



Publication of Decisions

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*The views expressed are personal and do not bind the Commission

Outline

- Why publish anything?
- What the EU actually publishes
- European Commission's obligation to publish
- Publications going beyond legal requirement
- Interests involved in publications
- What information should a published decision include?
- How to prepare documents for publication?
- Publications policy management

Why publish anything?

- EU legal obligation to publish certain decisions
- Legitimacy of enforcement: "*Face*" of an authority
 - Transparency (public interest – deterrence)
 - Predictability
 - Legal certainty
 - Rights of defence
 - Damage claimants
- Support enforcement efficiency
 - Agency advocacy
 - Self-discipline in the market

What the EU actually publishes

- 1. Specific legal obligation** under Art. 30 of Reg. 1/2003 to **publish** main content of competition decisions
- 2. Publications going beyond the legal requirements:**
Practice to **publish** a non-confidential version of decisions ('public version') on DG Comp's website
- 3. General legal obligation** to provide **access** to the full (non-confidential) decision upon request under Regulation 1049/2001 regarding **public access to documents**

Obligation to publish

1. Article 30 Regulation 1/2003 (basic procedure Regulation): the Commission shall publish the decisions, which it takes pursuant to Articles 7 to 10, 23 and 24.
2. The publication shall state the names of the parties and the main content of the decision, including any penalties imposed. It shall have regard to the legitimate interest of undertakings in the protection of their business secrets.
(Summary of the Commission's decision)

Obligation to publish in the EU Official Journal

- Article 7: Decision finding an infringement
- Article 8: Decision on interim measures
- Article 9: Commitments decision
- Article 10: Decision of inapplicability
- Article 23: Decision imposing fines
- Article 24: Decision on periodic penalty
- Final report of the Hearing Officer (Article 17(3) of Hearing Officer Terms of Reference)
- Opinion of the Advisory Committee (Article 14(6) Regulation No. 1/2003)

No explicit legal requirements regarding the timing of the publication, but done as soon as possible

Publications going beyond legal requirement

- Commission's website publishes shortly after the adoption:
 - Summary decision without confidential information
 - Full (non-confidential) text of final decisions
 - Rejection of complaints (Article 7(2) of Commission Regulation 773/2004)
 - Opening of proceedings (Article 2(2) of Commission Regulation 773/2004)
 - <http://ec.europa.eu/competition/antitrust/cases/index.html>
- Commission's website
 - Press releases published on day of action
 - Major steps in cases (confirm inspections and Statement of Objections and Decisions)
 - Describes the scope of the case, the nature of the infringement and the fine or remedy
 - <http://europa.eu/rapid/search.htm>

Overview: Scope of publications

Publication	Compulsory	Official Journal	Internet	Press release	Annual report
Initiation of proceedings	optional	No	Yes	Yes (if possible)* (If no: No defensive Memo for spokesman)	No
Closure of proceedings	optional	No	Yes	No	No
SO	No	No	No	Yes (if possible)* (If no: No defensive Memo for spokesman)	No
Art 27(4) notices	Yes	Yes	Yes	optional	optional
Formal decisions Art 7,8,9,10,23,24	Yes	Yes OJ C summary	Yes full text (OR+ EN+FR+DE)	Yes	Yes
Guidance letter	yes	No	Yes	optional	Yes
Rejection of complaint	No*, but best practices	No	Yes	optional	optional
Hearing Officer report	Yes	Yes OJ C	Yes	No	No
Advisory Committee opinion	Yes if requested	Yes OJ C	Yes	No	No
Inspection	No	No	No	No (but defensive Memo for spokesman)	No

Balancing the different interests

- **Transparency**: public (including deterrence), parties, damage claimants
- Protection of **investigations** (including protection of the leniency programme)
- **Business secrets** & other confidential information
- **Other** – data protection
 - EU Court case law: *Case T-474/04 Pergan*

How to prepare documents for publication

- Redaction of business secrets
 - Parties submit confidentiality claims
 - Obligation to follow the "Akzo" procedure (Case 53/85 *Akzo v Commission*)
 - Opportunity for the company to express its views
 - Motivated decision by the Hearing Officer
 - Opportunity to ask for interim measures from the Court of Justice to block publication of information
- *Ex officio* redaction of other information

4.3.4.3. Communications

215. Apart from the meetings which became less and less frequent over time, regular exchanges of correspondence (mostly by fax and e-mail) between the parties as of mid-1999 played an increasingly important role in the cartel.
216. [...] ³⁹¹
217. Throughout 1999 – 2006, information exchanges concerning past sales, often in relation to quotas were frequent and members regularly discussed allocation of individual sales and other issues.
218. [...] ³⁹²
219. [...] ³⁹³
220. [...] ³⁹⁴
221. [...] ^{395 396 397 398 399 400 401 402 403 404 405 406}

388 [...]
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Example of immediate publication - 1

Case COMP/AT.39861 – Yen Interest Rate Derivatives (YIRD)
Commission Decision of 4 February 2015

No public version available

As DG Competition and the companies involved are in the process of establishing a version of the decision that does not contain any business secrets or other confidential information, no public version of this text is available for the time being. DG Competition is trying to settle this issue as soon as possible with a view to a quick publication. You are therefore invited to check the present section of DG Competition's website regularly in order to remain aware of any further developments.

But combined with a press release:

http://europa.eu/rapid/press-release_IP-15-4104_en.htm

Example of publication - 2

CASE AT.39780 – Envelopes

- Press release
 - Published 11 December 2014
http://europa.eu/rapid/press-release_IP-14-2583_en.htm
- Summary of Commission Decision
 - Published on 23.01.2015
http://ec.europa.eu/competition/antitrust/cases/dec_docs/39780/39780_3527_7.pdf
- Commission Decision Public version
 - Published on 23.01.2015
http://ec.europa.eu/competition/antitrust/cases/dec_docs/39780/39780_3528_6.pdf

Example of publication - 3

- Case COMP/39.437 — TV and computer monitor tubes:
 - Decision of 5 December 2012 – 340 pages
 - Press release published 5 December 2012
http://europa.eu/rapid/press-release_IP-12-1317_en.htm?locale=en
 - 4 pages Summary of Decision published on 19 October 2013
 - FINES IMPOSED BY THE DECISION
 - Provisional decision published on 23 December 2014
 - This is a provisional non-confidential version. The definitive non-confidential version will be published as soon as it is available.

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39437

Publications policy management

- 2009 creation of Publication Task Force in Cartels
 - Mission: creation of consistent publications policy
 - Templates
 - Detailed guidance on which types of information should be redacted (the so-called "Grid")
 - *Ad hoc* advice to case-teams
- Further guidance initiative :
 - Public guidance on what parties can claim as business secrets or other confidential information



Thank you for your attention