

Opinion of the Advisory Committee on restrictive agreements and dominant position given at its meeting of 12 March 2012 regarding a draft decision relating to Case COMP/39.793 — EPH and others

Rapporteur: Sweden

(2012/C 316/03)

1. The Advisory Committee agrees with the Commission's qualification of the two incidents relating to the handling of e-mails as a refusal to submit to an inspection according to Article 23(1)(c) of Regulation (EC) No 1/2003.
 2. The Advisory Committee agrees with the Commission that the infringement of Article 23(1)(c) of Regulation (EC) No 1/2003, i.e. the refusal to submit to the inspection, was committed negligently with regard to the unblocking of an e-mail account and intentionally with regard to the diversion of incoming e-mails.
 3. The Advisory Committee agrees with the Commission's assessment that the two incidents relating to the handling of e-mails constitute a single infringement.
 4. The Advisory Committee agrees with the Commission that Energetický a průmyslový holding a.s. and EP Investment Advisors, s.r.o. are each liable for the infringement.
 5. The Advisory Committee agrees with the factors taken into account when calculating the level of the fine for Energetický a průmyslový holding a.s. and EP Investment Advisors, s.r.o. pursuant to Article 23(1)(c) of Regulation (EC) No 1/2003.
 6. The Advisory Committee agrees with the actual level of the fine proposed by the Commission.
 7. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.
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