

From: [REDACTED] <[REDACTED]@google.com>
Sent: mercredi 17 avril 2019 12:06
To: SANTE ACCESS TO DOCUMENTS
Cc: [REDACTED]
Subject: RE: Consultation pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents – Ref No GestDem 2019/1412

Follow Up Flag: Follow up
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Categories: Google

Dear Sir / Madam,

Many thanks for your email of 11 April 2019 to which I am responding [REDACTED]. We appreciate the opportunity to comment on the potential disclosure of documents 7, 9 and 11 (Ares(2018)1188592, Ares(2017)4727016 and Ares(2017)3196268) attached to your email.

We submit that none of these documents qualifies for disclosure under Regulation (EU) 1049/2001. All three documents relate to antitrust investigations (COMP/AT.39740 Google Search (Shopping), COMP/AT.40099 Google Android and COMP/AT.40411 Google Search (AdSense)) and associated court proceedings (T-612/17 and T-604/18) that are ongoing. Under well-established case-law (Judgment of 28 March 2017, Deutsche Telekom AG v Commission, T-210/15), there is a presumption that the disclosure of Commission files relating to antitrust investigations risks undermining (i) the Commission's decision-making process, as well as (ii) the commercial interests of a legal person. The application of this presumption means that the three documents identified are not subject to an obligation of disclosure of their content, in full or in part, in line with Article 4(2) of Regulation (EU) 1049/2001.

In light of the above, as well as the collective responsibility that the College of Commissioners carries for adopting antitrust decisions, we object to the disclosure of the three documents.

Please note that this response is without prejudice to the position Google may take in relation to other documents falling within the scope of this access to documents request lodged with your services, or any future requests.

Also, in order to facilitate your review of any future requests under Regulation (EU) 1049/2001, you may address them directly to me at [REDACTED]@google.com as a central communication point, or alternatively cc me in any communications you send to individuals working at Google.

We remain at your disposal should you have any further questions.

Kind regards,

[REDACTED]

[REDACTED] | [REDACTED] EU Affairs | [REDACTED] [@google.com](mailto:[REDACTED]@google.com) | +32 2 [REDACTED]

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The Google Legal Team is hiring. Visit [here](#) to learn more.

This email may be confidential or privileged. If you received this communication by mistake, please do not forward it to anyone else, erase all copies and attachments, and let me know that it was sent to the wrong person. Thank you.

----- Forwarded message -----

From: <SANTE-ACCESS-TO-DOCUMENTS@ec.europa.eu>

Date: Thu, Apr 11, 2019 at 11:11 AM

Subject: Consultation pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents – Ref No GestDem 2019/1412

To: <[REDACTED]@google.com>

Cc: <SANTE-ACCESS-TO-DOCUMENTS@ec.europa.eu>

Dear [REDACTED],

We have received an application for access to documents made under Regulation (EC) 1049/2001 ("the Regulation"). Please find herewith a copy of the Regulation.

The applicant requests access to several documents which were sent to the Commission by you (Ares(2018)1188592, Ares(2017)4727016 and Ares(2017)3196268).

The general principle of Regulation 1049/2001 is to grant the widest possible access to any document held by an EU-institution which is requested under this Regulation. The institution only refuses disclosure of (a part of) the requested document(s), if disclosure would undermine the protection of a specific interest as laid down in Article 4 of this Regulation.

As regards third-party documents, Article 4, paragraph 4 of Regulation 1049/2001 provides that *the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.*

With a view to handling this application, we invite you to indicate whether you agree with disclosure of the document originating from you or, on the contrary, object to disclosure. In case

you wish to object to disclosure, we kindly ask you to indicate how in your view, disclosure would affect one of the interests protected under Article 4, paragraphs 1 or 2 of Regulation 1049/2001.

Please note in this respect that the personal data of staff who are not the main representative of your organisation, biometric data such as signatures, and contact details of individuals will be redacted by default, with reference to Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001.

In case you consider that the document could be partially released, we would kindly ask you to indicate/mark the parts of the document that should be withheld and to give reasons for redacting them. The document is attached for your convenience.

In order to enable us to reply to the request for access within the prescribed time limit, we would be grateful if you could inform us as soon as possible and in any case within **five working days** upon receipt of this letter, the position of your company as regards the disclosure of the document concerned.

In case we do not receive a reply within the prescribed time-limit, we will take a position on disclosure of the document requested taking account of the legitimate interests of your company on the basis of the information in our possession.

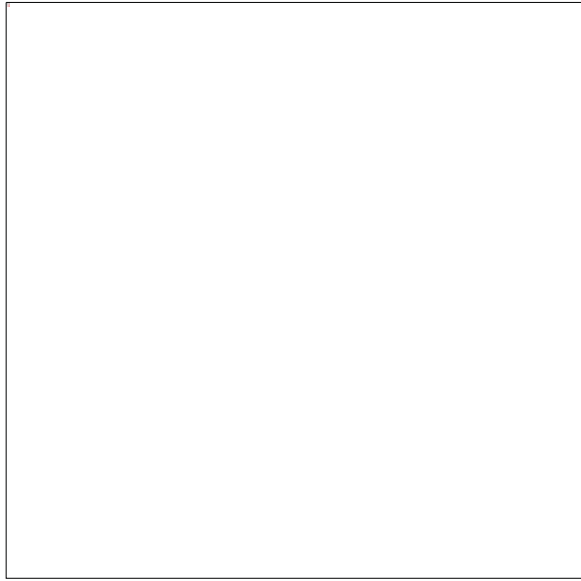
In view of the short period allowed for the Commission's reply under Regulation No 1049/2001, we would be grateful if you could reply e-mail to:

SANTE-ACCESS-TO-DOCUMENTS@ec.europa.eu

Thank you in advance for your assistance.

Yours faithfully,

SANTE ACCESS TO DOCUMENTS



European Commission
Health and Food Safety