

Action brought on 12 July 2004 by UPS Europe N.V./S.A. and UPS Deutschland Inc. & Co OHG against the Commission of the European Communities

(Case T-284/04)

(2004/C 251/45)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 July 2004 by UPS Europe N.V./S.A., Brussels, Belgium and UPS Deutschland Inc. & C. OHG, represented by Mr T.R. Ottervanger and Ms A.S. Bijleveld, lawyers.

The applicant claims that the Court should:

- Annul the implied Commission decision to refuse their confirmatory request of 13 April 2004 for access to certain documents;
- Order the Commission to pay the costs of this procedure.

Pleas in law and main arguments:

By a decision dated 20 March 2001 ⁽¹⁾ the Commission decided that Deutsche Post AG had infringed Article 82 of the EC Treaty through its practices in the mail-order parcel sector. It further required Deutsche Post to create a separate commercial parcel services subsidiary as well as a system of transparent and market-based pricing between Deutsche Post AG and that subsidiary. Deutsche Post was required to inform the Commission annually on the fulfilment of these undertakings. Deutsche Post did so by letter of 22 May 2003. The applicants, who are also active in the same business sector, requested and received a non-confidential version of that letter on 22 September 2003. On 20 October 2003 the applicants requested the Commission to grant them access to the average internal transfer prices charged by Deutsche Post to its subsidiary, information which had been blanked out in the non-confidential version of the letter of 22 May 2003. They also requested access to a report and a calculation which, according to the same letter, had been submitted to the Commission on 16 November 2001. The request was made on the basis of Regulation 1049/2001 ⁽²⁾ Official Journal L 145, 31/05/2001, p. 43-48. The applicants repeated their request on 18 November 2003 and made a confirmatory application on 13 April 2004. By letter of 21 April 2004 the Commission acknowledged receipt of the confirmatory application and stated that it was consulting Deutsche Post on the exact scope of the commercially sensitive information in the documents requested. Not having received any further answer, the applicants consider that there is an implied Commission decision to refuse their application for access, and request the Court to annul it.

In support of their application the applicants invoke a breach of Regulation 1049/2001, contending that none of the exceptions of Article 4 apply and that therefore access should have been granted as requested. They also invoke a breach by the Commission of the duty, under Article 253 EC, to state reasons for its decision. The applicants submit that the Commission is in breach of Regulation 1049/2001 also on the grounds that it neither replied within the prescribed time limit nor stated any reasons for refusing to grant access. Finally, they argue that the Commission has violated its own Rules of Procedure as amended by the Commission's decision of 5 December 2001 ⁽³⁾. According to the applicants, the Commission should have finalised its consultation of Deutsche Post and have taken a decision within the 15 day working period.

⁽¹⁾ Commission Decision of 20 March 2001 relating to a proceeding under Article 82 of the EC Treaty (Case COMP/35.141 — Deutsche Post AG) (notified under document number C(2001) 728), OJ L 125 5/5/2001 p. 27.

⁽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.

⁽³⁾ OJ L 345, 29/12/2001 p. 94.

Action brought on 9 July 2004 by the United Kingdom of Great Britain and Northern Ireland against the Commission of the European Communities

(Case T-286/04)

(2004/C 251/46)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 9 July 2004 by the United Kingdom of Great Britain and Northern Ireland, represented by Mr R. Thompson QC and Mr S. Grodzinski Barrister with an address for service in Luxembourg.

The applicant claims that the Court should:

- Annul Article 2 of Commission Decision 2004/451/EC on the clearance of the accounts of Member States' expenditure financed by the European Agricultural Guidance and Guarantee Fund, for the 2003 financial year, notified under document number C(2004) 1699 ⁽¹⁾, insofar as it relates to the accounts of the Rural Payments Agency, the Department of Agriculture and Rural Development, the Forestry Commission and the Countryside Council for Wales;