

Decision of the examiner:	Registration partially refused
Decision of the Board of Appeal:	Appeal dismissed

Operative part

The Court:

1. Dismisses the action;
2. Orders MPDV Mikrolab GmbH, Mikroprozessordatenverarbeitung und Mikroprozessorlabor to pay the costs.

Judgment of the General Court (Sixth Chamber) of 13 September 2010 — Éditions Jacob v Commission

(Case T-279/04)

(Competition — Concentrations — French-language publishing — Decision declaring the concentration compatible with the common market subject to sale of assets — Action for annulment brought by an unsuccessful prospective purchaser — Duty to state reasons — Fraud — Error of law — Manifest error of assessment — Regulation (EEC) No 4064/89)

1. *Actions for annulment — Actionable measures — Concept — Measures producing binding legal effects — Preparatory measures — Not included — Commission decision to initiate in-depth examination of a concentration operation (Art. 230 EC; Council Regulation No 4064/89, Art. 6(1)(c)) (see para. 89)*

2. *Competition — Concentrations — Assessment of compatibility with the common market — Nature of control, single or joint, exercised over an undertaking to be taken into account — Criteria for assessment — Holding of assets operation prior to authorisation of the concentration by the Commission — Possibility of exercising a determinant influence over the business connected with the assets — None — Acquisition of assets with a view to their resale (Council Regulation No 4064/89, Arts 3 and 4) (see paras 116-118, 125, 132, 138-140, 142, 144, 150, 153)*
3. *Competition — Concentrations — Examination by the Commission — Operation carried out before being notified — Consequences — Possibility of the Commission declaring the operation incompatible with the common market — Possibility of the Commission revoking a decision declaring the concentration compatible — None — Failure to notify capable of being penalised by the imposition of a fine (Council Regulation No 4064/89, Arts 6 to 8 and 14) (see paras 156-161, 201-202)*
4. *Competition — Concentrations — Notification — Obligation — Scope — Holding of assets operation not constituting a concentration — Not included (Council Regulation No 4064/89, Arts. 1(1), 4(1) and (7)(1)) (see paras 171, 231-232)*
5. *Competition — Concentrations — Examination by the Commission — Revocation of a decision authorising a concentration operation — Criteria — Decision fraudulently obtained — Concentration operation classified as acquisition of shareholdings on a temporary basis — Requirement for demonstration that control acquired (Council Regulation No 4064/89, Arts 3(1)(b) and (5)(a) and 8(5)(a)) (see paras 191-194)*
6. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision to apply rules on concentrations between undertakings — Decision authorising a concentration operation — Scope (Council Regulation No 4064/89, Art. 8(2)) (see paras 226-228, 233-234)*

7. *Competition — Concentrations — Examination by the Commission — Economic assessments — Discretion — Judicial review — Limits (Council Regulation No 4064/89, Art. 2) (see paras 248-249)*
8. *Competition — Concentrations — Assessment of compatibility with the common market — Creation or strengthening of a dominant position — Evidence — Modification of the initial position of the parties on the affected markets — Consequences of a sale of assets — Overall turnover figures of the parties to the operation — Not included (Council Regulation No 4064/89, Arts 2(3) and 8(3)) (see paras 284-286, 288)*
9. *Competition — Concentrations — Examination by the Commission — Definition of the market in question — Criteria — Substitutability of products — Structure of supply and demand — Transversal effect of a concentration taken into account (Council Regulation No 4064/89) (see paras 302-306)*
10. *Competition — Concentrations — Assessment of compatibility with the common market — Point in time to be taken into consideration — Point at which the operation notified — No obligation to take into consideration the risk of agreements restricting competition being concluded following the concentration — (Council Regulation No 4064/89, Art. 2) (see paras 326-327, 338)*
11. *Competition — Concentrations — Examination by the Commission — Commitments by the undertakings concerned to render the notified transaction compatible with the common market — Undertaking to sell assets — Selection criteria of the buyer — Current or potential competitor — Independence, financial resources and competences confirmed — Sale of assets to a financial buyer — Lawfulness (Council Regulation No 4064/89; Commission Communication on corrective measures admissible in accordance with Regulations Nos 4064/89 and 447/98, para. 49) (see paras 340-346)*

Re:

APPLICATION for the annulment of Commission Decision 2004/422/EC of 7 January 2004 declaring a concentration to be incompatible with the common market and the functioning of the EEA Agreement (Case COMP/M.2978 — Lagardère/Natexis/VUP) (OJ 2004 L 125, p. 54).

Operative part

The Court:

1. Dismisses the action;
2. Orders Éditions Odile Jacob SAS to bear its own costs and to pay the costs of the European Commission and Lagardère SCA.

**Judgment of the General Court (Sixth Chamber) of 13 September 2010 —
Trioplast Wittenheim v Commission**

(Case T-26/06)

(Competition — Agreements, decisions and concerted practices — Market for industrial plastic sacks — Decision finding an infringement of Article 81 EC — Duration of the infringement — Fines — Gravity of the infringement — Mitigating circumstances — Cooperation during the administrative procedure — Proportionality)

1. *Competition — Administrative procedure — Commission decision finding an infringement — Burden of proving the infringement and its duration on the Commission — Scope of the evidential burden — Burden of proof on the undertaking as regards distance taken from decisions taken during meetings (Art. 81(1) EC) (see paras 39-42, 47-48)*