



EUROPEAN COMMISSION

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2019/3863**

Dear ██████████,

I refer to your letter of 29 July 2019, registered on the same day, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

**1. SCOPE OF YOUR REQUEST**

In your initial application of 5 July 2019, addressed to the Directorate-General for Competition, you requested access to ‘the non-confidential versions of the Commission’s Decisions in Case COMP/40135 Forex (Forex Express) [and] (Three Way Banana Split), [... and] Summary of the Commission’s Decisions in Case COMP/40135 Forex (Forex Express) [and, respectively] (Three Way Banana Split)’.

The European Commission has identified the following documents as falling under the scope of your request:

- A non-confidential version of the Commission’s Decision in Case COMP/40135 Forex (Forex Express) (hereafter ‘document 1’), and

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

- A non-confidential version of the Commission's Decision in Case COMP/40135 Forex (Three Way Banana Split) (hereafter 'document 2').

In its initial reply of 29 July 2019, the Directorate-General for Competition informed you that it was not able to identify any documents as falling within the scope of your request, as the versions you requested did not exist at that time.

In your confirmatory application, you request a review of this position. You underpin your request with detailed arguments, which I will address in the corresponding section below.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I can inform you that full access is granted to documents 1 and 2.

As regards your request for the summaries of the two Decisions in Case COMP/40135 Forex, we understand your request to cover the versions of the summaries adopted by the Commission. Please note that the Commission services are currently working to establish these summaries. Therefore, the summaries that you request do not yet exist and the Commission is not in a position to handle your request.

Indeed, as specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission*



Enclosures: (2)