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COMMISSION NOTICE on the concept of undertakings concerned under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (98/C 66/03) (Text with EEC relevance)

I. INTRODUCTION

1. The purpose of this notice is to clarify the Commission's interpretation of the term 'undertakings concerned used in Articles 1 and 5 of Council Regulation (EEC) No 4064/89 (1) as last amended by Regulation (EC) No 1310/97 (2) (hereinafter referred to as 'the Merger Regulation) and to help identify the undertakings concerned in the most typical situations which have arisen in cases dealt with by the Commission to date. The principles set out in this notice will be followed and further developed by the Commission's practice in individual cases.

This Notice replaces the Notice on the notion of undertakings concerned (3).

2. According to Article 1 of the Merger Regulation, the Regulation only applies to operations that satisfy two conditions. First, several undertakings must merge, or one or more undertakings must acquire control of the whole or part of other undertakings through the proposed operation, which must qualify as a concentration within the meaning of Article 3 of the Regulation. Secondly, those undertakings must meet the turnover thresholds set out in Article 1.

3. From the point of view of determining jurisdiction, the undertakings concerned are, broadly speaking, the actors in the transaction in so far as they are the merging, or acquiring and acquired parties; in addition, their total aggregate economic size in terms of turnover will be decisive in determining whether the thresholds are met.

4. The Commission's interpretation of Articles 1 and 5 with respect to the concept of undertakings concerned is without prejudice to the interpretation which may be given by the Court of Justice or by the Court of First Instance of the European Communities.

II. THE CONCEPT OF UNDERTAKING CONCERNED

5. Undertakings concerned are the direct participants in a merger or acquisition of control. In this respect, Article 3(1) of the Merger Regulation provides that:

'A concentration shall be deemed to arise where:

(a) two or more previously independent undertakings merge, or

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

- one or more undertakings

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

6. In the case of a merger, the undertakings concerned will be the undertakings that are merging.

7. In the remaining cases, it is the concept of 'acquiring control that will determine which are the undertakings concerned. On the acquiring side, there can be one or more companies acquiring sole or joint control. On the acquired side, there can be one or more companies as a whole or parts thereof, when only one of their subsidiaries or some of their assets are the subject of the transaction. As a general rule, each of these companies will be an undertaking concerned within the meaning of the Merger Regulation. However, the particular features of specific transactions require some refinement of this principle, as will be seen below when analysing different possible scenarios.

8. In concentrations other than mergers or the setting-up of new joint ventures, i. e. in cases of sole or joint acquisition of pre-existing companies or parts of them, there is an important party to the agreement that gives rise to the operation who is to be ignored when identifying the undertakings concerned: the seller. Although it is clear that the operation cannot proceed without his consent, his role ends when the transaction is completed since, by definition, from the moment the seller has relinquished all control over the company, his links with it disappear. Where the seller retains joint control with the acquiring company (or companies), it will be considered to be one of the undertakings concerned.

9. Once the undertakings concerned have been identified in a given transaction, their turnover for the purposes of determining jurisdiction should be calculated according to the rules set out in Article 5 of the Merger Regulation (4). One of the main provisions of Article 5 is that where the undertaking concerned belongs to a group, the turnover of the whole group should be included in the calculation. All references to the turnover of the undertakings concerned in Article 1 should therefore be understood as the turnover of their entire respective groups.

10. The same can be said with respect to the substantive appraisal of the impact of a concentration in the market place. When Article 2 of the Merger Regulation provides that the Commission is to take into account 'the market position of the undertakings concerned and their economic and financial power, that includes the groups to which they belong.

11. It is important, when referring to the various undertakings which may be involved in a procedure, not to confuse the concept of 'undertakings concerned under Articles 1 and 5 with the terminology used in the Merger Regulation and in Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time-limits and hearings provided for in Council Regulation (EEC) No 4064/89 (hereinafter referred to as the 'Implementing Regulation) (5) referring to the various undertakings which may be involved in a procedure. This terminology refers to the notifying parties, other involved parties, third parties and parties who may be subject to fines or periodic penalty payments, and they are defined in Chapter III of the Implementing Regulation, along with their respective rights and duties.

III. IDENTIFYING THE UNDERTAKINGS CONCERNED IN DIFFERENT TYPES OF OPERATIONS

1. Mergers

12. In a merger, several previously independent companies come together to create a new company or, while remaining separate legal entities, to create a single economic unit. As mentioned earlier, the undertakings concerned are each of the merging entities.

2. Acquisition of sole control

2.1. Acquisition of sole control of the whole company

13. Acquisition of sole control of the whole company is the most straightforward case of acquisition of control; the undertakings concerned will be the acquiring company and the acquired or target company.

2.2. Acquisition of sole control of part of a company

14. The first subparagraph of Article 5(2) of the Merger Regulation provides that when the operation concerns the acquisition of parts of one or more undertakings, only those parts which are the subject of the transaction shall be taken into account with regard to the seller. The concept of 'parts is to be understood as one or more separate legal entities (such as subsidiaries), internal subdivisions within the seller (such as a division or unit), or specific assets which in themselves could constitute a business (e. g. in certain cases brands or licenses) to which a market turnover can be clearly attributed. In this case, the undertakings concerned will be the acquirer and the acquired part(s) of the target company.

15. The second subparagraph of Article 5(2) includes a special provision on staggered operations or follow-up deals, whereby if several acquisitions of parts by the same purchaser from the same seller occur within a two-year period, these transactions are to be treated as one and the same operation arising on the date of the last transaction. In this case, the undertakings concerned are the acquirer and the different acquired part(s) of the target company taken as a whole.

2.3. Acquisition of sole control after reduction or enlargement of the target company

16. The undertakings concerned are the acquiring company and the target company or companies, in their configuration at the date of the operation.

17. The Commission bases itself on the configuration of the undertakings concerned at the date of the event triggering the obligation to notify under Article 4(1) of the Merger Regulation, namely the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest. If the target company has divested an entity or closed a business prior to the date of the event triggering notification or where such a divestment or closure is a pre-condition for the operation (6), then sales of the divested entity or closed business are not to be included when calculating turnover. Conversely, if the target company has acquired an entity prior to the date of the event triggering notification, the sales of the latter are to be added (7).

2.4. Acquisition of sole control through a subsidiary of a group

18. Where the target company is acquired by a group through one of its subsidiaries, the undertakings concerned for the purpose of calculating turnover are the target company and the acquiring subsidiary. However, regarding the actual notification, this can be made by the subsidiary concerned or by its parent company.

19. All the companies within a group (parent companies, subsidiaries, etc.) constitute a single economic entity, and therefore there can only be one undertaking concerned within the one group - i. e. the subsidiary and the parent company cannot each be considered as separate undertakings concerned, either for the purposes of ensuring that the threshold requirements are fulfilled (for example, if the target company does not meet the ECU 250 million Community-turnover threshold), or that they are not (for example, if a group was split into two companies each with a Community turnover below ECU 250 million).

20. However, even though there can only be one undertaking concerned within a group, Article 5(4) of the Merger Regulation provides that it is the turnover of the whole group to which the undertaking concerned belongs that shall be included in the threshold calculations (8).

3. Acquisition of joint control

3.1. Acquisition of joint control of a newly-created company

21. In the case of acquisition of joint control of a newly-created company, the undertakings concerned are each of the companies acquiring control of the newly set-up joint venture (which, as it does not yet exist, cannot be considered to be an undertaking concerned and moreover, as yet, has no turnover of its own).

3.2. Acquisition of joint control of a pre-existing company

22. In the case of acquisition of joint control of a pre-existing company or business (9), the undertakings concerned are each of the companies acquiring joint control on the one hand, and the pre-existing acquired company or business on the other.

23. However, where the pre-existing company was under the sole control of one company and one or several new shareholders acquire joint control while the initial parent company remains, the undertakings concerned are each of the jointly-controlling companies (including this initial shareholder). The target company in this case is not an undertaking concerned, and its turnover is part of the turnover of the initial parent company.

3.3. Acquisition of joint control with a view to immediate partition of assets

24. Where several undertakings come together solely for the purpose of acquiring another company and agree to divide up the acquired assets according to a pre-existing plan immediately upon completion of the transaction, there is no effective concentration of economic power between the acquirers and the target company since the assets acquired are jointly held and controlled for only a 'legal instant. This type of acquisition with a view to immediate partition of assets will in fact be considered to be several operations, whereby each of the acquiring companies acquires its relevant part of the target company. For each of these operations, the undertakings concerned will therefore be the acquiring company and that part of the target which it is acquiring (just as if there was an acquisition of sole control of part of a company).

25. This scenario is referred to in recital 24 of Regulation (EEC) No 4064/89, which states that the Regulation applies to agreements whose sole object is to divide up the assets acquired immediately after the acquisition.

4. Acquisition of control by a joint venture

26. In transactions where a joint venture acquires control of another company, the question arises whether or not, from the point of view of the acquiring party, the joint venture should be regarded as a single undertaking concerned (the turnover of which would include the turnover of its parent companies), or whether each of its parent companies should individually be regarded as undertakings concerned. In other words, the issue is whether or not to 'lift the corporate veil of the intermediate undertaking (the vehicle). In principle, the undertaking concerned is the direct participant in the acquisition of control. However, there may be circumstances where companies set up 'shell companies, which have little or no turnover of their own, or use an existing joint venture which is operating on a different market from that of the target company in order to carry out acquisitions on behalf of the parent companies. Where the acquired or target company has

a Community turnover of less than ECU 250 million, the question of determining the undertakings concerned may be decisive for jurisdictional purposes (10). In this type of situation, the Commission will look at the economic reality of the operation to determine which are the undertakings concerned.

27. Where the acquisition is carried out by a full-function joint venture, i. e. a joint venture which has sufficient financial and other resources to operate a business activity on a lasting basis (11) and is already operating on a market, the Commission will normally consider the joint venture itself and the target company to be the undertakings concerned (and not the joint venture's parent companies).

28. Conversely, where the joint venture can be regarded as a vehicle for an acquisition by the parent companies, the Commission will consider each of the parent companies themselves to be the undertakings concerned, rather than the joint venture, together with the target company. This is the case in particular where the joint venture is set up especially for the purpose of acquiring the target company, where the joint venture has not yet started to operate, where an existing joint venture has no legal personality or full-function character as referred to above or where the joint venture is an association of undertakings. The same applies where there are elements which demonstrate that the parent companies are in fact the real players behind theoperation. These elements may include a significant involvement by the parent companies themselves in the initiation, organisation and financing of the operation. Moreover, where the acquisition leads to a substantial diversification in the nature of the joint venture's activities, this may also indicate that the parent companies are the real players in the operation. This will normally be the case when the joint venture acquires a target company operating on a different product market. In those cases, the parent companies are regarded as undertakings concerned.

29. In the TNT case (12), joint control over a joint venture (JVC) was to be acquired by a joint venture (GD NET BV) between five postal administrations and another acquiring company (TNT Ltd). In this case, the Commission considered that the joint venture GD NET BV was simply a vehicle set up to enable the parent companies (the five postal administrations) to participate in the resulting JVC joint venture in order to facilitate decision-making amongst themselves and to ensure that the parent companies spoke and acted as one; this configuration would ensure that the parent companies could exercise a decisive influence with the other acquiring company, TNT, over the resulting joint venture JVC and would avoid the situation where that other acquirer could exercise sole control because of the postal administrations' inability to reach a unified position on any decision.

Canada Post

DBP Postdienst

La Poste

PTT Post

Sweden Post

Joint venture GD NET BV

TNT Ltd

Joint venture JVC

5. Change from joint control to sole control

30. In the case of a change from joint control to sole control, one shareholder acquires the stake previously held by the other shareholder(s). In the case of two shareholders, each of them has joint control over the entire joint venture, and not sole control over 50 % of it; hence the sale of all of his shares by one shareholder to the other does not lead the sole remaining shareholder to move from sole control over 50 % to sole control over 100 % of the joint venture, but rather to move from joint control to sole control of the entire company (which, subsequent to the operation, ceases to be a 'joint venture).

31. In this situation, the undertakings concerned are the remaining (acquiring) shareholder and the joint venture. As is the case for any other seller, the 'exiting shareholder is not an undertaking concerned.

32. The ICI/Tioxide case (13) involved such a change from joint (50/50) control to sole control. The Commission considered that '. . decisive influence exercised solely is substantially different to decisive influence exercised jointly, since the latter has to take into account the potentially different interests of the other party or parties concerned . . . By changing the quality of decisive influence exercised by ICI on Tioxide, the transaction will bring about a durable change of the structure of the concerned parties . . . . In this case, the undertakings concerned were held to be ICI (as acquirer) and Tioxide as a whole (as acquiree), but not the seller Cookson.

6. Change in the shareholding in cases of joint control of an existing joint venture

33. The decisive element in assessing changes in the shareholding of a company is whether the operation leads to a change in the quality of control. The Commission assesses each operation on a case-by-case basis, but under certain hypotheses, there will be a presumption that the given operation leads, or does not lead, to such a change in the quality of control, and thus constitutes, or does not constitute, a notifiable concentration.

34. A distinction must be made according to the circumstances of the change in the shareholding; firstly, one or more existing shareholders can exit; secondly, one or more new additional shareholders can enter; and thirdly, one or more existing shareholders can be replaced by one or more new shareholders.

6.1. Reduction in the number of shareholders leading to a change from joint to sole control

35. It is not the reduction in the number of shareholders per se which is important, but rather the fact that if some shareholders sell their stakes in a given joint venture, these stakes are then acquired by other (new or existing) shareholders, and thus the acquisition of these stakes or additional contractual rights may lead to the acquisition of control or may strengthen an already existing position of control (e.g. additional voting rights or veto rights, additional board members, etc.).

36. Where the number of shareholders is reduced, there may be a change from joint control to sole control (see also Section III.5.), in which case the remaining shareholder acquires sole control of the company. The undertakings concerned will be the remaining (acquiring) shareholder and the acquired company (previously the joint venture).

37. In addition to the shareholder with sole control of the company, there may be other shareholders, for example with minority stakes, but who do not have a controlling interest in the company; these shareholders are not undertakings concerned as they do not exercise control.

6.2. Reduction in the number of shareholders not leading to a change from joint to sole control

38. Where the operation involves a reduction in the number of shareholders having joint control, without leading to a change from joint to sole control and without any new entry or substitution of shareholders acquiring control (see Section III.6.3.), the proposed transaction will normally be presumed not to lead to a change in the quality of control and will therefore not be a notifiable concentration. This would be the case where, for example, five shareholders initially have equal stakes of 20 % each and where, after the operation, one shareholder exits and the remaining four shareholders each have equal stakes of 25 %.

39. However, this situation would be different where there is a significant change in the quality of control, notably where the reduction in the number of shareholders gives the remaining shareholders additional veto rights or additional board members, resulting in a new acquisition of control by at least one of the shareholders, through the application of either the existing or a new shareholders' agreement. In this case, the undertakings concerned will be each of the remaining shareholders which exercise joint control and the joint venture. In Avesta II (14), the fact that the number of major shareholders decreased from four to three led to one of the remaining shareholders acquiring negative veto rights (which it had not previously enjoyed) because of the provisions of the shareholders' agreement which remained in force (15). This acquisition of full veto rights was considered by the Commission to represent a change in the quality of control.

6.3. Any other changes in the composition of the shareholding

40. Finally, in the case where, following changes in the shareholding, one or more shareholders acquire control, the operation will constitute a notifiable operation as there is a presumption that it will normally lead to a change in the quality of control.

41. Irrespective of whether the number of shareholders decreases, increases or remains the same subsequent to the operation, this acquisition of control can take any of the following forms:

- entry of one or more new shareholders (change from sole to joint control, or situation of joint control both before and after the operation),

- acquisition of a controlling interest by one or more minority shareholders (change from sole to joint control, or situation of joint control both before and after the operation),

- substitution of one or more shareholders (situation of joint control both before and after the operation).

42. The question is whether the undertakings concerned are the joint venture and the new shareholder(s) who would together acquire control of a pre-existing company, or whether all of the shareholders (existing and new) are to be regarded as undertakings concerned acquiring control of a new joint venture. This question is particularly relevant when there is no express agreement between one (or more) of the existing shareholders and the new shareholder(s), who might only have had an agreement with the 'exiting shareholder(s), i.e. the seller(s).

43. A change in the shareholding through the entry or substitution of shareholders is considered to lead to a change in the quality of control. This is because the entry of a new parent company, or the substitution of one parent company for another, is not comparable to the simple acquisition of part of a business as it implies a change in the nature and quality of control of the whole joint venture, even when, both before and after the operation, joint control is exercised by a given number of shareholders.

44. The Commission therefore considers that the undertakings concerned in cases where there are changes in the shareholding are the shareholders (both existing and new) who exercise joint control and the joint venture itself. As mentioned earlier, non-controlling shareholders are not undertakings concerned.

45. An example of such a change in the shareholding is the Synthomer/Yule Catto case (16), in which one of two parent companies with joint control over the pre-existing joint venture was replaced by a new parent company. Both parent companies with joint control (the existing one and the new one) and the joint venture were considered to be undertakings concerned.

7. 'Demergers and the break-up of companies

46. When two undertakings merge or set up a joint venture, then subsequently demerge or break up their joint venture, and in particular the assets (17) are split between the 'demerging parties, particularly in a configuration different from the original, there will normally be more than one acquisition of control (see the Annex).

47. For example, undertakings A and B merge and then subsequently demerge with a new asset configuration. There will be the acquisition by undertaking A of various assets (assets which may previously have been owned by itself or by undertaking B and assets jointly acquired by the entity resulting from the merger), with similar acquisitions by undertaking B. Similarly, a break-up of a joint venture can be deemed to involve a change from joint control over the joint venture's entire assets to sole control over the divided assets (18).

48. A break-up of a company in this way is ‘asymmetrical. For such a demerger, the undertakings concerned (for each break-up operation) will be, on the one hand, the original parties to the merger and, on the other, the assets that each original party is acquiring. For the break-up of a joint venture, the undertakings concerned (for each break-up operation) will be, on the one hand, the original parties to the joint venture, each as acquirer, and, on the other, that part of the joint venture that each original party is acquiring.

8. Exchange of assets

49. In those transactions where two (or more) companies exchange assets, regardless of whether these constitute legal entities or not, each acquisition of control constitutes an independent concentration. Although it is true that both transfers of assets in a swap are usually considered by the parties to be interdependent, that they are often agreed in a single document and that they may even take place simultaneously, the purpose of the Merger Regulation is to assess the impact of the operation resulting from the acquisition of control by each of the companies. The legal or even economic link between those operations is not sufficient for them to qualify as a single concentration.

50. Hence the undertakings concerned will be, for each property transfer, the acquiring companies and the acquired companies or assets.

9. Acquisitions of control by individual persons

51. Article 3(1) of the Merger Regulation specifically provides that a concentration is deemed to arise, inter alia, where 'one or more persons already controlling at least one undertaking acquire control of the whole or parts of one or more undertakings. This provision indicates that acquisitions of control by individuals will bring about a lasting change in the structure of the companies concerned only if those individuals carry out economic activities of their own. The Commission considers that the undertakings concerned are the target company and the individual acquirer (with the turnover of the undertaking(s) controlled by that individual being included in the calculation of the individual's turnover).

52. This was the view taken in the Commission decision in the Asko/Jacobs/Adia case (19), where Asko, a German holding company with substantial retailing assets, and Mr. Jacobs, a private Swiss investor, acquired

joint control of Adia, a Swiss company active mainly in personnel services. Mr. Jacobs was considered to be an undertaking concerned because of the economic interests he held in the chocolate, confectionery and coffee sectors.

10. Management buy-outs

53. An acquisition of control of a company by its own managers is also an acquisition by individuals, and what has been said above is therefore also applicable here. However, the management of the company may pool its interests through a 'vehicle company, so that it acts with a single voice and also to facilitate decision-making. Such a vehicle company may be, but is not necessarily, an undertaking concerned. The general rule on acquisitions of control by a joint venture applies here (see Section III.4.).

54. With or without a vehicle company, the management may also look for investors in order to finance the operation. Very often, the rights granted to these investors according to their shareholding may be such that control within the meaning of Article 3 of the Merger Regulation will be conferred on them and not on the management itself, which may simply enjoy minority rights. In the CWB/Goldman Sachs/Tarkett decision (20), the two companies managing the investment funds taking part in the transaction were those acquiring joint control, and not the managers.

11. Acquisition of control by a State-owned company

55. In those situations where a State-owned company merges with or acquires control of another company controlled by the same State (21), the question arises as to whether these transactions really constitute concentrations within the meaning of Article 3 of the Merger Regulation or rather internal restructuring operations of the 'public sector group of companies (22). In this respect, recital 12 of Regulation (EEC) No 4064/89 sets out the principle of non-discrimination between public and private sectors and declares that 'in the public sector, calculation of the turnover of an undertaking concerned in a concentration needs, therefore, to take account of undertakings making up an economic unit with an independent power of decision, irrespective of the way in which their capital is held or of the rules of administrative supervision applicable to them.

56. A merger or acquisition of control arising between two companies owned by the same State may constitute a concentration and, if so, both of them will qualify as undertakings concerned, since the mere fact that two companies are both owned by the same State does not necessarily mean that they belong to the same 'group . Indeed, the decisive issue will be whether or not these companies are both part of the same industrial holding and are subject to a coordinated strategy. This was the approach taken in the SGS/Thomson decision (23).

(1) OJ L 395, 30.12.1989, p. 1; corrected version L 257, 21.9.1990, p. 13.

(2) OJ L 180, 9.7.1997, p. 1.

(3) OJ C 385, 31.12.1994, p. 12.

(4) The rules for calculating turnover in accordance with Article 5 are detailed in the Commission Notice on calculation of turnover.

(5) OJ L 61, 2.3.1998, p. 1.

(6) See judgment of the Court of First Instance of 24 March 1994 in Case T-3/93 - Air France v Commission 1994 ECR II-21.

(7) The calculation of turnover in the case of acquisitions or divestments subsequent to the date of the last audited accounts is dealt with in the Commission Notice on calculation of turnover, paragraph 27.

(8) The calculation of turnover in the case of company groups is dealt with in the Commission Notice on calculation of turnover, paragraphs 36 to 42.

(9) i. e. two or more companies (companies A, B, etc.) acquire a pre-existing company (company X). For changes in the shareholding in cases of joint control of an existing joint venture, see Section III.6.

(10) The target company hypothetically has an aggregate Community turnover of less than ECU 250 million, and the acquiring parties are two (or more) undertakings, each with a Community turnover exceeding ECU 250 million. If the target is acquired by a 'shell company set up between the acquiring undertakings, there would only be one company (the 'shell company) with a Community turnover exceeding ECU 250 million, and thus one of the cumulative threshold conditions for Community jurisdiction would not be fulfilled (namely, the existence of at least two undertakings with a Community turnover exceeding ECU 250 million). Conversely, if instead of acting through a 'shell company, the acquiring undertakings acquire the target company themselves, then the turnover threshold would be met and the Merger Regulation would apply to this transaction. The same considerations apply to the national turnover thresholds referred to in Article 1(3).

(11) The criteria determining the full-function nature of a joint venture are contained in the Commission Notice on the concept of full-function joint ventures.

(12) Case IV/M.102 - TNT/Canada Post, DBP Postdienst, La Poste, PTT Post and Sweden Post, of 2 December 1991.

(13) Case IV/M.023 - ICI/Tioxide, of 28 November 1990.

(14) Case IV/M.452 - Avesta II, of 9 June 1994.

(15) In this case, a shareholder who was a party to the shareholders' agreement sold its stake of approximately 7 %. As the exiting shareholder had shared veto rights with another shareholder who remained, and as the shareholders' agreement remained unchanged, the remaining shareholder now acquired full veto rights.

(16) Case IV/M.376 - Synthomer/Yule Catto, of 22 October 1993.

(17) The term 'assets as used here means specific assets which in themselves could constitute a business (e.g. a subsidiary, a division of a company or, in some cases, brands or licences) to which a market turnover can be clearly attributed.

(18) Case IV/M.197 - Solvay-Laporte/Interox, of 30 April 1997.

(19) Case IV/M.082 - Asko/Jacobs/Adia, of 16 May 1991.

(20) Case IV/M.395 - CWB/Goldman Sachs/Tarkett, of 21 February 1994.

(21) The term 'State as used here means any legal public entity, i.e. not only Member States, but also regional or local public entities such as provinces, departments, Lander, etc.

(22) See also Commission Notice on the concept of concentration, paragraph 8.

(23) Case IV/M.216 - CEA Industrie/France Telecom/Finmeccanica/SGS-Thomson, of 22 February 1993.

ANNEX

'DEMERGERS AND BREAK-UP OF COMPANIES (1)

Merger scenario

Before merger

Company A

Company B

After merger

Merged company

Combined assets

After breaking up the merger

Company A:

Divided assets of merged company:

-some (initial) assets of A

-some (initial) assets of B

-some (subsequent) assets of the merged-company

Company B:

Divided assets of merged company:

-some (initial) assets of A

-some (initial) assets of B

-some (subsequent) assets of the merged-company

Joint venture scenario (JV)

Before JV

Company A

Assets of A for the JV

Assets of B for the JV

Company B

After JV

Company A

Joint venture

Combined assets

Company B

After breaking up the JV

Company A

Divided assets of joint venture:

-some initial (assets) of A

-some initial (assets) of B

-some (subsequent) assets of the JV

Divided assets of joint venture:

-some initial (assets) of A

-some initial (assets) of B

-some (subsequent) assets of the JV

Company B

(1) The term 'assets as used here means specific assets which in themselves could constitute a business (e.g. a subsidiary, a division of a company or, in some cases, brands or licences) to which a market turnover can be clearly attributed.