

Appeal brought on 22 September 2022 by Illumina, Inc. against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 13 July 2022 in Case T-227/21, Illumina v Commission

(Case C-611/22 P)

(2022/C 432/15)

Language of the case: English

Parties

Appellant: Illumina, Inc. (represented by: D. Beard, BL, J. Holmes, Barrister, P. Chappatte, avocat, E. Wright, avocate, F. González Díaz, abogado, M. Siragusa, avvocato)

Other parties to the proceedings: European Commission, Grail LLC, Hellenic Republic, French Republic, Kingdom of the Netherlands, EFTA Surveillance Authority

Form of order sought

The appellant claims that the Court should:

- annul the judgment under appeal;
- annul the Commission Decision C(2021) 2847 final of 19 April 2021, accepting the request of the Autorité de la concurrence française (French Competition Authority) to examine the concentration relating to the acquisition by Illumina, Inc. of sole control over Grail, Inc. (Case COMP/M.10188 — Illumina/Grail), the Commission Decisions C(2021) 2848 final, C(2021) 2849 final, C(2021) 2851 final, C(2021) 2854 final and C(2021) 2855 final of 19 April 2021, accepting the requests of the Greek, Belgian, Norwegian, Icelandic and Dutch competition authorities to join that referral request, the Commission's letter of 11 March 2021 informing Illumina and Grail of that referral request and the decision of the Commission dated 11 March 2021 informing Illumina that it was prohibited from implementing the concentration pursuant to Article 7 EUMR.⁽¹⁾
- order the Commission to pay the costs of the present proceedings (the application to the General Court and the present appeal against the judgment).

Pleas in law and main arguments

First, the General Court erred in law in interpreting Article 22(1) EUMR so that it empowers a Member State with national merger control laws to make a request for a referral to the Commission of a concentration that does not qualify for review under its national merger control laws.

Second, the General Court erred in law in rejecting Illumina's plea that the referral request was made out of time by misinterpreting the meaning of the words 'made known' in Article 22 EUMR. It erred in its conclusions that time starts running for a referral by a Member State to the Commission only from when the merging parties specifically provide to the Member State's authorities sufficient material for them to be able to make a preliminary assessment of whether the merger could qualify for referral.

Having found that the Commission's delays in sending the invitation letter were unreasonable and breached principles of legal certainty, the obligation to act within a reasonable time and the principle of good administration: (i) the General Court erred in law in finding that Illumina needed to establish harm to the rights of defence in this case; or (ii) the General Court erred in law in finding that there was no such harm.

Third the General Court erred in law in rejecting Illumina's claim that it had a legitimate expectation that no change in Commission policy would be applied prior to the issuance of guidance and/or the Commission's active encouragement to Member States to seek a referral was contrary to the principle of legal certainty: (i) in finding that a legitimate expectation could arise only if the assurance relied upon was directed specifically at the concentration in question; (ii) in mischaracterising the scope of the legitimate expectation; (iii) in finding that a carefully considered speech by the Commission Executive Vice-President responsible for competition did not emanate from the EU administration; and/or (iv) in finding that the Executive Vice-President's assurance that the Commission would continue its policy of discouraging Member States from requesting referrals (pending issuance of guidance) was consistent with the Commission encouraging referral requests.

(¹) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

**Appeal brought on 27 September 2022 by RT France against the judgment of the General Court
(Grand Chamber) delivered on 27 July 2022 in Case T-125/22, RT France v Council**

(Case C-620/22 P)

(2022/C 432/16)

Language of the case: French

Parties

Appellant: RT France (represented by: E. Piwnica, avocat)

Other parties to the proceedings: Council of the European Union, Kingdom of Belgium, Republic of Estonia, Republic of France, Republic of Latvia, Republic of Lithuania, Republic of Poland, European Commission, High Representative of the Union for Foreign Affairs and Security Policy

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court of the European Union of 27 July 2022 in Case T-125/22 *RT France v Council*;
- order the Council of the European Union to bear all the costs;

with all the legal consequences which that entails.

Pleas in law and main arguments

According to the appellant, the General Court infringed the provisions of Article 41(2) of the Charter of Fundamental Rights of the European Union in holding that — in order to conclude that there was no infringement of RT France's right to be heard — the EU authorities were not required to hear the appellant prior to the initial inclusion of its name on the lists in question on account of the highly exceptional context in which the measures at issue were adopted and of the objective pursued by the Council.

The appellant claims that the General Court failed to comply with the provisions of Article 41(2) of the Charter of Fundamental Rights and distorted the evidence before it by holding that the appellant had not been able to show that the outcome of the procedure might have been different if it had been heard prior to the adoption of the measures at issue or if the grounds for the application of those measures had been disclosed to it beforehand.