

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging that the Commission committed errors of law, manifest errors of assessment, and infringement of essential procedural requirements in the interpretation and application of the legal test for the assessment of horizontal non-coordinated effects in the market for retail mobile telecommunications services in the United Kingdom. In particular: the Commission erred with respect to the qualification of the applicant as an 'important competitive force' and in assessing closeness of competition. The Commission also committed manifest errors of assessment in the analysis of the predicted price effects and likely incentives of the merged entity following the Concentration.
2. Second plea in law, alleging manifest errors of assessment and distortion of the evidence with respect to the analysis of the counterfactual scenario. In particular: the Commission failed to assess Hutchison's network capacity relative to that of its competitors and impermissibly relies on the alleged ability of Hutchison to adopt 'demand management' initiatives, such as increasing prices, as a reason for rejecting Hutchison's evidence concerning future network capacity.
3. Third plea in law, alleging errors of fact, errors of law, manifest errors of assessment and infringement of essential procedural requirements with respect to horizontal non-coordinated effects arising from network sharing. In particular: the Commission has erred in relation to its novel propositions concerning the necessity and extent of 'alignment' between competitors in network sharing agreements; and the Commission has committed an error of law and manifest errors of assessment by basing its conclusions on potential harm to competitors of the merged entity rather than competition. The Commission committed further errors in rejecting Commitments offered by Hutchison that would have fully resolved all of its concerns relating to network sharing.
4. Fourth plea in law, alleging manifest errors of assessment, errors of law and infringement of essential procedural requirements with respect to horizontal non-coordinated effects arising in the wholesale market for access and call origination on public mobile networks in the United Kingdom. In particular: the Commission erred in concluding that Hutchison is an 'important competitive force' in the wholesale market despite having a very small market share (less than 3 %); and in basing its conclusions on the opinions of third parties instead of conducting its own analysis.
5. Fifth plea in law, alleging errors of law, manifest errors of assessment, lack of reasoning and infringement of essential procedural requirements with respect to the evaluation of the Commitments offered by Hutchison in respect of concerns relating to the retail and wholesale mobile telecommunications markets in the United Kingdom. In particular: the Commission incorrectly objected to the proposed Commitments alleging uncertainty of their implementation; the Commission has manifestly erred in its assessment of the ability of new and strengthened competitors to compete effectively on the basis of the proposed Commitments; and the Commission erred in its assessment of the overall suitability of the proposed Commitments to offset the loss of competition alleged in the decision.

Action brought on 27 July 2016 — Maximum Play v EUIPO (MAXPLAY)

(Case T-400/16)

(2016/C 371/13)

Language of the case: English

Parties

Applicant: Maximum Play, Inc. (San Francisco, California, United States) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'MAXPLAY' — Application for registration No 14 047 963

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 26 May 2016 in Case R 2273/2015-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Pleas in law

- Infringement of Articles 7(1)(b) and 7(1)(c) of Regulation No 207/2009.
- Failure to take into account properly previous European Union trade mark and national registrations as well as a national application.

Action brought on 31 July 2016 — Makhlouf v Council

(Case T-409/16)

(2016/C 371/14)

Language of the case: French

Parties

Applicant: Ehab Makhlouf (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- declare the applicant's action admissible and well founded;
- consequently, annul Decision (CFSP) 2016/850 of 27 May 2016 and the subsequent measures implementing it, in so far as they relate to the applicant;
- order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law which are essentially identical or similar to those relied on in Case T-410/16, *Makhlouf v Council*.
