

Decision of the European Ombudsman on complaint 227/2001/GG against the European Commission

Decision

Case 227/2001/GG - Opened on 26/02/2001 - Decision on 25/06/2001

Strasbourg, 25 June 2001

Dear Mr B.,

On 14 February 2001, you lodged, on behalf of B. GmbH, a complaint with the European Ombudsman against the European Commission concerning the European Commission's handling of the complaint lodged by you on 15 September 1999 in accordance with Article 3 of Regulation 17/62.

On 26 February 2001, I forwarded the complaint to the Commission for its comments.

On 2 May 2001, I received the Commission's opinion, and I forwarded it to you on 8 May 2001 with an invitation to make observations, if you so wished. On 18 May 2001, you sent me your observations on the Commission's opinion.

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

THE COMPLAINT

The complainant is a German company that used to be active in the commerce of selling bricks.

In 1994, the Commission granted, subject to several conditions and for a period of five years (1992-1997), an exemption under the competition rules to an agreement between Dutch brick producers that was meant to reduce spare capacities in order to balance the market (1) .

In September 1999, the complainant lodged, on the basis of Article 3 (2) of Regulation 17 (2) , a complaint with the Commission's Directorate-General Competition in which it alleged that the relevant Dutch companies and its association had committed several serious infringements of EU competition rules. According to the complainant, it had lost all its assets due to these infringements. On 9 March 2000, and in reply to a reminder sent by the complainant, the Commission informed the complainant that it had begun to examine its complaint. In reply to a further letter, the Commission explained in a letter of 20 September 2000 that the examination



of complaints in competition matters takes a certain amount of time. On 15 January 2001, the complainant wrote again to ask how far the Commission's examination had progressed and when it would be likely to be completed. In a short letter of 25 January 2001, the Commission pointed out that it was not yet able to say when its examination would be completed since it did not yet have all the necessary information to decide on the complaint.

In its complaint to the Ombudsman, the complainant claimed that the Commission had failed to deal with its complaint within a reasonable period. The complainant also suggested that Regulation 17 should be changed so as to provide for higher penalties in case of an infringement of EU competition law.

THE INQUIRY

The complaint was sent to the Commission for its comments. The Ombudsman informed the complainant, however, that he was not competent to deal with his suggestion that Regulation 17 be changed and that such a suggestion could be submitted to the European Parliament.

The Commission's opinion

In its opinion, the Commission made the following comments:

Following the lodging of the complaint on 15 September 1999, the Commission had informal contacts with both Mr B. and the Dutch Competition Authorities in order to collect more information in relation to the case. A formal request for information was sent to the Royal federation of Dutch brick manufacturers (KNB) on 6 March 2000. The answer of KNB, which comprised several hundreds of pages in Dutch, was received on 11 April 2000.

After studying the documents submitted by KNB, the Commission's services prepared and sent out information requests to 25 Dutch brick manufacturers on 11 November 2000. The answers to these requests were received in December 2000 and January 2001. After having analysed these answers, further requests for information were sent to 16 Belgian and 16 German brick manufacturers on 26 January and 30 January respectively. The answers started arriving in February 2001. The Commission now intended to send out about 40 information requests to German brick dealers in the following weeks.

During the whole period of investigation, when the complainant had asked for information, it had always received a reply in due time. Unfortunately at times it had not been possible to meet the latter's expectations due to legal constraints, e.g. when access was requested to documents collected in the course of a previous proceeding.

The following reasons explained the time consumed in carrying out the above-mentioned steps of the investigation:

* after a first investigation, there had appeared to be no substantial evidence for an infringement, and the Commission had therefore given priority to the treatment of more substantiated cases



* the unit in charge of dealing with the case was small and responsible for a variety of subjects; furthermore, there had been several staff changes since the investigation started

* given the size of the unit it was sometimes difficult to cover the languages of the member states other than those most frequently used; because the documents from KNB as well as many other answers to information requests had been in Dutch, it had taken the unit considerable time to analyse their content in depth.

The Commission considered that the case was being dealt with within a reasonable time and that it was still actively investigating the complaint. Subject to the results of the last request for information, the Commission estimated to be able to conclude the fact-finding within 2001. It added, however, that at this stage the outcome of its investigation could not be predicted.

The Commission submitted a detailed list of the correspondence that had been exchanged and the contacts that had been made during the investigation.

The complainant's observations

In its observations, the complainant queried how the Commission had been able to grant an exemption for the relevant sector without examining whether the products covered by the exemption were produced at all. The complainant also asked how the companies benefiting from the exemption had been able to increase their prices by nearly 60 % during the exemption period whilst the general rate of increase for prices for building materials had only been 15 %. In the complainant's view, these questions concerned a structural problem and should be answered independently of the complaint lodged in September 1999.

THE DECISION

1 Scope of the decision

1.1 In its complaint, the complainant suggested that EU competition rules be changed so as to provide for higher penalties in case of infringements. The European Ombudsman has been entrusted with the task of inquiring into possible instances of maladministration in the activities of the Community institutions and bodies. He has no power to change or amend EU competition rules. The European Ombudsman however informed the complainant that his suggestion could be submitted to the European Parliament.

1.2 In its observations on the Commission's opinion, the complainant raised several questions in relation to the exemption granted by the Commission in 1994 to an agreement between Dutch brick producers (3) . These questions are not related to the Commission's handling of the complaint lodged in 1999 and do not appear to have been submitted to the Commission yet. They will therefore not be further considered here.

1.3 The present decision therefore only deals with the complainant's claim in relation to the handling of his complaint by the Commission.

2 Failure to deal with complaint within reasonable period

2.1 In September 1999, the complainant lodged, on the basis of Article 3 (2) of Regulation 17



(4) , a complaint with the Commission's Directorate-General Competition in which he alleged that the relevant Dutch companies and its association had committed several serious infringements of EU competition rules. The complainant claims that the Commission has failed to deal with its complaint within a reasonable period.

2.2 The Commission submits that the case is being dealt with within a reasonable time and that it is still actively investigating the complaint. It points out that formal information requests were sent to various persons on four occasions (6 March 2000, 11 November 2000, 26 and 30 January 2001) and that further information requests were about to be sent out. The Commission also claims that certain factors like the lack of resources and the fact that the language in which most of the relevant documents were written was Dutch explained the time the investigation had taken.

2.3 The Ombudsman considers that the information in his possession does not confirm the complainant's claim according to which the Commission has failed to deal with his complaint within a reasonable time. It is clear that investigations into complaints alleging anti-competitive behaviour can be time-consuming, particularly if information has to be gathered from a variety of sources as seems to be the case here. Taking into account the subject-matter of the complaint, the various procedural steps taken by the Commission so far and the problems highlighted, the Ombudsman concludes that the complainant's claim that there have been excessive delays in the investigation carried out by the Commission in this case cannot be regarded as having been established.

2.4 In the light of the above, there appears to be no maladministration on the part of the Commission in the present case.

3 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears that there was no maladministration on the part of the European Commission. The Ombudsman therefore closes the file.

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

Yours sincerely,

Jacob SÖDERMAN

(1) Commission Decision of 29 April 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/34.456 - Stichting Baksteen), OJ 1994 L 131, p. 15.

(2) Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty, OJ No 13, 21. 2. 1962, p. 204.

(3) Commission Decision of 29 April 1994 relating to a proceeding under Article 85 of the EC



Treaty (IV/34.456 - Stichting Baksteen), OJ 1994 L 131, p. 15.

(4) Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty, OJ No 13, 21. 2. 1962, p. 204.