

Decision of the European Ombudsman on complaint 943/2001/GG against the European Commission

Decision

Case 943/2001/GG - Opened on 12/07/2001 - Decision on 04/10/2001

Strasbourg, 4 October 2001

Dear Ms P.,

On 10 July 2001, you made a complaint to the European Ombudsman concerning the European Commission's refusal to provide you with a copy of a report prepared by a working group that had been mandated to focus on (1) an in-depth study of the respective EU and US approaches to the identification and implementation of remedies in merger cases and (2) the scope for further convergence in the treatment of merger cases dealt with in the EU and the US respectively.

On 12 July 2001, I forwarded the complaint to the Commission for its comments.

The Commission sent its opinion on your complaint on 21 September 2001. I forwarded the Commission's opinion to you on 24 September 2001 with an invitation to make observations. On 30 September 2001, you sent me your observations on the Commission's opinion.

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

THE COMPLAINT

In its XXXth Report on Competition Policy, the Commission's Directorate-General mentioned that a working group set up by the Commission and competition authorities from the USA had been mandated to focus on (1) an in-depth study of the respective EU and US approaches to the identification and implementation of remedies in merger cases and (2) the scope for further convergence in the treatment of merger cases dealt with in the EU and the US respectively.

On 6 June 2001, the complainant, a German national studying in the Netherlands, sent an e-mail to a case-handler in DG Competition in which she asked where she could obtain a copy of the report of this working group. In his reply sent the next day, the Commission official explained that the working group would not publish a report on its work since the purpose of the work had been to allow an informal exchange of views between the authorities. On 20 June



2001, the complainant sent a further e-mail, this time to the Director-General of DG Competition, in which she asked where she could obtain a copy of the report. She stressed that since the report had been financed by taxpayers' money, the public should be allowed access to it. On 23 June 2001, the complainant sent a reminder to the same person. On 25 June 2001, a Mr Bernhard Friess replied to these two e-mail messages. Mr Friess claimed that DG Competition had already replied to the complainant's inquiry (on 7 June 2001) and that there was nothing to add to this response.

In her complaint to the Ombudsman, the complainant claimed that the Commission should provide her with a copy of the said report.

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:

No report on the work of the working group had been prepared. The working group had studied and discussed the relevant issues. The outcome of the study and discussions have been reflected in the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 (1) a copy of which was attached to the opinion. Apart from this notice, no other document had been produced.

The complainant's observations

In her observations, the complainant took the view that it was difficult to imagine that no documentation at all should have been prepared in relation to the meetings and the results of the study and discussions. In the complainant's view, the complex questions could hardly have been discussed and solutions identified without the production of some "documents or notes or summaries or papers or essays or presentation with accompanying notes etc.". The complainant asked to be given access to this documentation.

THE DECISION

1 Failure to provide access to a report

1.1 The complainant claims that the Commission failed to provide her with a copy of a report prepared by a working group set up by the Commission and competition authorities from the USA that had been mandated to focus on (1) an in-depth study of the respective EU and US approaches to the identification and implementation of remedies in merger cases and (2) the scope for further convergence in the treatment of merger cases dealt with in the EU and the US respectively.

1.2 The Commission replies that no report on the work of the Working Group was prepared.

1.3 On the basis of the evidence available, the Ombudsman concludes that it has not been proven that a report on the work of the Working Group has been prepared.



1.4 In these circumstances, there appears to be no maladministration on the part of the Commission.

2 Failure to grant access to other documents relating to the Working Group

2.1 In her observations of 30 September 2001 on the Commission's opinion, the complainant took the view that some documents ("documents or notes or summaries or papers or essays or presentation with accompanying notes etc.") must have been prepared in relation to the meetings and the results of the study and discussions. The complainant asked to be given access to this documentation.

2.2 The Ombudsman notes that this claim was first raised in the complainant's observations on the Commission's opinion. However, Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (2) provides for a two-stage procedure for access to documents. If the initial application is refused, the applicant may lodge a confirmatory application. If this confirmatory application is refused, the applicant may turn to the Court of First Instance or to the Ombudsman. The Ombudsman notes that the complainant has not yet submitted an application to the Commission for access to the documents mentioned in her letter of 30 September 2001. In these circumstances, the Ombudsman considers that it would not be appropriate for him to deal with the new claim raised by the complainant. The complainant is of course free to submit a new complaint to the Ombudsman if the Commission should refuse access to these documents.

3 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears that there is no maladministration on the part of 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) OJ 2001 C 68, p. 3.

(2) OJ 1994 L 46, p. 58.