

C/2025/1627

24.3.2025

Appeal brought on 14 October 2024 by Mead Johnson Nutrition (Asia Pacific) Pte Ltd, MJN Global Holdings BV, Mead Johnson Nutrition Co. against the order of the General Court (Second Chamber) delivered on 13 August 2024 in Case T-37/23, Mead Johnson Nutrition (Asia Pacific) e.a. v Commission

(Case C-670/24 P)

(C/2025/1627)

Language of the case: English

Parties

Appellants: Mead Johnson Nutrition (Asia Pacific) Pte Ltd, MJN Global Holdings BV, Mead Johnson Nutrition Co. (represented by: C. Quigley KC, M. Whitehouse and B. Thomas, Solicitors)

Other parties to the proceedings: European Commission and Government of Gibraltar

Form of order sought

The applicants claim that the Court should:

- set aside the order under appeal;
- decide that the application for annulment is admissible; and
- annul the Commission Decision C(2022) 7665 final of 31 October 2022 on State aid SA.34914 (2013/C) implemented by the United Kingdom in respect of the Gibraltar Corporate Income Tax Regime (the ‘contested decision’) ⁽¹⁾ and order the Commission to pay the appellants’ costs in the Court of Justice and in the General Court; or
- alternatively, remit the matter for consideration as to the merits by the General Court

Pleas in law and main arguments

In support of the appeal, the appellants rely on three pleas in law.

1. Error of law in that the General Court should have found that the Commission had no jurisdictional competence to adopt the contested decision under Article 92(3)(a) of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the ‘Withdrawal Agreement’) ⁽²⁾. Consequently, the General Court should not have classified the application as a challenge to the exercise of the Commission’s power under Article 108(2) to make a preliminary decision (which would normally be inadmissible where aid was not subsisting), but instead as an admissible challenge to the Commission’s anterior invocation of Article 92(3)(a).
2. Error of law in that the General Court failed to interpret and apply Article 92 of the Withdrawal Agreement together with Article 108 TFEU and should have concluded that there was no ‘ongoing administrative procedure’ in the present case, so that the Commission’s investigation had no legal basis in Article 92(3)(a) of the Withdrawal Agreement. An appeal on such a basis would be admissible for the same reasons as set out above.
3. Failure to state reasons, in that the General Court failed to assess whether the application for annulment was inadmissible on grounds of infringement of Article 92 of the Withdrawal Agreement.

⁽¹⁾ OJ 2023 C 52, p. 10.

⁽²⁾ OJ 2019 C 384I, p. 1