



Press and Information

General Court of the European Union
PRESS RELEASE No 119/14
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Judgment in Case T-471/11
Éditions Odile Jacob SAS v Commission

The General Court dismisses the action brought by Odile Jacob in connection with the purchase of Vivendi Universal Publishing by Lagardère

The General Court confirms that the Commission was justified in once again approving Wendel as the purchaser of the part of assets of Vivendi Universal Publishing to be sold by Lagardère

In September 2002, Vivendi Universal, a company operating on the French-language publishing market, decided to dispose of all the book publishing activities which it carried on in Europe through the intermediary of its subsidiary Vivendi Universal Publishing (VUP). The Lagardère group declared its interest in acquiring those assets.

In 2004, the Commission authorised the concentration subject to certain undertakings on Lagardère's part. The Commission took the view that, in the absence of those undertakings, the concentration would lead on several markets to creating or strengthening dominant positions resulting in a significant barrier to effective competition. Thus, Lagardère agreed to sell a significant part of VUP's assets. It approached a number of companies likely to purchase those assets including Éditions Odile Jacob ('Odile Jacob') which expressed its interest in the transaction.

At the end of the selection procedure to find a purchaser for VUP's sold assets, Lagardère accepted the offer of another company, Wendel Investissement SA (Wendel). The Commission approved that company as purchaser. Odile Jacob then applied to the General Court for annulment of the decision authorising the concentration and of the decision approving Wendel as purchaser. By judgments of 13 September 2010,¹ the General Court confirmed the decision authorising the concentration but annulled the approval decision, on the ground that the latter decision had been adopted on the basis of a report drawn up by a trustee who did not satisfy the required condition of independence set by the Commission. The judgments of the General Court were confirmed by the Court of Justice in 2012.²

Following the delivery of the judgments of the General Court, Lagardère submitted a new request for approval of Wendel to the Commission, proposing a new trustee, who had been approved by the Commission in early 2011. On 13 May 2011, the Commission once again approved Wendel as purchaser of the sold assets, with effect as of 30 July 2004. Odile Jacob subsequently brought a new action for annulment of that decision, arguing, in particular, that the Commission had not given full effect to the judgments of 13 September 2010, that it had infringed the principle of non-retroactivity and that it had committed errors of law and manifest errors in the assessment of Wendel's bid.

In today's judgment, the General Court dismisses Odile Jacob's action.

First, the General Court declares that the Commission was not required, **in order to give full effect to the judgments of 13 September 2010**, to revoke the decision authorising the concentration. The General Court observes in this connection that the annulment of the first approval decision, in itself, had no impact on the lawfulness of the decision authorising the

¹ Cases [T-279/04](#) and [T-452/04](#) *Éditions Jacob v Commission*, see also Press Release No [84/10](#)

² Case [C-551/10 P](#) *Éditions Odile Jacob v Commission* [C-553/10 P](#) and [C-554/10 P](#) *Commission v Éditions Odile Jacob and Lagardère v Éditions Odile Jacob*. The background to the dispute and the reasoning of the General Court and the Court of Justice are set out in more detail in Press Release No [137/12](#).

concentration: that latter decision was not rendered inapplicable until the Commission adopted a position on the approval of a new purchaser. Furthermore, the Commission was not required to revoke the decision authorising the concentration, since the appointment of an independent trustee was a responsibility but not a condition.

Likewise, the General Court declares that the Commission was not obliged, in order to give full effect to the judgments of 13 September 2010, to repeat the whole procedure from the date on which Lagardère appointed the first trustee. The Commission was required to repeat the procedure only from the precise point at which the illegality took place that, is when the first trustee's report was submitted and the first approval decision was adopted. Since the acts adopted previously by the first trustee had not been called into question, the Commission was not obliged to repeat the procedure at that stage.

Concerning Odile Jacob's argument that the Commission was not realistically able to take the report of the new trustee into consideration (since it was not submitted to the Commission until the day before the adoption of the contested decision), the General Court observes that the Commission had the English version of the report three months before the adoption of the contested decision, which enabled it to acquaint itself fully with its contents. Moreover, the General Court points out that that report is merely one element taken into account in the Commission's appraisal, that institution being required to carry out the research necessary to establish that the purchaser did indeed satisfy the approval conditions.

As regards the alleged unlawful retroactivity of the decision of 13 May 2011, the General Court notes that the Commission can adopt retroactive decisions where this is required by the intended aim and the principle of protection of the legitimate expectations of the parties concerned is properly observed. The General Court takes the view that those conditions have been met in the present case: the new retroactive approval decision is intended to meet several objectives in the public interest (namely to remedy the illegality sanctioned by the judgment in Case T-452/04 and to fill the legal vacuum created by the annulment of the first approval decision) and does not undermine the legitimate expectations of either those persons whom it concerns directly or third parties.

Lastly, the General Court is of the opinion that the Commission, which evaluated the situation in 2004 and supported its findings by an analysis of the developments after that date, did not commit **any error of law or manifest error in the assessment of Wendel's bid**. It is apparent from the file that, in accordance with the undertakings entered into by Lagardère, Wendel was a viable operator capable of maintaining and developing effective competition on the market, the Commission having properly examined the viability and ability of Wendel in this respect. Nor did the Commission fail to take account of Wendel's lack of experience in publishing. On the contrary, it noted that, despite that lack of experience, Wendel was an operator capable of maintaining and developing effective competition. Furthermore, the Commission observed the condition that Wendel had to be independent of Lagardère: the General Court points out that Wendel was independent of the Lagardère group, that there was no link in terms of capital or any other economic link between those two companies and that the presence of the same person on the management and supervisory bodies of those two companies was not such as to establish a relationship of dependency between Wendel and Lagardère, Wendel having, in particular, undertaken that that person would terminate her mandates within one year of the approval decision and that she would not participate, in the interim, in the deliberations concerning the group's publishing activities.

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

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