Defendant: European Commission

Form of order sought

— Order the defendant to produce the questionnaires sent by it to third parties during the first phase and second phase of its investigation into the proposed acquisition by Western Digital Corporation of Viviti Technologies Ltd. and into the proposed acquisition by Seagate of the hard disk drive business of Samsung Electronics Co. Ltd.;

— Order the defendant to grant access to its pre-notification and post-notification file in the Seagate transaction, including, in particular, access to the non-confidential versions of any correspondence and records of contacts between Seagate, Samsung, and the Commission until the notification date, and any internal communications within the Commission – in both the Seagate/Samsung and Western Digital Ireland/Viviti Technologies cases – concerning the prioritization of the two transactions;

— Annul the priority decision included in the Decision (2011/C 165/04) of the European Commission of May 30, 2011, in Case COMP/M.6203 – Western Digital Ireland/ Viviti Technologies, to open a second phase investigation with regard to the proposed concentration, in accordance with Article 6(1)(c) of Council Regulation No 139/2004 [1] (OJ 2011 C 165, p. 3); and

— Order the defendant to pay the costs of the present proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on four pleas in law.

1. First plea in law, alleging the defendant lacks the powers to adopt a priority rule based on the date of notification of a concentration.

2. Second plea in law, alleging that the defendant committed an error of law and violated the general principles of fairness and good administration, as:

   — The priority rule chosen by the defendant has no basis in EU law, does not follow from settled case-law, and is not inherent in the merger control system;

   — The priority rule chosen by the defendant leads to unsound policy outcomes; and

   — The priority rule chosen by the commission violates general principles of law.

3. Third plea in law, alleging that the defendant breached applicants' legitimate expectations that the proposed acquisition by Western Digital Corporation of Viviti Technologies Ltd. would be assessed against the market structure that prevailed when it was signed, announced and pre-notified to the Commission.

4. Fourth plea in law, alleging that the defendant breached the principles of good administration, fairness, proportionality and non-discrimination, by imposing additional burdens on the applicants, and by not disclosing the fact that there was a parallel transaction affecting the same relevant markets.

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[1] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

Action brought on 29 July 2009 — Barloworld v Commission

(Case T-459/11)

(2011/C 305/09)

Language of the case: Spanish

Parties

Applicant: Barloworld International, S.L. (Madrid, Spain) (represented by F. Alcaraz Gutierrez and A.J de la Cruz Martínez, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 1(1) of the contested decision (Commission Decision of 12 January 2011 on the tax amortisation of financial goodwill for foreign shareholding acquisitions No C 45/07 (ex NN 51/07, ex CP 9/07) implemented by Spain) in that it declares that Article 12 of the Texto Refundido de la Ley del Impuesto sobre Sociedades ('TRLIS') (the consolidated text of the Spanish Company Tax Act) contains elements of State aid regulated by Article 107(1) TFEU and lacks the reasoning required by Article 296 TFEU;

— or, in accordance with the principle of protection of legitimate expectations, annul Article 1(2) and (3) of the decision the object of these proceedings, in that it does not allow transactions effected from the date on which the Commission's Opening Decision was published (21 December 2007) to the date on which the contested decision was published (21 May 2011) to continue to apply the fiscal deduction under Article 12(5) TRLIS throughout the period of amortisation;

— or, annul Article 1(4) and (5) of the decision the object of these proceedings, in that it gives no reasons for establishing a scheme on the basis that legal obstacles to legal barriers to cross-border business combinations have supposedly not been demonstrated, and

— order the Commission of the European Union to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant puts forward four pleas in law.

1. The first plea in law, alleging infringement of Article 107(1) TFEU, inasmuch as Article 12(5) TRLIS does not meet the conditions for being regarded as State aid.

   — Article 12(5) TRLIS, considered in the Spanish tax system as a whole, does not constitute an economic advantage for the purpose of Article 107(1) TFEU. On the other hand, the measure at issue is general in nature, for it cannot be concluded that is in fact selective, in the terms recognised by the Commission's legal opinion and Community case-law.

2. The second plea in law, claiming that the contested decision is supported by no reasoning at all

   — The Decision lacks the reasoning called for by Article 296 TFEU, inasmuch as the Commission has not therein carefully and impartially examined all relevant matters, nor given reasons enough for the conclusions of that decision. What particularly attracts attention is the insufficient reasoning in analysing whether or not there are legal barriers to cross-border business combinations.

3. The third plea in law, arguing that the measure is in keeping with Article 107(3) TFEU

   — Amortising of financial goodwill pursues the aim, for want of fiscal harmonisation at EU level, of removing obstacles to cross-border investment, for it obviates the negative effect of barriers to cross-border and national business combinations, which ensures that decisions adopted concerning those transactions are not based on fiscal considerations, but rather on purely economic considerations.

4. The fourth plea in law, alleging breach of the principle of the protection of legitimate expectations, given that the transitional scheme arising from the application of that principle ought to be applied until the date on which the Decision was published in the *OJEU*, i.e., 21 May 2011.

   — The Decision on extra-EU acquisitions was maintained pending resolution, it being expressly stated in the first Decision on intra-EU acquisitions that there may, outside the EU, persist legal barriers to cross-border business combinations that would place such transactions in a different situation of law and fact from that of intra-Community transactions. The first Decision therefore led certain undertakings to entertain legitimate expectations regarding the Spanish legislation, especially in the light of the knowledge that, in the vast majority of jurisdictions, it is in fact impossible to effect cross-border business combinations outside the European Union.

Action brought on 26 August 2011 — Globula v Commission

(Case T-465/11)

(2011/C 305/10)

Language of the case: English

Parties

Applicant: Globula a.s. (Hodonín, Czech Republic) (represented by: M. Petite, D. Paemen, A. Tomtsis, D. Koláček and P. Zákoucký, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission's Decision dated 27 June 2011 ordering the Czech Republic to withdraw the notified decision of the Czech Ministry of Industry and Trade of 26 October 2010 granting the applicant temporary exemption from the obligation to provide negotiated third party access to a planned Underground Gas Storage Facility in Dambořice (C(2011) 4509); and

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

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