



C/2024/714

22.1.2024

Appeal brought on 29 November 2023 by Nicoventures Trading Ltd and Others against the order of the General Court (Second Chamber) delivered on 20 September 2023 in Case T-706/22, Nicoventures Trading and Others v Commission

(Case C-731/23 P)

(C/2024/714)

Language of the case: English

Parties

Appellants: Nicoventures Trading Ltd, British American Tobacco (Germany) GmbH, British American Tobacco Italia SpA (BAT Italia), British American Tobacco Polska Trading sp. z o.o., British American Tobacco España, SA, P.J. Carroll & Company Ltd (represented by: L. Van den Hende, M. Schonberg, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The Appellants claim that the Court should:

- set aside the order under appeal;
- to the extent that the Court considers the state of the proceedings so permit, reject the Commission's plea of inadmissibility, declare the action admissible and refer the case back to the General Court to rule on the substance, and
- order the Commission to pay the Appellants' costs, including the costs before the General Court.

Pleas in law and main arguments

This appeal contains a single ground of appeal relating to the General Court's application of the requirement of individual concern and finding that the Appellants lacked standing in relation to their action for annulment of Commission Delegated Directive (EU) 2022/2100 ⁽¹⁾ of 29 June 2022 amending Directive 2014/40/EU of the European Parliament and of the Council as regards the withdrawal of certain exemptions in respect of heated tobacco products (the 'contested measure').

The General Court erred in law in assessing the factors raised by the Appellants in supporting their individual concern. Fundamentally, the General Court erred in its approach in considering each of these factors separately and individually, and therefore whether each factor in and of itself was sufficient to establish individual concern, rather than considering them collectively. The General Court further erred in assessing the legal significance of the factors raised by the Appellants, as each of these factors is clearly relevant and of significance in this regard.

The General Court erred in assessing the specific legal test for individual concern of whether the contested measure has a substantial effect on the Appellants' market position. In particular, the General Court made errors in relation to the applicability and application of that test.

⁽¹⁾ OJ 2022, L 283, p. 4.