



Brussels, 25 May 2020

By e-mail:

Mr Johnny Ryan
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Subject: Request for access to documents

Ref.: Your e-mails of 2 April 2020, registered 3 April, under references GestDem 2020/1927 and 2020/1931

Dear Mr. Ryan,

I refer to your email above-mentioned by which you request, under 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 documents¹:

- “documents about the financial cost of legal and related expenses, including permanent staff cost where relevant, to the Commission of defending DG Comp's decision in Case AT.39740 concerning Google Shopping, which included a fine of €2.4 billion”, (registered GestDem 2020/1927);
- “documents about the financial cost of legal and related expenses, including permanent staff cost where relevant, to the Commission of defending DG Comp's decision in Case AT.40099 concerning Google Android” (registered GestDem 2020/1931).

Your requests concern all documents about the legal and related expenses, including permanent staff cost, where relevant, incurred by the Commission to defend its decisions in two competition cases, *i.e.* Cases T-612/17 and T-604/18, which are still pending before the General Court.

In response to your request, I would like to inform you that the Legal Service has not identified any document relating to the financial costs of legal expenses as indicated in your requests. Therefore, in accordance with Article 2(3) of Regulation (EC) No 1049/200001, it is unable to grant any access².

¹ OJ L145, 31.05.2001, page 43.

² « [T]his regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union. »

Please note that the Rules of Procedure of the Union courts provide which are the expenses incurred in judicial proceedings that shall be regarded as recoverable costs³ *i.e.* those incurred for the purposes of the proceedings and which are essential for that purpose.

The Commission has not engaged outside counsel to represent it in Cases T-612/17 and T-604/18 and accordingly it is represented by lawyers who are members of the staff of its Legal Service. As regards the expenses related to the representation of institutions by their own officials before the Union's courts, it is settled case law⁴ that only the expenses that can be separated from the internal activity of an institution are considered to be essential expenses. Consequently, the only costs that can be recovered when an institution is represented by its own officials are those such as the travel and subsistence expenses required by the proceedings. That case law also clarified that remuneration allotted to an official under the staff regulations is the counterpart of the performance of his or her duties, which includes, in connection with representation before the Court, the defence of the interests of the institution which he or she represents.

Furthermore, please be informed that the decisions regarding the costs are given in the judgment or order which closes the judicial proceedings. Since Cases T-612/17 and T-604/18 are still ongoing before the General Court, the question of the allocation of costs is also pending.

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the following address:

European Commission
Secretariat-General
Transparence, Document Management & Access to Documents (SG.C.1)
Berl 7/76
B-1049 Brussels

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

Yours sincerely,

(signed electronically)
Luis ROMERO REQUENA

³ Article 144 of the Rules of the Procedure of the Court of Justice; Article 140 of the Rules of the Procedure of the General Court.

⁴ Order of the Court of Justice of 7 September 1999, C-409/96 P-DEP, *Commission v. Sveriges Betodlares et Henrikson*, paragraph 12, ECLI:EU:C:1999:389; Order of the Civil Service Tribunal of 12 December 2012, Case F-12/10DEP, *Petrus Kerstens v. Commission*, ECLI:EU:F:2012:183, paragraphs 23-26.