

Form of order sought

The applicants claim that the Court should:

- annul the decision of the European Commission of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN);
- order the Commission to pay the Applicants' costs pursuant to Article 134 of the Rules of Procedure of the General Court, including the costs of any intervening parties.

Pleas in law and main arguments

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

1. First plea in law, alleging an error of law and a manifest error of assessment in the identification of the alleged state aid measure and its classification as an aid scheme within the meaning of Article 1(d) of Regulation 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union and Article 107 TFUE.
2. Second plea in law, alleging an error in law and misapplication of Article 107(1) TFUE in holding that the Excess Profits Adjustments system constitutes State aid.
3. Third plea in law, alleging a manifest error of assessment in identifying the groups as beneficiaries of the alleged aid and violation of the principle of legality and Article 16(1) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.
4. Fourth plea in law, alleging a violation of the principles of legal certainty, protection of legitimate expectations and sound administration.

Action brought on 25 July 2016 — CK Telecoms UK Investments v Commission

(Case T-399/16)

(2016/C 371/12)

Language of the case: English

Parties

Applicant: CK Telecoms UK Investments Ltd (London, United Kingdom) (represented by: T. Wessely and O. Brouwer, lawyers, and A. Woods, J. Aitken and M. Davis, Solicitors)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the decision of the European Commission of 11 May 2016, C (2016) 2796 in case COMP/M.7612 — Hutchison 3G UK Investments Limited/Telefónica (Europe plc), notified to Hutchison on 13 May 2016 declaring the proposed acquisition of Telefónica Europe plc by Hutchison incompatible with the internal market and the EEA Agreement pursuant to Article 8(3) of Council Regulation No 139/2004 in its entirety; and
- order the Commission to pay the costs of the proceedings, including those related to any potential intervener.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission committed errors of law, manifest errors of assessment, and infringement of essential procedural requirements in the interpretation and application of the legal test for the assessment of horizontal non-coordinated effects in the market for retail mobile telecommunications services in the United Kingdom. In particular: the Commission erred with respect to the qualification of the applicant as an 'important competitive force' and in assessing closeness of competition. The Commission also committed manifest errors of assessment in the analysis of the predicted price effects and likely incentives of the merged entity following the Concentration.
2. Second plea in law, alleging manifest errors of assessment and distortion of the evidence with respect to the analysis of the counterfactual scenario. In particular: the Commission failed to assess Hutchison's network capacity relative to that of its competitors and impermissibly relies on the alleged ability of Hutchison to adopt 'demand management' initiatives, such as increasing prices, as a reason for rejecting Hutchison's evidence concerning future network capacity.
3. Third plea in law, alleging errors of fact, errors of law, manifest errors of assessment and infringement of essential procedural requirements with respect to horizontal non-coordinated effects arising from network sharing. In particular: the Commission has erred in relation to its novel propositions concerning the necessity and extent of 'alignment' between competitors in network sharing agreements; and the Commission has committed an error of law and manifest errors of assessment by basing its conclusions on potential harm to competitors of the merged entity rather than competition. The Commission committed further errors in rejecting Commitments offered by Hutchison that would have fully resolved all of its concerns relating to network sharing.
4. Fourth plea in law, alleging manifest errors of assessment, errors of law and infringement of essential procedural requirements with respect to horizontal non-coordinated effects arising in the wholesale market for access and call origination on public mobile networks in the United Kingdom. In particular: the Commission erred in concluding that Hutchison is an 'important competitive force' in the wholesale market despite having a very small market share (less than 3 %); and in basing its conclusions on the opinions of third parties instead of conducting its own analysis.
5. Fifth plea in law, alleging errors of law, manifest errors of assessment, lack of reasoning and infringement of essential procedural requirements with respect to the evaluation of the Commitments offered by Hutchison in respect of concerns relating to the retail and wholesale mobile telecommunications markets in the United Kingdom. In particular: the Commission incorrectly objected to the proposed Commitments alleging uncertainty of their implementation; the Commission has manifestly erred in its assessment of the ability of new and strengthened competitors to compete effectively on the basis of the proposed Commitments; and the Commission erred in its assessment of the overall suitability of the proposed Commitments to offset the loss of competition alleged in the decision.

Action brought on 27 July 2016 — Maximum Play v EUIPO (MAXPLAY)

(Case T-400/16)

(2016/C 371/13)

Language of the case: English

Parties

Applicant: Maximum Play, Inc. (San Francisco, California, United States) (represented by: M. Graf, lawyer)