MEMORANDUM

INFORMATION ON THE FORMAL ORAL HEARING

1. The formal oral hearing

In merger proceedings pursuant to Council Regulation 139/2004 on the control of concentrations between undertakings, the formal oral hearing is governed by Articles 14, 15 and 16(2) of Commission Regulation (EC) 802/2004 ("Implementing Regulation")¹ and Articles 10, 11, 12 and 13 of Decision 2011/695/EU on the terms of reference of the hearing officer ("Terms of Reference").²

Formal oral hearings are organised and conducted by the hearing officer in accordance with the Terms of Reference and with Article 15 of the Implementing Regulation.

The purpose of the formal oral hearing is to give the notifying parties and other involved parties the opportunity to further exercise their right to be heard by developing their arguments orally before the Commission, which is represented by the Directorate-General for Competition as well as other services that contribute to the further preparation of a decision to be taken by the Commission,³ and representatives of the competition authorities of the Member States. Where appropriate, third parties may also be afforded the opportunity to express their views orally.

In their oral presentations, participants are asked not to exceed the time that is allocated to them by the hearing officer.

In addition to the oral presentations, the hearing officer may allow the notifying parties, other involved parties, third persons admitted to the hearing, as well as the Commission services and the competent authorities of the Member States to ask questions during the formal oral hearing.⁴ One or more sessions of questions and answers are generally scheduled during the formal oral hearing. These sessions should be used to clarify as much as possible the presentations of the various parties, and/or comment briefly on such presentations. To the extent that, exceptionally, a party cannot answer a question in whole or in part during the formal oral hearing, the hearing officer may specify a time limit for the answer to be provided in writing. Such written reply will be subsequently circulated to all participants in the formal oral hearing, unless the hearing officer decides

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³ Recital 19 of the Terms of Reference.
⁴ Article 15(7) of the Implementing Regulation.
otherwise in order to protect the rights of defence of an addressee of the statement of objections or the business secrets or other confidential information of any person.\textsuperscript{5}

At the end of the formal oral hearing, the notifying parties and other involved parties will be given the opportunity to make final remarks, the purpose of which is to give these parties the opportunity to sum up and conclude their presentations.

2. Participation and representation

Persons invited to attend shall either appear in person or be represented by legal representatives or by representatives authorised by their constitution as appropriate. Undertakings and associations of undertakings may also be represented by a duly authorised agent appointed from among their permanent staff.\textsuperscript{6} Persons heard by the Commission may be assisted by their lawyers or other qualified and duly authorised persons admitted by the hearing officer.\textsuperscript{7}

In order to guarantee that all participants can express themselves freely, the formal oral hearing is not public.\textsuperscript{8} It can be attended only by those whose names have been notified to the hearing officer in advance, as requested in the invitation. Before the formal oral hearing, a provisional list of participants (as well as an indicative time table) will be distributed. Only persons on the list wearing badges, which will be provided on the day of the hearing, will be allowed by the security personnel to enter the meeting room.

3. Slide presentations

Slides may be used for presentations. Please note that Commission's computers are compatible with the following software: Windows XP SP3, Adobe Reader 9.4, Complete Office Suite 2003/2010, Flash player 11.

If you intend to use a slide presentation, please send it electronically to hearing.officer@ec.europa.eu at the latest one day prior to the hearing (even in draft form), so that it could be sent to the interpreters to facilitate their preparation. Further, if you intend to speak from a prepared text, a copy should also be provided either in advance or upon your arrival at the hearing for use by the interpreters.

On the day of the hearing, you are requested to bring:

a) an electronic copy of the slides on a USB stick; after using it for your presentation please make it available to the hearing secretary for filing purposes;

b) hard copies of presentations to be made available to each party (at least one copy for each if there are many parties present) as well as to the hearing officer, the case team, other Commission services, competition authorities of the Member States and interpreters (six copies for the interpreters unless otherwise advised). The Commission case team will likewise provide hard copies of its presentation.

\textsuperscript{5} Article 12(3) of the Terms of Reference.
\textsuperscript{6} Article 15(4) of the Implementing Regulation.
\textsuperscript{7} Article 15(5) of the Implementing Regulation.
\textsuperscript{8} Article 15(6) of the Implementing Regulation.
After the oral hearing please send all presentation and other documents distributed to the participants during the hearing electronically to hearing.officer@ec.europa.eu (if not yet provided to the secretary during the hearing) for filing purposes.

4. Closed sessions

Each person shall normally be heard in the presence of all the other persons invited to attend the formal oral hearing. Nevertheless, the hearing officer may exceptionally decide to hear persons separately in a closed session, having regard to their legitimate interest for the protection of their business secrets and other confidential information.9

If a party considers it necessary to be heard in a closed session, it may submit a reasoned request to the hearing officer. Such a request must be submitted as soon as possible. The request should indicate the parts of the envisaged presentation that contain confidential information and describe in detail why the disclosure of that information to the other parties would be liable to cause serious harm to the requesting party. The hearing officer will not accede to a request to be heard in a closed session without sufficient justification.

5. Recording of the formal oral hearing

There are no official minutes of the formal oral hearing. The statements made by each person heard will only be recorded.10 The recording will be made available upon request to those who attended the hearing. Recordings of closed sessions are available only to the parties who were present during such sessions. To ensure the usefulness of the recording, it is very important that speakers state their names each time they take the floor, in particular during the time allocated to questions and answers.

A participant wishing to receive a copy of the recording must fill in the request form distributed on the day of the formal oral hearing. The participants who requested a copy of the recording will be informed by the secretariat of the hearing officer when the copy is ready. This can be picked up either personally at the premises of the secretariat of the hearing officer during working hours, or sent upon request via registered mail with notification of receipt.

6. Confidentiality

The formal oral hearing is not public and any information, discussions, presentations and documents disclosed during it may only be used for the purposes of the relevant proceedings. They must not be disclosed or used for any other purpose by any participant at the hearing, even after the case is closed by the Commission. This use restriction also applies to the recording of the formal oral hearing, as well as any visual presentations.

Please note:

This Memorandum is intended for guidance only and is not intended as an authoritative interpretation of the legal provisions involved.

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9 Article 13 of the Terms of Reference and Article 15(6) of the Implementing Regulation.
10 Article 15 (8) of the Implementing Regulation.