

Case T-336/04

TVDanmark A/S and Kanal 5 Denmark Ltd

v

Commission of the European Communities

(Confidentiality)

Order of the President of the Fifth Chamber of the Court of First Instance,
1 March 2007 II - 494

Summary of the Order

1. *Procedure — Intervention — Communication of pleadings to interveners — Derogation (Rules of Procedure of the Court of First Instance, Art. 116(2); Instructions to the Registrar of the Court of First Instance, Art. 5(4), first para., Practice Directions of the Court of First Instance to the parties, Section VIII, points 2 and 3)*

2. *Procedure — Intervention — Communication of pleadings to interveners — Derogation*
(Rules of Procedure of the Court of First Instance, Art. 116(2); Instructions to the Registrar of the Court of First Instance, Art. 5(4), first para., Practice Directions of the Court of First Instance to the parties, Section VIII, points 2 and 3)

1. Article 116(2) of the Rules of Procedure of the Court of First Instance lays down the principle that a copy of every document served on the parties must be served on the interveners. It is only by way of derogation therefrom that the second sentence of Article 116(2) permits certain documents to be treated as confidential, thereby exempting them from the requirement that copies be served on interveners.

In addition, the first subparagraph of Article 5(4) of the Instructions to the Registrar of the Court of First Instance of 3 March 1994 provides that an application by a party for certain matters or certain documents on the file to be treated confidentially must specify the confidential matters or passages and explain why each matter or passage concerned is confidential. Section VIII, points 2 and 3, of the Practice Directions of the Court of First Instance of 14 March 2002 specify, in their turn, that an application for confidential treatment which is inadequately detailed will not be considered and that an application must accurately identify the particulars or passages to be excluded and briefly state the reasons for which each of those particulars or passages is regarded as confidential.

For the purpose of determining the conditions under which confidential treatment may be given to certain matters, it is necessary, in respect of each document on the file or passage in a procedural document for which confidential treatment is sought, to balance the applicant's legitimate concern to prevent substantial damage to its business interests and the interveners' equally legitimate concern to have the necessary information for the purposes of being fully in a position to assert their rights and state their case before the Community Courts.

It follows that an application for confidential treatment which is insufficiently detailed as to the particulars it covers will be dismissed. It also follows that account will be taken of the succinctness of the reasons provided in support of an application for confidential treatment in situations where it is

not sufficiently clear from the examination of the particulars covered by the application that they are confidential. Such consideration is, in the interests of the proper administration of justice, a fortiori necessary in cases where the confidential treatment sought concerns a substantial amount of information.

in so far as it concerns matters which have not been disputed, or not disputed expressly and in detail.

(see paras 39-45)

Opposition to confidentiality by interveners must, in turn, relate to specific matters which have been obscured in the procedural documents and state the reasons for which confidentiality with regard to those matters should be refused. Accordingly, an application for confidential treatment must be upheld

2. An intervener cannot be deprived, so long as it complies with the time-limit laid down for that purpose by the Court, of the right to oppose an application for confidential treatment of passages in a procedural document on the ground that it did not challenge the confidentiality of those matters within the prescribed period when they were pleaded at an earlier stage of the proceedings.

(see para. 50)