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# EU Competition Law Newsletter

## Highlights

— Air Canada Grounds Plans To Acquire Transat Facing Headwinds From The European Commission

— First Article 22 EUMR 'Below Threshold' Upward Referral After Commission's Recent Policy Change

# Air Canada Grounds Plans To Acquire Transat Facing Headwinds From The European Commission

On April 2, 2021, Air Canada announced that it had abandoned its plan to acquire Transat, a competing operator in the market for air transport services between Canada and the EEA. The deal was notified on April 16, 2020 and after one year of discussions and repeated suspensions of the investigation by the Commission, Air Canada decided to abandon the €127 million deal.

### Hitting a wall: Air Canada's withdrawal of its notification

On April 16, 2020, Air Canada notified its intention to acquire sole control over its competitor Transat for approximately €480 million at the time. Air Canada is Canada's largest airline while Transat's subsidiary, Air Transat, ranks third. The companies are respectively the first and second largest providers of scheduled passenger air transport services between the EEA and Canada.

On May 25, 2020, the Commission opened a Phase II investigation, raising concerns regarding 33 origin and destination ("O&D") city pairs between the EEA and Canada, on 29 of which the parties offer competing direct flights. The Commission found that the parties were each other's closest competitors because other airlines were active only on small subsets of routes.

Air Canada offered its first remedy package on November 25, 2020, after the Commission had suspended its investigation for the first time for two months. Among other commitments,[1] Air Canada offered to divest take-off and landing slots on a dozen transatlantic routes. The Commission rejected the initial package as insufficient, mirroring recent statements by Commission officials which seem to indicate a certain reticence with regard to slot divestments as an appropriate remedy, pointing to "mixed success" with slot remedies in the past.[2]

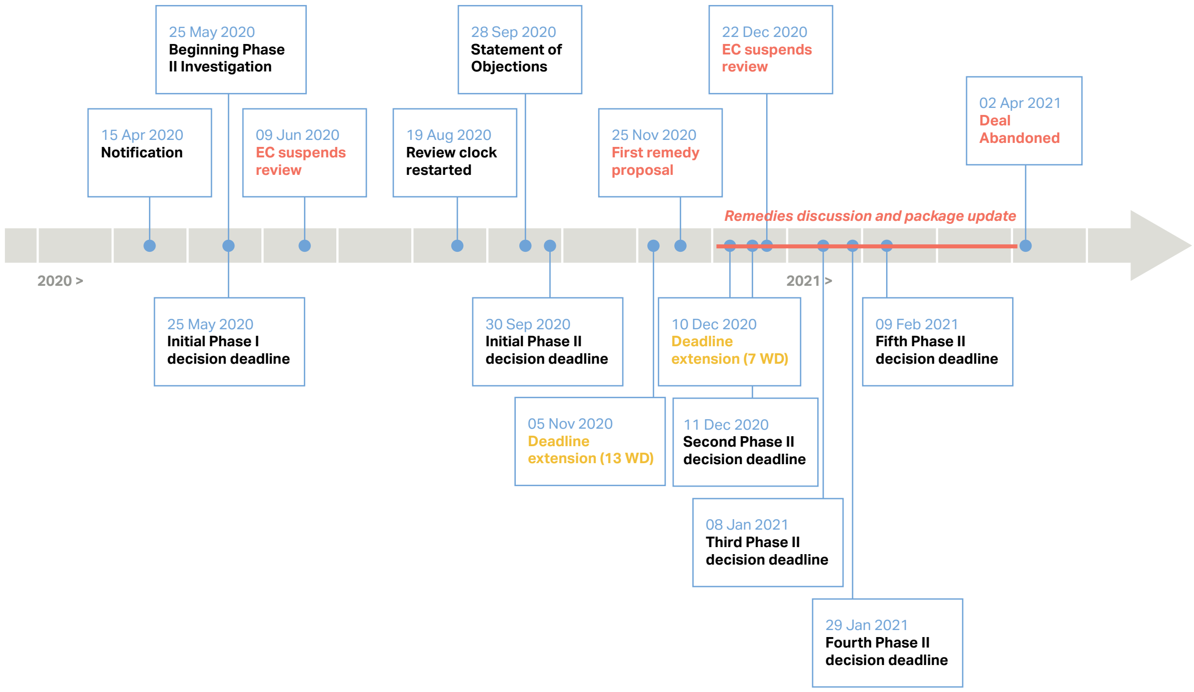
[1] The other commitments offered were behavioural, in particular, Air Canada committed to allow competing airlines flying routes where competition concerns arose to sell return journeys with one leg being covered by Air Canada, and to carry connecting passengers taking long-haul flights operated by competing airlines.

[2] See Henrik Morch (Director of the DG COMP Unit Markets and cases V: Transport, Post and other services) during the Concurrences Webinar "*Competition in the Air Transport Sector After Covid-19*," November 25, 2020 ("H. Morch, Concurrences Webinar").

Moreover, the Commission shows increased interest in commitments for access to airport infrastructures. It therefore seems to require strong evidence that the slots offered are sufficiently attractive and competitive.[3] Negotiations lasted several months until the proposal of revised commitments. Air Canada later declared that the revised remedy package went "beyond the commercially reasonable efforts" that have been "traditionally accepted by the Commission in previous airline merger cases."

Air Canada considered that any additional remedies would likely not win the Commission over and compromise its ability to compete internationally, in particular following the impact of the COVID-19 pandemic. When the Commission upheld its concerns despite the revised remedy package, Air Canada withdrew its notification on April 2, 2021.

The timeline below illustrates the main steps of the merger control procedure:




## COVID-19 and failing firm defense – different standards across the Atlantic?

The transaction was notified to competition authorities in the midst of the COVID-19 pandemic, which has significantly disrupted the aviation sector at large. As a result, the acquisition of Transat was valued over €350 million less at the time of abandonment of the deal compared to the time when it was notified.[4] Unsurprisingly, Air Canada advanced a "failing firm defense" in Transat's regard.

However, neither the Commission—nor ostensibly the Canadian Competition Bureau —found the conditions for a failing firm defense to be met. The Commission was not convinced that, absent the merger, Transat would be forced out of the market in the near future, or that its assets would inevitably exit the market.[5]

Indeed, Transat had extended a loan facility for over 250 million Canadian dollars as recently as in 2020, and failed to show that no further funding would be granted. Air Canada also failed to prove that Transat would not have found an alternative

[3] In the present case notably, timing is of the essence. For example, a slot with flights leaving Canada early afternoon may not be competitive enough since passengers may land in Europe in the middle of the night. Similarly, the connection flights Air Canada offered to make available as a remedy might arrive too early or too late to the connecting airports to make them truly attractive to customers.

[4] This decrease was also partly due to the remedies offered by Air Canada to have the deal approved.

[5] For the European "failing firm" test, see Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, 2004/C 31/03, February 5, 2004, para. 90.

buyer. At the same time, the Commission had made clear that it would not apply the failing firm defense more flexibly in the context of the pandemic.[6]

On the other side of the Atlantic, however, the deal was cleared following an intervention by the Canadian Government, and despite opposition from the Canadian Competition Bureau. The Canadian Government based its conditional approval[7] on reasons of public interest, including the level of future (*i.e.*, post-pandemic) air service, wider social and economic implications including potential job losses, the financial health of the air transportation sector, and future competition on Canadian routes.[8]

The Canadian Government underlined that the pandemic was a key factor in its final decision, in particular in view of the significant uncertainties concerning Transat's ability to recover and continue operating after the crisis. In light of the expected consequences of the crisis, it concluded that the acquisition was the best probable outcome for market stakeholders and related industries.

The absence of a similar public interest intervention mechanism at EU level was Air Canada's challenge in Europe. In spite of vociferous demands in recent years for an introduction of a public interest veto at EU level,[9] the Commission continues to found its assessment purely on competition grounds. Hence, the Commission distinguished between the temporary market impact of an acute crisis, such as the COVID-19 pandemic, and mid- to long-term effects of structural changes in the market.[10]

Yet, it seems unlikely that Air Canada's case will revive the debate of EU reform and the introduction of political veto rights. Given that Canada's veto would have benefitted primarily the region of Quebec, with anticompetitive effects continuing to threaten markets in Europe, the case may in fact more likely provide an argument against political unilateralism.

# First Article 22 EUMR 'Below Threshold' Upward Referral After Commission's Recent Policy Change

On April 19, 2021, the Commission accepted a referral request by the French competition authority of genomic sequencing company Illumina's planned acquisition of biotech company Grail under Article 22 EUMR.[11] This marks the first effective upward referral of a 'below threshold' transaction, *i.e.*, a transaction that neither meets national nor EU merger control thresholds.[12]

Breaking with its long-standing approach, the Commission now encourages NCAs to refer transactions to the Commission, even if those do

6 See H. Morch, Concurrences Webinar.

7 The conditions imposed by the Canadian Government included (i) the preservation of the Transat head office and brand in the province of Quebec; (ii) maintaining 1,500 employees in the new entity's leisure travel business; (iii) a commitment to facilitate aircraft maintenance in Canada, and in particular in Quebec; (iv) a price monitoring mechanism; (v) an active encouragement by Air Canada of other airlines to take up former Transat routes to Europe; and (vi) a launch of new destinations from Canada within the first five years. See, the Canadian Government's official press release of February 11, 2021, available at: https://www.canada.ca/en/transport-canada/news/2021/02/government-of-canada-approves-proposed-purchase-of-transat-at-inc-by-air-canada.html.

8 See Privy Council Office Order-in-Council number 2021-0070 of February 9, 2021.

9 As reported in our February 2019 EU Competition Law Newsletter. Similar veto powers exit for instance in France and Germany ("*Ministererlaubnis*").

10 During its market test, the Commission had asked competitors to respond without taking the COVID-19 crisis into account, despite all uncertainty whether recovery in the air transport industry will in fact occur.

11 *Illumina/Grail* (Case COMP/M.10188), decision not yet published. The French competition authority was one of the most vocal proponents for a revival of the Article 22 EUMR referral mechanism, advocating for its use to close the perceived loophole in EU merger control for "killer acquisitions" since 2017, *see*, *e.g.*, Autorité de la Concurrence Press Release "The Autorité welcomes the announcement by the European Commission, which will henceforth allow national competition authorities to refer sensitive merger transactions to it for examination, including when they are not subject to national merger control," September 15, 2020.

12 Another transaction was also referred to the Commission under Article 22 EUMR, on April 6, namely Facebook's proposed acquisition of customer-services startup Kustomer. This Transaction was reportable in Austria and was referred following its formal notification to the Austrian NCA, confirming the increased scrutiny of "killer acquisitions," in the tech sector. *See* Austrian Federal Competition Agency Press Release of March 31, 2021, available at: https://www.bwb.gv.at/en/merger_control/merger/id/5343/.

not meet EU or national notification thresholds, and even where these have already been implemented.[13] With this significant policy change, the Commission hopes to fill a perceived enforcement gap regarding so-called "killer acquisitions," usually in the tech and pharmaceutical sectors.

Illumina markets next generation genomic sequencers which are widely used in the biotech sector, in particular by research laboratories and other healthcare companies, including Grail and its competitors. Grail uses genomic sequencing and data science tools to develop blood tests for early cancer detection based on genomic sequencing technology. Following a preliminary analysis, the French competition authority voiced concerns around a potential input foreclosure theory of harm. The authority considered that Illumina could be led to increase the price or lower the quality of its sequencers sold to competitors of Grail post-transaction.

The referral was supported by several NCA's, including Belgium, Greece, Iceland, the Netherlands and Norway.[14]

The parties challenged the referral request given the lack of activities of the target in the EU. But the French Administrative Supreme Court (*Conseil d'État*) refused to oppose the request. The *Conseil d'État* ruled that the referral request could not be separated from the overall merger control investigation and could therefore only be challenged before the EU courts once the Commission reaches its final decision on the substance of the transaction.[15]

The Commission accepted the referral on April 19 and asked Illumina to notify the transaction.[16] On April 28, Illumina appealed the Commission's decision arguing its illegality on the basis that (i) the Commission has never previously accepted a 'below threshold' referral; and (ii) Illumina was not informed of the investigation in a timely manner.[17] The General Court's decision is pending. Since the appeal has no suspensory effect, the transaction will now be reviewed by the Commission within the merger control deadlines.

# News

## Commission Updates

### *The Commission Withdraws Its 2019 Decision Imposing Binding Commitments In The PayTV Investigation*

On March 31, 2021, the Commission withdrew its decision which made binding—under Article 9 of Regulation No 1/2003—commitments offered by NBCUniversal, Sony, TWDC, Twentieth Century Fox, Warner Bros and Sky in the cross-border access to pay-TV antitrust proceedings.[18] The withdrawal follows the annulment by the Court of Justice of the Commission's commitments decision against Paramount and its parent company Viacom[19] (the "Paramount Commitments Decision"), who had offered essentially identical commitments to those offered by the parties in the present case.

[13] For reporting on the broader application of Article 22 EUMR, see our March 2021 EU Competition Law Newsletter.

[14] See GCR article of April 9, 2021, available at: https://globalcompetitionreview.com/european-commission/french-court-declines-block-illuminagrail-merger-referral-eu.

[15] Autorité de la Concurrence Press Release, "The European Commission opens a review of Illumina's acquisition of Grail under the procedure of Article 22 of the 2004 Merger Regulation," April 20, 2021. For further details on the competence of the *Conseil d'État* under Article 22 EUMR, see our April 2021 French Competition Law Newsletter.

[16] Commission Press Release MEX/21/1846.

[17] *Illumina v. Commission* (Case T-227/21), case pending.

[18] Commission decision C(2021) 2076 final of March 31, 2021, withdrawing Decision C(2019) 1772 final of 7 March 2019 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement Case AT.40023 - Cross-border access to pay-TV.

[19] For the remainder of this article together referred to as Paramount.

### Background

In 2015, the Commission issued a Statement of Objections against six U.S. film studios (NBCUniversal, Paramount, Sony, TWDC, Twentieth Century Fox, and Warner Bros) and UK broadcaster, Sky, voicing concerns that certain contractual provisions in the licensing agreements between the film studios and Sky restricted cross-border passive sales within the EEA and therefore amounted to a restriction by object of competition within the meaning of Article 101(1) TFEU.[20]

The Commission accepted commitments offered by Paramount in 2016 and those offered by the other five studios and Sky in 2019 (the "2019 Decision"). The commitments prohibited the studios and Sky from complying with, and enforcing contractual clauses that restricted the passive sale of pay-TV subscriptions across borders in the EEA.[21]

On December 9, 2020, the Court of Justice granted Canal+'s application to annul the Paramount Commitments Decision (the "Paramount Judgment").[22] The Court of Justice concluded that the Paramount Commitments Decision breached the principle of proportionality because, without their agreement, it negated the contractual rights under the passive sales bans of third parties who were not involved in the proceedings (such as Canal+).[23]

In prohibiting Paramount from complying with its obligations under the clauses in question, the Commission undermined third parties' contractual right to "absolute territorial protection." The Court considered that commitments adopted must not nullify pre-existing contractual rights of third parties who are not part of the proceedings.

### The Commission withdrew the 2019 decision, drawing on lessons from the Paramount Judgment

As a result of the Paramount Judgment, the Commission withdrew its 2019 Decision. The withdrawal and the subsequent closure of the antitrust proceedings in the cross-border pay-TV access case[24] evidence the practical hurdles established by the Court of Justice's Paramount Judgment.

To avoid nullifying pre-existing contractual rights of third parties who are not part of the proceedings, the Commission would have had to broaden its investigation by including in the proceedings all relevant third parties affected by the commitments. The Commission would have also needed to issue a new Statement of Objections.

Instead—and although the Court of Justice upheld the Commission's position with respect to the legality of the bans of passive cross-border sales of pay TV subscriptions—in view of the rulings and the changes made to the agreements between the studios and broadcaster, the Commission opted for a withdrawal.

## *The Commission Fines Three Railway Companies For Their Participation In A Customer Allocation Cartel*

On April 20, 2021, the Commission fined Österreichische Bundesbahnen ("ÖBB"), Deutsche Bahn ("DB") and Société Nationale des Chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen ("SNCB") for their participation in a customer allocation cartel in the market for cross-border rail cargo transport services on blocktrains. The fine imposed amounts to a total of approximately €48 million and includes reductions following the leniency application of all three companies and their settlement with the Commission.[25]

[20] *Cross-border access to pay-TV* (Case COMP/AT.40023), Commission decision of July 26, 2019.

[21] *Cross-border access to pay-TV* (Case COMP/AT.40023), Commission decision of March 7, 2019, as reported in our March 2019, EU Competition Law Newsletter.

[22] *Groupe Canal+ v. Commission* (Case C-132/19 P) EU:C:2020:1007, as reported in our Alert memorandum of January 4, 2021.

[23] *Groupe Canal+ v. Commission* (Case C-132/19 P) EU:C:2020:1007, as reported in our December 2020 EU Competition Law Newsletter.

[24] Commission notice of March 31, 2021, of closure of proceedings in case AT.40023 – *Cross-border access to Pay-TV*.

[25] *Rail Cargo* (Case AT.40330), Commission Decision of April 20, 2021, not yet published.

**Background**

The Commission found that ÖBB, DB and SNCB participated in a customer allocation cartel in the market for cross-border rail cargo transport services on blocktrains. Blocktrains are cargo trains that deliver goods from one site to another without being stored or split up on the way. The trains usually transport high volumes of a single commodity, and connect major harbors and industrial sites across Europe. Freight sharing models are common practice in the cross-border rail cargo transport industry. These allow railway companies to provide cross-border freight services to customers for a single, comprehensive price.

ÖBB, DB and SNCB[26] concluded such bilateral and trilateral freight sharing services agreements for the transport services which they handled jointly. The Commission found that these agreements went beyond the scope of the cooperation authorized under legal freight sharing agreements and were therefore anticompetitive. It determined that the railway companies were exchanging sensitive information on customer requests for competitive offers and provided each other with higher quotes (*i.e.*, higher prices to offer to customers) to protect their respective business and market shares. The Commission concluded that ÖBB and DB took part in these practices between December 2008 and April 2014, while SNCB participated between November 2011 and April 2014.

**Leniency and settlement reductions vs. fine increase for repeat offence**

All three companies benefitted from a double reduction of fine for (i) their cooperation with the Commission following their application for leniency; and (ii) acknowledging their participation and liability in the cartel in the context of their settlement with the Commission. ÖBB received full immunity for being the first leniency applicant, escaping a €37 million fine. For their cooperation during the leniency proceeding, DB and SNCB benefited from a 45% and 30% fine reduction respectively, and both benefitted from the 10% reduction provided for in the Settlement Notice.[27]

On the other hand, the Commission increased the fine against DB by 50% for its repeated participation in cartels in the cargo transport sector.[28] Indeed, DB has been a member of several cartels in the cargo transport sector over the past decade.

— In 2012, DB and its subsidiary Schenker were fined almost €35 million for their participation in four distinct cartels in air freight forwarding over the period of 2002 to 2007.[29]

— In 2015, DB and ÖBB, via their respective subsidiaries, were fined a total of €49 million for their participation between July 2004 and June 2012 in a cartel in the same product market as the present case, *i.e.*, for cross-border rail cargo transport services on blocktrains. The 2015 case concerned mainly routes in central and southeastern Europe.[30]

While the Commission relied on DB's participation in the freight forwarding cartels to increase its fine by 50% for the repeat offence, it could not take into account DB's participation in the first blocktrain cartel because the decision in the latter case had not yet been notified to DB at the time of its participation in the second blocktrain cartel.

Notification of an infringement decision prior to a second infringement is a necessary condition for a repeat offence to constitute an aggravating factor. Only the 2012 freight forwarding decision

[26] SNCB participated in the practices via its former subsidiary, SNCB Logistics (now Lineas Group).

[27] Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases, 2008/C 167/01, of July 2, 2008 (the "Settlement Notice").

[28] Under para. 28 of the Commission Notice on Immunity from fines and reduction of fines in cartel cases, 2006/C 298/11, of December 8, 2006, recidivism is an aggravating factor allowing the Commission to impose up to a 100% fine increase.

[29] *Freight Forwarding* (Case AT. 39462), Commission decision of March 28, 2012.

[30] *Blocktrains* (Case AT. 40098), Commission decision of July 15, 2015.

had been notified to DB during the time of its participation in the second blocktrain cartel (2008-2014), whereas the first blocktrain decision was notified after DB had terminated its participation in the second blocktrain cartel, in 2015.[31]

| Rail Cargo 2021 Decision | | | | |
|---|---|---|---|---|
| Company | Reduction for leniency application | Reduction for settlement | Increase for aggravating factor | Fine (in euros) |
| ÖBB | 100% | 10% | N/A | 0 |
| DB | 45% | 10% | 50% | 48,324,000 |
| SNCB | 30% | 10% | N/A | 270,000 |

**Settlement vs. potential follow-on damages claims**

The present case confirms the importance of the Commission's leniency program despite fears that it would lose its attractiveness following the rise of private actions for damages, in particular with the adoption of the Damages Directive in 2014.[32] In an attempt to balance the benefits of settlement reductions with the risk of follow-on claims, ÖBB declared that the practices had no adverse effects on customers because prices were always "very competitive" and margins "extremely low" due to the strong competitive pressure exerted by truck transport and private rail cargo operators. DB also argued that no harm to customers was caused because the agreements at issue were in principle lawful and common industry practice.

## Court Updates

***Another Brick In The Wall: The Court Of Justice Confirms The (Not So) Rebuttable Presumption Of Parental Liability For Holding Companies***

On April 15, 2021,[33] the Court of Justice confirmed the General Court judgment[34] upholding the Commission's 2015 decision in the retail food packaging cartel which found Italmobiliare jointly and severally liable for the participation of its subsidiary Sirap-Gema.

**Background**

On June 24, 2015, the Commission fined eight manufacturers and two distributors of retail food packaging trays a total of €115.8 million for participating in at least one of five separate price-fixing cartels which took place in the EEA between 2002 and 2008.

The investigation, including inspections at the participants' premises, was initiated following information provided by Linpac, another cartel member who was granted full immunity under the Commission's 2006 Leniency Notice. Sirap-Gema, indirect subsidiary of Italmobiliare, was the second undertaking—or for the cartels in the Italian and French markets—the third to provide the Commission with additional information on the cartels, and therefore did not receive full immunity.

31 The various cargo cartels coincided with the liberalization of the cargo transport markets. The liberalization of the rail cargo sector took place between 2001 and 2016 with the adoption and revision of several railway packages. See, in particular, Directive 2007/58/EC of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area, OJ 2012 L 343/32, and Directive (EU) 2016/797 of the European Parliament and of the Council on the interoperability of the rail system within the European Union, OJ 2016 L 138/44.

32 Directive 2014/104/EU of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ 2014 L 349/1.

33 *Italmobiliare and Others v. Commission* (Case C-694/19 P) EU:C:2021:286.

34 *Italmobiliare and Others v. Commission* (Case T-523/15) EU:T:2019:499.

Relying on the *Akzo Nobel* parental liability doctrine[35] (according to which, a parent company holding all or almost all of a subsidiary's capital is presumed to have exercised decisive influence over the conduct of the subsidiary), the Commission found the investment company Italmobiliare jointly and severally liable for fines totaling €35.9 million imposed on [its subsidiary Sirap-Gema, in which it held a 100% shareholding, for participation in three of the cartels.

Italmobiliare and Sirap-Gema appealed the Commission decision to the General Court, as did most of the other addressees. On appeal, the General Court dismissed Italmobiliare's appeal and upheld the Commission's decision in its entirety.

Italmobiliare appealed the General Court's judgment in October 2019. In its judgment of April 15, 2021, the Court of Justice also dismissed Italmobiliare's appeal in its entirety.

**Pure financial investors cannot escape presumption of decisive influence with a 100% shareholding**

On parental liability, the Court of Justice confirmed that Italmobiliare, regardless of it being a financial investor, was rightly presumed to have exercised decisive influence over the conduct of its subsidiaries, because of its 100% shareholding in Sirap-Gema during the period of the infringement.

The Court of Justice therefore confirmed its approach in *Pirelli*[36] and *Goldman Sachs*[37] that, absent robust evidence that they did not exercise decisive influence, financial investors are also jointly responsible for wrongdoings of companies in which they hold all (or almost all) shares, or as in the case of Goldman Sachs, merely a lower level of shareholding, as long as the financial investor retains all voting rights associated with that company's shares.

The judgment in *Italmobiliare* follows the trend of *Pirelli* and *Goldman Sachs* and strengthens the Commission's ability to rely on the presumption of decisive influence in cartel cases where the parent company is a (conglomerate) holding company. Despite the Court's statements of principle, *Italmobiliare* adds to the impression of *de facto* irrefutability of the presumption.

**No infringement of fundamental rights as long as the presumption remains rebuttable**

The Court of Justice equally dismissed Italmobiliare's arguments on the infringement of fundamental rights such as the principle of personal liability and the presumption of innocence.

In this regard, the Court recalled its established case law that the presumption of decisive influence is rebuttable, and therefore does not infringe these fundamental rights. In light of the quasi-insurmountable hurdle to rebut the presumption, the Court's reiteration that it is precisely to honor the general principles of EU law that the presumption is rebuttable, is questionable. As if conscious of the general criticism, the Court of Justice added, based *inter alia* on *Pirelli*, that the fact that a rebuttal remains difficult does not make the presumption *de facto* irrefutable.

Italmobiliare also argued that the application of the presumption of decisive influence to a financial holding company amounted to unequal treatment of different property ownership systems in breach of Article 14 ECHR, Article 17 of the European Charter of Fundamental Rights, and the principle of neutrality in respect of the property ownership system enshrined in Article 345 TFEU. And indeed, pure financial investors see themselves exposed to the—still unrebutted—presumption of liability for wrongdoings of their subsidiaries for the mere fact of owning all or almost all of the cartelist's voting rights. On the other hand, a minority shareholder

[35] *See Akzo Nobel NV and others v. Commission* (Case C-97/08 P) EU:C:2009:536, para. 60.

[36] *Pirelli & C. SpA v. Commission* (Case C-611/18 P) EU:C:2020:868, as reported in our November 2020 EU Competition Law Newsletter.

[37] *The Goldman Sachs Group, Inc. v. Commission* (Case C-595/18 P) EU:C:2021:73, as reported in our January 2021 EU Competition Law Newsletter. Italmobiliare's argument, based on the part of the *Goldman Sachs* judgment referring to a period of the infringement during which Goldman Sachs only had 31% shareholding of the cartelist, and for which Goldman Sachs had escaped the presumption of decisive influence, was not considered relevant precisely because of the different shareholding levels (amounting to 100% for Italmobiliare).

in a listed company with fragmented shareholding, despite exercising *de facto* control, is not subject to the same presumption, thus increasing its chances of successfully contesting the Commission's findings on parental liability.

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