

Brussels, 29 July 2020

Mr Emmet Oliver
1 Dalke Court
Barnhill Road
Co Dublin
Ireland

By e-mail:

ask+request-8372-99f6a534@asktheeu.org

Subject: Request for access to documents

Ref.: Your e-mail of 16 July 2020, registered on 17 July, under reference GestDem 2020/4372

Dear Mr. Oliver,

I refer to your application above-mentioned, addressed to Directorate-General for Competition (DG COMP), by which you request, under Regulation (EC) No 1049/2001¹, documents in relation to the State aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Appel, including those regarding the legal costs (registered under reference GestDem 2020/4364).

You request, among other, documents relating which contain the following information:

“The total costs to date of the enforcement action, taken under community State Aide legislation, against Apple Inc, in relation to tax rulings granted by the Irish tax authorities. These legal costs should cover from the inception of the case until the judgment in the general Court.

A breakdown of these legal costs, as per law firm or legal representative, used by the Commission during the case. If in-house counsel were used, a summary of the hours deployed by the counsel on this particular case since its inception and the monetary value of these hours”.

As you were informed, part of your request relating to the legal costs has been transferred to the Legal Service and registered under reference GestDem 2020/4372.

¹ 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 (OJ L145, 31.05.2001, page 43).

The present reply concerns the documents about the legal costs, including permanent staff cost, incurred by the Commission to defend its Decision (EU) 2017/1283 of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) before the General Court in Cases T-778/16 and T-892/16².

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 above. Therefore, in accordance with Article 2(3) of Regulation (EC) No 1049/20001, it is unable to grant any access³.

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 costs⁴ *i.e.* those incurred for the purposes of the proceedings and which are essential for that purpose.

The Commission did not engage outside counsel to represent it in Cases T-778/16 and T-892/16 and accordingly it was 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 law⁵ 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 could be recovered when its own officials represent an institution 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.

For these reasons, no summary of the hours spent by its officials on those cases was prepared, and the Commission is thus not in position to provide you with such a document.

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]
Daniel CALLEJA CRESPO

² Judgement of the General Court of 15 July 2020, Cases T-778/16, *Ireland v. Commission* and T-892/16, *Apple Sales International a.o. v. Commission*, ECLI:EU:T:2020:338.

³ « [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. »

⁴ 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.

⁵ 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.