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Press and Information

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Judgment of the Court of First Instance in Case T-310/00

MCI, Inc. v Commission of the European Communities

THE COURT OF FIRST INSTANCE ANNULS THE COMMISSION DECISION PROHIBITING THE MERGER OF WORLDCOM AND SPRINT

Without ruling on the merits of the case, the Court of First Instance holds that the Commission no longer had the power to adopt the decision after the proposed merger notified to it by the undertakings concerned had been abandoned.

On 10 January 2000, the American communications companies WorldCom (now called MCI) and Sprint notified the Commission of the agreement by which they intended to merge the whole of their businesses. The merger was to be effected through an exchange of Sprint shares for WorldCom shares, for an amount initially evaluated at USD 127 billion.

Like the United States competition authorities, the Commission opposed the envisaged merger, taking the view that, despite commitments offered concerning the disposal of Sprint's internet business, the transaction had a Community dimension and would lead either to the creation of a dominant position, or to the strengthening of WorldCom's dominant position, in the market for 'top-level internet connectivity' and the market for the provision of global telecommunications services to multinational corporations.

On 26 June 2000, Mario Monti, the European Commissioner responsible for competition, met representatives of the U.S. Department of Justice in Washington (United States). At the press conference after that meeting, he stated that his proposal to the Commission would be to prohibit the merger.

By letter of 27 June 2000, WorldCom and Sprint formally stated to the Commission that they were withdrawing their notification and that they no longer proposed to implement the envisaged merger in the form presented in the notification.

On 28 June 2000, the Commission none the less adopted its decision declaring the merger incompatible with Community law. [1] It took the view, in essence, that the letter of the undertakings concerned of 27 June 2000 did not amount to a 'formal withdrawal of the merger agreement' notified on 10 January 2000.

WorldCom brought an action before the Court of First Instance challenging the Commission decision.

The proceedings were stayed following the events which led to WorldCom being placed under the protection of the United States Bankruptcy Code ('Chapter 11' protection). They resumed their normal course after the American courts having jurisdiction approved the reorganisation of WorldCom.

The Commission's power to adopt the decision:

The Court finds that the letter of 27 June 2000 sent by WorldCom and Sprint to the Commission concerned not the abandonment, as a matter of principle, of any idea of, or proposal for, a merger, but only the abandonment of the proposal 'in the form presented in the notification', that is to say in the form envisaged by the notified merger agreement. Press statements which the two undertakings made in the United States on the same day confirm that at that time WorldCom and Sprint still entertained some hopes of merging in one form or another. The truth is that it was only by a press release of 13 July 2000 that the undertakings announced that they were definitively abandoning the proposed merger.

However, the Court adds that a merger agreement capable of being the subject of a Commission decision does not automatically exist (or continue to exist) between two undertakings simply because they are considering merging (or continue to consider merging). The Commission's power cannot rest on mere subjective intentions of the parties. In the same way as the Commission does not have the power to prohibit a merger before a merger agreement has been concluded, it ceases to have such power as soon as the agreement has been abandoned, even if the undertakings concerned continue negotiations with a view to concluding an agreement in a modified form. In the present case, therefore, **the Commission should have found that it no longer had the power** to adopt the decision.

In any event, the Court points out that the Commission's settled practice, under which it is satisfied with mere withdrawal of the notification by the parties concerned in order for it to close, without a decision on the merits, a procedure relating to merger case, led to the belief in the relevant circles that withdrawal of the notification was, from the Commission's point of view, equivalent in practice to abandonment of the proposed merger. In those circumstances, WorldCom and Sprint were entitled to expect their letter of 27 June 2000 to result in closure of the file in accordance with the Commission's prior administrative practice. Therefore, the Court holds that **the Commission**, at the very least, **infringed the legitimate expectation of WorldCom and Sprint by adopting the decision** without first informing them that their letter was not sufficient to result in closure of the file.

Consequently, **the Court has annulled the Commission decision.**

[1] Decision 2003/790/EC declaring a concentration incompatible with the common market and the EEA Agreement (Case COMP/M.1741 – MCI WorldCom/Sprint) (OJ 2003 L 300, p. 1).

REMINDER: an appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

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