MEMORANDUM

INFORMATION ON THE ORAL HEARING

1. The oral hearing

In proceedings under Articles 101 and 102 of the TFEU, the oral hearing is governed by Articles 6(2), 12, 13(2), 13(3) and 14 of Commission Regulation (EC) No 773/2004 ("Implementing Regulation"). Articles 10, 11, 12 and 13 of Decision 2011/695/EU on the terms of reference of the hearing officer ("Terms of Reference"), and the Commission notice on best practices ("Best Practices").

Oral hearings are organized and conducted by the hearing officer in accordance with the Terms of Reference and Article 14 of the Implementing Regulation.

The purpose of the oral hearing is to allow the addressees of the statement of objections that have already replied in writing to the statement of objections 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 the decision to be taken by the Commission, and the representatives of the competition (or other) authorities of the Member States. The oral hearing should provide an additional opportunity to ensure that all relevant facts – whether favourable or unfavourable to the parties concerned, including the factual elements relating to the gravity and duration of the alleged infringement – are clarified as much as possible. Furthermore, the oral hearing should allow the parties to present their arguments as to the matters that may be of importance for the possible imposition of fines.

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4. Recital 19 of the Terms of Reference. According to §108 of the Best Practices, it is the practice of the Directorate-General for Competition to ensure the continuous presence of senior management of the Directorate-General for Competition (Director or Deputy Director-General), together with the case team of Commission officials responsible for the investigation.
5. Article 14(3) of the Implementing Regulation. In cases concerning Articles 53 or 54 of the EEA Agreement, the EFTA Surveillance Authority and the EEA EFTA States may also be represented at the oral hearing; see Article 5 of Protocol 23 to the EEA Agreement, as replaced by Decision No 130/2004 of the EEA Joint Committee of 24 September 2004, (OJ L 64, 10.3.2005, p. 57).
6. Recital 19 of the Terms of Reference; see also § 107 of the Best Practices.
In their oral presentations, participants must not exceed the time which is allocated to them by the hearing officer.

The hearing officer may allow the addressees of the statement of objections, the Commission services and the authorities of the Member States, to ask questions during the hearing. A session of questions and answers will be scheduled after the presentation of each participant or group of participants, as the case may require. 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 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 oral hearing, unless the hearing officer decides 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.

At the end of the oral hearing, each party is given the opportunity to make final remarks, the purpose of which is to give 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. Persons heard by the Commission may be assisted by their lawyers or other qualified persons admitted by the hearing officer.

In order to guarantee that all participants can express themselves freely, the oral hearing is not public. 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 oral hearing, a provisional list of participants (as well as an indicative time table) will be distributed. Only persons on the list and 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. Languages

Simultaneous translation will normally be available during the oral hearing from and into English, French, and German, as well as any other official EU language in which an addressee of the statement of objections has replied in writing to the statement of objections. Participants who want to use another official EU language at the oral hearing should without delay contact the hearing officer so that translation can be provided for.

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7 Article 14(7) of the Implementing Regulation and Article 12(3) of the Terms of Reference.
8 Article 12(3) of the Terms of Reference.
9 Article 14(4) of the Implementing Regulation.
10 Article 14(5) of the Implementing Regulation.
11 Article 14(1) of the Implementing Regulation and § 107 of the Best Practices.
4. **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 **two days** 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.

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.

5. **Closed sessions**

Each person shall normally be heard in the presence of all the other persons invited to attend the 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.\(^{12}\)

If a party considers it necessary to be heard in a closed session, it may submit a reasoned request to the hearing officer. 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.

6. **Recording of the oral hearing**

There are no official minutes of the oral hearing. The statements made by each person heard will only be recorded.\(^ {13}\) 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

\(^{12}\) Article 13 of the Terms of Reference.

\(^{13}\) Article 14 (8) of the Implementing Regulation.
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 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.

7. **Confidentiality**

The oral hearing is not public and any information, discussions, presentations and documents disclosed during it should not be used for a purpose other than judicial and/or administrative proceedings for the application of Articles 101 and 102 TFEU. This use restriction also applies to the recording of the oral hearing, as well as any visual presentations. Should information disclosed during the oral hearing be used for a purpose other than judicial and/or administrative proceedings for the application of Articles 101 and 102 TFEU at any point in time with the involvement of outside counsel, the Commission may report the incident to the bar of that counsel, with a view to disciplinary action.14

**Please note:**

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