

Decision in case 520/2014/PMC concerning the European Commission's refusal of access to documents relating to its decision not to take a position as to the compatibility of the complainant's commercial practices with EU competition rules

Decision

Case 520/2014/PMC - Opened on 11/04/2014 - Decision on 24/02/2016 - Institution concerned European Commission (Settled by the institution) |

The complainant, a fair-trade certification association, asked the Commission to issue a decision or an informal guidance letter as regards the compatibility of its commercial practices with EU competition rules. Following the Commission's rejection of the complainant's request, the latter applied for public access to *the Commission's file*. *The complainant contested the Commission's decision not to grant full access to its internal correspondence and an internal note.*

In the course of her inquiry, the Ombudsman set out her preliminary view that the Commission had redacted more information than was strictly necessary. The Ombudsman is pleased that the Commission has re-examined the documents concerned and decided to grant wider access. She thus considers the case resolved.

The background to the complaint

1. In 2013, the complainant, a fair-trade certification association, requested the Commission to issue a decision or an informal guidance letter as regards the compatibility of its commercial practices with EU competition rules. [1] The Commission replied that it would not issue such a decision or letter, because doing so would not be in line with the self-assessment obligation on the market operators.

2. Subsequently, the complainant requested access to the Commission's administrative file on the handling of its above-mentioned request, under the EU public access to documents rules. [2] The Commission replied, identifying six categories of documents covered by the access request. [3] The Commission refused to disclose its internal correspondence, and released only parts of its internal note [4] , arguing that disclosure of the documents containing opinions for internal use as part of deliberations and preliminary consultations within the institution would



seriously undermine its decision-making process, even after a decision had been taken [5] . It also argued that disclosure would undermine the purpose of possible future investigations [6] . The complainant requested the Commission to review its position, and, dissatisfied with its reply in this regard, complained to the Ombudsman.

3. Following initial contact from the Ombudsman, the Commission decided to grant more extensive access to the documents than in its original decision. However, it maintained that only partial access could be granted to the internal correspondence and the internal note. The complainant insisted on being granted full access to these documents, specifically objecting to the Commission's decision not to disclose the names of case handlers and the considerations relied upon by the Commission when deciding not to issue an informal guidance letter.

The inquiry

4. The Ombudsman opened an inquiry into the following allegation and claim:

Allegation:

The Commission failed to provide valid reasons for not granting full access to the internal correspondence and the internal note requested by the complainant.

Claim:

The Commission should fully disclose the requested documents.

Inspection of the Commission's file

5. The Ombudsman's inquiry team inspected the Commission's administrative file, in order to assess whether the Commission's decision on the request for public access was in line with EU access to documents rules. [7]

6. After a careful assessment of the inspected documents, the Ombudsman asked the Commission to provide an opinion on the complaint. In her request for an opinion, the Ombudsman set out her preliminary view that the Commission had redacted more information than necessary to protect the legitimate interests set out in EU access to documents rules. [8]

7. The Ombudsman concluded that there were insufficient grounds to inquire further into the Commission's decision not to disclose the names of the case-handlers. In this respect, she found that the complainant had not demonstrated the necessity for having the personal data of the case-handlers transferred to it, as required by Article 8 of Regulation 45/2001 on the protection of personal data [9] .



Meeting between the Ombudsman's inquiry team and the Commission

8. In order to further explain the Ombudsman's preliminary view expressed in her opinion request, the Ombudsman's inquiry team met with the Commission, pointing out in detail the text passages which, in the Ombudsman's view, could be made public.

Arguments presented to the Ombudsman

9. The complainant argued that the Commission had failed to provide valid reasons for not granting full access to the relevant internal correspondence and the internal note. The complainant also argued that the Commission had not carried out an individual and specific assessment of the documents in question, but that it had relied on general considerations.

10. In its opinion, the Commission noted that the relevant documents were drafted as part of an administrative procedure aimed at analysing whether a decision under Article 10 of Regulation 1/2003 or an informal guidance letter should be issued. The complainant was a party in that administrative procedure. In the Commission's view, it would be contrary to the logic and basic principles of EU rules on public access to documents if the complainant were to be granted wider access to the documents concerned than any other citizen requesting access to the same documents. The fact that the complainant may or may not have received and/or provided certain information as a party to the administrative procedure cannot in any way prejudice the Commission's assessment of whether to grant public access to those documents under the EU rules on public access to documents.

10. In addition, the Commission disagreed with the complainant's assertion that it had failed to carry out an individual and specific assessment of the relevant documents, given that without such an individual and specific assessment, further partial access would not have been granted.

11. Without prejudice to the foregoing, the Commission had nevertheless re-examined the relevant documents, thereby deciding to grant wider access to the documents, copies of which it enclosed with its opinion.

12. The complainant did not comment on the Commission's opinion or on the enclosed documents granting wider access.

The Ombudsman's assessment

13. The Ombudsman appreciates and welcomes the constructive approach taken by the Commission to re-examine the documents to which the complainant sought access and its subsequent decision to grant wider access to those documents, as suggested by the Ombudsman in her preliminary analysis of the case. Given that the complainant has not submitted any comments to say that it was not satisfied with the outcome of the inquiry, the



Ombudsman finds that the Commission has resolved the case.

Conclusion

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

By re-examining the documents concerned and thereby deciding to grant wider access, the Commission has resolved the case .

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

Emily O'Reilly

Strasbourg, 24/02/2016

[1] Pursuant to Article 10 of 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, OJ 2003 L 1, p. 1-25.

[2] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

[3] That is, i. administrative documents in relation to the Commission's opening and closing of the file; ii. all minutes of meetings or discussions between the Commission and the complainant; iii. all correspondence between the complainant and the Commission; iv. a 'position paper' submitted by the complainant; v. internal Commission correspondence; vi. an internal Commission note.

[4] The Commission granted access to the documents mentioned under i. It considered documents ii., iii., and iv. to be outside the scope of the complainant's request, considering that they had already been sent or were known to the complainant.

[5] Article 4 (3), second paragraph of Regulation 1049/2001.

[6] Article 4(2), third indent of Regulation 1049/2001.

[7] The Ombudsman's inquiry team inspected copies of the Commission's internal correspondence as well as its internal note falling within the scope of the complainant's request for access.



[8] It appeared that the Commission had redacted not only parts of the documents related to the substance of the case, and the analysis thereof, but also parts of the documents that explain the general policy on issuing a decision under Article 10 of Regulation 1/2003 or an informal guidance letter, as well as parts which merely elaborate on what was communicated to the complainant in the letter informing it that the Commission would not to issue an Article 10 Decision or a guidance letter. Moreover, the Commission also redacted information which the complainant itself appeared to have provided.

[9] Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1-22.