of agreements, decisions and concerted practices on the basis of article IV. 5;

§ 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 IV. 61 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 officials of the local and federal police, the competition prosecutors and civil servants of the Belgian Competition Authority authorized by the Minister have the powers to detect infringements of this book 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 IV.6, IV.7., IV.9, IV.10 et IV.11.

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 on the premises, means of transport and other premises of the undertaking where they have reasons 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, as well as at the home of heads of undertakings, directors, managers and other members of the staff as well as at the home address or on the business premises of natural or legal persons, internal or external entrusted with commercial, accounting, administrative, fiscal or financial management responsibilities, between 8 h am and 6 h pm with the prior authorisation of an examining judge ;

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 of the Belgian Competition Authority 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 prosecutor general may appoint experts whose tasks he shall determine.

§ 4. Notwithstanding specific laws that guarantee the secrecy of declarations, public administrations shall assist the competition prosecutors in the performance of their tasks.

§ 5. In carrying out their investigations, the competition prosecutors, civil servants of the Belgian Competition Authority, as well as all who assist them in their investigations under their authority 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 IV. 42, § 5, 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 spoken in Belgium shall be used as appropriate for the needs of the case.

§ 6. Before transmitting to the President the reasoned draft decision referred to in articles IV.42, § 5, IV. 58, § 4 or IV.62, § 2, 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 draft decision is notified.

The competition prosecutor draws up a file that composes only the documents and the data on which his decision is founded. The assigned ranking of confidentiality will also be added. The file will be laid down together with the draft of decision.

§ 7. When 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 competition prosecutor shall then rule. The competition prosecutor may decide that the interest of ensuring the effective application of this book should prevail over the confidential nature of the data in question. The competition prosecutor shall then notify the decision to the natural or legal persons having supplied the data in question.

When a natural or legal person calls upon the confidential nature of the data he supplies, he supplies in the meantime a non-confidential version of the document concerned in so far this is not yet part of the file. If the confidentiality is accepted by the competition prosecutor, the confidential documents are removed from the file and replaced by the non-confidential version. If a non-confidential version is not supplied, the data

will be considered as non-confidential unless it is decided differently due to the application of clause 5.

When 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.

The competition prosecutor may decide in the interest of the investigation, that certain data which he indicates, supplied by third parties, should be considered as confidential. He informs the natural and legal persons concerned, who supplied the data, by letter, fax or electronic mail. In this case he imposes the parties to supply a non-confidential version or summary, according to clause 3. This decision shall not be appealable.

§ 8. The decisions of the competition prosecutor regarding the confidentiality of the data can be subject of an appeal to the president by natural or legal persons who supplied these data, within three working days after notification of the decision. The president designates an assessor vice-president or assessor who decides about the confidentiality and who cannot have a seat on the Competition College that hears the same case.

The designated assessor vice-president or assessor hears the undertaking concerned or association of undertakings, as well as the competition prosecutor general or the authorized competition prosecutor designated by him, within five working days on receipt of the appeal, and rules within five working days after having heard the parties. The time limit of five working days is reduced to two working days if the investigation concerns a concentration. This decision is not appealable.

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

Sub-section 2. Investigation rules applying specifically to anti-competitive practices

Art. IV.42. § 1. Complaints concerning anti-competitive practices shall be submitted to the competition prosecutor general.

§ 2. If it concludes that the complaint is inadmissible or ungrounded, or prescribed by limitation, the College of Competition Prosecutors shall drop the complaint by reasoned decision. The College of Competition Prosecutors can also drop a complaint by reasoned decision in view of the available resources and the priorities which are set. This decision shall be notified by registered letter to the complainant, indicating that the file can be consulted at the registry, that a copy can be obtained against payment and that the complainant can appeal to the president who composes the Competition College that will handle the appeal.

§ 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 IV.79, § 4. The president can impose deadlines within which the undertaking, against whom the complaint was filed, and the complainant can submit written remarks. The president rules, if the occasion arises, on the confidentiality of the documents and data.

Only in the case of dismissal in view of the available resources and the priorities, the president of the Competition College may at the request of the appealing party, provided that there are serious grounds, decide that the Investigation Service must clarify its reasons before the Competition College rules on the appeal.

The Competition College rules on documents. The verdict of the Competition College is not appealable or protest. If the Competition College considers the appeal grounded, the file will be transferred to the College of competition prosecutors.

§ 4. If the College of Competition Prosecutors considers that the complaint, or if applicable, an investigation at its own initiative, is justified, the competition prosecutor general communicates to the undertakings and natural persons whose activity has been investigated, which grievances are taken into account, and gives them access to evidence which was used to reach their provisional conclusion and also to all non-confidential versions of documents and information's collected during the investigation. He sets a deadline of at least one month to enable them to respond to this notice.

§ 5. One month at most upon receipt of the answers referred to in paragraph 4 of this provision or failing to get a response within the deadline, the competition prosecutor files on behalf

of the College of Competition Prosecutors, a reasoned draft decision with the president. The draft decision will be submitted together with the procedural file mentioning the assigned ranking of confidentiality as well as the inventory.

On receipt of the draft decision the president composes without delay the Competition College which will be hearing the case and submits the draft and the procedural file to the Competition College.

Art. IV.43. The King may prescribe any formality with regard to the preparation and submitting of files, and also determine the procedural arrangements before the Competition College, the president 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 Belgian Competition Authority and these bodies or institutions, with regard to the investigation and the reciprocal exchange of confidential information.

Art. IV.44. The president 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 harming the functioning of the market. He may if there is serious proof of the existence of practices prohibited by articles IV.1,§1, and IV.2 and the articles 101 and 102 TFEU or when undertakings, associations of undertakings or natural persons refuses to cooperate, the competition prosecutor general may ask that the College of Competition Prosecutors renders assistance to a general or sectorial investigation. The provisions of Article IV. 41 shall apply by analogy to the investigation of the College of Competition Prosecutors, except for clauses 4 to 8 of paragraph3.

Sub-section 3. – Decisions on restrictive practices.

Art. IV.45. § 1. Simultaneously with the filing of the draft decision referred to in article IV.42, § 5, the competition prosecutor shall inform the undertakings and natural persons whose activity has been investigated and transmit to them a copy of the draft. He shall inform them that they can

consult the investigation file and the file of procedure at the secretariat of the College of Competition Prosecutors, referred to in article IV. 41,§ 6 ,and obtain a copy of it against payment.

The secretariat shall inform the natural or legal persons having submitted the complaint, that the draft decision has been filed. If the Competition College hearing the case deems it necessary, the natural or legal persons having submitted the complaint as well as the other parties heard by the College in accordance with paragraph 5, clause 2 and 3, may receive a non-confidential version of the draft referred to in article 45, § 5.

§ 2. The competition prosecutor general invites the undertakings and natural persons whose activities have been investigated to indicate the confidential parts of the draft decision with a view to transmitting a non-confidential version of the draft to the natural or legal persons that filed the complaint or to the other parties heard by the Competition College in accordance with paragraph 5, clauses 2 and 3. The competition prosecutor general hearing the case shall take a decision in this regard, which shall not be separately appealable.

The complainants and all the other natural or legal persons heard by the Competition College shall not have access to the investigation file and the file of procedure, unless the president decides otherwise regarding the file of procedure.

When parties other than the undertakings under investigation, wish to communicate confidential information to the Competition College, an assessor vice-president or the by the president assigned assessor who is not part of the Competition College, shall rule as the competition prosecutor on the confidentiality in accordance with the procedure set out in article IV.41, §§ 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 assessor vice-president or assessor. This decision is not open to a separate appeal.

§ 3. As soon as the undertakings under investigation have been given access to the file pursuant to §§1 and 2, the parties dispose of a time period of two months , to submit their written observations and the documents of the investigation file that they wish to add to the file of procedure .

They are not allowed to add additional documents which were not submitted during the previous investigation, except if it concerns a proof of a fact or an answer to grievances of which they were not yet informed.

The president extends the term by reasoned request of the parties or the competition prosecutor general provided that he sees it fit to and for a term which does not exceed the requested term.

At their request the president decides about the access to written observations of an undertaking under investigation by other undertakings which are also under investigation. He rules on the confidentiality of data in these written observations.

When the Competition College, pursuant to paragraph 5, clause 2 or 3, has granted access to the hearing to natural or legal persons, the 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 written replies.

§ 4. On receipt of the written observations of the parties who are qualified to do so or the exceeding of the term to submit observations, the written procedure is closed and the president will organize without delay a hearing of the Competition College. This hearing takes place at least one month and at most two months after closing of the written procedure.

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

When the Competition College 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 and the chief economist and the general counsel 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. After hearing the case the Competition College takes the matter into consideration and decides within a term of one month. This term will be suspended when the nature of the proposed decision requires to confer with the European Commission.

§ 7. The decision of the Competition College on the substance of the case cannot be based on the documents of which 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 Competition College, as well as the arrangements for obtaining copies.

Art. IV.46. § 1. 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 IV.1, if this undertaking has contributed to prove the existence of the prohibited practice and to identify the participants, inter alia by providing information which the Belgian Competition Authority did not have before, by delivering the evidence of a practice prohibited by article IV.1, § 1, of which the existence had not yet been established, or by admitting the prohibited practice.

When this is proposed by the competition prosecutor general or the competition prosecutor he designated, the president will compose the Competition College hearing the case and submits the proposal to the Competition College.

As a consequence of the action of this undertaking or association of undertakings, the Competition College adopts, at the request of the competition prosecutor general or the competition prosecutor he designated, 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 Competition College hearing the case may, if the conditions stipulated in the leniency declaration are fulfilled, grant immunity from fines in proportion to the contribution which was provided in order to

prove the infringement.

§ 2. Natural persons who are acting in the name or for the account of an undertaking or association of undertakings which, together with others were involved in a practice prohibited by article IV.1, may appeal for immunity from prosecution to the College of Competition Prosecutors with respect to infringements referred to in article IV.1,§ 4.

The Competition College grants on request of the competition prosecutor general or the competition prosecutor he designated, immunity from prosecution, if this person has contributed to prove the existence of a practice prohibited by article IV.1,§1, and to identify the participants, inter alia by providing information which the Belgian Competition Authority did not have before, by delivering the evidence of a practice prohibited by article IV.1,§ 1, of which the existence had not yet been established or by admitting the practice prohibited by article IV.,§ 4.

Immunity from prosecution may be granted to all who comply with the conditions referred to in this provision by cooperating on an appeal for leniency of an undertaking for whom they act.

§ 3. After adopting the leniency declaration or granting immunity to natural and legal persons, the documents and observations which are submitted by an applicant in support of his appeal for leniency, may be part of the investigation file or the procedural file but without prejudice to the provisions of article IV.69 no access can be granted in any other circumstance.

§ 4. Without prejudice to the terms of limitation the competition prosecutor general or the competition prosecutor he designated may request to impose a sanction against the person concerned, if the Competition College concludes that the conditions of the personal leniency declaration referred to in § 2 were not observed.

§ 5. An appeal for immunity from sanctions by a natural person does not exclude the granting of a complete exemption of fines to an undertaking by applying § 1.

Art. IV.47. The Competition College may, after the procedure referred to in article IV. 45 concerning a complaint, a request or an investigation at its own initiative declare , by reasoned decision, that according to the elements in its possession, there are no grounds for acting.

Art. IV.48. After the procedure referred to in article IV.45 the Competition College, may come to the conclusion by reasoned decision :

1° that an anti-competitive practice exists and order it to cease, if applicable, in accordance with the conditions the Competition College 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 IV.4, clause 2, or a royal decree within the meaning of articles IV.4, clause 3 and IV.5 does not apply in an individual case, where the anti-competitive practice in question produces effects that are incompatible with article IV.1, § 3;

4° that a regulation within the meaning of article IV.4, clause 1, does not apply in an individual case, where the anti-competitive practice produces effects incompatible with article 101, paragraph 3, of the TFEU, in the national territory or part of it, which has all the characteristics of a separate geographic market.

Art. IV.49. § 1. When the Competition College 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 Belgian Competition Authority 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 president may re-open the procedure set out in articles IV.41 to IV.45 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. IV.50. If the agreement, decision or concerted practice which has been investigated is the subject of a regulation of the Council of the European Union or the European Commission declaring article 101 , paragraph 1, of the EC Treaty inapplicable or of a royal decree within the meaning of article IV.5, the Competition College shall record that fact and issue a decision to dismiss the case.

Sub-section 4. Procedure concerning transactions

Art. IV.51. During an investigation pursuant to article IV.1 or article IV.2, whether or not with simultaneous application of article 101 or article 102 TFEU, the College of Competition Prosecutors may at each moment of the procedure but anyway before the draft decision referred to in article IV .42, §4 is submitted to the president, fix a term on behalf of the undertaking or association of undertakings which are under investigation, where they can indicate in writing that they are prepared to hold transaction talks in order to submit propositions for transactions. The College of Competition Prosecutors is under no obligation to take into consideration the answers which are received when the term has already expired.

Art. IV.52. When an undertaking or association of undertakings, which are under investigation indicate that they are prepared to hold transaction talks, the College of Competition Prosecutors communicates in writing to the undertaking or association of undertakings concerned their intention to proceed to a transaction. The College of Competition Prosecutors identifies the grievances and grant access to evidence in support of the grievances, as well as to all non-confidential versions of documents and observations received during the investigation.

The College of Competition Prosecutors gives also notice of the minimum and the maximum fine which it considers to propose to the Competition College.

Art. IV.53. When it is clear to the College of Competition Prosecutors that a transaction is

possible after further talks and after examination of the documents and observations, the College may fix a term ,within which the undertaking or association of undertakings concerned agrees to give a statement of transaction. In this statement they must admit their involvement and assume responsibility for the quoted infringement and accept the proposed sanction.

The College of Competition Prosecutors is under no obligation to take into consideration the propositions of transactions which he receives when the term has expired. The College of Competition Prosecutors may stop the procedure of transaction any time.

Art. IV.54. In the case the propositions of the undertaking or association of undertakings concerned reflect the acceptance of the infringement identified in the communication of the College of Competitions prosecutors , the College may inform the undertaking or association of undertakings concerned of the draft transaction decision in which this is stated, as well as the fixed fine.

For the calculation of the fine in accordance with the guidelines for the calculation of fines of the Belgian Competition Authority or in the absence of such rules, of the European Commission, the College of Competition Prosecutors may apply a 10% reduction of fine .It can also take into consideration a commitment of the undertaking or association of undertakings concerned to carry out the payment of damages.

In order to come to a transaction, the undertakings or the association of undertakings concerned must confirm within a term fixed by the College of competition Prosecutors, that the communication of the draft decision reflects the content of their proposition of transaction and that they accept the sanction, mentioned in the draft.

Art. IV.55. In case of a simultaneous application of article 101 or article 102 TFEU, the College of Competition Prosecutors informs the European Commission of the draft decision in accordance to article 11, 4th clause, of Regulation (EC) nr. 1/2003.

Art. IV.56. All documents and data which are exchanged by the College of Competition Prosecutors and the undertaking or association of undertakings concerned are confidential.

Art. IV.57. If the undertaking or association of undertakings concerned have communicated their confirmation within the fixed term, the College of Competition Prosecutors takes a decision, including the fine ,whereby the procedure is closed. This decision counts as a decision of the Competition College as referred to in article IV.48.

If the European Commission formulates remarks which require an amendment of the draft decision and the College of Competition Prosecutors does not decide to stop the transaction procedure, the College takes a new draft decision and the procedure referred to in article IV. 54 will be pursued again.

The competition prosecutor general sends the decision by registered letter to the undertaking or association of undertakings concerned. The competition prosecutor general sends also a copy of this decision to the secretariat with the intention of publication and to the complainant if there is one.

The undertaking or association of undertakings concerned cannot appeal to a higher court against the transaction decision.

Sub-section 5. – Investigations concerning concentrations

Art. IV.58. § 1. The Competition Prosecutor designated by the Competition Prosecutor general shall initiate his investigation upon receipt of the notification or if the information to be provided is incomplete, upon receipt of the complete information.

When the conditions referred to in article IV.63 for the application of the simplified procedure are not met , the competition prosecutor will , pursuant to article IV.10 ,send a copy of the notifications of the concentrations, without delay,, to the president who will compose the Competition College that will be hearing the case .

§ 2. The competition prosecutor who is in charge of the daily management of an investigation can assign investigative duties to the members of the staff of the investigation service.

§ 3. The competition prosecutor designated pursuant to article IV.27 shall submit the reasoned draft decision to the president, together with the file which is only composed of documents and data on which the competition prosecutor has based his draft, mentioning the assigned ranking of

confidentiality and the list of the documents of this file. This list shall determine the confidentiality of the documents with regard to each of the parties having access to the file.

§ 4. The draft decision shall be submitted within 25 working days with effect from the day after the day when the notification is submitted to the competition prosecutor general. 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 IV. 59, clause 2.

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

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

The competition prosecutor rules a priori on the confidentiality and includes the documents and data in a distinct supplement which he transmits to the secretariat.

Art. IV.59. 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 IV.9, § 4, he shall inform the undertakings that are parties of the concentration accordingly, at least five working days before his or her draft decision is submitted to the President, in accordance with article IV.58, § 3.

The undertakings that are parties to 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 IV.61,§ 2, clause 1, 1^o.

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 draft decision.

Sub-section 6. Decisions on concentrations

Art. IV.60. § 1. The Competition College 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 Competition College hearing the case shall hear the undertakings that are parties to 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.

They may not add additional documents which were not submitted during the previous investigation, except if it is a proof of a fact or an answer to grievances of which they have not yet been informed.

When it considers it necessary, the Competition College 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.

In all cases the chief economist and the general counsel 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 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 Competition College hearing the case, no later than

three working days before the hearing. The secretariat 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 Competition College, a competition prosecutor who is not member of the case team, designated by the competition prosecutor general, shall rule on its confidentiality, in accordance with the procedure set out in article IV.41, §§6 en 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 Competition College '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 notifying parties have not been able to examine the said documents.

§ 5. The King shall determine the rules for procedures before the Competition College, as well as the arrangements for obtaining copies.

Art. IV.61. § 1. The Competition College hearing the case shall rule, by way of a reasoned decision:

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

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

§ 2. If the concentration falls within the scope of application of this act, the competent Competition College 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 Competition College wishes to take into consideration conditions and/or obligations that are not discussed in the report,(draft of decision) 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 Competition College 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 IV. 62.

The Colleges' 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 IV.58, § 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 Competition College 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.

Art. IV.62. § 1. If the Competition College hearing the case adopts the decision referred to in article IV. 61,§ 2,clause 1, 3°, the competition prosecutor shall carry out a supplementary investigation and submit a supplementary draft decision to the Competition College hearing the case. The provisions of article IV. 58, except for §§ 1 and 4, shall apply to the supplementary investigation and draft decision.

No later than 20 working days after the date of the decision to initiate the procedure in accordance with article IV.61, § 2,first clause, 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 Competition College 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 paragraph 1. This supplementary report shall be transmitted in accordance with article IV. 58, § 5.

When the competition prosecutor is of the opinion that the concentration should be declared permissible in accordance with article IV.9, § 3, the revised draft decision 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 IV.9, § 4, or should be subject to conditions and/or obligations, the supplementary draft decision 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 IV.60, § 2, shall submit any written observations they may have, within a period of 10 working days after the supplementary draft decision has been filed, with a copy to the competition prosecutor and the other parties to the case.

They may not add supplementary documents which were not submitted during the previous investigation, except if it is a proof of a fact or an answer to grievances of which they had no knowledge yet.

§ 4. When written observations are submitted in accordance with paragraph 3, the competition prosecutor may submit a supplementary report to the Competition College hearing the case within five working days after the expiry of the deadline stipulated in paragraph 3. This draft decision shall be transmitted in accordance with article IV.58, § 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.

They must not add supplementary documents which were not submitted during the previous investigation.

The supplementary written observations of the intervening parties shall be excluded from the debates.

§ 5. The Competition College hearing the case shall hear the case in accordance with article IV. 60.

§ 6. The Competition College '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 paragraph 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 Competition College hearing the case wishes to take into consideration conditions and/or obligations that are not discussed in the draft decision, 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 Competition College has not taken its decision within the time limit of 60 working days, extended if applicable in accordance with paragraph 2, where the undertakings concerned present commitments in accordance with paragraph 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 Competition College 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 Belgian Competition Authority, modify the time-limit referred to in clause 1.

§ 7. When the Competition College 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.

Sub-section 7. Investigation and decisions during simplified concentration procedures

Art. IV.63. § 1. The notifying parties may request the application of the simplified procedure. In this case the following provisions shall apply by derogation to the provisions of articles IV.58, § 1 and §§ 3 to 5, and IV.59 to IV.62.

§ 2. The competition prosecutor shall investigate the case as soon as he receives the notification provided for in article IV.10 or, where the information to be supplied is incomplete, as soon as he 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 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 secretariat of the Belgian Competition Authority for publication

§ 4. The competition prosecutor's letter referred to in paragraph 3 shall be considered for the purpose of the application of this book, as a decision of the Competition College within the meaning of article IV.61, § 2, first clause, 1^o.

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

There is no separate right of appeal against this decision.

This letter from the competition prosecutor shall terminate the simplified procedure, and as a result articles IV.58 to IV.62 shall once again apply in full. The notification shall be considered as incomplete from the beginning within the meaning of article IV.58 , § 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 decision.

§ 6. The competition prosecutor shall transmit the letter referred to in paragraph 3 or paragraph 5 to the notifying parties within 15 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.

Sub-section 8. Interim measures

Art. IV.64. § 1. The Competition College 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. Reasoned requests for interim measures may, together with the related documents, be submitted to the president by the complainant, the College of Competition Prosecutors, the minister or the minister with responsibility for the sector concerned. Without delay the president will constitute the Competition College that will rule on the request and submits to the College the request. Under penalty of nullity the applicant transmits on the same day as the deposition, by registered letter or e-mail with receipt-note, a copy of his request and the supplementary documents to the undertakings or associations of undertakings against which it has been requested to adopt interim measures. The secretariat transmits to the competition prosecutor general, a copy of this request and the supplementary documents if he is not the applicant. It transmits also a copy of the documents to the competition prosecutor general, and if necessary to the minister when he is the applicant.

§ 3. The president or the assessor vice-president or assessor, who he delegates, fix the date of a hearing which shall take place within a calendar month after depositing the request where upon the applicants and the competition prosecutor general or a competition prosecutor by him designated can be heard. The secretariat informs the applicants, the undertakings or association of undertakings against which it has been requested to adopt interim measures, the competition prosecutor general and the minister of the decision. The

competition prosecutor general must submit written observations not later than six working days before the day of the hearing. The parties need to dispose of a time limit of five working days before the hearing, to inspect the documents and the submitted observations, except for the extracts of which, the president of the Competition College or the assessor vice-president or assessor who he delegates, the confidentiality with regard to them is accepted.

According to art. IV 31 written remarks must be deposited at the secretariat, which are sent on to the president and the competition prosecutor general. The party who submits remarks must send a copy by recorded delivery letter or e-mail to all other parties concerned.

§ 4. The terms referred to in § 3 and § 6 can only be extended with maximum two weeks. If these terms are extended to allow the applicants to answer to the written observations of other parties, the other parties need to dispose, as the applicants, of an equal period of time to reply.

§ 5. The parties who submit documents may indicate which extracts they consider confidential provided it is well-reasoned and they submit a non-confidential summary. The president of the Competition College or the assessor vice-president or assessor whom he delegates rules on the confidentiality of extracts and this decision is not open to separate appeal.

§ 6. After the hearing the Competition College decides by reasoned decision within a term of one calendar month referred to in paragraph 3, if there is reason to adopt interim measures. In the absence of such a decision within this term, the request to adopt interim measures deems to be rejected.

The decision of the Competition College cannot be based on documents of which the undertakings, against whom it had been requested to adopt interim measures, had no knowledge of.

Sub-section 9. Publication and notification

Art. IV.65. The decisions of the Competition College and its president shall be notified by the secretariat of the Belgian Competition Authority 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 IV.45, § 5, or article IV.60,

§ 2 and who has requested to be heard by the Competition College.

The president who 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. IV.66. § 1. The competition prosecutor general shall transmit, upon receipt, an abstract of the notification of a concentration for publication in the Belgian Official Gazette and on the website of the Belgian Competition Authority. 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 Competition College or of its president, including those referred to in Sections 3 to 7 of this chapter, of the College of Competition Prosecutors referred to in article IV.30,§1,2° and of the competition prosecutor referred to in article IV.63,§3 shall be published in the Belgian Official Gazette and on the website of the Belgian Competition Authority.

The decisions of the Court of Appeal in Brussels and the Court of Cassation shall be published in the Belgian Official Gazette and notified to the parties by the registry concerned, by recorded delivery letter.

Notices whereby the concentration is deemed, in the absence of a decision, to be authorised, shall also be published in the 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 IV.60, § 2 and who has asked to be heard by the Competition College.

The notices whereby the request for interim measures is deemed, in the absence of a decision, to be rejected, shall be notified to the applicants as well as to each person who took part in the procedure.

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 Competition College 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 Competition College or of its president of the Competition College 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 book and those which provide for the procedure referred to in article IV.62 to be initiated shall not be considered as final decisions within the framework of this appeal procedure.

Sub-section 10. Cooperation with the European commission and the competition authorities of other European Union member states.

Art. IV.67. When the Belgian Competition Authority rules pursuant to article 104 of the TFEU, 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 101, clause 1, and 102 of the TFEU, in accordance with the procedure and sanctions laid down in this book.

When the Belgian Competition Authority rules, pursuant to regulations or directives adopted on the basis of article 103 of the TFEU, in application of the principles set out in articles 101 and 102 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 book.

Art. IV.68. Staff members of the Belgian Competition Authority, assigned for that purpose by the competition prosecutor general, 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 for undertakings, as part of its role in ensuring compliance with the rules on competition of the treaties of the European Union, 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 officials authorised for that purpose shall have the same powers and obligations as those of the authorised officials referred to in article IV.41 § 3 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. IV.69. For the purposes of the application of articles 101 and 102 of the TFEU and of Regulation (EC) n°139/2004 of the Council of 20 January 2004 concerning the control on concentrations of undertakings, the president, the competition prosecutor general and the officials of the Belgian Competition Authority 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.

Section 3. Fines and periodic penalty payments

Art. IV.70. § 1 . When it takes a decision referred to in article IV.48, 1°, the Competition College may impose on each of the undertakings and associations of undertakings concerned, fines not exceeding 10% of their turnover. 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, 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 IV.48, 3° and 4°, and IV.49, § 2 apply, and in the case of non-compliance with the decisions referred to in articles IV.61, § 2, 1°, and IV.62, § 6 and § 7.

§ 2. Infringements of article IV.1., § 4 are punished with an administrative fine from 100 up to 10.000 euros

§ 3. Fines and periodic penalty payments referred to in § 1 and 2 are not tax-deductible.

Art. IV.71. § 1. The Competition College hearing the case may impose on persons, undertakings or associations of undertakings involved, fines of up to 1% of their turnover, 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 IV.41 as well as the inquiries referred to in article IV. 44.

§ 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. IV.72. In the event of an infringement of article IV.10, § 5, the Competition College may impose the fines and periodic penalty payments referred to in article IV.70, § 1.

It may, in addition, impose the periodic penalty payments referred to in article IV.70, § 1, to ensure compliance with the order referred to in article IV.62, § 7.

Art. IV.73. The Competition College may impose the periodic penalty payment referred to in article IV. 70, § 1, in order to ensure compliance with the interim measures adopted in accordance with article IV. 64 and compliance with the decision referred to in article IV.41, § 2, clause 3.

In the last case the periodic penalty payment can be imposed during the investigation.

Art. IV.74. The turnover referred to in articles IV.70 and IV.71 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.

Chapter 2. Preliminary rulings sought from the Court of Cassation and interventions as amicus curiae

Art. IV.75. The Court of Cassation shall give preliminary rulings on questions relating to the interpretation of the provisions of book.

Art. IV.76. § 1. When the resolution of a dispute depends on the interpretation of this book, the court to which the dispute is referred, 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 Belgian Competition Authority, the minister and, if articles 101 and 102 of the Treaty of the functioning of the European Union apply, to the European Commission.

The registrar of the Court of Cassation shall invite the parties, the Belgian Competition Authority, 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.

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. IV.77. The Belgian Competition Authority may on its own initiative or at request of the court hearing the case, , submit written observations within the time limits determined by the court, concerning the application of the articles IV.1 and IV.2 or of the articles 101 and 102 of the Treaty of the Functioning of the European Union

She can also submit oral observations with the permission of the court hearing the case.

Only in order to prepare their observations, the Belgian Competition Authority may request the court hearing the case to send or to forward all documents necessary to evaluate the case.

When the Belgian Competition Authority submits observations the other parties must get the opportunity to respond to these observations.

Art. IV.78. Any judgement or ruling given by the courts relating to cases concerning the legitimate nature of a competition practice within the meaning of this book, shall be notified to the Belgian Competition Authority 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 Belgian Competition Authority of appeals lodged against any judgement or ruling referred to in the preceding clause.

Chapter 3. Appeals

Art. IV.79. §1. Against the decisions of the Competition College referred to in articles IV.47, IV.48, IV.50, IV.61 §1,1° and 2°, and §2,1° and 2°,

IV.62 § 6, IV.63 §3 and IV.64 as well as tacit decisions on the admissibility of a concentration by allowing the terms, referred to in articles IV.61 and IV.62, to expire and the tacit rejection of a request of interim measures by allowing the term, referred to in article IV.64, to expire, is further appeal only possible before the Court of Appeal in Brussels.

The decisions of the College of Competition Prosecutors concerning the use of data in an investigation obtained by an inspection referred to in art. IV 41 § 3 fourth clause can be subject of appeal at the Brussels' Court of Appeal after communication of the grievances referred to art. 42 § 4 and art. IV 59 first clause as far as these data are used to prove the grievances.

Against other decisions of the Competition College, the College of Competition Prosecutors or a competition prosecutor, appeal is only possible which is provided for by the book, without prejudice to the possibility to employ every means in an appeal procedure before the Court of Appeal in Brussels, referred to in this paragraph.

§ 2. The Court of Appeal in Brussels decides, as in summary proceedings on both points of law and fact, on the case such as submitted by the parties.

The Court of Appeal decides, except for the cases referred to in the third clause, with full jurisdiction including the power to substitute the contested decision by their own decision.

In cases regarding the admissibility of concentrations or the by the Competition College imposed conditions or obligations, and in cases in which the Court, contrary to the contested decision, finds an infringement of articles 101 or 102 TFEU, the Court will only rule on the contested decision, with the power of annulment.

The appeal does not suspend the contested decisions.

The Court of Appeal may, on request of the interested party and by decision before judgment is given, suspend entirely or partially the execution of the court decision to the day judgment is rendered.

The suspension of the execution can only be ordered when serious means are called upon which can justify the annulment of the contested decision and on condition that the immediate execution of

the decision could have serious consequences for the party concerned .

The Court of Appeal may, when the occasion arises, order that the paid amount of the fines is reimbursed to the party concerned .

§ 3. The appeals may be lodged against the Belgian Competition Authority by the interested parties before the Court of Appeal in Brussels, as well as by any other person demonstrating a valid interest in accordance with article IV. 45,§ 5, or article IV.60, § 2, and having asked the Competition College 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 College.

§ 4. 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 contested 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 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;

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 ;

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 in Brussels;

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 secretariat of the College of Competition Prosecutors, informing the President and the competition prosecutor general, as well as the parties to whom the disputed decision has been notified, evidenced by the notification letter and to the minister if the latter is not the applicant.

§ 5. A counter appeal may be lodged. It is only admissible if it 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 College when there is a risk that the main appeal or the counter appeal may affect their rights or obligations. The Court may ask the Belgian Competition Authority to communicate the procedural file and other documents which were deposited at the Competition College.

The minister may file his written observations to the registry of the Brussels Court of Appeal and consult the file there. The Brussels Court of Appeal shall fix the deadlines for submitting these observations. The registry shall inform the parties of their content.

§ 6. When a decision imposing a fine is not annulled, interest is due from the date of the contested decision.

Chapter 4. Other provisions

Art. IV.80. § 1. The investigation referred to in article IV.41 may only concern facts occurring within the last five years. This limitation period shall run from the date of the decision of the competition prosecutor general to carry out an investigation at its own initiative or from the date when the case is referred to the competition prosecutor general in accordance with article IV.41, § 1.

In the case of continuing or repeated infringements this period shall begin to run from the day on which the last infringement ceased to exist.

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

In the case of continuing or repeated infringements this period shall begin to run from the day on which the last infringement ceased to exist.

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 President 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 and 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 begin 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 ceased to exist.

The limitation period for the imposition of fines and periodic penalty payments shall be interrupted by any action by the College of Competition Prosecutors or the Competition College or, in the case of the application of articles 101 and 102 of the TFEU, 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 are:

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

4° the filing of the draft decision in accordance with article IV.42, § 5 , 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 Competition College 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 and periodic penalty payments shall be suspended for as long as the Competition College's decision is the subject of proceedings pending before the Brussels Court of Appeal.

§ 4. The power to enforce decisions adopted pursuant to articles IV.70 and IV.71 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. IV.81. If the undertaking is in default in the payment of the fine or penalty, the decision of the Competition College or of its president or the decision of the Brussels Court of Appeal, *res judicata*, shall be transmitted to the Federal Public Service of Finance 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 IV.70 to IV.74.

Art. IV.82. 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. IV.83. The investigation is conducted and the draft decision is written in the language of the Region where the undertaking, subject of the investigation, is established. If there are several undertakings, the language of the region where the majority of the undertakings is domiciled will be used. In the case of equal numbers, one of the national languages, according to the needs which are typical for that case will be used.

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. The decision regarding the change of the procedural language is taken by the competition prosecutor general. The undertaking concerned or association of undertakings may lodge a further appeal to the president within three working days after notification of the decision. He hears the undertaking concerned or association of undertakings, as well as the competition prosecutor general or the by him authorized competition prosecutor within five working days from receipt of

the appeal, and rules within five working days after hearing the parties. This decision is not appealable.

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