

Case T-219/01

Commerzbank AG

v

Commission of the European Communities

(Actions for annulment — Request for access to documents —  
Decision of the hearing officer — Admissibility)

Order of the Court of First Instance (Fifth Chamber), 9 July 2003 . . . . II - 2845

Summary of the Order

*Actions for annulment — Actionable measures — Meaning — Measures producing binding legal effects — Administrative procedure applying the competition rules — Refusal by the hearing officer of access to information requested under Article 8(1) of Decision 2001/462 — Intermediate measure — Excluded — Rights of the defence — Any infringement pleadable in support of an action against the Commission's final decision*

*(Art. 230 EC; Commission Decision 2001/462, Art. 8(1))*

II - 2843

The acts or decisions against which proceedings for annulment may be brought under Article 230 EC are measures the legal effects of which are binding on, and capable of affecting the interests of, the applicant by having a significant effect on his legal position. In the case of acts or decisions drawn up in a procedure involving several stages, only measures definitively laying down the position of the institution upon the conclusion of that procedure may in principle be contested, and not a provisional measure intended to pave the way for the final decision.

Even if the hearing officer's refusal of a request under Article 8(1) of Decision 2001/462 on the terms of reference of hearing officers in certain competition proceedings for access to information on the circumstances which led to the closure of administrative proceedings brought against persons other than the applicant were to be capable of constituting an infringement of that applicant's defence

rights, such an infringement, which renders the entire administrative proceedings unlawful, does not affect the applicant's legal situation until a final decision finding that it infringed Article 81 EC has been adopted. Therefore, that refusal, which in itself produces only limited effects characteristic of a preparatory measure forming part of an administrative procedure initiated by the Commission, cannot be the subject-matter of an action before that procedure has been completed.

The opportunity for the applicant to complain of an alleged infringement of defence rights is in an action against the Commission's final decision finding an infringement.

(see paras 53, 58, 63)