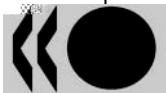


For Official Use

DAF/COMP/WP3/WD(2010)45



Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

11-Jun-2010

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

**DAF/COMP/WP3/WD(2010)45
For Official Use**

--

--

English - Or. English

1. Introduction

1. The United States has two antitrust enforcers – the U.S. Department of Justice (“DOJ”), through its Antitrust Division (“Division”), and the Federal Trade Commission (“FTC” or “Commission”) (together, “Agencies”). DOJ is part of the executive branch, while the FTC is an independent agency. Of the three primary antitrust statutes in the United States, DOJ enforces one, the Sherman Act;¹ the FTC enforces another, the FTC Act;

12. In the DOJ process, an economist is

03Ts0.0007 031 Tw 9.96 0 0 9.96 532.94.96 040

competitor.²¹ The model order accomplishes this goal by limiting the disclosure of such materials to the administrative law judge and staff, Commission employees, outside counsel of record for any respondent (provided they are not employees of a respondent) and anyone retained by outside counsel to assist in hearing preparation (provided they are not affiliated with a respondent, and any witness or deponent who may have authored or received the information in question). Thus, for the respondent, the model protective order requires disclosure to be limited to outside counsel, and does not allow confidential third-party materials to be disclosed to in-house counsel or business employees of the respondent.²²

24. Upon receiving an appropriate request from a congressional committee, the FTC may share confidential information. When it receives such a request, the FTC typically seeks to minimize the exposure of any confidential materials by making presentations to congressional members or their staff in confidential briefings, before which the FTC notifies the members and their staff in writing about the confidential nature of the information to be provided and requests that the information remain confidential. The FTC also notifies the submitter of the information about the confidential nature of the information.²³

may vary, but it is not uncommon during pretrial proceedings for such orders to require especially sensitive information to be filed under seal with access limited to the parties' attorneys.²⁷

26.

kinds of cases that the Agencies can settle. The Agencies view the opportunity for settlement as an essential part of their role as antitrust enforcers. First, an appropriate settlement is often sufficient to achieve the goals of antitrust enforcement while conserving resources. Second, providing the parties with the opportunity to present settlement options and to discuss consensual resolution is a key aspect of a fair and transparent investigation process. Both merger and civil non-merger cases often are resolved in a

s-eT/ 5t oppowhicc 0(c)11is copnducoted (t)-2.2pu(sol0.2suao)123 (3.211.4t .)7.4(t).2.32.tPa(sol0.2e)03818 3 (t)-2.2 (

33. The Part 3 Rules also include strict deadlines to expedite its process. For example, the

arguments or facts that may support the parties' positions, providing the parties with the Agencies' view on an investigation's progress and the legal theories supporting the investigation, and allowing for internal assistance and independent review of the investigation's development by high-level management, economists, and other experts. Throughout the process, the Agencies are required to keep sensitive commercial information confidential, protecting the submissions of both parties and third parties by not disclosing such sensitive materials to the public. Finally, if the DOJ or the FTC formally requests information from targets through, for example, a subpoena, or bring enforcement actions against the targets, the opposing parties have the opportunity for independent review in federal district court. The agencies regularly review their procedures and practices and update them when necessary to further the public interest and provide a fair and open dialogue with parties.