



Press and Information

General Court of the European Union

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Judgments in Cases T-279/04 and T-452/04
Editions Odile Jacob SAS v Commission

The General Court confirms the lawfulness of the Commission decision of 7th January 2004 authorising, subject to the sale of assets, the purchase of Vivendi Universal Publishing by Lagardère

However, the decision authorising Wendel to buy the assets sold by Lagardère is annulled

The six principal French publishers, Vivendi Universal Publishing SA (VUP), a subsidiary of Vivendi Universal SA (VU), Hachette Livre SA, controlled by Lagardère SCA, Gallimard SA, Flammarion SA, Albin Michel SA and Éditions du Seuil SA represented, in early 2004, more than two thirds of the French-language publishing market in terms of turnover.

VUP is the leading company in this market. It is active in all sectors of creative publishing and is the owner of well known marks or collections. VUP is also vertically integrated in the publishers' distribution services through the intermediary of Vivendi Universal Publishing Services SA, which has its own logistical tools for distribution.

In September 2002 Vivendi Universal (VU) decided to dispose of all the book publishing activities which it carried on in Europe through the intermediary of its subsidiary Vivendi Universal Publishing (VUP). The Lagardère group declared its interest in acquiring VUP's publishing assets, which consisted of VUP's book publishing activities (the 'target assets').

However, VU's timetable for the disposal – VU's aim being to complete the sale and obtain the proceeds as quickly as possible – was not compatible with the time needed to complete the formalities required to obtain prior authorisation of this proposed purchase from the competition authorities. Lagardère therefore asked Natexis Banques Populaires (NBP) to take its place, through the intermediary of a subsidiary, in order to acquire VU's target assets on a temporary basis and to sell them back to Lagardère, once authorisation for the VUP/Lagardère concentration was obtained from the Commission. NBP's involvement was in accordance with the 1989 Regulation on concentrations¹ which allows a financial institution to acquire an undertaking with a view to reselling it, without having to obtain prior authorisation from the Commission – since such a temporary holding is not deemed to be a concentration.

By decision of 5 June 2003 the Commission, finding that the proposed VUP/Lagardère concentration raised serious doubts as to its compatibility with the common market, commenced the phase of in-depth control of concentrations intended to examine the effects of the VUP/Lagardère concentration on the economy of the sector and to permit consultation of the market players.

The Commission gave notice of its objections to Lagardère on 27 October 2003. The Commission considered that the purchase of the target assets by Lagardère was such as to create a dominant position on twelve markets in the French-language book chain and that it was likely that this concentration would strengthen Lagardère's dominant position. The Commission asked Lagardère to provide undertakings to sell the target assets, in order to remedy the problems identified and stated that, otherwise, it would not authorise Lagardère's purchase of VUP. That was the

¹ Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395 of 30.12.1989, p. 1–12).

background to Lagardère's declaration in December 2003 that it would retain only 40% of the target assets, a position approved by the Commission by its **decision of 7 January 2004** authorising the VUP/Lagardère concentration, provided that Lagardère complied with its sale commitments.

In March and April 2004 Wendel Investissement declared its interest in purchasing the target assets which had to be sold. Lagardère declared that it had purchase offers from five potential buyers – including an offer from Odile Jacob – but that it would deal exclusively with Wendel Investissement. On 28 May 2004 Lagardère made known its decision to sell 60% of the target assets to Wendel. By decision of **30 July 2004** the Commission approved Wendel as the purchaser of the sold assets.

The French publisher Odile Jacob brought actions before the General Court seeking the annulment of the decision of 7 January 2004 authorising the VUP/Lagardère concentration², and of the decision of 30 July 2004 approving Wendel as the buyer of the sold target assets.

In the judgment delivered today, the General Court dismisses the action of Odile Jacob against the decision of 7 January 2004.

The General Court examines first the holding of the target assets through the intermediary of NPB. In that regard, the Court considers that, contrary to what is claimed by Odile Jacob, that holding could not give to Lagardère, from December 2002 onwards, the possibility of exercising, alone or jointly with NBP, a decisive influence over the activity associated with the target assets which might affect the Commission's decision of 7 January 2004. The General Court concludes that the holding of the target assets cannot be deemed to be a concentration, subject to control by the Commission.

Second, the General Court applies the implications of this finding to the assessment of the lawfulness of the decision authorising the VUP/Lagardère concentration. Accordingly, contrary to what is claimed by Odile Jacob, the holding can not, in particular, be regarded as fraudulent.

Likewise, according to the General Court, Odile Jacob is wrong to claim that the Commission, in its authorisation decision, did not carry out an analysis of the initial positions occupied by the respective parties to the concentration in the markets concerned, in order to determine whether the concentration created or strengthened a dominant position in those markets. The analysis of the concentration's effect on competition reveals that the Commission identified the parts of the market held by Hachette and VUP prior to the concentration in the sectoral markets concerned.

In that analysis, the Commission also took into consideration the horizontal effects of the concentration, its vertical and conglomerate effects and the checks and balances capable of containing the power of the merged entity.

In those circumstances, it is not evident that the Commission made any errors of assessment.

Accordingly, the General Court confirms the lawfulness of the Commission's authorisation decision of 7 January 2004.

However, in relation to the parallel action brought by Odile Jacob (Case T-452/04), the General Court annuls the Commission decision of 30 July 2004 approving Wendel³ as the purchaser of the target assets sold by Lagardère. According to the General Court, the report assessing Wendel as a prospective purchaser, on the basis of which that second decision was adopted, was drawn up by a trustee who did not satisfy the required condition of independence in relation to the target assets which were being held. The establishment of this illegality is such as to vitiate the lawfulness of the approval decision.

² Commission Decision 2004/422/EC of 7 January 2004 declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COM/M.2978 – Lagardère/Natexis/VUP) (OJ 2004 L 125, p. 54).

³ Commission Decision (2004) D/203365 of 30 July 2004 relating to the approval of Wendel Investissement as purchaser of assets sold pursuant to Commission Decision 2004/422/EC.

Consequently, the Commission's approval decision of 30 July 2004 is annulled.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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