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Press and Information

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Judgment of the Court of First Instance in Cases T-209/01 and T-210/01

Honeywell v Commission and General Electric v Commission

THE COURT OF FIRST INSTANCE UPHOLDS THE PROHIBITION OF GENERAL ELECTRIC'S ACQUISITION OF HONEYWELL

Although the Commission made errors in its decision declaring the concentration to be incompatible with the common market, in particular in its analysis of conglomerate effects resulting from the concentration, the fact that dominant positions would have been created or strengthened on several specific product markets is sufficient to justify that decision

On 5 February 2001, the European Commission received notification of a merger between the United States companies Honeywell International and General Electric Company ("GE"). By decision of 3 July 2001, the Commission declared the merger incompatible with the common market and, consequently, the parties were prohibited from putting the merger into effect in the European Union.

GE and Honeywell brought actions before the Court of First Instance for annulment of that decision. The British company, Rolls-Royce, and the United States company, Rockwell Collins, intervened in both cases in support of the European Commission.

The Court has approved the Commission's findings that the merger would create or strengthen dominant positions as a result of which effective competition would be significantly impeded on three markets:

- the market for jet engines for large regional aircraft;
- the market for engines for corporate jet aircraft;
- the market for small marine gas turbines.

Those findings are sufficient for it to be concluded that the merger is incompatible with the common market. The Court has not therefore annulled the decision, even though the Commission made errors in relation to other aspects of the case, in particular in its analysis of conglomerate effects.

In *GE v Commission*, **the Court upheld the Commission's argument** that the merger would have created **a monopoly on the worldwide market for jet engines for large regional aircraft**. The Commission stressed, rightly, the importance of that market from a European perspective, given that large regional aircraft accounted for 14% of the European fleet in 1992 and 33% in 1998. In this respect, the Court upheld the Commission's finding that the creation of a monopoly in respect of the engines powering those aircraft would have harmful effects on competition, inasmuch as it would deprive customers of the benefits of price competition. Finally, the Court upheld the Commission's rejection of the commitment proposed by the parties to the merger to resolve the competition problems that the merger would create on this market.

Similarly, the Court **rejected GE's arguments** with regard to the Commission's findings concerning the creation of dominant positions on **the market for engines for corporate jet aircraft** and on **the market for small marine gas turbines**.

With regard to other aspects of the case, the Court held, first, that the **Commission could conclude**, without making a manifest error of assessment, **that GE held a dominant position, prior to the merger, on the market for jet engines for large commercial aircraft**. The Court found, *inter alia*, that the Commission could legitimately consider GE to have used the commercial strength of subsidiaries within its group, in particular the aircraft leasing company GECAS, to win contracts which it might well not have won without their involvement.

However, the Court held that three distinct aspects of the Commission's decision were vitiated by illegalities:

Vertical overlap between Honeywell's engine starters and GE's engines as a result of the merger: The Court held that the pillar of the contested decision relating to the strengthening of GE's pre-merger dominance on the market for jet engines for large commercial aircraft, resulting from that vertical overlap, was unfounded. More specifically, the Court held that the Commission failed to take into account the deterrent effect of Article 82 EC, despite its relevance, and that the Commission's analysis was, as a result, vitiated by a manifest error of assessment.

Conglomerate effects resulting from the merger owing to GE's financial strength and vertical integration: The Court held that the Commission did not establish to a sufficient degree of probability that the merged entity would have extended to Honeywell's markets (avionics and non-avionics products) GE's practices on the market for large commercial jet aircraft engines, by which GE used the financial and commercial strength it derived from its subsidiaries. In any event, the Commission did not adequately establish that those practices, assuming that they had been put into effect, would have been likely to create dominant positions on the various avionics and non-avionics markets concerned. Consequently, the Commission made a manifest error of assessment.

Conglomerate effects resulting from bundling: The Court held that the Commission did not sufficiently establish that the merged entity would have bundled sales of GE's engines with Honeywell's avionics and non-avionics products. In the absence of such bundled sales, the mere fact that the merged entity would have had a wider range of products than its competitors was not sufficient to establish that dominant positions would have been created or strengthened for it on the different markets concerned. Consequently, the Commission also made a manifest error of assessment in this respect.

Finally, the Court examined GE's other claims, which alleged that its rights of defence had been infringed, and held that none of them was well founded.

In conclusion, in the action brought by GE, the Court held that, despite the manifest errors of assessment made by the Commission with regard to the effects of the merger on particular markets, its findings relating to the horizontal effects which the merger would have had on three other markets were sufficient to establish that the decision prohibiting the merger between GE and Honeywell was well founded.

The Court also dismissed Honeywell's application, largely on technical grounds relating to the scope of the action.

Consequently, the actions for annulment brought by GE and Honeywell against the Commission's decision were dismissed.

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.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE, EN, FR, ES, HU, IT, PL

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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