

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 No [XX] – [CASE NAME]

Within the framework of access to the EFTA Surveillance Authority’s file granted to [Name(s) of Party/Parties to which data room access is granted through their External Advisors] in Case No [XX] – [CASE NAME] pursuant to Article 27(1) and (2) of Chapter II of Protocol 4 to Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the “Surveillance and Court Agreement”), the EFTA Surveillance Authority (the “Authority”) makes available a room at its premises at Rue Belliard 35, 1040 Brussels (the “Data Room”) to the [external economic advisors and/or external legal counsel] (the “External Advisors”) instructed by [Name(s) of Party/Parties to which data room access is granted through their External Advisors] (the “[Party/Parties]”). The [Party/Parties], [requested/accepted] the data room procedure by email dated [Date of email].

The Data Room contains information which the Authority considers to constitute business secrets and other confidential information within the meaning of Article 122 of the EEA Agreement, Article 27(2) of Chapter II of Protocol 4 to the Surveillance and Court Agreement, and Articles 15(2) and 16(1) of Chapter III of Protocol 4 to the Surveillance and Court Agreement (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.

As set out in the Data Room Best Practices,¹ the Authority 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 the Authority relating to [Explanation of data contained in data room] so that they can respond to the Authority'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 the Authority is strictly forbidden.

It remains at the Authority's absolute discretion to conduct a data room, as an exceptional tool of granting access to the Authority'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 Authority's file with sufficient evidentiary value in a timely manner. 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 any 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 Authority 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 therein. 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: +xxxxx]) 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 the Data Providers before access is given to the Data Room.

Only these persons will be allowed access to the Data Room. The usual rules for access to the Authority's building apply. In order to speed up the access procedures, the Parties must inform the Authority's 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 the Authority, to which these rules will be attached:

1. EQUIPMENT

- (1) In the Data Room, [number] PC workstation[s] will be made available with the following technical specifications:

¹ Best Practices on the disclosure of information in data rooms in proceedings under Articles 53 and 54 EEA (the "Data Room Best Practices").

- (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 Authority'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 Authority 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 Authority'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 will be set up in the PC workstations provided by the Authority.
- (6) External Advisors may bring additional computer codes, paper material or text in electronic format into 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 Authority'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 the Authority'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 the Authority. All printouts and notes may be reviewed by the Authority'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.
- (9) No external communication in any form is allowed. 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 into 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 the Authority's premises will be accompanied by the Authority's staff.

3. REPORTING TO THE [PARTY/PARTIES] OR TO THE AUTHORITY

- (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 (the [Party/Parties]).²
- (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, the Authority 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.³ Only upon its approval, will the Authority 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 in respect of any part of the Data Room Report to be provided to the addressees of the Statement of Objections.
- (16) During access to the Data Room, the External Advisors may decide to prepare and address to the Authority 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 Authority's file, will remain in the sole

² 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.

³ During the review of the Data Room Report, further redactions may be made by the Authority to protect third party business secrets and other confidential information, before the Data Room Report is approved by the Authority.

possession of the Authority, 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, the legal counsel of the [Data Provider(s)], 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 Parties' External Advisors recognise their rights and accept the obligations stemming from the data room procedure. If any of the rules or obligations are not respected by any of the Parties' External Advisors, all Data Room participants of the relevant party will be immediately requested to leave the Data Room.
- (20) In addition, the Authority 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 damages actions. The Authority 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