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Press and Information

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Judgment of the Court of First Instance in Case T-2/03

Verein für Konsumenteninformation v Commission

THE COURT ANNULS A COMMISSION DECISION REJECTING IN ITS ENTIRETY A REQUEST FOR ACCESS TO THE ADMINISTRATIVE FILE IN A COMPETITION CASE CONCERNING AUSTRIAN BANKS

Concrete, individual examination of the documents referred to in a request for access is one of the elementary duties of an institution in response to such a request.

By decision of 11 June 2002,¹ the Commission found that eight Austrian banks had participated, over a number of years, in a cartel known as the ‘Lombard Club’ covering almost the whole of Austria (‘the Lombard Club decision’). In the Commission's view, the banks referred to had, within that cartel, inter alia, jointly fixed the interest rates for certain investments and loans. The Commission therefore imposed fines totalling 124.26 million euros on those banks, which included in particular the Bank für Arbeit und Wirtschaft AG (‘BAWAG’).

The Verein für Konsumenteninformation (‘the VKI’) is a consumer organisation constituted under Austrian law which has the right to bring proceedings before the Austrian civil courts in order to assert certain financial claims of consumers, which the latter have previously assigned to it.

The VKI is currently conducting several sets of proceedings against BAWAG before the Austrian courts. In those proceedings, the VKI claims that as the result of an incorrect adjustment of the interest rates applicable to variable-interest loans granted by BAWAG the latter charged its customers too much interest over a number of years.

In that context, the VKI applied to the Commission for access to the administrative file relating to the ‘Lombard Club’ decision.

When the Commission rejected that request in its entirety, the VKI brought an action for annulment of that rejection before the Court of First Instance of the European Communities.

¹ Commission Decision 2004/138/EC of 11 June 2002 relating to a proceeding under Article 81 of the EC Treaty (in Case COMP/36.571/D-1: Austrian banks – ‘Lombard Club’) (OJ 2004 L 56, p. 1)

The VKI submits inter alia that it is incompatible with the right of access to documents and, in particular, with the Regulation regarding public access to European Parliament, Council and Commission documents² to refuse access to the whole of an administrative file without having first actually examined each of the documents contained in the file. In its view, the Commission should, at the very least, have granted it partial access to the file.

The Court of First Instance observes, first of all, that the institution to which a request for access to documents is made under the regulation concerning access to documents is obliged to examine and reply to that request and, in particular, to determine whether any of the exceptions referred to in that regulation is applicable to the documents in question.

The Court then holds that **where an institution receives such a request it is required, in principle, to carry out a concrete, individual assessment of the content of the documents referred to in the request.** However, that approach, to be adopted in principle, does not mean that such an examination is required in all circumstances. Since the purpose of the concrete, individual examination which the institution must in principle undertake in response to a request for access is to enable the institution in question to assess, on the one hand, the extent to which an exception to the right of access is applicable and, on the other, the possibility of partial access, such an examination may not be necessary where, due to the particular circumstances of the individual case, it is obvious that access must be refused or, on the contrary, granted.

In this case, the Court finds that the exceptions relied on by the Commission do not necessarily apply to the whole of the Lombard Club file and that, even in the case of the documents to which they may apply, they may concern only certain passages in those documents.

Consequently, **the Commission was bound, in principle, to carry out a concrete, individual examination of each of the documents referred to in the request in order to determine whether any exceptions applied or whether partial access was possible.**

The Court adds that it is only in exceptional cases and only where the administrative burden entailed by a concrete, individual examination of the documents proves to be particularly heavy, thereby exceeding the limits of what may reasonably be required, that derogation from that obligation to examine the documents may be permissible.

Without ruling definitively on whether the examination required of the Commission in this case is unreasonable, the Court finds that it is not apparent from the reasons for the contested decision that the Commission considered specifically and exhaustively the various options available to it in order to take steps which would not impose an unreasonable amount of work on it but would, on the other hand, increase the chances that the applicant might receive, at least in respect of part of its request, access to the documents concerned.

Consequently, the Court annuls the Commission's decision.

² 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 2001 L 145, p.43).

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: FR, EN, DE

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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