

## **Decision in case 2022/2018/VB on the European Commission's failure to take a timely decision on a state aid complaint in the telecommunications sector**

Decision

**Case 2022/2018/VB - Opened on 09/12/2019 - Decision on 16/03/2020 - Institution concerned** European Commission ( No further inquiries justified ) |

The case concerned the European Commission's failure to take a timely decision on a state aid complaint made by a Slovenian telecommunications company.

The Ombudsman regrets that it took the Commission some nine years after having received the complaint to determine that the complainant was not an interested party. While a certain amount of time may be required to come to such a conclusion, nine years is excessive, even in a case that the Commission has determined is not a priority.

The Ombudsman acknowledges that the Commission was not inactive during this period as it engaged in extensive exchanges with the complainant and the national authorities and addressed all the arguments raised by the complainant.

As the Commission has now finalised the analysis of the state aid complaint, the Ombudsman concludes that no further inquiries into this complaint are justified and closes the case.

## **Background**

1. The complainant is a Slovenian telecommunications company which, in May 2010, complained to the European Commission about alleged irregularities in the granting of aid for broadband development in Slovenia.
2. After having obtained information from the Slovenian authorities, the Commission sent a preliminary assessment letter to the complainant in November 2011, stating that the state aid in question had been granted in line with an aid scheme approved by the Commission. [1] In the absence of a reaction from the complainant, the Commission said that it would consider the complaint to be withdrawn. In January 2012, the complainant replied to the Commission.
3. In June 2012, the Commission informed the complainant that, as the aid would have only a



limited impact on the functioning of the internal market, it could not give the complaint priority treatment.

4. Exchanges of correspondence and conference calls ensued in the years that followed. In July 2016, the Commission again informed the complainant of its preliminary assessment. It noted, in summary, that it had found no problem with the aid which, in any case, involved a very small amount of money. The Commission informed the complainant that it would consider the complaint withdrawn unless the complainant provided additional arguments that would alter its conclusions.

5. In August 2016, the complainant responded to the Commission, contesting the conclusions and asking it to take a decision on the substance. The complainant thus did not withdraw the complaint and said that it expected the Commission to take a formal decision on it.

6. In July 2017, the Commission again informed the complainant that the complaint had not been given priority given its limited impact on the functioning of the internal market.

7. Further exchanges ensued between the Commission, the complainant and the Slovenian authorities. According to the complainant, the Commission promised to send a formal decision in January 2018. Not having received a decision from the Commission, the complainant turned to the Ombudsman in November 2018, expressing its dissatisfaction with the length of time the procedure was taking.

## The inquiry

8. The Ombudsman opened an inquiry into the complaint about the Commission's failure to take a final decision on the state aid complaint within a reasonable period of time. During the course of the inquiry, the Ombudsman obtained information about further exchanges between the Commission and the complainant.

## Further developments

9. In the course of 2019, the Commission sought additional clarifications from the complainant on certain aspects of the complaint. In July 2019, it issued a third preliminary assessment letter. In that letter, the Commission took the view that the complainant is not a broadband service provider but a television service provider. As such, it does not qualify as an 'interested party' under the EU state aid rules [2]. The Commission noted that the complainant is not a potential competitor on the broadband market, which is the market affected by the aid, nor on the neighbouring market for the lease of Multichannel Multipoint Distribution Services (MMDS). As the complainant is not an interested party, it had no right to make a state aid complaint to the Commission. The Commission nevertheless addressed the substantive arguments raised by the complainant, concluding that, in any event, the actions complained about did not amount to a breach of EU state aid rules. As the Commission again informed the complainant that in the



absence of a reply it would have considered the complaint withdrawn, the complainant submitted further information in August 2019.

**10.** In December 2019, the Commission sent a letter to the complainant confirming its preliminary assessment that it was not an interested party. However, the Commission gave to the complainant the opportunity to submit further information in relation to its business relationship with another Slovenian company active in the field of provision of internet and telephony services. The complainant did so in January 2020.

**11.** In February 2020, the Commission concluded that the complainant was not an interested party and informed it that it would consider its submissions as market information.

## **The European Ombudsman's findings**

**12.** The Ombudsman regrets that it took the Commission some nine years after having received the complaint to determine that the complainant was not an interested party. While a certain amount of time may be required to come to such a conclusion, nine years is excessive, even in a case that the Commission has determined is not a priority.

**13.** The Ombudsman acknowledges that the Commission was not inactive during this period. It engaged in extensive exchanges with both the complainant and the Slovenian authorities on the arguments raised by the complainant. In its preliminary assessment letters, the Commission consistently took the view that there was no breach of EU state aid rules. The Commission has explained to the complainant the reasons for its position and it has assessed the further arguments that the complainant raised over the years.

**14.** The Ombudsman welcomes the fact that the Commission addressed the complaint on the substance also in its third preliminary assessment letter, despite considering that the complainant is not an interested party.

**15.** Despite the shortcoming identified above, the Ombudsman finds that it is not necessary to issue a finding of maladministration, given the series of actions taken by the Commission in this case.

**16.** As the Commission has now concluded its analysis of the complaint and has adopted a final position on it, the Ombudsman considers that no further inquiries into this complaint are justified and closes the case.

Emily O'Reilly

European Ombudsman



Strasbourg, 16/03/2020

[1] [Link] In 2009, the Slovenian authorities had notified an aid measure for broadband development to the Commission, which considered it to be compatible with the internal market in accordance with Article 87(3)(c) of the Treaty establishing the European Community. The Commission's decision is published for information purposes only at [https://ec.europa.eu/competition/state\\_aid/cases/230420/230420\\_1007373\\_39\\_1.pdf](https://ec.europa.eu/competition/state_aid/cases/230420/230420_1007373_39_1.pdf) [Link].

[2] [Link] The Commission referred to the definition of interested party given in Article 1(h) of Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, which reads as follows: '*any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations*'