

Case T-443/03

**Sociedad Operadora de Telecomunicaciones de Castilla y León,
SA (Retecal) and Others**

v

Commission of the European Communities

(Competition — Concentrations — Complaint concerning an alleged failure by the Spanish authorities — Decision to take no further action on the complaint — Inadmissibility)

Order of the Court of First Instance (Fifth Chamber), 25 May 2005 II - 1805

Summary of the order

1. *Competition — Concentrations — Referral of the examination of a concentration to the competent authorities of a Member State — Effects — Exclusive competence of the national authorities to make a determination in respect of the transaction — No possibility for the Commission to exercise direct control — Possibility of control by initiation of proceedings for failure to fulfil obligations*

(Art. 226 EC; Council Regulation No 4064/89, Art. 9(8))

2. *Actions for annulment — Actionable measures — Refusal of Commission to initiate proceedings for failure to fulfil obligations — Exclusion*
 (Arts 226 EC and 230, fourth para., EC)

1. Regulation No 4064/89 on the control of concentrations between undertakings does not lay down specific rules on the division of powers after the decision to refer a concentration to the national authorities of a Member State has been taken which derogate from the system provided for in the Treaties. It is true that Article 9(8) of Regulation No 4064/89 does not expressly exclude the power of the Commission to monitor compliance by the Member States with the obligations laid down in the Community competition rules, from which the referral does not have the effect of releasing them. However, although that article imposes an obligation on the Member State concerned, neither the Treaties nor the secondary legislation provide for a special review procedure that must be carried out by the Commission.

The Commission may not, therefore, monitor compliance with that obligation other than by means of the procedure established by the Treaties in the case of a transaction falling within the jurisdiction of that Member State. As regards a concentration over which the Commission

no longer exercises direct control after it has been referred to the national authorities, the Commission may act only under Article 226 EC, by bringing, where appropriate, an action against that Member State for failure to fulfil its obligations.

(see paras 40, 42-43)

2. Individuals do not have standing to challenge a refusal by the Commission to initiate proceedings against a Member State for failure to fulfil its obligations. In effect, the Commission is not required to commence proceedings for failure to fulfil obligations, but enjoys a discretion which precludes any right for individuals to require it to take a specific position and to bring an action against its refusal to take action.

(see para. 44)