



## Annex A: Standard Data Room Rules

### TERMS OF DISCLOSURE OF BUSINESS SECRETS AND OTHER CONFIDENTIAL INFORMATION ON "EXTERNAL ADVISOR ONLY" BASIS ("DATA ROOM RULES")

Case [M.XXXX/AT.XXXXX] - [CASE NAME]

Within the framework of access to the Commission's file granted to [Names of Party/Parties to which data room access is granted through their External Advisors] in Case [M.XXXX/AT.XXXXX] - [CASE NAME] pursuant to [Article 27(1) and (2) of Council Regulation (EC) No 1/2003<sup>1</sup> / Article 18(3) of Council Regulation (EC) No 139/2004 (the "Merger Regulation")<sup>2</sup>], DG Competition makes available a room at its premises at Place Madou / Madouplein 1, 1210 Saint-Josse-ten-Noode / Sint-Joost-ten-Node, Brussels (the "Data Room") to the [external economic advisors and/or external legal counsel] (the "External Advisors") instructed by [Names of Party/Parties to which data room access is granted through their External Advisors] (the "[Party/Parties]") to the investigation in Case [M.XXXX/AT.XXXXX]. The [Party/Parties], [requested/accepted the] data room procedure by email dated [Date of email].

The Data Room contains information which DG Competition considers to constitute business secrets and other confidential information within the meaning of Article 339 TFEU, [Article 27(2) of the Council Regulation (EC) 1/2003, and Articles 15(2) and 16(1) of the Commission Regulation (EC) 773/2004<sup>3</sup> / Article 18(3) of the Merger Regulation and Article 17(3) of the Commission Implementing Regulation (EU) No 1269/2013<sup>4</sup>] (the "Data", as specified in Annex 1 of these Data Room Rules), and therefore will exceptionally be made available within the framework of the data room procedure and under the strict conditions set out in these Data Room Rules.

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<sup>1</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1-25.

<sup>2</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1-22.

<sup>3</sup> Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004, p. 18-24.

<sup>4</sup> Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 336, 14.12.2013, p. 1-36.

As set out in the Data Room Best Practices,<sup>5</sup> DG Competition may exceptionally, having balanced the effective exercise of the Parties' rights of defence with the legitimate confidentiality interests of Data Providers, disclose specific information for the sole purpose of allowing the External Advisors an opportunity to better understand the evidence relied upon by DG Competition relating to [Explanation of data contained in data room] so that they can respond to DG Competition's Statement of Objections on behalf of [Name of the Party]. Further disclosure of the Data seen in the Data Room without the written prior agreement of DG Competition is strictly forbidden.

It remains at DG Competition's absolute discretion to conduct a data room, as an exceptional tool of granting access to the Commission's file, in very limited circumstances where it is not possible or very burdensome for the Data Provider to provide meaningful non-confidential versions of part of the Commission's file with sufficient evidentiary value in a timely manner.<sup>6</sup> Business secrets and other confidential information that is not necessary for the exercise of the rights of defence or whose evidentiary value can be disclosed in an alternative way shall be left outside the scope of data included in a data room to avoid unnecessary exposure of the Data Provider's confidential information.

The Data Room Rules apply to the External Advisors and are set up in order to ensure the legitimate protection of the [Data Provider(s)]'s business secrets and other confidential information collected by the Commission within the framework of its on-going investigation in the above referenced case.

The External Advisors and any person who belongs to the team of such External Advisors are required to agree to these Data Room Rules and sign the attached Non-Disclosure Agreement prior to obtaining access to the data room and the Data thereof. The External Advisors and any person who belongs to the team of such External Advisors commit to respect the letter and the spirit of the following conditions.

Prior to obtaining access to the Data, the External Advisors will make available to the case team (contact: contact person, tel: +xxxxxx) the name, the number of a valid identity document (passport or identity card), the job title and employer of each member of the External Advisors team who will access the data room. The External Advisors shall not exceed [number of persons] persons. The identity of the External Advisors will be disclosed to Data Providers before access is given to the Data Room.

These persons only will be allowed access to the Data Room. The usual rules for access to Commission buildings apply. A visitor's badge will have to be worn visibly at all times. In order to speed up the access procedures, the Parties will have to inform the DG Competition case team in advance and in writing (preferably by e-mail) of the composition of the External Advisors team that will be present on a specific date.

Entry to the Data Room, conduct within it and use of the Data are subject to these rules and to suitable undertakings being given to DG Competition, to which these rules will be attached:

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<sup>5</sup> Best Practices on the disclosure of information in data rooms in proceedings under Articles 101 and 102 TFEU and under the EU Merger Regulation (the "Data Room Best Practices").

<sup>6</sup> Taking into account the need for an effective application of the competition rules in light of the different legal and procedural frameworks for antitrust and merger proceedings, in particular the need for speed in the latter.

## 1. EQUIPMENT

- (1) In the Data Room, [number] PC workstation[s] will be made available with the following technical specifications:
  - (a) [Word Processing Software (with an equation editor) / Spreadsheet Processing Software / PDF Reader Software].
  - (b) [Data Analysis and Statistical Software].
- (2) [This/These] PC workstation[s] [is/are] made available for the purpose of allowing the External Advisors an opportunity to [verify the evidence in the Commission's file where the disclosure of such confidential information may be necessary for the effective exercise of the rights of defence, in particular insofar as such confidential information is relied upon in the Statement of Objections/verify the methodology used by the Commission to collect, check the consistency of, manage and analyse, the data used in a Statement of Objections, as well as to replicate and check the robustness of the Commission's analysis] and of drafting the Report for the Parties (see section 3 of these Data Room Rules).
- (3) No external storage medium will be available to the External Advisors.
- (4) A local printer with numbered blank pages [and a local network connecting the PC workstations and the printer] will also be made available.

## 2. THE CONDITIONS OF ACCESS TO THE DATA

- (5) The Data will be made available to the External Advisors in electronic form. The PC workstation[s] will have access to a specific folder in which there will be a number of read-only files for review by the External Advisors. The computer workstations will be backed-up daily to ensure business continuity. To facilitate collaboration among External Advisors in the data room, a secured, shared collaborative space is set up in the PC workstations provided by DG Competition.
- (6) External Advisors may bring additional computer codes, paper material or text in electronic format in the data room (e.g. handwritten, printed notes or electronic text files, a copy of the Statement of Objections etc.), that may be necessary for the verification of the Commission's analysis and the preparation of the data room report. Paper material brought into the data room by the External Advisors may be reviewed by DG Competition's officials at any time. Such documents may not, under any circumstances, be taken out of the data room and shall be destroyed at the end of the data room procedure.
- (7) During the course of the data room procedure, External Advisors may (i) take notes on, copy or otherwise replicate the data and (ii) print documents, on pre-numbered blank pages provided by DG Competition. All printouts and notes may be reviewed by DG Competition's officials at any time. Any such printouts and notes may not, under any circumstances, be taken out of the data room and shall be destroyed at the end of the data room procedure.
- (8) The External Advisors shall proactively activate and in any event not obstruct the logging functionality of the software made available to them in the Data Room. An automatically generated log with all manipulations and related actions

performed on the Data shall be kept in the hard drive of the computer where such manipulations and related actions were performed. Furthermore, any file created/edited in the context of all manipulations and related actions performed on the Data shall be left stored in the hard drive of the computer where such manipulations and related actions were performed.

- (9) No external communication in any form is allowed. The External Advisors are not allowed to carry any electronic device, camera, mobile phone or other communication or recording device while they are in the data room. The External Advisors agree that they can be searched at any time between each entry in and exit from the Data Room. Any device, such as mobile phones or other handheld/mobile wireless devices, laptops, PDAs, voice recorders, cameras, CDs, DVDs, USB sticks and the like, will be locked away and returned upon exit from the Data Room (or at the end of the day).
- (10) The data room will be monitored at all times. Anyone leaving the Data Room, while on DG Competition premises will be accompanied by Commission staff.

### **3. REPORTING TO THE [PARTY/PARTIES] OR TO THE COMMISSION**

- (11) A non-confidential data room report (the "Data Room Report") is the only means through which the External Advisors may communicate to and discuss the data in the data room with the addressees of the Statement of Objections ([Party/Parties]).<sup>7</sup>
- (12) The Data Room Report contains the findings and conclusions of the External Advisors regarding their assessment of the data consulted, which are relevant for the exercise of their client's rights of defence, as described in paragraph (2).
- (13) The Data Room Report must only contain non-confidential information. At the end of the data room procedure, DG Competition will review and approve the Data Room Report that has been prepared and finalised by the External Advisors to ensure that it does not contain any business secrets and other confidential information.<sup>8</sup> Only upon its approval, DG Competition will send each addressee of the Statement of Objections the individual Data Room Report prepared by their respective External Advisors.
- (14) The External Advisors shall not remove any data, information or documents from the data room, even if such data, information or documents do not contain business secrets and other confidential information.
- (15) It is not possible to claim Legal Professional Privilege or other kind of privilege protection vis-à-vis any part of the Data Room Report to be provided to the addressees of the Statement of Objections.

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<sup>7</sup> For the avoidance of doubt, where External Advisors acting for multiple addressees of the Statement of Objections are granted access to a data room, only one Data Room Report can be prepared for each of the addressees of the Statement of Objections by their respective External Advisors during the Data Room access period.

<sup>8</sup> During the review of the Data Room Report, further redactions may be made by DG Competition to protect third party business secrets and other confidential information, before the Data Room Report is approved by DG Competition.

- (16) During access to the data room, the External Advisors may decide to prepare and address to the Commission a non-redacted, confidential version of the Data Room Report for the sole purpose of explaining in more detail how the External Advisors have conducted their calculations and reached their findings and conclusions contained in the Data Room Report. In such case, the External Advisors shall explain the differences between both versions of the Data Room Report, highlighting in the non-redacted, confidential version of the Data Room Report any confidential information or results included in the non-redacted, confidential version of the Data Room Report. The non-redacted, confidential version of the Data Room Report will be registered in the Commission's file, will remain in the sole possession of the Commission, and will not be made accessible to the addressees of the Statement of Objections.

#### **4. DURATION OF THE DATA ROOM ACCESS**

- (17) The Data Room will be open for an initial period of [XX] working day[s] from 9h00 to 18h00 CET.

#### **5. POSSIBLE PRESENCE OF [DATA PROVIDER]'S LEGAL COUNSEL**

- (18) At any point during the course of the Data Room procedure, [Data Provider(s)]'s legal counsel, at their request, may be allowed access to the Data Room for the sole purpose of verifying that appropriate safeguards are in place.

#### **6. SANCTIONS**

- (19) By signing the Non-Disclosure Agreement and agreeing to the Data Room Rules, the Notifying Parties' External Advisors recognise their rights and accept the obligations stemming from the data room procedure. In case any of the rules or obligations is not respected by any of the Notifying Parties' External Advisors, all Data Room participants of the relevant party will be immediately requested to leave the data room.
- (20) In addition, the Commission and the Data Providers shall take all appropriate legal action in case of breach of these Data Room Rules and/or Non-Disclosure Agreement, including but not limited to damage actions. The Commission shall also inform the relevant law bar associations or other professional associations, as appropriate, of a violation of the applicable deontological or professional conduct rules.

Date

Name

Signature