STATE AIDS (COMPANY TAXATION): THE GIBRALTAR CASE

Subject: State aids

Industry: All industries

Parties: Government of Gibraltar
Commission of the European Communities
Kingdom of Spain (Intervener)

Sources: (1) Court of Justice Statement CJE/02/40, dated 30 April 2002
(2) Judgment of the Court of Justice in Joined Cases T-195 and 207/01, dated 30 April 2002 (*Government of Gibraltar v Commission of the European Communities*)

(Note. Special concessions wrapped up in complex systems of company taxation are a classic method of introducing a subtle form of state aid; and it is interesting to note that the Commission has initiated investigation procedures in respect of eleven company taxation schemes in eight Member States. The Government of Gibraltar, responsible for two of the schemes in question, challenged the Commission's decision to initiate the procedures under the state aid rules. The Commission proposed, and the Government of Gibraltar agreed, to seek the expedited procedure for hearing and determining the case. The timing is interesting:

20 August and 7 September 2001: applications lodged with the Court;
12 November 2001: Court agrees to expedited procedure;
5 March 2002: hearing of case;
30 April 2002: judgment by the Court.

There were four other interesting features of the case: first, the argument, won by the applicant, on the locus standi of the Government of Gibraltar; second, the argument, won by the applicant, that the Commission's decision to initiate an investigation was a justiciable act; third, the argument, won by the applicant, that the Commission's decision should be annulled in respect of "exempted companies"; and, fourth, the argument, lost by the applicant, that the Commission decision should annulled in respect of "qualified companies". These categories are explained further in the text of the judgment, of which there is a strictly abbreviated report below.)

Court Statement

On 11 July 2001, the Commission decided to initiate investigation procedures in respect of eleven company taxation schemes in eight Member States. The Commission considers that those tax provisions may constitute State aid and has doubts as to their compatibility with the EC Treaty. Gibraltar is among the territories concerned by those procedures.

Then, by applications lodged on 20 August and 7 September 2001, the Government of Gibraltar sought annulment of the two decisions of 11 July 2001 whereby the Commission had initiated the formal State aid investigation procedure laid down in the EC Treaty in respect of the Gibraltar legislation on two specific categories of company, namely "exempt" companies (T-195/01) and "qualifying" companies (T-207/01), which benefit from tax exemptions under the applicable national law.

On 12 November 2001, the Court of First Instance, upon application by the Commission and with the applicant's consent, decided to adjudicate under an expedited procedure, which has been available pursuant to its Rules of Procedure since February 2001. This marks the first occasion on which the Court of First Instance has made use of that new procedure in an economic case.

The Commission had emphasised that the expedited procedure would allow it to specify quickly the procedure to be followed in all the State aid cases mentioned above. The repercussions on the general practice adopted by the Commission in State aid procedures would be significant.

In the context of the expedited procedure, the Court of First Instance was able to hold the public hearing on 5 March 2002, ie four months after application for that particular procedure was made. The judgment of 30 April 2002 has thus closed a judicial procedure relating to State aid which lasted only eight months, whereas the average duration of a case before the Court of First Instance in 2001 was 19½ months.

The Court of First Instance annulled the decision relating to "exempt" companies, on the ground that the Commission had committed an error in classifying the legislation in issue as a new aid scheme, while the action in respect of "qualified" companies was dismissed as unfounded.

Judgment (Selected Paragraphs)

12. Since Gibraltar is a European territory, within the meaning of Article 299(4) of the EC Treaty, for whose external relations the United Kingdom of Great Britain and Northern Ireland is responsible, the provisions of the Treaty apply to it. However, by virtue of Article 28 of the Act concerning the conditions of accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, annexed to the Treaty relating to their accession, acts of the institutions of the Community relating, in particular, to the harmonisation of legislation of Member States concerning turnover taxes, shall not apply to Gibraltar, unless the Council decides otherwise. However, it is not disputed that the rules of Community law on competition, including those relating to State aid granted by the Member States, do apply to Gibraltar.

13. The present cases concern two legislative measures applicable to companies, concerning exempt companies and qualifying companies respectively. Exempt companies are not actually present in Gibraltar while qualifying companies have a bricks and mortar presence there and are active in various sectors.

Findings of the Court on the applicant's locus standi

52. First of all, the fourth paragraph of Article 230 of the EC Treaty provides that a]ny natural or legal person may institute proceedings for annulment. In the present case, it is not disputed that, in British law, the applicant has legal personality and as such must be regarded as a legal person for the purposes of the above-mentioned provision.

53. As regards the applicant's competence to initiate the present action, it follows from the response of the United Kingdom that under the relevant British law the applicant has competence in the specific field with which the present cases are concerned, namely company taxation, as a defined domestic matter. There is nothing in the documents before the Court to invalidate that response.

54. In those circumstances, the reference by the Commission and by the Kingdom of Spain to Case C-298/89, *Gibraltar v Council*, in which the United Kingdom disputed the locus standi of the Government of Gibraltar, is irrelevant, since that case concerned air transport within the Community and was therefore fundamentally different from the present case.

55. Consequently, the first objection of inadmissibility must be dismissed in the light of the documents before the Court, without there being any need for the Court to examine that question of admissibility more closely of its own motion.

Court's findings on the legal nature of the contested decisions

68. It is necessary to ascertain the criteria which distinguish a decision to initiate the formal investigation procedure and to assess whether the contested decisions fulfil those criteria or whether, as the Commission claims, they must be regarded as procedural innovations which differ in nature from a 'classic decision initiating that procedure.

69. In that regard, the initiation of the formal investigation by the Commission is provided for, pursuant to Article 88 EC and to Article 4(4) of the regulation on State aid procedure, and also to Articles 13, 16 and 19(2) of that regulation, in four possible situations which are exhaustively listed, namely: for the purpose of examining new notified aid, for the purpose of examining 'possible unlawful aid, in the event of misuse of aid within the meaning of Article 1(g) of that regulation, and where a Member State rejects the appropriate measures proposed by the Commission in respect of an existing aid scheme.

70. In the present case, the last two possibilities must be precluded at the outset. Nor was the national legislation in issue notified in accordance with Article 88(3) EC, since its notification to the Primarolo group - set up by the Council and composed, in particular, of national experts - cannot be treated as formal notification to the Commission for the purposes of the Community rules on State aid. Consequently, the question whether the procedural approach chosen by the Commission in the present case should be classified as the initiation of the formal

examination procedure, with the legal effects that step implies, can be examined solely in relation to the category of 'possible unlawful aid.

71. Under Article 4(4) and Article 6(1) of the regulation on State aid procedure, any formal investigation procedure must be initiated by a decision which includes a 'preliminary assessment by the Commission as to the character of the measure in issue as aid and must set out the doubts which exist concerning its compatibility with the common market. Pursuant to Article 7 of the regulation on State aid procedure, the formal investigation procedure may be closed by a decision finding that the measure in issue does not constitute aid (paragraph 2), by a positive decision declaring the aid compatible with the common market (paragraph 3), by a conditional positive decision (paragraph 4) or by a decision declaring the aid incompatible with the common market (paragraph 5).

72. Those provisions allow the Commission to examine, from all possible aspects, the character of the State measure in question which may constitute new aid or the amendment of existing aid in order to overcome its doubts as to the compatibility of the measure with the common market in the course of the formal investigation (see Case C-400/99, *Italy v Commission* (*Tirrenia*), paragraph 45). The Commission is even required to initiate that procedure, pursuant to Article 4(4) of the regulation on State aid procedure, if the initial analysis of the measures in issue has not enabled all the difficulties raised by the assessment of the measure in question to be overcome (see Case T-95/96, *Gestevisión Telecinco v Commission*, paragraph 52; Case T-11/95, *BP Chemicals v Commission*, paragraph 166; and Case T-73/98, *Prayon-Rupel v Commission*, paragraph 42).

73. At the end of the preliminary state of the investigation into a State measure, the Commission thus has three choices: it may decide that the State measure at issue does not constitute State aid, or it may decide that that measure, although constituting aid, is compatible with the common market, or it may decide to initiate the formal investigation procedure (*Gestevisión Telecinco v Commission*, paragraph 55; and Case T-17/96, *TF1 v Commission*, paragraph 28).

74. It follows from the foregoing that the formal investigation procedure can only be initiated by a 'decision within the meaning of the fourth paragraph of Article 249 EC and that that decision must contain a 'preliminary assessment of the character of the State measure in issue. That assessment is an inherent element of the decision initiating the procedure.

75. As to whether the acts contested in the present case satisfy those criteria, each of them states by way of introduction that the Commission 'has decided to initiate the procedure laid down in Article 88(2) [EC]. Furthermore, each contains a preliminary assessment of the exempt companies legislation or the qualifying companies legislation.

76. Thus, in contested decision I, the Commission states that, on the basis of the information communicated by the United Kingdom authorities, the legislation in issue appears to contain at least two changes which can be considered as notifiable events (point 9). The Commission concludes that, having regard to

those substant[ive] modifications, the exempt companies legislation cannot be regarded as existing aid but must be regarded as unlawful aid (point 16). It further states that the observations submitted by the United Kingdom Government and the Government of Gibraltar are not sufficient to dispel its doubts as to the nature of the legislation in issue as existing State aid (points 34 and 35) and, last, that the aid does not appear to qualify for any of the exceptions provided for in Article 87(3) EC (point 48).

77. In contested decision II, the Commission states that the legislation in issue does not seem to fall within the definition of existing aid and 'has to be considered at this stage as a non-notified aid (point 1). The Commission notes that the legislation appears to constitute aid within the meaning of Article 87(1) of the EC Treaty (point 17) and concludes that it can, at this stage, be considered as an operating aid, which does not appear to qualify for the exceptions provided for in Article 87(3) of the EC Treaty (points 23 and 24).

78. Consequently, in spite of the argument which the Commission bases on what it claims to be a procedural innovation, the contested decisions, far from being characterised by a complete absence of preliminary legal assessment, are indeed decisions initiating the formal investigation procedure within the meaning of the regulation on State aid procedure and the relevant case-law.

79. The finding that the Commission provisionally concluded that the legislation in issue constitutes unlawful aid that is incompatible with the common market is not invalidated by the invitation (in point 49 and point 25 of the contested decisions, respectively) to interested parties to express their views on the possible recovery of the aid 'in the event that [it] would be qualified as being illegal and incompatible with the common market. That merely constitutes a precautionary reminder that a final decision, adopted at the close of the formal investigation and in the light of the observations submitted by the interested parties, might contain a different legal classification from the preliminary assessment made in the decision initiating the procedure.

80. It was in regard to a decision to initiate the formal investigation procedure in respect of allegedly unlawful aid that the Court of Justice held in *Tirrenia* that [r]egarding aid in the course of implementation the payment of which is continuing and which the Member State regards as existing aid, the contrary classification as new aid, even if provisional, adopted by the Commission in its decision to initiate the procedure under Article 88(2) of the EC Treaty in relation to that aid, has independent legal effects (paragraph 57). Such a decision, according to the Court of Justice, 'implies that the Commission does not intend to examine the aid in the context of the permanent examination of existing aid schemes provided for by Article 88(1) of the EC Treaty and Articles 17 to 19 of the regulation on procedure in State aid cases (paragraph 58) and 'necessarily alters the legal position of the measure under consideration and that of the undertakings which are its beneficiaries, particularly as regards the pursuit of its implementation (paragraph 59). The Court of Justice further held (paragraph 59):

> Whereas, until the adoption of such a decision, the Member State, the beneficiary undertakings and other economic operators may think that the

measure is being lawfully carried out as an existing aid, after its adoption there is at the very least a significant element of doubt as to the legality of that measure which ... must lead the Member State to suspend payment, since the initiation of the procedure under Article 88(2) EC excludes the possibility of an immediate decision holding the measure compatible with the common market which would enable it to be lawfully pursued,

81. That reasoning of the Court of Justice related to a decision of the Commission to initiate the formal investigation procedure in which the Member State was neither ordered to suspend implementation of the measures referred to, in accordance with Article 11(1) of the regulation on State aid procedure (paragraph 55), nor ordered provisionally to recover the aid which had already been paid (Article 11(2) of the regulation on State aid procedure). Contrary to the Commission's argument, therefore, the fact that it did not make use of the possibilities provided for in Article 11 has no relevance to the classification of the legal nature of a decision to initiate the formal investigation procedure.

82. Consequently, even though the classification of the aid corresponds to an objective situation which does not depend on the assessment made at the stage of the initiation of the formal investigation procedure and though the mere initiation of that procedure does not have the same immediately binding character as a suspension injunction addressed to the Member Sate concerned (*Tirrenia*, paragraphs 58 and 60), the fact that the Commission chose to initiate the formal investigation procedure and provisionally classified the legislation in issue as new aid, instead of following the procedure in respect of possible existing aid, has legal effects such as those described by the Court of Justice in *Tirrenia*.

83. Furthermore, in spite of the provisional nature of the legal assessments which it contains, each decision to initiate the formal investigation procedure, such as the contested decisions in the present case, is definitive in so far as the Commission's choice in initiating that procedure produces effects at least until it is closed.

84. First, even a final decision of the Commission which, after classifying the State measures in issue as new aid, declares the aid compatible with the common market, does not have the consequence of regularising ex post facto the implementing measures which would have to be deemed to have been adopted in breach of the prohibition laid down in the final sentence of Article 88(3) of the EC Treaty: Case C-312/90, *Spain v Commission* (*Cenemesa*), paragraph 23.

85. Second, the decision initiating the procedure may, in any event, be invoked before a national court (*Tirrenia*, paragraph 59) and thus exposes the beneficiaries of the measure in issue and territorial entities such as the applicant to the risk that the national court will order suspension of the measure and/or recovery of the payments made, in order to ensure compliance with the last sentence of Article 88(3) EC, since the direct effect of the prohibition on implementation of the proposed measure laid down in that article extends to all aid which has been implemented without being notified (Case 120/73, *Lorenz*, paragraph 8; and Case C-39/94, *SFEI and Others*, paragraph 39). Those beneficiaries and

territorial entities therefore run a higher economic and financial risk than if the formal investigation procedure had not been initiated. It is particularly for that reason that the decision to initiate that procedure is liable to affect their legal situation (see, by analogy, Case T-46/93, *Scottish Football v Commission*, paragraph 13).

86. It follows that the procedural choice made by the Commission must be amenable to judicial review in a case such as this. The initiation of the formal investigation procedure produces the legal effects described above, while, in the context of the examination of existing aid, the legal situation does not change until such time as the Member State concerned accepts proposals for appropriate measures or the Commission adopts a final decision (*Tirrenia*, paragraph 61).

87. Accordingly, the second plea of inadmissibility cannot be upheld either.

Findings of the Court: Contested decision I: exempt companies

105. As to whether the Commission was justified in initiating the formal investigation procedure or whether it should have examined the State measure in issue in the context of the permanent review of existing State aid systems provided for in Article 88(1) of the EC Treaty and in Articles 17 to 19 of the regulation on State aid procedure, it should be observed, first of all, that in the present case the procedure was initiated because the Commission had serious doubt as to the classification of that scheme as 'possible unlawful aid and as to its compatibility with the common market. Unlawful aid is defined in Article 1(f) of the regulation on State aid procedure as new aid put into effect in contravention of Article [88(3) of the EC Treaty].

106. It is common ground that the original 1967 tax scheme - on the assumption that it can be classified as an aid scheme - in any event constituted existing aid within the meaning of Article 1(b)(i) of the regulation on State aid procedure when the United Kingdom acceded to the Community on 1 January 1973.

107. Contested decision I expressly states that that original scheme was the subject of two amendments, in 1978 and in 1983. Those amendments are classified as substantive, so that 'the exempt companies legislation cannot be regarded as an existing but an illegal aid (point 16 of the decision). Furthermore, the decision refers to all exempt companies existing in Gibraltar and not only to the companies affected by the 1978 and 1983 amendments (point 38).

108. The Commission therefore provisionally considered that both amendments, adopted after the United Kingdom's accession to the Community, changed the original tax scheme in its entirety into a system of new aid.

109. Under Article 1(c) of the regulation on State aid procedure, alterations to existing aid are to be regarded as new aid. According to that unequivocal provision, it is not altered existing aid that must be regarded as new aid, but only the alteration as such that is liable to be classified as new aid.

110. That analysis is confirmed by Case C-44/93, *Namur-Les assurances du crédit*, paragraphs 13 and 16, where the Court of Justice held that measures 'to ... alter aid must be regarded as new aid and that plans to ... alter aid cannot be put into effect before the procedure has resulted in a final Commission decision.

111. Accordingly, it is only where the alteration affects the actual substance of the original scheme that the latter is transformed into a new aid scheme. There can be no question of such a substantive alteration where the new element is clearly severable from the initial scheme.

112. In the present case, the Commission itself stated, in point 12 of contested decision I, that the 1978 amendment introduced an exemption from stamp duty on the issue of life insurance policies by exempt companies, on annuities payable by exempt companies and on certain transactions relating to such policies or annuities, the advantage thus granted to exempt companies not having been available under the original legislation. In points 13 and 14 of that decision, the Commission states that the 1983 amendment extended eligibility for the tax scheme in issue to a new category of undertakings which had not previously satisfied the requirements of the original 1967 scheme.

113. According to the Commission's own reasoning, therefore, the two amendments in issue are mere additions to the original 1967 scheme which, first, extended the exempt operations to a single category of additional operations, namely life insurance, and, second, added a single category of companies to the beneficiaries of the tax exemption, namely branches of certain companies. On the other hand, there is no evidence in the case-file that those developments affected the intrinsic functioning of the initial tax scheme as regards the other operations and categories of company. The 1978 and 1983 amendments must therefore be regarded as severable elements of the original 1967 tax scheme, so that - on the assumption that they may be classified as aid - they cannot alter the character of existing aid of the original scheme.

114. That analysis is not contradicted by *Namur-Les assurances du crédit* (cited above, paragraph 28), where the Court of Justice held that whether aid may be classified as new aid or as alteration of existing aid must be determined by reference to the provisions providing for it. Although it is true that in the present case the 1978 and 1983 amendments were inserted into the original 1967 legislation, the fact remains that those amendments are severable from the original scheme. In *Namur-Les assurances du crédit* the question of the severable nature of the amendment was not raised and the Court of Justice did not adjudicate on that point.

115. It follows from the foregoing that in initiating the formal investigation procedure in respect of the whole of the exempt companies legislation and in provisionally classifying that scheme as new aid in its entirety, the Commission infringed Article 88 EC and Article 1 of the regulation on State aid procedure. Accordingly, contested decision I must be annulled in its entirety, without there being any need to consider the other pleas and arguments put forward against it.

116. Furthermore, the partial annulment of that decision, confined to the introduction of the amendments in issue into the original scheme, is precluded, since the Court cannot substitute itself for the Commission and decide that there are grounds for maintaining the formal investigation procedure in relation only to the 1978 and 1983 amendments.

Contested decision II: qualifying companies

117. The qualifying companies tax scheme dates from 1983 and was therefore enacted after the accession of the United Kingdom to the Community: accordingly, it cannot be regarded as existing aid within the meaning of Article 1(b)(i) of the regulation on State aid procedure.

118. Furthermore, the Commission's choice of the formal investigation procedure instead of the existing aid procedure can be criticised by the Court only on the basis of the pleas and arguments put forward by the applicant in support of the form of order which it seeks. However, none of the arguments or pleas put forward by the applicant in the present dispute is really directed against the Commission's presentation of the elements of fact and of law or against its preliminary legal assessment in contested decision II, on the basis of which it reached the provisional conclusion that the scheme in issue constitutes new aid and is incompatible with the common market.

119. The applicant confines its pleadings to a description of historical developments, the uncertain legal situation existing in 1983, the subsequent liberation of movements of capital and the clarification of the concept of aid of a fiscal nature which was only provided towards the end of the 1990s. Furthermore, it merely states, generally, that the rules on State aid constitute a living law and that the concept of aid changes over time, a phenomenon which is recognised by Article 1(b)(v) of the regulation on State aid procedure. Last, it maintains that it would be sensible and fair to conclude that, in 2001, the 1983 qualifying companies legislation constitutes existing aid, while to classify it as new would be wholly illogical and contrary to the normal and usual meaning of the applicable Community provisions.

120. It must be held that those general arguments are not capable of establishing that the 1983 tax scheme must, owing to its intrinsic characteristics, be classified as an existing aid scheme.

121. Furthermore, the Court of Justice held in Case C-295/97, *Piaggio*, paragraphs 45 to 48, that the answer to the question whether aid is new cannot depend on a subjective assessment by the Commission. Thus, in 1999 the Court of Justice condemned the conduct of the Commission in regard to a national law dating from 1979 which had been classified by the Commission as existing State aid for reasons of practical expediency, which included the Commission's own doubts, which had extended over 14 years, concerning the classification of that law as State aid. The Court of First Instance therefore finds whether a specific State measure is to be classified as existing aid or as new aid must be determined

without reference to the time which has elapsed since the measure in question was introduced and independently of any previous administrative practice.

122. In so far as the applicant maintains that the tax scheme in issue must be classified as existing aid because it was brought to the knowledge of the Primarolo group, it has already been held (paragraph 70 above) that that notification cannot be treated as formal notification to the Commission for the purposes of the Community rules on State aid.

123. As regards the reference to the Commission's two proposals for appropriate measures concerning the Irish corporation tax scheme, the factual and legal situation forming the background to those proposals is quite different from the situation prevailing in the present case. Those proposals therefore do not serve as a precedent for classifying the tax scheme at issue in the present dispute as existing aid.

124. The applicant further emphasises the small size of Gibraltar, and claims that the impact of the scheme in issue on competition within the common market and on trade between Member States has always been marginal, since the number of qualifying companies registered in Gibraltar after 18 years during which the scheme has been in force is only 150. Nor has the Commission, it alleges, carried out an economic analysis of that impact.

125. It must be pointed out that that argument contains no figures relating to the volume of the tax measures in issue or on the size of the companies benefiting from it in terms of turnover and advantages. It is sufficient to point out, therefore, that it is settled case-law that the relatively low amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that intra-Community trade may be affected (see Case T-14/96, *BAI v Commission*, paragraph 77, and the case-law cited there). Furthermore, in order for the classification as State aid to be upheld, it is sufficient that the State measures in issue 'threaten to distort competition and are capable of having an impact on trade between Member States.

126. Consequently, in the absence of information on the part of the applicant, the finding made in contested decision II (point 14) that the qualifying companies benefiting from the scheme in issue are liable, actually or potentially, to trade with companies in other Member States, all the more so because they are not normally allowed to trade in Gibraltar, has not been validly contested.

127. Moreover, the Commission correctly contended that the formal investigation procedure, in so far as it allows the economic operators concerned to be involved in the procedure leading to the adoption of the final decision, constitutes the appropriate procedural framework for the economic analysis which the applicant would have it carry out.

128. As regards the argument that the initiation of the formal investigation procedure will cause irreparable harm to Gibraltar's position as an international financial centre, since the risk that the tax scheme in issue will be abolished

represents a real threat to the economic viability of Gibraltar, it is sufficient to observe (see paragraphs 72 and 121 above) that the Commission is required to initiate the formal investigation procedure if, after provisionally classifying the measure in issue as new aid, it experiences serious difficulties in assessing its compatibility with the common market. The economic risks caused by the decision to initiate that procedure of which the applicant complains cannot of themselves affect the legality of such a decision. Consequently, this argument must be rejected.

129. In so far as the applicant relies, last, on the principles of proportionality, legitimate expectations and legal certainty, it follows from the foregoing that the mere fact that for a relatively long period the Commission did not open an investigation into a State measure cannot in itself confer on that measure the objective nature of existing aid, if it does constitute aid (*Piaggio*, paragraphs 45 to 47). As the Commission correctly stated, any uncertainty which may have existed in that regard may at most be regarded as having given rise to a legitimate expectation on the part of the recipients so as to prevent recovery of the aid paid in the past (Case 223/85, *RSV v Commission*, paragraphs 16 and 17; and Case C-5/89, *Commission v Germany*, paragraphs 16 and 17).

130. The same applies to the limitation period provided for in Article 15 of the regulation on State aid procedure, which does not in any way express a general principle whereby new aid is transformed into existing aid but merely precludes recovery of aid established more then 10 years before the Commission first intervened.

131. It follows from the foregoing that the pleas alleging infringement of Article 88 EC and Article 1 of the regulation on State aid procedure and breach of the principles of proportionality, legal certainty and legitimate expectations must be rejected in so far as they relate to the action against contested decision II.

Court's Ruling

The Court of First Instance (Second Chamber, Extended Composition), hereby:

1. In Case T-195/01: (a) Annuls decision SG (2001) D/289755 of the Commission of 11 July 2001 initiating the procedure laid down in Article 88(2) EC in respect of the Gibraltar exempt companies legislation;
(b) Orders the Commission to pay the costs incurred by the Government of Gibraltar and to bear its own costs, with the exception of the costs of the interlocutory proceedings in Case T-195/01 R, which shall be paid in their entirety by the Government of Gibraltar;
(c) Orders the Kingdom of Spain to bear its own costs;

2. In Case T-207/01: (a) Dismisses the application;
(b) Orders the Government of Gibraltar to pay the costs incurred by the Commission and to bear its own costs, including those incurred in the interlocutory proceedings in Case T-207/01 R;
(c) Orders the Kingdom of Spain to bear its own costs. ■