



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

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CONNECT/R4

Mr Peter Teffer
EUobserver
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Advance copy via email:

ask+request-5887-270d77c0@asktheeu.org

REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents- Ref GestDem 2018/4613

Dear Mr Teffer,

We refer to your e-mail dated 29 August 2018 in which you make a request for access to documents, registered on the same date under the above mentioned reference number. We also refer to our holding reply dated 18 September 2018, our reference Ares(2018)4784454, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation (EC) No 1049/2001 on public access to documents (hereinafter 'Regulation 1049/2001').

1. SCOPE OF YOUR APPLICATION

You request access to the following:

- *All documents related to the 20-1-2016 meeting between commissioner Günther Oettinger and the Boston Consulting Group GmbH, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations*
- *All documents related to the 19-10-2017 meeting between Alina-Stefania Ujupan and 5G Automotive Association, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations*

– All documents related to the 8-12-2017 meeting between Alina-Stefania Ujupan and Mobivia, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations

– All documents related to the 24-1-2018 meeting between Maximilian Strotmann and Scania, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations

– All documents related to the 20-2-2018 meeting between Alina-Stefania Ujupan and Scania, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations

– All documents related to the 20-3-2018 meeting between Carl-Christian Buhr and Qualcomm, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

Your application concerns the following documents:

- Meeting between Commissioner Günther Oettinger and the Boston Consulting Group GmbH (20-01-2016)

1. Email dated 17/12/2015 concerning the meeting request - Ares(2015)5968565 (Document No 1)

2. Revolution in the Driver's Seat-The Road to Autonomous vehicles- BCG (Document No 2)

3. Revolution versus Regulation-The Make-or-Break-Questions about autonomous vehicles-BCG (Document No 3)

- Meeting between Alina-Stefania Ujupan and 5G Automotive Association (19-10-2017)

4. Mail dated 2/10/2017 concerning the meeting request - Ares(2017)4788484 (Document No 4)

5. 5GAA Presentation - Ares(2018)4604307 (Document No 5)

6. BTO Meeting the 5GAA- Ares(2018)4604437 (Document No 6)

7. 5GAA Position Paper- Ares(2018)4603926 (Document No 7)

8. Handwritten notes of the meeting- Ares(2018)4604546 (Document No 8)

-Meeting between Alina-Stefania Ujupan and Mobivia (08-12-2017)

9. Mobivia Corporate Presentation 2017 - Ares(2018)4606137 (Document No 9)

10. Mobivia Position paper UE - Ares(2018)4606213 (Document No 10)

11. BTO Meeting with Mobivia - Ares(2018)4606256 (Document No 11)

- Meeting between Maximilian Strotmann and Scania (24-1-2018)

12. Email exchanges concerning meeting request – Ares(2018)4606782 (Document No 12)

- Meeting between Alina-Stefania Ujupan and Scania (20-2-2018)

13. Email dated 20-12-2017 concerning meeting request - Ares(2018)4607232 (Document No 13)

14. CAB Gabriel meeting Scania Board- Ares(2018)4607322 (Document No 14)

15. Handwritten notes - Ares(2018)4607461 (Document No 15)

-Meeting between Carl-Christian Buhr and Qualcomm (20-3-2018)

16. Email dated 01/02/2018 concerning the meeting request - Ares(2018)672174 (Document No 16)

17. BTO Carl-Christian Buhr meeting with Qualcomm - Ares(2018)1623567 (Document No 17)

3. ASSESSMENT UNDER REGULATION 1049/2001

Having examined all the documents falling within the scope of your request under the provisions of Regulation 1049/2001 and taking into account the consultation of third parties, we have arrived at the conclusion that full disclosure can be granted for four documents; three documents cannot be disclosed and partial access can be granted to all other documents.

A. Full disclosure

Following an examination of Documents No 2, 3, 9 and 10, we have arrived at the conclusion that full disclosure can be granted.

Please note that Documents No 2 and 3 are publicly available via the following links:

http://image-src.bcg.com/Images/BCG-Revolution-in-the-Drivers-Seat-Apr-2015_tcm9-64351.pdf

http://image-src.bcg.com/Images/BCG-Revolution-Versus-Regulation-Sep-2015_tcm9-74389.pdf

Please note that all the documents that can be fully disclosed were received by the European Commission from third parties. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on it. Such documents do not reflect the position of the Commission and cannot be quoted as such.

B. Partial access with only personal data redacted

Parts of the Documents No 1, 7, 11, 12, 13 and 16 contain personal data, in particular names, contact details and functions of the Commission staff or external staff and handwritten signatures.

Pursuant to Article 4(1)(b) of Regulation 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 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 (hereinafter “Regulation 45/2001”)¹.

According to Article 8(b) of Regulation 45/2001, personal data shall be transferred to recipients only if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing a version of these documents in which the personal data have been redacted.

As to the handwritten signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned as it would expose them to the risk of forgery and identity theft.

Please note that some of the documents which are being partially disclosed under this section were received by the Commission from third parties (Documents No 1,7,12,13,16). They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on it. Such documents do not reflect the position of the Commission and cannot be quoted as such.

With respect to document No 11, please note that it was drawn up for internal use under the responsibility of the relevant officials of DG CNECT and the relevant Cabinet. It solely reflects the authors' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer.

C. Partial access based on Article 4(2) and 4(3) of Regulation 1049/2001

Following an examination of Documents No 4,6,14 and 17 and taking into account the feedback received from the third party in relation to Documents No 4 and 6, we have arrived the following conclusions:

- Documents No 4, 6, and 17 can be partially disclosed on the basis of the commercial interests exception laid down under Article 4(2), first indent of Regulation 1049/2001. Further explanation on this is included below in part (i).
- Document No 14 is partially disclosed on the basis of the protection of the decision-making process exception laid down under Article 4(3), second sub-paragraph of Regulation 1049/2001. Further explanation is included below in part (ii).

Certain parts of these documents also contain names, contact details and functions of Commission staff or external staff. These constitute personal data that have been expunged for the reasons set out under Section 3B above.

¹ Official Journal L8 of 12.1.2001,p.1 See also Judgment of the Court of Justice of the EU of the 29 June 2010 in case 28/08P, *Commission/ The Bavarian Lager Co. LTD*, ECR 2010 I-06055.

Please note that Document No 4 was received by the Commission from a third party. It is disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on it. It does not reflect the position of the Commission and cannot be quoted as such.

With respect to Documents No 6, 14 and 17, please note that these were drawn up for internal use under the responsibility of the relevant officials of DG CNECT and the relevant Cabinet. They solely reflect the authors' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer.

(i) Partial access based on Article 4(2) first indent of Regulation 1049/2001 (Protection of commercial interests)

Article 4(2) first indent of Regulation 1049/2001 provides that *the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property...unless there is an overriding public interest in disclosure.*

Parts of the Documents No 4, 6, and 17 contain sensitive commercial information.

Part of the Document No 4 is information allowing conclusions on the intent of 5GAA and thus its future actions. Disclosing the intended topic of the meeting would undermine the protection of 5GAA's commercial interests.

Parts of the Document No 6 contain points made by the third parties that participated in the meeting and their expressed views. These views allow for conclusions on the respective third party's opinion on the subject matter. Such information alone may be used to predict the party's future business behaviour and thus allow competitors to prepare accordingly. This information was given during a non-public meeting and is confidential and commercially sensitive.

Parts of No 17 contain information which Qualcomm shared with the Commission services relating to its strategy and views regarding its competitors and potential customers which could undermine its commercial interests, if publicly released.

Based on the foregoing we consider that there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the commercial interests of the parties concerned.

(ii) Partial access based on Article 4(3) second subparagraph of Regulation 1049/2001 (Protection of the decision-making process)

The second subparagraph of Article 4(3) of Regulation 1049/2001 provides that *[a]ccess to a document, containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*

Parts of document No 14 contain preliminary views and reflections of the Commission services concerning the Electronic Communications Code and the General Data Protection Regulation (GDPR).

Disclosure of this part of the document could cause significant damage to the Commission's functioning and internal decision-making process. Disclosure of preliminary opinions would deter Commission staff and officials from putting forward their views independently and without being unduly influenced by the prospect of wide disclosure exposing the Commission. The effective decision-making process within the Commission would thus be seriously undermined should the specific part of the document be disclosed.

D. Non-Disclosure

We regret to inform you that access to Documents No 5, 8, 15 cannot be granted as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

Following an examination of the abovementioned documents and taking into account the opinion of the third party in relation to Document No 5, we regret to inform you that this document cannot be disclosed as disclosure would undermine the protection of commercial interests of 5GAA, including its intellectual property (Article 4(2) first indent of Regulation 1049/2001). The presentation is intellectual property of 5GAA since the content and design were made by 5GAA. Moreover, it contains commercially sensitive information relating to the 5GAA strategies and positions.

With regard to Commission services' own documents No 8 and 15, their disclosure would undermine the protection of privacy and integrity of the individual (Article 4(1) (b) of Regulation 1049/2001). These documents are handwritten notes and they constitute biometric data. Therefore, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned, as it would expose them to the risk of forgery and identity theft. Please note, however, that the content of these handwritten notes is reflected in Documents No 6 and 14 which are partially disclosed.

We have considered whether partial access could be granted to these documents. However, partial access is not possible considering that the documents concerned are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Articles 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in disclosure but we have not been able to identify such interest.

5. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

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
Secretary-General
Transparency unit SG-B-4
BERL 5/282
1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-Signed)
Roberto Viola

Enclosures: (14)