What do the Commission's hearing officers do in merger and antitrust cases?

On 16 October 2013, Joos Stragier began work as the European Commission’s newest hearing officer. He has replaced Michael Albers, who retired in July 2013, and joined Wouter Wils, who has been a hearing officer since September 2010.

ROLE OF THE HEARING OFFICER

The European Commission created the position of hearing officer in 1982 to uphold the procedural rights of parties involved in competition proceedings. The hope was that this would improve the objectivity, transparency and fairness of competition proceedings.

General responsibilities

Hearing officers are responsible for decisions on a variety of procedural rights, including:

- whether complainants and third parties have a right to be heard or to participate in oral hearings;
- whether parties, complainants and third parties may have access to files; and
- whether information should be protected for reasons of business confidentiality.

Hearing officers may also require the Directorate General for Competition to inform a party under investigation of its procedural status.

In addition to these general responsibilities, hearing officers have special powers in certain specific areas. Some of these are considered below.
(i) **Legal professional privilege**

Where an undertaking relies on legal professional privilege to withhold a document from the Commission, the Commission is not able to inspect the document to determine the issue. Instead, a hearing officer may, with the undertaking’s consent, independently review the document in question. The hearing officer must then give his view to the Commission (without revealing the content of the document) and try to foster a mutually acceptable solution. If no solution emerges, the hearing officer may give the Commission a reasoned recommendation, providing a copy to the undertaking.

Similarly, where an undertaking refuses to reply to a request for information on grounds of privilege against self-incrimination, a hearing officer may be asked to consider whether the undertaking’s claim is genuine. He may then give the Commission a reasoned recommendation, a copy of which he must deliver to the undertaking.

(ii) **Deadlines**

Where an undertaking considers that the deadline imposed for its reply to a request for information is too short, it may refer the matter to a hearing officer. The hearing officer will then decide whether to grant an extension, taking account of the length and complexity of the request and the requirements of the investigation. Hearing officers have similar powers over deadlines for responding to statements of objections. In both cases, however, the undertaking must refer the matter to the hearing officer before the original time limits expire.

(iii) **Access to files**

Where a party has exercised its right of access to a file and has reason to believe that the Commission has not disclosed to it documents that are necessary for the proper exercise of its right of defence, it may make a reasoned request to a hearing officer for access to these documents. The hearing officer will then make a reasoned decision on the request and communicate his decision to the undertaking and any other person concerned.

(iv) **Oral hearings**

Hearing officers are also responsible for the preparation, organisation and conduct of oral hearings. To this end, the hearing officers may decide when hearings take place and who may attend. They may also consult the case team on the central issues, arrange preparatory meetings and ask questions of the parties or the case team before the hearing.

After an oral hearing, the hearing officer must submit an interim report on procedural rights to the Competition Commissioner. The report must cover all material procedural issues, including access to files, confidentiality, deadlines, privilege and the right to be heard. Separately, the hearing officer may also submit observations on the further progress and impartiality of the proceedings. These may relate to the need for further information, the withdrawal of certain objections, the formulation of further objections or suggestions for further investigative measures.

Once the Commission has prepared a draft decision, the hearing officer must prepare a final report. This report must cover all the matters in the interim report, as well as considering whether the draft decision deals only with objections to which the parties have been given a chance to respond.
JOOS STRAGIER

Joos Stragier graduated with a degree in law from the Catholic University of Leuven in 1982. He took a postgraduate degree in European law at the College of Europe in Belgium in 1983. After leaving university, he worked as a lawyer in the legal department at Kredietbank NV. He joined the European Commission’s Directorate General for Competition in 1989, first as a case handler dealing with pharmaceutical, chemical and agricultural products, and later as a member of the policy department. From 1999 to 2004, he was deputy head and then head of the transport unit. In November 2004, he took charge of antitrust enforcement, coordination and scrutiny. In October 2006 his responsibilities were extended to include antitrust policy. In September 2007 he became head of the newly created strategy and delivery unit.

SOURCES


Hearing Officers’ web pages.

“Joos Stragier”, Institute of Competition Law website.

Merger Control

NOTIFICATIONS

1. **LVMH/Loro Piana** (Case M.7020, 11.10.2013).

2. **Simplified procedure cases**
   - Ares/OTPP/CPG (Case M.7069, 11.10.2013).

PHASE I CLEARANCES

3. **Unconditional clearances**

4. **Unconditional clearances: simplified procedure**
   - Cinven/Heidelberger Leben (Case M.7042, MEX/13/1016, 16.10.2013).
   - CVC/Domestic and General Group Holdings (Case M.7040, MEX/13/1014, 14.10.2013).
   - BP Europa/Grupa Lotos/Lotos Tank (Case M.6987, MEX/13/1014, 14.10.2013).

Antitrust

5. **Commission consults on commitments offered by Samsung Electronics regarding use of standard essential patents** – The Commission has invited comments on commitments offered by Samsung Electronics ("Samsung") in relation to the enforcement of its Standard Essential Patents (SEPs) that it owns in the field of mobile communication. The Commission has concerns that by seeking injunctions to enforce its mobile technology patents against Apple, Samsung may be abusing its dominant position in breach of EU antitrust law. In order to remedy these concerns, Samsung has offered to refrain from seeking such injunctions against companies who agree to a particular licensing framework for a period of five years (MEX/13/1017, 17/10/2013).

6. **General Court ("GC") upholds the Commission's decision rejecting a complaint about France Télécom's pricing practices** – Vivendi and Iliad, which hold majority stakes in large telecoms operators in France, filed a complaint with the Commission in 2009 alleging that France Télécom had infringed EU competition law. The allegations claimed that France Télécom demanded an excessively high price for its services relating to access to the local loop, and that by these prices, France Télécom aimed to drive competitors out of the market. In 2012 the Commission decided that there was not sufficient EU interest in pursuing an investigation of the allegations. Vivendi appealed this decision, but the GC in its judgment of 16 October 2013 ruled that the Commission was right to reach its conclusions (Case T-432/10, Vivendi v Commission, judgment of 16.10.2013, Court Press Release 129/13).
State Aid

7. **ECJ rules on recovery of State aid from Alcoa** – The European Court of Justice (“ECJ”) has found that Italy has failed to comply with a Commission decision made in 2009. The decision required it to recover the State aid that it had unlawfully paid out to Alcoa Transformazioni srl, and the ECJ has found that Italy has not taken all measures necessary to do so within the required time limits (Case C-344/12, European Commission v Italy, judgment of 17.10.2013).

8. **ECJ rules on recovery of State aid from Ellinikos Khrisos** – The ECJ has found that Greece has failed to comply with a 2011 Commission decision, which required it to recover State aid unlawfully paid out to Ellinikos Khrisos AE. Greece claimed that the decision was impossible to implement because there was no legislation that would allow for the recovery of the amount, but the ECJ has rejected this claim and found that Greece has therefore failed to comply with the decision within the necessary time limits (Case C-263/12, Commission v Greece, judgment of 17.10.2013).

9. **Judgment of the GC on an annual grant for France Télévisions** – In its judgment of 16 October 2013, the GC confirmed the Commission’s 2010 decision on the multiannual financing mechanism of France Télévisions by the French government. The Commission, after an in-depth investigation, had held that the financing mechanism was State aid, provided in line with State aid rules. The decision was challenged by TF1. The GC judgment confirms that the Commission was correct in finding that no hypothecation could be established between certain new taxes that had been introduced and the aid granted to France Télévisions. The taxes therefore did not form an integral part of the aid. The GC also found that the decision did show the reasoning on which the Commission based its finding that there was no risk of over-compensation for the net costs of the public service mission of France Télévisions, and that there was no error of law in the Commission’s failure to take into account the economic efficiency of France Télévisions in the performance of its public service. (T-275/11, Télévision Française 1 (TF1) v Commission, judgment of 16.10.2013, Court Press Release 130/13).

10. **Commission launches public consultation on new rules for State aid in agriculture, forestry and rural areas** – The current Agricultural Block Exemption Regulation will expire on 30 June 2014. It allows Member States to grant certain categories of State aid without prior notification to the Commission. The Commission has published for consultation a draft of a new block exemption regulation which will repeal the existing block exemption. The draft is aimed at widening the scope of the block exemption and includes new categories of aid. The new provisions should significantly reduce the administrative burden for the authorities involved. Comments can be submitted until 19 November 2013 (MEX/13/1016, 16.10.2013, Draft Block Exemption Regulation).

11. **Consultation on the prolongation of the period of application of the General Block Exemption Regulation** – The revision of interdependent State aid instruments in the context of the State Aid Modernisation Initiative launched in May 2012 cannot be finalised before the expiry of the General Block Exemption Regulation on 31 December 2013. The Commission is therefore consulting on a proposal to prolong the period during which the General Block Exemption Regulation will apply (i.e. until 30 June 2014) (Draft General Block Exemption Regulation).

12. **Commission authorises phasing-out of Belgian biofuel support scheme** – The Commission has found that the phasing out, over the next year, of a biofuel support scheme operated by the Belgian government is in line with EU State aid rules. Belgium introduced the scheme in 2006. It allowed seven biofuel producers to benefit from reduced excise duty and was initially approved by...
13. **Commission clears €465 million aid for developing Polish gas network** – In March 2013 Poland notified plans to the Commission of its intention to grant aid to GAZ-SYSTEM, the Polish state-owned gas transmission system operator, to support the development of the country’s gas transmission network. GAZ-SYSTEM will use the funds to set up a ‘North-South corridor’, a network of pipelines intended to facilitate access to gas supply sources in the north and to better integrate the market with those of Germany, the Czech Republic and Slovakia. This will allow network access to a greater number of suppliers and stimulate competition. The Commission has therefore found the aid to be compatible with EU State aid rules (IP/13/957, 16.10.2013).

14. **Commission confirms that debt write-off for Slovak alcohol producer Frucona Košice is incompatible with EU rules** – Frucona Košice ("Frucona") was a producer of spirit and spirit-based beverages in Slovakia and currently operates as a distributor. In 2004 the company ran into financial difficulty and requested its creditors for an arrangement under the relevant legislation. The tax office agreed to write off 65% of its debt. The Commission concluded in 2006 that the tax office was not thereby acting as any private creditor, since it could have recovered more of its debt through other methods. The write-off was therefore classified as State aid. This was incompatible with EU State aid rules because Frucona had no realistic chances of becoming profitable again, and so Slovakia was ordered to recover the amounts. Frucona’s appeal of the decision to the GC was dismissed, but on further appeal the ECJ set aside the GC’s judgment on the grounds that it had failed to take into account the duration of the bankruptcy proceedings. The Commission has consequently adopted a new decision, but reached the same conclusion as it did originally (IP/13/959, 16.10.2013).

15. **Commission authorises €134 million aid for Greek gas infrastructure projects** – Aid of €134m granted by the Greek government to the country’s only gas transmission operator, DESFA, has been found to be compatible with EU State aid rules. The aid will fund four infrastructure projects that will each improve supplies of gas in different areas of the country. The Commission found that these projects will help to develop the gas market in Greece and enable DESFA to offer extra capacity to third-party suppliers. The projects will also have indirect environmental benefits by reducing CO₂ emissions (IP/13/961, 16.10.2013).