

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

European Commission, Directorate-General for Competition; European Union

The following template is submitted by the European Commission, Directorate-General for Competition, pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The European Commission (the “[Commission](#)”) enforces the competition policy of the European Union, which includes rules on antitrust (including cartels), merger control, and state aid (“EU competition rules”). Competition policy is core to the achievement of the EU’s internal market. Its aim is to provide everyone in the EU with a wider choice of better quality goods and services at lower prices. Competition policy is about applying rules to make sure companies compete fairly with each other, encouraging enterprise and efficiency.

The primary sources of EU competition rules are Articles 3 - 4 of the [Treaty on the European Union](#) (“TEU”) and Articles 101 - 109 of the [Treaty on the Functioning of the European Union](#) (“TFEU”) (together the “Treaties”). The legal basis for the Commission’s power to assess mergers is in the [EU Merger Regulation](#).

Within the Commission, the Directorate-General for Competition (“[DG Competition](#)”) is primarily responsible for directly enforcing EU competition rules.

Alongside the Commission, the national competition authorities of the EU Member States are also empowered to enforce Articles 101 and 102 TFEU. This system of parallel enforcement powers is enshrined in Regulation 1/2003 (“[Regulation 1/2003](#)”) and articulated through cooperation within the European Competition Network (“ECN”), formed by the Commission and the competition authorities of the Member States.

This submission provides a succinct overview of the procedures applicable to the Commission’s competition investigations, but is by no means exhaustive. More detailed information can be found in the sources hyperlinked in this submission. The Commission website provides comprehensive information on EU [antitrust legislation](#), [cartels legislation](#), [mergers legislation](#) and [state aid legislation](#). This includes also all relevant procedural rules. The website also provides access to non-legislative texts, such as Commission notices, guidelines or best practices, as well as links to relevant case law of the EU courts, and an overview of the Commission’s engagement in [international cooperation](#) in the competition field. The [Commission’s Manual of Procedures for the conduct of antitrust investigations](#) is also available on that website.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links

or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The Commission's investigative powers and enforcement policies in the competition field fully comply with the principle of non-discrimination. All competition investigations are based on the facts, the economics and the law.

The Commission is obliged by law to respect the rights of all the parties involved and to remain impartial and fair, with the same broad array of rights of defence being available to all parties. These are crucial values for the Commission's competition law enforcement. All Commission decisions in the competition field are subject to judicial review by EU Courts.

The principle of non-discrimination is a general fundamental principle of EU law, enshrined in Article 21 of the EU Charter of Fundamental Rights ("[EU Charter](#)"). Article 21(2) of the EU Charter specifically provides that „Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.“

The Commission is bound to observe the EU Charter; Article 51(1) of the EU Charter provides that EU institutions shall “respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.”

The exact same principle of non-discrimination is set out also in Article 18 [TFEU](#).

Even if the EU Charter and the TFEU refer to the application of EU law within the EU, the EU is bound to observe fundamental rights universally, as it is stipulated in Article 21 of the [TEU](#): „The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the [United Nations Charter](#) and international law.“

c) Transparency and Predictability

- i. *Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. *Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. *Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. *Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. *Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

All EU legislation and the case law of EU courts that apply to the Commission's investigations and enforcement proceedings are published in the [Official Journal of the European Union](#).

Besides, the Commission's [website](#) provides comprehensive information on EU [antitrust legislation](#), [cartels legislation](#), [mergers legislation](#) and [state aid legislation](#) that applies to its investigations and enforcement proceedings. This includes also all relevant procedural rules.

The website also contains and explains non-legislative guidance, such as Commission notices, guidelines or best practices, as well as links to relevant case law of the EU courts.

All important steps of every investigation – from the opening decision or merger notification to the decisions bringing the investigation to an end – are also described in detail on the Commission's website.

Further, for each case the Commission publishes on its website a wealth of information, such as detailed procedural steps and deadlines, as well as intermediary and final Commission Decisions.

With regard to **antitrust, including cartels**:

The most important legislative procedural rules are [Regulation 1/2003](#), which implements the competition rules laid down in Articles [101](#) and [102](#) TFEU, and [Regulation 773/2004](#), which sets out the procedure of Commission proceedings pursuant to Articles 101 and 102 TFEU.

Non-legislative guidance documents on procedural aspects of Commission investigations include e.g. [Best Practices for the conduct of antitrust proceedings](#), [Notice on the handling of complaints](#), [Notice on access to the Commission file](#), [Leniency Notice](#), [Notice on settlement](#)

[procedures](#), or [Guidelines on the method of setting fines](#). The [Commission's Manual of Procedures for the conduct of antitrust investigations](#) is also available on that website.

As regards substantive aspects, the Commission has made public notices on, e.g. the [definition of the relevant market](#), [de minimis agreements](#), the [effect on trade](#) concept, or the guidelines on [horizontal agreements](#) and [vertical restraints](#).

With regard to **mergers**:

The most important procedural rules are the [EU Merger Regulation](#) and the implementing [Regulation 802/2004](#).

Non-legislative guidance documents include e.g. [Best Practices on the conduct of merger control proceedings](#), [Jurisdictional Notice](#), [Best practices on the submission of economic evidence](#), [Guidelines on the assessment of horizontal mergers](#), [Guidelines on the assessment of horizontal mergers](#), [Notice on remedies](#), or [Guidance on the preparation of public versions of merger decisions](#).

The Commission website contains also pages that provide easily accessible overviews outlining all relevant steps in the relevant proceedings, such as [antitrust procedures in anticompetitive agreements](#), [antitrust procedures in abuse of dominance](#), or [overview of procedures in merger control](#),

Further, the Commission annually publishes [Reports of Competition Policy](#), which provide detailed information on the most important policy and legislative initiatives, and on decisions adopted by the Commission in application of EU competition rules during the previous year.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

With regard to **antitrust, including cartels**:

The Commission's investigative process is governed by [Regulation 1/2003](#) and [Regulation 773/2004](#). Practical guidance on the conduct of the investigative process is provided in the Commission's [Best Practices for the conduct of antitrust proceedings](#), the purpose of which is to increase understanding of the Commission's investigation process and thereby enhance the

efficiency of investigations and ensure a high degree of transparency and predictability in the process.

As the Best Practices explain, when the first investigative measure is addressed to a person - normally a request for information under Article 18 of [Regulation 1/2003](#) or an inspection under Article 20 and/or 21 of [Regulation 1/2003](#) - the addressee is informed of the fact that it is subject to a preliminary investigation and about the subject matter and purpose of such investigation. The investigative measure will include the applicable legal basis.

A decision ordering an inspection specifies, among other things, the legal basis, the subject matter and purpose of the inspection. A request for information states the legal basis and the purpose of the request, specifies what information is required and fixes the time limit within which the information is to be provided. The Commission may require companies to provide all necessary information, i.e. information that may enable the Commission to verify the existence of the alleged infringement referred to in the request.

Addressees are given a reasonable time limit to reply to the request, according to the length and complexity of the request taking into account the requirements of the investigation. In general, this time limit will be at least two weeks from the receipt of the request. If from the outset it is considered that a longer period is required, the time limit to reply to the request will be set accordingly.

If the Commission's initial assessment leads to the conclusion that the case merits further investigation and is to be treated as a matter of priority, the Commission opens proceedings under Article 2 of [Regulation 773/2004](#), which describes the Commission's duty as regards the timing of opening proceedings. The decision to open proceedings identifies the parties subject to the proceedings and briefly describes the scope of the investigation. In particular, it sets out the behaviour constituting preliminarily the alleged infringement of Articles 101 and/or 102 TFEU to be covered by the investigation. In cartel cases, the opening of proceedings normally takes place simultaneously with the adoption of the Statement of Objections, though it may take place earlier.

After having received a request for information or being subject to an inspection, parties may inquire at any time with DG Competition about the status of the investigation, including before the opening of proceedings. If such a party considers that it has not been properly informed by DG Competition of its procedural status, namely whether they are subject to an investigation or on the subject matter and purpose of the investigation, it may refer the matter to the [Hearing Officers for competition proceedings](#) under Article 4 of the of the [Hearing Officers' Terms of Reference](#).

Throughout the procedure DG Competition endeavours to give, on its own initiative or upon request, parties subject to the proceedings ample opportunities for open discussions — taking into account the stage of the investigation — and to make their points of view known. In this respect, DG Competition offers parties at certain stages of the proceedings State of Play meetings and other types of meetings, as well as opportunities to review key submissions, as described in detail in the [Best Practices](#).

With regard to **mergers**:

The Commission's investigative process is governed by the [EU Merger Regulation and Regulation 802/2004](#). Further, practical guidance is provided in the Commission's [Best Practices on the conduct of merger control proceedings](#). These explain in detail all relevant stages, engagement tools and procedural rights, including pre-notification contacts, notification requirements, requests for information, State of Play meetings, remedies discussions, confidentiality rules, or the right to be heard.

Similarly as in antitrust, when parties receive a request for information from the Commission, they are given a reasonable time limit to reply to the request, according to the length and complexity of the request taking into account the requirements of the investigation. Given the dynamics of merger control proceedings (and the applicable short deadlines), however, the default time limit for reply is 5 working days.

Further, also in merger control proceedings DG Competition endeavours throughout the procedure to give parties many opportunities for open discussions and to make their points of view known. In this respect, DG Competition offers parties State of Play meetings and other types of meetings, as well as opportunities to review key submissions, as described in detail in the [Best Practices on the conduct of merger control proceedings](#).

Importantly – and this applies to **both antitrust and mergers** - before adopting the final decision, the Commission notifies its preliminary objections to the parties and gives them opportunity to submit their observations in writing. The access to file procedure allows the addressees of a Statement of Objections (SO) to consult the evidence on which the Commission relied in raising preliminary objections and, thus, to defend themselves effectively in their reply to the SO.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The Commission always endeavours to conclude its investigations and enforcement proceedings within a reasonable time, taking into account the nature and complexity of the case. This follows already from the fundamental right to good administration, as anchored in Article 41 of the [EU Charter](#), which includes every person's right to have his or her affairs handled by the institutions, bodies, offices and agencies of the EU within a reasonable time.

In **antitrust, including cartels**, there are no specific time limits on the length of the Commission proceedings. The length varies significantly depending on the complexity of the case.

The [Best Practices for the conduct of antitrust proceedings](#) provide (in para. 16) that in cases based on a complaint, the Commission will endeavour to inform complainants within four months from the receipt of the complaint of the action that it proposes to take. This timeframe, however, is only indicative and will depend on the circumstances of the individual case, and on the timeliness and completeness of information provided by the complainant or third parties.

In addition to aiming for a swift conclusion of its antitrust investigations, the Commission also pays utmost attention to ensuring the parties' rights of defence and a thorough analysis of the substance. These rights of defence include the right of access to file, which often entails extensive negotiations on confidentiality, the organisation of an oral hearing and the right of a party to reply in writing to the Commission's preliminary view as set out in the Statement of Objections.

In order to foster the public interest in concluding antitrust proceedings effectively and within a reasonable time, in appropriate cases the Commission may make use of specific instruments and procedures that can lead to adopting decisions more quickly, such as [Settlement procedures in cartel cases](#), or [Cooperation procedures in non-cartel cases](#).

In situations where there exists a risk of serious and irreparable harm, the Commission may also make use of Interim measures based on Article 8 of [Regulation 1/2003](#).

The [EU Merger Regulation](#) sets strict time limits within which the Commission's **merger investigations** need to be conducted. The 'one-stop shop system', which the Merger Regulation creates by providing the Commission with jurisdiction to review mergers that transcend national borders, brings legal certainty and shortens the length of the procedure.

Pursuant to the [EU Merger Regulation](#), the standard legal deadline is 25 working days following the receipt of the notification to adopt a decision. The Commission can conclude that (i) the notified concentration does not fall within the scope of the regulation, or (ii) the notified transaction does not raise serious doubts as to its compatibility with the common market, or (iii) the notified concentration raises serious doubts as to its compatibility with the common market, initiating an in-depth investigation. The standard legal deadline is increased to 35 working days if remedies were submitted by the parties or a referral request was made by an EU Member State.

The statutory deadline to adopt decisions in the event of initiation of proceedings under (iii) above is 90 working days from the date on which the proceedings were initiated. This period is increased to 105 working days in case remedies are submitted by the parties. The above-mentioned 90 working days or 105 working days deadline can be extended with maximum 20 working days at the request of the parties or by the Commission with the agreement of the parties. These procedural deadlines can only be suspended in exceptional circumstances, such as if the notifying parties fail to respond within the time limit set to a Commission decision requesting information.

The Commission encourages merging parties to engage in pre-notification discussions with the Commission. The duration of these varies in practice. The pre-notification period enables the merging parties and the Commission to discuss the intended concentration informally in confidence and to discuss jurisdictional and other legal issues. It also enables the parties to frame the scope of the required information so that the Commission is able to consider a notification complete.

To make EU merger control more focused and effective, the Commission can apply a [simplified procedure for certain concentrations that normally do not raise competition concerns](#). As the notice on simplified procedure explains, the Commission can adopt a short-form decision within 25 working days from the notification date. In 2018, 75% of the cases were assessed under the simplified procedure.

f) Confidentiality

- i. *Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. *Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. *Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

Article 41(2)(b) of the [EU Charter](#) provides that legitimate interests of confidentiality and of professional and business secrecy need to be respected in the context of the right of every person to have access to his or her file (being part of the right to good administration).

Article 339 [TFEU](#) obliges the members of EU institutions, and the officials and other servants of the EU, “even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.”

The Commission takes into consideration both the interests of the parties and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information, as well as in safeguarding rights of defence.

With respect to **antitrust procedures**, rules on professional secrecy are set out in Article 28 of [Regulation 1/2003](#). Further, Article 16 of the [Regulation 773/2004](#) contains rules on the identification and on the protection of confidential information. In particular, it sets out that “information, including documents, shall not be communicated or made accessible by the Commission in so far as it contains business secrets or other confidential information of any person”.

In addition, Chapter 6 of the Commission’s [Best Practices for the conduct of antitrust proceedings](#) explains the limits on the use of information, including the Commission’s commitment that it will, “at all stages of the proceedings, respect genuine and justified requests from complainants or from information providers regarding the confidential nature of their submissions or contacts with the Commission, including, where appropriate, their identity, in order to protect their legitimate interests (in particular in case of possible retaliation) and to avoid discouraging them from coming forward to the Commission.”

With regard to **merger proceedings**, the relevant rules and guidance are set out in particular in the [EU Merger Regulation](#) (Professional secrecy – Article 17), [Regulation 802/2004](#) (Access to the File - Articles 17 and 18) and the [Best Practices on the conduct of EU merger control proceedings](#) (Confidentiality rules – paragraph 47).

An important source of guidance – applicable to **both antitrust and mergers** – is the [Notice on access to the Commission file](#). It explains that access to the Commission file is one of the procedural guarantees intended to apply the principle of equality of arms and to protect the

rights of defence, explains who and when is entitled to access to the file, what documents are accessible, etc.

Among other things, the [Notice on access to the Commission file](#) states that “the qualification of a piece of information as confidential is not a bar to its disclosure if such information is necessary to prove an alleged infringement or could be necessary to exonerate a party. In this case, the need to safeguard the rights of the defence of the parties through the provision of the widest possible access to the Commission file may outweigh the concern to protect confidential information of other parties. It is for the Commission to assess whether those circumstances apply to any specific situation.” The Commission’s Hearing Officer plays an important role in this respect (Art. 8 of the [Hearing Officers’ Terms of Reference](#)).

The Commission’s webpage provides a wealth of further information on the handling of confidentiality in the context of the [Notice on access to the Commission file](#), including [Guidance on confidentiality claims](#), [Best Practices on the disclosure of information in data rooms](#), and [Guidance on the use of confidentiality rings](#). In the context of publication of decisions, the page refers to the [Guidance on the preparation of public versions of Commission Decisions](#).

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

In accordance with the right to good administration, anchored in Article 41 of the [EU Charter](#), every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the EU.

Article 17(3) [TEU](#) provides that „the members of the Commission shall be chosen [...] from persons whose independence is beyond doubt. In carrying out its responsibilities, the Commission shall be completely independent. [...] the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.“

Article 2(6) of the [Code of Conduct for the Members of the European Commission](#) sets out that “Members shall avoid any situation which may give rise to a conflict of interest or which may reasonably be perceived as such. A conflict of interest arises where a personal interest may influence the independent performance of their duties. Personal interests include, but are not limited to, any potential benefit or advantage to Members themselves, their spouses, partners or direct family members.”

Article 3 of the Code of Conduct obliges Members to submit a declaration of interests on an annual basis and sets out detailed requirements for such declaration. Article 4 provides for a procedure for conflicts of interest, including an obligation of Members to recuse themselves from any decision or instruction of a file and from any participation in a discussion, debate or

vote in relation to a matter which may give rise to a conflict of interest or which may reasonably be perceived as such. Members have a duty to inform the Commission's President whenever such situation arises, and the President has the power to take any measure considered appropriate.

Concerning Commission's staff, Articles 11 until 17 of the [Staff Regulations of Officials](#) lay down specific rights and obligations of officials, which are relevant for avoiding any conflict of interest, handling any conflict when it arises, and which describe in detail the applicable procedures. Among other obligations, an official "shall carry out the duties assigned to him/her objectively, impartially and in keeping with his/her duty of loyalty to the EU. An official shall not without the permission of the appointing authority accept from any government or from any other source outside the institution to which (s)he belongs any honour, decoration, favour, gift or payment of any kind whatever [...]."

Prior to obtaining access to the files held by the registry on a case, case team members must confirm explicitly that they have no (potential) conflict of interest.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

The right to good administration, defined in Article 41 of the [EU Charter](#) as every person's right to have his or her affairs handled impartially, fairly and within a reasonable time, includes the following three elements: (a) the right to be heard, before any individual measure which would affect the person adversely is taken; (b) the right to have access to the person's file; and (c) the obligation of the administration to give reasons for its decisions. Article 48 of the EU Charter proclaims the fundamental right of defence as follows: „Respect for the rights of the defence of anyone who has been charged shall be guaranteed.”

Concerning **antitrust, including cartels**, Article 27 of [Regulation 1/2003](#) provides that before taking a decision finding an infringement (as well as other specified types of decisions), the Commission shall give the parties which are the subject of the proceedings the opportunity of being heard on the matters to which the Commission has taken objection. The Commission shall base its decisions only on objections on which the parties concerned have been able to

be heard. Further elements are regulated in the [Regulation 773/2004](#), particularly in Articles 11 until 16 (Right to be heard, including oral hearing; Right to access to the file).

All key steps relevant for the practical implementation of the right to be heard are explained in detail in the Commission's [Best Practices for the conduct of antitrust proceedings](#). These include the role of the Hearing Officers (paragraphs 79 and 80), the timing, purpose and content of the Statement of Objections (paragraphs 81 until 90), transparency (publishing of a press release concerning the Statement of Objections – paragraph 91), access to file and/or negotiated disclosure to a restricted circle of persons (confidentiality rings) and/or data room procedure (paragraphs 92 until 98), written reply to the Statement of Objections (paragraphs 99 until 103), oral hearing (paragraphs 106 until 108), etc.

The Commission's webpage on [Antitrust/Cartels Procedural information](#) provides further information in the form of the [Terms of reference of the Hearing Officer](#) (plus a webpage describing the [Hearing Officers' mission](#) in practical terms), the [Notice on access to the Commission's file](#) and the [Best Practices on the disclosure of information in data rooms](#) (both applicable also in merger proceedings), or [Guidance on the use of confidentiality rings](#).

Concerning **merger proceedings**, as explained on the [Merger control procedures](#) webpage, there is a distinction between Phase I investigation and Phase II investigation.

In Phase I, the Commission keeps the undertakings (or the parties) concerned informed about the progress of its analysis. Towards the end of Phase I, a State-of-Play meeting is typically held, in which the Commission informs them about the results of the investigation. If there are competition concerns, companies can offer remedies, which extends the Phase I deadline by 10 working days; otherwise, the Commission opens Phase II investigation.

During Phase II investigation, the Commission updates the parties regularly about the process. If, after an in-depth analysis of the concentration's effect on competition, the Commission concludes that it will likely significantly impede effective competition, it sends a Statement of Objections to the notifying parties, informing them of the Commission's preliminary conclusions. Parties then have the right to respond to the Statement of Objections in writing within a certain period. They also have the right to access to the Commission's case file and to request an oral hearing, which is conducted independently by the Hearing Officer for competition proceedings.

More detailed practical information can be found in the [Best Practices on the conduct of EU merger control proceedings](#).

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct a reasonable evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

Article 47 of the [EU Charter](#) provides that the right to a fair trial includes the right for everyone to have the possibility of being advised, defended and represented. The Commission provides persons with the opportunity to present their views regarding substantive and procedural issues through qualified counsel, throughout the investigation.

Undertakings under investigation by the Commission may be represented by legal counsel of their choosing. For instance, in case of information requests by the Commission in antitrust or merger proceedings, lawyers duly authorized to act may supply the information on behalf of their clients, without prejudice to the undertakings' responsibility if incomplete, incorrect or misleading information was provided on their behalf. In case of oral hearings, persons heard by the Commission may be assisted by their lawyers or other qualified persons admitted by the Hearing Officer.

The [Antitrust/Cartels Procedural information](#) webpage features a model Power of Attorney. Similarly, the [Mergers Legislation](#) webpage features a model Power of Attorney for notifications, and a model Power of Attorney for reasoned submissions.

The Commission recognizes applicable privileges including privileges for lawful confidential communications between persons and their legal counsel relating to the solicitation or rendering of legal advice.

Certain communications between lawyer and client may, subject to conditions, be protected by Legal Professional Privilege ("LPP") and thus be confidential as regards to the Commission, as an exception to the latter's powers of investigation and examination of documents.

In the [AM & S case](#) (Case C-155/79), and in subsequent cases, the EU Court of Justice established that LPP is a general principle of law and an essential corollary to the full exercise of the right of defence.

LPP covers:

- written communications with independent lawyer made for the purposes of the exercise of the client's right of defence;
- internal notes circulated within an undertaking which are confined to reporting the text of the content of communications with independent lawyers containing legal advice; and

- preparatory documents prepared by the client, even if not exchanged with a lawyer or not created for the purpose of being sent physically to an independent lawyer, provided that they were drawn up exclusively for the purpose of seeking legal advice from an independent lawyer in exercise of the rights of the defence.

According to the EU case law, the substantive scope of LPP covers only communication of a client with its external independent lawyer for the purposes of the client's rights of defence in competition investigations. In-house lawyers are explicitly excluded from LPP, irrespective of their membership of a Bar or Law Society or their subjection to professional discipline and ethics or protection under national law. Communication between a company and a third parties' lawyer is also excluded from the scope of LPP.

The relevant case law of the EU Courts is summarized in paragraphs 51 until 58 of the Commission's [Best practices for the conduct of antitrust proceedings](#).

j) Decisions in Writing

- Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

All Commission decisions are issued in writing.

In **antitrust, including cartels**, Article 30 of [Regulation 1/2003](#) provides that the Commission shall publish the following types of decisions:

- finding and termination of an infringement (Article 7);
- interim measures (Article 8);
- commitments (Article 9);
- finding of inapplicability (Article 10);
- fines (Article 23); and
- periodic penalty payments (Article 24).

Pursuant to Article 27 of [Regulation 1/2003](#), when the Commission intends to adopt a commitments decision, it has to publish a concise summary of the case and the main content of the commitments. Interested third parties may submit their observations within a time limit which is fixed by the Commission in its publication and which may not be less than one month. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

In **mergers**, Article 20 of the [EU Merger Regulation](#) provides that the Commission shall publish the following types of decisions:

- Declaring the concentration compatible with the common market (Articles 8(1) and 8(2));
- Declaring the concentration incompatible with the common market (Article 8(3));
- Requiring the undertakings to dissolve the concentration (Article 8(4));
- Adopting interim measures (Article 8(5));
- Revoking a decision (Article 8(6));
- Imposing fines (Article 14); and
- Imposing periodic penalty payments (Article 15).

In **both antitrust and mergers**, the relevant rules provide that the publication needs to 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.

In practice, shortly after the adoption of a decision, the Commission publishes a summary of decisions, the Hearing Officer's final report and the opinion of the Advisory Committee (if applicable to the procedure), in the [Official Journal of the EU](#) in all official languages.

Addressees of decisions have no right to prevent the publication by the Commission in the Official Journal and, where relevant, on DG Competition's website, of information, which, even though not confidential, includes more than the 'main content' essential for understanding the operative part of those decisions.

As the EU General Court has established in [Bank Austria Creditanstalt v Commission \(Case T-198/03\)](#): "The interest of an undertaking which the Commission has fined for breach of competition law in the details of the offending conduct of which it is accused not being disclosed to the public does not warrant any particular protection, given the public interest in knowing as fully as possible the reasons behind any Commission action, the interest of the economic operators in knowing the sort of behaviour for which they are liable to be penalized and the interest of persons harmed by the infringement in being informed of the details thereof so that they may, where appropriate, assert their rights against the undertakings punished, and in view of the fined undertaking's ability to seek judicial review of such a decision."

After the adoption of a decision, the Commission also publishes a [press release](#). The press release describes the scope of the case and the nature of the infringement. It also indicates, where appropriate, the fines imposed on each undertaking concerned and/or the remedies imposed or, in commitments decisions, the commitments which will be rendered binding on the parties.

In addition, DG Competition endeavours to publish as soon as possible on its [Antitrust Cases](#), [Cartel Cases](#), or [Merger Cases](#) webpage, respectively, a non-confidential version of the decision in the authentic languages, as well as in other languages of the Member States, if such versions are available. A non-confidential version of the decision will also be sent to the complainant.

The addressees of the decision will normally be asked to provide the Commission within two weeks with a non-confidential version of the decision and to approve the summary. Should disputes arise regarding the deletion of business secrets, a

provisional version of the decision excluding all information for which confidentiality has been requested will be made available on DG Competition's website in any of the official languages in anticipation of a final version after resolution of the disputed parts.

In the interest of transparency, the Commission also makes public on its website its decisions rejecting complaints or a summary thereof. If required for the protection of legitimate interests of the complainant, the published version of the decision will not identify the complainant.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

Article 47 of the [EU Charter](#) establishes that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

Article 19 [TEU](#) provides that the EU Court of Justice "shall ensure that in the interpretation and application of the Treaties the law is observed".

Based on this, the EU General Court has, among other things:

- unlimited jurisdiction with respect to penalties imposed by the Commission (Article 261 [TFEU](#) and Article 31 of [Regulation 1/2003](#)); and
- jurisdiction to annul the acts of the Commission on the grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of any rule of law relating to its application, or misuse of powers (Article 263 [TFEU](#)).

Furthermore, the judgments of the EU General Court can be appealed, in whole or in part, to the EU Court of Justice by the unsuccessful party before the EU General Court pursuant to Article 256 [TFEU](#). Such appeals are limited to questions of law, thus the EU Court of Justice does not review the facts of the case unless it can be shown that the EU General Court clearly distorted the obvious meaning of the evidence before it.