Reports of Cases

ORDER OF THE PRESIDENT OF THE COURT

10 March 2023 *

(Appeal – Intervention – Second paragraph of Article 40 of the Statute of the Court of Justice of the European Union – Interest in the result of the case – Competition – Concentrations – Pharmaceutical industry market – European Commission decision to examine a merger referred by the competition authority of a Member State – Commission decision accepting that the initial referral request be joined by other Member States – Professional association not representative of the sector concerned – Rejected)

In Case C-625/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 30 September 2022,

Grail LLC, established in Menlo Park (United States), represented by A. Giraud, avocat, J.M. Jiménez-Laiglesia Oñate, abogado, D. Little, Solicitor, J. Ruiz Calzado, abogado, and S. Troch, advocaat,

applicant,

the other parties to the proceedings being:

Illumina Inc., established in San Diego (United States), represented by D. Beard, Barrister-at-Law, J. Blanco, abogada, B. Cullen, Barrister-at-Law, F. González Díaz, abogado, J. Holmes, Barrister, G. Rizza and M. Siragusa, avvocati,

applicant at first instance,

European Commission, represented by G. Conte, N. Khan and C. Urraca Caviedes, acting as Agents,

defendant at first instance,

Hellenic Republic,

French Republic, represented by T. Stéhelin and N. Vincent, acting as Agents,

Kingdom of the Netherlands, represented by M.K. Bulterman and P.P. Huurnink, acting as Agents,

* Language of the case: English.

EFTA Surveillance Authority, represented by C. Simpson, M. Sánchez Rydelski and M.-M. Joséphidès, acting as Agents,

interveners at first instance,

THE PRESIDENT OF THE COURT,

having regard to the proposal of N. Wahl, Judge-Rapporteur,

after hearing the Advocate General, N. Emiliou,

makes the following

Order

1 By its appeal, Grail LLC seeks annulment of the judgment of the General Court of the European Union of 13 July 2022, *Illumina* v *Commission* (T-227/21, EU:T:2022:447), by which the General Court dismissed the action seeking annulment, first, of Commission Decision C(2021) 2847 final of 19 April 2021 granting the request of the French Autorité de la concurrence (Competition Authority) to examine the concentration involving the acquisition by Illumina Inc. of sole control of Grail, Inc. (Case COMP/M.10188 – Illumina/Grail), second, Commission Decisions C(2021) 2848 final, C(2021) 2849 final, C(2021) 2851 final, C(2021) 2854 final and C(2021) 2855 final of 19 April 2021, granting the requests of the Greek, Belgian, Norwegian, Icelandic and Dutch competition authorities to join that request for referral and, third, the Commission's letter of 11 March 2021 informing Illumina and Grail of that request for referral.

2 By documents lodged at the Registry of the Court of Justice on 9 January 2023, the association française des juristes d'entreprise (AFJE) (French Association of In-House Lawyers (AFJE)) and the European Company Lawyers Association (ECLA) applied for leave to intervene in the present case in support of the form of order sought by Grail, pursuant to the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union and Articles 130 and 190 of the Rules of Procedure of the Court of Justice.

3 Following service on the parties by the Registrar of the Court of Justice, in accordance with Article 131(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 190(1) of those rules, of the applications to intervene lodged by the AFJE and the ECLA, Illumina, Grail and the European Commission submitted observations on those applications within the prescribed period.

4 While Illumina and Grail indicated that they supported those applications to intervene, the Commission contended that the applications ought to be rejected.

The applications to intervene

5 Under the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, any person establishing an interest in the result of a case submitted to the Court, other than a case between Member States, between institutions of the European Union or between those States, of the one part, and such institutions, of the other part, may intervene in that case.

6 According to 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 case 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. The words 'result of a case' refer to the final decision sought, as set out in the operative part of the future judgment or order (order of the President of the Court of 7 February 2019, *Bayer CropScience and Bayer* v *Commission*, C-499/18 P, not published, EU:C:2019:107, paragraph 5 and the case-law cited).

7 In that regard, it must, in particular, be ascertained, whether the applicant for leave to intervene is directly affected by the contested measure and whether its interest in the result of the case is established. In principle, an interest in the result of the case can be considered to be sufficiently direct only to the extent to which that result is likely to alter the legal position of the person seeking leave to intervene (order of the President of the Court of 27 February 2019, *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, not published, EU:C:2019:174, paragraph 8 and the case-law cited).

8 However, it is also settled case-law that a representative professional association, whose objective is to protect the interests of its members may be granted leave to intervene where the case raises questions of principle which are liable to affect those interests (orders of the President of the Court of 1 October 2019, *Commission* v *Ville de Paris and Others*, C-179/19 P, not published, EU:C:2019:836, paragraph 7, and of 1 September 2022, *Google and Alphabet* v *Commission*, C-48/22 P, not published, EU:C:2022:667, paragraph 7 and the case-law cited). Therefore, the requirement that such an association has a direct, existing interest in the result of a case must be found to be fulfilled when the association establishes that it is in such a situation, irrespective of whether the result of the case is likely to alter the legal position of the association as such.

9 Indeed, such a broad interpretation of the right to intervene in favour of representative professional associations is intended to facilitate assessment of the context of such cases submitted to the EU Courts, while avoiding multiple individual interventions which would compromise the efficiency and the proper course of the procedure (see, to that effect, orders of the President of the Court of 17 June 1997, *National Power and PowerGen* v *Commission*, C-151/97 P(I) and C-157/97 P(I), EU:C:1997:307, paragraph 66, and of 1 October 2019, *Commission* v *Ville de Paris and Others*, C-179/19 P, not published, EU:C:2019:836, paragraph 12). However, unlike natural and legal persons acting on their own behalf, representative professional associations are likely to apply for leave to intervene in a case before the Court not in order to defend individual interests but rather to defend the collective interests of their members. Intervention by such an association offers an overall perspective of those collective interests which are affected by a question of principle on which the result of the case depends, and is, accordingly, of such a nature as better to enable the Court to assess the context in which a case is submitted to it.

10 Therefore, in accordance with the case-law referred to in paragraph 8 of the present order and, more specifically, as is apparent from the case-law of the General Court (see order of the President of the Third Chamber (Extended Composition) of the General Court of 6 October 2021, *Illumina* v *Commission*, T-227/21, not published, EU:T:2021:672, paragraph 24 and the case-law cited), an association may be granted leave to intervene in a case if, first, it represents a significant number of undertakings active in the sector concerned, if, second, its

objects include the protection of the interests of its members, if, third, the case may raise questions of principle affecting the functioning of the sector concerned and if, therefore, fourth, the interests of its members may be affected significantly by the forthcoming judgment.

11 The substance of the applications to intervene submitted by the AFJE and the ECLA must be assessed in the light of those conditions, whose correctness is confirmed.

12 In support of their applications, the AFJE and the ECLA claim, first, that they represent a significant number of members active in the economic sector concerned by the concentration at issue in the present case. The AFJE represents the entire community of in-house lawyers in France and covers all sectors of the French economy. As for the ECLA, it is the umbrella organisation of 22 European associations of in-house lawyers and therefore represents the common interests of in-house lawyers' associations covering all sectors of the European economy. Second, the AFJE and the ECLA, whose purpose is the protection of the rule of law and the principle of legal certainty in Europe, are responsible for defending and protecting the interests of their members. Third, the present case raises questions of principle, relating to the interpretation of Article 22 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1), affecting legal transactions in various economic sectors. Fourth, the interests represented by the AFJE and the ECLA may be significantly affected by the outcome of the appeal. In particular, with regard to merger transactions, in-house lawyers need to be able to implement clear and predictable procedures to prevent the companies employing them from being placed in difficulty by a regulator competent to review such operations or from being forced to interrupt a transaction which has already been initiated or even closed.

13 However, that line of argument does not justify granting the present applications to intervene.

14 In the first place, the AFJE and the ECLA have not established that their interests or those of their members would be affected by the result of the present case within the meaning of the case-law cited in paragraphs 6 and 7 of the present order. Since neither those associations nor their members are affected by the concentration at issue in the present case, and indeed they do not claim to be so affected, the operative part of the forthcoming judgment cannot have a direct, existing effect on their legal position.

15 In the second place, the AFJE and the ECLA have not established, first, that, in accordance with the principles set out in paragraph 10 of the present order, they represent a significant number of undertakings active in the sector concerned by the concentration at issue in the present case, second, that that concentration may raise questions of principle affecting the functioning of that sector and, third, that the interests of their members may be affected significantly by the forthcoming judgment.

16 It should be noted that the concentration at issue in the present case concerns the sector of blood tests for the early detection of cancer using next-generation genomic sequencing and, more broadly, the pharmaceutical and/or medical devices sector.

17 In that regard, it should be noted that, although, as is apparent from the case-law cited in paragraph 9 of the present order, the broad interpretation of the right of representative professional associations to intervene is intended to facilitate assessment of the context of such cases submitted to the EU Courts while avoiding multiple individual interventions which would

compromise the effectiveness and the proper course of the procedure, it is not, however, intended to allow intervention by non-representative associations which have only an indirect and hypothetical interest in the result of the case.

18 If the Court were to accept that an association representing in-house lawyers could intervene in a case such as the present case based on reasons such as those put forward by the AFJE and the ECLA, it would follow that such an association would be able to intervene in the majority of procedures before the EU Courts involving the interpretation of a provision of EU competition law, since analogous reasons could always be relied on in such procedures.

19 Consequently, in the light of the foregoing, it must be concluded that, irrespective of whether the AFJE and the ECLA constitute representative professional associations and whether their purpose includes the protection of the interests of their respective members, they have not demonstrated 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. Therefore, their applications to intervene must be dismissed.

20 That conclusion is not called into question by the fact that the EU Courts have, in certain cases, allowed intervention by representative professional associations of lawyers and legal advisers, where those cases concerned questions of principle which were likely to affect the interests of their members. In particular, it should be noted, in that regard, that the legal question raised in the case which gave rise to the order of the President of the Court of 5 July 2018, *Uniwersytet Wrocławski and Poland* v *ERA* (C-515/17 P and C-561/17 P, not published, EU:C:2018:553), concerned compliance with the condition of independence required for a legal adviser to represent a party before the EU Courts where that legal adviser is connected to that party by a contract governed by civil law for services provided as an external teacher, and therefore constituted a question of principle likely to affect the interests of a professional association representing legal advisers.

21 It follows from all the foregoing considerations that the AFJE and the ECLA have not shown that they have 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 and that, therefore, their applications to intervene must be dismissed.

Costs

22 Under Article 138(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the AFJE and the ECLA have been unsuccessful in their applications to intervene and the Commission has applied for costs to be awarded against them, it must be decided that they are to pay the costs relating to the present applications to intervene.

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

1. **The applications to intervene submitted by the association française des juristes d'entreprise (AFJE) and the European Company Lawyers Association (ECLA) are dismissed.**

2. **The association française des juristes d'entreprise (AFJE) and the European Company Lawyers Association (ECLA) are to pay the costs relating to the present applications to intervene.**

Luxembourg, 10 March 2023.

A. Calot Escobar
Registrar

K. Lenaerts
President