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Ombudsman criticises Commission for delay in giving access to key evidence in cartel investigation

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The European Ombudsman, Emily O'Reilly, has criticised the European Commission for a delay in giving the German company Infineon, which was under investigation in the "smart card chips" cartel inquiry, access to evidence. Infineon was eventually fined more than EUR 82 million for being a member of this cartel. According to Infineon, the Commission breached its rights of defence by withholding from it the electronic version of an internal e-mail of a competitor which, according to the Commission, had implicated Infineon in the cartel. Infineon wished to obtain this evidence as it doubted the authenticity of the e-mail.

Emily O'Reilly explained: "The Commission should exercise the utmost care and diligence when conducting competition investigations. By not disclosing key evidence to Infineon earlier, the Commission risked compromising its investigation."

Delay of six months to provide evidence

On 3 September 2014, the Commission imposed fines totalling EUR 138 million on Infineon, Philips, Samsung and Renesas for forming a cartel in the smart card chips market.

On 28 July 2014, just over one month before that decision was adopted, the Commission sent Infineon an electronic copy of an internal e-mail of a competitor. The e-mail in question was, according to Infineon, key evidence in the Commission's inquiry. However, the company had questioned its authenticity. The electronic copy of that e-mail constituted, according to the Commission, credible evidence.

Although the Commission was in possession of the electronic copy of the e-mail since January 2014, it only sent it to Infineon in late July. According to Infineon, this delay meant that it only had one week to carry out the complex analysis necessary to show whether it was genuine.

In its reply to the Ombudsman, the Commission provided no convincing explanation for the delay in sending this evidence to Infineon. The Ombudsman thus closed her inquiry by criticising the Commission for not having sent the evidence to Infineon earlier.

The full text of the decision is available at:
<http://www.ombudsman.europa.eu/en/cases/decision.faces/en/58338/html.bookmark>