

**Od:** [REDACTED]  
**Odesláno:** pondělí, 12. srpna 2019 9:43  
**Komu:** [REDACTED]  
**Kopie:** [REDACTED]  
**Předmět:** FW: Czech Post - Access to documents request

[REDACTED]

[REDACTED]

(1) See Case C-139/07 P, *Commission v Technische Glaswerke Ilmenau GmbH*, para 58-59

(2) See Case T-456/13, *Sea Handling SPA v Commission*, para 55-58 and 61

[REDACTED]

**Od:** [REDACTED]  
**Odesláno:** pátek 9. srpna 2019 17:22  
**Předmět:** Czech Post - Access to documents request

Dear [REDACTED],

We are writing to you in response to your email of 23 July 2019, in which you consult us on a request for access to documents in accordance with Article 5 of Regulation 1049/2001.

In addition to your argument that the disclosure of the requested documents would risk jeopardising the integrity of Court proceedings, we would note that under the current case law, and in particular the judgment in case C-139/07 P *Commission v Technische Glaswerke Ilmenau* (to which you also refer in your email), all documents in State aid cases are covered by a **general presumption** that their disclosure would undermine the protection of the purpose of investigations. This presumption applies whether or not any State aid procedures are pending before Court. The Court reasoned that the general presumption 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. 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(1). This line of reasoning was upheld by the Court in *Sea Handling* even when it comes to a reduced number of documents pertaining to a State aid file(2).

Moreover, documents forming part of a State aid investigation contain information from which the direction of the investigation, the future procedural steps which the Commission may take, as well as its investigative strategy may be revealed to the public. Such information could easily be misinterpreted or misrepresented as indications of the Commission's possible final assessment in a case. Such misinterpretations and misrepresentations may cause damage to the reputation and standing of the potential beneficiaries investigated, in particular if no decision is adopted establishing a violation of the competition rules.

In view of the above, the requested documents and even disclosing the existence of (pending) State aid cases are, in our view, manifestly covered in their entirety by the exception related to the protection of the purpose of the Commission's State aid investigations set out in Article 4(2), third indent of Regulation 1049/2001.

Pursuant to Article 4(2) of Regulation 1049/2001, the exception to the right of access contained in that Article does not apply if there is an overriding public interest in disclosing the documents requested. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public (as opposed to private interests of the applicant) and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4(2), third indent. As far as we understand, the complainant has not brought forward such an overriding public interest, nor have we identified one ex-officio. It therefore seems that the prevailing interest is the protection of the effectiveness of the Commission's investigations and its decision-making process.

DG COMP considers that under EU law, the documents exchanged between the Commission and the Czech authorities in relation to a State aid procedure are covered by the above presumption and therefore should not be disclosed. Under EU law, the documents sent by the Czech authorities are also covered by the above presumption, and should not be disclosed either.

[REDACTED]

[REDACTED] State aid proceedings are between the Commission and the Member States and it is not our practice to discuss the existence of pending cases or the lack thereof, nor to provide the case number if the former applies. This has already been communicated to Mr [REDACTED], who also approached the Commission with an access to documents request.

In light of the above, we agree with your assessment that the request for access to documents should be rejected.

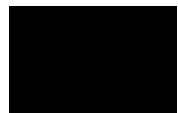
Best regards and have a nice weekend,

Gert

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**Gert Rammeloo**  
Case handler

**European Commission**  
DG COMPETITION  
Unit COMP/F/3



<http://ec.europa.eu/competition>