

*Defendant:* European Commission

### **Form of order sought**

The applicant claims that the Court should:

- declare the action for annulment admissible;
- annul Articles 1-4 of the Commission's decision dated 21 October 2015 addressed to the Grand Duchy of Luxembourg ('Luxembourg') in case SA.38375 (2914/C ex 2014 NN) ('Contested Decision');
- order the Commission to pay FCFE's costs.

### **Pleas in law and main arguments**

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging that the contested decision breaches Article 107 TFEU because the Commission has misapplied the concept of 'selective advantage' and failed to show that the APA is liable to distort competition.
2. Second plea in law, alleging that the contested decision breaches Article 296(2) TFEU and its duty to state reasons through its failure to explain how it derives the arm's length principle from Union law, or even what the principle is and through its superficial description of the APA's effect on competition.
3. Third plea in law, alleging that the contested decision breaches the principle of legal certainty since the Commission's novel formulation of the arm's length principle introduces complete uncertainty and confusion as to when an advance pricing agreement, and indeed any transfer pricing analysis might breach EU state aid rules.
4. Fourth plea in law, alleging that the contested decision breaches the principle of legitimate expectations since the Commission has created a legitimate expectation that for state aid purposes it assesses transfer pricing arrangements on the basis of the OECD Guidelines and its sudden departure from this has breached the principle of legitimate expectations.

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### **Action brought on 23 December 2015 — Netherlands v Commission**

**(Case T-760/15)**

(2016/C 059/58)

*Language of the case: Dutch*

### **Parties**

*Applicant:* Kingdom of the Netherlands (represented by: M. Bulterman, B. Koopman and M. de Ree, acting as Agents)

*Defendant:* European Commission

### **Form of order sought**

The applicant claims that the Court should:

- annul the decision of the Commission of 21 October 2015 with reference number C(2015) 7143 concerning State aid SA.38374 (2014/C ex 2014/NN) implemented by the Netherlands in favour of Starbucks;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging an incorrect application of Article 107(1) TFEU in so far as the Commission finds that the Advanced Pricing Agreement ('APA') is selective in nature.
  - First, the Commission did not adequately — and separately — demonstrate that the selectivity criterion was fulfilled.
  - Second, the Commission erroneously took the general Netherlands corporation tax system as a reference. The correct reference for the APA is Article 8b(1) of the Wet op de Vennootschapsbelasting (Law on Corporation Tax) and the Verrekenprijbsluit (Settlement Price Decree). In the APA effect is simply given to that reference framework.
2. Second plea in law, alleging an incorrect application of Article 107(1) TFEU in so far as the Commission assesses the existence of an advantage by reference to an EU law arm's length principle. However, the applicant argues that there is no arm's length principle in EU law and that that principle is not part of a State aid assessment.

3. Third plea in law, alleging an incorrect application of Article 107(1) TFEU in so far as the Commission finds that the APA confers an advantage on Starbucks Manufacturing EMEA BV as a result of the selection of the 'Transactional Net Margin Method' as settlement price methodology.

The Commission incorrectly states that the methodology agreed in the APA does not provide a reliable approach to a market outcome. Moreover, the Commission does not demonstrate that the remuneration to Alki and the surcharge on the cost price of the green beans have no business value.

4. Fourth plea in law, alleging an incorrect application of Article 107(1) TFEU in so far as the Commission states that the APA confers an advantage on Starbucks Manufacturing EMEA BV as a result of the manner of applying the 'Transactional Net Margin Method'.

The Commission incorrectly proceeds on the assumption that the 'Transactional Net Margin Method' agreed in the APA was applied in an erroneous manner and results in an advantage for Starbucks Manufacturing EMEA BV. The Commission in no way demonstrates that the better — in its view — application of the 'Transactional Net Margin Method' leads to a higher taxable income and the absence of an advantage.

5. Fifth plea in law, alleging breach of the duty to exercise due care in so far as the Commission did not assess and include all the relevant information in the decision and also uses as a basis anonymous information, or at least information that has never been shared with the Netherlands Government.

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**Order of the General Court of 7 December 2015 — Ahrend Furniture v Commission**

**(Case T-482/15) <sup>(1)</sup>**

(2016/C 059/59)

*Language of the case: French*

The President of the Third Chamber has ordered that the case be removed from the register.

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<sup>(1)</sup> OJ C 337, 12.10.2015.

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