

- breach of the second component of the right of defence (right to access the file), refusal to grant access to the personal file and to the documents used for the negative decision of 27.02.2012, breach of Articles 25 and 26 of the Staff Regulation, and breach of Article 41 (2) (b) of the Charter.
2. Second plea in law, alleging violation of essential procedural requirements.
 3. Third plea in law, alleging misuse of powers and conflict of interest, breach of interest of the service, manifest error of assessment and wrong application of the principle of retroactivity.
 4. Fourth plea in law, alleging breach of the obligation to comply honestly and in a good faith with the Judgement T-658/13 P.

(¹) Judgment of 3 June 2015, BP v FRA, T-658/13 P, EU:T:2015:356

**Action brought on 19 December 2016 — Apple Sales International and Apple Operations Europe v
Commission**

(Case T-892/16)

(2017/C 053/46)

Language of the case: English

Parties

Applicants: Apple Sales International (Cork, Ireland) and Apple Operations Europe (Cork, Ireland) (represented by: A. von Bonin and E. van der Stok, lawyers, D. Beard QC, A. Bates, L. Osepciu and J. Bourke, Barristers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the decision of the European Commission of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple;
- alternatively, annul the decision in part; and
- order the Commission to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in its interpretation of Irish law.
 - The applicants consider that as non-resident Irish companies, they were only liable to Irish corporation tax under Section 25 of the Taxes Consolidation Act 1997 on 'chargeable profits' attributable to activities performed by their Irish branches. The Opinions properly reflected the branches' 'chargeable profits' and did not therefore confer an advantage. The Commission also erred by finding that profit allocation under Section 25 must be under the 'arm's length principle' (the 'ALP').
2. Second plea in law, alleging that the ALP does not operate as the test for State aid in tax assessments under Article 107 TFEU.

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- The Commission was wrong to find that Article 107(1) TFEU required Ireland to calculate the applicants' taxable profits under Section 25 in accordance with the Commission's ALP.
3. Third plea in law, alleging that the Commission made fundamental errors relating to the applicants' activities outside of Ireland.
- The Commission made fundamental errors by failing to recognise that the applicants' profit-driving activities, in particular the development and commercialisation of intellectual property ('Apple IP'), were controlled and managed in the United States. The profits from those activities were attributable to the United States, not Ireland. The Commission wrongly considered only the minutes of the applicants' board meetings and ignored all other evidence of activities.
4. Fourth plea in law, alleging that the Commission made fundamental errors relating to the applicants' activities in Ireland.
- The Commission failed to recognise that the Irish branches carried out only routine functions and were not involved in the development and commercialisation of Apple IP which drove profits.
5. Fifth plea in law, alleging that the Commission's presumptions are contrary to the burden of proof, OECD guidelines and unanimous expert evidence; the conclusion is self-contradictory.
- The Commission presumed that all of the applicants' critical profit-making activities were attributable to the Irish branches without properly assessing the evidence, including extensive expert evidence showing that the profits were not attributable to activities in Ireland.
6. Sixth plea in law, alleging that the applicants were treated in the same way as other non-resident taxpayers in Ireland and were not afforded selective treatment.
- The Commission failed to prove selectivity: it has wrongly treated the applicants as if they were Irish resident companies and as if they should be taxed on their worldwide profits.
7. Seventh plea in law, alleging that the primary line must be annulled for a breach of an essential procedural requirement.
- The opening decision did not articulate the primary line of reasoning. If it had, Apple would have been able to present evidence which could and should have changed the outcome.
8. Eighth plea in law, alleging that there were errors of fact and assessment in the Commission's application of the TNMM to the Irish branches under the subsidiary line.
- The Commission's subsidiary line wrongly rejects expert evidence and fails to articulate what a correct profit attribution analysis would be.
9. Ninth plea in law, alleging that the alternative line is vitiated by breach of essential procedural requirements and manifest error of assessment.
- The Commission was wrong to compare the opinions with other opinions issued by Irish Revenue to third parties since the factual circumstances were different.
10. Tenth plea in law, alleging that the subsidiary and alternative lines do not enable calculation of a recovery amount.
- The decision does not contain any explanation of how much is to be recovered under the subsidiary or alternative lines, contrary to State aid rules and the principle of legal certainty.

11. Eleventh plea in law, alleging that the Commission violated the principles of legal certainty and non-retroactivity by ordering recovery of the alleged aid.
12. Twelfth plea in law, alleging a failure to conduct a diligent and impartial investigation.
13. Thirteenth plea in law, alleging a breach of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union.
14. Fourteenth plea in law, alleging that the decision exceeds the Commission's competence under Article 107(1) TFEU.
 - The Commission has violated legal certainty by ordering recovery under an unforeseeable interpretation of State aid law; failed to examine all relevant evidence contrary to its obligation of due diligence; failed to reason the decision adequately; and exceeded its competence under Article 107 TFEU by attempting to redesign Ireland's corporate tax system.

Action brought on 20 December 2016 — Puma v EUIPO — Senator (TRINOMIC)

(Case T-896/16)

(2017/C 053/47)

Language in which the application was lodged: German

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: M. Schunke, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Senator GmbH & Co. KGaA (Groß-Bieberau, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'TRINOMIC' — Application No 12 697 074

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 October 2016 in Case R 70/2016-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order the defendant to pay the costs of the proceedings, including those incurred in the appeal proceedings.

Pleas in law

- Infringement of Article 8(1)(b) of Regulation No 207/2009;
 - Infringement of the principle of equal treatment and of the principle that the administration is bound by its own decisions.
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