

EUROPEAN COMMISSION
Competition DG

Director General

Brussels, 19.12.2014
COMP C4/AH/bs-D(2014)127786

Mr Adrian Blanco
Oxford Street, 6 fl
London W1C 2DZ
United Kingdom

By registered mail

e-mail: ask+request-1620-3468a3c9@asktheeu.org

Subject: Request for access to documents, GestDem reference 2014/5827

Dear Mr Blanco,

I would like to refer to your requests of 3 December 2014, by which you requested access to documents related to the Commission investigations regarding the cases SA.29769, 33754 and 36387.

1. DOCUMENTS CONCERNED

You request access to all non-confidential documents related with the investigations in the cases SA.29769, 33754 and 36387. The documents you request access to are part of ongoing investigations under Article 108 TFEU. No final Commission position has yet been taken.

I regret to inform you that the access to the documents you requested is covered by the exception provided for by the policy relating to access to documents and that it cannot be made available to you.

2. APPLICABLE EXCEPTION

Pursuant to Article 4 (2), third indent, of Regulation 1049/2001 the Commission shall refuse access to a document where its disclosure would undermine the protection of the purpose of inspections, investigations and audits.

Please specify the name of the case and the case number in all correspondence.

This exception aims at protecting the Commission's capacity to ensure that Member States and other third parties comply with their obligations under Community law.

As the Court of Justice has ruled in case *Commission v TGI*¹ there exists, with regard to Article 4(2), third indent, of Regulation 1049/2001, a general presumption that disclosure of documents in the administrative files in State aid procedures in principle undermines the protection of the purpose of investigations. The Court reasoned that this follows from the fact that under the State aid procedural rules the interested parties, other than the Member State concerned, have no right to consult the documents in the administrative file and should such access be granted under Regulation 1049/2001 the nature of the procedure is likely to be modified and thus the system for review of State aid would be called into question.

The documents to which you request access are part of the State aid file in the ongoing State aid procedures mentioned above. Thus, in accordance with the *Commission v TGI* case law, the requested documents are covered by the above presumption unless the applicant demonstrates otherwise. In your letter you have not demonstrated that certain documents are not covered by the general presumption.

Moreover, the procedures at hand are based on an investigation of the Commission which must be carried out in co-operation with the national authorities. Disclosure of the exchanges between the Commission and the national authorities could prejudice this cooperation and thus undermine the purpose of the Commission's investigation.

In view of the above I consider that the documents requested are manifestly covered by the exception related to the protection of the purpose of investigations.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Pursuant to Article 4(2) of Regulation 1049/2001, and according to the *Commission v TGI* case law, the general presumption that access to the requested documents would undermine the purpose of investigations may be superseded by an overriding public interest in disclosure. Furthermore, an overriding public interest must be objective and general in nature and must not be indistinguishable from individual or private interests.

In your application, you have not put forward any arguments leading to identify an overriding public interest in disclosure. The Commission has not itself identified such overriding public interest. Consequently, the prevailing interest in this case rather lies in protecting the effectiveness of the Commission's State aid investigation.

4. MEANS OF REDRESS

If you want this position to be reviewed you should write to the Commission's Secretary-General, at the address below, confirming your initial request. You have 15 working days in which to do so from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

¹ Case C-139/07 P *Commission v TGI* paragraph 61.

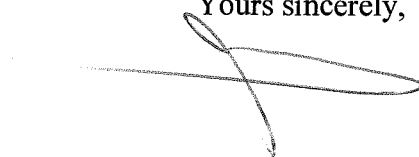
² Case 139/08 P *TGI v Commission*.

The Secretary-General will inform you of the result of this review within 15 working days from the registration of your request, either granting you access to the document or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to the following address:

European Commission
Secretary-General
Transparency unit
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke and a vertical stroke that crosses the horizontal one.

Alexander ITALIANER