

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.

Competition



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





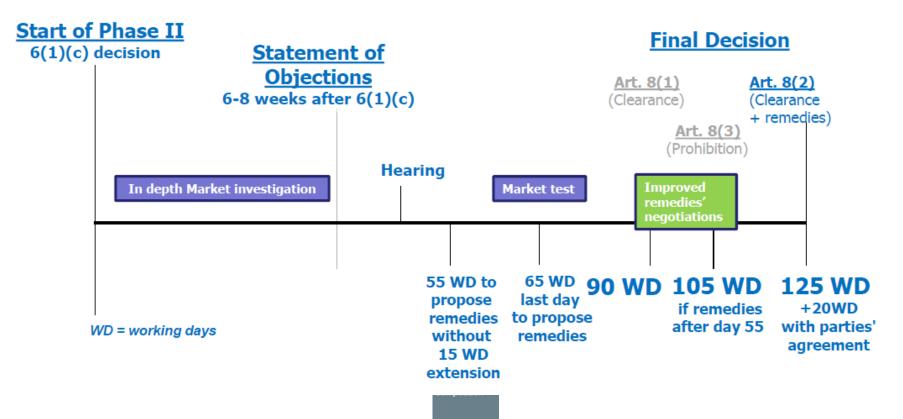
The oral hearing - purpose

- 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





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
 - $_{\odot}$ 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
 - $_{\rm O}$ Member of Competition Commissioner's cabinet
 - Commission's legal service
 - \circ Case team
 - $_{\odot}$ 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.