General Court annuls Commission's decision to clear Liberty Global / Ziggo deal

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It is quite exceptional for a Commission merger approval decision to be annulled by the EU courts, but companies should double-check the Commission's reasoning in merger decisions all the same. In a rare move, the General Court recently annulled the merger clearance of the Liberty Global / Ziggo deal because the Commission neglected to explain why it had not assessed the deal's potential vertical anti-competitive effects on the premium pay-TV sports channels market. De Brauw assisted KPN in their successful appeal against the Commission's clearance decision.

In October 2014, the European Commission approved the acquisition of cable TV operator Ziggo by its competitor Liberty Global. Dutch competitor KPN appealed this clearance decision, arguing that the Commission had not sufficiently examined the transaction's potential effects on the market for premium pay-TV sports channels. KPN argued that the Commission should have investigated whether the transaction would have given the merged entity the ability and incentive to foreclose its competitors from the Sport1 (now Ziggo Sport Totaal) channel. The General Court sided with KPN and ruled that the Commission should, at the very least, have provided some explanation for its choice not to look into the effects of the transaction on this market. As the Commission had not done so, the Court annulled the decision. The transaction will now have to be re-notified to the Commission, which must carry out a new analysis of the transaction based on current market circumstances.

It is quite rare for a Commission merger approval decision to be annulled by an EU court. The facts of this case have changed since the last transaction and Liberty Global is no longer able to exercise sole control over Ziggo, since it is now a joint venture with Vodafone. The re-notification will therefore raise some interesting questions.