

Fair Trade Commission Directions on Oral Arguments in Cases

Passed by the 262nd Commissioners' Meeting of November 6, 1996;
by Fair Trade Commission Order (85) Kung Fa Tzu No. 03590 of November 19, 1996;

Amended by the 352nd Commissioners' Meeting of August 5, 1998;
by Fair Trade Commission Order (87) Kung Fa Tzu No. 03100 of August 15, 1998

Amended by the 527th Commissioners' Meeting of December 13, 2001
by Fair Trade Commission Order Kung Fa Tzu No. 0910001325 of February 8, 2002

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retroactive to February 6, 2012

Promulgated by Order Kung Fa Tzu No. 1111560095 on March 21, 2022

1. Oral arguments may be held in important and complex or controversial cases, which are under deliberation by the Fair Trade Commission and the evidence thereof remains insufficient after investigations pursuant to the provisions of Article 27 of the Fair Trade Law.
2. Oral arguments, when necessary, shall be proposed by a Commissioner or the Department handling the case, and conducted only after a resolution therefore is passed at a Commissioners' Meeting. This procedure shall also apply where a party requests the Commission in writing with reasons for such oral arguments.

The request made by a party referred to in the preceding paragraph may be rejected by the Commission if the Commission does not consider oral arguments necessary. The party shall be notified in writing of such rejection.

3. A "party" as referred to in these Guidelines means the following:
 - (1) a filer of a report of merger;
 - (2) an applicant for approval of concerted action;
 - (3) a complainant and a respondent in a complaint case.

4. Oral arguments shall be conducted in Chinese language. Persons who use a foreign language shall provide their own interpreters. However, if there is any difficulty for the persons in bringing their interpreters, the Commission will take it into consideration and then offer the interpretation service to the persons in need.
5. For cases that the Commission has resolved to conduct oral arguments, the Department in charge shall notify the relevant units in the Commission for the following preparations:
 - (1) to carefully review the file and circulate the file to all Commissioners;
 - (2) to set the date for such oral arguments, based upon full consultations with the Commissioner(s) in charge of reviewing the case;
 - (3) to send written notifications to the parties, witnesses, and/or related persons, ten days prior to the date for the oral arguments; provided, if a person to be notified has no domestic domicile, place of business, or representative, such ten-day period may be extended; and
 - (4) to confirm the persons attending and the time for check-in prior to the date for oral arguments, and arrange for seating, waiting rooms, and recording facilities.

The written notification referred to in the third subparagraph of the preceding paragraph shall set forth the following:

- (1) name and domicile or residence of the person notified; if a company, sole proprietorship, association or organization, the name of the responsible person and the address of the firm or place of business;
- (2) the subject of the case;
- (3) date, hour, and place of the oral arguments;
- (4) identification documents that the notified party needed to bring with him to the oral arguments;
- (5) major proceedings for the oral arguments;

- (6) the requirement of whether the party should personally appear at the Commission or whether an agent may be appointed for such purpose; in addition to the bringing of the identification documents referred to in subparagraph (4) above, the agent should present a power of attorney or other documents demonstrating his qualification as an agent;
 - (7) a summary of opinions provided by the respondent of the case; and
 - (8) procedures to deal with the situation where the notified party is absent from the oral arguments.
6. The check-in procedures will be handled as follows:
- (1) at the time the notified person and accompanying persons arrive at the Commission, they should first report to the Commission and shall register in the attendance book the time of arrival;
 - (2) the person in charge of the check-in shall examine the identification documents of the notified person and any accompanying persons, and shall notify the Department handling the case.
 - (3) where a party is to be represented by an agent for purposes of the oral arguments, it must be assured that he/she is carrying a power of attorney or other proof of the agency; if the person is not carrying such document, he/she shall be requested to immediately obtain it through facsimile or other means. The agent may be permitted to participate in the oral arguments only when such document is submitted. In the event such document cannot be obtained, the party shall be considered absent.
7. Persons who have been checked in shall be taken to the waiting room by the person in charge of the check-in to wait for a call from the chairperson conducting the proceedings.
8. Oral arguments shall be held only when at least more than one half of the Commissioners are present in the proceedings. The Chairperson of the Commission shall be the chair of the proceedings. If the Chairperson is unable to chair the proceedings, the Vice Chairperson shall serve as the chair

of the proceedings, and if the Vice Chairperson is unavailable, a Commissioner may be designated to chair the proceedings.

Notwithstanding the preceding paragraphs, the Commissioners' Meeting may resolve to set a quorum of three Commissioners with one of them as the chairperson, if such arrangement is appropriate for the specific case.

9. Oral arguments shall proceed according to the following sequence:
 - (1) presentation of the abstracts of the case;
 - (2) the complainant or its agent to present statement of the facts and legal arguments;
 - (3) the respondent or its agent to present defenses on the facts or legal arguments;
 - (4) to ask any of the parties to answer on questions that need to be clarify;
 - (5) to ask whether any of the parties wishes to present further statements.
10. The chairperson of the oral arguments shall conduct the proceedings in a fair and impartial manner. During the oral arguments the chairperson in charge of the proceedings may:
 - (1) question a party or urge it to submit evidence regarding points of fact or law;
 - (2) conduct necessary investigations ex officio or upon application of the party;
 - (3) grant the parties or other persons to make statements;
 - (4) forbid speaking by the parties or other persons to avoid delay; and to expel any person seriously disrupting the proceedings;
 - (5) commence or end the proceedings when a party is absent without reasonable cause. However, if the absent party had present his written statement prior to the proceedings, the contents in the written

statements may be considered as the statements made in the proceedings;

- (6) when necessary, and after having obtained agreement from a majority of Commissioners in attendance, decide on the date and place of another session of oral arguments; and
- (7) adopt any other measures that will facilitate the proceeding of the oral arguments.

11. Administrative personnel shall prepare and file records of the oral proceedings.

The records referred to in the preceding paragraph shall include the following and shall be signed by the Commissioners in attendance:

- (1) the subject of the case;
- (2) name and domicile of the parties in attendance and their agents;
- (3) date and place of the oral arguments;
- (4) the main points presented by parties and their agents and the documents and evidence presented;
- (5) a description of any objections made by parties during the proceedings and the chairperson's disposition of such objections;
- (6) the main points in the questioning of parties and their answers;

The record of subparagraph (6) above should in principle be prepared in a question-and-answer format.

The record of the proceedings shall be supplemented by sound or video recording.

12. Where the record of the proceedings is completed immediately after the closing of the oral arguments, the parties and their agents, witnesses, and related persons in attendance shall sign or seal on the document; if the record cannot be completed at the such time, the person in charge of the

proceedings shall set a time and place for reviewing the record, after which the record should be signed or sealed.

If a party or their agent, a witness or other related person in attendance refuses to sign or seal the record of the proceedings or fails subsequently to read and sign or seal them at a designated time and place, a record should be made of such circumstances.

13. Where the record of the proceedings is completed immediately after the closing of the oral arguments and a person who made statements or asked questions during the proceedings objects to the record, they may raise such objection immediately. If the chairperson conducting the proceedings believes that the objection is with good cause, a correction or supplement shall be made; if it is considered that the objection is without good cause, the objection shall still be recorded.

Where the record of the proceedings is not made immediately after the closing of the oral proceedings and if a person who made statements or asked questions objects to the record, the Department in charge shall assess whether or not the objection is with good cause, and if necessary may make a correction or otherwise handle the matter after having reviewed the relevant audio or video tape. In addition, a record shall be made of the circumstances of the raising and handling of the objection. Additions, deletions, or other alterations to the record of oral arguments shall be sealed on and all additional or deleted words should be recorded at the top of the page corresponding to the line in which the change is made. A signature shall be affixed next to each such notation.

14. The seating arrangements for oral arguments shall be organized by the Secretarial Office.

Facilities for the location of the oral proceedings and matters pertaining to security of persons in attendance shall be handled by the Secretarial Office, Anti-Corruption Office, and Senior Advisors' Office.

15. These Guidelines shall be effective after final approval.