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TO THE PRESIDENT AND MEMBERS OF THE EFTA COURT

OBSERVATIONS

Submitted, pursuant to Article 20 of the Statute of the EFTA Court, by the European Commission, represented by Piedade Costa de Oliveira and Manuel Kellerbauer, members of its Legal Service, as Agents, with an address for service at the office of Antonio Aresu, also a member of its Legal Service, Bâtiment BECH, 2721 Luxembourg,

in Case E-14/11

DB Schenker

v

EFTA Surveillance Authority

Regarding an application seeking the annulment of the EFTA Surveillance Authority's decision of 16 August 2011 refusing access to certain documents relating to Case n°34250 (Norway Post/Privpak) on the basis of the Rules on access to Documents established by the EFTA Surveillance Authority on 27 June 2008 (Decision 407/2008/COL).

The Commission has the honour to make the following observations:

1. INTRODUCTION

1. The background and the facts of the case are already set out in the contested decision, as well as in the Application and the Defence.

2. The contested decision was adopted on the basis of Decision 407/2008/COL by which the EFTA Surveillance Authority (hereinafter "the Authority") established, on its own motion, rules on access to documents. These rules reproduce, to a large extent, the provisions of 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[1] (hereinafter "Regulation 1049/2001"). In particular, the exceptions to the right of access are identical in both legal acts. Therefore, even if, as submitted by the Authority at para. 13 of its Defence, the EFTA Court were not bound by Article 3 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (SCA) in the present case, the Commission considers that the interpretation of these exceptions by the Court of Justice of the European Union, on the hand, and by this Court, on the other hand, should converge.

3. This appears particularly important in the present case, which concerns documents collected by the Authority during an inspection in a cartel case, a matter governed by Protocol n° 4 on the functions and powers of the EFTA Surveillance Authority in the field of competition[2]. Chapter II to this Protocol sets out general procedural rules implementing Articles 53 and 54 of the EEA Agreement which are, to a large extent, identical to those set out in Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 101 and 102 TFEU (ex-articles 81 and 82 EC) (hereinafter "Regulation 1/2003").

4. The Commission wishes to inform the Court that several cases are pending before the Union Courts concerning the interpretation of Regulation 1049/2001 in relation

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[1] OJ L 145 of 31.5.2001, p. 43.

[2] Available at: http://www.efta.int/~/media/Documents/legal-texts/the-surveillance-and-court-agreement/agreement-annexes-and-protocols/Protocol-4-on-the-functions-and-powers-of-the-EFTA.pdf [updated text 6.11.2007].

to documents pertaining to competition files. In two pending appeals (C-404/10 P *Commission/Odile Jacob* and C-477/10 P, *Commission/Agrofert),* the questions submitted to the interpretation of the Court of Justice relate precisely to the relevance of the Union rules governing competition procedures for the interpretation of several exceptions to the right of access to documents under Regulation 1049/2001. Oral hearings have taken place in both cases and the conclusions of Advocate General Cruz Villalón in Case C-477/10 P were delivered on 8 December 2011. The Court has decided to rule in Case C-404/10 P without conclusions of the Advocate General[3].

5. Even if these two appeals concern access to documents contained in the file of merger control procedures governed by Council Regulation (EC) No 139/2004[4], the Commission considers that the interpretation of the Court of Justice will be directly relevant also for the disclosure of documents stemming from the file in antitrust procedures governed by Regulation 1/2003.

6. Indeed, both Regulations (139/2004 and 1/2003) confer on the Commission extensive powers of investigation but contain at the same time provisions aimed at protecting the legitimate interests of undertakings subject to these investigatory powers, in particular, the obligation of professional secrecy and the obligation to use the information gathered during an investigation only for the purpose for which it was acquired[5]. Since Article 28 of Protocol 4 is identical to Article 28 of Regulation No 1/2003 which is identical to Article 17 of Regulation No 139/2004, the Commission takes the view that the outcome of the abovementioned Court cases is highly relevant for this Court's adjudication in the present matter.

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[3] Two cases concerning access to documents of a cartel file are also pending before the General court - T-344/08 *EnBW Energie Baden-Württemberg AG/Commission* (the oral hearing has taken place on 29 November 2011) and T-534/11 *Schenker / Commission* (there has been a first round of written pleadings).

[4] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

[5] Cf. Article 28 Regulation No 1/2003 and Article 17 Regulation No 139/2004.

2. PRELIMINARY STATEMENTS OF PRINCIPLE

7. Before proceeding to the substance of this case, in terms of examining the exceptions to the right to access to documents invoked by the Applicant, the Commission considers it essential to make a number of statements of principle.

8. The documents at issue have been acquired by the Authority in the course of a cartel investigation during an inspection at the premises of Norway Post pursuant to Article 20 of the Agreement amending Protocol 4. The application of competition rules under this Protocol is one of the Authority's core tasks. It was for the Authority to verify whether Norway Post had breached the EEA competition rules. According to the contested decision, the investigation concerned both the exclusivity agreements and practices dealt with in the Authority's decision 322/10/COL adopted on 14 July 2010 and Norway Post's discount system for parcel services.

9. Protocol 4 sets up a system for the gathering of information from investigated parties. It imposes far-reaching obligations on the undertakings involved in the proceedings to provide information including business secrets[6] and confers on the Authority powers to require all necessary information and to carry out all necessary inspections[7]. These obligations and extensive powers of investigation are, to some extent, counterbalanced by the provisions on the reinforced protection of professional secrecy provided for in the Protocol itself[8]. These guarantees aim to ensure, on the one hand, the proper functioning of the system of enforcement of competition rules in the public interest. On the other hand, they aim to safeguard the legitimate interests of the undertakings concerned in that they oblige the Authority to use the information only for the purposes of the investigation and not to disclose confidential information. This ensures that the Authority' powers of interference do

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6 See Articles 18 to 20.

7 See Articles 17 to 21.

8 Cf. Article 28 on professional secrecy. Pursuant to para. 1 "[...] information collected pursuant to Articles 17 to 22 or of Article 58 of the EEA Agreement and Protocol 23 thereto, shall be used only for the purpose for which it was acquired." Para. 2 states that "[...] the EFTA Surveillance Authority [...] shall not disclose information acquired or exchanged by them pursuant to this Chapter or Article 58 of the EEA Agreement and Protocol 23 thereto and of the kind covered by the obligation of professional secrecy. [...]". Agreement of 3.12.2004 amending Protocol n° 4 (Ref. N° 1043512)

not disproportionally restrict the right to confidentiality and privacy of the undertakings concerned.

10. The Commission takes the view that the obligation of professional secrecy set out in Article 28 of Protocol 4 not only aims to ensure the respect of confidentiality of the companies business and commercial secrets but also to guarantee their rights of defence.

11. This results from the judgments of the Court of Justice relating to the interpretation of Article 20 of Regulation No 17[9], replaced by Regulation 1/2003[10], which contains, for the purposes of applying Articles 101 and 102 TFUE (ex-Articles 81 and 82 EC), an identical provision limiting the use of the information collected by the Commission (and by the national authorities) for the purposes of the specific investigation.

12. In its judgement of 15.10.2002 in *PVC II*[11], the Court of Justice states that *that requirement [on the limitation of use] is intended to protect, in addition to the professional secrecy [...], the undertakings' defence rights [...], which not only form part of the fundamental principles of Community law but are also enshrined in Article 6 of the ECHR.* The Court of Justice adds *[t]hose rights would be seriously endangered if the Commission were able to rely on evidence against undertakings which was obtained during an investigation but was not related to the subject-matter or purpose thereof*[12].

13. Already in its judgement of 16 July 1992, in case C-67/91, *Asociación Española of Banca Privada a.o.*[13], the Court of Justice had ruled as follows:

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9 Regulation No 17, First Regulation implementing Articles 85 and 86 of the Treaty, OJ 13, 21.2.1962, p. 204 (replaced by Regulation No 1/2003).

10 See the previous Article 20 of Regulation N° 17 of 1962, which became Article 28 of Regulation 1/2003.

11 Judgment of the Court of Justice of 15 October 2002 in Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others v Commission* [2002] ECR I-8375, para. 299.

12 Idem, para. 300.

13 [1992] ECR, I-4785, para. 35-37.

> *35. By prohibiting the use of the information obtained under Article 11 of Regulation No 17 for purposes other than that for which it was requested and by requiring both the Commission and the competent authorities of the Member States and their officials and other servants to observe professional secrecy, Article 20 of the regulation is designed to protect the rights of undertakings (see, to that effect, the judgment in Case 85/87 Dow Benelux v Commission [1989] ECR 3137, paragraphs 17 and 18).*
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> *36. The rights of defence, which must be respected in the preliminary investigation procedure, require, on the one hand, that, when the request for information is made, undertakings be informed, in accordance with Article 11(3) of the regulation, of the purposes pursued by the Commission and of the legal basis of the request and, on the other, that the information thus obtained should not subsequently be used outside the legal context in which the request was made.*
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> *37. Professional secrecy entails not only establishing rules prohibiting disclosure of confidential information but also making it impossible for the authorities legally in possession of such information to use it, in the absence of an express provision allowing them to do so, for a reason other than that for which it was obtained.* (emphasis added)

14. Therefore, the obligation on the part of the Commission to make use of the information acquired only for specific purposes forms an integral part of the obligation to respect professional secrecy and has the purpose, essential for the functioning of the system, to protect the fundamental rights of the undertakings concerned.

15. This reasoning is reinforced by the *Varec* judgment[14] in which the Court recognised that safeguarding the fundamental rights of a third party or safeguarding an important public interest[15] can justify limits to the adversarial principle even if this principle aims to guarantee the fundamental right to a fair trial. The Court of Justice states that the right to respect for private life, enshrined in Article 8 of the ECHR, can constitute such a limitation. Moreover, by referring to the case law of the European Court of Human Rights[16], the Court of Justice underlined the broad

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[14] Judgment of 14 February 2008 in Case C-450/06, *Varec* [2008] ECR I-581.

[15] *Varec*, para. 47.

[16] See European Court of Human Rights judgments *Niemietz v Germany*, judgment of 16 December 1992, Series A no 251-B, §29; *Société Colas Est and Others v France*, no 37971/97, §41, ECHR 2002-III; and also *Peck v The United Kingdom* no 44647/98, at para. 57, ECHR 2003-I.

interpretation of the notion of 'private life', which has to be interpreted as comprising the professional or commercial activities of either natural or legal persons, which can include the participation in a contract award procedure[17]. Furthermore, in his conclusions in *Agrofert*[18], Advocate General Cruz Villalón states the following:

> *50. Such extensive and consequential powers of inspection are acceptable only to the extent that they are necessary for the purposes of achieving the legitimate objective pursued by the Commission. Consequently, the information acquired from undertakings must be available for use only to serve the objective of a proper assessment of the merger under examination, the whole aim of which, ultimately, is to determine whether or not the merger is compatible with the common market. The link between the information obtained, on the one hand, and the objective the attainment of which justifies the obligation incumbent on undertakings to provide all the information required, on the other hand, must be unbreakable. Any other arrangement would impose on undertakings in other circumstances a duty of transparency which may be incompatible with the continuation of their very existence as entities engaged in the competing economic activity, without ensuring that their private life is not adversely affected as a result, in so far as that term is applicable to the commercial activities of legal persons pursuant to the case-law of the European Court of Human Rights relating to Article 8 of the ECHR.*

16. The Commission therefore submits that there is a need for a coherent interpretation and application of the rules on public access to documents with the provisions governing the competition procedure to which the requested documents belong. It is inconceivable that, by adopting such rules on access to documents, the Union legislator (or the Authority) would have wished to jeopardise the protection guaranteed, in particular to undertakings, by other provisions, which in there case at hand are provisions of primary law.

17. One of the main principles that applies when interpreting acts of legislation is that of preserving the unity of the legal order and making sure that they do not contain

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[17] *Varec*, at para.48.

[18] Conclusions of Advocate General Cruz Villalón of 8 December 2011 in Case C-477/10 P, *Commission v Agrofert*.

contradictory provisions. If contradictions may appear to exist at first sight, they need to be straightened out by means of a harmonious interpretation.

18. Similar to Regulation 1049/2001, the Authority's rules on access to documents are rules of a general nature which, in accordance with their Article 2 (3), apply to all documents acquired by the Authority in all sectors of its activity. The limitations to the right of access, enacted in order to protect public or private interests, were intentionally drafted in broad terms, precisely, to apply the very different situations that could occur in practice. Therefore, they have to be interpreted in such a way as to protect the legitimate interests (public or private), in all the spheres of activity of the Authority and, *a fortiori,* when these interests benefit from an explicit protection in accordance with other provisions of EEA law.

19. Indeed, since legal rules constitute instructions addressed to the citizens and to public authorities they should not require contradictory behaviour.

20. In its two judgements of 29 June 2010 in Cases C-28/08 P, *Commission v Bavarian Lager*[19], paragraphs 58-59 and 64-65, and C-139/07 P, *Commission v Technische Glaswerke Ilmenau*[20], paragraphs 61 and 63, the Court of Justice confirmed the need to interpret Regulation 1049/2001 in the light of other equally applicable legal acts[21]. Similarly, the Court of Justice has stated in its *API*[22] judgment that the limits to the application of the transparency rules in the field of judicial activities laid down by Article 15(3) TFUE (and former Article 255 EC) and the exception aimed at protecting court proceedings under Regulation 1049/2001 pursue the same objective: "that is to say, they seek to ensure that the exercise of the right of access to the documents of the institutions does not undermine the protection of court

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19 Judgment of 29 June 2010 in Case C-28/08 P, *Commission v The Bavarian Lager Co. Ltd,* (hereafter, "*Bavarian Lager* "), [2010] ECR, I-06055.

20 Judgment of 29 June 2010 in Case C-139/07 P, *Commission v Technische Glaswerke Ilmenau* (hereafter, "*TGI*"), [2010] ECR, I-05885.

21 In these cases, the legal acts concerned are Regulation (EC) N° 45/2001 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 L 8, 12.1.2001, p. 1) and Regulation (EC) n° 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83; 27.3.1999, p. 1.

22 Judgment of the Court of Justice of 21 September 2010, joined Cases C-514/07 P, C-528/07 P and C-532/07 P, *Sweden, API and Commission* (hereinafter "*API*"), not yet reported, at para. 84.

proceedings". Thus the Court of Justice confirmed the need for a harmonious interpretation of the applicable law.

21. In the present instance, a coherent interpretation of the rules on access to documents and Protocol 4 requires, in the Commission's view, the existence of a general presumption according to which the documents gathered by the Authority during a cartel inspection are covered by one or more exceptions to the right of access to documents.

22. Leaving aside that the Authority could, in the Commission's view, have rejected the Application on the basis of a general presumption, it nevertheless undertook a concrete and individual examination of the documents requested by the Applicant and has consulted Norway Post pursuant to Article 4(4) of the Rules on access to documents with the result that certain documents were disclosed while others were refused. Consequently, the Authority did not infringe its rules on access to documents by the adoption of the contested decision but even went beyond what was legally required.

3. THE APPLICANT'S FIRST PLEA

23. By its first plea, the Applicant submits that the Authority misapplied Article 4(1)(b) of the Rules on access to documents.

24. The Commission would underline in this regard that the narrow interpretation of this exception submitted by the Applicant in paras. 14 to 20 of the Application was rejected by the Court of Justice in its judgment in *Bavarian Lager* in which it interpreted the equivalent exception contained in Regulation 1049/2001. It is important to point out, in this regard, that according to the European Court of Human Rights professional activities of individuals cannot be excluded from the protection afforded to personal data[23].

25. The Commission contends that since the documents were collected from lockers, offices and computers of individual employees of Norway Post they might fall under

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[23] See European Court of Human Rights judgments *Niemietz v Germany*, judgment of 16 December 1992, Series A no 251-B, §29; *Société Colas Est and Others v France*, no 37971/97, §41, ECHR 2002-III; and also *Peck v The United Kingdom* no 44647/98, §57, ECHR 2003-I.

the exception provided for under Article 4(1)(b) of Regulation 1049/2001 and, therefore, under the equivalent exception of the Authority's rules on access to documents, if they contain personal data. According to the description in the contested decision, the Commission believes that this is the case.

26. However, even if *quod non*, the exception relating to the privacy/integrity of an individual under Article 4(1)(b) was not applicable to all documents concerned, this would not result in their disclosure since they are still covered by other exceptions. Therefore, the Commission considers that the Applicant's pleas and arguments in this regard are not capable of questioning the lawfulness of the contested decision.

4. SECOND PLEA: ALLEGED MISAPPLICATION OF THE EXCEPITON PROVIDED FOR UNDER ARTICLE 4(2), FIRST INDENT

27. According to the Applicant, the Authority failed to establish a threefold test (para. 33 of the Application): "(i) the documents must concern "commercial interests", (ii) a disclosure of the documents must have the capability to "undermine" those interests, and (iii) there must not be an "overriding public interest" in disclosure".

28. In the Commission's view, because the documents at stake were collected during an inspection and relate to the business activities of Norway Post, such documents are manifestly covered by the exception "commercial interests". The interpretation of this exception in the context of a competition investigation is inextricably linked to the obligation of professional secrecy provided for in Article 28 of Protocol 4, as explained above. As suggested by Advocate General Cruz Villalón's conclusions in *Agrofert*,

> *67. [...] the protection of commercial interests as a basis for the exception to access provided for in Regulation No 1049/2001 must be interpreted in the light of the Merger Regulation, and must therefore support the general presumption that disclosure of the documents supplied by an undertaking to the Commission in the course of a merger procedure is capable of adversely affecting its commercial interests.*

29. Given that the documents were acquired in the course of a competition investigation and are therefore presumed to be covered by the exception resulting from the need to protect commercial interests, there was no need to assess the documents individually in the first place. In view of the fact that the Authority nevertheless checked the

documents individually and consulted Norway Post to verify that their disclosure would indeed undermine the company's commercial interests, the Authority cannot be accused of having drawn wrong conclusions in this respect

30. The Applicant contents that the case law appears reluctant to accept that the notion of "commercial interests" extends beyond the traditional scope of business secrets (para. 34 of the Application).

31. This contention is contradicted by case-law interpreting Regulation 1049/2001 and in other areas[24].

32. Finally, regarding the applicant's contention that the documents "may well be more than 11 years old" (para. 36), the Commission refers to Article 4(7) of the rules on access to documents according to which the exception relating to commercial interests may continue to apply after a period of 30 years. With regard to the protection *ratione temporis* of documents covered by the exception relating to commercial interests under Regulation No 1049/2001 Advocate General Cruz Villalón states the following in his conclusions in *Agrofert*:

> *78. In my opinion, the fact that a document remains 'sensitive' for longer is a fundamental element in the architecture of the system of exceptions already established in Article 4 of Regulation No 1049/2001. Thus, documents which have been drawn up for internal use in a procedure (paragraph 3) are protected until the procedure is concluded, but only those documents which contain opinions continue to be protected even after the procedure has come to an end. In the latter case, the exception will apply, in common with all the exceptions contained in Article 4, 'for the period during which protection is justified on the basis of the content of the document' (paragraph 7). In accordance with Article 4(7), that period may be extended for a maximum of 30 years. However, that maximum period may be extended, 'if necessary', for three types of documents: those 'covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents' (paragraph 7).*
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> *79. Commercial interests therefore warrant greater protection ratione temporis under the rules of access set out in Regulation No 1049/2001. [...].* (emphasys added).

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[24] E.g. T-380/04, *Terezakis v Commission*, at para. 57; joined Cases T-355/04 and T-446/04, *Co-Frutta v Commission*, at paras. 127-128; T-88/09, *Idromacchine*, at para. 60 (good reputation represents a commercial value).

5. THIRD PLEA: ALLEGED INFRINGEMENT OF ARTICLE 4(2) 3RD INDENT

33. The Commission agrees with the Authority in that disclosure of the requested documents would be capable of undermining the exception relating to the purpose of inspections/investigations. Indeed, the Commission considers that the protection of commercial interests and the purpose of inspections/investigations are narrowly intertwined in a cartel procedure. This follows from the fact that obtaining business secrets or other commercially sensitive information is essential for the enforcement of competition rules. Such information does not lose its confidential nature when the administrative procedure is closed. Indeed, as indicated above, commercial interests may be protected even after thirty years pursuant to Article 4(7) of the rules on access to documents. Consequently, as the Commission, the Authority must preserve its files from unauthorised access also in closed cartel cases. If the termination of the procedure would automatically result in the inapplicability of the exceptions, undertakings would no longer be willing to cooperate with the Commission in such proceedings. If undertakings participating in the procedure no longer trusted in the Authority's capacity to protect their right to confidentiality and rights of defence, future competition investigations (and possibly even investigations of a different kind) would be rendered virtually impossible.

34. It must be observed in this regard that the "investigations" exception is deemed to protect "the **purpose** of investigations, inspections and audits". Had the Union legislator and the Authority intended to limit its application only to a specific investigation and only for as long as the investigation is ongoing, it would certainly have drafted the exception accordingly, e.g. "*The [institutions] Authority shall refuse access to a document where disclosure would undermine the protection of: an ongoing investigation, inspection and audit*".

35. In any event, since Decision 322/10/COL of 2010 has been challenged and, at the moment of adoption of the contested decision, this Court has not ruled on the matter, the Commission considers that the investigation cannot be considered closed.

36. No different conclusion can be derived from the judgment of the Court of Justice in *MyTravel*[25] since this judgment concerns different exceptions, namely, the

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[25] Case C-506/08 P *Sweden, Commission* and *MyTravel*, judgment of 21.07.2011, not yet reported.

protection of the decision-making process and legal advice in matters definitively settled.

37. Consequently, the Commission considers that the Authority's reliance on the exception "purpose of investigations" is lawful and, therefore, the Applicant's plea and arguments are wholly unfounded.

6. PARTIAL ACCESS

38. Both in the contested decision and in the Defence, the Authority states that it has examined each document individually in order to assess whether it could grant partial access and found that only certain meaningful parts of these documents were not covered by the exception relating to "commercial interests". The Authority therefore concluded that the administrative burden entailed by drawing up non-confidential versions of the inspection documents would be disproportionate.

39. The Commission considers that the *Hautala*[26] case-law of the Court of Justice entirely supports the Authority's way of proceeding and conclusion.

40. Therefore, the Authority did not infringe Article 4(6) of the Rules on access to documents.

41. In conclusion on this matter, the Commission considers that the Authority lawfully refused to grant partial access to the documents concerned.

7. OVERRIDING PUBLIC INTEREST

42. The Applicant contends that there is an overriding public interest in disclosure (paragraphs 52 to 59 of the Application). In this respect, the Commission points out that the Court of Justice has confirmed that in administrative matters the need for transparency does not carry the same weight as in legislative matters[27]. Furthermore, the Applicant is essentially invoking a personal and individual interest in seeking access. As the Court of First Instance stated in *Franchet and Byk*[28], such an

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[26] Case C-353/99 P, *Council v Hautala*, [2001] ECR, I-9565, at para. 30.

[27] *TGI*, at para. 60; *API*, at para. 77.

[28] Joined Cases T-391/03 and T-70/04, *Franchet & Byk* v Commission, [2006] ECR, II-2023, at para.136-139.

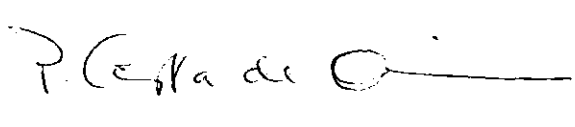
individual interest is not decisive for the purpose of assessing the existence of an overriding interest, indeed it is irrelevant.

43. In support of if its contention, the Applicant refers to para. 28 of the *Pleiderer* judgment of the Court of Justice. However, in that judgment the Court of Justice examined the possibility of granting access to certain documents of a cartel file under German law which provides for special safeguards to protect the information providers' interest in confidentiality. Under the rules on access to documents no equivalent protection exists. Moreover, a decision to grant access has *erga omnes* effect i.e. the information disclosed becomes publicly available without any restrictions.

44. In the light of the above, the existence of an overriding public interest in the disclosure of the documents concerned has not been demonstrated by the Applicant. Since, as stated in the contested decision, the authority did identify an interest of that kind, it must be considered that such overriding public interest does not exist.

8. CONCLUSION

45. For the reasons given above, it is respectfully submitted that the Court should dismiss the application as being unfounded.



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