

T-464/04 - Independent Music Publishers and Labels Association (Impala) v Commission, judgment of 13 July 2006

Facts: The relevant companies were Bertelsmann AG, a German company involved with music recording and publishing, television and radio, book, magazine and newspaper publishing, print and media services, and book clubs and music clubs, and two branches of Sony, one established in the Netherlands and one established in New York, specialising in music recording and publishing, industrial and consumer electronics and entertainment.

The companies had reached an agreement to merge and then form joint ventures. They notified the Commission of this proposed merger, and the Commission served them with a statement of objections stating that it would lead to a concentration which was incompatible with Community law since it would strengthen a collective dominant position on the recorded music market. Following a hearing, the Commission reversed this decision, declaring compatibility with EU law.

Impala, an international association of independent music production companies, applied to have this decision reversed.

Held: The Court clarified that when the Commission declared a concentration to be compatible with EU law, it was a necessary and sufficient condition that the decision stated clearly and unequivocally the reasons why the Commission considered the concentration at issue did not raise serious doubts as to compatibility with the market.

On this point, the Commission had not been unequivocal and clear: in particular, the Commission had not stated why product homogeneity carried more weight than a continuum of substitutability, nor had it indicated why the finding that the pricing of albums is quite standardised was invalidated by the general statement that pricing depended on the success of the album.

While this would not be enough to lead to the conclusion that a collective dominant position did not exist on the market, it was enough to support the conclusion that the Commission's decision did not provide sufficient grounds for the finding that the market was not sufficiently transparent to allow a collective dominant position.

What was more, the Commission had committed a manifest error in assessment as not all relevant data had been taken into consideration (in particular, no prospective analysis was carried out), in line with the respondents' arguments.

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