

Pleas in law and main arguments

By Decision 93/82/EEC of 23 December 1992, the Commission imposed on, inter alia, the applicant a fine in the context of a proceeding pursuant to Articles 85 and 86 (now Articles 81 and 82) of the EC Treaty. The applicant brought an action against that decision and the Court of Justice, by judgment of 16 March 2000 ⁽¹⁾, annulled the decision in so far as it imposed a fine on the applicant. Following that judgment, the Commission adopted the contested decision, which imposed a fine of EUR 3 400 000 on the applicant for the same infringements.

In support of its application for annulment of the latter decision, the applicant submits, first, that the Commission adopted its second decision at a time when the period within which it could reasonably do so had elapsed and that it is therefore estopped from taking action. The applicant also claims that the Commission breached its rights of defence by re-opening the procedure solely in relation to the question of the fine. According to the applicant, where the Commission imposes a fine, it must re-assess the infringements as at the date of its new decision and cannot, as in the present case, have regard to assessments of the facts made 12 years ago. The applicant also claims that the fine is unjustified, as the infringements have not been established. Lastly, the applicant argues that the fine is discriminatory and disproportionate, that it was imposed in breach of the Commission's customary practice and that it amounts to an abuse of power. The applicant maintains that it received virtually the entire fine imposed for alleged abuses of a dominant position by a conference in which it held less than one third of the rights.

⁽¹⁾ Joined Cases C-395/96 P and C-396/96 P.

Action brought on 8 July 2004 by Éditions Odile Jacob SAS against the Commission of the European Communities

(Case T-279/04)

(2004/C 262/64)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8 July 2004 by Éditions Odile Jacob SAS, established in Paris, represented by Olivier Fréget and Wilko van Weert, lawyers.

The applicant claims that the Court should:

- annul the Commission Decision of 7 January 2004 declaring a concentration compatible with the common market and the functioning of the EEA agreement (Case No COMP7M:2978-LAGARDERE/NATEXIS/VUP) ⁽¹⁾;
- order the Commission to pay the costs.

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By the contested decision, the Commission decided not to oppose the acquisition by Lagardère of control of certain assets of Vivendi Universal Publishing, controlled by Investima, itself controlled by Natexis Banques Populaires, notified to the Commission under Article 4 of Regulation (EEC) No 4064/89 ⁽²⁾ on 14 April 2003, and to declare it compatible with the common market and with the EEA agreement, provided the commitments offered were met.

The applicant, who claims to be directly and individually concerned by the contested decision, having actively participated in the administrative procedure preceding its adoption, seeks the annulment of the decision in question, arguing, first, that the Commission has infringed Regulation No 4064/89. The applicant submits that the bank, Natexis, cannot be covered by the exception laid down in Article 3(5)(a) of that regulation, since it acquired Vivendi Universal Publishing only after giving a commitment to resell that undertaking to Lagardère. Furthermore, the Commission wrongly classified the project in question as the acquisition of total control, when in actual fact it constituted the acquisition of joint control by Lagardère and Natexis, which should have notified it to the Commission jointly under Article 4(2) of Regulation 4064/89.

The applicant maintains also that the Commission infringed Article 6(1) and Article 2(1)(a) of Regulation No 4064/89 by accepting notification of the operation in question more than four months after it took place and by granting Lagardère successive extensions of time which had the effect of postponing the adoption of the decision by nine months. The Commission also committed a manifest error in its assessment of Lagardère's real power.

The applicant further claims that the Commission infringed Article 2 of Regulation No 4064/89 and committed a manifest error of assessment on the ground that the contested decision strengthened Lagardère's dominant position. It also submits that the Commission's acceptance of a divestiture commitment, neither the principle nor the conditions for implementation of which are such as to enable effective competition to be restored, constitutes an infringement of Article 8(2) of Regulation No 4064/89. Finally, the applicant alleges failure to give reasons for the contested decision as regards the effect of that commitment on the structure of the market in its current state.

⁽¹⁾ OJ L 125 of 28.4.2004, p. 54.

⁽²⁾ Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings OJ L 257/90 p. 13.