



EUROPEAN COMMISSION

Competition DG

The Director General

Brussels, 17/02/2022

COMP/A5/LJ

Mr Max Bank
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Subject: Your application for access to documents pursuant to Regulation (EC) No. 1049/2001 – GestDem No 2022/0097

Dear Sir,

I refer to your application of 6 January 2022, registered under GESTDEM number 2022/0097, in which you request access to documents in accordance with Regulation (EC) No. 1049/2001¹ ("Regulation 1049/2001").

1. DOCUMENTS CONCERNED

In your application, you request access to:

- *“All documents - including minutes, notes, operational conclusions, lines to take, e-mails, and presentations - related to the meetings members of DG Competition have held with interest representatives on the EU-U.S. Joint Technology Competition Dialogue since 01 September until today;*
- *All correspondence (i.e. any emails, correspondence, telephone call notes, and/or text messages including WhatsApp exchanges) between members of DG Competition and interest representatives on the EU-U.S. Joint Technology Competition Dialogue since 01 September until today”.*

I considered that your request covers the period from 1 September 2021 to 6 January 2022.

¹ Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L145 of 31.5.2001, p. 43.

The Joint Statement (i.e., the operational conclusions of the December 2021 high-level meeting) of the EU-US Joint Technology Competition Policy Dialogue (“Joint Dialogue”) is available publicly².

As regards the remainder of your request, following relevant documents were identified as falling under the scope of the request under Regulation 1049/2001:

- 1) *Briefing prepared by Directorate General for Competition for the participation of the Executive Vice-President Vestager in the launch of the EU-US Joint Technology Competition Policy Dialogue in Washington, DC, on 7 December 2021;*
- 2) *Briefing prepared by Directorate General for Competition for the participation of the Director General for Competition Olivier Guersent in the launch of the EU-US Joint Technology Competition Policy Dialogue in Washington, DC, on 7 December 2021;*
- 3) *Mission report prepared by the EU Delegation in the US following the visit of the Executive Vice-President Vestager to Washington, DC, on 6-9 December 2021.*

Having examined the three identified documents in the light of Regulation 1049/2001, I have come to the conclusion that the documents fall under the exception of Article 4(1)(a), third indent of Regulation 1049/2001. Access to these documents, therefore, has to be refused. Please find below the reasons of the refusal.

2. APPLICABLE EXCEPTION

Article 4(1)(a), third indent, protection of the public interest as regards international relations

Pursuant to Article 4(1)(a), third indent of Regulation 1049/2001, the Commission shall refuse access to documents where its disclosure would undermine the protection of the public interest as regards international relations.

In assessing whether disclosure to the public of a document would undermine the interests protected by that provision the Commission has a wide discretion³.

The documents that fall under the scope of your request relate to the first high-level meeting of the EU-US Joint Technology Competition Policy Dialogue among the heads of the three competition authorities (the European Commission, the US Department of Justice, and the US Federal Trade Commission). The EU and the US announced the Joint Dialogue in spring 2021 and officially launched it in December 2021 with the aim to deepen the cooperation among the EU and the US competition authorities in the technology sector.

² Please see: https://ec.europa.eu/competition-policy/system/files/2021-12/EU-US_Joint_Dialogue_Statement_12.6.21_1.pdf

³ Judgment of the Court of Justice of 3 July 2014 in Case C-350/12 P *Council v In 't Veld*, EU:C:2014:2039, paragraph 63, and judgment of the General Court of 25 November 2020 in case T-166/19 *Bronckers v European Commission*, EU:T:2020:557, paragraph 62.

In particular, the briefings prepared for this event contain information about ongoing competition law enforcement cases. They also formulate directions that the Commission plans to pursue in the enforcement of competition rules in the technology sector and in the Joint Dialogue. The mission report contains information about the directions of alignment on policy and – especially – the enforcement of the competition rules in the technology sector.

It has been publicly announced that the Joint Dialogue will focus on competition policy matters and enforcement in the tech sector. The Joint Statement for that matter summarized the main messages that the EU and the US competition authorities considered relevant and sufficient to inform the public on the work of the Joint Dialogue.

Disclosing information beyond that Joint Statement, such as the information contained in the relevant documents, would negatively affect the mutual trust between the EU and the US enforcement agencies and would risk undermining the international relations between the EU and the US. The mutual trust between the EU and the US in the field of competition enforcement has been built in more than 30 years of cooperation, and the Joint Dialogue aims to deepen that trustful cooperation.

It shall be noted that the way in which the authorities of a third country perceive the decisions taken by the European Union is an important component of the relations established with that third country. The quality of our relations with third countries depend on that perception.

Having the above in mind, I consider that public disclosure of the listed documents would negatively affect both the ability of the European Commission to pursue efficient and trust-based relations with the United States in the context of the EU-US Joint Technology Competition Policy Dialogue, and to effectively promote the interests and priorities of the EU in the context of the ongoing cooperation on competition enforcement in technology sector. I consider that risk as reasonably foreseeable and non-hypothetical, as by publicly disclosing the approaches and strategies as regards the future enforcement of the competition rules in the technology sector on both sides of the Atlantic would weaken the ability of the authorities to efficiently enforce those rules.

In view of the foregoing, the requested documents are covered in their entirety by the exception related to the protection of the public interest as regards international relations, set out in Article 4(1)(a), third indent of Regulation 1049/2001.

3. PARTIAL ACCESS

I have also considered the possibility of granting partial access to the documents for which access has been denied in accordance with Article 4(1)(a), third indent of Regulation 1049/2001.

However, no meaningful partial access is possible once all parts of the document protected by Article 4(1)(a), third indent (protection of the public interest as regards international relations) are redacted.

4. MEANS OF REDRESS

You are entitled to make a confirmatory application requesting the Commission to review this position in accordance with Article 7(2) of Regulation (EC) No 1049/2001.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu.

Yours faithfully,

[e-signed]

Olivier GUERSENT