By order of 3 December 2020, the Court of Justice (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered the appellant to bear its own costs.

Appeal brought on 25 September 2020 by European Commission against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 15 July 2020 in Joined Cases T-778/16 and T-892/16, Ireland and Others v Commission

(Case C-465/20 P)

(2021/C 35/33)

Language of the case: English

Parties

Appellant: European Commission (represented by: L. Flynn, P.-J. Loewenthal and F. Tomat, Agents)

Other parties to the proceedings: Ireland, Apple Sales International (ASI), Apple Operations Europe (AOE), Grand Duchy of Luxembourg, Republic of Poland, EFTA Surveillance Authority

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— reject the first to fourth and eighth pleas in Case T-778/16 and the first to fifth, eighth and fourteenth pleas in Case T-892/16;

— refer the case back to the General Court for reconsideration of the pleas not already assessed; and

— reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

The Commission puts forward two grounds of appeal.

First ground of appeal: the General Court committed several errors of law in rejecting the Decision's ([1]) primary finding of advantage. This ground of appeal consists of three parts.

— First, in paragraphs 125, 183 to 187, 228, 242, 243 and 249 of the judgment under appeal, the General Court misinterprets the Decision by concluding that the primary finding of advantage relied solely on the lack of employees and physical presence in the head offices of ASI and AOE and did not attempt to show that the Irish branches of ASI and AOE in fact performed functions justifying the allocation of the Apple IP licences to those branches. Recitals 281 to 305 of the Decision analyse the actual functions performed both by the head offices and by the Irish branches to justify the allocation of the Apple IP licences to the Irish branches. The General Court's failure to properly consider the structure and content of the Decision and the explanations in the Commission's written submissions on the functions performed by the head offices and the Irish branches is a breach of procedure. The General Court's subsequent acknowledgement, in paragraphs 268 to 283, 286 and 287 of the Judgment, that the Decision examines the functions performed by the Irish branches in justifying the attribution of the Apple IP licences to them constitutes contradictory reasoning, which amounts to a failure to state reasons.

— Second, in paragraphs 267, 269, 273, 274, 275, 277, 281, 283, 298 to 302 of the judgment under appeal, the General Court violates the separate entity approach and the ALP (arm's length principle), which constitutes an infringement of Article 107(1) TFEU and/or a distortion of national law, by invoking functions performed by Apple Inc. to reject the Decision's allocation of the Apple IP licences to the Irish branches. The General Court's failure to consider the explanations in recitals 308 to 318 of the Decision and the Commission's written submissions why functions performed by Apple Inc. are irrelevant for the attribution of profit within ASI and AOE is a breach of procedure and a failure to state reasons.

— Third, in paragraphs 301 and 303 to 309 of the judgment under appeal, the General Court violates the separate entity approach and the ALP, which constitutes an infringement of Article 107(1) TFEU and/or a distortion of national law, by finding that formal acts taken by the directors of ASI and AOE constitute functions performed by their head offices in relation to the Apple IP licences. The General Court's failure to consider the Commission's explanations in the Decision and in its written submissions why those acts do not constitute functions performed by the head offices for the application of the separate entity approach and the ALP is a breach of procedure and a failure to state reasons. The General Court's reliance on inadmissible evidence in support of its finding is a breach of procedure.

Second ground of appeal: the General Court committed errors of law by rejecting the Decision's subsidiary finding of advantage. This ground of appeal consists of three parts.

— First, in paragraphs 349, 416, 434 and 435 of the judgment under appeal, the General Court commits an error of law in the application of the rules on the standard of proof the Commission must meet to show an advantage.

— Second, in paragraphs 315 to 481 of the judgment under appeal, the General Court commits a breach of procedure when it relies on arguments to reject the subsidiary finding of advantage that neither Ireland nor ASI/AOE made in their applications at first instance.

— Third, in paragraphs 315 to 481 of the judgment under appeal, the General Court misrepresented the Decision and infringed Article 107(1) TFEU and/or distorted national law in concluding that the Decision had not established the existence of an advantage under its subsidiary line of reasoning.

([1]) Commission Decision (EU) 2017/1283 of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple (OJ 2017, L 187, p. 1).

Request for a preliminary ruling from the Cour d'appel de Mons (Belgium) lodged on 5 October 2020 — TP v Institut des Experts en Automobiles

(Case C-502/20)

(2021/C 35/34)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Applicant: TP

Defendant: Institut des Experts en Automobiles

Questions referred

1. Can the provisions of Article 5[(1)(2)](b) and Article 6 of the Belgian Law of 15 May 2007 on the recognition and protection of the profession of automotive expert, read in conjunction with the provisions of the Law of 12 February 2008 establishing a general framework for the recognition of EU professional qualifications, in particular Articles 6, 8 and 9 thereof, be interpreted as meaning that a service provider who changes his or her place of establishment to another Member State cannot, after that change, be entered, in his or her country of origin (in this instance, Belgium), in the IEA's register of temporary and occasional service providers with a view to pursuing temporary and occasional activity in that country? Is such an interpretation compatible with the freedom of establishment granted under EU law?