



PRESS RELEASE No 127/24

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Judgment of the Court in Joined Cases C-611/22 P | Illumina v Commission and C-625/22 P | Grail v Commission and Illumina

Illumina-Grail merger: the Court of Justice sets aside the judgment of the General Court and annuls the decisions by which the Commission accepted requests from national competition authorities seeking the examination of the proposed concentration

The Commission is not authorised to encourage or accept referrals of proposed concentrations without a European dimension from national competition authorities where those authorities are not competent to examine those proposed concentrations under their own national law

On 21 September 2020, Grail LLC, a US company that develops blood tests for the early detection of cancer, and Illumina Inc., a US company specialised in genetic analysis solutions, made public a proposal on the acquisition by Illumina of sole control over Grail. Since the concentration did not have a European dimension in particular given the fact that Grail had no turnover either in the European Union or elsewhere in the world, it was not notified to the Commission. Moreover, it was not notified in the Member States or in the States party to the Agreement on the European Economic Area (EEA), since it failed to reach the relevant national thresholds.

Having received a complaint concerning that concentration, the Commission invited the Member States to submit to it, in accordance with the Merger Regulation¹, any requests for it nonetheless to examine that proposed concentration, on the ground that it may affect trade between the Member States and threaten to significantly affect competition within their territory. The Commission received such a request from the French competition authority, which was joined by the Greek, Belgian, Norwegian, Icelandic and Dutch competition authorities. By its judgment in Illumina v Commission², the General Court dismissed Illumina's action challenging the decisions by which the Commission accepted the main request and the requests to join it. Illumina and Grail each lodged an appeal against that judgment.

The Court of Justice **sets aside the judgment of the General Court and annuls the Commission decisions at issue.**

The Court of Justice finds that **the General Court erred in concluding that a literal, historical, contextual and teleological interpretation of the Merger Regulation allowed national competition authorities to ask the Commission to examine a concentration** that not only lacks a European dimension but also **falls outside their competence to review** such a concentration on account of the fact that it does not reach the applicable national thresholds. In particular, the General Court erred in establishing that that regulation provides for a 'corrective mechanism' for the effective control of all concentrations with significant effects on the structure of competition in the European Union.

According to the Court of Justice, the General Court's interpretation is liable to upset the balance between the various objectives pursued by that regulation. In that regard, the Court of Justice finds that the thresholds set for

determining whether or not a transaction must be notified are **an important guarantee of foreseeability and legal certainty for the undertakings concerned**. Those undertakings must be able easily to determine whether their proposed transaction must be the subject of a preliminary examination and, if so, by which authority and subject to what procedural requirements.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Article 22 of Council Regulation \(EC\) No 139/2004](#) of 20 January 2004 on the control of concentrations between undertakings.

² Judgment of 13 July 2022, Illumina v Commission, [T-227/21](#) (see also press release [No 123/22](#)).