

*Mark or sign cited in opposition:* the word mark 'LA LIBERTAD' (Community trade mark No 1 456 664) and the figurative mark 'La LIBERTAD' (Community trade mark No 2 433 126) for goods in Classes 14 and 34

*Decision of the Opposition Division:* the opposition was upheld

*Decision of the Board of Appeal:* the appeal was dismissed

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation No 207/2009 as there is no likelihood of confusion between the marks at issue.

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**Action brought on 15 February 2012 — Cisco Systems and Messagenet v Commission**

(Case T-79/12)

(2012/C 109/62)

*Language of the case:* English

**Parties**

*Applicants:* Cisco Systems, Inc. (San José, United States of America), Messagenet SpA (Milan, Italy) (represented by: L. Ortiz Blanco, J. Buendía Sierra, A. Lamadrid de Pablo and K. Jörgens, lawyers)

*Defendant:* European Commission

**Form of order sought**

- Annul the decision C(2011) 7279 final of the Commission of 7 October 2011 (OJ C 341, 22.11.2011, p. 2) not to oppose the notified concentration between Microsoft Corporation and Skype Sarl and declaring it compatible with the common market (Case No COMP/M.6281) for breach of Articles 2 and 6 of Council Regulation (EC) No 139/2004 (the EC Merger Regulation) <sup>(1)</sup> or, alternatively, of Article 296 TFEU;
- Order the defendant to bear its own costs, as well as those incurred by the applicants in connection with the present action.

**Pleas in law and main arguments**

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

1. First plea in law, alleging

- that the European Commission committed a manifest error of assessment in holding that the merger would not raise any anti-competitive horizontal concerns in the consumer unified communications markets. In this connection, the applicants stress that the merger leads to combined market shares of more than 80 % in the narrowest possible market examined in the decision

(video call services to consumers on Windows-based PC). Both the combination of powerful network effects accruing to the largest installed base of users and the merging company's full control of the Windows Operating System and other adjacent applications will reinforce the dominant position and eliminate any incentive which the merged entity may have to offer interoperability with competing products;

2. Second plea in law, alleging

- that the European Commission also committed a manifest error of assessment in holding that the merger undoubtedly did not raise any anti-competitive conglomerate effects in enterprise unified communications markets. In this connection, the applicants stress that given the increasing popularity of consumer unified communications services, enterprise customers wish to connect with customers using the tools of consumer unified communications. By expanding its established base of consumer unified communications customers, the merging company will have both the increased ability and the incentives to deny interoperability with competing enterprise communications products. The foreclosure effects will be reinforced by the pre-existing leading/dominant position already enjoyed by that company in adjacent markets, such as operating systems and enterprise application software products, e.g. Office and Outlook. In particular, the contested decision is inconsistent with the decision-making practice of the European Commission and the Court of Justice of the European Union, in relation to the importance of network effects in IT markets and the need to ensure interoperability with a view to preserving effective consumer choice, when such network effects are in play;

3. Third plea in law, alleging on a subsidiary basis

- that the European Commission failed to comply with its duty to state sufficient reasons to justify the authorization of the merger in the first phase, without considering that commitments from the parties were necessary.

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1

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**Action brought on 20 February 2012 — Makhoul v Council**

(Case T-82/12)

(2012/C 109/63)

*Language of the case:* French

**Parties**

*Applicant:* Mohammad Makhoul (Damas, Syria) (represented by: C. Rygaert and G. Karouni, lawyers)