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Two articles on the CFI's GE/Honeywell decision

GE/Honeywell: A merger prohibition decision from the European Commission concerning two US companies with a theory of harm based primarily on conglomerate effects – this case had everything to make headlines. Against that background, it came at no surprise that the parties to the merger appealed the Commission's decision before the European Court of First Instance. After four long years of procedure, on 14th December 2005 the Court handed down its judgment in this controversial case, awaited with impatience. The GE/Honeywell merger triggered ample discussion on the merits of conglomerate merger theory. However, reducing the proceeding to this one issue would mean taking a much too narrow view at this particularly rich judgement. The following two articles endeavour to distil and interpret the CFI's most important findings and their potential impact on the future of Community merger control. All authors were directly involved in the Commission and Court procedure, although on different sides and with different professional backgrounds. Consequently, the two articles look at the judgement from very different perspectives and they come to diverging conclusions in some of their core points. The first article approaches the judgement from a legal background and explores the importance and guidance value of the CFI's various findings in relation to the existing merger control case law. It addresses in particular issues related to standard of proof, single firm dominance, presumptive value of high market shares, vertical foreclosure, conglomerate effects, the role of Art. 82 EC in merger assessment, remedies and access to the file. The second article provides the economist's perspective with a focus on the CFI's analysis of pre-merger dominance and the vertical and conglomerate effects of the merger. The articles however reflect agreement in one point: That GE/Honeywell provides food for discussion even post-mortem and post-appeal, and makes this a judgement worth studying for all involved with EC and national competition law.