ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
30 April 2001 *

In Case T-41/00,

British American Tobacco International (Holdings) BV, established in Amsterdam (Netherlands), represented by S. Crosby, Solicitor,

applicant,

v

Commission of the European Communities, represented by U. Wölker and X. Lewis, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

APPLICATION for the annulment of the Commission's decision of 20 January 2000, refusing to grant Rothmans of Pall Mall Ltd access to certain minutes of the Committee on Excise Duties,

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

composed of: B. Vesterdorf, President, M. Vilaras and N.J. Forwood, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and Procedure

1 British American Tobacco International (Holdings) is a company incorporated under Netherlands law which, with its subsidiaries, forms a group engaged primarily in the manufacture, distribution and sale of cigarettes and other tobacco products ('the BAT Group').

2 Since the merger in 1999 of the BAT Group and the Rothmans International Group, the applicant has controlled, through the intermediary of a succession of three subsidiaries, a company incorporated under Swiss law called 'Rothmans of Pall Mall Ltd' ('RPM'), whose business is the distribution, free of tax and excise duty, of BAT Group products inside and outside the Community.

3 Pursuant to Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (OJ 1994 L 46, p. 58), RPM applied to the Commission, by letter of 9 September 1999, for access to certain minutes of the Committee on Excise Duties ('the Committee') for the purpose of assessing the scope of the new rules applicable from 1 July 1999 to tax and duty-free sales in the Community. The request for access concerned minutes of meetings of the Committee since 1 January 1993 in relation to the application of certain provisions of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1).

4 By letter of 12 October 1999, an official of the Directorate-General 'Taxation and Customs Union' of the Commission, on behalf of the Director-General, informed RPM that it would be granted access only to extracts from the Committee's minutes concerning measures adopted pursuant to Articles 7 and 24 of Directive 92/12, in respect of which it is provided that the Committee issues an opinion in its capacity as a 'comitology' committee. However, in relation to minutes concerning the adoption of measures pursuant to Articles 8 to 10, 27 and 28 of Directive 92/12, for which the opinion of the Committee is not expressly required, access was refused to the applicant on the ground that disclosure of those documents might undermine the protection of the confidentiality requested by the legal persons who supplied the information.

5 By letter of 25 October 1999, RPM submitted a confirmatory application to the Secretary-General of the Commission, in accordance with Article 2(2) of Decision 94/90, for the purpose of obtaining the access which it had been refused.

6 By letter of 24 November 1999, the Secretariat-General of the Commission informed RPM that its confirmatory application would be examined as quickly as possible, but that it would be more than a month before it would receive an answer.

7 The Commission having failed to reply within the period laid down by Article 2(4) of Decision 94/90, the applicant, by application lodged at the Court Registry on 14 January 2000 and registered under Number T-4/00, brought an action against the implied rejection of RPM's application for access.

8 By a letter of 20 January 2000 addressed to RPM's lawyer, the Secretary-General of the Commission informed the applicant of his decision to refuse access to the minutes requested on the grounds that their disclosure would undermine the protection of confidentiality requested by the legal person that supplied the information, and the protection of the institution's interest in the confidentiality of its proceedings ('the contested decision').

9 By application lodged at the Registry of the Court of First Instance on 25 February 2000, the applicant brought the present action against that decision.

10 By order of the President of the First Chamber of 20 March 2000, Case T-4/00 was removed from the register of the Court of First Instance following withdrawal by the applicant.

Forms of order sought by the parties

11 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

12 The Commission contends that the Court should:

— dismiss the application as inadmissible;

— in the alternative, dismiss the application as unfounded;

— order the applicant to pay the costs.

Admissibility

13 Under Article 113 of its Rules of Procedure, the Court, giving its decision in accordance with Article 114(3) and (4), may at any time, of its own motion, consider whether there exists any absolute bar to proceeding with an action before it; such a bar, according to settled case-law, may arise from the conditions governing the admissibility of an action which are laid down in Article 230 EC (order in Case T-114/96 *Biscuiterie-Confiserie LOR and Confiserie du Tech* v *Commission* [1999] ECR II-913, paragraph 24 and case-law cited therein).

14 In the present case, the Court finds that it has sufficient information from the documents produced and the explanations given by the parties during the written procedure to enable it to rule on the admissibility of the action without opening the oral procedure.

Arguments of the parties

15 Without formally raising an objection of inadmissibility, the Commission submits that the action is inadmissible on the grounds that the applicant is not the addressee of the contested decision, nor is that decision of individual and direct concern to it within the meaning of the fourth paragraph of Article 230 EC. In that respect, it argues that the applicant did not participate in the administrative procedure before the Commission, that it exercises only indirect control over RPM through intermediate companies, and, finally, that it has no direct interest in tax and duty-free sales operations, that activity being carried out by RPM.

16 It further submits that the facts of this case are clearly different from those which gave rise to the judgment in Case T-112/97 *Monsanto* v *Commission* [1999] ECR II-1277. It is clear from that judgment that, first, the parent company was individually concerned by the measure addressed to its subsidiary only in so far as it was the sole owner of that subsidiary, and, second, that it was directly concerned because it was the inventor and developer of the product concerned by the measure. The latter therefore had direct effects on the position of that company, whereas a decision refusing a person access to documents would, to the contrary, not directly alter the legal position of another person, despite the links that might exist between them.

17 The applicant argues that its interests in tax and duty-free distribution are identical to those of RPM, since the latter is entirely under its control and carries on its business only on the basis of an allocation of tasks within the BAT Group. The policy for distributing group products is thus determined by the applicant, and not by RPM. Therefore, in its capacity as holding company controlling the business of RPM, the applicant maintains that it is differentiated from all other persons (see *Monsanto*, cited above). The applicant's capacity to bring an action is, moreover, confirmed by the fact that, in Case T-4/00, the admissibility of its action was never called into question.

Findings of the Court

18 It has been consistently held that the admissibility of an action for annulment brought by a natural or legal person is dependent upon the condition that the person concerned demonstrate a legal interest in bringing proceedings (judgments in Case 88/76 *Société pour l'Exportation des Sucres* v *Commission* [1977] ECR

709, paragraph 19, and in Case T-117/95 *Corman* v *Commission* [1997] ECR II-95, paragraph 83; order in Case T-78/98 *Unione Provinciale degli Agricoltori di Firenze and Others* v *Commission* [1999] ECR II-1377, paragraph 30).

19 It is clear in this case that the contested decision, whereby the Commission ruled on the application by RPM and refused it access to documents, does not affect the interests of the applicant.

20 That decision does not affect the applicant company's own rights because, first, it did not itself submit an application for access to documents and, second, the possibility for it to submit such an application is not called in question. In that respect, it should be noted that, in the context of the application of Decision 94/90, any person may request access to any unpublished Commission document, and is not required to give a reason for the request (Case T-174/95 *Svenska Journalistförbundet* v *Council* [1998] ECR II-2289, paragraph 65). That means, in particular, that the fact that the applicant carries on the business of the distribution, free of excise duty, of BAT Group products only through the intermediary of its subsidiary RPM would not prevent it from submitting an application to the Commission for access to the minutes of the Committee on Excise Duties concerning the application of that tax system in the Community.

21 Moreover, the applicant's position cannot be compared with that of the undertaking at the origin of the action which gave rise to the judgment in *Monsanto*, cited above, a case in which the contested measure had the effect of prohibiting the marketing, throughout the Community, of a product invented by that undertaking. In this case, by contrast, the contested decision concerns only a refusal to give access to documents falling within the scope of Decision 94/90, and, whilst it is undisputed that those documents concern the system of excise duties applicable to tobacco products in the Community, the decision does not in itself have any effect on the marketing of those products.

22 It follows from all the above considerations that the applicant cannot be regarded as having a legal interest in seeking the annulment of a decision addressed to another legal person, refusing it access to documents.

23 As for the argument that the admissibility of the action brought by the applicant in Case T-4/00 has not been called into question by the Court of First Instance, it is irrelevant because it can have no impact on the admissibility of the present action. It should be borne in mind, moreover, that examination of the admissibility of the action in that case was rendered superfluous by the applicant's withdrawal and the consequent removal of that case from the register.

24 It follows that, in the absence of a legal interest in bringing proceedings, the action must be dismissed as inadmissible, without there being any need to examine the question whether the applicant has standing to bring proceedings.

Costs

25 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. **The application is dismissed as inadmissible.**

2. **The applicant is ordered to pay the costs.**

Luxembourg, 30 April 2001.

H. Jung
Registrar

B. Vesterdorf
President