



EUROPEAN COMMISSION

Brussels,

SEC Gen will insert date and number



**Subject: Case COMP AT.40097 – Estonian Flour Millers  
Letter pursuant to Article 13 of Council Regulation No 1/2003 and  
Article 9 of Commission Regulation No 773/2004  
(Please quote this reference in all correspondence)**

Dear [REDACTED],

- (1) I refer to your complaint dated 23 July 2012 pursuant to Article 7 of Council Regulation No 1/2003<sup>1</sup>, regarding alleged infringements of Article 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU")<sup>2</sup> by [REDACTED] as well as to the subsequent correspondence, in particular the letters of the Commission, dated 26 June 2013 (explaining the conditions under which the Commission may reject a complaint) and 18 September 2014 (informing you about the Commission's intention to reject your complaint) and your reply by email of 9 December 2014.
- (2) As already explained to you, pursuant to Article 13 of Council Regulation No 1/2003, the Commission may reject a complaint on the ground that a competition authority of a Member State is dealing or has dealt with the case. Where the Commission rejects a complaint pursuant to Article 13 of Regulation No 1/2003, it shall inform the complainant without delay of the national competition authority which is dealing or has already dealt with the case.<sup>3</sup>

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<sup>1</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, *Official Journal L 1*, 04.01.2003, pages 1-25.

<sup>2</sup> With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, respectively, 102 of the TFEU. The two sets of provisions are in substance identical. In regulations and notices adopted before the 1 December 2009, references to Articles 81 and 82 of the EC Treaty should be understood as references to Articles 101 and 102 of the TFEU.

<sup>3</sup> Article 9 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, *Official Journal L 123*, 27.04.2004, pages 18-24.

- (3) More particularly, in accordance with case-law, the Commission may, in order to reject a complaint on the basis of Article 13 (2) of Regulation No 1/2003 properly rely on the ground that a competition authority of a Member State has previously rejected that complaint following a review conducted in the light of the rules of EU competition law.<sup>4</sup> In addition, the EU Courts have declared that Article 13 (2) of Regulation No 1/2003 can be invoked in those cases where a national competition authority has carried out its investigation under its national legislation provided that the agreement or practice investigated involved the same infringement, the same relevant geographical market and the same products as those referred to in the complaint submitted to the Commission.<sup>5</sup>
- (4) Also, as stated by case-law, in order for Article 13 of Council Regulation No 1/2003 to apply, it is not necessary that another competition authority must have taken a formal decision on all allegations.<sup>6</sup> Requiring the Commission to review a complaint each time a competition authority of a Member State has investigated the same complaint without taking a decision (or rejecting the complaint on priority grounds) would not be in line with the objective of Article 13, which is to establish an optimal allocation of resources within the European Competition Network.<sup>7</sup>
- (5) In the light of the foregoing, the Commission considers that Article 13 of Council Regulation No 1/2003 provides a stand-alone rejection ground based solely on the fact that a Member State competition authority has dealt with the same conduct of an undertaking. In the present case, based on the information provided by you as well as by the Estonian Competition Authority, we must conclude for the reasons set out below that the Estonian Competition Authority has already dealt with the same case featuring the same type of practices on the same product and geographic markets.<sup>8</sup>
- (6) Your complaint relied on three allegations: (1) the sale of [REDACTED] flour business to [REDACTED] in 2006 constituted a restriction of competition, (2) [REDACTED] abused its dominant position (in particular in the form of a price war in 2006 aimed at depressing flour prices in Estonia and therefore rendering [REDACTED] operation financially impossible), and (3) [REDACTED] participated in an overall flour cartel in the Baltic countries.
- (7) Regarding allegation (1), as already set out in your complaint and explained in more detail in the letter of 26 June 2013 by Mr Philippe Chauve, Head of the Food Task Force in the Competition Directorate-General, the Estonian Competition Authority investigated the circumstances of the sale of [REDACTED]

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<sup>4</sup> See Case T-355/13, *easyJet v Commission*, ECLI:EU:T:2015:36, paragraph 44 to 46.

<sup>5</sup> See *easyJet v Commission*, cited *ut supra*, paragraph 45, and Case T-201/11, *Si.mobil telekomunikacijske storitve d.d. v Commission*, ECLI:EU:T:2014:1096, paragraph 33.

<sup>6</sup> See *easyJet v Commission*, cited *ut supra*, paragraph 33.

<sup>7</sup> *Ibid.*, at paragraph 37.

<sup>8</sup> See paragraph 20 of Commission notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43-53.

████████ flour business to ██████████ in the context of an antitrust investigation in 2006 (Case No ██████████). Such an investigation finally led to the opening of criminal proceedings by the Estonian Competition Authority, which were terminated on 25 March 2013 on procedural grounds.

- (8) Regarding allegations (2) and (3), you informed the Food Task Force at a meeting held on 8 November 2013 in Brussels that you had already presented these allegations to the Estonian Competition Authority. The Estonian Competition Authority confirmed that it had investigated these two aspects of your complaint but ultimately concluded that it did not have sufficient evidence to formally open proceedings.
- (9) In your email of 9 December 2014 responding to Mr Chauve's letter of 18 September 2014, you did not allege any new facts or provided any new evidence in this regard.
- (10) Based on the above, and as previously explained to you in the letter of 18 September 2014, the Commission considers that the Estonian Competition Authority has dealt with a case that concerned the same infringements, the same markets, the same product and the same time frame. The Commission also considers that it is irrelevant that the Estonian Competition Authority dealt with the case only under §§4 and 16 of the Estonian Competition Act and not Articles 101 and 102 TFEU. For all relevant intents and purposes, these Estonian legal provisions correspond to Articles 101 and 102 TFEU, and in line with the case-law referred to above, your complaint must be deemed to have been dealt with in the light of EU competition law rules.<sup>9</sup>
- (11) For these reasons, I inform you that, pursuant to Article 13 of Council Regulation No 1/2003, the Commission rejects your complaint.

Yours faithfully

For the Commission

Margrethe VESTAGER  
Member of the Commission

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<sup>9</sup> See *easyJet v Commission*, cited *ut supra*, at paragraphs 44-46.