

Case T-310/00

MCI, Inc.

v

Commission of the European Communities

(Competition — Merger control — Action for annulment — Interest in bringing proceedings — Powers of the Commission)

Judgment of the Court of First Instance (Second Chamber), 28 September
2004 II - 3256

Summary of the Judgment

1. *Actions for annulment — Interest in bringing proceedings — Commission decision declaring a concentration incompatible with the common market — Commission notified of the parties' abandonment of the transaction before the adoption of the decision — Not relevant*
(Art. 230, fourth para., EC)

2. *Competition — Concentrations — Powers of the Commission — Adoption of a decision declaring a concentration incompatible with the common market when the transaction has been abandoned by the parties — Not included*
(Council Regulation No 4064/89, Arts 4 and 8)
3. *Community law — Principles — Protection of legitimate expectations — Expectation capable of arising from a mere administrative practice — Conditions*

1. An action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested measure. In order for such an interest to be present, the annulment of the measure must of itself be capable of having legal consequences or, in accordance with a different form of words, the action must be liable, if successful, to procure an advantage for the party who has brought it.

An undertaking party to a notified proposed concentration which informs the Commission, just before the adoption by the latter of a decision, of its abandonment of that transaction, precisely to avoid the adoption of the decision, retains a legal interest in bringing proceedings for annulment of the decision by which the Commission, refusing to take account of the abandonment, declares the transaction incompatible with the common market.

annulled by the Community judicature, continues to stand, the undertaking is prevented by law from merging with the other party to the notified transaction, at least in the configuration and under the conditions put forward in the notification, should it again have the intention to do so.

The fact that the undertaking does not necessarily have that intention, or that it will perhaps not carry it out, is, in this respect, a purely subjective circumstance that cannot be taken into account when assessing its interest in bringing proceedings for the annulment of a measure which, unquestionably, produces binding legal effects such as to affect its interests by bringing about a distinct change in its legal position.

As long as the decision in question, which is presumed to be valid until it is

(see paras 44, 52, 53-57)

2. The Commission exceeds the limits of its powers under Regulation No 4064/89 on the control of concentrations between undertakings by adopting a decision declaring a notified concentration incompatible with the common market when the notifying parties have formally withdrawn their notification and informed it of the abandonment of the concentration in the form envisaged in the notification. In such a case, the Commission no longer has the power, in the absence of a concentration agreement within the meaning of Article 4 of Regulation No 4064/89, to adopt a decision under Article 8(3) of that regulation.
3. A mere administrative practice or concession that is not contrary to the legislation in force and does not involve the exercise of discretion may give rise to a legitimate expectation on the part of the persons concerned, and the expectation therefore does not necessarily have to be founded on a communication which is generally applicable.

(see paras 91, 107)

(see para. 112)