



The use of confidentiality rings in antitrust access to file proceedings

1. INTRODUCTION

1. In several recent proceedings, DG Competition has used confidentiality rings and data rooms as a means of providing access to file.¹ The guidance on confidentiality rings set out in this document is based on the experience that DG Competition has acquired to date and is intended to reflect its current practice. It includes a template for a negotiated disclosure agreement for use in confidentiality ring procedures. The specific features of an individual case may require an adaptation of, or deviation from what is set out in this document and the template.
2. This guidance does not create or alter any rights or obligations as set out in the Treaty or relevant secondary legislation as interpreted by the case law of the Union Courts, nor does it alter the Commission's interpretative notices. DG Competition may update this guidance document from time to time to reflect changes in legislation, case law and practice.

2. ACCESS TO FILE

3. Access to the Commission's file is one of the procedural guarantees intended to protect the rights of the defence.²
4. Therefore, before taking decisions on the basis of Articles 7, 8, 23 and 24(2) of Council Regulation (EC) No 1/2003, DG Competition will give addressees of its Statements of Objections (SO) an opportunity to have access to the Commission's file.
5. The Commission Notice on access to file explains the practicalities of access to file.³ According to this Notice, the SO addressees will be granted access to all documents

¹ In 2015, DG Competition published Best Practices on the disclosure of information in data rooms on its website. Available via http://ec.europa.eu/competition/mergers/legislation/disclosure_information_data_rooms_en.pdf. These Best Practices are accompanied by standard data room rules: http://ec.europa.eu/competition/mergers/legislation/data_room_rules_en.pdf and a standard non-disclosure agreement: http://ec.europa.eu/competition/mergers/legislation/non_disclosure_agreement_en.pdf

² Article 41(2)(b) of the Charter of Fundamental Rights, OJ C 83, 30.3.2010, p. 389 (hereafter "the Charter"); The right of the parties to have access to file is also laid down in Article 27 (1) and (2) of Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1 (hereafter "Regulation No. 1/2003"); and Article 15 of Regulation (EC) No 773/2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004, p. 18 (hereafter "Regulation No 773/2004"), as amended by Commission Regulation (EU) 2015/1348 of 3 August 2015, OJ L 208, 5.8.2015.

³ Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004, OJ C 325, 22.12.2005, p. 7-15

making up the Commission's file, with the exception of internal documents and confidential information. Access to the file is granted to the addressees after an SO has been notified.

6. Traditionally, DG Competition requests any person providing information for the Commission's file (the information provider) to prepare a non-confidential version of the original documents. In some instances, it may not be possible for the information provider to provide, in a timely manner, a meaningful non-confidential version. However, granting access to such information may be necessary for an effective exercise of the rights of defence.

3. **CONFIDENTIALITY RINGS AS A MEANS OF PROVIDING ACCESS TO FILE**

7. In accordance with Article 339 TFEU, the Commission has a general duty to protect confidential information. Notwithstanding this, in antitrust proceedings confidential information may exceptionally be disclosed when such disclosure is necessary to prove an infringement of Articles 101 or 102 TFEU,⁴ or to safeguard the rights of defence of the parties.⁵
8. Confidentiality rings are a form of negotiated disclosure set out in point 96 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (hereafter "the Antitrust Best Practices").⁶ Through confidentiality rings, DG Competition can safeguard the rights of defence while respecting the legitimate interests in confidentiality of the information providers. In addition, confidentiality rings remove or reduce the burden of preparing non-confidential versions of documents.
9. In a confidentiality ring, an SO addressee, who is entitled to access to documents in the Commission's file, agrees with the information provider to receive all or some of the information which the latter has provided to the Commission, including confidential information. The SO addressee limits access to the information to a restricted circle of persons (the members of the confidentiality ring).
10. The procedure can be used irrespective of whether the information provider is a party to the proceedings or a third party.
11. An information provider may agree to a confidentiality ring vis-à-vis some parties but not others.

4. **ROLE OF DG COMPETITION**

12. DG Competition may facilitate the conclusion of an agreement between information provider and SO addressee to establish a confidentiality ring.
13. DG Competition has discretion to decide whether a confidentiality ring is appropriate in a particular case. As is the case with data rooms, DG Competition may decide to propose a confidentiality ring, either on its own motion or upon a request from an SO

⁴ See Article 15(3) of Regulation No 773/2004.

⁵ See also in this context point 24 of the Access to File Notice

⁶ Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ C 308, 20.10.2011, p. 6.

addressee or an Information Provider. This means that an SO addressee or information provider may propose that DG Competition facilitates a confidentiality ring, but DG Competition has discretion to accept the proposal or not. DG Competition may also suggest that an SO addressee or information provider make such a proposal but they have no obligation to agree to it.

14. To facilitate a confidentiality ring, DG Competition may:

- a. Help the SO addressee and the information provider to consent to the use of a confidentiality ring by proposing a suitable draft negotiated disclosure agreement. This includes supervising the parties' efforts to define the members of the confidentiality ring;
- b. Prepare the DVDs/USB sticks or any other form of electronic media which contain the documents that form part of the confidentiality ring.

15. Once the SO addressee, the information provider and DG Competition agree on the principle of using a confidentiality ring for some (or all) documents subject to access to file, they can start discussing the text of the negotiated disclosure agreement. This document must be signed before the confidentiality ring starts. Until the negotiated disclosure agreement is signed, DG Competition, the SO addressee and the information provider may decide to discontinue the process and revert to the normal access to file procedure.

5. THE NEGOTIATED DISCLOSURE AGREEMENT

16. The negotiated disclosure agreement (including its annexes) must be agreed upon by both the SO addressee and the information provider. The template may require some adjustments to take account of the specific circumstances of each case.

17. By signing the negotiated disclosure agreement, the SO addressee agrees with:

- a. The fact that the confidentiality ring procedure satisfies its access to file rights with respect to the documents covered by the confidentiality ring.
- b. The fact that its external counsel who is also member of the confidentiality ring is released from any obligation to disclose to it information contained in the documents included in the confidentiality ring.

18. By signing the negotiated disclosure agreement, the information provider agrees with:

- a. A disclaimer stating that DG Competition's communication of the documents to the members of the confidentiality ring respects Article 339 TFEU and Article 28 of Regulation No. 1/2003.
- b. A disclaimer stating that in case of a breach of the negotiated disclosure agreement by a member of the confidentiality ring, the European Commission cannot be held liable under Article 340 TFEU for any unauthorised disclosure by the members of the confidentiality ring.

- c. The fact that the inclusion of documents in the confidentiality ring procedure does not necessarily imply that these documents contain confidential information.

19. The negotiated disclosure agreement will contain a provision on the destruction of the documents included in the confidentiality ring after a certain time limit.

20. In case of violation of the negotiated disclosure agreement by an external counsel, the Commission may report the incident to the bar association of the lawyer concerned with a view to disciplinary action.

6. THE MEMBERS OF THE CONFIDENTIALITY RING

21. A confidentiality ring would usually comprise the external counsel of the SO addressee and persons under the direction, control or supervision of the external counsel. It may include certain agreed representatives of the SO addressee or economic advisers. The members of the confidentiality ring will be listed in an enclosure to the negotiated disclosure agreement and must sign an appropriate undertaking to respect confidentiality.

7. TYPES OF NEGOTIATED DISCLOSURE FACILITATED BY DG COMPETITION

22. So far, DG Competition has used two types of confidentiality rings:

- a. A confidentiality ring whereby the external counsel selects from the documents included in the ring only those documents that are considered potentially exculpatory. For these documents a non-confidential version is prepared by the information provider that can be shared with the SO addressee (client access). The non-confidential versions can also be used in the reply to the SO, the Oral Hearing and in possible further Court submissions.

- b. A confidentiality ring whereby the external counsel of an SO addressee selects from the documents included in the ring those documents that are considered potentially exculpatory but no non-confidential versions are prepared of these documents. In this case, special arrangements will be sought to protect the confidential nature of the information from disclosure to the SO addressee and others in the reply to SO, the Oral Hearing as well as in possible further Court submissions. An optional clause may provide a possibility for the external counsel to apply for client access for some of the information if required by the rights of defence.

23. Details on both options are included in the template negotiated disclosure agreement and can be further negotiated between the information provider, the SO addressee and DG Competition.

8. THE ROLE OF THE HEARING OFFICER

24. If an SO addressee considers that further access to file is necessary for the proper exercise of its right to be heard and the issue cannot be resolved with DG

Competition, that SO addressee may refer the matter to the Hearing Officer under Article 7 of the Hearing Officer's Terms of Reference.⁷

25. If the Commission intends to disclose information the information provider considers confidential, DG Competition must inform the information provider of the reasons for that intention and invite the information provider's comments. Where the information provider objects to the planned disclosure, it can refer the matter to the Hearing Officer under Article 8 of the Hearing Officer's Terms of Reference. Where appropriate, the Hearing Officer may decide that the information concerned may be made accessible in a restricted manner to the SO addressee requesting access.

Annex 1 Template Negotiated Disclosure Agreement

⁷ See Articles 3(7) and 7(1) of Decision 2011/695/EU of the President of the European Commission on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29. ("Hearing Officers' Terms of Reference").

Annex 1: Template Negotiated Disclosure Agreement

TEMPLATE FOR NEGOTIATED DISCLOSURE/CONFIDENTIALITY RING

[NAME SO ADDRESSEE], a [PLACE OF ESTABLISHMENT] corporation, with its principal place of business at [ADDRESS], duly represented by [AUTHORIZED REPRESENTATIVE] ("NAME"); and

[NAME INFORMATION PROVIDER], an [PLACE OF ESTABLISHMENT] corporation, with its principal place of business at [ADDRESS], duly represented by [AUTHORIZED REPRESENTATIVE] (the "Information Provider")

(together: the "Parties")

On [DATE] entered into this

NEGOTIATED DISCLOSURE AGREEMENT

Whereas:

- (1) On [DATE], the European Commission (the "Commission") issued a Statement of Objections ("SO") in Case AT [NUMBER] ("the Case") to [SO Addressee] (the "SO Addressee").
- (2) The SO Addressee has engaged [EXTERNAL COUNSEL, FIRM] as external legal counsel in relation to the Case (the "External Counsel").
- (3) The Commission [has/will] provide(d) the SO Addressee access to the file [on [DATE]]. Access to the file [will be/was] provided on the basis of Article 27(2) of Council Regulation (EC) No 1/2003,⁸ Articles 15 and 16a of Commission Regulation (EC) No 773/2004⁹ and the Commission Notice on Access to File.¹⁰
- (4) In principle, the Commission grants the SO Addressee access to all documents contained in the Commission file, with the exception of internal documents, business secrets of other undertakings, and other confidential information.¹¹ In

⁸ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1.

⁹ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the Treaty, OJ L 123, 27.4.2004, p. 18, as amended by Commission Regulation (EU) 2015/1348 of 3 August 2015, OJ L 208, 5.8.2015..

¹⁰ Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54, 57 of the EEA Agreement and Council Regulation (EC) No 139/2004, OJ C 325 22.12.2005, p. 7.

¹¹ Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004, point 10.

this Case, the Commission's file includes documents that are claimed to contain business secrets and other confidential information.

- (5) A [third] party in an EU antitrust procedure can waive, *vis-à-vis* the Commission, its right to the protection of its business secrets and other confidential information.¹²
- (6) The Commission has agreed to facilitate a negotiated disclosure of [ALL/PART] of the documents contained in the file. These documents are listed in Enclosure I to this Agreement (the "**Documents**"). The Commission obtained these Documents from the Information Provider. The Documents are claimed to contain business secrets or other confidential information. The SO Addressee has [not yet] received access to non-confidential versions of the documents or to summaries thereof [on DATE].
- (7) This Agreement together with all of its Annexes is intended to facilitate disclosure of the Documents through a confidentiality ring comprising the External Counsel [and persons under the direction, control or supervision of the External Counsel and bound by confidentiality obligations towards his/her law firm] [and certain agreed representatives of the SO Addressee]. The members of the confidentiality ring are listed in the Enclosure II to this Agreement (the "**Members**").
- (8) The SO Addressee has declared to the Commission that access to the Documents in accordance with this Agreement will satisfy the Commission's obligations towards the SO Addressee as regards the exercise of its right to access to file.
- (9) In contemplation of the Commission providing the Members with the Documents pursuant to this Agreement, the Information Provider has waived its right to the protection of its business secrets and other confidential information by the Commission.

The Parties therefore conclude the following agreement:

1. Access to the Documents is granted on the condition that the information thereby obtained may only be used by the External Counsel for the purposes of the proceedings before the Commission in the Case and in any judicial review of a possible future Commission Decision in the Case before the Court of Justice of the European Union. External Counsel may use the information contained in the Documents only for the purposes stated above under the conditions set out in this Agreement.
2. The Information Provider hereby waives, *vis-à-vis* the Members, its right to protection of business secrets and other confidential information contained in the Documents. This waiver is solely for the purpose of enabling the Commission to

¹² See by analogy Case T-45/98, *Krupp Thyssen Stainless v Commission*, EU:T:2001:288, paragraph 63.

disclose the Documents to the Members in accordance with the terms of this Agreement and is granted to that extent only.

Negotiated disclosure ring procedure

3. The Information Provider has provided the Documents to the Commission in an unredacted form. The Information Provider has consented that the Commission will provide the External Counsel with a password protected electronic storage device containing electronic copies of the Documents upon receipt of the following documents:
 - a. Agreement duly executed by all the Parties; and
 - b. Acknowledgements of Negotiated Disclosure Agreement signed by the External Counsel and each and every other Member in the form of Annex A.

**[ALTERNATIVE I: NEGOTIATED DISCLOSURE TO GRANT FULL ACCESS
(delete when using alternative II)]**

4. The SO Addressee agrees that the External Counsel

- redacts or removes any information acquired from the Documents from written submissions pertaining to the Case made to the Commission and the Court of Justice of the European Union, and/or
- places information acquired from the Documents in a confidential Annex to the Reply to the SO or Court submission which remains non-accessible to the SO Addressee.
- excludes information acquired from the Documents from any oral submission in the proceedings before the Commission and the Court of Justice of the European Union pertaining to the Case (save where arrangements have been made to prevent improper disclosure of information acquired from the Documents, or where ordered by the Court)

5. [OPTIONAL The Information Provider agrees that in the event that the External Counsel considers that SO Addressee's defence cannot properly be assured without information in certain of the Documents (or parts thereof) being disclosed in full to the SO Addressee, permission for such disclosure to the SO addressee shall be sought from the Information Provider. Where such permission is not granted within 10 working days, the External Counsel may address the Commission according to Article 3(7) and 7 of the Decision of the President of the European Commission of 13 October 2011 on the functions and terms of reference of the Hearing Officer in certain competition proceedings¹³ seeking the provision by the Commission of (part(s) of) the Document(s) concerned.]]

¹³ Decision of the President of the European Commission of 13 October 2011 on the functions and terms of reference of the hearing officer in certain competition proceedings OJ L275, 20.10.2011, p. 29.

[ALTERNATIVE II: NEGOTIATED DISCLOSURE AS A FILTER –delete when using alternative I

6. If the External Counsel identifies the information in the Documents as exculpatory and intends to use this information for the purposes identified in Article 1 of this Agreement, the External Counsel is required to:
 - a. clearly identify the Documents or parts thereof which are concerned; and
 - b. submit to the Commission a reasoned request for client access in the form of a list (the "**List**") including (i) clear identification of the relevant Documents or parts thereof and (ii) explanation of why the information in the identified Documents or parts thereof is considered exculpatory. General or vague justifications such as "*the information could be exculpatory*" or "*the information could be necessary to understand the context*" will not be considered as sufficient. The justification must clearly explain the specific reasons why the particular information is necessary for the exercise of the SO Addressee's rights of defence and what the External Counsel intends to show by it; and
 - c. provide the Commission with the List within 15 working days as of the receipt of the password protected electronic storage device containing electronic copies of the Documents.
7. If the External Counsel fails to provide the Commission with the List in accordance with and within the deadline set in Article 4 of this Agreement, it shall be considered that the SO Addressee's rights to access to file with respect to the Documents have been fully exercised by the SO Addressee and the External Counsel shall return the Access to File DVD to the Commission.
8. Upon receipt of the List, the Commission will contact the Information Provider and assess whether the information identified in the List can be disclosed. To the extent that the Information Provider does not object to the disclosure of the information, the Information Provider shall prepare and deliver it to the Commission within 10 working days from the Commission submitting the List to the Information Provider. If the Information Provider fails to deliver to the Commission non-confidential versions of any of the Documents identified in the List within the deadline set in this Article, the Commission may presume that the information contained in the Documents concerned should be accessible. The Commission will disclose the Documents to the SO Addressee in accordance with this agreement.]
9. To the extent that the Information Provider objects to disclosure of some of the information by showing that disclosure could cause serious commercial harm to the Information Provider, the procedure set out in Article 8 of the Decision of the President of the European Commission of 13 October 2011 on the functions and terms of reference of the Hearing Officer in certain competition proceedings

applies.¹⁴ This means that, with regard to that information, the Commission services will then assess whether the Information Provider's claim to confidential treatment of information outweighs the reasons provided by the External Counsel for making such information available to the SO Addressee in view of its rights of defence.

10. The Documents will not be copied or otherwise reproduced except to the extent such copying or reproduction is reasonably necessary for permitted uses under this Agreement, and all such copies or reproductions will be subject to the terms of this Agreement. If the duplication process by which copies or reproductions of the Documents are made does not itself preserve the possible confidentiality designations that may appear on the original Documents, all such copies or reproductions will be appropriately marked with those confidentiality designations. For the purposes of this Agreement and its Annexes, the expression “the Documents” covers, in addition to originals, any copies or reproductions of the Documents, even if made in contravention of this paragraph.

Liability

11. Members will take all necessary measures to ensure that the Documents are kept so as to avoid unauthorised disclosure. The Information Provider has a right to claim damages and such other relief as may be available from the Members and their firm or employer for any unlawful disclosure of the Documents or parts thereof in contravention of this Agreement.
12. Disclosure pursuant to and to the extent required under the terms of an order issued by a court of a competent jurisdiction or by a competent regulatory authority shall not constitute a violation of the Members’ obligations under this Agreement.

Waiver of lawyer-client disclosure duty

13. The SO Addressee hereby releases any External Counsel who are Members and their law firms from any professional duties and obligations to disclose to it information contained in the Documents subject to the negotiated disclosure procedure. The SO Addressee will undertake any required or advisable action and execute any required or advisable document to effect the release described in this Article. The SO Addressee shall refrain from issuing any instruction to any Members which may result in the violation of this Agreement.
14. This Agreement will be governed by and construed in accordance with the [LAW]. All disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The place of arbitration is [PLACE]. The language of the arbitral proceedings is [LANGUAGE]

¹⁴ Decision of the President of the European Commission of 13 October 2011 on the functions and terms of reference of the hearing officer in certain competition proceedings OJ L275, 20.10.2011, p. 29.

On behalf of [SO ADDRESSEE]
[PROVIDER]

.....

Name:

Function:

Date:

Place:

On behalf of [INFORMATION

.....

Name:

Function:

Date:

Place:

DECLARATION OF [SO ADDRESSEE(S)] VIS-A-VIS THE EUROPEAN COMMISSION

[NAME], a [PLACE OF ESTABLISHMENT] corporation, with its principal place of business at [ADDRESS], duly represented by [AUTHORIZED REPRESENTATIVE] (“[NAME]”)

Hereby declares with regard to the procedure in the Case AT.[NUMBER] – [NAME]:

[NAME] agrees to exercise its rights to access to file as regards the Documents as defined below solely in accordance with the terms set out in the draft Negotiated Disclosure Agreement annexed hereto, which, further to this Declaration, [SO ADDRESSEE(S)] intends to enter into with [NAME INFORMATION PROVIDER] a [PLACE OF ESTABLISHMENT] corporation, with its principal place of business at [ADDRESS] (the "Information Provider").

[NAME] agrees that the Commission, by acting in accordance with the disclosure procedure set out in the draft Negotiated Disclosure Agreement would comply with its obligation to provide access to the file as set out in Council Regulation (EC) No 1/2003, Commission Regulation (EC) No 773/2004 and the Commission Notice on Access to File, as regards the Documents.

The term "Documents" means [NUMBER] documents totalling around [NUMBER] pages received by the European Commission in the course of its investigation of the Case AT.[NUMBER] – [NAME]. The documents are listed in Enclosure I to the draft Negotiated Disclosure Agreement.

On behalf of [NAME].

.....

Name:

Function:

Date:

Place:

WAIVER DECLARATION OF [INFORMATION PROVIDER] VIS-A-VIS THE EUROPEAN COMMISSION

[NAME], an [PLACE OF ESTABLISHMENT] corporation, with its principal place of business at [ADDRESS], duly represented by [AUTHORIZED REPRESENTATIVE] (the “**Information Provider**”)

Hereby declares with regard to the procedure in the Case AT.[NUMBER] – [NAME]:

The Information Provider hereby waives with respect to the European Commission its right to the protection of business secrets and other confidential information contained in the Documents. This waiver is granted solely for the purpose of enabling the European Commission to disclose the Documents in accordance with the terms of the draft Negotiated Disclosure Agreement which, further to this Declaration, [INFORMATION PROVIDER] intends to enter into with [SO ADDRESSEE], a [PLACE OF ESTABLISHMENT] corporation, with its principal place of business at [ADDRESS] and the Information Provider.

The Information Provider agrees that disclosure of the Documents in accordance with the terms of the draft Negotiated Disclosure Agreement would satisfy the Commission’s duty to respect professional secrecy under Article 339 TFEU and/or Article 28 of Regulation (EC) No 1/2003 and/or any other applicable rules. Accordingly, the Information Provider agrees not to pursue any claim against the Commission and its staff in respect of any damage that might result from a possible breach of the Negotiated Disclosure Agreement.

The term “**Documents**” means [NUMBER] documents totalling around [NUMBER] pages received by the European Commission in the course of its investigation of the Case AT.[NUMBER] – [NAME]. The documents are listed in Enclosure I to the draft Negotiated Disclosure Agreement.

On behalf of [INFORMATION PROVIDER]

.....

Name:

Function:

Date:

Place:

ANNEX A

UNDERTAKING TO BE ENTERED INTO BY MEMBERS OF THE CONFIDENTIALITY RING

I am a [POSITION – *employee, partner, associate, in house counsel*] of [FIRM/SO ADDRESSEE] and I hereby acknowledge that:

1. I have read the Negotiated Disclosure Agreement of [DATE OF THE AGREEMENT] entered into by and between [SO ADDRESSEE], a [PLACE OF ESTABLISHMENT] corporation, with its principal place of business at [ADDRESS] and [INFORMATION PROVIDER], a [PLACE OF ESTABLISHMENT] corporation, with its principal place of business at [ADDRESS] (the "Agreement"), understand the terms thereof, and agree to be bound by it and by the following commitments:
 - a. I will not use any of the Documents for any purpose other than that authorized by the Agreement;
 - b. Subject to the exceptions provided in the Agreement, I will not disclose, transmit, communicate or make available the information contained in the Documents (or any observations or comments that repeat any parts of the Documents) in any manner, shape or form to anyone other than to the other Members;
 - c. I will take all appropriate measures necessary to ensure that the Documents are not unlawfully disclosed and notably to ensure that the password protected electronic storage device containing the Documents (and copies containing information extracted therefrom on any medium) [and copies of the List] will be stored in a manner that prevents their non-authorized use;
 - d. I will process the personal data contained in the Documents in accordance with applicable law, and accept responsibility as controller for any personal data thus processed by the Members or by the SO Addressee in case of disclosure to the SO Addressee allowed in accordance with this Agreement.
 - e. I will destroy all hard copies of the Documents and to take all reasonable steps to remove, destroy or render otherwise inaccessible any electronic copies of any parts of the Documents, irrespective of the storage medium used, within 60 days of the conclusion of the Commission Proceedings in the Case or within 60 days of the conclusion of any litigation before the Court of Justice of the European Union that might arise in relation to the Case whichever 60-day period expires later, and to certify (by way of affidavit) compliance with this requirement to the Commission and the Information Provider upon their request

- f. I will make only such copies or notes as are required to enable me to render assistance in connection with the matters for which I am engaged;
- g. I will inform the Commission and the Information Provider of any non-authorized disclosure of the Documents in breach of this Agreement and the circumstances of such disclosure as soon as they become aware thereof unless required not to do so by any applicable law or by any competent Court or regulatory or police authority.
- h. I acknowledge [on behalf of the External Counsel's law firm/economists or in-house lawyers' employer] to assume liability for losses or damages incurred by the Information Provider for any damages which are caused by any breach of the terms of the Agreement attributable to me.
- i. [FOR LAWYERS] I acknowledge that if the information from the Documents is used at any time for a purpose other than the purposes identified in Article 1 of this Agreement, then the Commission may report the incident to the my Bar association with a view to disciplinary action].

The term "**Documents**" means [NUMBER] documents totalling around [NUMBER] pages received by the European Commission in the course of its investigation of the Case AT.[NUMBER] – [NAME]. These documents were submitted by to [INFORMATION PROVIDER], a [PLACE OF ESTABLISHMENT] corporation, with its principal place of business at [ADDRESS]. The documents are listed in Enclosure I to the Negotiated Disclosure Agreement of [DATE OF THE AGREEMENT].

In [PLACE], on [DATE]

Name:

Signature:.....

.....

ENCLOSURE I

[LIST OF DOCUMENTS]

ENCLOSURE II

[LIST OF MEMBERS, INDICATING NAME, FUNCTION AND A FIRM]