Reports of Cases

ORDER OF THE PRESIDENT OF THE COURT

16 July 2020*

(Appeal — Intervention — Statute of the Court of Justice of the European Union — Article 40 — Interest in the result of the case)

In Case C-883/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 3 December 2019,

HSBC Holdings plc, established in London (United Kingdom),

HSBC Bank plc, established in London,

HSBC France, established in Paris (France),

represented by K. Bacon QC, D. Bailey, Barrister, M. Simpson, Solicitor, and by C. Angeli and M. Giner, avocats,

applicants,

the other party to the proceedings being:

European Commission, represented by P. Berghe and M. Farley and by F. van Schaik, acting as Agents,

defendant at first instance,

THE PRESIDENT OF THE COURT,

having regard to the proposal of K. Jürimäe, Judge-Rapporteur,

after hearing the Advocate General, M. Bobek,

makes the following

Order

1 By their appeal, HSBC Holdings plc, HSBC Bank plc and HSBC France (together, 'the HSBC companies') seek to have set aside the judgment of the General Court of the European Union of 24 September 2019, *HSBC Holdings and Others* v *Commission* (T-105/17, EU:T:2019:675) ('the judgment under appeal'), by which it annulled Article 2(b) of Commission Decision C(2016) 8530

* Language of the case: English.

final of 7 December 2016 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39914 — Euro Interest Rate Derivatives) ('the contested decision'), and dismissed their action as to the remainder.

2 By document lodged at the Court Registry on 20 March 2020, JPMorgan Chase & Co., JPMorgan Chase Bank, National Association, and J.P. Morgan Services LLP (together, 'the JPMC companies') applied, on the basis of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, for leave to intervene in support of the forms of order sought by the HSBC companies.

3 By documents lodged at the Registry respectively on 22 and 30 April 2020, the European Commission and the HSBC companies submitted their written observations on that application. By document lodged at the Registry on 18 May 2020, before the expiry of the period prescribed for the lodging of its observations, HSBC supplemented its initial observations in the light of the order of the President of the Court of 30 April 2020, *Commission* v *HSBC Holdings and Others* (C-806/19 P, not published, EU:C:2020:364), and, in view of those circumstances, that document has been placed on the file.

The application for leave to intervene

4 In support of their application, the JPMC companies state, in essence, that they brought an action, registered at the Registry of the General Court as Case T-106/17, against the contested decision, which is also addressed to them, and that that action relates to the same issues as those at issue in the present appeal. They point out that the General Court decided, on the basis of Article 69(1)(b) of its Rules of Procedure, to stay the proceedings in that case pending the judgment of the Court of Justice in the present appeal. It is clear from the latter decision that Case T-106/17 was stayed because of the existence of common pleas in law with those raised in Case T-105/17 and, consequently, in the appeal present case. They argue that the existence of common pleas in law is further confirmed by the judgment under appeal. The JPMC companies infer from this that the judgment to be delivered in the present case on appeal will have a direct impact on the outcome of their own action for annulment. In those circumstances, the JPMC companies stress that it would be unfair for the Court to rule on issues which will be decisive for the resolution of their action without hearing them on those issues.

5 The JPMC companies consider, therefore, that they have a direct interest in the result of the case, within the meaning of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union.

6 In that regard, it follows from that provision that any natural or legal person has a right to intervene in a case before the Courts of the European Union, other than a case between Member States, between institutions of the European Union or between Member States, on the one hand, and institutions of the European Union, on the other hand, if that person can establish an interest in the result of that case.

7 According to the Court's settled case-law, the concept of an 'interest in the result of a case', within the meaning of that provision, must be defined in the light of the precise subject matter of the dispute and be understood as meaning a direct, existing interest in the ruling on the form of order sought, and not as an interest in relation to the pleas in law or arguments put forward as such. The words 'result of a case' refer to the final decision sought, as set out in the operative part of the decision which closes the proceedings. Therefore, more specifically, it is a direct and existing interest in the grant of the form of order that is sought by the party that the applicant for leave to intervene intends to support (order of the President of the Court of 30 April 2020, *Commission* v *HSBC Holdings and Others*, C-806/19 P, not published, EU:C:2020:364, paragraph 7 and the case-law cited).

8 In that regard, it is appropriate, in particular, to ascertain that the applicant for leave to intervene is directly affected by the contested measure and that his or her interest in the result of the case is certain. In principle, an interest in the result of the case can be regarded as sufficiently direct only to the extent that that result is such as to alter the legal position of the applicant for leave to intervene (order of the President of the Court of 30 April 2020, *Commission* v *HSBC Holdings and Others*, C-806/19 P, not published, EU:C:2020:364, paragraph 8 and the case-law cited).

9 Furthermore, according to the case-law of the Court, a party which, pursuant to Article 40 of the Statute of the Court of Justice of the European Union, is granted leave to intervene in a case submitted to the Court may not alter the subject matter of the dispute as defined by the forms of order sought and the pleas in law raised by the main parties. It follows that arguments submitted by an intervener are not admissible unless they fall within the framework provided by those forms of order and pleas. Thus, it is by taking account, inter alia, of the subject matter of the dispute forming the basis of the appeal, as it emerges from the forms of order sought by the main parties and the pleas put forward in support of those forms of order, that the interest in the result of the case of an applicant for leave to intervene should be assessed (order of the President of the Court of 30 April 2020, *Commission* v *HSBC Holdings and Others*, C-806/19 P, not published, EU:C:2020:364, paragraph 9 and the case-law cited).

10 In the present case, it is apparent from paragraph 42 of the judgment under appeal that, in the context of their action brought before the General Court which gave rise to the judgment under appeal, the HSBC companies submitted, first, claims for annulment of Article 1 and Article 2(b) of the contested decision and, secondly, claims for variation of the amount of the fine imposed on them by Article 2(b).

11 In Article 1 of the contested decision, the Commission found that the companies referred to in that decision, which included the JPMC and HSBC companies, had infringed Article 101 TFEU by taking part in a 'single and continuous infringement' which consisted in 'agreements and/or concerted practices that had as their object the distortion of the normal course of pricing components in the Euro interest rate derivatives sector (EIRD)'. In Article 2(b) of that decision, the Commission imposed on the HSBC companies jointly and severally a fine of EUR 33 606 000 for the infringement referred to in Article 1.

12 In the judgment under appeal, the General Court dismissed the pleas of the HSBC companies seeking, principally, annulment of Article 1 of the contested decision. By contrast, it upheld the third complaint of the first part of the plea seeking annulment of Article 2(b) of that decision and annulled that article.

13 In that context, by their appeal, the HSBC companies seek, first, annulment of paragraph 2 of the operative part of the judgment under appeal by which the General Court dismissed their action in so far as it sought annulment of Article 1 of the contested decision and, secondly, annulment of Article 1(b) of that decision.

14 It is necessary to determine whether, in those circumstances, the JPMC companies establish, in the context of the present appeal, a direct and existing interest in the grant of the forms of order sought by the HSBC companies, within the meaning of the case-law referred to in paragraph 7 of the present order.

15 In that regard, it should be noted that the present appeal relates, in particular, to the lawfulness of the General Court's assessments of the grounds underlying the operative part of the contested decision by which the Commission found that there was an infringement of Article 101(1) TFEU. The HSBC companies submit, in that context, that the General Court erred in law by rejecting their pleas for annulment alleging that the Commission wrongly classified that infringement as an infringement by object, within the meaning of Article 101(1) TFEU, and as a single and continuous infringement. In addition, they consider that the General Court erred in law in rejecting their plea for annulment

alleging infringement of the principles of the presumption of innocence and sound administration and of the rights of the defence by reason of the adoption of that decision following a settlement decision in which the Commission had already taken a position on the participation of the HSBC companies in the infringement at issue.

16 Admittedly, according to the Court's settled case-law, a decision, such as the contested decision, although drafted and published in the form of a single decision, must be seen as a set of individual decisions finding that each of the addressees is guilty of the infringement or infringements of which they are accused and imposing on them, where appropriate, a fine (judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 100 and the case-law cited). Therefore, if the forms of order sought by the HSBC companies in the context of the present appeal were granted, the Court would set aside the judgment under appeal and, then, in the event that it found that the action at first instance was well founded, it would annul Article 1(b) of the contested decision, which applies only to those companies, should it itself give final judgment in the matter in accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union.

17 However, it must be noted, first, that the JPMC companies, as joint addressees of the contested decision, are among the companies designated as having participated, together with the HSBC companies, in the infringement referred to in Article 1 of that decision. Furthermore, although Article 1(c) of that decision, which the JPMC companies are seeking to have annulled in Case T-106/17, in fact applies only to the latter companies, the grounds for annulment which they raise, relating to the nature and existence of the infringement found in that decision, are equivalent to those put forward by the HSBC companies. Thus, notwithstanding the case-law referred to in the previous paragraph, the decisions establishing the respective participation of the HSBC and JPMC companies in the same 'agreements and/or … concerted practices' within the meaning of Article 101(1) TFEU, although distinct, are closely linked to each other, even interdependent.

18 In those circumstances, and having regard to the fact that, by their appeal, the HSBC companies contest the existence and nature of the infringement of Article 101(1) TFEU, the judgment to be delivered in the present case — whether the Court of Justice grants the forms of order sought by the HSBC companies and sets aside the judgment under appeal or dismisses the grounds of appeal put forward by those companies — will necessarily have a direct impact on the assessment by the General Court of the action brought by the JPMC companies in so far as it seeks the annulment of Article 1(c) of the contested decision.

19 Therefore, without prejudice to the assessment of the grounds raised in support of the present appeal, it should be noted that, by the judgment to be delivered in the present case, the Court will give a final ruling on the legal merits of the grounds of appeal put forward by the HSBC companies concerning the Commission's finding as to the existence and the nature of the infringement referred to in Article 1 of the contested decision, the legal content of which corresponds, in part, to that of the grounds of appeal put forward at first instance by the JPMC companies in Case T-106/17.

20 Consequently, if the JPMC companies were not authorised to intervene in the present case in support of the forms of order sought by the HSBC companies, they would be deprived of the possibility of being heard in practice on the legal merits of their pleas, whereas the judgment to be delivered in the present case will provide an answer that is likely to be decisive for the assessment by the General Court of the merits of those pleas.

21 In those circumstances, the concept of an 'interest in the result of a case', referred to in the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as permitting an application for leave to intervene, such as that of the JPMC companies, to be granted.

22 It should be noted in that regard that the principle of equality of arms, which is an integral part of the principle of effective judicial protection of the rights that individuals derive from EU law, enshrined in Article 47 of the Charter of Fundamental Rights, in that it is a corollary, like, in particular, the principle *audi alteram partem*, of the very concept of a fair trial, implies an obligation on the part of the court to offer each party a reasonable opportunity to present its case in conditions that do not place it in a clearly less advantageous position by comparison with its opponent (see, to that effect, judgments of 2 December 2009, *Commission* v *Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraph 54, and of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 61).

23 It follows that a distinction must be drawn according to whether the addressees of a decision such as the contested decision appealed at first instance — which is the subject of a suspension — apply for leave to intervene in a case concerning the very existence of an infringement of Article 101(1) TFEU of which they have been named as co-authors, or whether they seek to intervene in a case concerning solely the legality or the amount of the fine imposed on another of those co-authors in respect of that infringement.

24 In the first hypothesis, the fact that the applicants to intervene are undertakings identified as having participated in an infringement of Article 101(1) TFEU enables them to establish a direct interest in the grant of the forms of order sought by another participant in that infringement in the context of a dispute challenging the existence of that infringement, provided that they themselves brought an action for annulment against the decision relating to their own participation in the same infringement, based on substantially identical or similar grounds for annulment as those put forward in the context of that dispute. By contrast, as regards the second hypothesis, the applicants to intervene establish, having regard to the individual nature of the fines imposed under Article 101(1) TFEU, only an indirect interest in the result of the case in which they wish to intervene (see, to that effect, order of the President of the Court of 30 April 2020, *Commission* v *HSBC Holdings and Others*, C-806/19 P, not published, EU:C:2020:364, paragraph 13 and the case-law cited).

25 In the present case, unlike the application made by the JPMC companies in Case C-806/19 P, *Commission* v *HSBC Holdings and Others*, the present application for leave to intervene falls under the first of those two hypotheses.

26 Consequently, the JPMC companies establish an interest in the result of the case within the meaning of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union.

27 However, it should be borne in mind that, in accordance with the case-law of the Court referred to in paragraph 9 of the present order, a party that is granted leave to intervene may not alter the subject matter of the dispute as defined by the forms of order sought and the pleas in law raised by the main parties. It follows that only those arguments of the intervener which fall within the framework defined by those forms of order and pleas in law are admissible.

28 As regards the procedural rights of the JPMC companies, it should be noted that the application to intervene was lodged within the one-month time limit laid down in Article 190(2) of the Rules of Procedure, with the result that the JPMC companies are, in principle, entitled to be served with all the procedural documents served on the parties pursuant to Article 131(4) of those rules, which is applicable to the appeal proceedings under Article 190(1) of those rules.

29 In those circumstances, a short period should be set for HSBC and the Commission to make, where appropriate, a request for confidential treatment of the documents in the file in the present case.

30 It follows from all the above considerations that the JPMC companies must be granted leave to intervene in the case in support of the forms of order sought by the HSBC companies.

Costs

31 Pursuant to Article 137(1) 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.

32 In the present case, since the application for leave to intervene by the JPMC companies has been granted, the costs relating to their intervention should be reserved.

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

1. **JPMorgan Chase & Co, JPMorgan Chase Bank, National Association, and J.P. Morgan Services LLP are granted leave to intervene in Case C-883/19 P in support of the forms of order sought by HSBC Holdings plc, HSBC Bank plc and HSBC France;**

2. **Subject to paragraph 3, a copy of all the procedural documents will be served on JPMorgan Chase & Co., JPMorgan Chase Bank, National Association, and J.P. Morgan Services LLP by the Registrar;**

3. **A time limit will be set for HSBC Holdings plc, HSBC Bank plc and HSBC France and for the European Commission to make, where appropriate, a request for confidential treatment of the documents in the file in this case with regard to JPMorgan Chase & Co., JPMorgan Chase Bank, National Association, and J.P. Morgan Services LLP;**

4. **A time limit will be set for JPMorgan Chase & Co., JPMorgan Chase Bank, National Association, and J.P. Morgan Services LLP to set out, in writing, the pleas in law relied on in support of the forms of order sought by them;**

5. **The costs are reserved.**

Luxembourg, 16 July 2020.

A. Calot Escobar
Registrar

K. Lenaerts
President