

Decision of the European Ombudsman on complaint 1476/2000/(HC)/GG against the European Commission

Decision

Case 1476/2000/GG - Opened on 06/12/2000 - Decision on 18/07/2001

Strasbourg, 18 July 2001

Dear Dr A.,

On 8 November 2000, you lodged a complaint with the European Ombudsman concerning the way in which the European Commission had handled your complaint about an alleged violation of the state aids and competition rules of the EC Treaty.

On 6 December 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 16 February 2001, and I forwarded it to you on 27 February 2001 with an invitation to make observations before 31 March 2001. On the occasion of a telephone conversation on 5 April 2001, you informed my services that you did not intend to submit observations.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complainant is a general practitioner in Belgium. In November 1998 and January 1999, he complained to the European Commission's Directorate-General Competition about the introduction and implementation of the so-called "Gloaal Medisch Dossier" (global medical dossier, GMD) in Belgium. This system was introduced by a Belgian law. According to the complainant, it is implemented by agreements between the Belgian state, the health insurance funds and doctors' associations. It appears that this system provides persons who are 60 years of age or older with the possibility to register with a general practitioner. The inscription is made for a year and can be renewed. The health insurance funds pay the doctors concerned an annual fee (BEF 505) to cover the administrative costs. Patients thus inscribed have to pay less for a consultation of their general practitioner since the health insurance funds grant higher reimbursements. The complainant considered that this system worked to the detriment of new general practitioners and infringed the rules of the EC Treaty regarding state aids and competition.



The European Commission replied to this complaint in a letter of 8 March 1999. It took the view that in so far as the rules on state aids were concerned, account had to be taken of the fact that the relevant amounts were granted by the health insurance funds which were themselves financed by contributions from employers and employees. It was thus difficult to ascertain whether and, if so, to what extent the scheme involved state aids. With regard to the alleged anti-competitive agreements between Belgian health insurance funds and doctors' associations the Commission took the view that the Belgian competition authority was the most appropriate body to deal with the complaint, given that the said agreements only appeared to concern Belgium. The Commission further argued that it was not always clear whether bodies like health insurance funds could be considered as 'undertakings' within the meaning of the competition rules of the EC Treaty. It pointed out in this context that the alleged agreements appeared to have the aim of implementing the Belgian law introducing the GMD. Lastly, the Commission pointed out that one of the aims of the Belgian law and thus also of the actions of the health insurance funds and doctors' associations appeared to be to try and reduce the costs of health care. In the Commission's view, such an aim could be legitimate as such.

In his complaint to the Ombudsman, the complainant criticised this view for two reasons. Firstly, the Belgian scheme would, according to the complainant, also lead to unfair competition in the border regions to the detriment of general practitioners from abroad. Secondly, the complainant claimed that the Commission had already interfered in purely national matters in the past.

The complainant thus claimed that the Commission had not properly handled his complaint.

THE INQUIRY

The complaint was sent to the Commission for its opinion.

The Commission's opinion

In its opinion, the Commission made the following comments:

The Commission had only received the complaint dated 8 January 1999 on 11 February 1999. It had sent the complainant a reasoned and timely reply on 8 March 1999, explaining why it saw little or no merit in his complaint. The Commission had also provided the complainant with the contact details of the Belgian competition authorities, which might be able to help him under national competition law.

The Commission had contacted the Belgian competition authorities on 19 December 2000 in order to check whether they had been approached by the complainant. On 21 December 2000 the Commission had been informed that this had indeed been the case but that the procedure was still pending.

The Commission's services were ready to meet the complainant to explain their position on a face-to-face basis and had therefore invited the complainant on 4 January 2001. The complainant had accepted this invitation and informed the Commission that he would contact its services as soon as he was available to come to Brussels.



The complainant's observations

The complainant did not submit any written observations. However, he informed the Ombudsman's services by telephone that he had no observations to make since, in his view, this would not change anything. He further informed the Ombudsman's services that he had not yet gone to Brussels to discuss the case with the Commission.

THE DECISION

1 Failure properly to handle the complaint

1.1 The complainant claims that the Commission failed properly to handle his complaint regarding an alleged violation of the competition and the state aids rules of the EC Treaty in relation to the introduction and implementation of the introduction and implementation of the so-called "Globaal Medisch Dossier" (global medical dossier, GMD) in Belgium. This system was introduced by a Belgian law. According to the complainant, it is implemented by agreements between the Belgian state, the health insurance funds and doctors' associations.

1.2 The Commission points out that its services sent a reasoned and timely reply to the complainant, explaining why they saw little or no merit in the complainant's complaint. It also notes that it provided the complainant with the contact details of the Belgian competition authorities that might be able to help with the competition-related aspects of the complaint and contacted these authorities to check whether the complainant had approached them. Finally, the Commission points out that its services invited the complainant to discuss the matter.

1.3 It appears appropriate to distinguish between those aspects of the complaint that relate to the competition rules and those that concern the state aids rules.

1.4 The Ombudsman notes that according to the case-law of the Court of Justice, EU competition rules do not expressly oblige the Commission to open an investigation when it receives a complaint alleging anti-competitive behaviour (1). The Commission is however bound to respect the rights guaranteed by the Community legal order in such procedures. Article 6 of Council Regulation No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 [now articles 81 and 82] of the EC Treaty (2) provides that if the Commission considers that there are insufficient grounds for acting on a complaint, "it shall inform the applicant or complainant of its reasons and set a date by which the applicant or complainant may make known its views in writing".

1.5 On the basis of the information submitted to the Ombudsman, it appears that the Commission did not set a date by which the complainant could make known his views in writing.

1.6 The Ombudsman notes, however, that the Commission's services have invited the complainant to discuss the matter on a face-to-face basis. It thus appears that the Commission has not yet closed the file and has manifested its willingness to hear the complainant before doing so.

1.7 On the basis of these findings, there appears to be no maladministration in so far as the



Commission's handling of the competition-related aspects of the complaint is concerned.

1.8 In so far as the Commission's handling of the complaint regarding the state aids rules is concerned, the Ombudsman notes that in its letter of 8 March 1999 the Commission set out the reasons for not opening an inquiry. The Ombudsman considers that the arguments put forward by the Commission appear to be reasonable.

1.9 In view of the above, there appears to be no maladministration in so far as the Commission's handling of the aspects of the complaint relating to the state aids rules is concerned.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration on the part of the European Commission. The Ombudsman therefore closes the case.

The President of the European Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN

(1) See case T-24/90, *Automec v. Commission* [1992] ECR, II-2223, par. 76.

(2) OJ 1998 L 354, page 18.