European Ombudsman

Decision of the European Ombudsman closing his inquiry into complaint 1142/2008/(BEH)KM against the European Commission

Decision
Case 1142/2008/(BEH)KM - **Opened on** 22/05/2008 - **Decision on** 25/09/2009

In 2007, the complainant, a German citizen, wrote to the European Commission asking it to commence competition proceedings against E.ON and the Würzburg public utility company. He highlighted that the latter had not protested against price increases made by E.ON, which delivers gas to this company and also has an indirect minority stake in it.

In its reply, the Commission's Directorate-General for Competition (DG COMP) outlined that it shared the complainant's concerns about competition in the German energy markets but did not intend to open proceedings on the basis of his complaint. Further letters were exchanged before the complainant turned to the European Ombudsman.

In his complaint to the Ombudsman, the complainant alleged that the Commission failed to respect EC competition rules by not opening an investigation on the basis of his complaint. He also alleged deficiencies in the Commission's letter-handling policy.

In its opinion, DG COMP essentially argued that (i) the conduct of the Würzburg public utility company had no effect on cross-border trade and (ii) as regards the conduct of E.ON, the Commission had a discretion to prioritise other options of working towards increased competition in the German energy markets rather than those proposed by the complainant.

The Ombudsman considered that the Commission's position concerning the conduct of the Würzburg public utility company was correct. He also found that the Commission was right in arguing that it had a discretion as to whether or not to commence proceedings on the basis of a competition complaint. In the Ombudsman's view, the Commission acted within the limits of its discretion when deciding not to open an investigation regarding E.ON's conduct.

Furthermore, the Ombudsman noted that, although the Commission's reply to one of the complainant's letters was delayed, DG COMP apologised for this fact. Finally, the Ombudsman held that there were no grounds to carry out further inquiries into the Commission's handling of the complainant's other correspondence.

THE BACKGROUND TO THE COMPLAINT

1. In December 2006, the complainant wrote to the German Federal Cartel Office ("FCO") asking it to commence an investigation into (i) the buying behaviour of the Würzburg public utility company AG and (ii) the behaviour of E.ON. The complainant essentially argued that, through its minority stake in the Würzburg public utility company, E.ON influenced the latter to ensure that it accepted E.ON's inflated prices.

2. In January 2007, the FCO informed the complainant that there were insufficient grounds to start anti-trust proceedings, given that there appeared to be no evidence of abusively high prices being charged by the Würzburg public utility company.

3. The complainant appealed this decision to the President of the FCO. In April 2007, the President of the FCO confirmed the latter's decision. Subsequently, in June 2007, the complainant submitted a complaint to the German Federal Minister of Economics and Technology against the President of the FCO, alleging that the President had failed to comply with his duties. However, in July 2007, the Minister stated that no misconduct had been found on the part of the President, and essentially pointed out that the President's decision remained within his discretionary powers.

4. On 5 September 2007, the complainant turned to the European Commission regarding alleged restrictions and discrimination in the trade of natural gas in Germany. The complainant argued that the German FCO and the German Federal Ministry of Economics had failed to exercise their duties. In this regard, he stated that the Commission should start (i) infringement proceedings against Germany for failing to act and thus restricting the freedom of establishment and the free movement of capital, and (ii) competition proceedings against the Würzburg public utility company and E.ON which, in the complainant's view, had breached Articles 81 and 82 of the EC Treaty.

5. On 28 September 2007, the Directorate-General for Competition of the European Commission ("DG Competition") replied to the complaint. As regards the commencement of possible infringement proceedings against Germany, DG Competition pointed out that it failed to see how Germany's conduct could amount to an infringement of Community law. With regard to the complainant's claim that the Commission start anti-trust proceedings, DG Competition argued that its intervention was not called for.

6. In a further letter of 29 October 2007, the complainant disagreed with the view taken by DG Competition and urged it to take action regarding his complaint.

7. On 13 March 2008, DG Competition replied that it did not agree with the complainant's objections to its letter of 28 September 2007. Consequently, it refused to take any subsequent action.

THE SUBJECT MATTER OF THE INQUIRY

8. The complainant made the following allegations.
- The Commission wrongly decided not to start competition proceedings with regard to the facts brought to its attention in his letters of 5 September and 29 October 2007, and thereby sought to avoid application of the competition rules of the EC Treaty.
- The Commission's replies of 28 September 2007 and 13 March 2008 suggested (i) that they were not drafted by the persons who signed them and (ii) a case of corruption.
- The Commission failed to handle properly the letters sent by the complainant. For instance, he had not yet received a reply by regular mail to his letter of 5 September 2007.

9. The complainant made the following claims:
- The Commission should start competition proceedings on the basis of the facts submitted by him.
- The Commission should reconsider its approach towards handling letters it receives.

10. As regards the second allegation, the Ombudsman held that there appeared to be insufficient grounds to deal with it in the framework of the present inquiry. This was because (i) it appears to be consistent with common sense that, in a hierarchical organisation, officials empowered to sign letters are not necessarily the ones who have drafted them and (ii) the complainant did not provide any evidence which would suggest the existence of corruption.

11. The Ombudsman notes that, in his observations, the complainant has raised similar allegations of corruption, claiming that the only explanation for DG Competition's decision not to act on his complaint could be that it had been unduly influenced. However, the fact remains that the complainant has not adduced any evidence to support his allegation. This allegation, therefore, has not been included in the present inquiry.

THE INQUIRY

12. Accordingly, the Ombudsman forwarded the complaint to the Commission and asked it to submit an opinion on the complainant's first and third allegations and the two claims. On 24 October 2008, the Commission sent an opinion, which was forwarded to the complainant with an invitation to make observations. The Ombudsman received the complainant's observations on 28 November 2008.

13. On 31 July 2009, the complainant sent a letter to the Ombudsman informing him of further developments in relation to his complaint. In particular, he referred to the proceedings and judgment of the Federal Court of Justice in the E.ON/Eschwege public utility company case [1] and an academic publication on strategic minority shareholdings in the German energy sector.

14. In this context, the complainant first expanded on allegation (1), arguing that the Commission should have applied the reasoning from the *Delimitis* judgment [2] and should have found a violation of EU competition law on the grounds that the markets had been

foreclosed by a network of similar contracts. Second, the complainant repeated that the Commission had failed to recognise the cross-border impact of his complaint. Third, he stated that, according to an article published in an academic journal, the competition proceedings between E.ON and the FCO before the Düsseldorf Higher Regional Court revealed that the FCO was aware of the fact that E.ON controlled the companies in which it held minority shareholdings. However, when the complainant submitted that this was the case with the Würzburg public utility company, neither the FCO nor the Commission had taken this fact into account. Fourth, the complainant stated that the Commission had failed to analyse the contractual relationship between E.ON and the Würzburg public utility company properly, paying special attention to the consortium agreements he claimed must exist. Fifth, he argued that it was maladministration for the Commission not to have considered his complaint in a wider economic context. Finally, he stated that the contractual relationships between the major German energy companies, and the public utility companies which buy from them, could be analysed in terms of a regional cartel, that is, as ongoing protection of their previous territories, despite liberalisation of the market.

15. As regards the first, second, fourth and fifth points raised in the letter of 31 July 2009, the Ombudsman notes that the complainant already raised these aspects in his submissions to the Commission. They are, therefore, not new allegations.

16. As regards the third point of the letter of 31 July 2009, it appears that the complainant wishes to make a new allegation, namely, that the Commission and the FCO failed to co-operate and exchange relevant information. According to Article 2(4) of the Ombudsman's Statute, an allegation needs to be preceded by appropriate prior administrative approaches to the institution or body concerned. The Ombudsman notes, however, that the complainant does not appear to have raised this allegation in his correspondence with the Commission. The relevant allegation is, therefore, at present inadmissible. However, the complainant is free to renew this allegation after having made the appropriate prior approaches to the Commission. It, nevertheless, appears useful to add that the Ombudsman is only able to examine complaints about maladministration on the part of Community institutions or bodies. He would, therefore, in any event not be able to deal with the said allegation to the extent that it is directed at the FCO.

17. As regards the final point made by the complainant, the Ombudsman notes that the complainant did not indicate any specific conclusions that should be drawn from it regarding the present case. The Ombudsman, therefore, assumes that the relevant statement was intended for his general information.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

Preliminary remarks

18. The complainant initially asked the European Commission to commence (i) an Article 226 action against Germany on the grounds that it had failed to ensure the proper application of EC

competition law and (ii) competition proceedings against E.ON and the Würzburg public utility company. However, this first aspect was not included in his complaint to the European Ombudsman. It, therefore, does not form part of the present inquiry.

19. As stated above, the present inquiry concerns the complainant's allegations that the Commission (i) wrongly decided not to commence competition proceedings against E.ON and (ii) failed to handle properly the letters received by it. It also concerns the related claims that the Commission should start competition proceedings against E.ON and review its letter-handling procedures. These aspects will be dealt with in turn.

A. Allegation that the Commission wrongly decided not to commence proceedings against E.ON and the Würzburg public utility company

Arguments presented to the Ombudsman

20. The complainant argued that the facts which he brought to DG Competition's attention were such that it ought to have commenced competition proceedings. DG Competition's failure to do so showed that it did not want to apply European competition law and thus failed to fulfil its role as the guardian of effective competition.

21. In his complaint to the Commission, which he submitted as supporting evidence along with his complaint to the Ombudsman, the complainant sought to establish that the German natural gas market was characterised by a high degree of concentration. Due to forward integration by the major players, notably E.ON, competition on the markets for gas grids and end-consumers was restricted. This led to substantial losses for the German economy. The complainant further argued that the minority share which E.ON indirectly held in the Würzburg public utility company clearly showed the negative effects such conduct was having on competition.

22. In response to DG Competition's argument that the conduct of the Würzburg public utility company did not affect trade between Member States, and that this conclusion constituted one of the reasons why it decided not to intervene, the complainant took the view that his complaint to the Commission contained various elements of a cross-border nature. For instance, there were ongoing legal disputes between E.ON Ruhrgas AG and suppliers from Norway and the Netherlands regarding the import price of natural gas. Furthermore, BP had unsuccessfully attempted to enter the German gas market. By acquiring shareholdings in public utility companies, E.ON undermined the Commission's goal of developing national energy markets into a European energy market.

23. The complainant further pointed out that, as demonstrated in his complaint to the Commission, ownership unbundling (which DG Competition had referred to as one of its initiatives designed to improve the competitive conditions on the European energy markets) was not sufficient to trigger competition on the German energy market. Even after completely separating production, grids and distribution, competition would continue to be impeded by

E.ON's holding of shares in public utility companies. Against this background, the lack of action by DG Competition as regards the facts which the complainant had brought to its attention could not be justified by its initiatives in the field of ownership unbundling. Given that DG Competition shared his concerns about vertical integration, it should have acted immediately.

24. In its opinion, DG Competition repeated the statements made in its letters of 28 September 2007 and 13 March 2008. In these letters, DG Competition essentially pointed out that possible problems arising from vertical integration between energy companies and local utility companies were best dealt with through the mechanism of merger control, both at the Community and national level. As regards the pricing behaviour of the Würzburg local utility company, which predominantly affected the German market, this was best dealt with by the national competition authority. DG Competition also underlined that it could, in any event, only intervene in cross-border situations. Existing problems in relation to competition in natural gas markets, which DG Competition had addressed on a number of occasions, could not justify its intervention with regard to a local public utility company's pricing policy.

25. At the same time, DG Competition made it clear that it shared the complainant's concerns about vertical integration being a threat to effective competition. It pointed out that it was currently inquiring into possible breaches of Community competition law by German energy companies. It further explained that it had started formal proceedings against E.ON and RWE, another major German electricity company, in the summer of 2007 and referred to relevant press releases. Finally, DG Competition referred to the so-called third liberalisation package containing rules on ownership unbundling, which were expected to foster competition on the German energy market. DG Competition expressed its conviction that every consumer of electric power and gas would benefit from its relevant activities, as described in its letter of 28 September 2007.

26. DG Competition also addressed the complainant's allegation that it had failed to take into account that his complaint related to E.ON's conduct rather than to the behaviour of the Würzburg local utility company. In this regard, it stated that it had already addressed this aspect in its letter of 28 September 2007, in which it pointed out that it was currently pursuing a number of cases against some of the major German electricity companies, including E.ON.

27. DG Competition then turned to the complainant's claim that it should have started competition proceedings. First, it stated that the pricing behaviour of the Würzburg public utility company was not likely to affect trade between Member States. The complainant had not provided any other indications on which DG Competition could have based a decision to commence an investigation. Second, in relation to the conduct of both the Würzburg public utility company and E.ON, DG Competition pointed out that under Article 7 of Regulation 1/2003 [3] , it had discretion whether or not to open proceedings on the basis of a competition law complaint. DG Competition then went on to mention a number of previous cases it had launched relation to the German energy markets and emphasised that it used its discretion to choose the most effective way to work towards increased competition on these markets. It felt that the action proposed by the complainant would not be as effective as the actions it had already taken.

28. In his observations on DG Competition's opinion, the complainant made the following comments.

29. First, the complainant argued that DG Competition still refused to apply European competition law by claiming that the matter which the complainant had raised was best dealt with by the national competition authority. The complainant also expressed his discontent that DG Competition had ignored the fact that his complaint was directed mainly against E.ON. He had only referred to the Würzburg public utility company in order to allow DG Competition to commence an inquiry by initially requesting information from it and then extending the inquiry according to the evidence gathered.

30. Second, the complainant objected to DG Competition's statement that his complaint concerned the fact that the Würzburg public utility company passed its high purchasing costs on to its customers and that this alone did not constitute a breach of the EC competition rules. According to the claimant, this statement clearly shows that the Commission had been unduly influenced. The complainant reiterated that his complaint of 5 September 2007 contained a number of facts which showed that EC competition rules had been breached, notably by E.ON.

31. Third, the complainant questioned whether DG Competition did, in fact, have discretion in this matter, given the economic impact of the conduct which he had set out in his original complaint. He argued that the Commission's decision to ignore these facts and pretend that the problem was local and minor supported his suspicion of corruption.

32. Fourth, the complainant stressed that customers in Germany have not seen the effects of DG Competition's intervention, since energy prices have continued to rise in a way which could not be justified by an increase in world market prices. He further maintained that the problem of forward integration could not be addressed through the so-called 'ownership unbundling' proposed by the European Commission. The complainant quoted extensively from the 2007 report of the German Monopolies Commission and referred to a judgment by the German Federal Court of Justice to support his view that it is part of E.ON's business strategy to vertically integrate.

The Ombudsman's assessment

33. It should be stressed at the outset that the complaint concerns the Commission's decision not to open competition proceedings against E.ON on the basis of the information submitted by the complainant in his letters of 5 September and 29 October 2007. In order to avoid any possible confusion, it should be noted that the Ombudsman does not have to ascertain whether the allegations raised in the complainant's competition complaint were well-founded, that is to say, whether the infringements of competition law alleged by the complainant did, in fact, exist. Rather, the Ombudsman has to examine whether there was maladministration regarding the way in which DG Competition handled the competition complaint submitted by the complainant.

34. The Ombudsman notes that it follows from the established case-law of the Community

courts that persons submitting a competition complaint do not have the right to insist that the Commission take a final decision on the existence or non-existence of the alleged infringement [4] . When defining the orientation of Community competition policy and then implementing it, the Commission may, at its discretion, give differing degrees of priority to the complaints brought before it [5] . The Commission may refer to the Community interest in order to determine the degree of priority it applies to the various complaints it receives [6] .

35. However, the Commission's discretion is not unlimited [7] . It must consider attentively all facts and legal arguments which a complainant brings to its attention [8] . The Commission is also under an obligation to state reasons if it decides not to continue its examination of a complaint [9] .

36. In such cases, the Ombudsman's examination will, therefore, have to be limited to checking whether the Commission's decision is based on materially incorrect facts or whether it is vitiated by an error of law, a manifest error of assessment or misuse of powers [10] . Given that the complainant did not allege a misuse of powers in the present case, this issue does not need to be examined here.

37. The Ombudsman notes that the complainant's request to the Commission to become active was based on the conduct of the Würzburg public utility company and that of E.ON. It is, therefore, appropriate to distinguish between these two aspects.

38. Firstly, as regards the conduct of the Würzburg public utility company, DG Competition pointed out that this was unlikely to have an effect on trade between Member States and there thus were insufficient reasons to commence an investigation.

39. The Ombudsman recalls that, in order to breach Article 81(1) of the EC Treaty, anticompetitive agreements must, at least potentially, "affect trade between Member States". The same "effect on trade" criterion applies under Article 82. The arguments raised by the complainant to the effect that his complaint concerned a cross-border problem (see paragraph 22) relate to E.ON's conduct rather than that of the Würzburg public utility company seen in isolation. Under these circumstances, the Ombudsman considers that the Commission's conclusion that it would not be competent to commence an investigation against the Würzburg public utility company because its conduct was unlikely to affect trade between Member States was reasonable.

40. The Ombudsman further notes that DG Competition has expressly acknowledged the complainant's insistence that his complaint did not relate to the Würzburg public utility company in isolation but that the latter's conduct needed to be examined together with that of E.ON. In his observations, the complainant has raised doubts whether DG Competition had made its decision based on a correct appreciation of the facts in this regard. However, the Ombudsman notes that DG Competition has duly taken into account the conduct of E.ON (see below). The Ombudsman, therefore, finds that the complainant's doubts were not well-founded.

41. The second aspect of the complainant's competition complaint concerned the alleged

breach of EU competition law by E.ON.

42. According to the complainant, the "forward integration" strategy allowed E.ON to claim inflated prices from the public utility companies in which E.ON indirectly holds a share. These then passed the increased costs on to end consumers. The complainant sought to show the effects of these pricing decisions on the German economy and maintained throughout that the Commission should intervene in the matter.

43. The Ombudsman notes that DG Competition did not argue, as the complainant appears to think, that it will not commence an investigation into E.ON's conduct on the grounds that the latter does not affect trade between Member States. Rather, DG Competition referred to the fact that it has a discretion whether or not to commence proceedings in competition law matters. There is, therefore, no reason to think that DG Competition has wrongly failed to take into account the potential cross-border impact of any alleged conduct by E.ON.

44. The Ombudsman notes that the complainant has further argued that, given the considerable impact of the alleged breaches of competition law on the European economy, DG Competition's discretion should have been severely limited. However, the Ombudsman is not convinced by this argument. Although the impact of an alleged infringement is clearly an element to be taken into account by DG Competition when deciding whether or not to open or to continue proceedings on the basis of Articles 81 and 82 of the EC Treaty, it is clearly not the only element to be considered.

45. As regards the substance of the complainant's competition complaint, DG Competition has recognised that vertical integration is a problem in the markets concerned, which does need to be addressed. However, it stated that this issue is best addressed through the medium of merger control. The Ombudsman notes that this view appears to be shared by the German Monopolies Commission, which the complainant quotes in his observations as stating that shareholdings of major gas companies in regional and local gas companies have to be thoroughly investigated by the (federal or regional, depending on the circumstances) cartel office in the framework of merger control ("[*es*] *sind insbesondere Beteiligungen der Ferngasunternehmen an Regional- und Ortsgasunternehmen im* Verfahren der Zusammenschlusskontrolle durch das Kartellamt *intensiv zu prüfen* ").

46. DG Competition has also indicated that it is using the means at its disposal to address competition concerns raised by the situation of the energy markets in the European Union. These have led it to propose the so-called third liberalisation package and commence investigations against a number of European energy companies, including major companies active on the German market.

47. In response to DG Competition's argument that it had chosen the most effective measures at its disposal to improve the conditions for competition on the German energy markets, the complainant repeated, as a fourth point in his observations, that these means are insufficient to address the real competition issues in the said markets. He remarked that none of the measures taken by DG Competition have had any real effect. Instead, energy prices charged to

end consumers have continued to rise in a way which could not be explained by the rise in world market prices for energy.

48. The Ombudsman considers that the fact that the measures taken by DG Competition so far may not have led to an immediately noticeable drop in prices does not mean that they are ill-judged. Nor does it mean that the measures proposed by the complainant would actually improve competition in the German energy markets.

49. It does not appear, therefore, that DG Competition has committed a manifest error in exercising its discretion when deciding not to commence an investigation against E.ON, on the grounds that it was allegedly pursuing a policy of "forward integration". No maladministration was thus found by the Ombudsman as regards this aspect of the case.

B. Allegation that the Commission failed to handle the complainant's letters properly

Arguments presented to the Ombudsman

50. The complainant alleged that the Commission failed to handle properly the letters sent by him. He stated that, at the time of submitting his complaint, he had not yet received a reply by regular mail to his letter of 5 September 2007. Further, the reply to his letter of 29 October 2007 was only sent on 13 March 2008, after the he had sent a reminder to the Commission on 21 February 2008.

51. As a consequence, the complainant alleged that the Commission's letter-handling policy is deficient and ought to be reviewed.

52. In its opinion, DG Competition made the following observations.

53. DG Competition replied to the complainant's letter of 5 September 2007 on 28 September 2007 and sent the reply by regular mail. It did not know why the letter was not received by the complainant. When he inquired about the letter, DG Competition, acting on his explicit request, sent it again by e-mail. In this regard, DG Competition pointed out that it is not obliged to send its correspondence by any particular means.

54. As regards DG Competition's reply to the complainant's letter of 29 October 2007, DG Competition outlined that the delay (the reply was sent on 13 March 2008) was due to a clerical error. DG Competition further highlighted that it apologised for this error in its letter of 13 March 2008.

55. As regards the complainant's claim that the Commission should reconsider its approach to handling letters it receives, DG Competition recalled the Commission's policy of replying to letters in a timely manner, in accordance with its Code of Good Administrative Behaviour. This policy was followed in the present case, with the exception of the reply to the complainant's

letter of 29 October 2007. DG Competition apologised for this fact in its reply of 13 March 2008.

The Ombudsman's assessment

55. The second allegation raised by the complainant appears to consist of two parts, which are as follows: (i) the complainant never received the letter of 28 September 2007 by mail and (ii) the complainant's letter of 29 October 2007 was only answered in March 2008. In addition to that, the complainant claims that the Commission should reconsider its approach to handling letters it receives.

56. As regards the first part of this allegation, DG Competition stated that it posted the relevant letter in the normal way and does not know why it did not arrive. When the complainant inquired about this letter, DG Competition, acting on his specific request, sent it to him by email. DG Competition also pointed out that it was not required to send its communication by any particular means.

57. As there does not appear to be any reason to doubt that DG Competition did indeed post the letter to the complainant, the Ombudsman considers that DG Competition cannot be blamed for the fact that this letter did not reach the complainant. The Ombudsman notes that, as soon as DG Competition had been informed that the complainant had not received its reply, it forwarded a copy of the said reply to the complainant by e-mail. No maladministration is, therefore, found as regards this aspect of the case.

58. As regards the second part of this allegation, DG Competition acknowledged that, due to a clerical error, the complainant's letter of 29 October 2007 was only answered in March 2008. DG Competition further pointed out that it had apologised for that clerical error in its letter of 13 March 2008.

59. It is good administrative practice to reply to letters received within a reasonable period of time. DG Competition admitted that it failed to do so as regards the complainant's letter of 29 October 2007. However, given that DG Competition apologised for the delay of its reply, the Ombudsman considers that there are no reasons for further inquiries into this aspect of the case.

60. DG Competition has stated that its policy does comply with the Commission's Code of Good Administrative Behaviour and that is usually replies to letters in a timely manner. It added that this was also the case in all of its communications with the complainant, apart from its late reply to his letter of 29 October 2007, for which it duly apologised.

61. The Ombudsman considers DG Competition's explanation to be reasonable. In his view, DG Competition's failure to provide a timely reply to the complainant's letter of 29 October 2007 does not prove that its approach to handling correspondence addressed to it needs to be reviewed. The Ombudsman, therefore, finds no maladministration concerning this aspect of the case.

C. Conclusions

62. On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

Given that DG Competition has apologised for the delay in sending its reply to the complainant's letter of 29 October 2007, there is no reason for further inquiries into that matter. As regards the remainder of the complaint, no maladministration was found.

The complainant and the Commission will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 25 September 2009

[1] Judgment of 11 November 2008, KVR 60/07.

[2] C-234/89 *Delimitis v Henningerbräu* [1991] I-ECR 935.

[3] Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, O.J. 2003 L1, p.1.

[4] Case 125/78 *GEMA v Commission* [1979] ECR 3173, paragraphs 17 and 18; Case C-119/97-P *Ufex and Others v Commission* [1999] ECR I-1341, paragraph 87; Case T-24/90 *Automec v Commission* [1992] ECR II-2223, paragraph 75; and Joined Cases T-185/96, T-189/96 and T-190/96 *Riviera Auto Service and Others v Commission* [1999] ECR II-93, paragraph 48.

[5] *Ufex* , cited above, paragraph 88, and Case C-449/98-P *IECC v Commission* [2001] ECR I-3875, paragraph 36.

[6] *Automec* , cited above, paragraph 85, and Joined Cases T-9/96 and T-211/96 *Européenne automobile v Commission* [1999] ECR II-3639, paragraph 28. The fact that the Commission may reject a complaint for lack of Community interest is also explicitly acknowledged in Regulation No 1/2003 (recital 18).

[7] *Ufex* , paragaph 89, and *Européenne automobile* , cited above, paragraph 29.

[8] Case 210/81 *Schmidt* v *Commission* [1983] ECR 3045, paragraph 19; Case 298/83 *CICCE v Commission* [1985] ECR 1105, paragraph 18; Joined Cases 142/84 and 156/84 *BAT and Reynolds* [1987] ECR 4487, paragraph 20; Ufex, paragraph 86; and *IECC v Commission* , paragraph 45.

[9] *Ufex* , paragraphs 90 and 91; *Automec* , paragraph 85; and *Européenne automobile* , paragraph 29.

[10] Case T-24/90 *Automec* paragraph 80; Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraph 46; and *Européenne automobile* , paragraph 29.