



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-551/10 P
Éditions Odile Jacob SAS v European Commission

In Advocate General Mazák's view, the General Court's judgment which dismissed an action for annulment against the Commission Decision authorising the acquisition of Vivendi Universal Publishing by Lagardère should be confirmed

On 25 September 2002, Vivendi Universal SA ('VU') decided to dispose of the book publishing assets held in Europe by its subsidiary Vivendi Universal Publishing SA ('VUP'), the leading French-language publisher. Lagardère SCA declared its interest in acquiring those assets. However, it became clear that VU's wish for a quick sale would be prevented by the need to obtain prior authorisation from the competent competition authorities. Lagardère therefore requested Natexis Banques Populaires SA ('NBP') to act in its place and, by means of a subsidiary set up for that purpose, to acquire the target assets from VUP, to hold them provisionally and to sell them to Lagardère once authorisation of the proposed purchase of the assets by Lagardère had been obtained. (2) On 14 April 2003, Lagardère notified the Commission of its proposed purchase of the assets of VUP.

On 7 January 2004, the Commission adopted a decision¹ authorising the merger subject to commitments. In particular, Lagardère was required to sell assets representing approximately 60% to 70% of its worldwide turnover and 70% to 80% of VUP's turnover on the French-language markets affected by the merger². The Commission considered that these commitments would eliminate almost all the horizontal overlaps between the activities of the companies concerned in all the relevant French-language markets where the transaction created or strengthened a dominant position.

On 13 September 2010 the General Court rejected a challenge brought against that decision by Éditions Odile Jacob, which had declared an interest in acquiring the assets to be sold³. Éditions Odile Jacob has appealed this judgment to the Court of Justice.

In his Opinion issued today, **Advocate General Ján Mazák considers that the Court of Justice should dismiss all the grounds presented by Éditions Odile Jacob in its appeal.**

Advocate General Mazák notes that a number of the alleged errors claimed by Éditions Odile Jacob, have no practical bearing on the nature of the merger notified or on its effect on competition in the common market. In addition, the arrangement whereby assets were held by subsidiaries of NBP could in any event be considered as a first, but in itself insufficient, step in a number of linked transactions which ultimately led to Lagardère obtaining control over assets and thus to a merger. Advocate General Mazák also finds that unless a merger creates or strengthens a dominant position as a result of which competition would be significantly impeded, it cannot be declared incompatible with the common market merely on the basis that it was notified out of time.

Finally, Advocate General Mazák finds that the General Court did not err in its review of the commitments accepted by the Commission. In his view, the General Court correctly found that the

¹ Commission Decision 2004/422/EC of 7 January 2004 (OJ 2004 L 125, p. 54)

² Lagardère's agreement with a further company, Wendel Investissements SA, concerning the purchase of these assets, was subject to approval by the Commission and is the subject of separate pending proceedings before the Court (Joined Cases [C-553/10 P](#) & [C-554/10 P](#) Commission & Lagardère v Éditions Odile Jacob)

³ Case [T-279/04](#) *Éditions Odile Jacob v European Commission*. See also Press Release [84/10](#).

Commission cannot declare a merger incompatible on the sole basis that it altered the initial position of the parties in question on the relevant markets. Moreover, the Advocate General emphasises that the commitments proposed to the Commission by the undertakings do not have to improve the initial competitive situation prior to the merger. The merger control procedure and in particular the assessment of commitments proposed by the undertakings cannot be instrumentalised by the Commission as a means or opportunity for 'engineering markets or economic planning'. Additionally, Mr Mazák considers that the General Court did not err in finding that a financial buyer would be a potential competitor if it had a real capacity to maintain or preserve effective competition on the market in question even though it had no experience on that market. Therefore, he considers that this ground of appeal should also be dismissed as unfounded.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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

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