



# The oral hearing in merger investigations

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The views expressed are those of the speaker only and cannot be regarded as stating an official position of the European Commission.

# The oral hearing – legal basis

- Article 18 Merger Regulation: right to be heard
- Article 14(1) Merger Implementing Regulation:  
right to an oral hearing
  - “When the Commission intends to take a decision pursuant to Article 6(3) or Article 8(2) to (6) of [the Merger Regulation], it shall afford the notifying parties who have so requested in their written comments the opportunity to develop their arguments in a **formal oral hearing**.”



# The oral hearing – legal framework

- Merger Implementing Regulation, Arts. 14-16
- Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings

# The oral hearing - purpose

- To allow the parties to the merger to exercise their right to be heard by developing their arguments orally
- To ensure that all relevant facts – whether favourable or unfavourable – are clarified as much as possible

# The oral hearing – when?

## Procedure Phase II

**Start of Phase II**  
6(1)(c) decision

**Statement of  
Objections**  
6-8 weeks after 6(1)(c)

**Final Decision**

**Art. 8(1)**  
(Clearance)

**Art. 8(2)**  
(Clearance  
+ remedies)

**Art. 8(3)**  
(Prohibition)

In depth Market investigation

Hearing

Market test

Improved  
remedies'  
negotiations

WD = working days

55 WD to  
propose  
remedies  
without  
15 WD  
extension

65 WD  
last day  
to propose  
remedies

**90 WD**

**105 WD**  
if remedies  
after day 55

**125 WD**  
+20WD  
with parties'  
agreement

# The oral hearing - when?

- Only Phase II cases
- After a statement of objections is adopted
- If requested by the notifying party or other party to the merger
  - Request to be made in reply to statement of objections
  - Third parties cannot request an oral hearing (but may be allowed to attend if there is one)

# Oral hearing – in practice

- Normally one day
- Not public
- Sometimes a "closed session" (one party only)
  - Protection of that party's business secrets
- Chaired by Hearing Officer
  - Acting independently
  - Not part of DG COMP
  - Attached, for administrative purposes, to the Competition Commissioner

# Oral hearing – practice – who typically attends (1)?

- Notifying party + its lawyers and economists
- Other party to the merger (seller) + its lawyers and economists
- "Interested third persons"
  - E.g. competitors, suppliers, customers
  - Must have sufficient interest to be heard
  - Hearing officer decides, taking into account the contribution they can make to the clarification of the relevant facts of the case





# Oral hearing – practice – who typically attends (2)?

- DG COMP
  - Director and/or Deputy Director-General
  - Member of Competition Commissioner's cabinet
  - Commission's legal service
  - Case team
  - Members of the chief economist team
- National competition authorities
- Representatives of other relevant DGs
- Other authorities
- Third parties invited by the Commission to express their views

# After the oral hearing

- Hearing officer drafts interim report on hearing and conclusions he or she draws regarding respect for exercise of procedural rights. Submitted to Competition Commissioner.