OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 28 June 2007 [1]

I — Introduction

1. On 27 February of this year I delivered my Opinion in *Telefónica O2 Czech Republic,* [2] in which the Obvodní soud (Court of First Instance) number 3, Prague, submitted a number of questions concerning telecommunications in the European Union. The transitional arrangements for the so-called 'new regulatory framework', [3] adopted on 7 March 2002 and published on 24 April 2002, [4] were present behind the scenes but I refrained from putting those arrangements under the spotlight because the resolution of the main proceedings did not call for their analysis.

2. In the present proceedings, the Bundesverwaltungsgericht (Federal Administrative Court) (Germany) has submitted, pursuant to Article 234 EC, a script in which those transitional arrangements take centre stage as the German court seeks to ascertain the extent of the duty, incumbent on the Member States in accordance with the first paragraph (first sentence) of Article 27 of the Framework Directive and Article 16(1)(a) of the Universal Service Directive, to maintain temporarily the obligations imposed on certain operators under the previous legislation.

3. The referring court is uncertain whether that continuation pertains to obligations deriving directly from statute or whether, on the other hand, it concerns only obligations deriving from an individual measure, and asks whether it applies to legislation requiring prior authorisation of the charges which a dominant undertaking levies on users for the supply of voice telephony services (first question).

4. In any event, if it is found that Article 27 of the Framework Directive and Article 16 of the Universal Service Directive do not require the continuation of obligations

1 — Original language: Spanish.

2 — The judgment was delivered on 14 June 2007 (Case C-64/06 [2007] ECR I-4887).

3 — The framework comprises four Directives of the European Parliament and of the Council: Directive 2002/19/EC of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive); Directive 2002/20/EC of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive); Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive); and Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive).

4 — OJ 2002 L 108, pp. 7, 21, 33 and 51.

deriving from statute, the referring court asks whether those articles would permit such a continuation if they did not call for complete harmonisation and afforded the Member States sufficient latitude (second question).

II — The legal framework

A — *Community law*

5. Intervention by the Community in the telecommunications sector was organised in two stages. The first began at the dawn of the 1990s and was aimed at making the markets more flexible and harmonising national legislation; the second, which commenced once the conditions for effective competition had been created, [5] was embodied in the new regulatory framework referred to above. [6]

6. Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment [7] was adopted in between those two stages. Under the heading 'Tariff principles', Article 17 of that directive required national regulatory authorities to ensure that organisations with significant market power set cost-orientated tariffs (paragraphs 1 and 2), [8] independent of the type of application which the users implement, except to the extent that they require different services or facilities, in which case the additional tariffs must be unbundled (paragraphs 3 and 4). Tariff changes may be implemented only after an appropriate public notice period (paragraph 5). Finally, Member States are entitled to derogate from those requirements in geographical areas where effective competition exists (paragraph 6).

7. 'In order to ensure continuity of existing agreements and to avoid a legal vacuum' (recital 12 in the preamble to the Access Directive), the new regulatory framework on telecommunications provides for the obligations imposed under the earlier regulatory framework to be carried over until such time as a review has been carried out.

5 — The total liberalisation of the supply of telecommunication services and infrastructure within the Community, including transition periods for certain Member States, was completed on 1 January 1998.

6 — I examined that evolutionary process in the Opinions in Case C-339/04 *Nuova società di telecomunicazioni* [2006] ECR I-6917 (points 3 to 6) and *Telefónica O2 Czech Republic* (points 4 to 7).

7 — OJ 1998 L 101, p. 24.

8 — Article 17(2) refers to the harmonised criteria set out in point 4 of Annex II to Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ 1990 L 192, p. 1).

8. To that end, as a general measure, the first paragraph of Article 27 of the Framework Directive provides that Member States must maintain 'all obligations under national law referred to in Article 7 of ... [the] Access Directive ...' [9] and Article 16 of ... [the] Universal Service Directive ... until such time as a determination is made in respect of those obligations by a national regulatory authority in accordance with Article 16 of this Directive'.

9. More specifically, Article 16(1) of the Universal Service Directive maintains the obligations of Member States relating to

'(a) retail tariffs for the provision of access to and use of the public telephone network, imposed under Article 17 of Directive 98/10/EC

...

until a review has been carried out and a determination made in accordance with the procedure in paragraph 3 of this Article.'

10. Article 16(3) refers to the procedure laid down in Article 16 of the Framework Directive, pursuant to which national regulatory authorities, in collaboration with the national competition authorities, are required to carry out an analysis of the relevant markets (paragraph 1), to distinguish those markets which are effectively competitive from those which are not, and then, in the case of the former, to withdraw the obligations previously imposed on dominant undertakings and, in the case of the latter, to maintain or amend those obligations (paragraphs 2, 3 and 4).

B — *The German legislation*

11. Paragraph 25(1) of the Telekommunikationsgesetz (Law on telecommunications; 'TKG') of 25 July 1996, [10] which refers to Paragraphs 24 and 27 to 31 of that law, provides that the charges which dominant undertakings seek to impose on end-users for the supply of telephone services, and other elements of the general terms and conditions, are subject to administrative authorisation. Under Paragraph 24(1), the amount of those charges must be linked to the costs of providing the service.

9 — Namely, the access and interconnection obligations incumbent on undertakings providing public communications networks and/or services.

10 — BGBl. I, p. 1120.

12. Paragraph 150(1) of the TKG of 22 June 2004 [11] carries over the obligations incumbent on dominant undertakings under the TKG 1996 until such time as they are replaced by new decisions adopted in accordance with part 2 of the TKG 2004, which governs the manner in which markets are to be defined and analysed.

III — The facts and the main proceedings

13. Deutsche Telekom AG is a telecommunications company operating in Germany, where it provides voice telephony services via a fixed network.

14. On 8 June 2004, the Regulierungsbehörde für Telekommunikation und Post (Regulatory Authority for Telecommunications and Post) [12] ruled that the charges levied by that undertaking and the relevant clauses of its general terms and conditions fell within the authorisation requirement, pursuant to Paragraph 25(1) of the TKG 1996.

15. After the TKG 2004 entered into force, Deutsche Telekom brought an action under Paragraph 150(1), claiming that the obligations deriving from the decision of 8 June 2004 had ceased to be valid.

16. The Verwaltungsgericht (Administrative Court), Cologne allowed the action by judgment of 15 September 2005, on the grounds that the transitional provision contained in Paragraph 150(1) of the TKG 2004 covers only obligations which are complete in themselves and do not require any implementing measures, a category into which Paragraph 25(1) of the TKG 1996 does not fall.

17. The defendant public administration lodged an appeal before the Bundesverwaltungsgericht, claiming that the earlier obligations continue to be valid until such time as a decision has been made, under the TKG 2004, concerning the requirement for authorisation of the charges levied on customers.

IV — The questions referred for a preliminary ruling

18. The referring court takes the view that the action brought by Deutsche Telekom is

11 — BGBl. I, p. 1190.

12 — Now the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (Federal Agency for Electricity, Gas, Telecommunications, Post and Rail Networks).

unfounded in German law [13] but is uncertain whether the same outcome would result under Community law and it has therefore stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Are the first paragraph of Article 27 of the [Framework Directive] and Article 16(1)(a) of the [Universal Service Directive] to be understood as meaning that a statutory requirement provided for under earlier national law for the authorisation of charges for the supply of voice telephony services to end-users by an undertaking with a dominant position in that market, and hence an administrative measure confirming that requirement, should be temporarily maintained?

If the answer to the first question is in the negative:

(2) Does Community law preclude such extensive continuation?'

V — The procedure before the Court of Justice

19. The order for reference was registered at the Court Registry on 15 June 2006. Written observations were lodged by the German, Belgian, Italian and Lithuanian governments, the parties to the main proceedings and the Commission, and the latter three appeared at the hearing held on 7 June 2007.

VI — Analysis of the questions referred for a preliminary ruling

A — *The first question*

20. Once again, time plays an important role in a case pending before the Court. [14] The main subject-matter of this reference for a preliminary ruling in fact comprises two questions. The first entails ascertaining whether the temporary continuation, until such time as a specific determination is made, of the obligations which are incumbent on a dominant undertaking in the sector under the previous regulatory regime encompasses all types of obligation or whether, on the other hand, it excludes obligations which, since they are derived

13 — In accordance with the customary interpretation criteria (literal, systematic and teleological), the authorisation required by the decision of 8 June 2004 pursuant to Paragraph 25(1) of the TKG 1996 falls within the transitional arrangements contained in Paragraph 150(1) of the TKG 2004.

14 — 'It is idle to think that things in this life will last for ever in one state ... Human life speeds to its end faster than the wind ...' (M. de Cervantes, *Don Quixote*, translated by J.M. Cohen, The Second Part, Chapter LIII, Penguin Books, Harmondsworth, 1986, p. 811).

from a statutory provision, are general and abstract in nature. The answer to that question depends on the interpretation of the first paragraph of Article 27 of the Framework Directive and Article 16(1)(a) of the Universal Service Directive.

21. The second question concerns Paragraph 25(1) of the TKG 1996, and entails determining whether the requirement for authorisation of the charges which a dominant undertaking in respect of voice telephony services levies on its customers constitutes an obligation which must be carried over under the new regime, in accordance with the aforementioned provisions of the Framework Directive and the Universal Service Directive, the spirit of which also underlies Paragraph 150(1) of the TKG 2004.

22. Before I continue, and for the purpose of outlining the subject-matter of the present reference for a preliminary ruling, it is appropriate to dismiss the new argument put forward by Deutsche Telekom at the hearing, to the effect that the analysis should not be focused on the form (general provision or individual act) in which the obligations are imposed on dominant operators but rather on their substantive content. In that connection, Deutsche Telekom takes the view that, by requiring authorisation for voice telephony charges, the German legislature has exceeded the aim of the Community legislation. In making such an assertion the applicant has gone beyond the parameters of the questions referred for a preliminary ruling and failed to take account of the scope of Article 17 of Directive 98/10, which calls upon national regulatory authorities to ensure that undertakings with significant market power fix cost-based charges but does not require a review *a posteriori* or preclude one *ex ante*. In that regard, the national authorities have freedom of choice.

23. I must add a number of additional points which have also resulted from the oral hearing. First, there is no indication that there has been a disproportionate delay in analysing the German markets; second, the referring court, which is responsible for establishing the facts of the main proceedings, has not considered that possibility; and, third, the Community legislation (Article 7(6) of the Framework Directive) contains guidance for such a situation.

1. Some essential preliminary points

24. At the outset, it is important to make three statements which are common ground in the preliminary ruling proceedings: (i) Deutsche Telekom enjoys a privileged position in the national market; (ii) Deutsche Telekom's action is unfounded under German general and constitutional law; and (iii) the TKG 2004 was adopted for the purpose of transposing into German law the new Community regulatory framework on telecommunications.

25. The first statement demonstrates that the factual situation in which Deutsche Telekom finds itself is provided for in the transitional provisions of the Community and the national legislation because both apply to operators in this category. [15]

26. The second statement makes clear that the approach of the Bundesverwaltungsgericht is correct since, by interpreting German law, that court has clearly identified the focus of the dispute. However, the German court is uncertain whether Community law supports that interpretation, and therefore it has submitted the present reference to the Court.

27. The third statement points out that the TKG 2004 transposes the 2002 directives with the result that the interpretation rules for Articles 27 of the Framework Directive and 16 of the Universal Service Directive may be extrapolated to Paragraph 150 of the TKG. The order for reference reflects that view since it sets out in paragraphs 22 to 53 a number of arguments for dismissing the action of Deutsche Telekom under national law and then puts forward similar grounds (points 63 to 74), albeit with certain reservations, in support of the view that the same interpretation might be appropriate under Community law. Thus the referring court provides the Court with an exposition which has received eloquent approval from those who have submitted written observations in these proceedings.

28. In those circumstances, the preliminary ruling procedure acquires its full significance. Far from being an enquiry where one court simply asks a question and waits for the other court to provide a reply, the procedure unfolds as a genuine dialogue, a conversation in which the participants express their views, although, for reasons of an institutional nature and concerning the uniformity of the system, the last word falls to only one of the courts which gives its opinion having taken into account the views of the other participants. In the order for reference, the Bundesverwaltungsgericht employs a useful work method which, like the other participants in the proceedings, I will adopt in the following paragraphs before reaching a solution accepted by all parties with the exception, for reasons which do not require explanation, of Deutsche Telekom.

2. The nature of the obligations caught by the transitional arrangements

29. Regardless of which one is chosen, all the methods of interpretation (literal, systematic, historical and teleological) lead to the same conclusion, namely that the first paragraph

15 — The first paragraph of Article 27 of the Framework Directive refers to Article 16 of the Universal Service Directive which concerns retail tariffs imposed under Article 17 of Directive 98/10, which in turn sets out the principles by which entities with significant market power are bound.

of Article 27 of the Framework Directive and Article 16(1)(a) of the Universal Service Directive refer to obligations provided for under the previous national regime, regardless of whether their origin is abstract and general in legislation, or specific and individual in an administrative measure.

(a) The wording of the articles to be interpreted

30. The first paragraph of Article 27 of the Framework Directive provides, without further detail, that 'Member States shall maintain *all obligations under national law*' referred to in Article 7 of the Access Directive and Article 16(1) of the Universal Service Directive. Subparagraph (a) of the latter provision uses similar wording to maintain temporarily the obligations relating to charges for telephone services. [16] Neither of the two provisions contains any nuances, from which it follows that where the law does not distinguish, neither should those who interpret it *(ubi lex non distinguit, nec nos distinguere debemus).* Accordingly, it is possible to assert that the Community legislature wishes to maintain the obligations laid down under the previous regime, regardless of their nature, because that is clear from the words it has used.

16 — *Toutes les obligations* or *l'ensemble des obligations* in the French version of the two provisions; *all obligations* in the English; *alle Verpflichtungen* in the German; and *tutti gli obblighi* in the Italian.

31. That interpretation, which is supported by the wording of the provisions, is bolstered by the fact that they go on to provide that responsibility for withdrawing the temporary arrangements falls on the national regulatory authority, which must consider the obligations laid down in the previous regime after carrying out the market analysis referred to in Article 16 of the Framework Directive. Deutsche Telekom submits that since national regulatory authorities are required to decide whether the obligations concerned should be maintained, it is appropriate to conclude that the disputed articles presume that the obligations were individually imposed by those authorities because they lack the power to intervene with regard to decisions adopted by bodies with statutory or regulatory powers.

32. The view of the claimant company in the main proceedings is based on an erroneous premiss, which attributes to national regulatory authorities a role which is not provided for in the Framework and Universal Service Directives, since, according to the wording of the first paragraph of Article 27 and Article 16(1) and (3) respectively of those directives, the authorities concerned do not supplant the legislature. Instead, the national regulatory authorities make their determinations conscientiously as part of a carefully designed procedure (described in point 10 of this Opinion) in which, depending on its outcome, the obligations imposed in legislation which has been called into question by the entry into force of the new regulatory framework are maintained, amended or definitively withdrawn.

33. The aim of that procedure, which includes a market analysis, is to withdraw the obligations previously imposed on dominant companies where a high level of competition has been attained, or to maintain or amend those obligations in all other

cases, and that is a measure which affects those obligations irrespective of whether their source is a statutory provision or an individual act of the regulatory authority. Where applicable, an obligation deriving directly from a statutory provision may, according to the stipulations of the author of the provision, be replaced by another obligation which is imposed individually. The German Government is correct (paragraph 14 of its written observations) when it argues that there is nothing to prevent the legislature from making continuation of the effects of a law dependent on a determination from the executive, subject to the proviso, which I now add, that that is not precluded by a constitutional reservation.

34. In other words, in accordance with the Framework and Universal Service Directives, national regulatory authorities may, based on objective information obtained as part of a predetermined procedure, terminate a temporary situation which is required to be replaced by the situation laid down in the current legislation, while maintaining — albeit in a different form — amending or simply withdrawing the obligations concerned. It is clear that the authorities are not intervening in an area outside their jurisdiction but rather are acting at the invitation of the competent authority.

(b) A systematic view

35. The underlying aim of the new regulatory framework is to avoid a vacuum and to incorporate the obligations laid down in the previous regime, pending the immediate review of those obligations. An example is recital 12 and Article 7 of the Access Directive, which are imbued with the same spirit as Articles 27 of the Framework Directive and 16 of the Universal Service Directive, in that they provide for certain obligations imposed under the previous directives to be maintained temporarily.

36. In particular, those provisions refer to Articles 4, 6, 7, 8, 11, 12 and 14 of Directive 97/33/EC, [17] to Article 16 of Directive 98/10 and to Articles 7 and 8 of Directive 92/44/EEC. [18] A number of those articles, such as Article 4 of Directive 97/33, impose obligations directly on operators; others, namely Articles 6, 7, 8, 11, 12 and 14 of Directive 97/33, Articles 7 and 8 of Directive 92/44 and Article 16 of Directive 98/10, delegate that responsibility to the Member States. Of the latter group of articles, some refer to the authorities of the Member States in a non-specific way (Articles 6, 7 and 8 of the first directive; Articles 7 and 8 of the second), [19] while others specifically mention the national regulatory authorities (Articles 11, 12 and 14 of Directive 97/33; Article 16 of Directive 98/10).

17 — Directive of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) (OJ 1997 L 199, p. 32).

18 — Council Directive of 5 June 1992 on the application of open network provision to leased lines (OJ 1992 L 165, p. 27).

19 — They use the wording 'Member States shall ensure' or 'Member States shall require'.

37. Therefore, it appears that individual measures and general provisions are both caught by those articles, since whether the obligations concerned are governed by the former or the latter depends on the distribution of power within each constitutional system.

38. That view is bolstered if, rather than focusing on provisions external to the directives, regard is had to the subject-matter of the directives themselves, particularly to the Universal Service Directive which contains the most specific of the two provisions in issue in the present preliminary ruling procedure, namely Article 16, to which Article 27 of the Framework Directive refers. Recital 28 in the preamble to the Universal Service Directive states that it is considered necessary to ensure the continued application of the 'existing provisions' relating to the minimum set of leased line services until such time as the national regulatory authorities, following the relevant market analysis, take a decision on whether they should continue. Moreover, as the German Government points out, Annex VII to the Universal Service Directive calls for the continuation of the conditions laid down in Directive 92/44 with regard to the minimum set of leased lines, the abstract and general nature of which is common ground, while it is established whether there is effective competition in the sector.

39. Finally, to come full circle and focus the analysis on Article 16 of the Universal Service Directive, it is clear that the Member States must maintain temporarily both the obligations deriving from statutory provisions and the ones provided for in implementing measures. Article 16(1)(c) refers to obligations relating to leased lines, imposed under Articles 3, 4, 6, 7, 8 and 10 of Directive 92/44, the regulatory nature of which is indisputable. That is demonstrated by Article 8, which calls on Member States to ensure that national regulatory authorities adopt an adequate and transparent procedure to monitor the imposition on operators of obligations relating to usage of and access to that type of line, and Article 6, which provides that it is for national law to stipulate the reasons in the general interest ('essential requirements') [20] on which restrictions on the usage of such lines may be based.

(c) The historical approach

40. The German Government refers to the preparatory documents for the new regulatory framework, adopted in 2002, which contain information that is useful to the analysis.

20 — In accordance with Article 2(6) of Directive 90/387, 'essential requirements' means 'the non-economic reasons in the general interest which may cause a Member State to restrict access to the public telecommunications network or public telecommunications services. These reasons are security of network operations, maintenance of network integrity and, in justified cases, interoperability of services and data protection. Data protection may include protection of personal data, the confidentiality of information transmitted or stored as well as the protection of privacy.'

41. The Proposal for a Directive of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services of 12 July 2000 [21] did not contain transitional provisions requiring the continuation, under the new regulatory framework, of obligations imposed under the earlier legislation. In its opinion on that proposal, [22] the Economic and Social Committee proposed a transitional system to ensure that the '[then] existing legislation' continued to be applied until such time as the first market analysis was carried out (point 4.4). That precedent explains the fact that the first paragraph of Article 27 of the Framework Directive requires Member States to maintain all obligations under 'national law' until such time as a regulatory authority has made a determination in accordance with Article 16 of that directive, in other words, after the aforementioned analysis. In the light of that preparatory document, it is beyond doubt that Article 27 refers to all types of obligation regardless of whether they derive from legislation or were imposed by means of an administrative act.

42. Those considerations aid our understanding of the work carried out prior to the Universal Service Directive which is less informative in that regard. The Proposal of the Commission adopted on 12 July 2000 [23] contained in Article 16(1), under which Member States were required to maintain all obligations relating to retail tariffs that were 'in force' under Article 17 of Directive 98/10, until a determination had been made in the light of market analyses. The term 'in force' was removed from the final wording of the provision and, although, it is not decisive, the use of that term illustrates the intention of the author because, usually, the state of being 'in force' is attributed to acts which are statutory in nature such as laws, regulations, and orders or customs. It might be possible to argue that the omission of that term from the provision adopted reveals that it was intended to cover only obligations which are imposed individually, but the uncertainty is dispelled by reading Article 17 of Directive 98/10, which provides for a procedure in which obligations and restrictions are imposed on dominant operators (tariffs to be fixed in accordance with the principles of cost orientation; those tariffs to be independent of the type of connection implemented; a public notice period to be set prior to the entry into force of any tariff changes).

(d) The teleological interpretation

43. The new regulatory framework on telecommunications reveals a concern for legal

21 — COM(2000) 393 final (OJ 2000 C 365 E, p. 198).

22 — OJ 2001 C 123, p. 56.

23 — Proposal for a Directive of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services (COM(2000) 392 final (OJ 2000 C 365 E, p. 238)).

certainty and smooth continuity between the past and the future. That is evident in Articles 16 of the Universal Service Directive, 7 of the Access Directive and 27 of the Framework Directive which, since it refers to the first two provisions and follows Article 26, which repeals the earlier legal framework, maintains the obligations deriving from the previous regime until such time as the state of the markets has been determined. The reason for that rule is that the full effectiveness of the new legislation is dependent on the creation and implementation of complex procedures in which a number of parties must participate, which must be duly coordinated, and for which purpose it is necessary to establish a transitional period in order to ensure the stability of the system. [24]

44. That approach is not expressly stated in the Framework and Universal Service Directives, which the present reference for a preliminary ruling concerns, but derives explicitly from the Access Directive. Recital 12 of the Access Directive, which is the precursor of Article 7 of that directive, states that it is necessary to avoid a legal vacuum. I have already explained that that need entails the continuation of all existing obligations, regardless of their origin. If, as is recognised in recital 5 to the Framework Directive, the convergence of the telecommunications, media and information technology sectors requires a single regulatory framework, it would be inconsistent for the transitional arrangements concerning access and interconnection (Article 7 of the Access Directive) to have a different scope to the transitional arrangements concerning tariffs (Article 16(1)(a) of the Universal Service Directive). That view explains why the first paragraph of Article 27 of the Framework Directive, with regard to maintaining obligations already imposed under national law, refers to obligations deriving from both Article 7 of the Access Directive and Article 16 of the Universal Service Directive.

45. The German Government is absolutely correct when it submits that, with regard to preparing the way for the unrestricted expansion of the new regulatory framework, the principle of effectiveness means that all the earlier measures must be maintained without distinction.

46. In short, whatever method of interpretation is used in respect of the first paragraph of Article 27 of the Framework Directive and

24 — Article 16 of the Framework Directive, to which Articles 27 of that directive, 16 of the Universal Service Directive and 7 of the Access Directive refer, lays down a procedure which is subject to the guidelines which, in accordance with Article 15(2) of the Framework Directive, the Commission approves in collaboration with the national competition authorities (Article 16(1)), and to the rules which the appropriate national authority must publish in order to satisfy the criteria of transparency and consultation (Article 6) with the assistance of the Commission and the relevant bodies of other Member States (Article 7(3), (4) and (5) of the Framework Directive). That complexity led me to propose in the Opinion in *Telefónica O2 Czech Republic* that the provisions concerned do not satisfy the criteria required for direct effect (point 45).

Article 16(1)(a) of the Universal Service Directive, it must include all the obligations imposed on operators under the previous regime regardless of their source, or, in other words, of the instrument which each Member State chooses to apply and implement Community harmonisation. [25] The view put forward by Deutsche Telekom would lead to undertakings in the same material situation being governed by different systems depending on the Member State in which they operate, an outcome which is contrary to the Telecommunications Directives and, in general, to the foundations of Community law.

48. The latter provision requires the maintenance of the obligations imposed under Article 17 of Directive 98/10, which provides that national regulatory authorities must ensure that organisations with significant market power comply with the principles set out in that article (paragraph 1) and, in particular, with the principles of cost orientation (paragraph 2).

3. The requirement for administrative authorisation of the charges

49. Paragraph 25 of the TKG 1996 refers to Paragraph 24 of that law which provides that the amount of the charges must be linked to the costs of providing the service. That being the case, there are no grounds for denying that the provision implements Article 17 of Directive 98/10, from which it follows that, pursuant to the first paragraph of Article 27 of the Framework Directive and Article 16(1)(a) of the Universal Service Directive, the provision must be maintained temporarily until such time as the relevant analysis of the German market has been conducted, the level of competition in that market assessed, and the appropriate action taken in the form of maintaining, amending or withdrawing the obligations imposed on dominant undertakings.

47. It still remains to be determined whether a rule such as the one contained in Paragraph 25(1) of the TKG 1996, under which there must be prior authorisation of the charges which dominant undertakings impose on end-users for voice telephony services, is consistent with the first paragraph of Article 27 of the Framework Directive and Article 16(1)(a) of the Universal Service Directive.

50. Indeed, the requirement that the charges levied by such undertakings, which satisfy the requirements of Paragraph 24 and concordant provisions of the TKG 1996, must be authorised by the relevant authority ensures compliance with Article 17 of Directive 98/10 (paragraph 1 of that provision), in particular by means of cost-orientated charges (paragraph 2).

25 — A wide interpretation of the transitional arrangements may be found in Case C-33/04 *Commission* v *Luxembourg* [2005] ECR I-10629, paragraphs 54 to 60.

51. The Commission is absolutely correct when it states that if, during the transitional period, those charges did not undergo an administrative review, it would be difficult to establish whether they are cost-orientated, thereby thwarting the aim of ensuring continuity free from undesirable interruptions until such time as the required market analysis has been carried out.

52. Accordingly, the obligation laid down in Paragraph 25 of the TKG 1996 is based on Article 17 of Directive 98/10, from which it follows that, in accordance with the first paragraph of Article 27 of the Framework Directive and Article 16(1)(a) of the Universal Service Directive, the obligation must be maintained temporarily.

53. In the light of all of the above, it would be appropriate for the Court to reply to the first question referred for a preliminary ruling by declaring that the provisions in issue require the temporary continuation of a statutory requirement laid down in earlier national legislation and of the relevant administrative implementing measure, pursuant to which the charges levied by a dominant undertaking on end-users for the supply of telephone services is subject to administrative authorisation.

B — *The second question is redundant*

54. By the second question, which has been referred in the alternative, the German court asks whether, in the event that the first paragraph of Article 27 of the Framework Directive and Article 16(1)(a) of the Universal Service Directive do not provide for the temporary continuation of a statutory requirement such as the one described, Community law affords the legislature of each Member State sufficient latitude to implement such a continuation.

55. That question is resolved by the reply to the first question. The Community law to which the question refers must be the directives which form the new regulatory framework in the electronic communications sector. It is clear from the systematic and teleological interpretation criteria which I have used in this Opinion that the general scheme of those provisions does not merely recommend but requires that the previous measures be maintained until such time as the market situation has been established by means of the appropriate analyses. The national regulatory authorities must then act to implement the new regulatory framework by maintaining, amending or withdrawing the previous obligations.

VII — Conclusion

56. In the light of the foregoing considerations, I propose that the Court of Justice should reply to the questions referred for a preliminary ruling by the Bundesverwaltungsgericht by declaring that:

The first paragraph of Article 27 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) and Article 16(1)(a) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) must be interpreted as meaning that a statutory requirement laid down in earlier national legislation, and the relevant administrative implementing measure which provides for administrative authorisation of the charges levied by a dominant undertaking on end-users for the provision of voice telephony services, must be maintained temporarily until such time as the appropriate market analysis has been carried out.