

European Commission to pay compensation for illegal merger prohibition decision

Lawrence Graham LLP

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The Commission has for the first time been required to pay damages for mistakes made during an investigation under the EC Merger Regulation. On 11 July 2007, the CFI held that the Commission must compensate Schneider SA partially for certain losses that Schneider incurred as a result of the Commission's prohibition in 2001 of its completed acquisition of Legrand. Both companies are French industrial groups involved in the production of electrical equipment. After the prohibition Schneider sought a purchaser for Legrand and, at the same time, appealed against the 2001 prohibition, which was then overturned by the CFI. The deal was remitted to the Commission for further examination but Schneider was unable to agree to the conditions for clearance required by the Commission and so continued to negotiate the sale of Legrand.

The CFI found that the Commission had failed to have regard to Schneider's rights of defence during its assessment of the merger and that this amounted to a sufficiently serious breach of Community law to give a right to damages. The CFI accepted Schneider's argument that the Commission's prohibition decision was partly based on an argument that the merger would reinforce the parties' positions in various national markets. This argument had not been mentioned in the Commission's statement of objections given to the parties during the merger investigation, but only appeared in the final decision. Thus Schneider had been deprived of a chance to defend itself against this argument.

The CFI accepted Schneider's argument that it incurred losses because it accepted a lower sale price in order to defer transfer of Legrand to the purchasers until after the proceedings before the CFI and the second Commission investigation were concluded. Compensation was therefore granted in this respect. The CFI considered, however, that Schneider had contributed to its own loss by assuming the risk that its completed acquisition would be prohibited. The Court also held that Schneider could recover its additional expenses in dealing with the Commission's second investigation of the deal.

The Commission is now appealing the CFI's decision as it considers that the CFI made a number of errors in its judgement. In particular, the Commission believes that

the breach of Schneider's right to be heard was not sufficiently serious as to justify the award of damages. In addition, the Commission does not accept that the low sale price obtained by Schneider was directly caused by the Commission's actions.