

COMMUNIQUÉ

From the Presidency of the Competition Authority:

**COMMUNIQUÉ ON HEARINGS HELD VIS-À-VIS THE COMPETITION BOARD
COMMUNIQUÉ NO: 2010/2****PART ONE****Purpose, Scope, Basis and Definitions****Purpose and scope**

ARTICLE 1 — (1) The purpose of this Communiqué is to determine the procedures and principles related to hearings held vis-à-vis the Competition Board in accordance with articles 46 and 47 of the Act on the Protection of Competition No. 4054.

(2) This Communiqué shall also be applicable in respect of the other meetings for receiving oral opinion/information to be held by the Competition Board to the appropriate extent.

Basis

ARTICLE 2 — (1) This Communiqué has been issued based on articles 27, 46 and 47 of the Act on the Protection of Competition No. 4054.

Definitions

ARTICLE 3 — (1) In implementation of this Communiqué;

These express the following:

- a) Ministry: Ministry of Industry and Trade,
- b) Chairman: Chairman of the Competition Board, Deputy Chairman in cases where the Chairman is not present,
- c) Relevant Department: Professional department that conducts the investigation process in accordance with article 43 of the Act,
- d) Means of proof: Every kind of evidence used in proving material cases,
- e) Act: The Act on the Protection of Competition No. 4054,
- f) Board: Competition Board,

- g) Authority: Competition Authority,
- h) Investigation committee: Committee determined by the Board and comprised of rapporteurs commissioned with conducting an investigation or a final examination in accordance with articles 43 and 44 of the Act,
- i) Investigation phase: Phase that elapses from taking the decision of investigation until the date of final written defense of those against whom an investigation is conducted or until the end of this duration,
- j) Complainant: Natural or legal persons who have a legitimate interest among those who apply to the Authority,
- k) Party: Those against whom an investigation or a final examination is conducted,
- l) Meeting: Hearing,
- m) Third person: Those other than the party and complainant, who are accepted by the Board to have a direct or an indirect interest link with the subject-matter of the session concerned.

PART TWO

General Principles

Right to oral defense and decision for a meeting

ARTICLE 4 – (1) Those against whom an investigation or a final examination is conducted shall have the right to oral defense before the Board. In case the parties notify in their petitions for defense or reply that they want to use the right to oral defense, a hearing shall be held. The Board can also decide for holding a hearing automatically in cases deemed necessary by it.

(2) The Board shall set the date, venue and time of the meeting, and the duration of application for complainants and third persons who want to attend the meeting, and this decision shall be announced on the internet page of the Authority.

Time of a meeting and written invitation

ARTICLE 5 – (1) Hearing shall be held within 30 days at least and 60 days at most from the end of the investigation phase. Written invitations for the hearing shall be sent to the parties at least 30 days before the day of the hearing.

Attendance of complainants, third persons and the Ministry

ARTICLE 6 – (1) Complainants can attend the meeting in case they make a written request within the duration determined by the Board. Third persons who want to attend the meeting can apply, within the same duration, to the Board by a petition that involves information and documents putting forward their relation of interest with regard to the subject-matter of the meeting. The decision of the Board as to the applications in question shall be notified to the persons concerned before the meeting.

(2) The Board can also invite, upon the request of the investigation committee or automatically, the other natural and legal persons, whom it deems to be concerned or from whom it needs to receive information, to the meeting to present their opinion.

(3) In those investigations initiated upon the request of the Ministry, notification shall also be made to the Ministry in assurance of ensuring attendance to the meeting.

Representation

ARTICLE 7 – (1) Just as the parties can personally attend the hearing, they can also attend through their authorized representatives.

(2) The representative is not required to possess the title of attorney. It is essential that who shall represent the parties at the meeting be notified to the Authority until seven days before the meeting at the latest, together with the documents showing the authority of representation of these persons. In mandatory cases, the Chairmanship can also permit hearing those representatives who have not been notified within this duration. The number of representatives such notified can be restricted by the Chairmanship on grounds such as the physical facilities of the meeting venue and more efficient use of the duration.

(3) Just as partners or members of undertakings or associations of undertakings who do not have a legal personality can attend the meeting separately, they can also attend by a joint representative.

(4) The provisions of this article shall also be applicable in respect of complainants and third persons attending the meeting.

Audience

ARTICLE 8 – (1) Such demands of those who want to attend the hearing as an audience shall be met to the extent of the physical facilities of the meeting hall and according to the order of arrival to the hall, on condition that they are present at

the locality of the meeting at a reasonable period of time before the time of the meeting.

PART THREE

Publicity and Confidential Session

Publicity of the meeting and decision for a confidential session

ARTICLE 9 — (1) Hearings shall be held publicly. Holding a hearing confidentially can be decided on grounds of the protection of general ethics and trade secrets.

(2) Just as the decision for a confidential session can be taken by the Board on its own initiative, it can also be taken upon the application of the parties in writing.

(3) The parties can notify the Board in writing of their request to make their oral defense in a confidential session partially or wholly until the end of the duration as to the presentation of means of proof at the latest. The confidentiality request made after this duration is made to elapse shall not be accepted.

(4) The parties making a request for confidentiality shall communicate to the Board seven days before the meeting at the latest the means of proof they shall use in their oral defense, accompanied by a draft of the presentation to be made by them, which involves its basic elements. Documents having the nature of confidentiality shall be marked with the expressions of “they are confidential” or “they involve trade secrets” expressly and visibly, and together with a copy of these documents that involves confidentiality, a copy of them that does not involve confidentiality, where only their sections involving confidentiality have been removed or closed, shall also be presented to the Board.

(5) The party which makes a request for confidentiality on grounds of protecting trade secrets shall be obliged, in respect of all information marked, to explain with their grounds why these should be considered as a trade secret, the declaration of the trade secrets in question would lead to what kind of a loss as regards itself and which sections of the presentation are required to be made confidentially for protecting them.

(6) The Board shall assess and resolve the request for confidentiality prior to the hearing. The Board can partially or wholly accept or reject this request. The

grounds of the decision taken by the Board as to this request shall take place in the final decision.

Practice of a confidential session

ARTICLE 10 — (1) In a confidential session, all persons other than the party concerned, the investigation committee and the Authority personnel charged with regard to the file shall be taken outside the hall.

PART FOUR
Means of Proof

Means of proof and notification

ARTICLE 11 — (1) In the oral defense, the parties can make use of every kind of evidence and means of proof provided in the Part Two Chapter Eight of the Code of Civil Procedure.

(2) Seven days before the hearing at the latest, the parties shall be obliged to notify the Board of the means of proof to be made use of by them in the oral defense. Those means of proof that have not been notified in due time cannot be made use of.

(3) It is essential that the other documents as to the presentation such as a text or slide be also notified within the same duration. Otherwise, these documents shall be duplicated by the party to make the presentation and delivered to the officers before the meeting starts, to be recorded and provide their distribution to the Board members and the investigation committee.

(4) The provisions of this article shall also be applicable in respect of complainants and third persons attending the meeting.

Witness

ARTICLE 12 — (1) The parties can have witnesses heard for the enlightenment of certain matters.

(2) The party designating a witness shall present to the Board within the duration mentioned in article 11 paragraph two a letter that involves the matter about which it wants a witness to be heard, and together with a list of witnesses wanted to be heard, an explanation as to the concern of these persons with the matter. Those persons not notified to the Board duly shall not be heard as a witness. The responsibility to make witnesses present in the meeting belongs to the parties.

(3) If the Board reaches the opinion that it obtained, by the testimony of a part of the witnesses, sufficient degree of information about the issue wanted to be proved, it can decide not to listen to the rest.

(4) The Board shall hear witnesses separately. Witnesses shall be confronted when necessary.

Expert opinion

ARTICLE 13 – (1) The parties can take a scientific opinion from experts of the matter with regard to the event which is the subject of the file.

(2) The Board, upon request or on its own initiative, can decide for hearing in the meeting the expert person from whom an opinion has been received.

(3) The party which shall resort to an expert opinion in its defense shall present to the Board within the duration mentioned in article 11 paragraph two the expert opinion, accompanied by every kind of data and analysis upon which such analyses are based if the opinion also involves qualitative analyses.

PART FIVE

Issues as to the Execution of the Meeting

Duration of oral defense

ARTICLE 14 – (1) Hearings shall be completed at five successive sessions at most, and various meetings held in one day shall be deemed to be one session.

Management of the meeting

ARTICLE 15 – (1) The Chairman manages hearings. The meeting shall be held with the attendance of at least five Board members including the Chairman.

(2) The meeting shall start with a public roll call. If none of the parties have attended the meeting, the Chairman shall terminate the meeting.

(3) Following the roll call, in the first place the floor shall be given to the investigation committee in order to briefly sum up the content of claims and the file. After the presentation of the investigation committee, right to have a say shall be given according to the alphabetical order as regards name/title to complainants, third persons if any and to the Ministry first and then to the parties respectively. The Chairman can change this order on his/her own initiative or upon the request of the parties.

(4) The Board can hear in the hearing the parties and complainants and third persons if any separately or jointly.

(5) In the meeting, the Chairman and the Board members can direct questions to the parties and complainants, third persons, witnesses and expert persons if any, to explain or complement their words. The last word belongs to the parties.

Order of the meeting

ARTICLE 16 – (1) The Chairman shall be responsible for the order of the meeting. The Chairman shall take all the measures required to enable that sessions be completed in calmness, soundly, impartially and completely.

(2) Speeches shall be delivered within the circle of respect. In case behaviours that have the nature of hindering a healthy running of the meeting are committed, the Chairman can warn the persons concerned or directly take them outside the meeting hall according to what is required by the situation.

Physical infrastructure

ARTICLE 17 – (1) In case the parties notify at a reasonable period of time beforehand, special equipment and facilities such as an interpreter, a sign language interpreter and wheelchair can be ensured by the Authority if deemed necessary.

Record

ARTICLE 18 – (1) In the meeting hall, there shall be the voice and/or image recording fittings of the Authority, and the entire meeting shall be recorded.

Adjournment of the meeting

ARTICLE 19 – (1) The Board can adjourn the holding of the meeting to a later date in case of an imperative. The adjournment decision shall be announced or a notice of it shall be given to the parties, it shall be notified to complainants and third persons if any and to the Ministry and announced from the internet page of the Authority.

PART SIX

Final Provisions

Existing meetings

TEMPORARY ARTICLE 1 – (1) This Communiqué shall not be applicable to those hearings decided to be held before its entry into force.

Entry into Force

ARTICLE 20 – (1) This Communiqué shall enter into force on the date of its publication.

Execution

ARTICLE 21 – (1) The provisions of this Communiqué shall be executed by the President of the Competition Authority.

GENERAL GROUNDS FOR THE COMMUNIQUÉ ON HEARINGS HELD VIS-À-VIS THE COMPETITION BOARD

(1) Hearing provided in articles 46 and 47 of the Act on the Protection of Competition No. 4054 is one of the safeguards related to procedure, which ensures a more efficient use of the right to defense. Besides the fact that hearing is not mandatory, if the parties think that they can plead better orally, hearing is held in case they communicate their request to this direction within due time. Furthermore, in case the Competition Board deems holding a hearing necessary, it can also automatically decide for holding a hearing without the existence of the request of the parties.

(2) In accordance with the Act No. 4054, in the investigation process, the parties are granted the right to three written pleas, one being at the outset of the investigation and two being after giving notice of the investigation report, and also one right to oral defense at the end of the process related to written pleas. In accordance with articles 46 and 47 of the Act, hearing is obliged to be completed within certain durations from the end of the investigation phase, and it has been limited to five consecutive sessions at most. In this regard, the main goal of oral defense is not the investigation parties' presenting all of their pleas through this means, but is actually to enable that among the issues in the written pleas presented by them beforehand, they also once verbally present before the Competition Board the essential points they deem important and to which they would like to draw the attention of the Board and to aid that the Board forms its final decision by hearing the parties and the others concerned and asking questions when necessary. Within this framework, it is important for oral defense presentations to focus on important points and be completed within a reasonable duration.

(3) As required by article 47 of the Act, it is essential for hearings to be held publicly, and the Board shall be able to decide for holding a hearing confidentially with a view to protecting general ethics and trade secrets. Along the lines of this principle, to be able to make a decision for a confidential session, relevant requests have to be communicated to the Board at a reasonable period of time before the hearing, together with their grounds. Accepting the request for a confidential session

or making a decision to this direction on one's own initiative does not mean that the entire oral defense shall be made confidentially. For this reason, the duration allocated for confidential sessions cannot be used contrarily to the purpose and with an intention of circumventing the principle of publicity.

(4) Other than the foregoing issues, in article 47 of the Act, it is provided that the parties concerned can make use of every kind of evidence provided in Part Two Chapter Eight of the Code of Civil Procedure in the oral defense, they are obliged to notify to the Board the means of proof they shall use in the oral defense seven days before the hearing at the latest, and those persons who have a direct or indirect interest can also attend the hearing. With the Communiqué herein, it has been aimed to explain in further detail the procedures and principles related to these issues.

(5) The Competition Board, having regard to the foregoing statements, setting out from the principles of efficiency, transparency and legal certainty, has issued this Communiqué concerning the procedures and principles related to hearings, in order to provide that the parties can use their rights fully and efficiently in relation to hearings, set and declare how the attendance of the parties, complainants and the other interest holders and how confidentiality practices shall be and eliminate problems that may be encountered in practice.