



Press and Information

General Court of the European Union
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Judgment in Case T-79/12
Cisco Systems Inc. and Messagenet SpA v Commission

Microsoft's acquisition of Skype is compatible with the internal market

The merger does not restrict competition either on the consumer Internet-based communications market or on the business Internet-based communications market

Skype provides internet-based communications services and software enabling instant messaging and voice and video communications.

Microsoft is a United States company whose activities relate essentially to the design, development and sale of computer software and the supply of related services which include internet-based communications services and software offered to both the general public and business users.

In September 2011, Microsoft notified to the Commission the concentration by which it intended to acquire control of Skype. Cisco and Messagenet, companies which supply internet-based communications services and software to undertakings and the general public respectively, submitted observations to the Commission by which they sought to demonstrate the anti-competitive effects that the planned merger would have. In October 2011, the Commission none the less declared that concentration¹ to be compatible with the internal market.

Cisco and Messagenet then brought an action before the General Court for annulment of the Commission's decision.

In its judgment delivered today, the Court notes, first of all, that the Commission confined itself in its decision to differentiating internet-based communications for the general public ('consumer communications') from communications for businesses ('enterprise communications') without adopting a position on whether it was necessary to identify, within the category of consumer communications, the existence of narrower reference markets. The Commission found that the concentration did not give rise to competition concerns even on the narrowest markets.

In that context, the Court takes the view that, even if the acquisition of Skype enables Microsoft to hold an 80 to 90% share of a segment of *consumer communications*, corresponding to video communications made on Windows-based PCs, the operating system developed by Microsoft, the high market shares and high degree of concentration on that segment of the market are not indicative of a degree of market power which would enable Microsoft to significantly harm effective competition in the internal market.

The consumer communications sector is a recent and fast-growing sector characterised by short innovation cycles in which large market shares may turn out to be ephemeral. Moreover, Microsoft, which has traditionally held a very large share of the PC software market, is less present on new operating devices, such as tablets and smartphones, which are becoming increasingly important on the consumer communications market. Any attempt to increase prices of communications for users of PCs might encourage them to switch to alternative devices. Furthermore, since services on that market are usually provided for free, a commercial policy of making users pay would run

¹ Commission Decision C(2011) 7279 declaring the concentration between undertakings involving the acquisition of Skype by Microsoft to be compatible with the internal market and the Agreement on the European Economic Area (EEA) (Case COMP/M.6281 – Microsoft/Skype).

the risk of encouraging users to switch to other providers continuing to offer their services free of charge.

The Court notes also that, on devices other than Windows-based PCs, competing operators of Microsoft have sufficiently large market shares to constitute communication networks whose level of use and attractiveness for users are at least comparable to those of Skype and Microsoft, taken together.

In those circumstances, and in the light of Cisco and Messagenet's failure to demonstrate that the concentration might harm competition on the consumer communications market, the Court concludes that, as regards that market, **the merger under examination is compatible with the EU competition rules.**

Next, the Court **rejects the argument of Cisco and Messagenet that, as a result of that concentration, Microsoft would be able to reserve to its product on the enterprise communications market, Lync, preferential interoperability with Skype and with Skype's large user base, to the detriment of its competitors.**

In that regard, the Court points out, first, that a concentration may be declared incompatible with the internal market only if it harms competition in a direct and immediate manner. The attainment of interoperability between Lync and Skype and the successful marketing of the new product resulting from this – which might, in theory, enable Microsoft to restrict competition – still depend on a series of factors in relation to which it is not certain that they might all occur in a sufficiently near future.

Second, the Court states that the precise advantages of and the real demand for such a product are vague. In that regard, the Court notes that undertakings potentially interested by an integrated communications tool wish primarily to communicate with consumers of their products and services and not with users of Skype, who are not necessarily their current or potential customers. In addition, Skype does not allow undertakings to canvass actively its users, who normally use a pseudonym, and who can be contacted only with their prior authorisation. Furthermore, customers will still be at liberty to contact via Skype – which continues to be a product which can be downloaded for free by both individuals and business users – undertakings which sell them goods and services without being obliged to obtain the product resulting from the integration of Lync with Skype.

Third, the Court states that Lync faces competition from other large players on the enterprise communications market, such as Cisco, which alone holds a larger share of the market than Microsoft. That circumstance considerably reduces Microsoft's ability to impede competition on that market.

Accordingly, **the Court dismisses the action of Cisco and Messagenet in its entirety.**

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

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