

Decision of the European Ombudsman on complaint 1723/2000/BB against the European Commission

Decision

Case 1723/2000/BB - Opened on 21/03/2001 - Decision on 07/12/2001

Strasbourg, 7 December 2001

Dear Mr O.,

On 21 December 2000, you made a complaint to the European Ombudsman concerning the handling of your request for an investigation to the European Commission sent on 15 December 1999.

On 21 March 2001, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 19 July 2001 and I forwarded it to you with an invitation to make observations. On 30 September 2001, you asked for an extension of the deadline for your observations, which was granted until 31 October 2001. However, no observations appear to have been received from you.

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

THE COMPLAINT

In her complaint, the complainant alleges that the European Commission has not sent a reply to her request for an investigation concerning the transfer of Finnish government owned Kemijoki Oy shares. The complainant requests that the European Ombudsman investigate the background of this omission and whether this practice can be considered good administrative behaviour.

THE INQUIRY

The Commission's opinion

In its opinion the Commission made the following remarks:

The letter of the complainant was registered on 25 January 2000 by DG Competition. It was an annex to another letter sent by another person to DG Environment, relating to an infringement procedure opened by the Commission against the Finnish Government.



Unfortunately, the services of DG Competition did not realise that the request for clarification by the complainant had a different object and the letter did not receive an appropriate follow-up. This is a regrettable mistake, which certainly does not qualify as good administrative behaviour, but one that was neither intentional nor purpose-oriented.

The complainant asks the Commission to clarify whether the surrender of the shares of the Kemijoki Oy State owned company in favour of other companies is in violation of Articles 87 and 88 of the Treaty of Rome or whether the matter warrants other clarifications or measures.

The sale of an asset owned by State, where performed in the absence of a public tender or of the evaluation of an independent expert ascertaining a sale at market value, might involve State aid, depending on the characteristics of the sector and on the specificity of the case.

In the absence of further information, among others on the nature of the assets sold and on the compensation received by the State, it is not possible to assess the presence of a violation of State aid rules. However, DG Competition has decided to file the letter of the complainant as a complaint and will therefore investigate the case.

The complainant has been informed by letter dated 25 June 2001 that the Commission will carry out the necessary investigations in connection with the information provided.

The complainant's observations

The complainant appears not to have sent her observations.

THE DECISION

1 Lack of reply by the Commission

1.1 In her complaint the complainant alleges that the European Commission has not sent a reply to her request for an investigation concerning the transfer of Finnish government owned Kemijoki Oy shares. The complainant requests that the European Ombudsman investigate the background of this omission and whether this practice can be considered good administrative behaviour.

1.2 In its opinion, the Commission states that the letter of the complainant was registered on 25 January 2000 by DG Competition. It was an annex to another letter sent by another person to DG Environment, relating to an infringement procedure opened by the Commission against the Finnish Government. According to the Commission, the services of DG Competition unfortunately did not realise that the request for clarification by the complainant had a different object and the letter did not receive an appropriate follow-up. This is a regrettable mistake, which certainly does not qualify as good administrative behaviour, but one that was neither intentional nor purpose-oriented.

1.3 The Commission states that DG Competition has decided to file the letter of the complainant as a complaint and will therefore investigate the case. The Commission states that the complainant has been informed by letter dated 25 June 2001 that the Commission will carry out



the necessary investigations in connection with the information provided.

1.4 The Ombudsman notes that the Commission has now replied to the complainant indicating that it will carry out the necessary investigations. Furthermore, the Commission has regretted the unfortunate mistake due to which the complainant's letter did not receive an appropriate follow-up immediately upon receipt. On the basis of the above, there appears to have been no maladministration by the Commission.

2 Conclusion

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

Yours sincerely,

Jacob SÖDERMAN