retailers, which is a market ancillary to but separate from that of the sale of vehicles.

2. A motor-vehicle manufacturer may not rely on the selective distribution system it has set up in a Member State in order to create, by not renewing type approval, obstacles to the re-importation of vehicles from other Member States by retailers outside its distribution network. The fact that its selective distribution system has been accepted by the Commission cannot justify such a practice which constitutes an abuse of a dominant position.

3. An undertaking abuses its dominant position where it has a legal monopoly and charges for its services fees which are disproportionate to the economic value of the service provided.

REPORT FOR THE HEARING
delivered in Case 226/84 *

I — Summary of the facts and written procedure

1. Registration of vehicles in Great Britain is subject to an approval system governed by section 47 of the Road Traffic Act 1972, as amended by the Road Traffic Act 1974, and Statutory Instrument No 1092 of 1979, Motor vehicles (Type Approval) (Great Britain) Regulations (hereinafter referred to as 'the NTA regulations').

Pursuant to section 47 (4), the manufacturer of a vehicle must apply to the Secretary of State for Transport for a British national type approval (NTA) certificate recording the fact that the vehicle complies with the relevant type approval requirements and specifying the permitted variations from the type vehicle. Before issuing the certificate, the Secretary of State satisfies himself that the vehicle complies with the relevant type approval requirements and that adequate arrangements have been made to ensure that other vehicles purporting to conform with that vehicle will so conform.

Pursuant to section 47 (5), the manufacturer may issue, on the basis of the NTA certificate, certificates of conformity stating, in respect of each vehicle manufactured by him, that it conforms with the approved type vehicle.

Condition 2 (2) of the NTA certificate requires the manufacturer to pre-notify to the Department of Transport any alteration which he intends to make to the model.

* Language of the Case: English.

When notifiable alterations are made to the vehicle without being notified, the position is, according to a letter from the Office of the United Kingdom Permanent Representative to the European Communities dated 19 July 1985, that the type approval does not lapse but certificates of conformity for vehicles which have undergone such alterations can no longer be issued.

By virtue of section 47 (8), any person (a manufacturer, importer or private individual) may obtain a Minister's Approval Certificate, which is also known as a Primary Minister's Approval Certificate (hereinafter referred to as a 'PMAC'), recording the fact that the vehicle complies with the approval requirements. For that purpose, the importer submits the vehicle to the Department of Transport for a rather costly technical examination. The examination is not required if the manufacturer provides the importer with technical information on the vehicle known as 'systems information'. All subsequent alterations to the vehicle must be notified as in the case of the NTA certificate.

Section 47 (11) provides that the Secretary of State may issue Subsequent Minister's Approval Certificates (hereinafter referred to as 'sub-MACS')to the manufacturer or importer of a vehicle which conforms to the vehicle in respect of which the PMAC was issued. The evidence of conformity must be provided by the holder of the PMAC, since only he can say whether or not the vehicle in question conforms to the PMAC.

By virtue of NTA Regulation No 3 (2) (e), vehicles imported by individuals are not subject to the approval rules provided that they have been purchased outside Great Britain for personal use, have been used by the individual or his dependants outside Great Britain, are intended solely for personal use in Great Britain and the person importing the vehicle has the intention of staying in Great Britain for a period of at least 12 months.

2. British Leyland Public Limited Company (hereinafter referred to as 'BL'), the only British-owned volume car manufacturer, launched the 'Metro' model in 1980. Since the closure of the BL assembly line in Belgium in 1980, the Metro is produced exclusively in the United Kingdom. Right-hand-drive vehicles with British specifications were no longer delivered in the other Member States of the EEC except under special schemes for British diplomatic or military personnel posted abroad.

3. In 1980 BL applied for an NTA certificate for the left-hand-drive and right-hand-drive versions of the Metro. BL states that it applied for national approval for left-hand-drive vehicles because it wished to put onto the British market a stock of vehicles of that type which were intended for export but had been returned to the manufacturer following complaints. The importer of a left-hand-drive vehicle could obtain a certificate of conformity from BL by paying a specified fee and making certain minor alterations to the vehicle relating to the direction of the headlight beam, the positioning of the wing mirror and the rear fog lamp, and the indication of the speed in miles per hour. Once approval was obtained, he could convert the vehicle into a right-hand-drive model without invalidating the approval.

4. The differences between the prices of the left-hand-drive Metro models marketed on the Continent and those charged by approved dealers in the BL selective distribution network in the United Kingdom for equivalent right-hand-drive models gave rise to re-imports of Metro cars into the United

Kingdom, principally from Belgium. This parallel trade, which began to develop in 1981, was carried out both by individual importers and by non-approved distributors.

5. Following a dealer council meeting on 16 July 1981 at which complaints were expressed on the subject of this parallel trade, BL decided to raise the charge made to distributors for the issue of a certificate of conformity for a left-hand-drive vehicle from UKL 25 to UKL 150, but to keep it at UKL 25 for individuals and for right-hand-drive vehicles. At a similar meeting held on 4 November 1981, BL informed its exclusive British distributors that it was no longer commercially justified to maintain national approval for left-hand-drive vehiclesand that the existing approvals were to be allowed to lapse as from October 1981. Consequently, BL no longer notified the Secretary of State for Transport of the alterations made to the left-hand-drive Metro models. Between June 1981 and April 1982, BL refused to issue certificates of conformity to importers or to provide them with the necessary information to obtain registration, on the ground that approval no longer existed. Thus, Derek Merson, a garage proprietor and importer of BL cars, asked BL on 13 November 1981 whether approval had been granted for a left-hand-drive Metro of which he gave the chassis number. BL replied on 17 November that it was not in a position to give him an approval number for that vehicle or for any other left-hand-drive Metro.

6. On 26 June 1982 the Commission initiated a proceeding against BL under Article 3 of Regulation No 17 of 6 February 1962, the first regulation implementing Articles 85 and 86 of the EEC Treaty (Official Journal, English Special Edition 1959-62, p. 87). On 17 July it notified to BL a Statement of Objections, charging it with abusing its dominant position regarding the provision of certificates of conformity for Metros; British Leyland was said to have refused to supply such certificates to a number of independent traders or individual purchasers re-importing Metros into Great Britain; it had deliberately omitted to update the NTA certificate for left-hand-drive cars and for the supply of certificates of conformity demanded a fee which was excessive in relation to the costs involved and discriminatory having regard to the fee charged by BL for other variants of the same vehicle.

In its reply of 24 August 1982, BL denied that it had a dominant position in any economic activity stemming from the NTA legislation or that it had abused any dominant position.

At the hearing on 19 October 1982 BL gave an undertaking to update the approval for the left-hand-drive Metro and to introduce a uniform charge of UKL 100 for the issue of certificates of conformity.

In a letter dated 6 May 1983, the Commission raised the question of the supply of right-hand-drive vehicles in Continental countries, with regard to which it seemed that a solution might be envisaged, and also the unresolved question of the prices charged for such vehicles.

In its reply of 9 June 1983, BL referred to the measures taken to meet the complaints raised by the Commission; it had re-applied

for national approval for left-hand-drive vehicles, issued certificates of conformity and set up a procedure for meeting orders for right-hand-drive models from customers established in Continental countries.

In a letter dated 25 August 1983, the Commission claimed that any fee of more than UKL 50 was excessive.

On 22 September 1983, BL defended the fees charged, namely UKL 25 for right-hand-drive vehicles for which certification was easy, and UKL 100 for left-hand-drive vehicles for which certification involved greater work.

7. On 2 July 1984, the Commission notified to BL Decision 84/379/EEC relating to a proceeding under Article 86 of the EEC Treaty (IV/30.615-BL) (Official Journal 1984, L 207, p. 11), Article 1 of which states that, by refusing to issue certificates of conformity between June 1981 and April 1982 when an NTA certificate was in force for the left-hand-drive variant of the Metro, by deciding in November 1981 no longer to seek NTA for the left-hand-drive variant of the Metro as a means of impeding re-importation of that vehicle into the United Kingdom from other Member States, and by charging UKL 150 to traders for the provision of certificates of conformity for left-hand-drive Metros between August 1981 and April 1982 and by charging UKL 100 for the same service to both independent dealers and individuals since 16 March 1983 when NTA for the left-hand-drive variant of the Metro was renewed, BL had infringed Article 86 of the Treaty.

By Article 2 of that decision, a fine of 350 000 ECU was imposed on BL.

Article 3 required BL to cease charging the fee of UKL 100 immediately.

8. By application lodged at the Court Registry on 11 September 1984, *BL Public Limited Company* brought an action against the Commission asking the Court:

to declare void Decision 84/379/EEC of the Commission of 2 July 1984; and

to order the Commission to pay the costs.

9. The *Commission* claims that the Court should:

declare the application unfounded;

order BL to pay the Commission's costs.

10. By order of 30 January 1985, Derek Merson, a garage proprietor of Minehead, Somerset, was allowed to intervene in Case 226/84 in support of the submissions of the Commission.

11. The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. The parties were invited to reply in writing to certain questions and they did so within the time prescribed.

12. Pursuant to Article 95 (1) and (2) of the Rules of Procedure, the Court, by decision of 15 January 1986 as amended by the decision of 29 January 1986, assigned the case to the Fifth Chamber.

II — Submissions and arguments of the parties

A — *Non-renewal of the approval for the left-hand-drive Metro*

1. *BL* claims that even if it were conceded that a special market existed for the supply of information or services regarding approval, it does not have a dominant position in that market. In fact, by contrast with General Motors (judgment of 13 November 1975 in Case 26/75 *General Motors* v *Commission* [1975] ECR 1367), it is not able to restrict trade, in particular because of the personal import scheme. Moreover, statistics show that imports of Metros into the United Kingdom were greater when the NTA did not exist than when it did exist.

Article 86 of the EEC Treaty imposes no obligation on BL to apply for or maintain NTA for the left-hand-drive Metro; BL does not supply the British market with vehicles of that type and had no commercial interest in maintaining that approval. In the absence of any long-standing customers for the NTA certificates, the Commission is not entitled to distinguish between a decision not to apply for approval for the first time and failure to renew it, or to treat non-renewal as a deliberate refusal to supply. The measure adopted by BL, which was legal in itself, is not made illegal by the fact that it was adopted with a view to impeding parallel imports.

The issue of certificates of conformity is not a commercial operation characteristic of a market, but is rather a function arising under public law. Trade importers are not economically dependent on BL for the supply of information or services in a manner characteristic of a dominant position (judgments of 6 March 1974 in Joined Cases 6 and 7/73 *Commercial Solvents Corporation* [1974] ECR 223 and of 14 February 1978 in Case 27/76 *United Brands Company* [1978] ECR 207). To say that BL occupied such a position with respect to a trader about to embark upon the parallel importation of vehicles is tantamount to applyingArticle 86 to BL's activities as a supplier of vehicles. A trader who has already imported vehicles is not in a position of sufficient economic dependence upon BL.

BL's attitude is objectively justified in view of the selective distribution system applied in the United Kingdom, a system whose advantages have been recognized by the Commission in individual decisions and in its proposal for a regulation granting exemption en bloc. The BL system was notified to the Commission and the latter has never regarded it as incompatible with Article 85. An undertaking cannot be obliged under Article 86 to give assistance to traders who are not part of the distribution network and do not have the required technical and commercial qualifications.

Unapproved traders do not have the appropriate trade and technical qualifications necessary for conversions and BL ought to be in a position to control such operations in order to protect the public and safeguard its own commercial reputation. The Commission's attitude is discriminatory, since no other manufacturer in the United Kingdom is obliged to have an NTA for left-hand-drive vehicles and to facilitate their conversion to right-hand drive.

2. The *Commission* maintains that the Court held in the *General Motors* judgment (*supra*) that the supply of information required by trade importers constitutes a separate market. In that market, which is distinct from that of vehicles, BL occupies a dominant position as the holder of a legal monopoly for the supply of such information, and is under a duty not to abuse that position. BL's policy as a supplier of vehicles is not at issue, since traders are dependent upon BL not for the supply of vehicles but for the supply of information required in order to market them.

The figures for imports of Metros into the United Kingdom are irrelevant, in the absence of any breakdown in them as between trade imports, which are covered by the NTA certificate rules, and personal imports, which are not subject to those rules.

Admittedly, BL is under no legal obligation to apply for national approval; however, in so doing it brought about a particular situation of law and of fact and the omission to renew the approval constitutes an abuse. By virtue of the *Commercial Solvents Corporation* and *United Brands* judgments (*supra*), it is the refusal to supply which is at the core of the abuse and the application of Article 86 to a refusal to supply persons who are not yet customers is in no way an extension of the present case-law. BL's intention to partition the market constitutes an aggravation of the abuse of its dominant position.

BL is entitled to enforce the contracts on which its selective distribution system is based but not to abuse its legal monopoly regarding the obtaining of national approval and issue of certificates of conformity to protect that system and to stand in the way of parallel trade which is legal under Community law. Protection of users against defective conversions is exclusively a matter for the public authorities. Parallel importers are not obliged to carry out conversions; no approval is required for conversions from the public authorities, from BL or a distributor; if a certificate is applied for after the conversion, BL is under no legal obligation to check that the conversion has been properly carried out.

3. *Derek Merson*, the intervener, supports the Commission's view that BL has a dominant position. The failure to renew the approval is accounted for solely by BL's wish to impede parallel imports. The figures provided by BL on re-imports are irrelevant.

B — *The refusal to issue certificates of conformity*

1. *BL* claims that the holder of a NTA certificate is not entitled to issue certificates of conformity for vehicles which have undergone a notifiable alteration which has not been notified. The first such alterations which were not notified date from October 1981. The Commission cannot rely on alleged belief on the part of BL that the NTA certificate was valid for a six-month period of grace in order to prove that its conduct constituted an abuse. Moreover, the decision against BL was based not on that belief but on the claim that the approval was still in force.

As regards the six individual refusals referred to by the Commission, three of them, namely in the cases of Auto-Europa, International Cars RHD Limited and Mrs Fox, took place before the expiry of the approval: Auto-Europa asked for the approval numbers, and BL offered to issue certificates of conformity subject to certain checks, in order to ensure that the vehicles were brought into compliance with the approval requirements. International Cars RHT Limited did not ask for certificates of conformity for individual vehicles, but wished to know the type approval number for the model; BL quite properly replied that it could not disclose that number, which was evidence that a certificate of conformity existed, and that no such certificate existed for left-hand-drive vehicles which were exported. Mrs Fox had described herself as a personal importer and BL quite properly drew her attention to the exemption for personal imports. The letters to Royal Cars AMS Ltd, Mr Merson and Mr Doyle were sent after 1 October 1981. BL refused to provide Royal Cars AMS Ltd with approval numbers for particular components or the 'systems information' asked for with a view to obtaining a PMAC in view of the dubious character of that company; however, the decision does not condemn the refusal to disclose that information. Mr Merson appears to have started importing cars on a personal basis. Subsequent applications for registration were rejected on the ground that he was not a personal importer. BL refused to issue a certificate of conformity to him because it believed that the vehicle concerned was built after 1 October 1981. By the time it stated that it was prepared to issue the certificate in question, Mr Merson had already succeeded in registering the vehicle. Mr Doyle's request concerned 'Mini' cars built after the expiry of the approval.

2. The *Commission* contends that when the information was asked for, the NTA certificate, in respect of which there was a six-month period of grace, was still in force; nevertheless, BL improperly gave inquirers the clear impression that that was no longer the case. In any event, all BL's replies were negative and made no distinction based on the date of construction of the vehicle. BL's reply to Auto-Europa was to the effect that there was no approval for vehicles shipped to Belgium. It was clear that International Cars RHT Ltd wished to re-import left-hand-drive Metros in order to register them in Great Britain; BL's reply, taking advantage of the fact that the request was clumsily formulated, was to the same effect as that given to International Cars RHT Ltd. The letter sent to Mrs Fox indicated that, according to BL, there was no national approval for left-hand drive Metros. Royal Cars AMS Ltd also wished to re-import vehicles of that type into the United Kingdom; even assuming that national type approval no longer existed, it would have been possible, as BL itself admitted, to obtain a certificate of conformity after conversion of the vehicle to right-hand-drive and inspection by BL. BL told Mr Merson that it could not supply NTA numbers for left-hand-drive Metros. Even if it were presumed that national approval no longer existed when Mr Doyle submitted his request, the reply given by BL is misleading since it made not the slightest reference to the possibility of issuing certificates of conformity after conversion of the vehicle to right-hand-drive.

3. *Mr Merson* denies having registered vehicles for personal use. BL not only

refused to issue a certificate of conformity for a specific vehicle but also denied the existence of any approval for left-hand-drive vehicles. It was only after incurring expenses and going to considerable trouble that he had obtained registration of the vehicle in question.

C — *The fees charged by BL for certificates of conformity*

1. *BL* states that as from 1 July 1981, it set the charges for certificates of conformity for vehicles originally built in accordance with the NTA at UKL 25, and for those not so built, in other words mainly left-hand-drive vehicles, at UKL 100 for individuals and UKL 150 for traders.

The charge of UKL 150 was not applied over a long enough period or frequently enough to constitute a case of abusive practice. The UKL 100 charged affected only individuals who did not effect personal imports. By contrast with the *General Motors* case, the charges did not have the effect of curbing parallel imports, which are carried out for the most part by private individuals.

The Commission has not proved that the charges (in particular that of UKL 100) were excessive in relation to the economic value of the services provided. The work involved in the certification of vehicles not built in accordance with the NTA proved to be very complex. The *General Motors* judgment (*supra*) did not indicate any particular level at which a charge constitutes an abuse; the charges made in Belgium in 1973 are not probative of what amount might be acceptable in the United Kingdom in 1984.

BL's charges are in line with those of other manufacturers or sales companies in the United Kingdom; moreover, the latter can issue only certificates of conformity or sub-MACS for vehicles which conform with the approval for right-hand-drive models, having been built either in accordance with the NTA and requiring no alteration or else not in accordance with the NTA and therefore requiring alteration. The fact that only BL has been penalized constitutes a discriminatory measure.

Between 16 March 1983, the date on which the approval for the left-hand-drive model was renewed, and 31 August 1983, the date of receipt of the Commission's letter dated 25 August in which it raised for the first time the question of the charge of UKL 100, the Commission had given BL to understand that that charge was acceptable. The penalty imposed for that period should be annulled because it is contrary to the principle of good administration or the principle of the protection of legitimate expectation or both.

The penalty for the period after 31 August 1983 should also be annulled. In its letter of 25 August, the Commission raised the question of the charge without mentioning the possibility of a penalty. Under Regulation No 99/63 of the Commission of 25 July 1963 on the hearings provided for in Article 19 of Council Regulation No 17 (Official Journal, English Special Edition 1963-64, p. 47), the Commission is required to inform defendants of its intention to impose a penalty and to provide relevant

information as to the gravity and duration of the infringement, so that they are in a position to submit their views.

2. The *Commission* states in reply that the argument that parallel imports continued is irrelevant, since its decision referred expressly to the position of car dealers.

The fee of UKL 100 and *a fortiori* that of UKL 150 are excessive for relatively modest routine clerical work, particularly since a further charge is made for inspections. They are excessive and discriminatory by comparison with the charges made for the issue of the certificate for a right-hand-drive model. The reduction of the charge from UKL 150 to UKL 100 does not prove that the first amount was excessive but clearly indicates that cost factors were not decisive in determining the amount of the charges.

The figures for the charges made by other manufacturers for right-hand-drive vehicles conforming with the NTA are not relevant, since the amounts charged by BL for that type of certificate have never been at issue. The charges for vehicles not conforming with the NTA relate to inspections and therefore are not comparable with BL's charges. The charge of discrimination is not sustainable.

The *General Motors* judgment (*supra*) does not lay down any rule as to the appropriate levels of charge, but rather gives certain criteria such as the relationship between the charge and the economic value of the service provided or the real economic cost of the operation.

In its Statement of Objections, the Commission criticized BL for imposing on dealers a charge of UKL 150, which is six times higher than the price charged to private individuals or to dealers for right-hand-drive vehicles. In its reply, BL sought to justify those differences; it is only now that BL says that it has charged UKL 100 to private individuals for left-hand-drive vehicles since 1 July 1981. That statement cannot justify the charges made.

The Statement of Objections refers in general to the excessive nature of the charges, without mentioning a specific amount; the Commission never expressed satisfaction with the UKL 100 charge and the letter of 25 August 1983 cannot be interpreted as sanctioning that amount in relation to any previous period.

No provision of Regulation No 99/63 requires the Commission explicitly to inform an undertaking that it is considering imposing a fine upon it. In any case, the Statement of Objections expressly stated that the Commission proposed to impose a fine for each of the abuses including, in particular, overcharging. It indicated the main factual and legal criteria attracting a fine, and the gravity and duration of and the motive for the infringement; BL thus had an opportunity to submit its observations.

3. *Mr Merson* claims that the differences in the charges made were intended to discriminate directly against traders. BL has no right to compare its charges with those made by other manufacturers for inspections.

D — *Breach of certain principles of law*

1. *BL* criticizes the Commission for taking action contrary to the principles of good administration or for misusing its powers, or both. Despite expressing satisfaction at the renewal of the approval for left-hand-drive models and the reduction of the charges following the Statement of Objections, the Commission continued with the proceedings against BL solely for the purpose of extracting further price concessions for right-hand-drive vehicles sold on the Continent, a matter falling outside the scope of the procedure. There is no demand for right-hand-drive vehicles for use on the Continent and the Commission in fact sought to create an artificial parallel trade in vehicles of that type between the Continent and the United Kingdom for the purpose of undermining the United Kingdom price structure.

2. According to the *Commission,* its discussions with BL should be regarded as having no effect upon the position that either party might ultimately adopt. The question of the price of right-hand-drive cars on the Continent does not, strictly speaking, come within the subject-matter of the Statement of Objections, but it is of considerable relevance to the question of national approval for left-hand-drive vehicles; in fact, the possibility of purchasing right-hand-drive vehicles on the Continent at prices similar to those of left-hand-drive vehicles would make it unnecessary to seek approval for left-hand-drive vehicles or to apply for certificates of conformity. The question of pricing is within the powers of the Commission and it is one factor which the Commission should take into account when granting an exemption for a selective distribution system.

3. *BL* accuses the Commission of acting contrary to the principles of proportionality and non-discrimination. The Commission has the duty of ensuring that consumers are able to buy vehicles wherever they wish in the common market, but it has no right to risk destroying the whole concept of selective distribution by guaranteeing parallel trade by unauthorized re-sellers of motor vehicles. The Commission fails to draw the distinction, to which expression is given in Commission Regulation No 123/85 of 12 December 1984 on the application of Article 85 (3) of the EEC Treaty to certain categories of motor vehicle distribution and servicing agreements (Official Journal 1985, L 15, p. 16), between those two types of parallel imports and has overlooked the existence of the exemption for personal imports.

By not applying for renewal of the approval, BL put itself in the position of the other manufacturers which the Commission does not compel to obtain NTA for left-hand-drive models. Thus, in the cases of both *Fiat* and *Alpha Romeo* vehicles, the Commission intervened only to secure that private individuals could purchase right-hand-drive vehicles on the Continent for importation into the United Kingdom.

The system of approval and the issue of certificates of conformity are matters of public internal law. Proceedings against the United Kingdom under Article 30 would have been more appropriate and more equitable than proceedings against a single undertaking under Article 86.

4. The *Commission* contends that it is not empowered to attack the dominant position

of vehicle suppliers in the market for the supply of information, but can intervene only where there is an abuse. BL's position is not comparable with that of the other vehicle suppliers; non-renewal of the approval cut off an important source of supply for the British car market and adversely affected both trade importers and consumers.

The *Fiat* and *Alpha Romeo* cases related to the price of right-hand-drive vehicles on the Continent and not to national approval. In view of the restrictive nature of the personal import exception, the Commission cannot be criticized for overlooking them. The Commission did not go beyond its objective and has not discriminated against BL.

In its communication to the Member States of 20 September 1984, the Commission stated that proceedings under Article 30 did not prejudice the direct application of Article 86 to the undertakings concerned, in so far as the circumstances referred to in that provision obtained. The existence of a national approval system does not empower undertakings to make use of that system in a manner incompatible with Community law.

E — *The amount of the fine*

1. In the alternative, *BL* maintains that the fine imposed upon it should be reduced. In that connection, BL refers to the reasons set out earlier regarding non-renewal of the approval, the issue of certificates of conformity and the amounts of the charges.

2. The *Commission* considers that BL's arguments in support of a reduction of the fine, which are identical to those relied upon for the claim that the decision was not well founded, must be rejected. In fixing the fine, the Commission took account of BL's cooperative attitude with regard to certain of the infringements.

III — Answers to questions put by the Court

1. Asked whether a certificate of conformity can be issued for a vehicle which, according to its chassis number, was built as a left-hand-drive vehicle, after its conversion to right-hand-drive, *BL* confirmed that a certificate is issued for a vehicle identified by its chassis number. The answer to the Court's question depends on the interpretation of section 47 (5) of the Road Traffic Act 1972. Is a vehicle which has been modified by persons other than the manufacturer 'a vehicle manufactured by the manufacturers which conforms with the type vehicle' within the meaning of that provision? Adopting a liberal interpretation, BL issues certificates of conformity for such vehicles, even where the steering has been moved from one side to the other, provided that the vehicle was originally manufactured by BL and conforms with the type vehicle when the certificate is issued. Other manufacturers take a more restrictive view. No other manufacturer will issue a certificate of conformity for a vehicle which has had the steering converted. Others take the view that such a vehicle is not a right-hand-drive 'vehicle manufactured by' them.

In response to the request to give details of the modifications made to the left-hand-drive Metro models which have not been notified since 1 October 1981, *BL* states that the period during which modifi-

cations were made extended from 1 October 1981 to late 1982. At the time of reinstatement of the type approval for the left-hand-drive Metro, in October 1982, 54 alterations concerning various technical matters were notified by BL.

In answer to the question whether those modifications are the same as those notified for right-hand-drive Metro models, *BL* states that they are.

2. The *Commission* was invited to indicate the charges made by other British manufacturers for the issue of certificates of conformity and in reply stated that the charges made for certificates of conformity by British vehicle manufacturers in respect of parallel imports are (excluding VAT) UKL 17.25 for Ford, UKL 25 for Peugeot-Talbot and UKL 75 for General Motors. Those are the amounts charged since May 1983, when a code of practice was introduced in Great Britain. General Motors increased its charge from UKL 50 to UKL 75 in November 1985. For the periods from August 1981 to April 1982 and March 1983 to May 1983, Ford made the same charge as today, Talbot made no charge at all until shortly before the code of practice was introduced, and General Motors charged UKL 50.

3. *BL* points out that it is possible only to compare 'like with like'. It is the only volume motor manufacturer to issue certificates of conformity for vehicles originally built with left-hand-drive. The other manufacturers do not hold NTA's for such vehicles and refuse to issue certificates of conformity for vehicles converted to right-hand drive. The other manufacturers' charges for the issue of certificates of conformity apply only to right-hand-drive vehicles which are built according to United Kingdom specifications and for which no modifications are therefore necessary, and right-hand-drive vehicles built to non-United Kingdom specifications for which modifications are necessary. For the first category, the charges vary between UKL 10 and UKL 100. For the second category, most manufacturers require the vehicleto be modified or inspected, or both modified and inspected, by a franchised dealer. As regards the inspection fees, the lowest charge discovered by BL is UKL 100 and the highest is UKL 655.50.

4. The *Commission* was invited to provide statistics indicating, as from 1980, the number of right-hand-drive and left-hand-drive vehicles re-imported and registered in the United Kingdom, broken down into personal imports and commercial imports, but it states that it is impossible to obtain a detailed break-down of the statistics requested by the Court. It gives the figures for imported vehicles registered in the United Kingdom which were not sold by authorized dealers: 1983: 84 000; 1984: 83 000; and for the first half of 1985: 51 000.

F. Schockweiler
Judge-Rapporteur