



EUROPEAN COMMISSION

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C(2025) 871 final

PUBLIC VERSION

Student AGENCY k.s.
Náměstí Svobody 86/17,
Brno 602 00,
Czech Republic

**Subject: Case AT.40846 - Copyright remuneration claims of INTERGRAM
Commission decision pursuant to Article 7(2) of Commission
Regulation (EC) No 773/2004 rejecting the complaint
(Please quote this reference in all correspondence)**

Dear Sir or Madam,

1. I am writing to inform you that the European Commission (the '**Commission**') has decided to reject your complaint of 23 November 2022 (the '**Complaint**') against Intergram, z.s. ('**Intergram**'), pursuant to Article 7(2) of Commission Regulation (EC) No 773/2004 ⁽¹⁾.

1. THE COMPLAINT

1.1. The allegations in your Complaint

2. In your Complaint you requested the Commission to launch an investigation into certain practices of Intergram, a collective rights management organisation, which represents performing artists and producers of phonograms and audio-visual fixations and collects fees for the communication to the public of their performances and recordings, in the territory of Czechia.
3. Student Agency k.s. ('**Student Agency**') is a Czech travel agency whose business activities include bus and rail transport and the resale of airline tickets. It does not

⁽¹⁾ Commission Regulation (EC) No 773/2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18). With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (the '**TFEU**'). The two sets of provisions are, in substance, identical. Pursuant to Article 5(3) of the Treaty of Lisbon, references in legal acts to Articles 81 and 82 of the EC Treaty are to be understood as references to Articles 101 and 102 TFEU when appropriate.

sell exclusively to students. The buses of Student Agency offer on-board entertainment systems with built-in individual LCD displays, including the possibility to purchase headphones, that broadcast music and audiovisual content and video games subject to a licence from the collective rights management organisations representing the relevant rightsholders.

4. You argue that Intergram is dominant in Czechia in rights management other than where OSA ⁽²⁾ manages copyrights ⁽³⁾. We understand that this covers the licensing of the rights of phonogram producers and performers for the communication to the public of their protected subject matter.
5. You claim that Intergram has abused its dominant position, in violation of Article 102 TFEU by (i) applying different terms and conditions to Student Agency and its competitors and (ii) enforcing unfair commercial terms and conditions, as well as disproportionately high fees, against Student Agency.
6. You allege ⁽⁴⁾ the following conduct by Intergram:
 - a. During the period from 1 January 2015 to 31 December 2017, Intergram imposed different conditions on Student Agency compared to other similar companies by retroactively claiming unjust enrichment before national courts against Student Agency, despite previously having made a public promise (**'Public Promise'**), which stated that (i) as of 1 January 2018, OSA would be a single point of contact for licensing (also concerning fees due to Intergram), and that (ii) no retroactive claims would be made by Intergram against parties who had a contract with OSA before 1 January 2018. You claim that Student Agency had a contract with OSA since 3 April 2013 and that, therefore, it should have been covered by such Public Promise.
 - b. For the year 2018, Intergram and OSA ⁽⁵⁾ did not allow Student Agency to conclude a licensing contract through the above-mentioned OSA single point of contact, because of hidden, non-transparent and discriminatory terms, which had been agreed between OSA and Intergram, despite the Public Promise referred to above.
 - c. During the period from 1 January 2015 to 31 December 2018, Intergram applied unfair commercial terms and conditions and also disproportionately high fees to Student Agency, when compared to fees applied to similar entities on the Czech market, due to the calculation method used.

⁽²⁾ Ochranný svaz autorský (**'OSA'**) is the Czech collective rights management organisation responsible for copyrights. Its activities include the management of economic copyrights of composers, lyricists, the heirs of copyrights and publishers.

⁽³⁾ Complaint, page 8.

⁽⁴⁾ Complaint, pages 4-5.

⁽⁵⁾ We note that your Complaint did not identify OSA as an undertaking giving rise to the Complaint in Section I of the Form C. It only identified Intergram. Therefore, this letter does not assess any claims that could be considered as referring to OSA's conduct.

1.2. Procedure before the Commission

7. Further to your Complaint, you provided additional submissions on 13 March 2023, 16 May 2023 and 3 August 2023 and you had telephone calls with the case team on 9 September 2022, 19 October 2022, 27 April 2023 and 10 November 2023.
8. On 20 July 2023, the case team informed you in writing that it would propose to reject the Complaint and offered you the possibility to withdraw or maintain your Complaint.
9. On 3 August 2023, you confirmed that you wished to maintain the Complaint.
10. On 10 November 2023, following a change in your legal representation, the case team explained again in a telephone call the reasons why it would propose to reject the Complaint.
11. On 8 January 2024, you confirmed that you wished to maintain the Complaint, without providing any additional information.
12. On 14 August 2024 ⁽⁶⁾, the Commission informed you in a letter, pursuant to Article 7(1) of Commission Regulation (EC) No 773/2004, that there were insufficient grounds for acting on your Complaint (**‘Article 7(1) Letter’**).
13. On 10 September 2024, you responded to the Article 7(1) Letter and expressed your disagreement with the Commission’s assessment of your Complaint. You also submitted additional documents to the Commission.

1.3. Procedure before the national competition authority

14. In your Complaint you informed the Commission that, on 23 April 2021, Student Agency had submitted a complaint to the Office for the Protection of Competition (Úřad pro ochranu hospodářské soutěže) in Czechia (the **‘National Competition Authority’**). The complaint at national level concerned the same allegations concerning conduct during the same period and between the same parties, as the Complaint in the present case.
15. Following a preliminary investigation, conducted only under national competition law, the National Competition Authority [...] ^{*} informed you that it had not found reasons to initiate administrative proceedings. No formal decision was taken.

1.4. Litigation before national courts

16. In your Complaint, you informed the Commission of pending legal proceedings before the Czech national courts between Intergram and Student Agency, concerning Intergram’s claim for restitution of unjust enrichment. On 13 March 2023, you shared with the Commission the judgments issued by two Czech courts in these legal proceedings: the judgment of the High Court of Olomouc of 5 January

⁽⁶⁾ The date of adoption of the Article 7(1) Letter was 8 August 2024 and it was notified to you on 14 August 2024 via DHL.

^{*} Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].

2023 (**‘High Court Judgment of 5 January 2023’**), which concerned Intergram’s claim for restitution of unjust enrichment against Student Agency for the period from 1 January 2015 to 31 August 2018, and the judgment of the Regional Court of Brno of 15 November 2022 (**‘Regional Court Judgment of 15 November 2022’**), which concerned Intergram's claim for restitution of unjust enrichment against Student Agency for the period from 1 September 2018 to 31 December 2018.

17. From the **High Court Judgment of 5 January 2023**, the following can be established:
 - a. The claim of Intergram for the period from 1 January 2015 to 19 November 2015 was considered to be time-barred.
 - b. The judgment at first instance of 21 May 2019 and the subsequent judgment on the appeal of 28 May 2020 were annulled by the judgment of the Supreme Court of 26 November 2020.
 - c. The Supreme Court established that Student Agency had not fulfilled the conditions of the Public Promise of Intergram, referred to in Paragraph 6.a above, particularly because it did not conclude a licensing agreement through the OSA single point of contact.
 - d. The second judgment at the first instance of 1 July 2021 established that Student Agency had failed to comply with the Public Promise of Intergram, but it had succeeded in proving that it had sought to conclude such a contract and that its efforts had been frustrated by Intergram. The court of first instance, therefore, concluded that both conditions of the Public Promise had been fulfilled.
 - e. This judgment was subsequently annulled by the second judgment on appeal of 3 February 2022. The appeal court held that, as regards the Public Promise, the court of first instance was bound by the Supreme Court’s view in the context of the first judgment (referred to in Paragraphs 17.b and 17.c above), i.e., that Student Agency had not fulfilled the conditions of the Public Promise and, therefore, ordered the court of first instance to examine the claim of Intergram for unpaid licence fees during the period from 19 November 2015 to 31 December 2017.
 - f. In the third judgement at the first instance of 17 May 2022 the Regional Court of Brno carried out a detailed assessment of the facts of the case. The court used the tariff of OSA as the basis for calculating the unpaid licence fees, which were then used to determine the unjust enrichment.
 - g. On subsequent appeal in the above-referenced High Court Judgment of 5 January 2023, the High Court of Olomouc found that the court at first instance was right to assess the applicant’s claim on the ground of unjust enrichment and maintained that Student Agency shall pay Intergram CZK 14.859.022 with interest for the period from 19 November 2015 to 31 August 2018.
18. From the **Regional Court Judgment of 15 November 2022**, the following can be established:

- a. The claim of Intergram for the period from 1 September 2018 to 6 October 2018 was considered to be time-barred.
 - b. While the court of first instance awarded Intergram an unjust enrichment in the amount of CZK 46,839.63 and interest, it rejected the majority of Intergram's initial claim of CZK 2,414,254.
 - c. In calculating the unjust enrichment, the court of first instance carried out a detailed assessment of the facts. Since Intergram had not had any relevant tariff for buses in the year 2018, and Student Agency submitted an expert's report on how such a tariff could be calculated, the court relied on that report to determine the unjust enrichment.
19. You informed the Commission during the call of 27 April 2023 that Student Agency would likely request an extraordinary review of the High Court Judgment of 5 January 2023 and that Intergram had appealed the Regional Court Judgment of 15 November 2022, however, you provided no further information or written submission on this issue prior to the adoption of the Article 7(1) Letter.
20. On 10 September 2024, as part of your response to the Article 7(1) Letter, you submitted the judgment of the Supreme Court of 29 May 2024 (**'Supreme Court Judgment of 29 May 2024'**) and a notification of the Regional Court of Brno for a court hearing (**'Hearing Notification'**).
21. From the **Supreme Court Judgment of 29 May 2024**, the following can be established:
- a. The Supreme Court annulled the High Court Judgment of 5 January 2023 and the underlying judgment at first instance of 17 May 2022 and referred the case back to the Regional Court of Brno at first instance.
 - b. The Supreme Court concluded that the High Court of Olomouc erred in finding that it was bound by the previous judgment of the Supreme Court from 26 November 2020 to conclude that the second condition of the Public Promise had not been fulfilled by Student Agency, also in relation to a possible (new) finding that the efforts of Student Agency in the conclusion of the license agreement were undermined by Intergram.
 - c. As a result of the annulment, the Regional Court of Brno is required to re-try the case.
22. From the **Hearing Notification** the following can be established:
- a. Following the Supreme Court Judgment of 29 May 2024, the Regional Court of Brno has reopened the case at first instance.
 - b. The Regional Court of Brno summoned Student Agency and Intergram for a court hearing on 6 September 2024, in order to enable Student Agency to respond to Intergram's latest submissions. The Commission has not received any further information regarding these proceedings since your response to the Article 7(1) Letter of 10 September 2024.

23. The Commission also notes that Student Agency has not provided any information on the appellate process in relation to the Regional Court Judgment of 15 November 2022, referred to in paragraph 18 above.

1.5. Your response to the Article 7(1) Letter

24. In response to the Commission's Article 7(1) Letter, you argue that the Commission's preliminary conclusions and reasoning are incorrect, because they are based on incorrect and outdated information. In particular, you state that the Commission's conclusion, that the Supreme Court established in its judgment of 26 November 2020 that Student Agency did not fulfil its conditions of the Public Promise ⁽⁷⁾, was incorrect. You refer to the subsequent Supreme Court Judgment of 29 May 2024, which you submitted after the adoption of the Article 7(1) Letter, as a result of which the case, including the question of whether or not Student Agency has fulfilled all conditions of the Public Promise, is now being re-examined by the Regional Court of Brno as court of first instance.
25. You argue that the Article 7(1) Letter is based on a purely formalistic analysis, whilst the Commission is required to carefully examine and address the substance of the Complaint, i.e. whether Intergram has infringed European competition rules.
26. You further argue that the scope of the dispute before national courts is not the same as the concerns raised in the Complaint and, in any case, national courts have not ruled on these matters because, following the Supreme Court Judgment of 29 May 2024, the case concerns whether Intergram deliberately frustrated Student Agency's ability to comply with the second condition of the Public Promise.
27. You also claim that national courts cannot and will not rule on the competition concerns raised in the Complaint because this is the role of the Czech National Competition Authority and the Commission. In that context, you state that absent an administrative procedure before a competition authority, Intergram can never be penalised for an infringement of competition rules. In that context, you also state that if the first instance court establishes that Intergram deliberately frustrated Student Agency's compliance with the conditions of the Public Promise, Intergram's action will be dismissed, and it will not receive the sums claimed. However, Intergram would not be held liable for an infringement of competition rules in the form of a penalty, which is an additional reason for the Commission to interfere.

2. THE NEED FOR THE COMMISSION TO SET PRIORITIES

28. Complaints facilitate the detection of infringements of the Union competition rules. They bring to the Commission's attention matters of fact and of law which the Commission examines ⁽⁸⁾.
29. It is inherent to the complaints procedure that the obligation to substantiate the allegations lies with the complainant ⁽⁹⁾, while the Commission is responsible for

⁽⁷⁾ Paragraph 29 of the Article 7(1) Letter

⁽⁸⁾ Judgment of 19 September 2013, *EFIM v Commission*, C-56/12 P, EU:C:2013:575, paragraph 71.

defining and implementing the orientation of the Union's competition policy. In order to perform that task effectively, the Commission is entitled to give differing degrees of priority to the complaints brought before it ⁽¹⁰⁾.

30. The Commission has limited resources and is unable to pursue every alleged infringement of the Union competition rules which is brought to its attention. Therefore, the Commission must set priorities, in accordance with the principles set out notably at points 41 to 45 of the Notice on the handling of complaints ⁽¹¹⁾, and reject a complaint when it considers that the case does not display a sufficient Union interest to justify further investigation.
31. When deciding which cases to pursue, the Commission takes various factors into account. There is no fixed set of criteria for assessment ⁽¹²⁾.
32. The Commission may take into account whether a national court or national competition authority might be well-placed to examine the allegations made.
33. Articles 101 and 102 TFEU produce direct effects in relations between individuals and confer rights on the individuals concerned which the national courts must safeguard. The power to apply the provisions of Articles 101 and 102 TFEU is vested concurrently in the Commission and the national courts. That conferral of competence is moreover characterised by the duty of sincere cooperation between the Commission and the national courts ⁽¹³⁾.
34. Where related disputes have already been brought before the national courts, procedural economy and the principle of sound administration of justice militate in favour of the case being considered by the courts to which related questions have already been referred ⁽¹⁴⁾.

3. ASSESSMENT OF YOUR COMPLAINT

35. In the light of the above principles and following a careful assessment of your Complaint, the Commission does not intend to conduct a further investigation into your claims for the reasons set out below.

⁽⁹⁾ *idem*, paragraph 72.

⁽¹⁰⁾ Judgment of 4 March 1999, *Ufex e.a. v Commission*, C-119/97 P, EU:C:1999:116, paragraph 88; judgment of 19 September 2013, *EFIM v Commission*, C-56/12 P, EU:C:2013:575, paragraph 72.

⁽¹¹⁾ Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty (OJ C 101, 27.4.2004, p. 65).

⁽¹²⁾ Judgment of 4 March 1999, *Ufex e.a. v Commission*, C-119/97 P, EU:C:1999:116, paragraphs 79 and 80; judgment of 19 September 2013, *EFIM v Commission*, C-56/12 P, EU:C:2013:575, paragraph 85; judgment of 20 September 2018, *Agria Polska e.a. v Commission*, C-373/17 P, EU:C:2018:756, paragraph 61.

⁽¹³⁾ Judgment of 18 September 1992, *Automec v Commission*, T-24/90, EU:T:1992:97, paragraph 90; judgment of 30 September 2016, *Trajektna luka Split v Commission*, T-70/15, EU:T:2016:592, paragraph 45.

⁽¹⁴⁾ Judgment of 18 September 1992, *Automec v Commission*, T-24/90, EU:T:1992:97, paragraph 88.

36. From the Complaint, it appears that the dispute between Student Agency and Intergram is a commercial dispute regarding the licensing of audio-visual works at a national level. National licensing disputes can be adequately dealt with by national courts or authorities, inter alia because they are well placed to collect and assess the relevant facts and evidence.
37. In the Article 7(1) Letter, the Commission preliminarily concluded that the Czech national courts were well placed to deal with your Complaint, as they had ruled on the entire subject matter of your Complaint, for the same period and between the same parties. It would not be in line with procedural economy and the principle of sound administration if the Commission were to open an investigation into your Complaint, the subject matter of which has already been dealt with by national courts. The arguments you made in response to the Commission's Article 7(1) Letter do not lead to a different assessment of the Complaint.
38. First, as regards your argument, which is mentioned in paragraph 24 above, the Commission notes that any potential factual errors in the Article 7(1) Letter could only be due to your failure to inform the Commission of the developments in the national court proceedings. The Supreme Court Judgment of 29 May 2024 was submitted by you to the Commission only as part of your response to the Article 7(1) Letter, which was notified to you on 14 August 2024.
39. Second, as regards your argument, which is mentioned in paragraph 25 above, the Commission recalls that it is obliged to examine carefully the factual and legal elements brought to its attention by the complainant but not to make a final finding as to the existence or non-existence of the alleged infringement ⁽¹⁵⁾. The Commission is also not obliged to carry out an investigation, which could have no purpose other than to seek evidence of the existence or otherwise of an infringement ⁽¹⁶⁾.
40. Third, contrary to your argument in paragraph 27 above, it does not follow from the fact that the Czech national courts are unable to impose administrative fines that the Commission is obliged to act upon your Complaint solely because, in your view, a fine should be imposed on Intergram in addition to any civil law remedies that the national courts could also prescribe.
41. Fourth, from the judgments that you shared with the Commission, it can be established that several proceedings relating to your commercial dispute with Intergram have already been brought before the courts of Czechia, and that the Czech courts have consistently established their competence at each stage of these proceedings. From the Supreme Court Judgment of 29 May 2024 and from the Hearing Notification, both submitted to the Commission together with the reply to

⁽¹⁵⁾ Judgment of 4 March 1999, *Ufex e.a. v Commission*, C-119/97 P, EU:C:1999:116, paragraph 87; judgment of 19 September 2013, *EFIM v Commission*, C-56/12 P, EU:C:2013:575, paragraph 57; judgment of 20 September 2018, *Agria Polska e.a. v Commission*, C-373/17 P, EU:C:2018:756, paragraph 97.

⁽¹⁶⁾ Judgment of 18 September 1992, *Automec v Commission*, T-24/90, EU:T:1992:97, paragraph 76.

the Article 7(1) Letter, it is also clear that the national proceedings are currently still ongoing ⁽¹⁷⁾.

42. It is also clear that the subject matter of the national court proceedings described in section 1.4 above and your Complaint concerns the same commercial dispute. Indeed, the ongoing legal proceedings before the Regional Court of Brno focus on the question whether Intergram has frustrated the ability of Student Agency to satisfy the conditions of the Public Promise, which also forms part of the allegations made in your Complaint (paragraphs 6.a and 6.b above).
43. As regards the allegations of the Complaint regarding the disproportionately high fees and unfair commercial terms and conditions applied by Intergram in its action against Student Agency for unjust enrichment (paragraphs 6.a and 6.c above), it is clear that:
 - a. Regarding the period from 1 September 2018 to 31 December 2018, the Regional Court of Brno has issued a ruling on this matter in the Regional Court Judgment of 15 November 2022 ⁽¹⁸⁾; and
 - b. Regarding the period from 1 January 2015 to 31 August 2018, the Czech courts have consistently demonstrated willingness to engage with these issues based on the previous judgments of the Regional Court of Brno of 17 May 2022 and the High Court Judgment of 5 January 2023, and continue to do so in the ongoing court proceedings.
44. The Commission notes that while the current court proceedings appear to focus specifically on issues relating to the Public Promise, Student Agency has not provided any evidence to the Commission suggesting that the current court proceedings could not also address Intergram's claims going beyond the questions concerning the Public Promise, nor that Student Agency would be precluded from maintaining or introducing Union competition law arguments in the previous, current or any future national court proceedings in Czechia.
45. Fifth, contrary to your argument ⁽¹⁹⁾, the competence of national courts to apply Union competition law is not limited to actions for damages, or to other proceedings

⁽¹⁷⁾ The Commission notes that Student Agency has not provided any further updates on the status of the ongoing court proceedings at first instance before the Regional Court of Brno since the response to the Article 7(1) Letter.

⁽¹⁸⁾ The Commission notes that, while Student Agency has informed the Commission during the call of 27 April 2023 that Intergram had appealed the Regional Court Judgment of 15 November 2022, Student Agency has not since provided any further information to the Commission regarding these proceedings.

⁽¹⁹⁾ Complaint, page 12, where you rely on point 138 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (OJ C 308, 20.10.2011, p. 6), which states: *'If a national court is dealing or has already dealt with the same case, the Commission may reject the complaint based on "insufficient grounds for acting"'*. In your opinion, this statement is linked solely to the situation where, in civil proceedings before a national court, an entity harmed by an anti-competitive practice seeks damages or compensation against the infringer of competition law, but not to the opposite situation. You consider that this interpretation follows indirectly from the fact that point 138 refers to the Report on Competition Policy 2005, adopted in June 2006, which deals only with situations in which the victims of anti-competitive conduct bring private actions against the infringers.

in which the complainant is the plaintiff. Articles 101 and 102 TFEU produce direct effects in relations between individuals and confer rights on the individuals concerned which the national courts are competent to review, including in cases where the alleged breach of Union law is invoked in the pleadings of the defendant. It is for the national courts to apply the applicable civil sanctions and remedies.

46. Sixth, the Commission has also considered whether Student Agency has or had the effective possibility to invoke the Union competition rules in the above-mentioned national court proceedings.
47. From the court judgments that you have shared with the Commission, the information in the Complaint and your further submissions, nothing suggests that Student Agency was precluded from raising the alleged breaches of the Union competition rules in the national court proceedings. Indeed, in earlier judgments concerning the dispute, the national courts engaged with the same issues which you raised in your Complaint and further submissions, such as the legal grounds, the Public Promise, the method of calculation of the unjust enrichment, and the actual level of the remuneration claimed by Intergram.
48. Consequently, the Commission concludes that the national courts in Czechia have already been seized with the dispute, which is the subject matter of the Complaint, covering the same time period. In the interests of procedural economy and sound administration of justice, the national courts in Czechia are therefore adequately placed to adjudicate on this matter.

4. CONCLUSION

49. For the reasons set out above, and after carefully reviewing your observations made in response to the Article 7(1) letter, the Commission confirms its conclusion that there are insufficient grounds for conducting a further investigation into the alleged infringement(s). Your Complaint is consequently rejected pursuant to Article 7(2) of Regulation (EC) No 773/2004 ⁽²⁰⁾.

5. NEXT PROCEDURAL STEPS

5.1. Right to bring an action

50. An action for annulment may be brought against this decision before the General Court of the European Union, in accordance with Article 263 TFEU.

⁽²⁰⁾ Commission Regulation (EC) No 773/2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

5.2. Confidential information

51. The Commission may send a copy of this decision to Intergram. Moreover, the Commission may decide to make this decision, or a summary thereof, public on its website ⁽²¹⁾.
52. If you consider that certain parts of this decision contain confidential information, you are requested to inform [...] (e-mail: [...]), within two weeks from the date of receipt of this decision, identifying clearly the information that you consider to be confidential. You are also requested to indicate why you consider that certain information should be treated as confidential.
53. If you do not respond within that time limit, the Commission may assume that you do not consider that this decision contains confidential information and that it can be published on the Commission's website or sent to Intergram.
54. The published version of this decision may conceal your identity upon your request if this is necessary for the protection of your legitimate interests.

For the Commission

'Signed'

*Teresa RIBERA
Executive Vice-President*

⁽²¹⁾ See paragraph 150 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (OJ C 308, 20.10.2011, p. 6).