# JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)
18 December 1997 *

In Case T-178/94,

**Asociación Telefónica de Mutualistas (ATM),** an association incorporated under Spanish law, established in Madrid, represented by Juan Eugenio Blanco Rodríguez and Bernardo Vicente Hernández Bataller, of the Madrid Bar, and by Lydie Lorang, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of André Sérébriacoff, 11 Rue Goethe,

applicant,

v

**Commission of the European Communities,** represented during the written procedure initially by Francisco Enrique González Diaz and Michel Nolin, then by Francisco Santaolalla and Michel Nolin, and during the oral procedure by Fernando Castillo de la Torre, all of its Legal Service, acting as Agents, with an address for service at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Spanish.

APPLICATION for annulment of the Commission's decision, communicated to the Asociación Telefónica de Mutualistas by the Commission's letter D/30508 of 15 February 1994, to close the file on the complaint lodged by that association objecting to the State aid allegedly received by a public limited company, Compañia Telefónica de España SA,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(First Chamber, Extended Composition),

composed of: A. Saggio, President, A. Kalogeropoulos, V. Tiili, R. M. Moura Ramos and J. Pirrung, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 30 September 1997,

gives the following

## Judgment

### Background to the complaint

1 The applicant, Asociación Telefónica de Mutualistas ('ATM') was established in 1987 in order to protect the rights of members of Institución Telefónica de Previsión ('ITP'), a mutual social welfare association established by Compañia Telefónica de España SA ('TESA') for the benefit of its employees and those in receipt of a pension from it.

2 TESA is a commercial public limited company in which the State holds an interest. The Spanish State has granted it the right to provide the basic public telephone service. In 1992 the State's shareholding amounted to 32% of its shares, the remainder being held by 300 000 other shareholders, each holding less than 0.5% of the shares. The applicant explained at the hearing that the State currently owns 21% of its share capital. Moreover, the State appoints the majority of the members of TESA's administrative bodies.

3 ITP was created by TESA in 1944 on the basis of a Law of 6 December 1941 concerning assistance funds and mutual social welfare associations and of the regulation implementing that Law, approved by Decree of 26 May 1943. According to that regulation, such funds and mutual associations were to be governed by their statutes and regulations, provided that they were in accordance with the requirements of the Law and the implementing regulation. Those rules laid down, moreover, that benefits provided by those bodies were to be regarded as compatible with benefits which their members could draw under the State's compulsory social insurance scheme, unless contrary statutory provisions or express provisions of the Ministry of Labour stipulated that those benefits replaced compulsory social insurance benefits.

4 Since 1966 ITP's scheme has been a substitute for the general social security scheme as regards retirement, permanent invalidity, death and survivorship benefits related to ordinary illness. The benefits awarded by ITP are stated to have been higher than those granted under the public scheme.

5 The benefits provided by the mutual associations and the contributions paid to them were fixed by their own regulations. TESA's contribution to ITP was originally fixed by the ITP regulations at 7%, then raised successively to 8% and 9%, of salaries paid to employees.

6 It further appears from the documents before the Court that a reduction coefficient is applied to the general rate of contribution for bodies and undertakings which, since they have a mutual association which to a certain extent replaces the general social security scheme, do not qualify for cover under the general scheme in respect of certain risks. The coefficients were determined each year by a decree of the Minister for Social Security. It has not been disputed that the reduction could be as high as 14% of salaries.

7 The aim of the General Law on Social Security of 1966 was to coordinate and consolidate the general social insurance scheme. That law provides that, in principle, groups falling within the scope of application of the social security system but not yet covered by the general social security scheme are to be integrated into that scheme.

8 A Royal Decree of 20 November 1985 provides that the institutions to which the groups that are to be integrated belong are required to pay to the social security scheme a sum corresponding to the burdens and obligations which are to be assumed by it and that, if the resources available in order to ensure payment of the obligations for which those institutions replace the social security scheme are insufficient to cover the costs of the integration, the difference is to be paid by the bodies or undertakings which are required to provide financial cover for payment of the benefits which the institutions in question awarded.

9 In the meantime, in 1977 the Ministry of Employment had approved ITP's amended regulations. Since then, point 4 of the transitional provisions has stated that TESA 'will guarantee payment, for a period of 10 years, of benefits which ITP is required to provide and, for the purposes of quantifying that liability, the maximum guaranteed amount shall be fixed annually and the guarantee shall be renewable annually in such a way that it covers the period of 10 years commencing on each renewal date'. According to the applicant, the issue of the guarantee had even been required by the public authority as a condition of its approval of the regulations.

10 According to the minutes of its meeting of 24 July 1979, the steering committee of ITP noted that, in the context of ITP's acquisition of a block of shares in TESA, TESA had guaranteed that it would enter into certain undertakings in regard to ITP. Those undertakings consisted, in particular, of 'the extension of the above-mentioned guarantee in order to cover the technical reserves emphasized in the actuarial reports' and of the obligation to maintain that guarantee, updated annually, as stated in the transitional provision set out in paragraph 9 above.

11 The applicant claims, without being contradicted in that regard by the Commission, that TESA fixed the amount of the guarantee only in regard to its budget for the 1977 financial year, at PTA 8 000 million.

12 The applicant also claims that at its meeting of 28 January 1987 TESA's board of directors took the view that the period of 10 years, during which the guarantee initially granted in 1977 was to remain in force, had expired and that it then cancelled that guarantee.

13 On 27 December 1991 the Spanish Council of Ministers decided to integrate ITP's groups of employees and pensioners into the general social security scheme. In a decree of 30 December 1991, the Ministry of Employment and Social Security then specified the effects of that integration. By resolution of 25 May 1992 the Directorate-General of Economic Planning for Social Security, duly authorized to that effect, determined the costs of that integration. That resolution provided, moreover, that, if ITP's resources proved insufficient, TESA would be required to pay the difference between the payments made by ITP and the total amount to be paid in respect of the pensioners. As regards the supplementary provident scheme, an agreement was made on 8 July 1992, in which TESA undertook to pay certain benefits to the beneficiaries.

14 On 10 June 1992 the Ministry of the Economy and Finance declared the compulsory winding-up and liquidation of ITP. However, the applicant has pointed out, without challenge by the defendant in that regard, that the winding-up proceedings have, nevertheless, not yet been finally completed.

## Administrative procedure

15 Those are the circumstances in which a complaint was lodged with the Commission on 1 July 1993, on behalf of ATM, claiming that the Spanish public authorities had allowed a reduction in TESA's social charges, which constituted State aid. The measures to which the complaint objects, in the light of the explanations given during the administrative procedure and the proceedings before the Court, are as follows.

16 The aid consists first, in the fact that the public authorities allowed TESA to benefit, between 1982 and the end of 1991, from the difference between the amount which it actually paid to ITP by way of contributions and the amount of contributions which, owing to the reduction coefficient, it did not have to pay to the general social security scheme. That aid amounts to PTA 270 000 million. The applicant requested the Commission to order TESA to pay that difference to ITP.

17 Second, the public authorities had allowed the cancellation of a guarantee which TESA was required to maintain in force so that ITP could always count on adequate cover for the benefits which it had to supply during the next ten years. That State measure provided an advantage to TESA which amounted to PTA 8 000 million.

18 In its complaint the applicant also claimed that those aid measures had led to a deficit in ITP, which had been put into liquidation as a result.

19 By letter of 12 August 1993 the Commission requested the applicant to supplement its complaint with further observations. Following a meeting held on 15 September 1993 the applicant sent additional information by letter of 29 October 1993. By letter of 12 November 1993 the Commission once again requested the applicant to provide further information, which it did by letter of 3 December 1993.

20 According to the Commission's reply to a question put by the Court, there was no exchange of correspondence with the Spanish State or formal decision addressed to that State.

21 After an exchange of correspondence between the Commission and the applicant, the Commission stated, in letter D/30508 of 15 February 1994 ('the letter of 15 February 1994'), addressed to Mr Molina del Pozo, the applicant's representative, that after consideration of all the information submitted there was no evidence of the existence of State aid in favour of TESA. The Commission therefore closed its file on the complaint.

22 The reasons given in the letter of 15 February 1994 were as follows:

'The State was not involved in the cancellation of [the guarantee .... A]lthough TESA is an undertaking in which the State has a majority shareholding, neither the State nor any other of its shareholders is in principle responsible for acts of or undertakings assumed by TESA, which has separate legal personality.

If ITP and the employees consider that their rights have been infringed by the non-performance of an undertaking imputable to TESA, they may, as they have done, seek redress in the competent national courts, which, if they consider it appropriate, will restore the complainants' rights.'

'The exemption from payment of certain amounts to the [general] social security scheme was decided by the Spanish Government in accordance with general Spanish social security law, and TESA fulfilled the conditions laid down in those provisions. As regards any failure by TESA to perform the undertakings which it had entered into under the general legislation referred to, the Tribunal Supremo Español has held, by judgment of 26 December 1990, that under the general legislation applicable TESA was not required to transfer amounts to ITP greater than those which it had in fact transferred. Consequently, the Commission cannot conclude that the difference in amount referred to constitutes State aid, since that situation is not contrary to the general legislation applicable.

[...]

in any event, the complainant's request that the Commission order TESA to pay to ITP the amount of the difference is not in conformity with Community law, since, if State aid were found to exist and to be incompatible, the Commission would order its repayment to the State'.

**Procedure**

23 Those are the circumstances in which the applicant brought the present action by application lodged at the Court Registry on 22 April 1994.

24 By separate document in accordance with Article 114(1) of the Rules of Procedure, the defendant raised a plea of inadmissibility, which was lodged at the Court Registry on 28 July 1994.

25 The applicant submitted its observations on the plea of inadmissibility on 12 September 1994.

26 By order of the Court of 14 June 1995 consideration of the plea of inadmissibility was reserved for final judgment.

27 The parties lodged their defence, reply and rejoinder with the Court Registry on 21 August 1995, 9 October 1995 and 15 December 1995 respectively.

28 Upon hearing the report of the Judge Rapporteur, the Court of First Instance (First Chamber, Extended Composition) decided to open the oral procedure. By way of measures of organization of procedure, the Court put certain written questions to the parties, to which they duly replied.

29 The parties presented oral argument and their replies to the Court's questions at the hearing which took place on 30 September 1997.

**Forms of order sought**

30 The applicant claims that the Court should:

— declare the action to be admissible and well founded;

— annul the letter of 15 February 1994 by which the Commission stated that it closed the file on the complaint brought by the applicant; and

— order the Commission to pay the costs.

31 The defendant contends that the Court should:

— declare the action inadmissible;

— alternatively, dismiss the action as unfounded; and

— order the applicant to pay the costs.

## Admissibility

*Arguments of the parties*

32 The defendant claims that the action is inadmissible on two grounds. First, the applicant has no interest in bringing an action. Second, there is no act which the applicant may challenge, and, in any event, it does not have capacity to bring proceedings as provided for in the fourth paragraph of Article 173 of the EC Treaty.

33 As to the first ground of inadmissibility, the applicant has no interest in bringing an action because, first, even if the financial measures taken by the Spanish State

for the benefit of TESA in fact constitute State aid incompatible with the common market, any order to repay it would in no way benefit the applicant, since the social charges that had not been levied would have to be repaid to the Spanish State and not to ITP or ATM. According to the defendant, the Spanish legal system does not provide any means of offsetting the difference between the normal contribution to social security and the lower contribution paid by TESA to ITP, as the Tribunal Supremo (Supreme Court) held in its abovementioned judgment.

34 The defendant adds that, in view of the winding-up of ITP, repayment to it has even been legally impossible since 1992. Even if the alleged aid to be repaid were to be paid into ITP's funds, it would, on account of the liquidation, have to be paid to the social security scheme in order to offset the cost of its integration into the general social security scheme.

35 Second, the applicant has no interest in bringing an action because the alleged State aid benefits solely TESA, an undertaking with which neither the applicant nor its members competed, whether directly or indirectly. The defendant relies in that regard on the orders of the Court of Justice of 30 September 1992 in Case C-295/92 *Landbouwschap* v *Commission* [1992] ECR I-5003 and of 8 April 1981 in Joined Cases 197/80, 198/80, 199/80, 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle Erling and Others* v *EEC* [1981] ECR 1041 and contends that, when determining whether or not there is an interest in bringing an action, the analysis of competitive relationships must be made in relation to the applicant and not to persons or undertakings which might actually or potentially be affected by the measure in question. In the present case, neither ATM nor its members are directly or indirectly in a competitive relationship with TESA, nor in any other relevant relationship from the point of view of the protection of free competition. It follows, according to the defendant, that the upholding or annulment of the contested decision in no way affects the interests of ATM.

36 The second ground of inadmissibility is based on the absence of any act that may be challenged by the applicant. The defendant contends, first, that the letter of 15 February 1994 is not a decision addressed to the applicant since, in contrast to the situation under Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87), no provision is made in the State aid sector for any complaints procedure which could, should the applicant so wish, lead to a decision addressed to it and capable of being contested in an action for annulment. According to the Commission, that view is clearly confirmed by the judgments of the Court of Justice in Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125 and in Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487 and synthesized in the Opinion of Advocate General Tesauro in the latter case (at p. I-2502).

37 In actual fact, a letter such as the letter of 15 February 1994 merely informs the recipient of a decision addressed to the Member State, the sole addressee of decisions in matters of State aid. It merely brings the tenor of a decision in the strict sense to the attention of those who have claimed that the aid exists. The letter of 15 February 1994 does not therefore in itself terminate the procedure, which could, moreover, be reopened if the complainant adduced new matters of fact or of law to justify such a course.

38 Furthermore, the defendant considers that, on any view, the applicant is not individually concerned, as required by the fourth paragraph of Article 173 of the Treaty. As a private association acting in these proceedings in the interests of its members and not in its own interests, the applicant is not individually concerned by a decision declaring that the State's alleged financial measure in favour of TESA does not constitute State aid for the purposes of Article 92 of the Treaty. More specifically, it did not act in the role of privileged interlocutor as required by judgments of the Court of Justice in Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219. Similarly, although the judgment of the Court of First Instance in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971 confirmed that a professional association could be regarded as individually concerned where it could show that the competitive position of some of its members had been significantly affected by the aid in question and where an action by those members would have been admissible

in accordance with the judgment of the Court of Justice in Case 169/84 *Cofaz and Others* v *Commission* [1986] ECR 391, the Commission nevertheless considers that these requirements are not satisfied in the present case.

39 Nor is the applicant directly concerned as required by the fourth paragraph of Article 173 of the Treaty, since there is no causal connection between the decision not to raise objections on the ground that there was no State aid, and the loss which may have resulted from the Spanish social security legislation. Even assuming that the Commission committed an error in categorizing the Spanish State's financial measures benefiting TESA and should therefore order the aid to be recovered, the Spanish legal system provides no mechanism whereby the applicant's alleged loss could be made good.

40 The applicant claims that its action is admissible. As regards the first ground of inadmissibility, it claims that it has an interest in bringing the proceedings. First of all, on account of the cancellation of the guarantee and the insufficiency of the contributions, which constitute the aid in question, ITP was unable to provide benefits to the persons entitled to them and was integrated into the general social security scheme. The repayment by TESA of the State aid which it considers to be incompatible with the common market would benefit it, because the Spanish administration would pay back those sums to ITP, which would ultimately benefit the applicant's members.

41 The applicant claims that the abovementioned judgment of the Tribunal Supremo has been misinterpreted by the Commission. According to the applicant, that judgment does not concern the question whether or not reimbursement should be made. The national court based its decision solely on a procedural rule and held that the application should have been made by the governing bodies of ITP rather than the employees and pensioners.

42 Nor is there any support in law for the Commission's claim that restitution of sums to ITP has been legally impossible since 1992, since the liquidation of ITP is not imminent. Even in the event of the legal requirements being fulfilled and the

legal decisions concerning the liquidation having been taken, a judgment by the Court in favour of the applicant in this case could lead to a review of the administrative measures which led to the winding-up of ITP.

43 As regards competition on the market, the applicant states that it has suffered an actual and definite loss owing to the State aid benefiting TESA, since the reduction in social contributions affected its members' rights. In that regard the applicant relies on *Cook* v *Commission*, cited above, according to which parties concerned, within the meaning of Article 93(2) of the Treaty, are defined as the persons, undertakings or associations whose interests might be affected by the grant of the aid, in particular competing undertakings and trade associations. Since the applicant is a professional association established in order to defend the interests of members of a provident scheme, anything which affects ITP or TESA is of direct interest to it.

44 The applicant claims that it also has an interest in bringing these proceedings because it was established in order to defend ITP's rights in circumstances where the defence of those rights would otherwise have been impossible on account of the control exercised by TESA over ITP.

45 As regards the second ground of inadmissibility, the applicant claims that it is the addressee of the letter of 15 February 1994, which is a decision producing binding legal effects. That measure terminated the complaints procedure and contains an appraisal of the aid contested and, accordingly, prevents the applicant's members from satisfying their interests in the future.

46 In that regard the applicant relies on Case C-325/91 *France* v *Commission* [1993] ECR I-3283, paragraph 9, claiming that the existence of a challengeable act for the purposes of Article 173 of the Treaty depends on whether it produces legal effects,

and on Joined Cases 166/86 and 220/86 *Irish Cement* v *Commission* [1988] ECR 6473, paragraph 11, in which the Court of Justice characterized the refusal to open the procedure provided for in Article 93(2) as a measure producing legal effects. The applicant refers also to Case C-39/93 P *SFEI and Others* v *Commission* [1994] ECR I-2681, paragraphs 27 and 28, according to which an institution empowered to find that there has been an infringement and to inflict a sanction in respect of it and to which private persons may make complaint, as is the case with the Commission in the field of competition, necessarily adopts a measure producing legal effects when it terminates an investigation initiated upon that complaint, and the decision to close the file on a complaint cannot be described as preliminary or preparatory, since it is the final step in the procedure. It cannot be followed by any other decision amenable to annulment proceedings.

47 The applicant claims, moreover, that it took an active part in the procedure initiated by the Commission following its complaint. That fact entitles it to contest the decision adopted at the end of the procedure (*Cofaz and Others* v *Commission*, cited above).

48 Lastly, the applicant claims that the present action should be admissible in order to secure the applicant's right to an effective remedy in accordance with Article 13 of the European Convention for the protection of human rights and the case-law of the Court of Justice, since there is no appropriate legal procedure in Spain in matters of State aid which would allow it to contest the reduction in social charges implicitly authorized by the Kingdom of Spain.

49 In its rejoinder the defendant counters by stating that the judgment in *SFEI and Others* v *Commission*, cited above, concerns the procedure applying Articles 85 and 86 of the Treaty, which provides in particular for the possibility of lodging complaints. That case is not applicable here. As regards the judgment in *Irish Cement* v *Commission*, cited above, the defendant observes that if the Court of Justice had not held in that judgment that the action had been brought out of time, it would have had to consider whether the applicant was directly and individually concerned by the Commission's letter.

50 Lastly, as to the applicant's submission that there would be no possibility of judicial review if this action were inadmissible, the defendant states that Article 92(1) of the Treaty is directly applicable and consequently may be relied on by the applicant in national courts if it considers this to be appropriate.

*Findings of the Court*

51 The Court observes, first of all, that a decision terminating an investigation of the compatibility with the Treaty of an aid measure is always addressed to the Member State concerned and that a private individual is entitled to contest it before the Community judicature where the conditions of the fourth paragraph of Article 173 of the Treaty are satisfied.

52 The letter of 15 February 1994 is, as regards the applicant, merely a notification outlining the terms of a decision addressed to the Member State concerned. The Court therefore considers that it is reasonable to construe the applicant's claim for annulment of the letter of 15 February 1994, in which the Commission stated that it had closed the file on the complaint brought by the applicant, as seeking in reality annulment of the decision addressed to the Member State concerned, which that letter reproduces.

53 However, pursuant to the fourth paragraph of Article 173 of the Treaty, a natural or legal person may contest only measures which produce binding legal effects capable of affecting that person's interests by bringing about a significant change in its legal situation.

54 It is therefore necessary to consider whether the decision to terminate the investigation as to the compatibility with the Treaty of the State aid to which the applicant objects, communicated to the applicant by the letter of 15 February 1994 but in reality addressed to the Kingdom of Spain, affects the applicant's interests by significantly altering its legal situation. Only if that is the case does the applicant have an interest in the annulment of the contested measure.

55 In the present case the applicant claims that the Commission's decision contains an appraisal of the contested aid and, consequently, prevents its members from satisfying their interests in the future. It is therefore necessary to set out the factual background to this case in order to determine what is the link between the Commission's decision and the applicant's alleged loss.

56 The applicant is an association formed by the beneficiaries of the mutual provident association ITP. Those beneficiaries are all employees or pensioners of TESA, a company which established ITP in order to set up a system of social providence for its employees. The Court therefore finds that the members of the applicant association are in fact complaining that the alleged State aid benefits their present or former employer.

57 The applicant claims that, if there had been no State aid as alleged, ITP would not have been integrated into the general social security scheme and the beneficiaries would have been able to continue to receive benefits above those awarded by that general scheme. It adds that if the amount of aid were repaid to the State — as, in its view, the Commission should have ordered — the State would pay those amounts to ITP. As a result, ITP would be revived and the beneficiaries would have their right to higher benefits restored.

58 However, the Tribunal Supremo held that 'no right exists to seek payment to [ITP] of sums ... other than those legally provided for by the [provisions] governing it and it is common knowledge that the discrepancy between the normal contribution to the [general social security fund], on account of the fact that it assumes all

the insured risks, and the partial contribution made in the present case to TESA's [mutual association ...] is a problem arising from a legislative amendment, which cannot be resolved by the courts' (point 3 of the legal grounds of the judgment cited above). This Court finds that the Commission was correct in concluding that under national law TESA was not required to make any contribution to ITP in excess of what it had actually paid. Moreover, national law does not provide for payment to ITP of the difference between the normal contribution to the general social security scheme and the lower contribution payable to that association pursuant to the provisions applicable to it at the material time (see paragraphs 5 and 6 above).

59 Even assuming that the decision were to be annulled and the Commission had to take the measures necessary to comply with the judgment, there is nothing to indicate that such a course of events could reasonably result in a payment of the difference in question to ITP.

60 As the Commission correctly claims, if repayment were to be ordered, social charges that had not been levied would have to be repaid to the Spanish State, which, under national law, is under no obligation then to pay them to ITP. Moreover, since the integration of the private social provident funds into the general social security scheme was in pursuance of a political objective (see paragraph 7 above), there is nothing to support the view that ITP could be revived.

61 As regards the other aspect of the alleged aid, the Court observes that, even if the Commission had found that the annulment of the guarantee constituted State aid and had ordered its reinstatement, that would merely have resulted in a guarantee by TESA that social benefits due to beneficiaries would be paid. However, TESA is already under an obligation, pursuant to the national measures cited in paragraphs 8 and 13 above, to cover the cost of ITP's integration into the general social security scheme. Since that integration, the benefits are paid by the general social security scheme. As the applicant has not shown that the annulment of the guarantee led to specific losses on the part of its members, it has not been able to show that any reinstatement would have given rise to benefits which those members could claim. Nor has it shown that ITP would not have been integrated into the general scheme if the guarantee had been maintained in force.

62 In the abovementioned circumstances, even though the effect of the decision was to close the file on the applicant's complaint, that decision clearly did not affect its legal sphere. It follows that the confirmation or annulment of that decision is in no way liable to affect the interests of the applicant or of its members. Consequently, the applicant has no interest in obtaining the annulment of the decision which it contests and therefore does not satisfy the requirements of the fourth paragraph of Article 173 of the Treaty.

63 The Court finds, furthermore, that, since the applicant is in fact an association of the employees of the undertaking which allegedly benefited from a State aid, it in no way competes with that undertaking and cannot establish an interest in bringing proceedings on account of competitive effects (see, as regards the relationship between competitive effects and admissibility, for example, the order in *Landbouwschap* v *Commission*, cited above, paragraph 12, and the judgment of the Court of First Instance in Case T-435/93 *ASPEC and Others* v *Commission* [1995] ECR II-1281, paragraph 63).

64 In those circumstances, the applicant has not established an interest in obtaining the annulment of the decision communicated to it by the letter of 15 February 1994.

65 It follows from all the foregoing that this action must be dismissed as inadmissible and that it is unnecessary to consider the other arguments put forward by the applicant and the Commission.

## Costs

66 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the applicant has been unsuccessful and the Commission has applied for costs, it must be ordered to bear its own costs and to pay those of the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)

hereby:

**1. Dismisses the application as inadmissible;**

**2. Orders the applicant to bear its own costs and to pay those of the Commission.**

Saggio Kalogeropoulos Tiili

Moura Ramos Pirrung

Delivered in open court in Luxembourg on 18 December 1997.

H. Jung A. Saggio

Registrar President