

Brasserie Nationale (formerly Brasseries Funck-Bricher and Bofferding)
and
Munhowen SA

v

European Commission

Judgment of the General Court (Sixth Chamber, Extended Composition) of 2 July 2025

(Competition – Concentrations – Market for the wholesale distribution of beverages – Article 22 of Regulation (EC) No 139/2004 – Referral request to the Commission from a Member State competition authority not having competence under national law to examine the concentration – Commission decision to examine the concentration – Time limit for submitting the referral request – Concept of ‘made known’ – Informing the undertakings concerned of the referral request – Language rules – Time limit for notifying the Commission decision to examine the concentration – Effect on trade between Member States – Threat of a significant effect on competition – Appropriateness of the referral)

1. Judicial proceedings – Representation of the parties – Action brought by a legal person governed by private law – Obligation to provide representation by a lawyer who is sufficiently distant from the legal person – Representation by a lawyer, chairman of the board of directors of the applicant undertaking – Not permissible

(Statute of the Court of Justice, Arts 19, third para., and 53)

(see paragraphs 31-35)

2. Concentrations between undertakings – Examination by the Commission – Request made by a national competition authority for the referral to the Commission of a concentration – Referral request under Article 22 of Regulation No 139/2004 – Obligation of the Commission to inform the undertakings concerned of the referral request – Information letter drafted in a language other than the official language of the Member State of the undertaking concerned – Infringement of the language rules applicable – No harmful consequences for the undertaking concerned – No impact of the infringement of language rules on the validity of the administrative procedure

(Council Regulations No 1, Art. 3, and No 139/2004, Art. 22)

(see paragraphs 38-48)

3. Concentrations between undertakings – Examination by the Commission – Request made by a national competition authority for the referral to the Commission of a concentration – Referral request under Article 22 of Regulation No 139/2004 – Concentration not subject to an obligation to notify in the Member State which made the referral request – Time limit for submitting the referral request – Point from which time starts to run – Date on which the concentration was made known to the Member State concerned – Concept of ‘made known’

(Council Regulation No 139/2004, Art. 22(1))

(see paragraphs 52-54, 58-76)

4. Concentrations between undertakings – Examination by the Commission – Request made by a national competition authority for the referral to the Commission of a concentration – Referral request under Article 22 of Regulation No 139/2004 – Obligation of the Commission to inform the undertakings concerned of the referral request – Scope

(Council Regulation No 139/2004, Art. 22(2))

(see paragraphs 101-111)

5. *Concentrations between undertakings – Examination by the Commission – Request made by a national competition authority for the referral to the Commission of a concentration – Referral request under Article 22 of Regulation No 139/2004 – Obligation of the Commission to inform the undertakings concerned of its decision on the referral request – Scope*

(Council Regulation No 139/2004, Art. 22(3))

(see paragraphs 115-124)

6. *Concentrations between undertakings – Examination by the Commission – Request made by a national competition authority for the referral to the Commission of a concentration – Referral request under Article 22 of Regulation No 139/2004 – Obligation of the Commission to inform the undertakings concerned of the referral request – Obligation of the Commission to hear the undertakings concerned before adopting a decision on the referral request*

(Council Regulation No 139/2004, Art. 22(2) and (3))

(see paragraphs 132, 133)

7. *Concentrations between undertakings – Examination by the Commission – Request made by a national competition authority for the referral to the Commission of a concentration – Referral request under Article 22 of Regulation No 139/2004 – Examination of the concentration by the Commission – Conditions – Effect on trade between Member States – Criterion – Concentration liable to have some discernible influence on the pattern of trade between Member States – Commission’s margin of discretion – No manifest error of assessment*

(Council Regulation No 139/2004, Art. 22(1) and (3))

(see paragraphs 143-170)

8. *Concentrations between undertakings – Examination by the Commission – Request made by a national competition authority for the referral to the Commission of a concentration – Referral request under Article 22 of Regulation No 139/2004 – Examination of the concentration by the Commission – Conditions – Threat of a significant effect on competition in the territory of the Member State which made the referral request – Criterion – Real risk of a significant adverse impact on competition in that territory – Commission’s margin of discretion – No manifest error of assessment*

(Council Regulation No 139/2004, Art. 22(1) and (3))

(see paragraphs 177-183, 198-201, 213-215)

9. *Concentrations between undertakings – Examination by the Commission – Request made by a national competition authority for the referral to the Commission of a concentration – Referral request under Article 22 of Regulation No 139/2004 – Examination of the concentration by the Commission – Formal and substantive conditions satisfied – Commission’s margin of discretion to decide whether to examine the concentration*

(Council Regulation No 139/2004, Art. 22)

(see paragraphs 220-224)

Résumé

Sitting in extended composition, the General Court dismisses the action for annulment brought against the decision of the European Commission ([1](#)) granting the request of the Autorité de concurrence du Grand-Duché de Luxembourg (Competition Authority of the Grand Duchy of Luxembourg) (‘the ACL’)

to examine the compatibility with the internal market of a concentration announced by the Luxembourg undertaking Brasserie Nationale. In that context, the Court clarifies the starting point of the time limit laid down in Regulation No 139/2004 ([2](#)) for the submission of such a request by a national competition authority.

On 22 December 2023, Brasserie Nationale, which is engaged in the production of beer and mineral water, contacted the ACL to inform it that its 100% subsidiary in Luxembourg, Munhowen, intended to acquire Boissons Heintz. Both Munhowen and Boissons Heintz, whose registered office is also in Luxembourg, are engaged in the wholesale distribution of beverages, the former in Luxembourg and in the neighbouring regions of France and Belgium, and the latter only in Luxembourg.

The announced concentration did not have a European dimension within the meaning of Article 1 of Regulation No 139/2004 and therefore did not have to be notified to the Commission. In the absence of a merger control system in Luxembourg, there was also no obligation to notify on that basis in that Member State. Nor did the concentration have to be notified in another EU Member State or in any of the States party to the Agreement on the European Economic Area (EEA).

On 7 February 2024, following several exchanges with Brasserie Nationale, Munhowen and third parties, the ACL requested the Commission to examine the concentration at issue, pursuant to Article 22(1) of Regulation No 139/2004 ('the referral request').

On 8 February 2024, the Commission informed the competition authorities of the other Member States and the EFTA Surveillance Authority of the referral request. However, no Member State or State party to the EEA Agreement requested to join the referral request.

By letter of the same date, the Commission informed Brasserie Nationale of the referral request and invited it to submit its observations. On 9 February 2024, the Commission sent that letter to the legal representatives of Brasserie Nationale and Munhowen.

After receiving Brasserie Nationale's observations on the referral request, the Commission granted that request by decision of 14 March 2024.

Brasserie Nationale and its subsidiary Munhowen then brought an action for annulment of that decision before the General Court.

Findings of the Court

In support of their action, the applicants submitted, inter alia, that the ACL had made the referral request to the Commission after the expiry of the time limit applicable under Regulation No 139/2004.

In that regard, the Court observes that, in accordance with the second subparagraph of Article 22(1) of Regulation No 139/2004, 'a [referral request] shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned'. The Court also notes that, in the absence of a merger control system in Luxembourg, there was no requirement to notify the concentration at issue in that Member State. Accordingly, the point from which the time limit of 15 working days started to run was, in the present case, the date on which that concentration was 'made known' to the ACL.

In the contested decision, the Commission confirmed that the time limit of 15 working days had been complied with, on the ground that the concentration was made known to the ACL at the earliest on 17 January 2024, namely the date on which the ACL had first received relevant information on that concentration and its effects, enabling it assess, in a preliminary manner, whether the conditions for a referral request under the first subparagraph of Article 22(1) of Regulation No 139/2004 were satisfied.

That argument of the Commission was, however, disputed by the applicants, which contended that a concentration's being 'made known', within the meaning of the second subparagraph of Article 22(1) of Regulation No 139/2004, does not require the active transmission of relevant information enabling the national competition authority to assess, in a preliminary manner, whether the conditions for a referral request have been satisfied.

Referring to settled case-law, the Court recalls that the meaning of the term 'made known', for the purposes of the second subparagraph of Article 22(1) of Regulation No 139/2004, must be determined on the basis of a literal, contextual, teleological and historical interpretation of that provision.

Accordingly, having held that the different language versions of that provision do not match, the Court points out that, from a historical perspective, the use of the term ‘made known’ was necessary in order to enable Member States which do not have national merger control rules to request the Commission to scrutinise concentrations that may have adverse effects in their territory, where those concentrations also affect trade between Member States. Nevertheless, although the historical interpretation puts the second subparagraph of Article 22(1) of Regulation No 139/2004 into perspective, it does not clarify the wording of that provision.

By contrast, the contextual interpretation of the second subparagraph of Article 22(1) of Regulation No 139/2004 reveals that a concentration’s being ‘made known’ must consist of an active transmission of information to the competent authority of the Member State concerned enabling it to carry out a preliminary assessment of the conditions, laid down in the first subparagraph of Article 22(1), in which a referral request may be made.

That contextual interpretation is confirmed by the teleological interpretation of the second subparagraph of Article 22(1) of Regulation No 139/2004, in so far as it makes it possible to ensure the control of mergers within deadlines compatible with both the requirements of good administration and the requirements of the business world.

Furthermore, since that interpretation ensures that the starting point of the time limit laid down in the second subparagraph of Article 22(1) of Regulation No 139/2004 is clearly defined, it is also necessary in the light of the principle of legal certainty.

Thus, the Court concludes that a concentration’s being ‘made known’ within the meaning of the second subparagraph of Article 22(1) of Regulation No 139/2004 must, as regards its form, consist of the active transmission of relevant information to the competent authority of the Member State concerned and, as regards its content, contain sufficient information to enable that authority to carry out a preliminary assessment of the conditions laid down in the first subparagraph of Article 22(1). In that context, it is irrelevant whether that information was transmitted by the undertakings concerned or by third parties or by any other source.

In the light of the foregoing, the Court finds that, in the absence of evidence of the active transmission to the ACL, before 17 January 2024, of all the relevant information for a preliminary assessment of the conditions of the first subparagraph of Article 22(1) of Regulation No 139/2004, the Commission cannot be criticised for having taken that date, in the contested decision, as the starting point of the time limit of 15 working days, as provided for in the second subparagraph of Article 22(1).

The Court also rejects the plea for annulment challenging the Commission’s finding in the contested decision that, in the absence of a national merger control system in Luxembourg, the acceptance of the referral request was appropriate and in line with its discretion.

In that regard, the applicants argued that Article 22 of Regulation No 139/2004 constitutes a legal regime the conditions for the application of which are laid down in paragraph 3 of that article. Considerations of expediency have no place in such a regime, with the result that the question of the appropriateness of that acceptance does not arise.

After recalling that Article 22 of Regulation No 139/2004 allows the Grand Duchy of Luxembourg to refer the examination of a concentration to the Commission, despite the absence of national merger control rules in that Member State, the Court points out that, under paragraph 3 of that article, the Commission ‘may’ decide to examine a concentration which is the subject of such a referral request if the formal and substantive conditions laid down in that provision have been satisfied.

While it follows that those conditions must be satisfied in order for a referral request to be accepted, the word ‘may’ indicates that the Commission is not obliged to accept it, but has a margin of discretion in that regard. Consequently, in the present case, the Commission was entitled to assess the appropriateness of the referral of the concentration by taking into account the factors characterising the situation in question.

In the light of the foregoing and having rejected the other complaints put forward by the applicants, the Court dismisses the action for annulment in its entirety.

(¹) Decision C(2024) 1788 final of the European Commission of 14 March 2024, adopted pursuant to Article 22(3) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between

undertakings ([OJ 2004 L 24, p. 1](#)) and Article 57 of the EEA Agreement ('the contested decision').

([2](#)) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ([OJ 2004 L 24, p. 1](#)).