Reports of Cases

ORDER OF THE PRESIDENT OF THE COURT

25 October 2017*

(Appeal — Intervention — Confidentiality)

In Case C-588/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 18 November 2016,

Generics (UK) Ltd, established in Potters Bar (United Kingdom), represented by I. Vandenborre, advocaat, and T. Goetz, Rechtsanwalt,

appellant,

the other party to the proceedings being:

European Commission, represented by F. Castilla Contreras, T. Vecchi, B. Mongin and C. Vollrath, acting as Agents, assisted by S. Kingston, Barrister,

defendant at first instance,

THE PRESIDENT OF THE COURT,

having regard to the proposal of the Judge-Rapporteur, D. Šváby,

after hearing the Advocate General, J. Kokott,

makes the following

Order

1 By its appeal, Generics (UK) Ltd ('Generics') asks the Court of Justice to set aside the judgment of the General Court of the European Union of 8 September 2016, *Generics (UK)* v *Commission* (T-469/13, not published, EU:T:2016:454), by which that Court dismissed its action seeking partial annulment of Commission Decision C(2013) 3803 final of 19 June 2013 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39226 — Lundbeck) ('the decision at issue') and requesting that the amount of the fine imposed on it by that decision be reduced.

2 By document lodged at the Registry of the Court of Justice on 28 July 2017, the United Kingdom of Great Britain and Northern Ireland applied for leave to intervene in Case C-588/16 P in support of the form of order sought by the European Commission.

* Language of the case: English.

3 Following service on the parties by the Registrar of the Court of Justice, pursuant to Article 131(1) of the Rules of Procedure of the Court of Justice, applicable to the appeal proceedings under Article 190(1) of those rules, of the application to intervene submitted by the United Kingdom, Generics submitted its observations in that regard.

4 Thus, by documents lodged at the Court Registry on 18 August and 21 August 2017, Generics argued, first of all, that the United Kingdom's application to intervene must be dismissed on the ground that it does not satisfy the requirements laid down by Article 130(2) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules, inasmuch as it contains neither a description of the case nor the form of order sought, in support of which the intervener is applying for leave to intervene, which is particularly prejudicial to Generics because that application was submitted out of time. Next, Generics indicates that, having regard to the application to intervene submitted by the United Kingdom on 10 March 2017 in the related Case C-591/16 P *Lundbeck* v *Commission*, it takes the view that the application to intervene in the present case serves no purpose, particularly if the Court were to decide not to hold a hearing. Generics also submits that, were a hearing to be held, its rights of defence would be impaired by the United Kingdom's intervention. Lastly, Generics argues that the present application to intervene is intended to enable that Member State to access data contained in, inter alia, the Commission's administrative file for the purposes of enabling the National Health Service and the UK Secretary of State for Health to bring claims for compensation against Generics before the courts of the United Kingdom.

5 In that regard, it should be noted, first, that, pursuant to the first paragraph of Article 40 of the Statute of the Court of Justice of the European Union, Member States may intervene in cases before the Court without having to establish an interest in the result of a case submitted to the Court.

6 Accordingly, Generics' assertion that the United Kingdom has no interest in submitting an application to intervene in the present case and its claims regarding the purported objectives of that application are irrelevant.

7 Secondly, it must be held that the application to intervene lodged at the Registry of the Court by the United Kingdom on 28 July 2017 satisfies the formal requirements laid down in Article 130(2) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules. In particular, and contrary to Generics' assertions, it contains both a description of the case in respect of which leave to intervene is sought and the form of order sought, in support of which the United Kingdom is applying for leave to intervene, namely the form of order sought by the Commission.

8 Thirdly, Generics' assertion that its rights of defence would be impaired because of the United Kingdom's possible intervention cannot succeed, since there is no evidence to support it.

9 Accordingly, pursuant to the first paragraph of Article 40 of the Statute of the Court of Justice of the European Union and Article 131(2) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules, it is appropriate to grant the United Kingdom leave to intervene.

10 However, in view of the fact that the United Kingdom's application was submitted after the expiry of the period referred to in Article 190(2) of the Rules of Procedure, applicable to appeals, and before the decision to open the oral part of the procedure, it is appropriate, pursuant to the first paragraph of Article 40 of the Statute of the Court of Justice of the European Union and Article 129(4) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules, to authorise that Member State to submit its observations only during the hearing, if it takes place.

11 In the event that the Court should grant the United Kingdom's application to intervene, Generics has also requested the Court to treat as confidential, with regard to that Member State, certain secret information concerning Generics that is contained in the following documents:

– its action for annulment and its reply before the General Court, which feature respectively in Annexes A.3 and A.4 to its appeal before the Court;

– Annexes A.1, A.5, A.27 and A.32 to its action for annulment before the General Court;

– Annexes B.1, B.2, B.4, B.10 and B.12 to its reply before the General Court;

– Annex E.4 to the Commission's observations following a measure of inquiry of the General Court;

– the appeal before the Court of Justice;

– Annexes A.2, A.7, A.9, A.10 and A.12 to that appeal, containing, respectively, the confidential version of the decision at issue (Annex A.2), a development and supply agreement concluded between Generics and Schweizerhall Pharma International GmbH (Annex A.7), two settlement and supply agreements between Generics and Lundbeck Ltd (Annexes A.9 and A.10), and an email relating to the practice penalised (Annex A.12).

12 To that end, it has communicated, as an appendage to its observations on the application to intervene submitted by the United Kingdom, non-confidential versions, with regard to the United Kingdom, of its appeal and of Annexes A.2, A.3, A.4, A.7, A.9, A.10 and A.12 thereto containing, respectively, the decision at issue (Annex A.2), the action for annulment brought before the General Court (Annex A.3), the reply submitted before the General Court (Annex A.4), the agreements concluded between Generics and Schweizerhall Pharma International and between Generics and Lundbeck (Annexes A.7, A.9 and A.10), and, lastly, an email relating to the practice penalised (Annex A.12).

13 As a preliminary point, regarding the request for confidential treatment of Annexes A.1, A.5, A.27 and A.32 to Generics' action for annulment before the General Court, Annexes B.1, B.2, B.4, B.10 and B.12 to its reply before the General Court and Annex E.4 to the Commission's observations as referred to above, it should be noted that those annexes are not appended to the appeal in the present case. Accordingly, they are not among the procedural documents capable of being served on interveners pursuant to Article 131(4) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules.

14 Consequently, the request for confidential treatment of those annexes serves no purpose.

15 With regard to the request for confidential treatment of Annex A.2 to the appeal, which contains the confidential version of the decision at issue, it must be pointed out that confidential treatment has already been granted to that version of the decision at issue, with regard to the United Kingdom, by the order of the President of the Court of 5 July 2017, *Lundbeck* v *Commission* (C-591/16 P, not published, EU:C:2017:532).

16 In view of that order, it must be decided that, at this stage of the present proceedings, only the public version of that decision, published by the Commission on its website on 19 January 2015, shall be communicated to the United Kingdom, in accordance with Article 131(4) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules.

17 Lastly, as regards the request for the appeal in the present case and Annexes A.3, A.4, A.7, A.9, A.10 and A.12 thereto, as referred to in paragraph 11 of the present order, to be treated as confidential with regard to the United Kingdom, it must be held, on the basis of that request alone, that the treatment sought appears to be justified. It is therefore appropriate, at the present stage of the

proceedings, to communicate to that Member State, pursuant to Article 131(4) of the Rules of Procedure, applicable to the appeal proceedings under Article 190(1) of those rules, only the non-confidential versions of those documents which are referred to in paragraph 12 of the present order.

Costs

18 Pursuant to Article 137 of the Rules of Procedure, applicable to the appeal proceedings under Article 184(1) of those Rules, a decision as to costs is to be given in the judgment or order which closes the proceedings.

19 It is therefore necessary to reserve the costs associated with the United Kingdom's intervention.

On those grounds, the President of the Court hereby orders:

1. **The United Kingdom of Great Britain and Northern Ireland is granted leave to intervene in Case C-588/16 P in support of the form of order sought by the European Commission.**

2. **The United Kingdom of Great Britain and Northern Ireland is authorised to submit its observations during the hearing, if it takes place.**

3. **Copies of all of the procedural documents shall be served on the United Kingdom of Great Britain and Northern Ireland by the Registrar, with the exception of the confidential versions of Generics (UK) Ltd's appeal and the documents appearing in Annexes A.2, A.3, A.4, A.7, A.9, A.10 and A.12 thereto.**

4. **A non-confidential version, with regard to the United Kingdom of Great Britain and Northern Ireland, of Generics (UK) Ltd's appeal and the documents appearing in Annexes A.3, A.4, A.7, A.9, A.10 and A.12 thereto and the public version, published by the Commission on its website, of the document appearing in Annex A.2 to that appeal shall be served on the United Kingdom of Great Britain and Northern Ireland by the Registrar.**

5. **It is unnecessary to rule on the application for confidential treatment submitted by Generics (UK) Ltd with regard to Annexes A.1, A.5, A.27 and A.32 to the action for annulment brought by Generics (UK) Ltd before the General Court of the European Union, Annexes B.1, B.2, B.4, B.10 and B.12 to its reply before the General Court of the European Union, and Annex E.4 to the observations of the European Commission following a measure of inquiry of the General Court of the European Union.**

6. **The costs are reserved.**

Luxembourg, 25 October 2017.

A. Calot Escobar
Registrar

K. Lenaerts
President