The role of the Hearing Officer in competition proceedings before the European Commission

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All views expressed are strictly personal
European Commission: institutional set-up

- European Commission:
  - College of Members of the Commission
  - Competition Commissioner
  - Directorate-General for Competition (DG Comp)
  - Legal Service

- General Court: review facts + law (annulment) + fines (unlimited jurisdiction)

- Court of Justice: appeal on law
European Commission: institutional set-up

✓ ECtHR, *Menarini Diagnostics v Italy*, 43509/08 (27 September 2011)

✓ ECtHR, *Bouyges Telecom v France*, 2324/08 (13 March 2012)

✓ ECJ, *Chalkor v European Commission*, C-386/10 P (8 December 2011)

✓ EFTA Court, *Posten Norge v ESA*, E-15/10 (18 April 2012)
Hearing Officer: history

- 1981: *IBM* case: retired DG IV director brought in to preside over the oral hearing
- Post of hearing officer subsequently institutionalised
- 1994: decisional powers: deadline for reply to SO, access to file, confidentiality, admission of third parties
- 2001: hearing officer moved outside DG Comp; final report (on respect of right to be heard) notified to parties and published in OJ
Hearing Officer: history

"shall act independently";
final report on respect for effective exercise of all procedural rights throughout proceedings;
decision or recommendation powers in investigation phase
Hearing Officer: current role

1) **direct role in conduct of antitrust and merger proceedings** (oral hearing; admission of third parties)

2) **independent review of issues concerning the effective exercise of procedural rights** (at the initiative of a party; issue first to be raised with DG Comp; depending on right and situation: decision, recommendation or reporting powers)

3) **verification of the respect for procedural rights at the hearing officer's own initiative** (general reporting powers; specific reporting obligation whether draft decision deals only with objections on which parties have been heard)

4) **advice to the Competition Commissioner on any matter arising out of any antitrust or merger proceedings**
oral hearing

- nature and purpose?
- when?
- who attends or can attend?
- who speaks?
- why ask for an oral hearing?
  - cartel cases
  - other antitrust cases
  - merger cases
papers

« The Role of the Hearing Officer in Competition Proceedings before the European Commission »

« The Oral Hearing in Competition Proceedings before the European Commission »
http://ssrn.com/paper=2050453