PROCEDURE (ALL INDUSTRIES): COMMISSION STATEMENT

Subject: Procedure
Hearing Officer

Industry: All industries

Source: Commission Statement IP/01/736, dated 23 May 2001

(Note. Although the proposed changes in the role of the Hearing Officer are generally welcome, it is still the case that the Hearing Officer is an official of the Commission. But, instead of being attached to the Director-General for Competition, he will be attached to the Commissioner. Other changes include greater transparency of the Hearing Officer's contribution to the final Decision reached by the Commission; and slightly greater increases in the scope and independence of his authority.)

The Commission has decided to take action to enhance the role of the Hearing Officer in its merger reviews and anti-trust proceedings. The Hearing Officer plays an important role in safeguarding the right of defence, a key principle of law to which the Commission is fully committed. From now on, the Hearing Officer will be attached directly to the Competition Commissioner and his or her report will be made available to the parties and will be published in the European Union's Official Journal, greatly contributing to a better transparency in the competition decision-making process.

"This new Mandate of the Hearing Officer will substantially improve the overall accountability of the Commission's decision-making process in merger and anti-trust proceedings, ensuring that all fundamental rights of parties and economic operators involved in its procedures are respected," Competition Commissioner Mario Monti said. "This also delivers on my promise, shortly after I was appointed, to enhance the role of the Hearing Officer as a guardian of basic procedural rights, such as the right to be heard or to have access to the files of the Commission."

The right to be heard is an established principle of European Community law. The principle has most recently been restated in the EU Charter of Fundamental Rights, as part of the right of every person "to have his or her affairs handled impartially, fairly and within a reasonable time". Safeguarding that right during the Commission's competition procedures is a special responsibility of the Hearing Officer.

The position of Hearing Officer was created in 1982. His initial responsibility was limited to the organisation, chairmanship and conduct of the oral hearing in antitrust proceedings and later on also in merger proceedings. Subsequently, this remit was updated and widened in 1994 to ensure adequate protection for the

rights of parties, with particular regard to confidentiality of documents and business secrets and adequate access to the case files of the Commission.

Main aspects of the reform

Position and appointment of the Hearing Officer

The Hearing Officer will no longer belong to the Directorate General for Competition, but will be directly attached to the office of the Commissioner in charge of competition policy to reinforce his independence. All Commission decisions on the appointment, termination of appointment or transfer of Hearing Officers will be published in the Official Journal of the European Communities. The new Mandate explicitly refers to the possibility that, in line with the staff regulations, the position of Hearing Officer should be filled by suitably qualified candidates from outside the Commission.

Procedural rights of the Hearing Officer

The main instrument with which the Hearing Officer exercises influence on a proceeding is his report on the draft Decision. Previously this document was not made available to the undertakings, nor published, nor systematically submitted to the College of Commissioners. From now on, the final report on the respect of the procedural rights of the parties will:

be communicated to the Member States,
be attached systematically to the draft Commission decision submitted to the College and
be disclosed to the parties and published together with the final decision.

This will give greater visibility and more weight to the Hearing Officer, reinforcing the protection of the legitimate interest of the parties in the fair conduct of the proceedings as well as greatly enhancing the transparency of the Commission's procedure.

Tasks of the Hearing Officer

Changes in the Hearing Officer's tasks include: involvement of the Hearing Officer in monitoring the market test phase of the procedure; specifying the Hearing Officer's powers with regard to granting or denying confidentiality when the Commission is disclosing information by publication in the Official Journal; and emphasizing more strongly the general function of the Hearing Officer as an independent guarantor of the fundamental procedural rights of all parties.

This new Mandate of the Hearing Officers follows the Commission's decision last year to upgrade this function. It aims to reinforce the independence and authority of the Hearing Officer and to enhance the objectivity and quality of the Commission's competition proceedings and the resulting decisions.

The Commission will soon launch a procedure to appoint two new Hearing Officers to deal with an increased workload in the merger and antitrust areas. ■