

GENERAL COURT

Action brought on 1 November 2019 – John Wood Group and Others v Commission

(Case T-749/19)

(2020/C 45/35)

Language of the case: English

Parties

Applicants: John Wood Group plc (Aberdeen, United Kingdom), WGPSN (Holdings) Ltd (Aberdeen), Wood Group Investments Ltd (Aberdeen) and Amec Foster Wheeler Ltd (Knutsford, United Kingdom) (represented by: C. McDonnell, Barrister, B. Goren, Solicitor, M. Peristeraki, lawyer, and K. Desai, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- hold that there has been no unlawful State Aid, annul Article 1 of Commission Decision C (2019) 2526 of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption, insofar as it finds that there has been unlawful State aid, and set aside the requirement for the UK to recover alleged unlawful State aid received by the applicants in this context (Articles 2 and 3 of the contested decision);
- in the alternative, annul Articles 2 and 3 of the contested decision insofar as they require the UK to recover from the applicants the alleged State Aid; and
- in any event, order the Commission to bear the costs incurred by the applicants for these proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on nine pleas in law.

1. First plea in law, alleging that the Commission misunderstands the context, aim and operation of the UK Controlled Foreign Company (CFC) rules, with respect to the treatment of non-trading finance profits. The Commission's conclusions in the contested decision are based on cumulative manifest errors. In particular, the Commission has made manifest errors in its understanding of the overall UK tax system, in its understanding of the aims of the CFC system, in the specific scope of the Group Financing Exemption and in the definition of qualifying loan relationships.
2. Second plea in law, alleging that the Commission wrongly construes the Group Financing Exemption as a tax exemption and accordingly an advantage. In relation to non-trading finance profits, the Group Financing Exemption represents a charging provision and a part of the definition of the limits of the CFC rules, not a selective advantage. The Commission has provided no quantitative analysis to show that it is an advantage and, in the absence of cogent evidence that the measure in question results in an advantage, the contested decision cannot stand.

3. Third plea in law, alleging that the Commission misidentified the reference system for the assessment of the effects of the CFC rules and wrongly identified the CFC rules as a distinct set of rules from the overall UK corporation tax system. The Commission has not correctly understood the objective of the CFC rules and has failed to consider the UK's margin for discretion.
4. Fourth plea in law, alleging that the Commission has shown manifest errors in its State aid analysis, and has applied the wrong tests when considering the question of comparability. The Commission failed to recognize the different level of risk to the UK tax base as between lending to a group entity which is taxable in the UK and lending to a group entity which is not taxable in the UK, and irrationally concluded that intra-group lending is comparable to third-party lending.
5. Fifth plea in law, alleging that, even assuming that the CFC measures in question *prima facie* constituted aid within the meaning of Article 107(1) TFEU, the contested decision wrongly concluded that there was no justification that could apply to defend the compatibility of the measures in question with EU State aid rules. In addition, the contested decision is irrational and inconsistent, in that the Commission has correctly accepted that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is justified in cases where the only reason for a CFC charge to apply under the counterfactual of the said Chapter 5 would be the 'UK connected capital' test, on the basis that that test may be excessively difficult to operate in practice, but at the same time, and without providing adequate reasoning, the Commission contends that the said Chapter 9 is never justified in cases where the significant people functions test would cause a CFC charge to apply under the said Chapter 5. In fact, the significant people functions test is excessively difficult to apply in practice, such that the Commission should have found the said Chapter 9 to be justified in the context of that test as well and, hence, it should have concluded that there is no State aid.
6. Sixth plea in law, alleging that were the contested decision to be upheld, then enforcement of it through recovery of the alleged State aid from the applicants will infringe fundamental principles of EU law, including the freedom of establishment and the freedom to provide services, noting that, in the applicants' case, the CFCs in question are situated in other Member States.
7. Seventh plea in law, alleging that the recovery order resulting from the contested decision is unfounded and contrary to fundamental Union principles.
8. Eighth plea in law, alleging that the Commission failed to provide adequate reasons for critical elements in the contested decision, such as the conclusion that the CFC charge under the said Chapter 5 could be applied using the significant people functions test without difficulty or disproportionate burden.
9. Ninth plea in law, alleging that the contested decision also breaches the principle of good administration, which requires that the Commission allows transparency and predictability in its administrative procedures and renders its decisions within a reasonable time-frame. It is not reasonable for the Commission to take more than four years to issue its decision opening the investigation in the present case and to give a decision more than six years after the contested measure came into effect.

Action brought on 8 November 2019 – Rio Tinto European Holdings and Others v Commission

(Case T-762/19)

(2020/C 45/36)

Language of the case: English

Parties

Applicants: Rio Tinto European Holdings Ltd (London, United Kingdom), Rio Tinto International Holdings Ltd (London) and Rio Tinto Simfer UK Ltd (London) (represented by: N. Niejahr and B. Hoorelbeke, lawyers, A. Stratakis and P. O'Gara, Solicitors)

Defendant: European Commission