

Re:

Application for a stay of execution of Commission Decision C(2008) final of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC)

Operative part of the order

1. *The application for interim measures is dismissed.*
2. *Costs are reserved.*

**Action brought on 18 September 2008 — SPAR
Österreichische Warenhandel v Commission**

(Case T-405/08)

(2009/C 6/66)

Language of the case: German

Parties

Applicant: SPAR Österreichische Warenhandels-AG (represented by: A.-H. Bischke, S. Brack und D. Bräunlich, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annul the defendant's decision of 23 June 2008;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant has brought an action against the decision of the Commission of 23 June 2008 in Case COMP/M.5047 — REWE/ADEG, by which the Commission approved the acquisition by Billa AG, a company in the German REWE Group, of sole control of ADEG Österreich Handelsaktiengesellschaft. The applicant submits that the Commission should not have approved the concentration in accordance with Article 6(2) of the EC Merger Regulation ⁽¹⁾, since the undertakings given were not sufficient to remove what the applicant considers to be existing competition concerns.

In support of its action, the applicant putting forward two pleas in law:

First, the applicant submits that Article 6(1)(c) of the EC Merger Regulation has been infringed because the Commission erred in law when it failed to open Phase II proceedings and approved the proposed concentration 'REWE/ADEG' subject to conditions in Phase I. The Commission failed to sufficiently investigate the

effect the proposed concentration would have on competition and therefore also misjudged the serious competition concerns arising in connection with the proposed concentration. In detail, the infringement consists of the following manifest errors of assessment:

- the Commission misjudged the effect of the proposed takeover on competition in the retail market in the whole of Austria, because if wrongly assumed that a number of competitors would remain in place and underestimated ADEG's competitive potential;
- the Commission wrongly determined and wrongly assessed the market position of the parties at regional and local level;
- the undertakings accepted by the Commission are not appropriate for removing the existing competition concerns, since they were assessed on the wrong basis;
- the Commission wrongly determined and wrongly assessed the effect on competition in the labour markets.

Second, during the merger control proceedings, the Commission infringed essential formal requirements. It infringed the applicant's and the Member States' right to a fair hearing when it failed to market test the last undertaking proposed by the parties and failed to forward it to the Member States. Moreover, the Commission failed to give sufficient reasons for its decision.

⁽¹⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

**Action brought on 16 September 2008 — Nexus Europe
(Ireland)/Commission**

(Case T-424/08)

(2009/C 6/67)

Language of the case: English

Parties

Applicant(s): Nexus Europe (Ireland) Ltd (Dublin, Ireland) (represented by: M. Noonan, Barrister)

Defendant(s): Commission of the European Communities

Form of order sought

- Order the Commission to pay damages in the sum of EUR 95 418,99;