

Subject: Best practices in antitrust proceedings and submission of economic evidence; Hearing Officers' guidance paper.

Dear. Sirs,

With reference to the issue at stake we must say the following:

We believe it very important to improve the practice and provide guidance for stakeholders and other interested parties on the conduct of day-to-day proceedings before the European Commission in relation to Articles 101 and 102 of the Treaty on the Functioning of the European Union, in accordance with Regulation 1 / 2003.

However, it raises us a question, about confidentiality.

It says the best practices that fit the company claims the protection of confidentiality with respect to a document submitted to the Commission an appropriate justification and relevant material for their arguments are not required to disclose the contents of the document.

Nevertheless, the mere fact that a company claims that the document is protected by confidentiality is not sufficient to prevent the Commission from reading that document, if the company does not produce relevant material capable.

And that, in the course of an investigation, the Competition DG considers that the material presented by the company is not likely to prove that the document in question is protected by confidentiality in case law, particularly when the company refuses to give officials of DG Competition, a quick look at a document, but it can not be excluded that the document can be protected, employees can put a copy of the appeal, in a sealed envelope and then remove it and bring it to the DG Sellers Competition, with a view to an eventual resolution of the dispute.

It follows a problem for companies, because the best practices provides a set of rules that should govern the inspections, particularly regarding the examination of documents.

On the other hand, there is a right of defence companies tenuous as to its refusal to display a document which it considers confidential.

Besides having to make very strong reasons to justify its refusal, which probably will always be considered inadequate by those who do the inspections, ending this way and run down for violating the right to confidentiality.

The best practices document also says the document submitted for consultation to the DG Competition can take a quick look at the document, but it can not be excluded that the information contained there can be protected, employees can put a copy of the appeal, in a sealed envelope and then remove it and bring it to the Sellers DG Competition, with a view to solving the dispute.

The procedure seems correct. However, it also cast doubt on the legality of that when implemented on the ground, as if the employee to take a quick look at the document can access the information even after it is considered confidential by officials DG Competition may be used connected with the investigation. That is, they can not use this document to use as a proof, but can not ignore the information contained in this document, which may be useful for research but detrimental to the investigation.

Thus, we believe this process should be reviewed and provided a more effective inspection to enterprises, especially, should be performed by the same impartial and entities that are not inspecting functions.

Yours sincerely,

Associação Nacional das Pequenas e Médias Empresas

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