

Case T-209/01

Honeywell International, Inc.

v

Commission of the European Communities

(Action for annulment — Competition — Commission decision declaring a concentration to be incompatible with the common market — Regulation (EEC) No 4064/89 — Ineffectiveness of a partial challenge to the decision — Aeronautical markets — Action that cannot lead to annulment of the decision)

Judgment of the Court of First Instance (Second Chamber, Extended Composition), 14 December 2005 II - 5532

Summary of the Judgment

1. *Actions for annulment — Subject-matter — Merger control decision — Decision based on several pillars of reasoning, each of which is sufficient to justify its operative part — Applicant raising only pleas relating to an error or other illegality affecting just one of those pillars — Action not founded*
(Council Regulation No 4064/89, Art. 2(3))

2. *Procedure — Application initiating proceedings — Formal requirements — Identification of the subject-matter of the dispute — Brief summary of the pleas in law on which the application is based — Analogous requirements with regard to grounds in support of a plea — Grounds not set out in the application — General reference to documents annexed to the application — Inadmissibility — Admissibility of a reference to documents submitted to the same court in another case — Case-by-case assessment — Essential condition — Parties, in particular the applicants, must be the same in both cases*
(Statute of the Court of Justice, Art. 21; Rules of Procedure of the Court of First Instance, Arts 43(1) and 44(1))
3. *Procedure — Joinder of two cases lodged by different applicants — No effect on the scope of the application lodged separately by each of them*
(Rules of Procedure of the Court of First Instance, Art. 50)
4. *Competition — Concentrations — Assessment of compatibility with the common market — No creation or strengthening of a dominant position impeding competition — Plurality of relevant markets — Condition not satisfied in respect of one of them — Prohibition*
(Council Regulation No 4064/89, Art. 2(3))
5. *Competition — Concentrations — Administrative procedure — No obligation on the Commission to indicate, after service of the statement of objections and before adoption of the final decision, its current thinking as to possible resolution of the problems previously identified*
6. *Actions for annulment — Pleas in law — Concept — Elements of an application for annulment appearing in a summary of the decision — Inclusion — Condition — The validity of the findings in the contested decision must be clearly and unambiguously challenged*

1. Where some of the grounds given in a decision are, by themselves, sufficient to justify that decision in law, errors which might invalidate other grounds of the decision do not have any effect on its operative part. Moreover, where the operative part of a Commission decision is based on several pillars of reasoning, each of which would in itself be sufficient to justify that operative part,

that decision should, in principle, be annulled only if each of those pillars is vitiated by an illegality. In such a case, an error or other illegality which affects only one of the pillars of reasoning cannot be sufficient to justify annulment of the decision at issue because it could not have had a decisive effect on the operative part adopted by the Commission. Where a pillar of reasoning that is

sufficient to justify the operative part of a measure is not called into question by an applicant in his action for annulment, that pillar of reasoning, and thus the measure founded on it, must be held to be lawful and established with regard to him.

First Instance, that any plea which is not adequately articulated in the application initiating the proceedings must be held inadmissible. In the case of an absolute bar to proceeding, such inadmissibility may be raised by the Court of its own motion if need be.

That rule applies in particular in the context of merger control decisions. Accordingly, a prohibition decision should not be annulled on the ground that the applicant has shown that the analysis adopted in relation to one or more markets is vitiated by one or more errors, if it is nevertheless apparent from the prohibition decision that the notified merger satisfied the criteria justifying a prohibition set out in Article 2(3) of Regulation No 4064/89 in relation to one or more other markets. In particular, if the grounds concerning those other markets are not challenged in the application, they must be held, for the purposes of the action in question, to be well founded with the result that the action is to be considered unfounded in its entirety.

The summary of an applicant's pleas in law must be sufficiently clear and precise to enable the defendant to prepare its defence and to enable the Court to give judgment in the action without the need to seek further information. Similar requirements apply where a submission is made in support of a plea in law.

(see paras 48-50, 96)

Moreover, in order to ensure legal certainty and the proper administration of justice, for an action to be admissible, the basic legal and factual particulars on which the action is based must be indicated coherently and intelligibly in the application itself, even if only in summary form. Whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed to it, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential submissions in law which, in accordance with the abovementioned provisions, must

2. It follows from Article 21 of the Statute of the Court of Justice and Article 44(1) of the Rules of Procedure of the Court of

appear in the application. It is not for the Court to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and instrumental function.

the mandatory requirements of Article 44(1) of the Rules of Procedure to be circumvented.

(see paras 54-59, 61, 64, 67)

Despite those requirements, in some cases the Community judicature has allowed pleas in law to be raised by means of a reference to another case and has refused to do so in others without however indicating, at least explicitly, a decisive criterion for the exercise of that choice, it depending on the specific features of each particular case. However, the requirement that the parties, and in particular the applicant, be identical in both cases is an essential condition for the admissibility of pleas purportedly raised by means of a reference to pleadings in another case.

3. It is clear from Article 50 of the Rules of Procedure that an order for joinder does not affect the independence and autonomy of the cases which it covers, since they may always subsequently be disjoined. Thus, the fact of joining two cases brought by different applicants cannot alter the scope of the application lodged separately by each of them; otherwise there would be a risk of impairing the independence and autonomy of their separate actions. To accept the contrary would mean that a procedural decision of the President falling entirely within his discretion could extend the scope of an application, and thus be decisive for the outcome of those proceedings before the Court, thereby introducing an arbitrary element into those proceedings.

(see paras 70-72, 75)

To accept the admissibility of pleas in law not set out expressly in the application on the ground that they were raised by a third party before the same court and in another case to which the application refers, would be to allow

4. It follows from Article 2(3) of Regulation No 4064/89 that, in relation to concen-

trations, if a transaction notified to it creates or strengthens a dominant position, on just one market, as a result of which effective competition would be significantly impeded in the common market, the Commission must, in principle, prohibit it, even if the transaction does not give rise to any other impediment to competition. Where the Commission examines several markets in turn and finds that a dominant position will be created or strengthened on several of them with the result that effective competition will be significantly impeded, it must be concluded, unless otherwise expressly indicated in the decision, that the Commission considers that the situation on each of those markets as a result of the concentration would, of itself, justify the prohibition of the notified transaction.

(see para. 79)

5. In matters relating to merger control the Commission cannot be required, over and above the obligation to set out its objections in a statement of objections and to supplement that statement if it should then decide to adopt new objections, to indicate, after service of the

statement of objections and before adoption of the final decision, its current thinking as to the possible means of resolving the problems it has identified.

(see para. 99)

6. Whilst matters set out in an application for annulment under the heading 'Summary of the decision' are not, prima facie, intended to constitute independent pleas in law capable of resulting in the annulment of the contested decision, but rather to describe the measure which is being challenged, it is not possible to rule out, a priori, that this part of the application may contain a statement setting out one or more pleas of annulment. Nevertheless, it is only where it emerges clearly and unambiguously from a passage contained under that heading that, in addition to providing a description, the passage is challenging the validity of the findings made in the contested decision, that the passage can be regarded as a plea in law, notwithstanding the structure of the application and its position in the general scheme of that document.

(see para. 106)