



Press and Information

Court of Justice of the European Union

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Judgments in Case C-551/10 P *Éditions Odile Jacob v Commission* and in
Joined Cases C-553/10 P *Commission v Éditions Odile Jacob* and
C-554/10 P *Lagardère v Éditions Odile Jacob*

The Court dismisses Odile Jacob's claim that the judgment of the General Court declaring Lagardère's purchase of Vivendi Universal Publishing to be compatible with the common market should be set aside

The Court confirms the annulment of the decision approving Wendel Investissement as purchaser of the sold assets of Vivendi Universal Publishing

In September 2002 Vivendi Universal SA ('VU') disposed of its book publishing assets held in Europe by its subsidiary Vivendi Universal Publishing ('VUP'), a leading French-language publisher. The Lagardère group declared its interest in purchasing those assets. It became apparent however that VU wanted to complete the sale as quickly as possible, without waiting until prior clearance was obtained from the competent competition authorities. Lagardère therefore asked Natexis Banques Populaires SA ('NBP') to take its place, through the intermediary of one of its subsidiaries created in order to purchase the target assets from VUP, hold them on a temporary basis, then, once clearance of the proposed purchase by Lagardère of the target assets was obtained, sell them back to Lagardère (the nominee holding arrangement).

On 14 April 2003 Lagardère notified the Commission of its proposed purchase of the VUP assets.

By **decision of 7 January 2004**¹ the Commission authorised the concentration subject to Lagardère agreeing to a number of commitments. The Commission considered that, in the absence of those commitments, the concentration would lead in a number of markets to the creation or strengthening of dominant positions as a result of which effective competition would be significantly impeded. Accordingly, Lagardère undertook to divest itself of a substantial part of the VUP assets. Lagardère made overtures to a number of undertakings as possible purchasers of those assets. One of those undertakings was Éditions Odile Jacob ('Odile Jacob') which expressed its interest in that transaction.

On the conclusion of the process of selecting the purchaser of the sold VUP assets, Lagardère accepted the offer of another undertaking, Wendel Investissement.

In February 2004, with the approval of the Commission, Lagardère appointed the auditing firm S. as a trustee. On 5 July 2004 the firm S. submitted to the Commission a report with the conclusion that Wendel Investissement's purchase of the assets was compatible with the criteria defined by the Commission. Consequently, by **decision of 30 July 2004** the Commission approved the purchase of the assets by Wendel Investissement (the approval decision)².

Odile Jacob brought actions before the General Court seeking the annulment of the decision of 7 January 2004 authorising the VUP/Lagardère concentration and of the decision of 30 July 2004 approving Wendel Investissement as purchaser of the assets sold.

¹ 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 No COMP/M.2978 — Lagardère/Natexis/VUP) (OJ 2004 L 125, p. 54).

² Commission Decision (2004) D/203365 of 30 July 2004 relating to the approval of Wendel Investissement as purchaser of the assets sold in accordance with Commission Decision 2004/422/EC.

By two judgments delivered on 13 September 2010, the General Court dismissed Odile Jacob's action against the decision of 7 January 2004 and decided to annul the approval decision of 30 July 2004³. Those two judgments are the subject of separate appeals before the Court.

As regards the first case (C-551/10 P), the Court dismisses the appeal brought by Odile Jacob. The criticism made by Odile Jacob of the General Court was, inter alia, that it erred in its assessment of the meaning of a concentration and of the characterisation of the nominee holding arrangement. **In that regard, the Court confirms that the legal characterisation of the nominee holding arrangement is of no relevance to the legality of the Commission's decision.**

The Court holds that, even if the transactions carried out enabled Lagardère to acquire earlier sole control, or control jointly with NBP, of the target assets, that circumstance had no consequences other than that the notification of the concentration at issue might be found to have been made late.

The Court adds that although such findings may entail the penalties prescribed by EU law - inter alia, the imposition of a fine - they cannot lead to the annulment of the Commission decision, since they have no relevance to the compatibility of the concentration at issue with the common market.

As regards Cases C-553/10 P and C-554/10 P, the Court dismisses the appeals brought by the Commission and Lagardère against the judgment of the General Court whereby it annulled the decision approving Wendel Investissement. The Court states, first, that the trustee is to be independent of Lagardère and of VUP, and is not to be exposed to any conflict of interests. The Court observes that, in the present case, the General Court correctly found that the trustee, B., as president of the firm S., had carried out the duties of a member of the executive board of the legal entity responsible for managing the assets sold and that the same firm had been appointed as trustee. Accordingly, for a certain time, B. carried out both the duties of the independent trustee and those of a member of the VUP executive board. The Court concludes that the General Court did not err in deciding that the trustee therefore did not satisfy the condition of independence required by Lagardère's commitments, which was sufficient ground for the annulment of the approval decision.

It was, inter alia, claimed that the General Court erred in failing to examine whether that lack of independence actually had an effect on the Commission's decision or whether, without that irregularity, the content of that decision might have been different. The Court states that a lack of independence is itself sufficient ground for the annulment of a Commission decision. Given that the General Court found that the trustee was not independent of the parties, it was under no obligation to examine whether that trustee actually acted in a way which was evidence of his lack of independence.

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 judgments in [C-551/10P](#), [C-553/10P](#) and [C-554/10P](#) is published on the CURIA website on the day of delivery.

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³ Judgments of the General Court of 13 September 2010 *Éditions Odile Jacob v Commission* ([T-279/04](#) and [T-452/04](#)), see also Press Release No [84/10](#).