

1. First plea in law, alleging that the defendant wrongly applied Article 36(9) of the Third Gas Directive⁽¹⁾, instead of applying Article 22(4) of the Second Gas Directive⁽²⁾. As a result, the defendant incorrectly issued the contested decision in the form of a binding decision instead of an informal request. Furthermore, relying on the time period under Article 36(9) of the Third Gas Directive the defendant issued the contested decision late, as under the Second Gas Directive the original time period could only be extended by one additional month. As a result the contested decision is of no legal effect.
2. Second plea in law, alleging that the defendant infringed the applicant's legitimate expectations when it first provided precise, unconditional and consistent assurances as to when and under what circumstances the notified decision of the Czech Ministry of Industry and Trade would become final, later unequivocally reconfirmed this and then, unexpectedly, issued the contested decision inconsistent with its previous statements.
3. Third plea in law, alleging that the defendant infringed the Treaties and the rules of law relating to their application. In this regard, the contested decision applied incorrect substantive law. The applicant contends that the applicable substantive rules in light of which the Commission should have reviewed the notified decision are to be found in Article 22 of the Second Gas Directive. The Commission therefore infringed the principles of legal certainty and the applicant's legitimate expectations.
4. Fourth plea in law, alleging that the defendant committed a manifest error in assessment of the facts when it wrongly rejected the explanation offered by the Czech Ministry of Industry and Trade that the applicant was and remains unable to find a reliable long-term partner under the storage capacity allocation rules of Czech law, applicable both at the time when the applicant filed the application for an exemption to the Ministry as well as today.

(¹) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94)

(²) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57)

Action brought on 5 September 2011 — *Éditions Jacob v Commission*

(Case T-471/11)

(2011/C 305/11)

Language of the case: French

Parties

Applicant: Éditions Odile Jacob SAS (Paris, France) (represented by: O. Fréget, M. Struys and L. Eskenazi, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision SG-Grefte (2011) D/C(2011)3503 of 13 May 2011, adopted in Case COMP/M.2978 Lagardère/Natexis/VUP following the judgment of the General Court of 13 September 2010 in Case T-452/04 *Éditions Odile Jacob v Commission*, by which the Commission once again approved Wendel as purchaser of the assets transferred in accordance with the commitments attached to the Commission's decision of 7 January 2004 authorising the concentration Lagardère/Natexis/VUP;

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on six pleas in law.

1. First plea in law, alleging that it was clearly impossible for the Commission to adopt a confirmatory decision — with, moreover, retroactive effect — which validated *ex post facto* the approval of Wendel as purchaser of Editis. The applicant maintains that:
 - by acting in that way, without drawing any of the conclusions entailed by the Court's finding of illegality related to the lack of independence of the trustee responsible for overseeing that transfer, the Commission infringed Article 266 TFEU;
 - by setting 30 July 2004 as the date on which the contested decision became effective, the Commission infringed the principle of non-retroactivity, disregarding the case-law of the Court of Justice, which allows retroactivity, by way of an exception, only if two conditions are met — that it is required by overriding reasons related to the public interest and that the legitimate expectations of the persons concerned have been duly respected.

2. Second plea in law, alleging that there was no legal basis for the contested decision, since the Commission's decision of 7 January 2004 authorising the concentration had ceased to apply following the Court's finding that Lagardère had failed to comply with some of the commitments.
3. Third and fourth pleas in law, alleging that the Commission made errors of law and manifest errors of assessment in its appraisal of Wendel's bid, both in 2004 and in the new decision granting approval; it also alleged that the Commission had made errors deriving, first, from its taking into account, when adopting the contested decision, facts subsequent to 30 July 2004 and, second, from those later facts being used in a selective and partial manner.
4. Fifth plea in law, alleging misuse of powers inasmuch as, by adopting *ex post facto* a decision retroactively approving an unlawful transfer and approving a new trustee whose only task was to draw up a further report confirming Wendel's suitability as a purchaser of the assets transferred, the Commission failed to apply Article 266 TFEU and Regulation No 4064/89 ⁽¹⁾ for their proper purpose, Regulation No 4064/89 providing, *inter alia*, for the possibility of revoking the clearance decision and penalising the parties responsible for the illegality.

5. Sixth plea in law, alleging that the statement of reasons is defective since the reasoning in the contested decision is both inadequate and contradictory.

⁽¹⁾ Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1; entire text republished following correction in OJ 1990 L 257, p. 13).

Order of the General Court of 30 August 2011 — PASP and Others v Council

(Case T-177/11) ⁽¹⁾

(2011/C 305/12)

Language of the case: French

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

⁽¹⁾ OJ C 145, 14.5.2011.