



## Reports of Cases

### ORDER OF THE PRESIDENT OF THE COURT

25 October 2017\*

(Appeal — Intervention — Confidentiality)

In Case C-611/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 November 2016,

**Xellia Pharmaceuticals ApS**, established in Copenhagen (Denmark),

**Alpharma LLC**, formerly Zoetis Products LLC, established in Parsippany (United States),

represented by D.W. Hull, Solicitor,

appellants,

the other party to the proceedings being:

**European Commission**, represented by F. Castilla Contreras, T. Vecchi, B. Mongin and C. Vollrath, acting as Agents, assisted by B. Rayment, Barrister,

defendant at first instance,

THE PRESIDENT OF THE COURT,

having regard to the proposal of the Judge-Rapporteur, D. Šváby,

after hearing the Advocate General, J. Kokott,

makes the following

#### Order

- 1 By their appeal, Xellia Pharmaceuticals ApS ('Xellia') and Alpharma LLC ask the Court of Justice to set aside the judgment of the General Court of the European Union of 8 September 2016, *Xellia Pharmaceuticals and Alpharma v Commission* (T-471/13, not published, EU:T:2016:460), by which that Court dismissed their action seeking partial annulment of Commission Decision C(2013) 3803 final of 19 June 2013 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39226 — Lundbeck) ('the decision at issue') and requesting that the amount of the fine imposed on them by that decision be reduced.

\* Language of the case: English.

- 2 By document lodged at the Registry of the Court of Justice on 28 July 2017, the United Kingdom of Great Britain and Northern Ireland applied for leave to intervene in Case C-611/16 P in support of the form of order sought by the European Commission.
- 3 Following service by the Registrar of the Court of Justice, pursuant to Article 131(1) of the Rules of Procedure of the Court of Justice, applicable to the appeal proceedings under Article 190(1) of those rules, of the application to intervene submitted by the United Kingdom, Xellia and Alpharma submitted their observations on that application to intervene, without specifying any secret or confidential documents which would be liable to affect them adversely if communicated to that Member State.
- 4 By document lodged at the Court Registry on 17 August 2017, Xellia and Alpharma argued that the United Kingdom's application to intervene had to be dismissed as being out of time, having been submitted after the expiry of the period referred to in Article 190(2) of the Rules of Procedure, and that there was no justification for that application. They also submitted that the fact that that Member State neither submitted its application to intervene in time nor provided a statement of reasons for that application did not enable the President of the Court to assess whether those reasons would justify allowing such a later intervention and to be satisfied that that Member State was not thereby seeking to gain a procedural advantage. Xellia and Alpharma submitted that such an application impaired their procedural rights inasmuch as the reasons for that application to intervene had not been communicated to them. Consequently, they were unable to challenge either those reasons or the arguments which that Member State was liable to put forward during the hearing.
- 5 In that regard, it should first of all be borne in mind that, pursuant to Article 129(4) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules, an application to intervene submitted after the expiry of the period referred to in Article 190(2) of those rules and before the decision to open the oral part of the procedure, as in the present case, may be taken into consideration.
- 6 The fact that such an application to intervene is submitted late merely deprives the intervener of the possibility of submitting a statement in intervention pursuant to Article 132(1) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules, but still makes it possible for that intervener to submit its observations during the hearing, if it takes place.
- 7 Next, it must be noted that, pursuant to the first paragraph of Article 40 of the Statute of the Court of Justice of the European Union, Member States may intervene in cases before the Court without having to establish an interest in the result of a case submitted to the Court.
- 8 Consequently, and in any event, the United Kingdom was not required to provide a statement of reasons for its application to intervene, and is also not required to do so in the case where the application to intervene is submitted after the expiry of the period provided for in Article 190(2) of the Rules of Procedure.
- 9 Lastly, with regard to the assertions of Xellia and Alpharma that their procedural rights would be impaired because it is impossible to predict the content of the arguments that the United Kingdom is liable to put forward during the hearing, if it takes place, suffice it to note, so far as is relevant, that, pursuant to Article 129(1) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules, an intervener's observations are to be limited to supporting, in whole or in part, the form of order sought by one of the main parties, in the present case the Commission.
- 10 Accordingly, pursuant to the first paragraph of Article 40 of the Statute of the Court of Justice of the European Union and Article 131(2) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules, it is appropriate to grant the United Kingdom leave to intervene.

- 11 However, in view of the fact that the United Kingdom's application to intervene was submitted after the expiry of the period referred to in Article 190(2) of the Rules of Procedure, applicable to appeals, and before the decision to open the oral part of the procedure, it is appropriate, in accordance with the first paragraph of Article 40 of the Statute of the Court of Justice of the European Union and Article 129(4) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules, to authorise that Member State to submit its observations only during the hearing, if it takes place.
- 12 Moreover, it should be noted that, by the order of the President of the Court of 5 July 2017, *Lundbeck v Commission* (C-591/16 P, not published, EU:C:2017:532), the confidential version of the decision at issue, which also appears in Annex 2 to the appeal brought by Xellia and Alharma, has already been treated as confidential with regard to the United Kingdom at the request of both the appellant in that case and the Commission.
- 13 In view of that order, it is appropriate that the Court should decide of its own motion, in the specific circumstances of this case and in the absence of any request by the parties to that effect, in particular on the part of the Commission, that, at the present stage of the proceedings, only the public version of that decision, published by the Commission on its website on 19 January 2015, shall be communicated to the United Kingdom, in accordance with Article 131(4) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules.

### **Costs**

- 14 Pursuant to Article 137 of the Rules of Procedure, applicable to the appeal proceedings under Article 184(1) of those rules, a decision as to costs is to be given in the judgment or order which closes the proceedings.
- 15 It is therefore necessary to reserve the costs associated with the United Kingdom's intervention.

On those grounds, the President of the Court hereby orders:

- 1. The United Kingdom of Great Britain and Northern Ireland is granted leave to intervene in Case C-611/16 P in support of the form of order sought by the European Commission.**
- 2. The United Kingdom of Great Britain and Northern Ireland is authorised to submit its observations during the hearing, if it takes place.**
- 3. Copies of all of the procedural documents shall be served on the United Kingdom of Great Britain and Northern Ireland by the Registrar, with the exception of the document appearing in Annex 2 to the appeal brought by Xellia Pharmaceuticals ApS and Alharma LLC.**
- 4. The public version, published on the European Commission's website, of the document appearing in Annex 2 to the appeal brought by Xellia Pharmaceuticals ApS and Alharma LLC shall be served on the United Kingdom of Great Britain and Northern Ireland by the Registrar.**
- 5. The costs are reserved.**

Luxembourg, 25 October 2017.

A. Calot Escobar  
Registrar

K. Lenaerts  
President

