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# CCBE

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**CONSEIL DES BARREAUX DE  
L'UNION EUROPÉENNE RAT DER  
ANWALTSCHAFTEN DER  
EUROPÄISCHEN UNION CONSEJO DE  
LOS COLEGIOS DE ABOGADOS DE LA  
UNIÓN EUROPEA CONSIGLIO DEGLI  
ORDINI FORENSI DELL'UNIONE  
EUROPEA RAAD VAN DE BALIES  
VAN DE EUROPESE UNIE CONSELHO  
DAS ORDENS DE ADVOGADOS DA UNIÃO  
EUROPEIA ΣΥΜΒΟΥΛΙΟ ΤΩΝ  
ΔΙΚΗΓΟΡΙΚΩΝ ΣΥΛΛΟΓΩΝ ΤΗΣ  
ΕΥΡΩΠΑΙΚΗΣ ΕΝΩΣΗΣ RÅDET FOR  
ADVOKATERNE I DEN EUROPÆISKE  
FÆLLESKAB EUROOPAN UNIONIN  
ASIANAJAJALIITTOJEN NEUVOSTO  
RÁÐ LÖGMANNAFÉLAGA Í  
EVRÓPUSAMBANDINU RÅDET FOR  
ADVOKATFORENINGENE I DET  
EUROPEISKE FELLESKAP RÅDET FOR  
ADVOKATSAMFUNDEN I DEN  
EUROPEISKA UNIONEN **COUNCIL OF  
THE BARS AND LAW SOCIETIES OF THE  
EUROPEAN UNION****

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**SUBMISSION OF THE CCBE WITH REGARD TO THE HEARING  
OFFICER IN EU COMPETITION CASES**

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## SUBMISSION OF THE CCBE WITH REGARD TO THE HEARING OFFICER IN EU COMPETITION CASES

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### **I. Introduction**

1. The Council of the Bars and Law Societies of the European Union (CCBE) represents through the national Bars and Law Societies some 500,000 European Lawyers within and outside the European Union. In this capacity, the CCBE often submits its views on issues concerning access to justice and the effective judicial protection of citizens of the EU. It is a primary concern of the Bar that the European Union is and remains a Community based on the rule of law, i.e. a Community characterized by enforceable legislation which is subject to review and providing effective and adequate judicial protection to the citizens of the European Union.
2. Following the Commission's press release on 29 May 2000, announcing the appointment of John Temple Lang as Hearing Officer and indicating that Commissioner Monti had given instructions to explore possibilities for strengthening the role of the Hearing Officer, the CCBE decided that it was important to consider the position of the Hearing Officer in EU Competition proceedings.
3. Under these circumstances, the CCBE finds it all the more important to submit its views to the effect that a reform should indeed be carried out.

### **II. General remark**

4. By submitting the view that the position and role of the Hearing Officer should be strengthened, the CCBE is not implying that the Hearing Officer can replace a proper independent tribunal as required under article 6 of the ECHR. The present submission does also not imply that the CCBE considers the access which is given to the file of the Commission in competition proceedings to be sufficient and the procedures regulating that access adequate. These latter issues are however not the subject of this contribution. This contribution exclusively focuses on the role of the Hearing Officer.
5. The CCBE is of the opinion that the Hearing Officer is a crucial element in improving the fairness (and in many respects also the efficiency) of EU competition proceedings.

### III. Specific comments

#### A. Position and powers of the Hearing Officer

6. The CCBE is of the opinion that the position and powers of the Hearing Officer should in any event be extended as follows:
- A non-confidential version of the Hearing Officer's report should be disclosed to all interested parties in a competition proceedings;
  - As there is no effective judicial protection in merger control cases, the role of the Hearing Officer should in particular in merger control cases be expanded such as to build in checks and balances that might contribute to a fairer procedure. In this respect, the Hearing Officer should in particular be given the power to:
    - decide whether questions addressed to parties do not go beyond the scope of the relevant investigation and what is needed;
    - be consulted before case-handlers reject a Form CO as being 'incomplete';
    - be informed of and review draft statements of objections and decisions (both of procedural nature and in substance);
    - arbitrate disputes between case-handlers and parties concerning the fairness of the proceedings;
    - be informed of and monitor exchanges of information among national antitrust authorities and the case-handlers/Merger Task Force/the Directorate-General Competition;
    - be informed of and monitor exchanges of information between the case-handlers/Merger Task Force/the Directorate-General Competition and non-EU antitrust authorities.
  - The Hearing Officer should be given the power to play a role in assessing whether evidence provided by the Commission or by the parties satisfies prima facie judicial standards of proof. The Hearing Officer should have the opportunity to express his views on the evidence and where requested or required, make recommendations to the Director-General for competition and/or the parties.
  - The CCBE could also endorse a proposal whereby the Hearing Officer would issue in all cases an independent, non-binding, opinion that would be communicated to the parties and published with the Commission's decision (this would apply in articles 81 and 82 EC procedures as well as in Phase II merger cases).

#### **IV. Appointment and resources of the Hearing Officer**

7. The CCBE recommends that:

- The number of Hearing Officers should be increased and the Hearing Officer should have sufficient support staff to carry out their (extended) function;
- The rules concerning the appointment and the removal of the Hearing Officer should be laid down in a regulation;
- The Hearing Officer should be irremovable except for serious misconduct;
- The Hearing Officer should report to the Commission as a whole or to the President of the Commission.

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