

Case T-219/01 R

Commerzbank AG

v

Commission of the European Communities

(Procedure for interim relief — Decision refusing access to certain documents —
Admissibility of the main application)

Order of the President of the Court of First Instance, 5 December 2001 . . . II-3503

Summary of the Order

Applications for interim measures — Suspension of operation of a measure — Interim relief — Conditions governing admissibility — Main action prima facie admissible — Irrelevant — Limits — Application for suspension of operation of a Commission decision refusing the applicant access to certain documents relating to the abandonment of a proceeding in application of Article 81 EC against other undertakings and suspension of the proceeding against itself — Inadmissible

(Arts 81 EC, 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

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In principle, the issue of the admissibility of the main application must not be examined in proceedings relating to an application for interim measures so as not to prejudge the substance of that case. Where, however, it is contended that the main application from which the application for interim measures is derived is manifestly inadmissible, it may prove necessary to establish the existence of certain factors which would justify the *prima facie* conclusion that the main application is admissible.

In the absence of serious evidence enabling the Court to consider that the main application is admissible, an application for interim measures seeking, first, suspension of the operation of a Commission decision refusing the applicant access to certain documents relating to the abandonment of a proceeding in application of Article 81 EC against other undertakings and, second, suspension of the proceeding against itself, must be declared inadmissible.

As to the first head of the application, a decision refusing the applicant access to certain documents relating to the abandonment of a proceeding against other undertakings, is not capable of producing legal effects of such a nature as to affect the applicant's interests immediately, before any decision finding an infringement of

Article 81(1) EC and possibly imposing a penalty on it is adopted.

As to the second head of the application, the judge hearing an application for interim relief cannot in principle accede to a request for interim measures seeking to prevent the Commission from exercising its powers of investigation after the opening of an administrative procedure and even before it has adopted the definitive acts whose operation is sought to be avoided. If such measures were adopted, the judge hearing the interim application would not be reviewing the activity of the defendant institution but assuming the role of that institution in the exercise of purely administrative powers. Consequently, the applicant is not entitled to request under Articles 242 EC and 243 EC that the defendant institution be prohibited, even provisionally, from exercising its powers in the course of an administrative procedure. Such an entitlement could only be recognised if the application were to present evidence from which the judge hearing the interim application could find that there were exceptional circumstances justifying the adoption of the measures requested.

(see paras 20, 41-42, 44)