

- In the second place, the *prima facie* different treatment under Article 12(5) TRLIS, far from constituting a selective advantage, serves to place all transactions for the acquisitions of shares on an equal tax footing, whether they be national or foreign: owing to the impossibility of cross-border mergers, the amortisation of goodwill can be effected only in the national sphere, and therefore the tax system includes rules which allow that. In that regard, Article 12(5) TRLIS does no more than extend such a possibility to the purchase of assets in foreign companies, a transaction which represents the closest functional equivalent to domestic mergers and is thus integral to the scheme and broad logic of the Spanish system.
- In the alternative, the Commission's decision is disproportionate given that its application to cases in which control of foreign companies is taken should at least be equivalent to cases of domestic mergers and therefore justified by the scheme and broad logic of the Spanish system.
2. Second plea in law, alleging a procedural irregularity since the procedure applicable to existing aid was not complied with
- The contested decision rejects the arguments concerning the fact that the measure plays an equivalent role, since it does not accept that intra-EU cross-border mergers are in practice impossible. In the Commission's view, the subsequent adoption of EU Directives in this sphere, all of them later than the entry into force of the measure at issue, removed all barriers or obstacles which may have existed. The applicant submits in that regard that, if the Commission's argument were accepted and if the EU Directives had actually removed the obstacles to cross-border mergers, which is not the

case, there would in any event be existing aid. The procedure for reviewing existing aid differs significantly from the procedure followed in this case and thus a fundamental procedural irregularity has been committed.

3. Third plea in law, alleging infringement of Article 107(1) TFEU resulting from an error of law in determining the beneficiary of the measure

— Even if the view is taken that Article 12(5) TRLIS contains elements of State aid, the Commission should have carried out a comprehensive economic analysis in order to determine who the beneficiaries of any possible aid were. The applicant submits that, in any event, the beneficiaries of the aid (in the form of an inflated purchase price for the shares) are those selling the shares and not, as the Commission alleges, Spanish firms which have applied that measure.

Order of the General Court of 14 March 2011 — Global Digital Disc v Commission

(Case T-259/08) ⁽¹⁾

(2011/C 139/54)

Language of the case: German

The President of the Second Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 272, 25.10.2008.