

Decision of the European Ombudsman on complaint 993/2002/GG against the Office for Official Publications of the European Communities

Decision

Case 993/2002/GG - Opened on 04/06/2002 - Decision on 17/09/2002

Strasbourg, 17 September 2002

Dear Dr. S.,

On 29 May 2002, you made a complaint to the European Ombudsman concerning the pricing and advertising behaviour of the Office for Official Publications of the European Communities.

On 4 June 2002, I forwarded the complaint to the Director-General of the Office. The Office sent its opinion on 5 July 2002. I forwarded it to you on 15 July 2002 with an invitation to make observations, which you sent on 15 September 2002.

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

THE COMPLAINT

Since 1998, the Office for Official Publications of the European Communities ("the Office") publishes the L and C series of the Official Journal also on CD-ROM. The complainant is a subscriber of this edition. The subscription price that was set in 1998 amounted to € 144 plus VAT.

In January 2002, the complainant was informed by the German sales agent of the Office that the subscription price had been increased to € 350 plus VAT for 2002 and to € 400 plus VAT for 2003. The complainant submitted that he could not see any objective reason for such a price increase of 243 % (2002) and 278 % (2003) since the price had been held stable for four years. He considered that by doing so, the Office had abused its monopolistic position.

The complainant further took the view that the Office had used deceptive advertising since the price mentioned on the EUR-Lex website was that of 2001 whereas the rates for 2002 and 2003 were not indicated.

The complainant pointed out that complaints to the German sales agent of the Office had been



unsuccessful and that his efforts to contact the Office directly in the past (in other cases) had been futile.

In his complaint to the Ombudsman, the complainant thus made the following allegations:

(1) The Office abused its monopolistic position by increasing the annual subscription rate for the L and C series of the Official Journal on CD-ROM from € 144 in 2001 to € 350 in 2002 and € 400 in 2003;

(2) The Office used deceptive advertising with regard to the annual subscription rate of the L and C series of the Official Journal on CD-ROM.

The complainant claimed that the price should be drastically reduced, perhaps to the level of 2001 plus an increase of 10 % at maximum, that the real prices for 2002 and 2003 should be stated on the EUR-Lex website and that the present subscribers should receive a letter of excuse regarding the deceptive advertising.

THE INQUIRY

The Office's opinion

In its opinion, the Office made the following comments:

The rates of the annual subscriptions for the different series and editions of the Official Journal were laid down by the Management Committee for the Office, composed of a representative of each institution of the European Communities. The price of the annual subscription for the CD-ROM version of the Official Journal (L and C series) had remained unchanged from 1998 to 2001. This rate corresponded to a launching price.

For 2002 and 2003, the Management Committee for the Office had taken the decision of increasing perceptibly the subscription price, on the basis of several considerations:

- to take into account the real production costs of the product,
- to ensure a more realistic remuneration for the sales agents,
- from mid-2002 a new version of the product would be delivered to subscribers; this version would be largely improved in terms of performance, presentation, search and browsing facilities,
- in comparison, the price of the annual subscription for the paper version of the Official Journal (L and C series) was € 1 000 plus VAT.

It was a fact that the EUR-Lex website only mentioned the annual subscription prices from 1998 to 2001. This was simply a failure to update this page of the site which would be updated as soon as possible. It was not the intention of the Office to deceive potential subscribers.



In addition, the prices of the 2002 annual subscriptions were available on the internet site of the Office. Finally, the information concerning the prices of the annual subscriptions for 2002 and 2003 had been communicated to the sales agents network in October 2001.

The complainant's observations

In his observations, the complainant submitted that a "launching price" had to be labelled as such, which had not been done by the Office, and that usually it was not used over a period of four years. The complainant further alleged that, on the assumption that the new prices covered the "real production costs", the Office confirmed that the price for the years 1998 to 2001 had been a dumping price, in violation of EU trade policy, and that the Office had thus abused its monopolistic position.

As to the "real production costs", the complainant took the view that since the files on the CD-ROM were the same as those offered free of charge via EUR-Lex, the costs of producing and delivering the CD-ROM could not justify price increases of 243 % and 278 % respectively. The complainant queried whether this meant that the price increases for the CD-ROM had to compensate for any conceivable present or future losses of the Office with regard to the print version.

The complainant concluded that the Office had failed to provide a serious explanation for the price increases, thus confirming that it had abused its monopolistic position to the detriment of subscribers.

THE DECISION

1 Abuse of monopolistic position by increasing price of CD-ROM

1.1 Since 1998, the Office for Official Publications of the European Communities ("the Office") publishes the L and C series of the Official Journal also on CD-ROM. The subscription price that was set in 1998 amounted to € 144 plus VAT. This price was increased to € 350 plus VAT for 2002 and to € 400 plus VAT for 2003. The complainant, a subscriber, alleges that by proceeding to these increases, the Office abused its monopolistic position.

1.2 In its opinion, the Office replies that the price set in 1998 was a launching price and that it was decided to increase the prices for 2002 and 2003 in order to take into account the real production costs of the product and to ensure a more realistic remuneration for the sales agents. The Office also points out that from mid-2002 a new, largely improved version of the product would be delivered to subscribers and that the price of the annual subscription for the paper version of the Official Journal (L and C series) was € 1 000 plus VAT.

1.3 In his observations, the complainant argues that, on the assumption that the new prices covered the "real production costs", the price for the years 1998 to 2001 was a dumping price, in violation of EU trade policy, and that the Office thus abused its monopolistic position. The complainant further expresses the view that since the files on the CD-ROM were the same as those offered free of charge via EUR-Lex, the costs of producing and delivering the CD-ROM could not justify price increases of 243 % and 278 % respectively.



1.4 The Ombudsman notes that the complainant, in his observations, submitted a further allegation to the effect that the Office had charged a "dumping price" from 1998 until 2001. Given that the Office has not yet had the opportunity to express its views on this allegation, the Ombudsman considers that it is not appropriate to deal with this issue in the present inquiry. The complainant is of course free to submit his allegation to the Office and, if necessary, consider submitting a further complaint to the Ombudsman. The present decision therefore deals only with the complainant's allegation that by increasing its prices, the Office abused its monopolistic position.

1.5 The complainant thus effectively reproaches the Office for having infringed Article 82 of the EC Treaty according to which the abuse, by an undertaking, of a dominant position within the common market or in a substantial part thereof shall be prohibited in so far as it may affect trade between member states. The imposition of unfair selling prices is mentioned as an example of such an abuse (Article 82, second sentence, sub a).

1.6 According to Article 195 of the EC Treaty, the European Ombudsman is empowered to receive complaints "concerning instances of maladministration in the activities of the Community institutions or bodies". The Ombudsman considers that maladministration occurs when a public body fails to act in accordance with a rule or principle binding upon it (1) . Maladministration may thus also be found when an institution infringes rules of EC competition rules, to the extent that these rules are applicable to this institution.

1.7 However, the Ombudsman considers that the scope of the review that he can carry out in such cases is necessarily limited. According to the case-law of the Court of Justice, prices charged by an undertaking in a dominant position can be considered abusive where they are "excessive in relation to the economic value" of the product or service concerned (2) or where they are excessive because they have "no reasonable relation to the economic value of the product supplied" (3) . Determining whether this is the case requires a thorough analysis of all the relevant facts, including the market concerned. This analysis could be carried out effectively only by an authority such as the European Commission's Directorate-General Competition or a court which would have the possibility to evaluate conflicting evidence on any disputed issues of fact.

1.8 The Ombudsman therefore takes the view that in cases like the present one it is justified to limit his inquiry to examining whether the Community institution or body has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its actions do not infringe EC competition rules. If that is the case, the Ombudsman will conclude that his inquiry has not revealed an instance of maladministration.

1.9 In the present case, the Office has put forward a number of considerations in order to justify the price increases for 2002 and 2003 that do not appear to be unreasonable at first sight. It should be pointed out in particular that even the increased price for the CD-ROM version of the Official Journal is still considerably lower than the price for the paper version. The Ombudsman concludes, therefore, that his inquiry into this aspect of the complaint has not revealed an instance of maladministration on the part of the Office.



2 Deceptive advertisement

2.1 The complainant alleges that the Office used deceptive advertising since the price mentioned on the EUR-Lex website was that of 2001 whereas the rates for 2002 and 2003 were not indicated there.

2.2 In its opinion, the Office points out that this was simply a failure to update this page of the site which would be updated as soon as possible. The Office also notes that the correct prices for 2002 are mentioned on its own website and that its sales agents were informed of the prices for 2002 and 2003 already in October 2001.

2.3 The Ombudsman has checked the contents of the EUR-Lex website (<http://eur-lex.europa.eu> [Link]) that is managed by the Office itself. To his surprise, even today, that is to say more than two months after the Office had announced that it would be updated "as soon as possible", the relevant page (accessible via "Buy the OJ on CD-ROM") only shows the prices for the 1998, 1999, 2000 and 2001 editions but not the prices for 2002 and 2003.

2.4 The Ombudsman trusts that the Office will proceed to update the relevant page without further delay. He does not, however, consider it necessary or appropriate to submit a proposal for a friendly solution or a draft recommendation to this effect to the Office. The fact that no information for 2002 (and 2003) is available on the EUR-Lex website is certainly deplorable. However, the absence of this information would not appear to amount to deceptive advertising on the part of the Office as alleged by the complainant. The Ombudsman considers that the information provided on that website, albeit incomplete, does not induce the informed reader to believe that the price will remain unchanged in so far as 2002 and later years are concerned. Furthermore, the Office's own website (<http://publications.europa.eu> [Link]) displays the correct price for the 2002 subscription of the CD-ROM version of the Official Journal. Finally, the Office claims that it informed its sales agents of the 2002 and 2003 prices already in October 2001, and the complainant himself points out that this information was passed on to him by the German sales agent of the Office in January 2002.

2.5 In these circumstances, the Ombudsman concludes that the complainant's second allegation according to which the Office resorted to deceptive advertising cannot be regarded as having been established.

3 Conclusion

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

The Director-General of the Office will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN



- (1) See Annual Report 1997, pages 22 sequ.
- (2) Case 26/75 *General Motors v Commission* [1975] ECR 1367 paragraph 16.
- (3) Case 27/76 *United Brands v Commission* [1978] ECR 207 paragraph 250.