

Action brought on 22 May 2018 — Amazon EU and Amazon.com v Commission**(Case T-318/18)**

(2018/C 276/82)

*Language of the case: English***Parties**

Applicants: Amazon EU Sàrl (Luxembourg, Luxembourg) and Amazon.com, Inc. (Seattle, Washington, United States) (represented by: D. Paemen, M. Petite and A. Tombiński, lawyers)

Defendant: European Commission

Form of order sought

- annul Articles 1 to 4 of the European Commission's decision of 4 October 2017 on State aid SA.38944 (2014/C) (ex 2014/NN) implemented by Luxembourg to Amazon, which finds that Luxembourg granted LuxOpCo illegal State aid over the period of May 2006 — June 2014 by virtue of a tax ruling granted in 2003 ⁽¹⁾;
- in the alternative, annul Articles 2 to 4 of the decision; and
- in any event, order the Commission to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the decision violates Article 107(1) TFEU because the decision fails to establish the existence of an advantage benefitting the applicants in view of the comparables adduced by the applicants
 - the decision improperly ignores direct evidence showing that the royalty LuxOpCo actually paid for the Intangibles over the relevant period was at arm's length, and that therefore the 2003 ATC did not confer an actual advantage on LuxOpCo in the form of a reduced tax base.
2. Second plea in law, alleging that the decision violates Article 107(1) TFEU because the decision's finding of an advantage is based on an erroneous analysis of the functions of LuxOpCo and Amazon European Holding Technologies S.C.S.
 - the decision's analysis of the functions performed by Amazon European Holding Technologies S.C.S. ('LuxSCS') and LuxOpCo is vitiated by a series of fundamental errors of law and fact. These errors invalidate the decision's application of the transactional net margin method and the resulting primary finding of advantage.
3. Third plea in law, alleging that the decision violates Article 41 of the Charter of Fundamental Rights of the EU and the principle of sound administration because the decision's finding of an advantage fails to consider all of the evidence.
 - the decision does not examine the evidence on file with the required level of care and impartiality.
4. Fourth plea in law, alleging that the decision violates Article 107(1) TFEU and the duty to state reasons because the decision's finding of an advantage is premised on a royalty that violates the arm's length principle.
 - the decision's finding of an advantage implies that LuxOpCo should have paid a transfer price that manifestly deviates from the arm's length principle and is therefore unfounded.

5. Fifth plea in law, alleging that the decision violates Article 107(1) TFEU because the decision fails to show an advantage under the subsidiary line of reasoning.
- The decision's subsidiary finding that the 2003 ATC conferred an economic advantage on LuxOpCo because it was based on three inappropriate methodological choices relies on a mischaracterisation of LuxOpCo's and LuxSCS' respective roles and is unfounded.
6. Sixth plea in law, alleging that the decision violates Article 107(1) TFEU because the decision mischaracterises the 2003 ATC as an ad hoc individual measure and as a result wrongly relies on a presumption of selectivity.
- based on a mischaracterisation of the 2003 ATC as an ad hoc individual measure, the decision under its primary finding of selectivity erroneously applies a presumption of selectivity to find that the 2003 ATC is selective in nature.
7. Seventh plea in law, alleging that the decision violates Article 107(1) TFEU and the principle of legal certainty because the decision's selectivity analysis relies on a flawed reference framework.
- under its subsidiary findings of selectivity, the decision improperly excludes Luxembourg's general administrative practice concerning transfer pricing from the reference framework, in violation of the applicable case law.
8. Eighth plea in law, alleging that the decision violates the principles of legal certainty, retroactivity, and non-discrimination, and an essential procedural requirement because it assesses the validity of the 2003 ATC by reference to post-dating OECD Guidelines.
- the decision retroactively and discriminatorily applies, and improperly holds the applicants and Luxembourg to, standards in the 2017 OECD Guidelines on transfer pricing first issued after the Commission opened the procedure under Article 108(2) TFEU, and long after the adoption of the 2003 ATC.
9. Ninth plea in law, alleging that the decision violates Article 17 of Regulation 2015/1589 ⁽²⁾ because the decision orders the recovery of aid even though the applicable limitation period had already expired.
- the decision's recovery order is unlawful because the ten-year limitation period provided for in Article 17 of Regulation 2015/1589 has expired.

⁽¹⁾ Commission Decision (EU) 2018/859 of 4 October 2017 on State aid SA.38944 (2014/C) (ex 2014/NN) implemented by Luxembourg to Amazon (notified under document C(2017) 6740) (OJ 2018 L 153, p. 1)

⁽²⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015, L 248, p. 9)

Action brought on 9 June 2018 — J. García Carrión v EUIPO — Codorníu (JAUME CODORNÍU)

(Case T-358/18)

(2018/C 276/83)

Language in which the application was lodged: Spanish

Parties

Applicant: J. García Carrión, SA (Jumilla, Spain) (represented by: E. Arsuaga Santos, lawyer)