

- order the defendant and the parties intervening in full or partial support of the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those relied on in Cases T-302/20, *Del Valle Ruiz and Others v Single Resolution Board*, and T-303/20, *Arias Mosquera and Others v Single Resolution Board*.

Action brought on 27 May 2020 — EVH v Commission

(Case T-312/20)

(2020/C 247/47)

Language of the case: German

Parties

Applicant: EVH GmbH (Halle [Saale], Germany) (represented by: I. Zenke and T. Heymann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the defendant's decision of 26 February 2019 declaring the merger of 'RWE/E.ON Assets' to be compatible with the internal market (Case M.8871) (OJ 2020 C 111, S. 1);
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the approval decision is formally flawed

- The merger approved by the contested decision (M.8871) was erroneously separated from the overall merger of RWE AG (RWE) and E.ON SE (E.ON). The overall operation covers, in addition to the acquisition of E.ON-production assets by RWE (Case M.8871), the acquisition of a 16,67 % share of E.ON by RWE and the transfer of the RWE subsidiary (76,8 % share held by RWE) innogy SE to E.ON (Case M.8870);
- The applicant's participation rights were adversely affected, since, although the defendant acknowledged the extensive indications of obstacles to competition as a result of the merger made to it in the proceedings, it however both failed to take into account the content of those indications and to satisfactorily assess them in the proceedings and in the decision;
- The defendant gave insufficient and late reasons for the decision.

2. Second plea in law, alleging that the defendant insufficiently assessed the facts and should have undertaken a Phase II-procedure in the context of an appropriate assessment.

- The analysis of RWE's increasing market power was carried out only on the basis of electricity volume and capacity, without the necessary own in-depth examination of additional indicators such as the elimination of its direct competitor E.ON, the Residual Supply Index (RSI), which expresses the indispensability of a supplier to meet demand, or the degree of market concentration
- By disregarding the long-term investment cycles of the energy sector, the defendant adopted a too short-term view of the historical and also the prognostic period for assessing the effects of the merger;
- The market power was erroneously assessed because the extensive integration of RWE and E.ON in the energy market was not taken into account and instead capacities from the reverse carve-out in Case M.8870 were netted;

- In general, the examination is erroneously limited to the present and ignored the effects for the coming years (e.g. through the increasing generation of green electricity and the phasing-out of coal), so that the defendant is unable to recognise whether there is a threat of lasting damage to competition.
3. Third plea in law, alleging that the defendant made a manifest error of assessment of the merger as being compatible with competition, partly as a result of its inadequate investigation
- The defendant incorrectly failed to assess the fact that E.ON is permanently eliminated as a competitor of RWE;
 - The defendant failed to recognise that the division of the value added stages of the energy sector between E.ON and RWE, which was agreed in connection with the overall merger, constituted a restriction of competition and was not compatible with Article 101 TFEU;
 - The defendant incorrectly classifies the increase in RWE's market power in the initial sales market as unobjectionable;
 - Finally, the decision erroneously fails to take account of the anticompetitive effects resulting from the elimination of E.ON as a competitor in the generation and wholesale trading of electricity from renewable energy sources and the provision of system services such as balancing energy.

Action brought on 27 May 2020 — Stadtwerke Leipzig v Commission

(Case T-313/20)

(2020/C 247/48)

Language of the case: German

Parties

Applicant: Stadtwerke Leipzig GmbH (Leipzig, Germany) (represented by: I. Zenke and T. Heymann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the defendant's decision of 26 February 2019 declaring the merger 'RWE/E.ON Assets' compatible with the common market (Case M.8871) (OJ 2020 C 111, p. 1);
- order the defendant to pay the costs.

Pleas in law and main arguments

The action is based on three pleas in law, which are essentially identical or similar to those put forward in Case T-312/20, *EVH v Commission*.

Action brought on 27 May 2020 — GWS Stadtwerke Hameln v Commission

(Case T-314/20)

(2020/C 247/49)

Language of the case: German

Parties

Applicant: GWS Stadtwerke Hameln GmbH (Hameln, Germany) (represented by: I. Zenke and T. Heymann, lawyers)

Defendant: European Commission