



EUROPEAN COMMISSION  
Directorate-General for Communications Networks, Content and Technology  
Director-General

Brussels,  
CONNECT/R4

**Ms. Margarida da Silva**  
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**REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT**

**Subject: Your application for access to documents – Ref GestDem No 2018/1960**

Dear Ms da Silva,

I refer to your access to documents application received and registered on 5 April 2018 under the above mentioned reference number. I also refer to our holding reply dated 25 April 2018, our reference [Ares\(2018\)2199101](#), 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**

In your application, you request access to all exchanges (i.e. any emails, correspondence, meeting notes or telephone call notes) held by the Directorate-General for Communications Networks, Content and Technology (DG CNECT) with FairSearch and any intermediaries representing its interests.

**2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST**

Your application concerns the following documents:

1. Briefing prepared by the European Commission for a meeting organized with FairSearch on 12 September 2013 ([our ref. Ares\(2018\)2540353](#));

2. FairSearch letter dated 21 November 2013 addressed to the Cabinet of the former European Commissioner for Digital Agenda and Vice President of the European Commission, Ms. Neelie Kroes (hereinafter, 'Kroes Cabinet') ([our ref. Ares\(2018\)2540283](#));
3. Email of 6 February 2014 received from FairSearch concerning the Key Weaknesses of the Google Commitments (including two attachments: (i) Letter from FairSearch dated 6 February 2014) and (ii) Foundem Initial response to third Google Proposals ([our ref. Ares\(2018\)2540105](#));
4. Email of 11 February 2014 received from FairSearch (including one attachment: (i) Letter from FairSearch dated 11 February 2014) ([our ref. Ares\(2018\)2553371](#));
5. Email of 13 June 2014 received from FairSearch, requesting a meeting with DG CNECT (which was held on 4 July 2014) ([our ref. Ares\(2018\)2574061](#));
6. Minutes for the meeting held between FairSearch and DG CNECT on 4 July 2014 ([our ref. Ares\(2018\)2553661](#));
7. Thank you email of 4 July 2014 received from FairSearch following the meeting of 4 July 2014 (including 5 attachments: (i) FairSearch paper of March 2014 on studies substantiating Google Abuses; (ii) FairSearch paper of April 2014 on key issues in the Google case; (iii) Presentation on additional Google revenue from settlement; (iv) December 2013 paper by Profs Franklyn and Hyman; (v) Letter from FairSearch of 7 April 2014 on Google's proposed commitments ([our ref. Ares\(2018\)2554324](#));
8. Email correspondence with FairSearch following a request for a meeting with the Kroes Cabinet (correspondence ongoing between March and September 2014) ([our ref. Ares\(2018\)2554432](#));
9. Letter received from FairSearch, dated 24 April 2015, requesting a meeting with the Cabinet of the European Commissioner for Digital Single Market and Vice President of the European Commission, Mr. Andrus Ansip (hereinafter, 'Ansip Cabinet') ([our ref. Ares\(2018\)2573713](#));
10. Email of 24 April 2015 received from FairSearch concerning 'Competition and Platforms' and requesting a meeting with the Ansip Cabinet (including one attachment: (i) Background Document prepared by DG CNECT for meeting held with FairSearch on 17 June 2015) ([our ref. Ares\(2018\)2573460](#));
11. Informal Minutes for the meeting held between FairSearch and the Ansip Cabinet on 17 June 2015 (for which DG CNECT was also present) ([our ref. Ares\(2018\)2573779](#)).

### 3. ASSESSMENT UNDER REGULATION 1049/2001

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents (hereinafter "Regulation 1049/2001"), I have come to the conclusion that they may be partially disclosed. Some parts of the documents have been redacted as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

Since some of these documents originate from third parties, the latter have been consulted pursuant to Article 4(4) of Regulation 1049/2001.

a) **Full disclosure**

Following an examination of documents No. 1, 3 (Attachment 2), 7 (Attachments 1 and 4) and 10 (Attachment) and taking into account the consultation of third parties (with respect to those documents for which they are third party authors), we have come to the conclusion that the disclosure of these documents can be fully granted.

With respect to those documents specified in this section which originate from third parties, please note that these are disclosed for information only and cannot be reused without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

With regard to documents produced by the Commission or on its behalf, you may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

b) **Partial disclosure of documents only expunged of personal data**

Documents 2, 5, 6, 8, 9, 10 (Email) and 11 contain personal data, in particular names, functions and contact details. Following an examination of these documents and taking into account the consultation of third parties (with respect to those documents for which they are third party authors), we have come to the conclusion that all these documents may be partially disclosed, only expunged from personal data.

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")<sup>1</sup>.

When access is requested to documents containing personal data, Regulation 45/2001 becomes fully applicable<sup>2</sup>.

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<sup>1</sup> Official Journal L 8 of 12.1.2001, p. 1

<sup>2</sup> Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, *Commission/The Bavarian Lager Co. Ltd*, ECR 2010 I-06055.

According to Article 8(b) of Regulation 45/2001, personal data shall only be transferred to recipients 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, with the information available, 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 the specified documents in which these personal data have been redacted.

Also, Document No. 10 (Email of 24 April 2015 received from FairSearch concerning 'Competition and Platforms' and requesting a meeting with the Ansip Cabinet) contains data which does not fall within the scope of your access to documents application. Therefore, we are disclosing a version of the documents requested in which this data has been redacted.

Concerning documents produced by the Commission or on its behalf, you may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

With respect to documents containing minutes or a summary record of a meeting with external parties, please note that this was drawn up for internal use under the responsibility of the relevant officials of DG CNECT. It solely reflects the authors' interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which were not consulted on its content. Also, with respect to informal documents, please note that these are preliminary drafts which do not reflect the position of the Commission and cannot be quoted as such.

With respect to those documents specified in this section which originate from third parties, please note that these are disclosed for information only and cannot be reused without the agreement of the originator, who holds a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application (following the procedure specified at the bottom of this letter) requesting the Commission to review this position.

c) **Non-disclosure**

Documents No. 3 (Email and Attachment 1), 4 (Email and Attachment) and 7 (Email and Attachments 2, 3 and 5) originate from the FairSearch Association which has objected to their disclosure. FairSearch considers that the disclosure of these documents would undermine the protection of court proceedings and legal advice under Article 4(2), second indent, of Regulation 1049/2001. More specifically, FairSearch considers that the specified documents are directly related to the ongoing proceedings before the General Court in Case T-612/17<sup>3</sup> and that the disclosure of such documents would affect the proper and fair conduct of these proceedings.

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<sup>3</sup> Case T-612/17 - *Google and Alphabet v Commission* (Action brought on 11 September 2017)

FairSearch also considers that the disclosure of the specified documents would undermine the protection of the purpose of inspections, investigations and audits under Article 4(2), third indent, of Regulation 1049/2001. More specifically, FairSearch refers to the ongoing investigation into Google's comparison shopping service in the aforementioned Case T-612/17 and Google's compliance with the Commission Decision of 27 June 2017 (Anti-Trust Case No. 39740 – Google Search (Shopping))<sup>4</sup> which is currently being reviewed by the European Commission.

Following an examination of the specified documents and taking into account the consultation of FairSearch Association, we regret to inform you that your application cannot be granted for these documents, as disclosure is indeed prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

#### **4. PARTIAL ACCESS**

We have considered whether partial access could be granted for documents No. 3 (Email and Attachment 1), 4 (Email and Attachment) and 7 (Email and Attachments 2, 3 and 5) and I have arrived at the conclusion that this is not possible, since the invoked exceptions cover the documents in their entirety.

#### **5. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(2) 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 the disclosure of documents No. 3 (Email and Attachment 1), 4 (Email and Attachment) and 7 (Email and Attachments 2, 3, 5), but we have not been able to identify such an interest. On the contrary, we consider that in this case the public interest is best served through the protection of the proper and fair conduct of ongoing Court proceedings and investigations.

#### **6. 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 the above positions.

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

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<sup>4</sup> [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39740/39740\\_14996\\_3.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf)

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or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Roberto Viola

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